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UNITED NATIONS JURIDICAL YEARBOOK 1990

UNITED NATIONS

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ABBREVIATIONS

ESCAP	Economic and Social Commission for Asia and the Pacific
FAO	Food and Agriculture Organization of the United Nations
GATT	General Agreement on Tariffs and Trade
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
ICSC	International Civil Service Commission
ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
ILO	International Labour Organisation
IMF	International Monetary Fund
IMO	International Maritime Organization
ITU	International Telecommunication Union
UNCHS	United Nations Centre for Human Settlements (Habitat)
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNDTCD	United Nations Department of Technical Cooperation for Development
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
UNITAR	United Nations Institute for Training and Research
UPU	Universal Postal Union
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization

FOREWORD

By its resolution 1814 (XVII) of 18 December 1962, the General Assembly requested the Secretary-General to publish a *Juridical Yearbook* which would include certain documentary materials of a legal character concerning the United Nations and related intergovernmental organizations, and by its resolution 3006 (XXVII) of 18 December 1972 the General Assembly made certain changes in the outline of the *Yearbook*.

Chapters I and II of the present volume — the twenty-eighth of the series — contain legislative texts and treaty provisions relating to the legal status of the United Nations and related intergovernmental organizations. With a few exceptions, the legislative texts and treaty provisions which are included in these two chapters entered into force in 1990. Decisions given in 1990 by international and national tribunals relating to the legal status of the various organizations are found in chapters VII and VIII.

Chapter III contains a general review of the legal activities of the United Nations and related intergovernmental organizations. Each organization has prepared the section which relates to it.

Chapter IV is devoted to treaties concerning international law concluded under the auspices of the organizations concerned during the year in question, whether or not they entered into force in that year. This criterion has been used in order to reduce in some measure the difficulty created by the sometimes considerable time-lag between the conclusion of treaties and their publication in the United Nations *Treaty Series* following upon their entry into force. In the case of treaties too voluminous to fit into the format of the *Yearbook*, an easily accessible source is provided.

Finally, the bibliography, which is prepared under the responsibility of the Office of Legal Affairs by the Dag Hammarskjöld Library, lists works and articles of a legal character published in 1990.

All documents published in the *Juridical Yearbook* were supplied by the organizations concerned, with the exception of the legislative texts and judicial decisions in chapters I and VIII which, unless otherwise indicated, were communicated by Governments at the request of the Secretary-General.

Part One

LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter I

LEGISLATIVE TEXTS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Peru

In 1990 the following Peruvian tax legislation relating to international organizations was issued:[1] *

(*a*) TAX CODE — GENERAL PRINCIPLES (SOLE AUTHORIZED TEXT)[2]

Rule XVI

By law, or otherwise by decision of the Executive, tax exemptions may be granted to foreign diplomatic and consular officials, on a basis of strict reciprocity, and also to the employees of international organizations.

In no case shall such exemptions cover taxes levied on any personal economic activities carried out by them.

(*b*) AMENDMENTS TO RULES CONCERNING THE NON-RECURRENT EXTRAORDINARY TAX LEVIED ON THE AMOUNT OF CAPITAL ASSETS INSURED[3]

Article 3

The following shall be exempted from the Extraordinary Tax:

(*a*) Organizations and agencies in the public sector, except government enterprises;

(*b*) The Catholic Church and other religious denominations recognized by the State, in respect of their churches and convents;

(*c*) The universities and educational and cultural centres referred to in article 32 of the Constitution of Peru;

(*d*) Natural persons and corporations, in respect of property constituting the cultural heritage of the nation, referred to in Act No. 24047 and amendments thereto;

(*e*) Foreign governmental organizations, international governmental organizations and institutions of international bilateral or multilateral technical cooperation;

(*f*) Foreign embassies, consular establishments and foreign diplomatic establishments in accordance with the relevant international conventions.

* The notes to each chapter are to be found at the end of that particular chapter.

(*c*) ADOPTION OF RULES CONCERNING THE NEW RATES OF THE SELECTIVE TAX ON CONSUMPTION AND OTHER NATIONAL RATES[4]

Article 5

The following shall not apply to supreme decrees Nos. 228-90-EF and 257-90-EF: customs clearance of the goods referred to in decree law No. 22150, articles 61 and 222, and related rules of supreme decree No. 003-78-RE, decree law No. 22992 and other addenda and amendments, carried out for Peruvians returning to Peru after performing diplomatic and official duties, or duties as employees in international organizations, during the period indicated in the foregoing texts.

Goods going through customs which, when this supreme decree enters into force, are pending or in the clearance process, may be cleared *ex officio* under this article.

(*d*) PERSONAL ASSETS TAX ACT[5]

. . .

Article 13

National tax exemptions which have been granted, or are being granted, shall not apply in the case of the present tax for which an express exemption shall be required. Foreign diplomats and foreign employees of duly accredited international organizations shall be exempt.

(*e*) AMENDMENTS TO SOME ASPECTS OF THE CONSUMPTION TAX SYSTEM[6]

Article 3

. . .

B. Imports of:

1. Goods donated from abroad by persons or organizations for the benefit of agencies and services in the public sector, with the exception of official or private Peruvian enterprises which render ancillary or educational services free of charge;

2. Goods for private use, including one motor vehicle with cylinders up to 2,000 cm^3; and household furniture and wares imported free of charge or exempted from customs duties by legal instruments, up to the amount and period specified therein;

3. Goods produced by universities and educational and cultural centres;

4. Equipment and materials for the Voluntary Fire Brigade of Peru;

5. Goods financed from donations from abroad, provided that they are intended for executing public works pursuant to arrangements made under bilateral technical co-operation agreements concluded between the Government of Peru and other States or international government organizations of bilateral and multilateral sources;

NOTES

[1] Translation prepared by the Secretariat of the United Nations on the basis of a Spanish version provided by the Permanent Mission of Peru to the United Nations.

[2] Supreme decree No. 218/90/EF of 24 July 1990.

[3] Supreme decree No. 277/90/EF of 12 October 1990.

[4] Supreme decree No. 294/90/EF of 4 November 1990.

[5] Legislative decree No. 620 of 29 November 1990.

[6] Legislative decree No. 621 of 29 November 1990.

Chapter II

TREATY PROVISIONS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Treaty provisions concerning the legal status of the United Nations

1. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS.[1] APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 13 FEBRUARY 1946

The following State acceded to the Convention in 1990:[2]

State	*Date of receipt of instrument of accession*
Angola	9 August 1990

This brought to 124 the number of States parties to the Convention.[3]

---

2. AGREEMENTS RELATING TO INSTALLATIONS AND MEETINGS

(*a*) Agreement between the United Nations and Ethiopia concerning additional land for the Economic Commission for Africa in Addis Ababa. Signed at Addis Ababa on 18 January 1990[4]

Article V

POSSESSION

1. Immediately upon receipt of the title deeds, the United Nations shall take possession of the Land; however, the Government shall be free to enter on the Land for purposes only of clearing the Land and removing the buildings and structures presently standing on it as required in article IV (2).

2. The United Nations agrees to proceed as expeditiously as possible with the construction of the proposed conference and other facilities on the Land.

. . .

Article VII

ECA HEADQUARTERS SITE

The Land shall form an integral part of the ECA Premises to which the Headquarters Agreement[5] shall *mutatis mutandis* apply.

. . .

Article X

PRIVILEGES AND IMMUNITIES

The privileges and immunities of the United Nations under the Convention on the Privileges and Immunities of the United Nations and the Headquarters Agreement shall apply to the activities under article V.

(*b*) Exchange of letters constituting an agreement between the United Nations and the Government of Argentina concerning the Latin American Seminar and Regional Non-Governmental Organization Symposium on the Inalienable Rights of the Palestinian People,[6] to be held at Buenos Aires from 5 to 9 February 1990. New York, 24, 25 and 26 January 1990

I

LETTERS FROM THE UNITED NATIONS

24 January 1990

(a)

I have the honour to inform you that pursuant to the provisions of paragraph 2 of General Assembly resolution 44/41 B on the "Question of Palestine" of 6 December 1989, the Committee on the Exercise of the Inalienable Rights of the Palestinian People has decided to hold jointly a Latin American Regional Seminar and a Latin American Regional NGO Symposium on the general theme "The Inalienable Rights of the Palestinian People".

. . .

With the present letter I have the honour to propose to your Government that the following terms should apply to the Seminar and NGO Symposium:

(i) The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946, shall be applicable in respect of the Seminar and NGO Symposium. The representatives of States invited by the United Nations to participate in the Seminar and NGO Symposium and the members and observers of the Committee on the Exercise of the Inalienable Rights of the Palestinian People shall enjoy the privileges and immunities accorded by article IV of the Convention. Officials of the United Nations participating in or performing functions in connection with the Seminar and NGO Symposium shall enjoy the privileges and immunities provided under articles V and VII of the Convention. Officials of the specialized agencies participating in the Seminar and NGO Symposium shall be accorded the privileges and immunities provided under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly of the United Nations on 21 November 1947;

(ii) All participants and all United Nations officials performing functions in connection with the Seminar and NGO Symposium shall have the right of unimpeded entry into and exit from Argentina. Visas and entry permits, where required, shall be granted promptly and free of charge upon application and submission to the competent Argentinian authorities of a copy of the invitation issued by the United Nations;

(iii) It is further understood that the Government of Argentina will be responsible for dealing with any action, claim or other demand against the United Nations arising out of (*a*) injury to person or damage of property in conference or office premises provided for the Seminar and NGO Symposium; (*b*) the transportation, if provided by the Government of Argentina; and (*c*) the employment for the Seminar and NGO Symposium of personnel.

. . .

I further propose that upon receipt of your Government's acceptance of this proposal the present letter and the letter in reply from your Government, shall constitute an agreement between the Government of Argentina and the United Nations concerning the arrangements for the Seminar and NGO Symposium.

(*Signed*) Ronald I. SPIERS
Under-Secretary-General for
Political and General Assembly Affairs
and Secretariat Services

(b)

I should like to refer to the Latin American Seminar and Latin American Regional NGO Symposium on the general theme "The Inalienable Rights of the Palestinian People" to be organized by the United Nations, at the invitation of the Government of Argentina, at Buenos Aires from 5 to 9 February 1990.

In this connection I have the honour to inform you, on behalf of the Secretary-General, that all participants invited by the United Nations to the Seminar and NGO Symposium, other than representatives of States, members and observers of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, officials of the United Nations and specialized agencies, have been designated as experts on mission for the United Nations and in such capacity enjoy the privileges and immunities accorded under article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations of 1946.

The United Nations will promptly inform the competent authorities of Argentina of the names of these participants, as soon as they are available.

I wish to propose that the present letter shall constitute an integral part of the agreement between the United Nations and the Government of Argentina concerning the arrangements for the Seminar and NGO Symposium.

(*Signed*) Ronald I. SPIERS
Under-Secretary-General
for Political and General Assembly Affairs
and Secretariat Services

II

LETTERS FROM THE PERMANENT MISSION OF ARGENTINA TO THE UNITED NATIONS

25 January 1990

(a)

I have the honour to acknowledge receipt of your letter dated 24 January 1990 which I hereby transcribe:

[See letter I(a)]

In this regard, I wish to inform Your Excellency that my Government agrees to the above-mentioned text.

(*Signed*) Alfredo CHIARADIA
Chargé d'affaires a.i.

(b)

I have pleasure to acknowledge receipt of Your Excellency's letter dated 24 January 1990 which I hereby transcribe:

[See letter I(b)]

In this regard, I wish to inform you that my Government agrees to the above-mentioned text.

(*Signed*) Alfredo CHIARADIA
Chargé d'affaires a.i.

(c)

I should like to refer to the Latin American Seminar and Latin American Regional NGO Symposium on the Inalienable Rights of the Palestinian People to be organized by the United Nations, at the invitation of the Government of Argentina, at Buenos Aires from 5 to 9 February 1990.

In this respect, and following instructions from my Government, I wish to inform you that according to articles 16 and 18 of the National Constitution, all the Argentine inhabitants are equal before the law. Therefore, it is inadmissible to exempt them from complying with the law, to remove them from the judges designated by law and to establish special or personal privileges.

(*Signed*) Alfredo CHIARADIA
Chargé d'affaires a.i.

III

LETTER FROM THE UNITED NATIONS

26 January 1990

I should like to refer to your letter of 25 January 1990 regarding the Latin American Regional Seminar and Latin American Regional NGO Symposium on the Inalien-

able Rights of the Palestinian People organized by the United Nations, at the invitation of the Government of Argentina, in Buenos Aires from 5 to 9 February 1990, wherein you refer to certain provisions of the Argentine Constitution.

It is the understanding of the United Nations that the provisions of articles 16 and 18 of the Constitution of Argentina will not be applied in a manner which would prejudice in any way the Organization's immunity.

As you know, it is the practice of the United Nations to employ conference and seminar personnel such as secretarial staff, messengers and drivers locally. Such personnel, although not officials of the United Nations within the meaning of section 17 of the Convention on the Privileges and Immunities of the United Nations, are nevertheless considered by the United Nations to be entitled to functional immunity pursuant to Article 105 of the Charter of the United Nations. The nature of the immunity, which is restricted to immunity from legal process in respect of words spoken or written and acts performed in an official capacity, clearly bears this out. Such immunity is granted in the interests of the Organization and not for the personal benefit of the individuals concerned.

In the circumstances, therefore, while it has been decided, on an exceptional basis, to proceed with the holding of the Seminar and NGO Symposium at Buenos Aires, the present situation should not be considered as constituting a precedent for future meetings held by the United Nations in Argentina, for which the appropriate legal arrangements will have to be made.

(*Signed*) Ronald I. SPIERS
Under-Secretary-General
for Political and General Assembly Affairs
and Secretariat Services

(*c*) Exchange of letters constituting an agreement between the United Nations and the Government of Guatemala concerning the status, privileges and immunities of the United Nations Observer Group in Central America in Guatemala.[7] New York, 10 November 1989, and Guatemala City, 26 January 1990

I

LETTER FROM THE UNITED NATIONS

10 November 1989

I have the honour to refer to United Nations Security Council resolution 644 (1989) of 7 November 1989, by which the Council decided to set up, under its authority, a United Nations Observer Group in Central America (hereinafter referred to as "ONUCA") with the terms of reference and structure referred to in the report of the Secretary-General to the Security Council contained in document S/20895 which was approved by the Council. The Council requested the Secretary-General to take the necessary steps, in accordance with the above-mentioned report, to give effect to its decision to establish ONUCA.

In order to facilitate the fulfilment of its purposes, I propose that your Government, in implementation of its obligations under Article 105 of the Charter of the United Nations, extend to ONUCA, as an organ of the United Nations, its property, funds and assets and its officials the provisions of the Convention on the Privileges and Immunities of the United Nations, to which Guatemala acceded on 7 July 1947. In view of the special importance of the functions which ONUCA will perform, I further propose that your Government extend to the Chief Military Observer the privileges and immunities, exemptions and facilities which are enjoyed by diplomatic envoys in accordance with international law, and extend to the military personnel serving under the Chief Military Observer and to their civilian support personnel, whose names shall be communicated to the Government for this purpose, the privileges and immunities accorded to experts performing missions for the United Nations under article VI of the Convention.

In addition to the foregoing, the privileges and immunities necessary for the fulfilment of the functions of ONUCA shall also include freedom of entry and exit without delay or hindrance, of property, supplies, equipment and spare parts; unrestricted freedom of movement on land, sea and in the air of personnel, equipment and means of transport; unrestricted freedom of movement across the land, sea and air borders; the acceptance of United Nations registration of means of transport (on land, sea and in the air) and the United Nations licensing of the operators thereof; the right to fly the United Nations flag on United Nations premises, including ONUCA liaison office and verification centres, its vehicles, aircraft and vessels; and the right of unrestricted communication by radio, satellite or other forms of communication, within the area of ONUCA operations, with United Nations Headquarters and between ONUCA headquarters in Tegucigalpa, Honduras, liaison offices and verification centres and to connect with the United Nations radio and satellite network, as well as by telephone, telegraph or other means.

It is understood that the Government of Guatemala shall provide at its own expense, in agreement with the Chief Military Observer, all such premises as may be necessary for the accommodation and fulfilment of the functions of ONUCA, including office space for the ONUCA liaison office and verification centres as well as the necessary space for the maintenance, service and parking/anchorage of aircraft and patrol boats. All such premises shall be inviolable and subject to the exclusive control and authority of the Chief Military Observer. Without prejudice to the use by the United Nations of its own means of transport and communication, it is understood that your Government shall, upon the request of the Chief Military Observer, provide, at its own expense, the means of transport and communication for ONUCA.

It is understood also that the Government of Guatemala shall provide, upon the request of the Chief Military Observer, armed escort to protect ONUCA personnel during the exercise of their functions when in the opinion of the Chief Military Observer such escort is necessary.

If the above provisions meet with your approval, I would propose that this letter and your reply thereto constitute an agreement between the United Nations and Guatemala to take effect as of the date of the arrival of the first element of ONUCA in Guatemala, which date shall be confirmed to you by me.

(*Signed*) Javier PÉREZ DE CUÉLLAR
Secretary-General
of the United Nations

II

LETTER FROM THE MINISTER FOR FOREIGN AFFAIRS OF GUATEMALA

26 January 1990

I have the honour to refer to your note dated 10 November 1989, which reads as follows:

[See letter I]

In reply, I have the honour to inform you that the Government of Guatemala accepts all the terms of the proposal set forth in the above note. Accordingly, the above note and this reply shall constitute an agreement between the United Nations and Guatemala, to enter into force on the date on which the first contingent of ONUCA arrives in Guatemala, which date is to be confirmed by you.

(*Signed*) Lic. Ariel Rivera IRIAS
Minister for Foreign Affairs

(*d*) Exchange of letters constituting an agreement between the United Nations and the Government of El Salvador concerning the status, privileges and immunities of the United Nations Observer Group in Central America in El Salvador.[8] New York, 10 November 1989, and San Salvador, 16 May 1990

I

LETTER FROM THE UNITED NATIONS

10 November 1989

[Text of the letter is similar to letter I reproduced under (*c*) above]

(*Signed*) Javier PÉREZ DE CUÉLLAR
Secretary-General
of the United Nations

II

LETTER FROM THE MINISTER FOR FOREIGN AFFAIRS OF EL SALVADOR

16 May 1990

I have the honour to refer to your letter dated 10 November 1989, which states: (*a*) that the United Nations Security Council has decided to set up, under its authority, a United Nations Observer Group in Central America (ONUCA); (*b*) that, in order to facilitate attainment of the objectives of ONUCA, the Government of El Salvador must give its approval to the provisions set forth in the above-mentioned letter; and (*c*) that the said letter and this reply thereto indicating the approval of the Government of El Salvador shall constitute the basis for the Agreement between the United Nations and the Government of El Salvador concerning the functioning and establishment of ONUCA.

The Government of El Salvador hereby gives its approval to the provisions set forth in your letter of 10 November 1989 and agrees that the exchange of the above letter and this note shall constitute the basis for the Agreement between the United Nations and the Government of El Salvador concerning the functioning and establishment of ONUCA.

(*Signed*) José Manuel Pacas CASTRO
Minister for Foreign Affairs
of the Republic of El Salvador

(*e*) Exchange of letters constituting an agreement between the United Nations and the Government of Honduras concerning the status, privileges and immunities of the United Nations Observer Group in Central America in Honduras (with memorandum of understanding).[9] New York, 10 November 1989, and Tegucigalpa, 5 July 1990

I

LETTER FROM THE UNITED NATIONS

10 November 1989

[Text of the letter is similar to the text of letter I reproduced under (*c*) above]

(*Signed*) Javier PÉREZ DE CUÉLLAR
Secretary-General
of the United Nations

II

LETTER FROM THE MINISTER FOR FOREIGN AFFAIRS OF HONDURAS

5 July 1990

I have the honour to acknowledge receipt of your note dated 10 November 1989, which reads as follows:

[See letter I]

I have the honour to inform you that the Government of Honduras accepts the provisions and terms of the above note, which, together with this reply, shall constitute an agreement between the United Nations and the Government of Honduras.

(*Signed*) Mario Carías ZAPATA
Minister for Foreign Affairs

MEMORANDUM OF UNDERSTANDING

Pursuant to the exchange of notes dated 10 November 1989 and 5 July 1990 between the United Nations and the Government of Honduras, concerning the statute

of the United Nations Observer Group in Central America (ONUCA) in Honduras, both parties agree to regulate and define the operational aspects specified in paragraph 4 of the exchange of notes as follows:

1. In the event that, because of special circumstances, ONUCA should require the use of Honduran military installations in order to discharge its functions, prior consultations must be held with the Armed Forces of Honduras, on the understanding that the latter shall at all times retain full, direct and immediate authority over Honduran military units, or elements thereof, placed at the disposal of ONUCA.

2. The Government of Honduras, at the request of the Chief Military Observer, shall, subject to normal resource limitations, supply and defray the cost of all means of transport and communications that may be required.

3. The Government of Honduras shall defray the cost of renting premises for the offices of ONUCA during the course of this year, up to a maximum of 30,000 lempiras per month.

This clause may be extended or amended if the parties so choose, with effect from 1 January 1991.

DONE at Tegucigalpa, Republic of Honduras, on 5 July 1990.

For the United Nations
(*Signed*) Ian DOUGLAS
Chief Military Observer a.i.
ONUCA

For the Government of Honduras:
(*Signed*) Jaime Guell BOGRAN
Deputy Minister for Foreign Affairs

(*f*) Exchange of letters constituting an agreement between the United Nations and the Government of the United Republic of Tanzania concerning the holding of a Workshop on Conflict Resolution, Crisis Prevention and Management and Confidence-building among African States.[10] New York, 25 January and 7 February 1990

I

LETTER FROM THE UNITED NATIONS

25 January 1990

I should like to refer to the kind offer of your Government and its Centre for Foreign Relations to cooperate with the United Nations, within the framework of the United Nations Regional Centre for Peace and Disarmament in Africa, regarding the arrangements for the convening, at Arusha, from 5 to 16 March 1990, of a high-level workshop for senior African military and civilian officials on "Conflict Resolution, Crisis Prevention and Management and Confidence-building among African States".

. . .

I wish to propose that the following terms shall apply to the workshop:

(*a*) (i) The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the workshop. The participants invited by the United Nations shall enjoy the privileges and immunities

accorded to experts on mission for the United Nations by article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the workshop shall enjoy the privileges and immunities provided under articles V and VII of the Convention;

(ii) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and persons performing functions in connection with the workshop shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the workshop;

(iii) Personnel provided by the Government of the United Republic of Tanzania pursuant to this Agreement shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the workshop.

. . .

Upon receipt of a letter expressing your Government's concurrence with the above, the present letter and your Government's reply shall constitute an agreement between the United Nations and the Government of the United Republic of Tanzania concerning the holding of the workshop.

(*Signed*) Arpad PRANDLER
Officer-in-Charge
Department for Disarmament Affairs

II

LETTER FROM THE PERMANENT MISSION OF THE UNITED REPUBLIC OF TANZANIA TO THE UNITED NATIONS

7 February 1990

I wish to refer to your letter regarding the terms of agreement between the United Nations and the Government of the United Republic of Tanzania concerning the holding of the Arusha Workshop on Conflict Resolution and Confidence-building Measures among African countries, to be held from 5 to 16 March 1990.

I have the honour to inform you that we have duly taken note of the contents contained in the said letter and have no objection to its provisions.

(*Signed*) A. B. NYAKYI
Ambassador

(*g*) Agreement between the United Nations and the Government of Cuba regarding the arrangements for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[11] to be held at Havana from 27 August to 7 September 1990. Signed at Vienna on 4 April 1990

Article X

LIABILITY

1. The Government shall be responsible for dealing with any action, claim or other demand arising out of:

(*a*) Injury to person or damage to or loss of property in the premises referred to in article III that are provided by or are under the control of the Government;

(*b*) Injury to persons, or damage to or loss of property caused by, or incurred in using, the transport services referred to in article VI;

(*c*) The employment for the Congress of the personnel provided by the Government under article VIII.

2. The Government shall indemnify and hold harmless the United Nations and its officials in respect of any such action, claim or other demand.

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to which Cuba is a party, shall be applicable in respect to the Congress. In particular, the representatives of States and of the intergovernmental organs referred to in article II, paragraph 1 (*a*) and (*b*), above, shall enjoy the privileges and immunities provided under article IV of the Convention, the officials of the United Nations performing functions in connection with the Congress referred to in article II, paragraphs 1 (*j*) and 2, above, shall enjoy the privileges and immunities provided under articles V and VII of the Convention, and any experts on mission for the United Nations in connection with the Congress referred to article II, paragraphs 1 (*d*), (*h*), (*i*) and (*k*), shall enjoy the privileges and immunities provided under articles VI and VII of the Convention.

2. The participants referred to in article II, paragraph 1 (*c*), (*f*), and (*g*) above, shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with their participation in the Congress.

3. The personnel provided by the Government under article VIII above shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Conference.

4. The representatives of the specialized or related agencies, referred to in article II, paragraph 1 (*e*), above, shall enjoy the privileges and immunities provided by the Convention on the Privileges and Immunities of the Specialized Agencies or the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, as appropriate.

5. Without prejudice to the preceding paragraphs of the present article, all persons performing functions in connection with the Congress, and all those invited or accredited to the Congress, including representatives of the press or of other information media, shall enjoy the privileges, immunities and facilities necessary for the independent exercise of their functions in connection with Congress.

6. All persons referred to in article II shall have the right of entry into and exit from Cuba, and no impediment shall be imposed on their transit to and from the Conference area. They shall be granted facilities for speedy travel. Visas and entry permits, where required, shall be granted free of charge, as speedily as possible and

not later than two weeks before the date of the opening Congress. If the application for the visa is not made at least two and a half weeks before the opening of the Congress, the visa shall be granted not later than three days from the receipt of the application. Arrangements shall also be made to ensure that visas for the duration of the Congress are delivered at the airport of arrival to those who were unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge, as speedily as possible, and in any case not later than three days before the closing of the Congress.

7. Distinguished guests officially invited to the Congress by the Government shall be given access to the conference area by the United Nations.

8. For the purpose of the application of the Convention on the Privileges and Immunities of the United Nations, conference premises shall be deemed to constitute premises of the United Nations and access thereto shall be under the control and authority of the United Nations. The premises shall be inviolable for the duration of the Congress, including the preparatory stage and winding up.

9. All persons referred to in article II above shall have the right to take out of Cuba at the time of their departure, without any restriction, any unexpended portions of the funds they brought into Cuba in connection with the Conference and to reconvert any such funds at the rate at which they had originally been converted.

(*h*) Exchange of letters constituting an agreement between the United Nations and the Government of Finland on the Meeting of Experts on Alternative Ways to Mark the End of the United Nations Decade of Disabled Persons,[12] to be held at Järvenpää-Talo, Finland, from 7 to 11 May 1990. Vienna, 10 April 1990

I

LETTER FROM THE UNITED NATIONS

10 April 1990

On behalf of Miss Margaret J. Anstee, who is presently on mission, I have the honour to refer to the arrangements for the Meeting of Experts on Alternative Ways to Mark the End of the United Nations Decade of Disabled Persons, which the United Nations is organizing at Järvenpää-Talo, at the invitation of the Government of Finland, from 7 to 11 May 1990 inclusive.

With the present letter, I wish to obtain your Government's acceptance of the following arrangements:

. . .

12. I wish to propose that the following terms shall apply to the Meeting:

(*a*) (i) The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 and the Convention on the Privileges and Immunities of Specialized Agencies of 21 November 1947 shall be applicable in respect of the Meeting. The participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by article VI of the Convention. Officials of

the United Nations participating in or performing functions in connection with the meeting shall enjoy the privileges and immunities provided under articles V and VII of the Convention. Officials of the specialized agencies participating in the meeting shall be accorded the privileges and immunities provided under articles VII and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies;

(ii) Without prejudice to the provisions of the Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies, all participants and persons performing functions in connection with the Meeting shall enjoy such facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Meeting;

(iii) Personnel provided by the Government pursuant to this Agreement shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Meeting;

(*b*) All participants and all persons performing functions in connection with the Meeting shall have the right of unimpeded entry into and exit from Finland. Visas and entry permits, where required, shall be granted free of charge with utmost speed;

(*c*) It is further understood that the Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of: (i) injury to persons or damage to property in conference or office premises provided for the Meeting; (ii) the transportation provided and arranged by the Government; and (iii) the employment for the Meeting of personnel provided or arranged by the Government; and the Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand, except if it is agreed by the parties that such injury or damage was caused by gross negligence or wilful misconduct by United Nations personnel.

. . .

13. I further propose that upon receipt of your confirmation in writing of the above, this exchange of letters shall constitute an agreement between the United Nations and the Government of Finland regarding the provision of host facilities by the Government for the Meeting of Experts on Alternative Ways to Mark the End of the United Nations Decade of Disabled Persons.

(*Signed*) Henryk J. SOKALSKI
Director
Social Development Division
Centre for Social Development
and Humanitarian Affairs

II

LETTER FROM THE PERMANENT MISSION OF FINLAND TO THE UNITED NATIONS OFFICE AT VIENNA

10 April 1990

I have the honour to refer to the letter of 10 April 1990 sent on your behalf by Mr. Sokalski, Director of the Social Development Division of the Centre for Social

Development and Humanitarian Affairs, setting out the arrangements negotiated for the Meeting of Experts on Alternative Ways to Mark the End of the United Nations Decade of Disabled Persons to be held under the auspices of the United Nations at Järvenpää, Finland, from 7 to 11 May 1990 inclusive.

I am pleased to confirm the acceptance by my Government of the terms of the arrangements as set out in your letter and to confirm that this exchange of letters shall constitute an agreement between the Government of Finland and the United Nations regarding the provision of host facilities for the said Meeting of Experts.

(*Signed*) Matti KAHILUOTO
Permanent Representative of Finland

(*i*) Exchange of letters constituting an agreement between the United Nations and the Government of Vanuatu concerning the arrangements for the Asia Pacific Regional Seminar in Observance of the Thirtieth Anniversary of the Declaration on the Granting of Independence to Colonial Countries and Peoples, to be organized by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples at Port Vila, Vanuatu, from 9 to 11 May 1990.[13] New York, 27 April 1990

I

LETTER FROM THE UNITED NATIONS

27 April 1990

I have the honour to refer to the arrangements for the Asia Pacific Regional Seminar in Observance of the Thirtieth Anniversary of the Declaration on the Granting of Independence to Colonial Countries and Peoples, to be organized by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples at Port Vila, Vanuatu, from 9 to 11 May 1990. With the present letter I wish to obtain your Government's acceptance of the following arrangements:

. . .

I wish to propose that the following terms shall apply to the Seminar:

(*a*) (i) The Convention on the Privileges and Immunities of the United Nations of 1946 shall be applicable in respect of the Seminar. The participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Seminar shall enjoy the privileges and immunities provided under articles V and VII of the Convention. Officials of the specialized agencies participating in the Seminar shall be accorded the privileges and immunities provided under articles V and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies;

(*ii*) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and per-

sons performing functions in connection with the Seminar shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Seminar;

(iii) Personnel provided by the Government pursuant to this Agreement shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Seminar.

(*b*) All participants and all persons performing functions in connection with the Seminar shall have the right of unimpeded entry into and exit from Vanuatu. Visas and entry permits, where required, shall be granted free of charge and as promptly as possible.

(*c*) It is further understood that your Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of: (i) injury to person or damage to property in conference or office premises provided for the Seminar; (ii) the transportation provided by your Government; and (iii) the employment for the Seminar of personnel provided or arranged by your Government; and your Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand.

. . .

I further propose that upon receipt of your confirmation in writing of the above, this exchange of letters shall constitute an agreement between the United Nations and the Government of Vanuatu regarding the provision of host facilities by your Government for the Seminar.

(*Signed*) Abdulrahim A. FARAH
Under-Secretary-General for Special
Political Questions, Regional Cooperation,
Trusteeship and Decolonization

II

LETTER FROM THE PERMANENT MISSION OF VANUATU TO THE UNITED NATIONS

27 April 1990

I have the honour to refer to your letter of today's date, the text of which read as follows:

[See letter I]

I have the honour to confirm that the above arrangements are acceptable to my Government and that your letter together with this reply constitute an understanding between the Republic of Vanuatu and the United Nations which takes effect on today's date.

(*Signed*) Robert F. VAN LIEROP
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Vanuatu to the
United Nations

(*j*) Agreement between the United Nations and the Government of Thailand regarding arrangements for the Sixteenth Session of the World Food Council of the United Nations,[14] to be held at Bangkok from 21 to 24 May 1990. Signed at Rome on 4 May 1990

Article X

LIABILITY

1. The Government shall be responsible for dealing with any action, claim or other demand against the United Nations or its personnel and arising out of:

(*a*) Injury to person or damage to or loss of property in the premises referred to in article III above;

(*b*) Injury to person or damage to or loss of property caused by, or incurred in using, the transport services referred to in article VI above;

(*c*) The employment for the session of the personnel provided by the Government under article VIII above.

2. The Government shall indemnify and hold harmless the United Nations and its personnel in respect of any such action, claim or other demand.

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, shall be applicable in respect of the session. In particular, the representatives of States and of the United Nations Council for Namibia referred to in article II (*a*) and (*b*) shall enjoy the privileges and immunities provided under article IV, the officials of the United Nations performing functions in connection with the session shall enjoy the privileges and immunities provided under articles V and VII and experts on mission for the United Nations in connection with the session shall enjoy the privileges and immunities provided under article VI of the Convention.

2. The representatives/observers referred to in article II (*c*), (*e*), and (*g*) shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with their participation in the session.

3. The personnel provided by the Government under article VIII above shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the session.

4. The representatives of the specialized agencies or of the International Atomic Energy Agency, referred to in article II (*d*), shall enjoy the privileges and immunities provided by the Convention on the Privileges and Immunities of the Specialized Agencies or the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, respectively.

5. Without prejudice to the preceding paragraphs of this article, all persons performing functions in connection with the session and all those invited to the session shall enjoy the privileges, immunities and facilities necessary for the independent exercise of their functions in connection with the session.

6. All persons referred to in article II, all United Nations officials serving the session and all experts on mission for the United Nations in connection with the ses-

sion shall have the right of entry into and exit from Thailand, and no impediment shall be imposed on their transit to and from the conference areas. They shall be granted facilities for speedy travel. Visas and entry permits, where required, shall be granted free of charge, as speedily as possible and not later than two weeks before the date of the opening of the session. If the application for the visa is not made at least two and a half weeks before the opening of the session, the visa shall be granted not later than three days from the receipt of the application. Arrangements will also be made to ensure that visas for the duration of the session are delivered at the airport of arrival to participants who were unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge, as speedily as possible, and in any case not later than three days before the closing of the session.

7. For the purpose of the application of the Convention on the Privileges and Immunities of the United Nations, the session premises shall be deemed to constitute premises of the United Nations in the sense of section 3 of the Convention and access thereto shall be subject to the authority and control of the United Nations. The premises shall be inviolable for the duration of the session, including the preparatory stage and winding up.

8. The participants in the session and the representatives of information media, referred to in article II above, and officials of the United Nations serving the session and experts on mission for the United Nations in connection with the session, shall have the right to take out of Thailand at the time of their departure, without any restrictions, any unexpended portions of the funds they brought into Thailand in connection with the session at the United Nations official rate of exchange prevailing when the funds were brought in.

9. The Government shall allow the temporary importation tax- and duty-free of all equipment, including technical equipment accompanying representatives of information media, and shall waive import duties and taxes on supplies necessary for the session. It shall issue without delay any necessary import and export permits for this purpose.

(*k*) Exchange of letters constituting an agreement between the United Nations and the Government of Sweden on the United Nations Training Course on Remote Sensing for Educators,[15] to be held at Stockholm and Kiruna from 14 May to 15 June 1990. New York, 10 and 22 May 1990

I

LETTER FROM THE UNITED NATIONS

10 May 1990

. . .

The United Nations has received with appreciation the offer from Your Excellency's Government that the first United Nations Training Course on Remote Sensing for Educators be organized in cooperation with the Government of Sweden and the Swedish Agency for International Technical and Economic Cooperation, for the benefit of Member States in the region of the United Nations Economic Commission for Africa (ECA).

. . .

In accordance with the understanding expressed in the exchange of letters between the Office of Legal Affairs of the United Nations and the Permanent Mission of Sweden to the United Nations dated 27 November 1987 regarding the arrangements for the United Nations meetings, seminars or workshops to be conducted in Sweden, I wish to propose that the following terms shall apply to the Training Course:

(*a*) (i) The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 and the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947 shall be applicable in respect of the Training Course;

(ii) Without prejudice to the provisions of the Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies, all participants and persons performing functions in connection with the Training Course shall enjoy such facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Training Course;

(iii) Personnel provided by the Government of Sweden and locally employed personnel pursuant to this Agreement shall enjoy immunity from legal process in respect of words, spoken or written, and any act performed by them in their official capacity in connection with the Training Course;

. . .

(*c*) It is further understood that the Government of Sweden will be responsible for dealing with any claim against the United Nations arising out of:

(i) Injury to persons or damage to property in conference or office premises provided for the Training Course,

(ii) The transportation provided by the Government,

(iii) The employment for the Training Course of personnel provided or arranged by the Government, and the Government shall hold the United Nations and its personnel harmless in respect of any such claim, resulting from the performance of the services under this Agreement, except where it is agreed by the Secretary-General of the United Nations and your Government that such claims arise from the gross negligence or wilful misconduct of such persons.

. . .

I further propose that, upon receipt of your Government's acceptance of this proposal, the present letter and the letter in reply from your Government shall constitute an agreement between the Government of Sweden and the United Nations concerning the arrangements for the Training Course.

(*Signed*) Vasiliy S. SAFRONCHUK
Under-Secretary-General for
Political and Security Council Affairs

II

LETTER FROM THE PERMANENT MISSION OF SWEDEN TO THE UNITED NATIONS

22 May 1990

I have the honour to acknowledge receipt of your letter dated 10 May 1990, which reads as follows:

[See letter I]

In reply I have the honour to inform you that the Swedish Government agrees with the contents of your note and will consider that your note and this reply constitute an agreement between the United Nations and the Government of Sweden on this subject, and that this Agreement enters into force on today's date.

(*Signed*) Jan ELIASSON
Ambassador
Permanent Representative of Sweden
to the United Nations

(*l*) Agreement between the United Nations and the Government of Togo concerning the arrangements for the seminar for French-speaking African countries on the relationships between the status of women and demographic phenomena.[16] Signed at Vienna on 30 March and at Lomé on 23 May 1990[17]

With a view to holding at Lomé, from 28 May to 1 June 1990, a seminar for the French-speaking countries of Africa on the relationships between the status of women and demographic phenomena, the Government of Togo and the United Nations have agreed as follows:

. . .

3. The Government of Togo agrees to host this meeting and undertakes:

(*a*) To apply the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, including:

(i) The participants invited by the United Nations, including observers from organizations of the United Nations system, Governments, intergovernmental and non-governmental organizations and interested research institutes shall be accorded the privileges and immunities granted to experts on missions for the United Nations under article VI of that Convention;

(ii) The United Nations officials participating in the meeting or exercising functions related to it shall be accorded the privileges and immunities provided for in articles V and VII of the Convention;

(*b*) To apply the Convention on the Privileges and Immunities of the Specialized Agencies (21 November 1947) to the officials of the specialized agencies attending the seminar, who shall be granted the privileges and immunities provided for in articles VI and VIII of that Convention;

(*c*) To facilitate the free entry into Togo and the departure of persons exercising functions related to the seminar and to deliver free of charge to them the visas and necessary authorizations. If they are requested four weeks before the opening of the seminar, the visas will be delivered at the latest two weeks before the opening. If they

are requested less than four weeks before the opening, the visas will be delivered as soon as possible and at the latest three days before the opening;

(*d*) To grant all participants and all persons exercising functions related to the seminar the privileges and immunities, facilities and courtesy measures necessary for the full, independent discharge of their duties related to the seminar;

(*e*) To grant immunity of jurisdiction to officials whose services are provided by the Government for any words spoken or written and acts done by them in their official capacity related to the seminar;

(*f*) To assume full responsibility in the follow-up of any proceedings instituted or any complaint or claim made against the United Nations as a result of the following circumstances:

—Injury to persons or damage caused to the premises or offices provided for the seminar;

—Transport provided by the Government;

—Employment for the seminar of personnel provided by the Government or working under arrangements made by the Government; moreover, the Government shall protect the United Nations and its staff against any such proceedings, complaint or claim;

. . .

(*m*) Exchange of letters constituting an agreement between the United Nations and the Government of the Federal Republic of Germany concerning the arrangements for the International Conference on "Energy in Climate and Development: Policy Issues and Technological Options".[18] New York, 20 March, 23 May and 24 May 1990

I

LETTER FROM THE UNITED NATIONS

20 March 1990

I have the honour to give you below the text of arrangements between the United Nations and the Government of the Federal Republic of Germany (hereinafter referred to as "the Government") in connection with the Conference on "Energy in Climate and Development: Policy Issues and Technological Options", to be held at the invitation of the Government of the Federal Republic of Germany, at Saarbruecken from 28 to 31 May 1990 . . .

. . .

4. The Convention of 13 February 1946 on the Privileges and Immunities of the United Nations, to which the Federal Republic of Germany is a party, shall be applicable to the Conference; in particular:

(*a*) The participants shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Conference shall enjoy the privileges and immunities provided under articles V and VII of the Convention;

(*b*) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and persons performing functions in connection with the Conference shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Conference;

(*c*) Personnel provided by the Government pursuant to this Agreement shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Conference;

(*d*) All participants and all persons performing functions in connection with the Conference shall have the right of unimpeded entry into and exit from the Federal Republic of Germany. Visas and entry permits, where required, shall be granted promptly and free of charge;

(*e*) A list with names of all participants of the Conference indicating their status will be communicated to the host authorities by the Secretariat at the earliest possible opportunity.

5. The rooms, offices and related localities and facilities put at the disposal of the Conference by the Government shall be the Meeting Area which will constitute United Nations premises within the meaning of article II, section 3, of the Convention of 13 February 1946.

. . .

I have the honour to propose that this letter and your affirmative answer shall constitute an agreement between the United Nations and the Government of the Federal Republic of Germany which shall enter into force on the date of your reply and shall remain in force for the duration of the Conference and for such additional period as is necessary for their preparation and winding up.

(*Signed*) Sergio C. TRINIDADE
Executive Director
United Nations Centre
for Science and Technology
for Development

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF THE FEDERAL REPUBLIC OF GERMANY TO THE UNITED NATIONS[19]

23 May 1990

I have the honour to confirm receipt of your note of 20 March 1990 — 9.2.1/188/JS/ng — proposing on behalf of the United Nations Centre for Science and Technology for Development (UNCSTD) the conclusion of an arrangement between the Government of the Federal Republic of Germany and the United Nations on the obligations of the host country in connection with the organization of the Conference "Energy in Climate and Development: Policy Issues and Technological Options" at Saarbruecken from 28 to 31 May 1990.

[See letter I]

I have the honour to inform you that the Government of the Federal Republic of Germany agrees to the proposals contained in your note of 20 March 1990, provided that

. . .

2. paragraph 4 (*c*) is deleted

. . .

If the United Nations agrees to the proposals contained in paragraphs 1 to 3 above, your note of 20 March 1990 and this note in reply thereto as well as your further note expressing the agreement of the United Nations with these amendments shall constitute an arrangement between the Government of the Federal Republic of Germany and the United Nations, to enter into force on the date of your further note.

(*Signed*) Hans Otto BRÄUTIGAM

Attachment

EXPLANATORY STATEMENT FOR PARAGRAPHS 4 (*a*) AND (*b*) OF THE ARRANGEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE UNITED NATIONS

With reference to my letter of 23 May 1990 concerning the Arrangement between the Government of the Federal Republic of Germany and the United Nations regarding the International Conference "Energy in Climate and Development: Policy Issues and Technological Options", I have been instructed to communicate the following:

It is the understanding of the Government of the Federal Republic of Germany that the term "participants" within the meaning of paragraph 4 (*a*) of the Arrangement designates persons who are experts on mission under article VI of the Convention and who are formally notified as such.

As regards the term "privileges and immunities" in paragraph 4 (*b*) of the Arrangement, the Government of the Federal Republic of Germany understands that all privileges and immunities with respect to the Conference have been dealt with exclusively under paragraph 4 (*a*).

III

LETTER FROM THE UNITED NATIONS

24 May 1990

I am pleased to refer to your communication of 23 May 1990 concerning the proposed agreement between the United Nations and the Government of the Federal Republic of Germany regarding the International Conference on "Energy in Climate and Development: Policy Issues and Technological Options", to be held at Saarbruecken, Federal Republic of Germany, from 28 to 31 May 1990.

In this context, I wish to confirm that the text of the proposed agreement contained in your above-mentioned communication, together with the proposed amendments, is acceptable to the United Nations and shall therefore constitute, as of today, an agreement between the United Nations and the Government of the Federal Republic of Germany.

(*Signed*) Sergio C. TRINIDADE
Executive Director
United Nations Centre
for Science and Technology
for Development

(*n*) Exchange of letters constituting an agreement between the United Nations and the Government of Spain concerning arrangements for the International Symposium on the Integration of Young People in Society,[20] to be held in Spain in June 1990. Vienna, 9 May and 28 May 1990

I

LETTER FROM THE UNITED NATIONS

9 May 1990

I have the honour to refer to the arrangements for the June 1990 International Symposium on the Integration of Young People in Society which the Instituto de la Juventud (Ministry for Social Affairs) of the Government of Spain has most graciously offered to host, and for which the United Nations is now preparing.

In accordance with the relevant provisions of the project document for this Symposium, with the present letter I wish to obtain your Government's acceptance of the following arrangements:

17. The following terms shall also apply to the Symposium:

(*a*) (i) The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the Symposium. The participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Symposium shall enjoy the privileges and immunities provided under articles V and VII of the Convention. Officials of the specialized agencies participating in the Symposium shall be accorded the privileges and immunities provided under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies;

(ii) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and persons performing functions in connection with the Symposium shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Symposium;

(iii) Personnel provided by the Government pursuant to this Agreement shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Symposium;

(*b*) All participants and all persons performing functions in connection with the Symposium shall have the right of unimpeded entry into and exit from Spain. Visas and entry permits, where required, shall be granted free of charge. When applications are made four weeks before the opening of the Symposium, visas shall be granted in good time for all the participants to attend the Symposium. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible and not later than three days before the opening;

(*c*) It is further understood that the Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of: (i) injury or damage to person or property in conference or office premises provided for the Symposium; (ii) the transportation provided by the Government; and (iii) the employment for the Symposium of personnel provided or arranged by the Government; and the Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand.

. . .

18. I further propose that upon receipt of your confirmation in writing of the above, this exchange of letters shall constitute an agreement between the United Nations and the Government of Spain regarding the provision of host facilities by the Government of Spain for the International Symposium on the Integration of Young People in Society.

19. Finally, it is understood that this Agreement shall enter into force as soon as the procedures required under the Spanish legal system have been completed, although it shall be applied on a provisional basis from the date on which the letters are exchanged.

(*Signed*) Margaret J. ANSTEE
Director-General
United Nations Office at Vienna

II

LETTER FROM THE PERMANENT MISSION OF SPAIN TO THE INTERNATIONAL ORGANIZATIONS AT VIENNA

28 May 1990

I have the honour to acknowledge receipt of your letter of 9 May 1990, which reads as follows:

[*See letter I*]

I have the honour to inform you that the Government of Spain accepts the provisions set forth in your letter, which, together with this reply, shall constitute the Agreement between the United Nations and the Government of Spain concerning the provision of services by the Government of Spain as the host Government for the International Symposium on the Integration of Young People into Society, and that this Agreement shall take effect on completion of the formalities required under Spanish legislation, notwithstanding which it shall apply provisionally from today's date.

(*Signed*) Eloy YBAÑEZ
Ambassador
Permanent Representative

(*o*) Exchange of letters constituting an agreement between the United Nations and the Government of Bulgaria concerning the holding of the Seminar on Confidence-building Measures in the Maritime Environment.[21] New York, 5 and 11 June 1990

I

LETTER FROM THE UNITED NATIONS

5 June 1990

I should like to refer to the kind offer of your Government to cooperate with the United Nations in holding a Seminar on Confidence-building Measures in the Maritime Environment. The meeting is being organized by the Department for Disarmament Affairs from 4 to 6 September 1990 at Varna, Bulgaria.

. . .

I would like to propose that the following terms, which have continually been established by the United Nations for similiar events, shall apply to the seminar.

(*a*) (i) The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the Seminar. The participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Seminar shall enjoy the privileges and immunities provided under articles V and VII of the Convention;

(ii) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and persons performing functions in connection with the Seminar shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Seminar;

(iii) Personnel provided by the Government of Bulgaria shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Seminar;

. . .

(*c*) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, the Government shall be responsible for dealing with any action, claim or other demand against the United Nations arising out of: (i) injury to person or damage to property, in conference or office premises provided for the Seminar; (ii) the transportation provided by your Government; and (iii) the employment for the Seminar of personnel provided or arranged by the Government of Bulgaria, and your Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand.

. . .

Upon receipt of a letter expressing your Government's concurrence with the above and with the provisions of the attachment, the present letter and your Government's reply shall constitute an agreement between the United Nations and the Government of Bulgaria concerning the holding of the Seminar on Confidence-building in the Maritime Environment organized by the United Nations in Bulgaria.

(*Signed*) Yasushi AKASHI
Under-Secretary-General
for Disarmament Affairs

II

LETTER FROM THE PERMANENT MISSION OF BULGARIA TO THE UNITED NATIONS

11 June 1990

I should like to acknowledge receipt of your letter of 5 June 1990 containing the terms that shall apply to the Seminar on Confidence-building Measures in the Maritime Environment to be held at Varna, Bulgaria, from 4 to 6 September 1990.

I should also like to confirm our agreement to the terms proposed in the above-mentioned letter and its annex with the understanding that the text of your letter and the present confirmation constitute an agreement between the United Nations and the Government of Bulgaria concerning the holding of the Seminar on Confidence-building Measures in the Maritime Environment.

(*Signed*) Ivan SOTIROV
Minister Plenipotentiary
Acting Permanent Representative
to the United Nations

(*p*) Exchange of letters constituting an agreement between the United Nations and the Government of Sweden concerning the United Nations European Regional Seminar on the Question of Palestine.[22] New York, 9 April and 18 June 1990

I

LETTER FROM THE UNITED NATIONS

9 April 1990

. . .

The Committee on the Exercise of the Inalienable Rights of the Palestinian People has received with appreciation the acceptance of Your Excellency's Government that the United Nations European Regional Seminar on the Question of Palestine be held at Stockholm, from 7 to 11 May 1990 . . .

In accordance with the understanding expressed in the exchange of letters between the Office of Legal Affairs of the United Nations and the Permanent Mission of Sweden to the United Nations dated 27 November 1987 regarding the arrangements for the United Nations meetings, seminars or workshops to be conducted in Sweden, I wish to propose that the following terms shall apply to the Seminar:

(*a*) (i) The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 and the Convention on the Privileges and Immunities of Specialized Agencies of 21 November 1947 shall be applicable in respect of the Seminar;

(ii) Without prejudice to the provisions of the Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies, all participants and persons performing functions in connection with the Seminar shall enjoy facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Seminar;

(iii) Personnel provided by the Government of Sweden pursuant to this Agreement shall enjoy immunity from legal process in respect of words, spoken or written, and any act performed by them in their official capacity in connection with the Seminar;

. . .

(*c*) It is further understood that the Government of Sweden will be responsible for dealing with any claim against the United Nations arising out of:

(i) Injury to persons or damage to property in conference or office premises provided for the Seminar;

(ii) The transportation provided by the Government;

(iii) The employment for the Seminar of personnel provided or arranged by the Government, and the Government shall hold the United Nations and its personnel harmless in respect of any such claim resulting from the performance of the services under this Agreement, except where it is agreed by the Secretary-General of the United Nations and your Government that such claims arise from gross negligence or wilful misconduct of such persons;

. . .

I further propose that, upon receipt of your Government's acceptance of this proposal, the present letter and the letter in reply from your Government shall constitute an agreement between the Government of Sweden and the United Nations concerning the arrangements for the Seminar.

(*Signed*) Ronald I. SPIERS
Under-Secretary-General for
Political and General Assembly Affairs
and Secretariat Services

II

LETTER FROM THE PERMANENT MISSION OF SWEDEN TO THE UNITED NATIONS

18 June 1990

I have the honour to acknowledge receipt of your letter dated 9 April 1990, which reads as follows:

[See letter I]

In reply I have the honour to inform you that the Swedish Government agrees with the contents of your note and will consider that your note and this reply constitute an agreement between the United Nations and the Government of Sweden on this subject, and that this Agreement enters into force on today's date.

(*Signed*) Jan ELIASSON
Ambassador
Permanent Representative of Sweden
to the United Nations

(*q*) Exchange of letters constituting an agreement between the United Nations and the Government of Barbados concerning the arrangements for the Caribbean Regional Seminar in Observance of the Thirtieth Anniversary of the Declaration on the Granting of Independence to Colonial Countries and Peoples.[23] New York, 30 May 1990, and St. Michael, Barbados, 12 June 1990

I

LETTER FROM THE UNITED NATIONS

30 May 1990

I have the honour to refer to the arrangements for the Caribbean Regional Seminar in Observance of the Thirtieth Anniversary of the Declaration on the Granting of Independence to Colonial Countries and Peoples, to be organized by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples at the Dover Convention Centre, Barbados, from 19 to 21 June 1990. With the present letter, I wish to obtain your Government's acceptance of the following arrangements:

. . .

I wish to propose that the following terms shall apply to the Seminar:

(*a*) (i) The Convention on the Privileges and Immunities of the United Nations of 1946 shall be applicable in respect of the Seminar. The participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Seminar shall enjoy the privileges and immunities provided under articles V and VII of the Convention;

(ii) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and persons performing functions in connection with the Seminar shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Seminar;

(iii) Personnel provided by the Government, pursuant to this Agreement, shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Seminar;

. . .

(*c*) It is further understood that your Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of: (i) injury to person or damage to property in conference or office premises provided for the Seminar; (ii) the transportation provided by your Government; and (iii) the employment for the Seminar of personnel provided or arranged by your Government; and your Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand.

. . .

I further propose that upon receipt of your confirmation in writing of the above, this exchange of letters shall constitute an agreement between the United Nations and the Government of Barbados regarding the provision of host facilities by your Government for the Seminar.

(*Signed*) Abdulrahim A. FARAH
Under-Secretary-General for
Special Political Questions, Regional
Cooperation, Trusteeship and Decolonization

II

LETTER FROM THE MINISTRY OF FOREIGN AFFAIRS OF BARBADOS

12 June 1990

I have the honour to refer to your letter of 30 May 1990 concerning arrangements for the Caribbean Regional Seminar in Observance of the Thirtieth Anniversary of the Declaration on the Granting of Independence to Colonial Countries and Peoples, and specifically to the following arrangement as set out in the said letter:

[See letter I]

I have the honour to confirm that the above arrangements are acceptable to the Government of Barbados and that your letter together with this reply constitute an understanding between the Government and the United Nations.

(*Signed*) Peter D. LAURIE
Permanent Secretary

(*r*) Exchange of letters constituting an agreement between the United Nations and the Government of Finland concerning the arrangements for the Meeting of Experts, "The social impact of the critical economic environment on developing countries: strategies for social development cooperation".[24] Vienna, 11 and 17 July 1990

I

LETTER FROM THE UNITED NATIONS

11 July 1990

I have the honour to refer to the arrangements for the 1990 Meeting of Experts, "The social impact of the critical economic environment on developing countries: strategies for social development cooperation", which the United Nations will organize at Helsinki, upon the invitation of the Government of Finland, from 17 to 21 September 1990 inclusive.

. . .

11. I wish to propose that the following terms shall apply to the Meeting:

(*a*) (i) The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 and the Convention on the Privileges

and Immunities of the Specialized Agencies of 21 November 1947 shall be applicable in respect of the Meeting. The participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Meeting shall enjoy the privileges and immunities provided under articles V and VII of the Convention. Officials of the specialized agencies participating in the meeting shall be accorded the privileges and immunities provided under articles VII and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies;

(ii) Without prejudice to the provisions of the Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies, all participants and persons performing functions in connection with the Meeting shall enjoy such facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Meeting;

(iii) Personnel provided by the Government pursuant to this Agreement shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Meeting;

. . .

(*c*) It is further understood that the Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of: (i) injury to persons or damage to property in conference or office premises provided for the Meeting; (ii) the transportation provided and arranged by the Government; and (iii) the employment for the Meeting of personnel provided or arranged by the Government; and the Government shall hold the United Nations and its personnel harmless in respect of any such claim or other demand, except if it is agreed by the parties that such injury or damage was caused by gross negligence or wilful misconduct by United Nations personnel.

12. I further propose that, upon receipt of your confirmation in writing of the above, this exchange of letters shall constitute an agreement between the United Nations and the Government of Finland regarding the provision of host facilities by the Government for the 1990 Meeting of Experts, "The social impact of the critical economic environment on developing countries: strategies for social development cooperation".

(*Signed*) Margaret J. ANSTEE
Director-General
United Nations Office at Vienna

II

LETTER FROM THE PERMANENT MISSION OF FINLAND TO THE UNITED NATIONS

17 July 1990

I have the honour to refer to your letter of 11 July 1990 setting out the arrangements negotiated for the Meeting of Experts, "The social impact of the critical eco-

nomic environment on developing countries: strategies for social development cooperation", which will be held under the auspices of the United Nations in Järvenpää, Finland, from 17 to 21 September 1990 inclusive.

I am pleased to confirm the acceptance by my Government of the terms of the arrangements as set out in your letter and to confirm that this exchange of letters shall constitute an agreement between the Government of Finland and the United Nations regarding the provision of host facilities for the 1990 Meeting of Experts, "The social impact of the critical economic environment on developing countries: strategies for social development cooperation".

(*Signed*) Arto KURITTU
Acting Permanent Representative of Finland
to the United Nations

(*s*) Agreement between the United Nations and the Government of France concerning the Second United Nations Conference on the Least Developed Countries,[25] to be held in Paris from 3 to 14 September 1990. Signed at Geneva on 9 August 1990[26]

Article XIII

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to which France has been a party since 18 August 1947, shall be applicable to the Conference.

2. Representatives of States shall enjoy the privileges and immunities provided for in article IV, officials of the United Nations shall enjoy the privileges and immunities provided for in articles V and VII, and experts on mission for the Organization shall enjoy the privileges and immunities provided for in article VI of the Convention on the Privileges and Immunities of the United Nations.

3. All persons referred to in article II above, all United Nations officials assigned to the Conference and all experts on mission for the United Nations on the occasion of the Conference shall have the right to enter France and to leave it, without any restrictions on their movements to and from the Conference premises referred to in article I above. Any entry and exit visas which may be necessary shall be issued free of charge and as quickly as possible. Arrangements shall also be made to have visas for the duration of the Conference issued upon arrival to those participants who were unable to obtain them before departure.

4. For the purposes of the application of the Convention on the Privileges and Immunities of the United Nations, the Conference premises referred to in article I above shall be deemed to be premises of the United Nations within the meaning of section 3 of the Convention, and access to them, with the exception of those premises which are part of the permanent headquarters of the United Nations Educational, Scientific and Cultural Organization, shall be placed under the authority and control of the United Nations. The Conference premises referred to in article I shall be inviolable for the duration of the Conference, as well as during the preparatory phase and the winding-up phase, neither of which may exceed 10 days.

5. The Government shall authorize the temporary import of all the material and supplies needed for the Conference, free of import duties and charges. It shall also

authorize, under the same conditions, the import during the Conference of all technical material required for the work of the persons referred to in article II, paragraph 2, above. The Government shall issue without delay all the import and export permits which may be necessary.

(*t*) Agreement between the United Nations (Office of the United Nations High Commissioner for Refugees) and the Government of Nicaragua.[27] Signed at Managua on 1 November 1990

WHEREAS the Office of the United Nations High Commissioner for Refugees was established by the United Nations General Assembly in resolution 319 (IV) of 3 December 1949,

WHEREAS the statute of the Office of the United Nations High Commissioner for Refugees, adopted by the United Nations General Assembly in resolution 428 (V) of 14 December 1950, provides, *inter alia,* that the High Commissioner, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the statute and of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities,

WHEREAS the Office of the United Nations High Commissioner for Refugees, a subsidiary organ established by the General Assembly pursuant to Article 22 of the Charter of the United Nations, is an integral part of the United Nations and its status, privileges and immunities are governed by the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946,

WHEREAS the Office of the United Nations High Commissioner for Refugees and the Government of Nicaragua wish to establish the terms and conditions under which the Office shall, within its mandate, be represented in the country,

NOW THEREFORE the Office of the United Nations High Commissioner for Refugees and the Government of Nicaragua, in a spirit of friendly cooperation, have entered into this Agreement.

Article I

DEFINITIONS

For the purposes of this Agreement:

(*a*) The term "UNHCR" means the Office of the United Nations High Commissioner for Refugees;

(*b*) The term "High Commissioner" means the United Nations High Commissioner for Refugees or the officials to whom the High Commissioner has delegated authority to act on his behalf;

(*c*) The term "Government" means the Government of Nicaragua;

(*d*) The terms "country of asylum" or "country" mean Nicaragua;

(*e*) The term "Parties" means UNHCR and the Government;

(*f*) The term "Convention" means the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946;

(*g*) The term "UNHCR office" means the offices, premises and facilities occupied or maintained in the country;

(*h*) The term "representative of UNHCR" means the UNHCR official in charge of the High Commissioner's office in the country;

(*i*) The term "UNHCR officials" means all UNHCR staff members employed in accordance with the Staff Rules of the United Nations, with the exception of persons recruited locally and paid by the hour, pursuant to General Assembly resolution 76 (I) of 7 December 1946;

(*j*) The term "experts on missions" means persons who are not UNHCR officials but who provide services on behalf of UNHCR, or who carry out temporary missions for UNHCR;

(*k*) The term "persons providing services on behalf of UNHCR" means all natural and juridical persons and their employees, not nationals of the country of asylum, recruited by UNHCR to execute or help to implement its programmes;

(*l*) The term "UNHCR staff" means all UNHCR officials, experts on missions and persons providing services on behalf of UNHCR.

. . .

Article VII

PRIVILEGES AND IMMUNITIES

1. The Government shall apply to UNHCR, its property, funds and assets, and to its officials and experts on mission the relevant provisions of the Convention on the Privileges and Immunities of the United Nations, to which the Government became a party on 29 November 1947. The Government also agrees to grant to UNHCR and its personnel such additional privileges and immunities as may be necessary for the effective exercise of the international protection and humanitarian assistance functions of UNHCR.

2. Subject to the provisions of paragraph 1 of this article, the Government shall in particular extend to UNHCR the privileges, immunities, rights and facilities provided for in articles VIII to XV of this Agreement.

Article VIII

UNHCR OFFICE, PROPERTY AND ASSETS

1. UNHCR, its property, funds and assets, wherever located and by whomsoever held, shall be immune from every form of legal process, except in so far as in any particular case it has expressly waived its immunity; it being understood that this waiver shall not extend to any measure of execution.

2. The premises of the UNHCR office shall be inviolable. The property, funds, and assets of UNHCR, wherever situated and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action, subject, in every case, to the preceding article.

3. The archives of UNHCR, and in general all documents belonging to or held by it, shall be inviolable.

4. The funds, assets, income and other property of UNHCR shall be exempt from:

(*a*) Any form of direct taxation, provided that UNHCR will not claim exemption from charges for public utility services;

(*b*) Customs duties and prohibitions and restrictions on articles imported or exported by UNHCR for its official use, provided that articles imported under such exemption will not be sold in the country except under conditions agreed upon with the Government;

(*c*) Customs duties and prohibitions and restrictions in respect of the import and export of its publications.

5. Any materials imported or exported by UNHCR or by national or international bodies duly accredited by UNHCR to act on its behalf in connection with humanitarian assistance for refugees shall be exempt from all customs duties and prohibitions and restrictions.

6. UNHCR shall not be subject to any financial controls, regulations or moratoria and may freely:

(*a*) Acquire from authorized commercial agencies, hold and use negotiable currencies, maintain foreign-currency accounts and acquire through authorized institutions, hold and use funds, securities and gold;

(*b*) Bring funds, securities, foreign currencies and gold into the host country from any other country, use them within the host country or transfer them to other countries.

7. UNHCR shall enjoy the legal rate of exchange, by mutual agreement in accordance with the regulations of the Government.

Article IX

COMMUNICATION FACILITIES

1. UNHCR shall enjoy, in respect of its official communications, treatment not less favourable than that accorded by the Government to any other Government including its diplomatic missions or to other intergovernmental, international organizations in the matter of priorities, tariffs and charges on mail, cablegrams, telephone, telephoto, telegraph, facsimile and other communications, as well as rates for information to the press and radio.

2. The Government shall secure the inviolability of the official communications and correspondence of UNHCR and shall not apply any censorship to its communications and correspondence. Such inviolability, without limitation by reason of this enumeration, shall extend to publications, photographs, slides, films and sound recordings.

3. UNHCR shall have the right to use codes and to dispatch and receive correspondence and other materials by courier or in sealed bags which shall have the same privileges and immunities as diplomatic couriers and bags.

4. UNHCR shall have the right to operate radio and other telecommunications equipment, on United Nations registered frequencies, and those allocated by the Government, between its offices, within and outside the country, and in particular with UNHCR headquarters in Geneva.

5. It is understood that these provisions shall be implemented by mutual agreement between UNHCR and the Government of Nicaragua.

Article X

UNHCR OFFICIALS

1. The UNHCR representative, deputy representative and other senior officials, as may be agreed between UNHCR and the Government, shall enjoy, while in the country, in respect of themselves, their spouses and dependent relatives, the privileges and immunities, exemptions and facilities normally accorded to diplomatic envoys. For this purpose, the Ministry of Foreign Affairs shall include their names in the Diplomatic List.

2. UNHCR officials, while in the country, shall enjoy the following facilities, privileges and immunities:

(*a*) Immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

(*b*) Immunity from inspection and seizure of their official baggage;

(*c*) Immunity from any military service obligations or any other obligatory service;

(*d*) Exemption, with respect to themselves, their spouses, their relatives dependent on them and other members of their households, from immigration restriction and alien registration;

(*e*) Exemption from taxation in respect of the salaries and all other remuneration paid to them by UNHCR;

(*f*) Exemption from any form of taxation on income derived by them from sources outside the country;

(*g*) Prompt clearance and issuance, without cost, of visas, licences or permits, if required, and free movement within, to or from the country to the extent necessary for the carrying out of UNHCR international protection and humanitarian assistance programmes;

(*h*) Freedom to hold or maintain within the country foreign exchange, foreign-currency accounts and movable property and the right upon termination of employment with UNHCR to take out of the host country their funds for the lawful possession of which they can show good cause;

(*i*) The same protection and repatriation facilities with respect to themselves, their spouses and relatives dependent on them and other members of their households as are accorded in time of international crisis to diplomatic envoys;

(*j*) The right to import for personal use, free of duty and other levies, prohibitions and restrictions on imports:

(i) Their furniture and personal effects in one or more separate shipments and thereafter to import necessary additions to the same, including motor vehicles, according to the regulations applicable in the country to diplomatic representatives accredited in the country and/or resident members of international organizations;

(ii) Reasonable quantities of certain articles for personal use or consumption, as determined by the authorities of the country.

3. UNHCR officials who are nationals of or permanent residents in the host country shall enjoy only those privileges and immunities provided for in the Convention of 13 February 1946.

Article XI

LOCALLY RECRUITED PERSONNEL

1. Persons recruited locally and assigned to hourly rates to perform services for UNHCR shall enjoy, solely as regards the performance of their functions, immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity.

2. The terms and conditions of employment for locally recruited staff shall be in accordance with national legislation and the relevant United Nations resolutions, regulations and rules.

Article XII

EXPERTS ON MISSION

1. Experts on mission for UNHCR shall be accorded such facilities, privileges and immunities as are necessary for the independent exercise of their functions. In particular, they shall be accorded:

(*a*) Immunity from personal arrest or detention;

(*b*) Immunity from legal process of every kind in respect of words spoken or written and official acts done by them in the course of the performance of their mission;

(*c*) Inviolability for all official papers and documents;

(*d*) For the purpose of their official communications, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(*e*) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(*f*) The same immunities and facilities including immunity from inspection and seizure in respect of their personal baggage as are accorded to diplomatic envoys.

Article XIII

PERSONS PERFORMING SERVICES ON BEHALF OF UNHCR

1. Except as the Parties may otherwise agree, the Government shall grant to all persons performing services on behalf of UNHCR, other than nationals of the host country employed locally, the privileges and immunities specified in article V, section 18, of the Convention. In addition, they shall be granted:

(*a*) Prompt clearance and issuance, without cost, of visas, licences or permits necessary for the effective exercise of their functions;

(*b*) Free movement within, to or from the country, to the extent necessary for the implementation of the UNHCR humanitarian programmes.

Article XIV

NOTIFICATION

1. UNHCR shall notify the Government of the names of UNHCR officials, experts on mission and other persons performing services on behalf of UNHCR, and of any change in the status of such individuals as soon as such change occurs.

2. UNHCR officials, experts on mission and other persons performing services on behalf of UNHCR shall be provided with a special identity card certifying their status under this Agreement.

Article XV

WAIVER OF IMMUNITY

Privileges and immunities are granted to UNHCR personnel in the interests of the United Nations and UNHCR and not for the personal benefit of the individuals concerned. The Secretary-General of the United Nations may waive the immunity of any UNHCR personnel in any case where, in his opinion, the immunity would impede the course of justice in the host country and it can be waived without prejudice to the interests of the United Nations and UNHCR.

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3. AGREEMENTS RELATING TO THE UNITED NATIONS DEVELOPMENT PROGRAMME

Standard Basic Assistance Agreement between the recipient Government and the United Nations Development Programme[28]

Article III

EXECUTION OF PROJECTS

5. [See *Juridical Yearbook, 1973,* p. 24]

Article IX

PRIVILEGES AND IMMUNITIES

[See *Juridical Yearbook, 1973,* p. 25]

Article X

FACILITIES FOR EXECUTION OF UNDP ASSISTANCE

[See *Juridical Yearbook, 1973,* pp. 25 and 26]

Article XIII

GENERAL PROVISIONS

4. [See *Juridical Yearbook, 1973,* p. 26]

Agreements between the United Nations Development Programme and the Governments of Sri Lanka[29] and Poland.[30] Signed respectively at Colombo on 20 March 1990 and at Warsaw and New York on 30 July 1990

These agreements contain provisions similar to articles III, paragraph 5, IX, X and XIII, paragraph 4, of the Standard Basic Assistance Agreement except that the agreement with Sri Lanka is accompanied by an exchange of letters that reads as follows:

I

LETTER FROM THE UNITED NATIONS DEVELOPMENT PROGRAMME

20 March 1990

I have the honour to refer to the Standard Basic Assistance Agreement concerning assistance to the Government of the Democratic Socialist Republic of Sri Lanka (the Government), by the United Nations Development Programme (UNDP), signed today by the Government and UNDP.

I wish to place on record the understanding of the Government that the privileges, immunities and facilities envisaged in article IX, para 4 (*a*), and para 5, and article X, would be applicable to non-governmental organizations and firms performing services on behalf of UNDP, a Specialized Agency or the IAEA, only when they are so specifically performing services. Such privileges, immunities and facilities will not apply to citizens of Sri Lanka employed locally by such firms.

I shall be grateful if you will kindly confirm that the above sets out correctly the understanding reached between the Government and UNDP. On receipt of your letter confirming this understanding, the understanding embodied in this letter and your reply thereto will constitute an agreement between the Government and UNDP.

(*Signed*) Robert ENGLAND
Resident Representative

II

LETTER FROM THE GOVERNMENT OF SRI LANKA

20 March 1990

I have the honour to acknowledge the receipt of your letter of 20 March 1990, which reads as follows:

[See letter I]

I have the honour to confirm on behalf of the Government of the Democratic Socialist Republic of Sri Lanka that the contents of the above letter set out correctly the understanding reached between the Government and UNDP and that your letter and this letter shall be regarded as constituting an agreement between the Government and UNDP.

(*Signed*) Ramalingam PASKARALINGAM
Secretary, Ministry of Finance, and
Secretary, Ministry of Policy Planning
and Implementation

B. Treaty provisions concerning the legal status of intergovernmental organizations related to the United Nations

1. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES.[31] Approved by the General Assembly of the United Nations on 21 November 1947

In 1990 the following States acceded to the Convention or, if already parties, undertook by a subsequent notification to apply the provisions of the Convention, in respect of the specialized agencies indicated below:

State	*Date of receipt of notification*	*Specialized agencies*
Poland	11 June 1990	IMF, IBRD
	1 November 1990	IFC

As of 31 December 1990, 94 States were parties to the Convention.[32]

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2. INTERNATIONAL LABOUR ORGANISATION

(*a*) Agreement between the International Labour Organisation and the Government of Zimbabwe concerning the establishment of a subregional office at Harare.[33] Signed at Geneva on 8 February 1990

Article 3

1. The Government of Zimbabwe shall grant to the Harare office, and to its property, funds and assets, the privileges, immunities and exemptions provided for in the Convention on the Privileges and Immunities of the Specialized Agencies.

2. The Director of the Southern Africa Team for Employment Promotion of the African Regional Department at the ILO (SATEP) and his deputy shall enjoy in the territory of the Republic of Zimbabwe, while exercising their functions and during their journeys to and from the Harare office, the same privileges, immunities and exemptions as are accorded by the Government in conformity with international law to resident representatives of comparable rank of other international organizations.

Article 4

1. Officials, experts and consultants recruited by ILO or on secondment to serve the Harare office shall enjoy in the territory of the Republic of Zimbabwe the following immunities, exemptions and privileges:

(*a*) Immunity from legal process in respect of words spoken or written and acts performed by them in their official capacity;

(*b*) Where they are not nationals, immunity from personal arrest or detention;

(*c*) Immunity from seizure of their personal and official baggage;

(*d*) Exemption from tax on, or in respect of, salaries and emoluments paid by ILO to the same extent that this exemption is granted to officials, experts and consultants of international organizations of comparable rank;

(*e*) Immunity, together with dependent members of their families and the personal employees of the Director of SATEP, from all immigration restrictions and alien registration;

(*f*) The same privileges in respect of exchange facilities as are accorded by the Government to members of diplomatic missions of comparable rank;

(*g*) Exemption from any form of direct taxation on income derived from sources outside the Republic of Zimbabwe; the freedom to maintain within the Republic of Zimbabwe foreign accounts in local currency, and elsewhere foreign currency accounts; such freedom to own in the Republic of Zimbabwe foreign securities and other property as is accorded to staff and officers of diplomatic missions and international organizations of comparable rank; and, while employed in the service of the Harare office and upon the termination of such employment, the right to transfer out of the Republic of Zimbabwe funds in any non-Zimbabwe currency without any restriction or limitation, provided that the officials concerned can show good cause for their lawful possession of such funds;

(*h*) The same right to import their furniture and effects, including vehicles and spare parts therefor, on first taking up their permanent posts at the Harare office, or thereafter, the same privileges and immunities as regards goods, including motor fuel, purchased in the Republic of Zimbabwe as are accorded in the Republic of Zimbabwe to the resident members of diplomatic missions and international organizations of comparable rank;

(*i*) The same repatriation facilities for themselves, dependent members of their families and the personal employees of the Director, and the same right to protection by the authorities of the Republic of Zimbabwe in time of international crisis or national emergency, as members of diplomatic missions; and

(*j*) Other privileges and exemptions which are or may be accorded by the Government to members of diplomatic missions of comparable rank or to officials, experts and consultants of comparable rank of other international organizations.

2. Officials, experts and consultants of ILO, not serving in the Harare office but having official business with that office, shall enjoy in the territory of the Republic of Zimbabwe the immunities, exemptions and privileges specified in paragraphs (*a*), (*b*), (*c*), (*d*), (*e*), and (*f*) above.

Article 5

All officials of the professional category and experts and consultants of ILO serving at the Harare office shall be provided by the Ministry of Foreign Affairs with an identity card certifying that they are officials of ILO, experts or consultants — as the case may be — and that they are entitled to the immunities, exemptions and privileges provided in this Agreement.

Article 6

The Director shall with the consent of the President have the duty to waive the immunity of any such person in any case where, in his opinion, such immunity would impede the course of justice and can be waived without prejudice to the overriding interests of the ILO.

Article 7

The Director of SATEP and the officials of ILO serving at the Harare office shall cooperate at all times with the Government to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the immunities, exemptions and privileges accorded in this Agreement. Should the Government consider that an abuse has occurred, the Director of SATEP shall with the consent of the President consult with the appropriate authorities of the Republic of Zimbabwe without delay.

(*b*) Agreement between the International Labour Organisation and the Government of Côte d'Ivoire concerning the Organisation's Regional Office for Africa.[34] Signed at Geneva on 26 June 1989

INVIOLABILITY OF THE PREMISES

Article III

1. Except as provided for hereinafter, the Office's premises shall be inviolable. The premises shall remain under the control and authority of the Office. The Government recognizes that the Office is empowered to issue such regulations as may be necessary for its official activities on its premises.

2. The Office shall not allow its premises to serve as a refuge for any person wanted for a criminal offence or in respect of whom a warrant, conviction or expulsion order has been issued by the competent authorities of Côte d'Ivoire.

3. The authorities, officials and agents of the Republic of Côte d'Ivoire shall not enter the premises in an official capacity unless at the request or with the authorization of the Office, signified by the Director or his representative; legal processes, including those concerning the seizure of private property, shall not be served on the premises without the consent of the Director or his representative, or in conditions other than those approved by him.

4. However, in the event of *force majeure*, fire or any other calamity requiring urgent measures of protection, the consent of the Director or his representative shall be considered to have been given.

5. The competent authorities of Côte d'Ivoire shall, to the extent possible, take all necessary measures to protect the Office's premises against any intrusion or damage, to ensure that their tranquillity is not disturbed and to preserve their dignity.

. . .

COMMUNICATIONS

Article V

To the fullest extent compatible with the provisions of international conventions, regulations and arrangements to which it is party, the Government shall facilitate the Office's access to postal, telephone, telegraph, radio-telegraph and radio-photoelectric services.

In this context, the Government shall grant the Office treatment not less favourable than that accorded to diplomatic missions in the matter of priorities, rates and taxes on mails, cables, and radio-telegrams and press rates for information to the press and radio.

INVIOLABILITY OF COMMUNICATIONS

Article VI

1. The Office's communications shall enjoy protection under the conditions and limitations defined in section 12 of the Convention on the Privileges and Immunities of the Specialized Agencies.

2. This immunity shall extend to publications, photographic film, films, photographs and audio and visual recordings addressed to the Office or sent by it which pertain to its official activities; the same immunity shall extend to materials for exhibitions organized by the Office.

TAX EXEMPTION

Article VII

1. The Office, its assets, income and other property shall be exempt from:

(*a*) All direct taxes, it being understood, however, that no claim of exemption will be made from taxes which are, in fact, no more than charges for public utility services;

(*b*) Customs duties or other taxes and all prohibitions or restrictions on imports and exports in respect of articles imported or exported by the Office for its official use. It is understood, however, that articles imported under such exemption will not be sold in Côte d'Ivoire except under conditions agreed with the Government;

(*c*) Customs duties or other taxes and all prohibitions or restrictions on imports and exports in respect of its publications.

2. (*a*) In general, the Office does not expect to enjoy exemption from sales and other taxes which form part of the price of movable or immovable property.

(*b*) Goods imported under these provisions may not be transferred or loaned in Côte d'Ivoire except under conditions agreed with the Government.

ENTRY, TRAVEL AND SOJOURN

Article X

1. Subject to the provisions of article XV, the Government shall in no way obstruct the entry into or departure from Côte d'Ivoire, when travelling to or from the Office, of persons exercising official functions at the Office or invited by it.

2. To this effect, the Government undertakes to authorize the following persons and their dependants to enter into Côte d'Ivoire and sojourn in the country throughout the duration of their assignment or missions to the Office:

(*a*) The Director, the Deputy Director and other members of the Office staff;

(*b*) All other persons invited by the Office.

3. The Office shall communicate to the Government, to the extent possible in advance, the names of such persons and their spouses and dependants, as well as all other relevant information concerning them.

4. Without prejudice to the specific immunities to which they may be entitled, the persons referred to in paragraph 2 above shall not, during their assignment or missions, be required by the authorities of Côte d'Ivoire to leave the territory of Côte d'Ivoire unless it is established, in accordance with the provisions of article XIV

hereof, that they have abused the privileges to which they are entitled by pursuing an activity unrelated to their official functions or missions.

5. The persons referred to in this article are not exempt from the application of quarantine and public health regulations in force.

. . .

PRIVILEGES AND IMMUNITIES OF THE OFFICE STAFF

Article XII

1. Without prejudice to the provisions applicable to the Organisation under the Convention on the Privileges and Immunities of the Specialized Agencies, the members of the Office staff shall enjoy the following privileges and immunities in Côte d'Ivoire:

(*a*) Immunity from legal process, even after the termination of their functions, in respect of all acts, including words spoken or written, performed by them in their official capacity. This immunity shall not apply to proceedings in respect of a violation of motor traffic regulations by an agent of the Office, or for damage caused by a motor vehicle driven by such an agent or a member of his family, it being understood that such violation or damage shall be reported immediately to the Director;

(*b*) Exemption from any form of taxation in respect of the salaries and emoluments pertaining to their work for the Office;

(*c*) Exemption from national service obligations and any other compulsory service in Côte d'Ivoire;

(*d*) A special residence permit issued by the competent authorities of Côte d'Ivoire, for themselves, their spouses and dependent children;

(*e*) Exemption from import duty and other levies on their household and personal effects imported within six months after first taking up their functions in Côte d'Ivoire. Articles imported under such exemption may not be sold or transferred except under conditions agreed with the Government;

(*f*) The temporary admission every three years of one vehicle per family, imported or purchased, provided that such vehicle is not sold or transferred during this period;

(*g*) In the event of international crisis, the same repatriation facilities as members of the diplomatic corps accredited to the Government of Côte d'Ivoire, for themselves, their spouses and dependent children;

(*h*) The same exchange facilities as those accorded to officials of comparable rank of diplomatic missions accredited to the Government of Côte d'Ivoire.

2. Throughout the duration of his functions, the Director shall enjoy the privileges and immunities accorded to the heads of diplomatic missions. The other senior members of the Office staff designated from time to time by the Director on the basis of the positions of responsibility which they fill, shall be accorded the privileges granted to diplomatic agents.

Article XIII

Nationals of Côte d'Ivoire and permanent foreign residents of Côte d'Ivoire employed by the Office shall not enjoy the privileges and immunities mentioned in the preceding article, except for immunity from prosecution in connection with acts

performed in other strictly official capacity. However, with a view to avoiding double taxation, the salaries, emoluments and indemnities paid to them by the Organisation, being subject to internal taxation, shall not be taxable in Côte d'Ivoire.

GENERAL PROVISIONS

Article XIV

1. The Government shall make every effort to ensure that the Office and its staff enjoy treatment not less favourable than that granted to other intergovernmental, international and regional organizations represented in Côte d'Ivoire.

2. The privileges and immunities provided for in this Agreement are not designed to secure personal advantage for their beneficiaries; they are designed exclusively to ensure that the Office may operate freely in all circumstances, and to safeguard the complete independence of the persons to whom they are granted.

3. Without prejudice to the privileges and immunities granted under this Agreement, the Office and all persons who enjoy these privileges and immunities have the duty to respect the laws and regulations of Côte d'Ivoire. They also have the duty not to interfere in the internal affairs of Côte d'Ivoire.

4. The Director-General has the right and duty to waive this immunity when he considers that it would impede the course of justice and can be waived without prejudice to the interests of the Office.

5. The Director shall take all measures necessary to prevent any abuse of the privileges and immunities granted under this Agreement; to this end, he shall issue such regulations, applicable to the Office staff and others concerned, as may be deemed necessary and appropriate.

6. Should the Government consider that there has been an abuse of a privilege or immunity granted under this Agreement, consultations shall take place, at its request, between the Director and the competent authorities with a view to determining whether such an abuse took place. Should such consultations not produce a result which is satisfactory to the Government and the Director, the matter shall be settled in accordance with the procedure described in article XVI.

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3. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

(*a*) Agreements based on the standard "Memorandum of Responsibilities" in respect of FAO sessions

Agreements concerning specific sessions held outside FAO headquarters, containing provisions on privileges and immunities of FAO and participants similar to the standard text,[35] were concluded in 1990 with the Governments of the following countries acting as hosts to such sessions: Argentina,[36] Chile, Colombia,[36] Costa Rica, Côte d'Ivoire, Czechoslovakia, Denmark, Egypt,[36] Finland, France,[36] Guinea, India,[36] Italy,[36] Jamaica, Madagascar, Malaysia, Morocco, Netherlands,[36] Nigeria,

Peru, Saint Vincent and the Grenadines, Sri Lanka,[36] Sweden,[36] Tunisia, Turkey, United States of America[36] and Zimbabwe.

(*b*) Agreements based on the standard "Memorandum of Responsibilities" in respect of seminars, workshops, training courses or related study tours

Agreements concerning specific training activities, containing provisions on privileges and immunities of FAO and participants similar to the standard text,[37] were concluded in 1990 with the Governments of the following countries acting as hosts to such training activities: Argentina,[36] Bolivia, Brazil, Ecuador, Ethiopia, Ghana, Italy,[36] Jamaica, Kenya, Mexico,[36] Nigeria, Samoa, Tunisia, Venezuela and Zimbabwe.

4. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Agreements relating to conferences, seminars and other meetings

The following standard clause concerning privileges and immunities was used in agreements between UNESCO and member States concerning UNESCO meetings organized in those States during 1990.

"III. *Privileges and Immunities*

The Government of (name of country) shall apply, in all matters relating to this meeting, the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies as well as Annex IV thereof (to which (name of country) has been a party since (applicable date)). In particular, the Government shall ensure that no restriction is placed upon the entry into, sojourn in and departure from the territory of (name of country) of all persons, of whatever nationality, entitled to attend the meeting by virtue of a decision of the appropriate authorities of UNESCO and in accordance with the organization's pertinent rules and regulations."

(With regard to international conferences of States and intergovernmental meetings the following sentence is added: "In addition, the Government shall apply, *mutatis mutandis*, to government representatives participating in the meeting, the relevant provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961.")

5. INTERNATIONAL MARITIME ORGANIZATION

Agreement between the International Maritime Organization and the Government of Malta concerning the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea.[38] Signed at Valletta on 27 April 1990

In accordance with this Agreement the Centre and personnel connected therewith enjoy the following privileges and immunities:

—All the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations, including its Annex XII (as revised), apply to all matters pertaining to the operation of the Centre, where applicable (article 1, paragraph 1);

—Except as otherwise provided in the Agreement, the law of Malta shall apply within the premises of the Centre, provided that the Organization or the Centre may establish any regulations necessary for the execution of the functions of the Centre, including rules of international administrative law and the terms of contracts of employment governed by the law. These regulations will be operative within the premises of the Centre and no law of Malta which is inconsistent therewith shall be enforceable within those premises (article 1, paragraph 2);

—The appropriate authorities of the Government shall impose no impediment to the transit to and from the premises of the Centre of any persons referred to in article 1 above or any other persons having official business with the Centre. The Government undertakes to authorize entry into Malta without charge for visas of all such persons for the term of their business with the Centre (article 3, paragraph 1);

—Officials of the Centre and members of their families forming part of their respective households, provided that they are not citizens of Malta, shall be exempt from custom duties and any taxes or charges (except charges for storage, cartage and similar services) imposed upon or by reason of the importation of articles (including a motor car) intended for their personal use or for their establishment at the time of taking up their post in Malta. Such articles shall normally be imported within six months of first entry of such persons into Malta (article 5, paragraph 1);

—The Director of the Centre and senior officials designated as such by the Secretary-General and agreed by the Government, provided they are not citizens of Malta, shall be exempt from:

(*a*) Tax arising outside Malta;

(*b*) Value-added tax and other indirect taxes on articles imported or purchased or services rendered for their personal use or for their establishment, to the extent accorded under the law of Malta; and

(*c*) Social security contributions with respect to services rendered for the Centre (article 5, paragraph 2);

—In the event of the introduction of taxes other than those referred to in this article, the Organization and the Government shall determine the applicability of this Agreement to such taxes (article 5, paragraph 3).

6. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

(*a*) Basic Cooperation Agreements

(i) Standard Basic Cooperation Agreement between UNIDO and Member States Receiving Assistance from UNIDO[39]

Article X

PRIVILEGES AND IMMUNITIES

1. The Government shall apply to UNIDO, including its organs, its property, funds, assets and its officials, including the Senior Industrial Development Field Adviser (SIDFA) and his staff in the country, the provisions of the Convention on the Privileges and Immunities of the United Nations, except that if the Government has acceded in respect of UNIDO to the Convention on the Privileges and Immunities of the Specialized Agencies, the Government shall apply the provisions of the latter Convention, including any annex to that Convention applicable to UNIDO.

2. The SIDFA of the UNIDO and his staff in the country shall be granted such additional privileges and immunities as may be necessary for the effective exercise of their official functions. In particular, the SIDFA shall enjoy the same privileges and immunities as the Government accords to diplomatic envoys in accordance with international law.

3. (*a*) Except as the Government and UNIDO may otherwise agree in Project Documents relating to specific projects, the Government shall grant all persons, other than government nationals employed locally, performing services on behalf of UNIDO, who are not covered by paragraphs 1 and 2 above, the same privileges and immunities as are granted to officials under section 18 or 19, respectively, of the Conventions on the Privileges and Immunities of the United Nations or of the Specialized Agencies, as applicable.

(*b*) For purposes of the instruments on privileges and immunities referred to in the preceding parts of this article:

(i) All papers and documents relating to a project in the possession or under the control of the persons referred to in subparagraph 3 (*a*) above shall be deemed to be documents belonging to UNIDO; and

(ii) Equipment, materials and supplies brought into, or purchased, or leased by those persons within the country for purposes of a project shall be deemed to be the property of UNIDO.

4. The expression "persons performing services" as used in articles X, XI and XIV of this Agreement includes operational experts, volunteers, consultants and juridical as well as natural persons and their employees. It includes governmental or non-governmental organizations or firms which UNIDO may retain to implement or to assist in the implementation of UNIDO assistance to a project and their employees. Nothing in this Agreement shall be construed to limit the privileges, immunities or facilities conferred upon such organizations or firms or their employees in any other instrument.

Article XI

FACILITIES FOR THE IMPLEMENTATION OF UNIDO ASSISTANCE

1. The Government shall take any measures which may be necessary to exempt UNIDO, its experts and other persons performing services on its behalf from regulations or other legal provisions which may interfere with operations under this Agreement and shall grant them such other facilities as may be necessary for the speedy and efficient implementation of UNIDO assistance. It shall, in particular, grant them the following rights and facilities:

(*a*) Prompt clearance of experts and other persons performing services on behalf of UNIDO;

(*b*) Prompt issuance without cost of necessary visas, licences or permits;

(*c*) Access to the site of work and all necessary rights of way;

(*d*) Free movement within or to or from the country to the extent necessary for proper execution of UNIDO assistance;

(*e*) The most favourable legal rate of exchange;

(*f*) Any permits necessary for tax- and duty-free importation of equipment, materials and supplies, and for their subsequent tax- and duty-free exportation;

(*g*) Any permits necessary for tax- and duty-free importation of property belonging to and intended for the personal use or consumption of officials of UNIDO, or of other persons performing services on its behalf, and for the subsequent tax- and duty-free exportation of such property; and

(*h*) Prompt release from customs of the items mentioned in subparagraphs (*f*) and (*g*) above.

2. Assistance under this Agreement being provided for the benefit of the Government and people of _____, the Government shall bear all risks of operations arising under this Agreement. It shall be responsible for dealing with claims which may be brought by third parties against UNIDO, its officials, or other persons performing services on their behalf, and shall hold them harmless in respect of claims or liabilities arising from operations under this Agreement. The foregoing provision shall not apply where the Government and UNIDO have agreed that a claim or liability arises from the gross negligence or wilful misconduct of the above-mentioned individuals.

. . .

Article XIV

GENERAL PROVISIONS

. . .

4. . . . The obligations assumed by the Government under articles X (concerning privileges and immunities), XI (concerning facilities for implementation of UNIDO assistance) . . . hereof shall survive the expiration or termination of this Agreement to the extent necessary to permit the orderly withdrawal of personnel, funds and property of UNIDO and of any persons performing services on its behalf under this Agreement.

(ii) Basic cooperation agreements between the United Nations Industrial Development Organization and the Governments of Burundi[40] and Togo.[41] Signed at Vienna on 25 June and 26 November 1990 respectively

These agreements contain provisions similar to articles X, XI and XIV, paragraph 4 of the Standard Basic Co-operation Agreement between UNIDO and Member States receiving assistance from UNIDO.

(*b*) Agreements for the extension of UNIDO Investment Promotion Services

UNIDO concluded agreements concerning the extension of the UNIDO Service in Austria, in Italy (Milan)[42] and in Japan for the promotion of industrial investment in developing countries.[43]

(*c*) Agreements for the extension of the Basic Terms and Conditions governing UNIDO projects for the International Centre for Genetic Engineering and Biotechnology

UNIDO concluded an exchange of letters with the Permanent Representative of India to UNIDO to extend the Basic Terms and Conditions governing UNIDO projects envisaged by the interim programme for the International Centre for Genetic Engineering and Biotechnology (ICGEB), dated 28 February 1990.[43] UNIDO also concluded an exchange of letters with the Permanent Representative of Italy to UNIDO to extend the Basic Terms and Conditions governing UNIDO projects envisaged by the five-year work programme for ICGEB, dated 12 and 19 December 1990.[43]

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7. INTERNATIONAL ATOMIC ENERGY AGENCY

(*a*) Agreement on the Privileges and Immunities of the International Atomic Energy Agency.[44] Approved by the Board of Governors of the Agency on 1 July 1959

In 1990 there were no additional acceptances of this Agreement. As of the end of the year, 61 member States were parties to the Agreement.

(*b*) Incorporation of provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency by reference in other agreements with States that are not or were not at the time parties to the Agreement:

(i) Article 10 of the Agreement between the Republic of Kiribati and the International Atomic Energy Agency for the Application of Safeguards in

connection with the Treaty on the Non-Proliferation of Nuclear Weapons (with Protocol).[45] Signed at Vienna on 10 October 1990 and at Tarawa on 19 December 1990

(ii) Articles 10 of the Agreement between the Republic of Malta and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons (with Protocol).[46] Signed at Vienna on 13 November 1990

(iii) Article 10 of the Agreement between Saint Lucia and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons (with Protocol).[47] Signed at Vienna on 8 December 1989 and at New York on 2 February 1990

NOTES

[1] United Nations, *Treaty Series*, vol. 1, p. 15.

[2] The Convention is in force with regard to each State which deposited an instrument of accession with the Secretary-General of the United Nations as from the date of its deposit.

[3] For the list of those States, see *Multilateral treaties deposited with the Secretary-General* (United Nations publication, Sales No. E.91.V.8.) The list reflects developments with respect to the States mentioned therein, i.e., the unification of Germany through the accession of the German Democratic Republic to the Federal Republic of Germany and the merger of the Yemen Arab Republic and the Democratic Republic of Yemen.

[4] Came into force on the date of signature.

[5] United Nations, *Treaty Series*, vol. 317, p. 101.

[6] Came into force on 26 January 1990.

[7] Came into force on 26 January 1990, with retroactive effect from 11 December 1989.

[8] Came into force on 16 May 1990 with retroactive effect from 17 January 1990.

[9] Came into force on 5 July 1990 with retroactive effect from 2 December 1989.

[10] Came into force on 7 February 1990.

[11] Came into force on the date of signature.

[12] Came into force on 10 April 1990.

[13] Came into force on 27 April 1990.

[14] Came into force on the date of signature.

[15] Came into force on 22 May 1990.

[16] Came into force on 23 May 1990.

[17] English translation prepared by the Secretariat of the United Nations on the basis of the French version of the Agreement.

[18] Came into force on 24 May 1990.

[19] Unofficial translation from German provided by the Permanent Mission of the Federal Republic of Germany to the United Nations.

[20] Came into force on 28 May 1990.

[21] Came into force on 12 June 1990.

[22] Came into force on 18 June 1990.

[23] Came into force on 9 July 1990.

[24] Came into force on 17 July 1990.

[25] Came into force on the date of signature.

[26] English translation prepared by the Secretariat of the United Nations on the basis of the French version of the Agreement.

[27] Came into force on the date of signature.

[28] UNDP, Basic Documents Manual, chap. II (1).

[29] Came into force on the date of signature.

[30] Came into force on the date of signature.

[31] United Nations, *Treaty Series*, vol. 33, p. 261.

[32] For the list of those States, see *Multilateral treaties deposited with the Secretary-General* (United Nations publication, Sales No. E.91.V.8).

[33] Came into force on the date of signature. Published in the ILO *Official Bulletin*, vol. LXXIII, 1990, Series A, No. 3, p. 182.

[34] Came into force on 2 August 1990. Published in the ILO *Official Bulletin*, vol. LXXXIV, 1991, Series A, No. 1.

[35] Reproduced in *Juridical Yearbook, 1972*, p. 32.

[36] Certain departures from the standard text or amendments thereto were introduced at the request of the host Government.

[37] Reproduced in *Juridical Yearbook, 1972*, p. 33.

[38] Came into force on 27 April 1990.

[39] UNIDO/IDB.1/13, annex, adopted by the General Conference of UNIDO on 12 December 1985.

[40] Came into force on the date of signature.

[41] Came into force on the date of signature.

[42] Renamed "UNIDO Office in Italy (Milan)".

[43] Annual report of UNIDO 1990 (IDB.8/10), appendix J.

[44] United Nations, *Treaty Series*, vol. 374, p. 147. Reproduced also in IAEA document INFCIRC/9/Rev.2.

[45] Reproduced in IAEA document INFCIRC/390.

[46] Reproduced in IAEA document INFCIRC/387.

[47] Reproduced in IAEA document INFCIRC/379.

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. DISARMAMENT AND RELATED MATTERS

(*a*) Approaches and trends in multilateral disarmament

(i) *Role of the United Nations in the field of disarmament*

In 1990 the role of the United Nations in the field of disarmament was a prominent issue in the deliberations in both the Disarmament Commission and the General Assembly. By its resolution 45/62 A of 4 December 1990,[1] the General Assembly adopted the text of the Declaration of the 1990s as the Third Disarmament Decade. The Disarmament Commission also completed its consideration of the item "Review of the role of the United Nations in the field of disarmament[2] and produced a text on the subject that was commended by the General Assembly in its resolution 45/62 B of 4 December 1990.[3] By the same resolution the Asembly noted with satisfaction that the Disarmament Commission had adopted by consensus a set of "Ways and means to enhance the functioning of the Disarmament Commission"[4] at its 1990 substantive session.

The issue of verification of and compliance with arms limitation and disarmament agreements and, in particular, the role of the United Nations in the verification of such agreements continued to receive earnest consideration. By its resolution 45/65 of 4 December 1990,[5] the Assembly welcomed the report of the Secretary-General on the subject,[6] noting that the report had been approved by the Group of Qualified Governmental Experts to Undertake a Study on the Role of the United Nations in the Field of Verification.

Political considerations reflecting ongoing positive changes in international relations as well as the rationalization of the work of the First Committee found their expression in new trends in the work of that Committee. The Committee succeeded, in some degree, in its efforts to stop the proliferation of decisions on disarmament matters; the number of decisions adopted in 1990 was the lowest in eight years, while the proportion of those adopted without a vote was the highest.

(ii) *The qualitative arms race; proliferation of advanced technologies*

During 1990 the discussions which took place in different disarmament forums revealed the need for thorough consideration of such issues as: globalization of technology; prevention of the proliferation of highly destabilizing weapons and related technology; national policy on research and development and technology assessment;

exchange of data and confidence-building measures; and the role of the United Nations in this field. In dealing with these matters the General Assembly adopted two resolutions. By its resolution 45/60 of 4 December 1990,[7] it took note of the report of the Secretary-General entitled "Scientific and technological developments and their impact on international security,"[8] and by resolution 45/61 of the same date[9] it welcomed national and international activities to use scientific and technological achievements for disarmament-related purposes.

(iii) *Question of general and complete disarmament: the comprehensive programme of disarmament*

In 1990, in continuation of the trend of most of the 1980s, efforts towards and achievement of specific arms regulation and reduction measures dominated the overall disarmament scene, once again reducing emphasis on the comprehensive approach. Therefore, resolution 45/62 E of 4 December 1990,[10] in which the General Assembly specifically requested the Conference on Disarmament to re-establish, at the beginning of its 1991 session, the Ad Hoc Committee on the Comprehensive Programme of Disarmament, was adopted with less support than had been given to the corresponding resolution of 1989, in which the Assembly had called upon the Conference only "to consider" such action. The Assembly recommended that the Ad Hoc Committee continue its work, building on the texts already agreed to, with the view to resolving the outstanding issues and thus concluding negotiations on it.

(*b*) Nuclear disarmament

(i) *Nuclear-arms limitation and disarmament; prevention of nuclear war*

In 1990 a total of eight resolutions dealing with the questions of nuclear-arms limitation and disarmament and the prevention of nuclear war were approved by the First Committee and adopted on 4 December 1990 by the General Assembly. Once again the Assembly underscored the special responsibility of the two major Powers for nuclear disarmament and, at the same time, reaffirmed that bilateral and multilateral negotiations on nuclear disarmament should complement each other. Two distinct resolutions (45/58 B[11] and 45/58 H[12]) were adopted on bilateral nuclear-arms negotiations, neither by consensus. In its resolution 45/58 D,[13] the General Assembly welcomed the continued implementation of the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter-Range Missiles and the negotiations between those States on the reduction of their nuclear arsenals and the progress made in those negotiations and urged them further to discharge their special responsibility for nuclear disarmament. Furthermore, by its resolution 45/62 C,[14] the Assembly expressed its belief that efforts should be intensified in order to initiate multilateral negotiations in accordance with the provisions of paragraph 50 of the Final Document of the Tenth Special Session of the General Assembly;[15] reiterated that, in view of the importance of the matter, it was equally necessary to devise suitable steps to expedite effective action for the prevention of nuclear war; and requested the Conference on Disarmament to establish ad hoc committees at the beginning of its 1991 session on both the cessation of the nuclear-arms race and nuclear disarmament and the prevention of nuclear war with adequate mandates in order to allow a structured and practical analysis of how the Conference could best contribute to progress on those two urgent matters.

By its resolution 45/59 D,[16] the General Assembly urged both the Union of Soviet Socialist Republics and the United States of America to reach agreement on an immediate nuclear-arms freeze, which would, *inter alia,* provide for a simultaneous total stoppage of any further production of nuclear weapons and a complete cut-off in the production of fissionable material for weapons purposes; and called upon all nuclear-weapon States to agree, through a joint declaration, to a comprehensive nuclear-arms freeze. And by its resolution 45/58 L,[17] the Assembly requested the Conference on Disarmament, at an appropriate stage of its work on the item entitled "Nuclear weapons in all aspects," to pursue its consideration of the question of adequately verified cessation and prohibition of the production of fissionable material for nuclear weapons and other nuclear explosive devices.

Moreover, by its resolution 45/59 B,[18] the General Assembly reiterated its request to the Conference on Disarmament to commence negotiations, as a matter of priority, in order to reach agreement on an international convention prohibiting the use or threat of use of nuclear weapons under any circumstances, taking as a basis the draft Convention on the Prohibition of the Use of Nuclear Weapons annexed to the resolution. And by its resolution 45/58 E,[19] the Assembly took note of the comprehensive study on nuclear weapons contained in the report of the Secretary-General[20] and commended the study and its conclusions to the attention of all Member States.

(ii) *Fourth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons*

The Fourth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons[21] was held at Geneva from 20 August to 14 September 1990. In all, 84 States parties to the Treaty took part in the Conference. The improvement in the international climate and the conclusion and implementation of the first agreement on the elimination of a whole category of nuclear weapons, as well as some other arms limitation agreements, did not prove sufficient to bridge the gap, which had existed from the beginning, between the nuclear and non-nuclear-weapon States parties to the Treaty. Once more the differences in assessment of the implementation of article VI, especially in regard to progress in reaching a comprehensive test-ban treaty, could not be resolved. As a result the Review Conference was unable to reach consensus on a substantive final declaration. However, in spite of the lack of a final declaration, the Conference proved useful in providing an opportunity to assess the operation of the Treaty and to confirm the readiness of virtually all States to continue to support the non-proliferation regime, of which the Treaty was the central element. Among the specific results of the Conference that were not formalized by the adoption of a final declaration, the most important was the agreement that the nuclear supplier States should require of non-nuclear-weapon recipients, as a condition for any nuclear supplies, a commitment that they would accept safeguards on all their nuclear activities.

No draft resolution concerning the Non-Proliferation Treaty or the Review Conference was called for in the General Assembly in 1990, and none was put forward. However, various resolutions on questions of nuclear disarmament connected with the objectives espoused by the Treaty were adopted.

(iii) *Cessation of all nuclear-test explosives*

In 1990 positions of the nuclear-weapon States on the question of cessation of nuclear-test explosions had not changed fundamentally from those of previous years.

However, the Conference on Disarmament, reaching consensus on a non-negotiating mandate for the Ad Hoc Committee on a test ban, represented an important breakthrough for that question.

The General Assembly adopted on 4 December 1990 two traditional resolutions on the test-ban issue. By its resolution 45/49,[22] the Assembly reaffirmed its conviction that a treaty to achieve the prohibition of all nuclear-test explosions by all States for all time was a matter of the highest priority and urged once more all nuclear-weapon States, in particular the three depositary States of the Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and under Water[23] and of the Treaty on the Non-Proliferation of Nuclear Weapons, to seek to achieve the early discontinuance of all test explosions of nuclear weapons for all time and to expedite negotiations to that end. By its resolution 45/51,[24] the Assembly urged the Conference on Disarmament, in order that a comprehensive nuclear-test-ban treaty might be concluded at an early date, to re-establish the Ad Hoc Committee on a Nuclear Test Ban at the beginning of its 1991 session to carry forward the work begun in the Conference in 1990, focusing on substantive work on specific and interrelated test-ban issues, including structure and scope as well as verification and compliance; urged the nuclear-weapon States, especially those which possessed the most important nuclear arsenals, to agree promptly to appropriate verifiable and militarily significant interim measures, with a view to concluding a comprehensive nuclear-test-ban treaty; and urged those nuclear-weapon States which had not yet done so to adhere to the partial test-ban Treaty. Furthermore, by its resolution 45/50,[25] also of 4 December 1990, the General Assembly called upon all parties to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water to participate in, and contribute to the success of, the Amendment Conference of the States parties to the Treaty, to be held in New York from 7 to 18 January 1991, for the achievement of a comprehensive nuclear-test ban at an early date, as an indispensable measure towards implementation of their undertakings in the preamble to the Treaty; and reiterated its conviction that, pending the conclusion of a comprehensive nuclear-test-ban treaty, the nuclear-weapon States should suspend all nuclear-test explosions through an agreed moratorium or unilateral moratoria.

(iv) *Effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons*

The work on security assurances in the Conference on Disarmament once again offered little evidence of tangible progress. Basically, the nuclear-weapon States maintained their established positions on the issue and upheld their existing unilateral assurances.

In the General Assembly, the two traditional competing agenda items and draft resolutions on the question had been replaced by one resolution, resolution 45/54 of 4 December 1990,[26] adopted by an overwhelming majority vote. By that resolution, the General Assembly reaffirmed the urgent need to reach an early agreement on effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons; noted with satisfaction that in the Conference on Disarmament there was no objection, in principle, to the idea of an international convention to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons, although the difficulties as regards evolving a common approach acceptable to all had also been pointed out; and appealed to all States, especially the nuclear-weapon States, to demonstrate the political will and flexibility necessary to reach

agreement on a common approach and, in particular, on a common formula that could be included in an international instrument of a legally binding character.

(v) *Nuclear-weapon-free zones and zones of peace*

The strengthening of existing nuclear-weapon-free zones and the establishment of new zones in various regions of the world continued to be supported in the Disarmament Commission and at the forty-fifth session of the General Assembly, as well as at the Fourth Review Conference of the Non-Proliferation Treaty. Although there were no significant developments in 1990 regarding nuclear-weapon-free zones and while there were some negative developments concerning the implementation of the Declaration on the Indian Ocean as a Zone of Peace (the withdrawal of France, the United Kingdom of Great Britain and Northern Ireland and the United States of America from the Ad Hoc Committee on the Indian Ocean), it was felt that the improved political atmosphere, the various sets of ongoing negotiations on disarmament and the steps that had been taken or were being taken to solve some regional crises and conflicts might contribute to tangible progress in that area in the future.

Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco)[27]

By resolution 45/48 of 4 December 1991,[28] the General Assembly once more urged France not to delay any further the ratification of Additional Protocol I of the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco), which had been requested so many times and which appeared all the more advisable, since France was the only one of the four States to which the Protocol was open that was not yet party to it.

Denuclearization of Africa

By its resolution 45/56 A of 4 December 1990,[29] the General Assembly reaffirmed that the implementation of the Declaration on the Denuclearization of Africa adopted by the Assembly of Heads of State and Government of the Organization of African Unity would be an important measure to prevent the proliferation of nuclear weapons and to promote international peace and security; called upon all States, corporations, institutions and individuals to desist from further collaboration with the racist regime of South Africa that might enable it to frustrate the objective of the Declaration; demanded once again that the racist regime refrain from manufacturing, testing, deploying, transporting, storing, using or threatening to use nuclear weapons; and also demanded that South Africa submit forthwith all its nuclear installations and facilities to inspection by the International Atomic Energy Agency.

Establishment of a nuclear-weapon-free zone in the region of the Middle East

By its resolution 45/52 of 4 December 1990,[30] the General Assembly urged all parties directly concerned to consider seriously taking the practical and urgent steps required for the implementation of the proposal to establish a nuclear-weapon-free zone in the region of the Middle East in accordance with the relevant resolutions of the General Assembly, and, as a means of promoting that objective, invited the countries concerned to adhere to the Treaty on the Non-Proliferation of Nuclear Weapons; called upon all countries of the region that had not done so, pending the establishment of the zone, to agree to place their nuclear activities under International Atomic Energy Agency safeguards; invited all countries of the region to declare their support for establishing such a zone, consistent with paragraph 63 (*d*) of the Final Document

of the Tenth Special Session of the General Assembly,[31] and to deposit those declarations with the Security Council; and also invited them not to develop, produce, test or otherwise acquire nuclear weapons or permit the stationing on their territories, or territories under their control, of nuclear weapons or nuclear explosive devices. Moreover, by its resolution 45/63 of 4 December 1990,[32] the Assembly reiterated its condemnation of Israel's refusal to renounce any possession of nuclear weapons; reaffirmed that Israel should promptly apply Security Council resolution 487 (1981), in which the Council, *inter alia,* requested it to place all nuclear facilities under International Atomic Energy Agency safeguards and to refrain from attacking or threatening to attack nuclear facilities; and called upon all States and organizations that had not yet done so not to cooperate with or give assistance to Israel that could enhance its nuclear-weapons capability.

Establishment of a nuclear-weapon-free zone in South Asia

By its resolution 45/53 of 4 December 1990,[33] the General Assembly reaffirmed its endorsement, in principle, of the concept of a nuclear-weapon-free zone in South Asia; urged once again the States of South Asia to continue to make all possible efforts to establish such a zone and to refrain, in the meantime, from any action contrary to that objective; and called upon those nuclear-weapon States that had not done so to respond positively to that proposal and to extend the necessary cooperation in the efforts to establish a nuclear-weapon-free zone in South Asia.

Implementation of the Declaration of the Indian Ocean as a Zone of Peace[34]

By its resolution 45/77 of 12 December 1990,[35] the General Assembly reaffirmed full support for the achievement of the objectives of the Declaration of the Indian Ocean as a Zone of Peace; reiterated and emphasized its decision to convene the Conference on the Indian Ocean at Colombo, as a necessary step for the implementation of the Declaration; and renewed the mandate of the Ad Hoc Committee on the Indian Ocean as defined in the relevant resolutions, and requested the Committee to intensify its work with regard to the implementation of its mandate.

(vi) *International cooperation in the peaceful uses of nuclear energy*

Promoting the peaceful uses of nuclear energy and safeguarding the non-proliferation regime, areas in which the International Atomic Energy Agency continued to play an indispensable role, were dominant concerns of the international community in 1990. IAEA's safeguards covered 95 per cent of all nuclear installations in non-nuclear-weapon States. Nuclear material under IAEA safeguards remained in peaceful nuclear activities or was otherwise adequately accounted for.

By its resolution 45/7 of 23 October 1990,[36] the General Assembly urged all States to strive for effective and harmonious international cooperation in carrying out the work of the International Atomic Energy Agency in promoting the use of nuclear energy and the application of measures to strengthen the safety of nuclear installations, in strengthening technical assistance and cooperation for developing countries and in ensuring the effectiveness and efficiency of the Agency's safeguards system.

(*c*) Prohibition or restriction of use of other weapons

(i) *Chemical and bacteriological (biological) weapons*

In the Conference on Disarmament, negotiations on chemical weapons continued on specific problem areas, in particular verification, technical, legal and institutional

issues, and agreement was reached on a number of questions of a technical nature. Despite the expectations raised by the Agreement between the United States and the Soviet Union on the destruction and non-production of chemical weapons and on measures to facilitate the multilateral convention on banning chemical weapons,[37] little progress was achieved in the multilateral negotiations. As in the previous year, the General Assembly adopted on 4 December 1990 three consensus resolutions on the subject.

By its resolution 45/57 A, the General Assembly renewed its call to all States to observe strictly the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925,[38] and to abide by the commitments undertaken in the Final Declaration of the Conference of the States Parties to the 1925 Geneva Protocol and Other Interested States, held in Paris from 7 to 11 January 1989; expressed its regret and concern that a convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction had not yet been concluded; and strongly urged the Conference on Disarmament, as a matter of highest priority, to intensify during its 1991 session its efforts to resolve outstanding issues, and to conclude its negotiations on a convention, and to re-establish its Ad Hoc Committee on Chemical Weapons for that purpose. And by its resolution 45/57 C, the Assembly endorsed the proposals of the group of qualified experts established in pursuance of its resolution 42/37 C of 30 November 1987 concerning technical guidelines and procedures to guide the Secretary-General in the conduct of timely and efficient investigation of the reports of use of chemical and bacteriological (biological) or toxin weapons, and noted the continuing significance of the Security Council decision to consider immediately, taking into account the investigations of the Secretary-General, appropriate and effective measures in accordance with the Charter of the United Nations, should there be any future use of chemical weapons in violation of international law. Additionally, by its resolution 45/57 B, the General Assembly noted that, at the request of the States parties, a Third Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction would be held at Geneva in 1991; and recalled in that regard the decision taken at the Second Review Conference that the Third Review Conference should consider, *inter alia,* the issues set out in article XII of the Final Declaration of the Second Review Conference.

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

In 1990, the question of the prevention of an arms race in outer space continued to be a focus of attention within the United Nations. The majority of States continued to consider that bilateral and multilateral efforts were complementary and they urged immediate negotiations on the subject in the Conference on Disarmament.

By its resolution 45/55 A of 4 December 1990,[39] the General Assembly urged the Soviet Union and the United States to pursue intensively their bilateral negotiations in a constructive spirit with a view to reaching early agreement for preventing an arms race in outer space; recognized the relevance of considering measures on confidence-building and greater transparency and openness in space; and requested the Conference on Disarmament to re-establish an ad hoc committee with an adequate mandate at the beginning of its 1991 session and to continue building upon areas of convergence with a view to undertaking negotiations for the conclusion of an agreement or agreements, as appropriate, to prevent an arms race in outer space in all its aspects.

(iii) *New weapons of mass destruction; radiological weapons*

As at previous sessions, the question of the prohibition of the development and manufacture of new types of weapons of mass destruction attracted little attention in the deliberations of the disarmament bodies in 1990, owing to the fact that differences of view concerning the imminence of the emergence of such weapons persisted. However, an agreement was reached to request the Conference on Disarmament to keep under review the question of the prohibition of the development and manufacture of new types of weapons of mass destruction and new systems of such weapons, and General Assembly resolution 45/66 of 4 December 1990 on the subject was adopted.[40]

The prohibition of radiological weapons was again addressed in the Conference on Disarmament and in the General Assembly. By its resolution 45/58 F of 4 December 1990,[41] the General Assembly requested the Conference on Disarmament to continue its substantive negotiation on the prohibition of development, production, stockpiling and use of radiological weapons, with a view to the prompt conclusion of its work. With respect to the prohibition of attacks on nuclear facilities, the General Assembly by its resolution 45/58 J, also of 4 December 1990,[42] recognized that an armed attack or threat of armed attack on a safeguarded nuclear facility, operational or under construction, would create a situation in which the Security Council would have to act immediately in accordance with the provisions of the Charter of the United Nations, including measures under Chapter VII; encouraged all States to be ready to provide immediate peaceful assistance in accordance with international law to any State, if it so requested, whose safeguarded nuclear facilities had been subjected to an armed attack; and called upon all states that had not done so to become parties to Additional Protocol I of 1977 to the Geneva Conventions of 12 August 1949 and upon all States parties to that Protocol to consider, in the context of a possible diplomatic conference, how to improve the existing regime with regard to the protection of nuclear facilities.

In addition, by its resolution 45/58 K of the same date,[43] the General Assembly expressed grave concern regarding any use of nuclear waste that would constitute radiological warfare and have grave implications for the national security of all States; called upon all States to take appropriate measures with a view to preventing any dumping of nuclear wastes that would infringe upon the sovereignty of States; requested the Conference on Disarmament to continue to take into account, in the ongoing negotiations for a convention on the prohibition of radiological weapons, the deliberate employment of nuclear wastes to cause destruction, damage or injury by means of radiation produced by the decay of such material; and requested the International Atomic Energy Agency to continue keeping the subject under active consideration and to intensify efforts to conclude a legally binding instrument under its auspices on the effective prohibition of any dumping of radioactive or nuclear wastes to complement a multilateral convention on its prohibition in the Conference on Disarmament.

(*d*) Conventional disarmament and other approaches

(i) *Conventional weapons*

Following a trend apparent in the latter half of the 1980s, questions on the conventional aspects of the arms race and conventional disarmament were discussed with increased emphasis in 1990. The most noteworthy development in the United Nations forums pertaining to conventional disarmament was the successful conclusion by the Disarmament Commission of its work on a broad range of guidelines, agreed upon by

consensus, on how the international community might best approach and deal with conventional disarmament.[44] Three draft resolutions and one decision relating to conventional disarmament were adopted by the General Assembly on 4 December 1990.[45]

By its resolutions 45/58 C and 45/58 G, the General Assembly reaffirmed the importance of conventional disarmament and encouraged States to intensify their efforts in that connection, and also endorsed and called the attention of States to the agreed recommendations of the Disarmament Commission. In addition to urging wider adherence to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects of 1980,[46] the Assembly, in its resolution 45/64, stressed that the Convention provided for the convening of conferences to consider amendments or additional protocols relating to other categories of weapons, or to review the scope and operation of the Convention and the Protocols annexed thereto. Furthermore, decision 45/415 ensured that the ongoing study report of the group of governmental experts to consider aspects of international arms transfers[47] would be given due attention.

(ii) *Regional disarmament and confidence- and security-building measures*

Considerable progress was made in regional disarmament efforts with regard to conventional armaments and the improvement of confidence-building measures in Europe in the course of 1990. The Treaty on Conventional Armed Forces in Europe[48] was signed by the 22 States members of the two military alliances in November in Paris. In another framework encompassing 34 States participating in the Conference on Security and Cooperation in Europe, a new set of mutually complementary confidence- and security-building measures, designed to reduce the risk of military confrontation in Europe, was adopted as the Vienna Document 1990,[49] also in November.

Enhanced interest in regional arms limitation and confidence-building measures was also in evidence in other regions. In Central America, for example, the peace process continued in the form of the activities of the Security Commission established under the Esquipulas II Agreements.[50]

At its forty-fifth session, the General Assembly adopted on 4 December 1990 six resolutions and two decisions on the subject of regional disarmament and/or confidence-building measures, including the related areas of naval disarmament and defensive security concepts.[51]

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2. OTHER POLITICAL AND SECURITY QUESTIONS

(*a*) Implementation of the Declaration on the Strengthening of International Security[52]

In its resolution 45/80 of 12 December 1990,[53] adopted on the recommendation of the First Committee,[54] the General Assembly reaffirmed the continuing validity of the Declaration on the Strengthening of International Security; stressed the need for further strengthening of the role of the United Nations in the maintenance of peace and security and promoting respect for international law, as well as in economic and

social development and progress for the benefit of mankind; welcomed the recent active involvement of the Security Council, in pursuance of its primary responsibility in the maintenance of international peace and security, and expressed the hope that it would continue in that spirit to address other threats to international peace and security; emphasized that the sustained growth and development of the world economy, particularly that of the developing countries, and the solution of their economic problems, were basic prerequisites for the strengthening of international peace and security; and considered that respect for and promotion of human rights and fundamental freedoms in all aspects and the strengthening of international peace and security mutually reinforced each other.

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

The Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space held its twenty-ninth session at the United Nations Office at Geneva from 2 to 20 April 1990.[55]

In continuing its consideration of the agenda item entitled "The elaboration of draft principles relevant to the use of nuclear power sources in outer space", the Legal Subcommittee re-established its Working Group on the item. The Subcommittee had before it a working paper submitted at its previous session by the delegation of Canada[56] and a working paper submitted at its current session by the delegations of Canada, the Federal Republic of Germany and France.[57] The Working Group concentrated on those draft principles where consensus had not been recorded. The Subcommittee, taking note with appreciation of the report of the Working Group, expressed particular satisfaction that principle 3 relating to guidelines and criteria for safe use had been unanimously agreed to by the Working Group at the current session.

The Subcommittee also re-established its Working Group on the agenda item "Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union. The Subcommittee had before it working papers submitted at its previous sessions. The Group considered the two aspects of the agenda item, namely the definition and delimitation of outer space, on the one hand, and the geostationary orbit, on the other, separately.

The Subcommittee re-established as well its Working Group on the item "Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries". the Subcommittee had before it the replies received[58] from States Members of the United Nations containing their views as to the priority of specific subjects under that particular agenda item and providing information on their national legal frameworks, if any, relating to the development of the application of the principle contained in article 1 of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. The Subcommittee also had before it replies received[59] from the Member States containing their views on the subject of international agreements that Member States had entered into that were relevant to the principle that the exploration and use of outer space should be carried out for the benefit and in the interests of all countries, taking into particular account the needs of developing countries.

The Committee on the Peaceful Uses of Outer Space at its thirty-third session, held at United Nations Headquarters from 4 to 14 June 1990, took note with appreciation of the report of the Legal Subcommittee on the work of its twenty-ninth session and made recommendations concerning the agenda of the Subcommittee at its thirtieth session.[60]

With regard to the item entitled "The elaboration of the draft principles relevant to the use of nuclear power sources in outer space", the Committee urged the Legal Subcommittee to make every effort in its work on the elaboration of the outstanding draft principles in order to arrive at a final text of draft principles relevant to the use of nuclear power sources in outer space as early as possible.

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

The Committee also considered, in accordance with paragraph 27 of General Assembly resolution 44/46 of 8 December 1989, the item entitled "Spin-off benefits of space technology: review of current status". The Committee agreed that spin-offs of space technology were yielding substantial benefits in many fields and noted that the importance of those benefits was growing rapidly. Furthermore, the Committee recommended that the Outer Space Affairs Division undertake a study of spin-offs and that space agencies in Member States might specifically consider the allocation of a small portion of their resources to encourage spin-off applications of space technology through technology transfer and exchange of technical information on promotional terms to developing countries.

At its forty-fifth session, by resolution 45/72 of 11 December 1990,[61] adopted on the recommendation of the Special Political Committee,[62] the General Assembly endorsed the report of the Committee on the Peaceful Uses of Outer Space; invited States that had not yet become parties to the international treaties governing the uses of outer space[63] to give consideration to ratifying or acceding to those treaties; and endorsed the recommendations of the Committee that the Legal Subcommittee, at its thirtieth session, should continue, through its working group, the elaboration of draft principles relevant to th use of nuclear power sources in outer space with the aim of finalizing the draft set of principles; its consideration of matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union; and its consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries.

(c) Question of Antarctica

By its resolution 45/78 A of 12 December 1990,[64] adopted on the recommendation of the First Committee,[65] the General Assembly expressed its regret that, despite the numerous resolutions adopted by the General Assembly, the Secretary-General of the United Nations or his representative had not been invited to the meetings of the Antarctic Treaty Consultative Parties; called upon the Consultative Parties to deposit information and documents covering all aspects of Antarctica with the Secretary-Gen-

eral; expressed the conviction that any move to draw up a comprehensive environmental convention on the conservation and protection of Antarctica and its dependent and associated ecosystems as well as establishing a nature reserve or world park must be negotiated with the full participation of the international community, and in this regard stressed that this should be pursued within the context of the United Nations system, including the United Nations Conference on Environment and Development; and requested the Secretary-General to undertake a comprehensive study with the help of relevant United Nations programmes and specialized agencies on the establishment of a United Nations–sponsored station in Antarctica with a view to promoting coordinated international cooperation in scientific research for the benefit of mankind, particularly the importance of Antarctica to the global environment and ecosystems, as well as to act as an early-warning system on climate change and accidents. Furthermore, by its resolution 45/78 B[66] of the same date, adopted also on the recommendation of the First Committee,[67] the Assembly viewed with concern the continuing participation of the apartheid regime of South Africa in the meetings of the Antarctic Treaty Consultative Parties and appealed once again to the Consultative Parties to take urgent measures to exclude the racist apartheid regime from participation in the meetings of the Consultative Parties at the earliest possible date.

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

(*a*) Environmental questions

Second special session of the Governing Council of the United Nations Environment Programme[68]

The second special session of the Governing Council of the United Nations Environment Programme was held at UNEP headquarters, Nairobi, from 1 to 3 August 1990. It was convened at the same location as, and in conjunction with, the first substantive session of the Preparatory Committee for the United Nations Conference on Environment and Development to deal with, *inter alia*, the elaboration of and the process of making and implementing decisions on priority environmental issues, in particular ways and means of enhancing the role of the Programme within the United Nations system in addressing those issues.

By its decision SS.II/2,[69] entitled "New developments in the protection of the ozone layer", the Governing Council welcomed the results of the Second Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer — in particular the decisions taken to strengthen the Protocol, the establishment of a financial mechanism to enable developing countries to comply with the control measures of the Protocol and the progress made in respect of transfer of technology — and urged all States that had not yet done so to become party to the Vienna Convention for the Protection of the Ozone Layer[70] and the Montreal Protocol on Substances that Deplete the Ozone Layer.[71] By its decision SS.II/3,[69] entitled "Climate", section C (Framework convention on climate change), the Governing Council authorized the Executive Director to convene, jointly with the Secretary-General of the World Meteorological Organization, an open-ended working group of government representatives to prepare

for negotiations on a framework convention on climate change, in September 1990, after the adoption of the interim report on the Intergovernmental Panel on Climate Change at its fourth session, to be held in Sweden; and requested the Executive Director to convene jointly with the Secretary-General of WMO the first negotiating session of the open-ended working group on the framework convention on climate change, and other related legal instruments as appropriate, and taking into account the interim report of the Intergovernmental Panel on Climate Change and the results of the Second World Climate Conference. That session should be held not later than February 1991. By its decision SS.II/4,[69] entitled "Hazardous wastes", section A (Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal),[72] the Governing Council, having considered those sections of the report of the Executive Director on priority evolving environmental issues concerning hazardous wastes and, in particular, the status of the Basel Convention and contributions to the costs of its interim secretariat,[73] called upon all States to sign and ratify the Basel Convention, if they had not already done so, and to continue to strengthen their cooperation in problem areas within the scope of the Convention. Furthermore, by its decision SS.II/5,[69] entitled "International legal instrument on the biological diversity of the planet", the Council, recalling its decision 15/34 of 25 May 1989 on the preparation of an international legal instrument on the biological diversity of the planet, urged the Executive Director to accord high priority to the work on biological diversity and biotechnology with a view to arriving at an international legal instrument for the conservation and rational use of biological diversity within a broad socio-economic context, taking particular account of the need to share costs and benefits between developed and developing countries and ways and means to support innovation by local people, and, to that end, called upon the Ad Hoc Working Group of Legal and Technical Experts established for that purpose to proceed expeditiously with its task on the basis of the final report of the Ad Hoc Working Group of Experts on Biological Diversity.

The Council also adopted a number of decisions concerning issues to be addressed by the Preparatory Committee for the United Nations Conference on Environment and Development.[69]

First session of the Preparatory Committee for the United Nations Conference on Environment and Development[74]

The Preparatory Committee for the United Nations Conference on Environment and Development held its first substantive session at Nairobi from 6 to 31 August 1990. Decisions adopted by the Committee[75] included decisions related to legal matters. In particular, by its decision 1/11, entitled "Climate change", the Preparatory Committee requested the Secretary-General of the Conference to make recommendations concerning the contribution of the Preparatory Committee to the negotiating process for a framework convention on climate change and related legal instruments. By its decision 1/12, entitled "Ozone depletion", the Preparatory Committee requested the secretariat of the Conference to cooperate with the United Nations Environment Programme and the World Meteorological Organization in evaluating the need for any additional action to be taken by the Preparatory Committee to support the ongoing work within the framework of the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer. By its decision 1/14, entitled "Combating deforestation", the Preparatory Committee recommended that discussions on the protection and sustainable management of boreal, temperate, subtropical and tropical forest ecosystems be well coordinated and compat-

ible with other possible types of action related to the reduction of emissions of greenhouse gases, protection of biological diversity, rational utilization of biological resources and improvement of market conditions for timber and timber products that might be taken by the Food and Agriculture Organization of the United Nations, the United Nations Environment Programme, the World Meteorological Organization and the International Tropical Timber Organization in connection with conventions on climate change and on biological diversity and other relevant agreements.

By its decision 1/16, entitled "Conservation of biological diversity", the Preparatory Committee requested the Secretary-General of the Conference to follow closely the work of the Ad Hoc Working Group of Experts on Biological Diversity, established under the auspices of UNEP, on the negotiations of an international legal instrument on biological diversity concerning the protection of biological diversity and the rational use of biological resources within a broad socio-economic context, including the work of the Sub-Working Group on Biotechnology, as well as the relevant work of FAO, UNESCO, the International Union for Conservation of Nature and Natural Resources and other intergovernmental and non-governmental organizations. By its decision 1/20, entitled "Protection of the oceans and all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources", the Preparatory Committee:

(1) requested the Secretary-General of the Conference to submit to the Preparatory Committee at its second session a comprehensive report with recommendations for action covering, *inter alia*, the following areas: the effectiveness and feasible strengthening of existing international institutions, the effectiveness and status of implementation of existing legal instruments and the identification of gaps in existing mechanisms for the protection of the marine environment; the effectiveness of existing international institutions, the effectiveness and status of implementation of existing legal instruments and the identification within appropriate forums of gaps in existing mechanisms for the protection, rational use and development of living marine resources, including the living resources of the high seas, taking into account the results of the 1984 World Conference of Fisheries Management and Development as well as the Third United Nations Conference on the Law of the Sea; and

(2) invited IMO, in cooperation with the States parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter,[76] to consider initiating work to strengthen the regime curbing dumping at sea, taking into consideration all relevant paragraphs of the Bergen Ministerial Declaration on Sustainable Development in the ECE region[77] and the outcome of the deliberations of the other regional commissions due to hold regional conferences in preparation for the United Nations Conference on Environment and Development.

By its decision 1/22, entitled "Environmentally sound management of wastes, particularly hazardous wastes, environmentally sound management of toxic chemicals and prevention of illegal international traffic in toxic and dangerous products and wastes", the Preparatory Committee requested the Secretary-General of the Conference to submit to the Preparatory Committee at its second session a progress report with recommendations for acton covering, *inter alia*, the following areas: measures to strengthen international, regional and subregional cooperation, taking account, *inter alia*, of the relevant provisions of the Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal, including exchange of information, training and technical assistance, in particular to developing countries, and measures to encourage, where appropriate, harmonization of standards for waste disposal;

review and analysis of problems encountered in the ratification of the Basel Convention and measures to be taken to solve those problems; and the possible development of a mechanism for management of chemicals similar to the Codex Alimentarius.

Consideration by the General Assembly

At its forty-fifth session the General Assembly, by its resolution 45/211 of 21 December 1990,[78] adopted on the recommendation of the Second Committee,[79] took note of the report of the Preparatory Committee on its first session and endorsed the decisions contained therein;[80] decided that the United Nations Conference on Environment and Development should take place at Rio de Janeiro, Brazil, from 1 to 12 June 1992; urged that representation at the Conference be at the level of head of State or Government; and reiterated that the Preparatory Committee should review and assess ongoing negotiating processes in the field of the environment, and invited the forums involved in such processes to report regularly on their activities to the Preparatory Committee at its forthcoming sessions.

Furthermore, by its resolution 45/212 of the same date,[81] adopted also on the recommendation of the Second Committee,[82] the General Assembly decided to establish a single intergovernmental negotiating process under the auspices of the General Assembly, supported by the United Nations Environment Programme and the World Meteorological Organization, for the preparation by the Intergovernmental Negotiating Committee of an effective framework convention on climate change, containing appropriate commitments, and any related instruments as might be agreed upon, taking into account proposals that might be submitted by States participating in the negotiating process, the work of the Intergovernmental Panel on Climate Change and the results achieved at international meetings on the subject, including the Second World Climate Conference; and considered that the negotiations for the preparation of an effective framework convention on climate change should be completed prior to the United Nations Conference on Environment and Development and opened for signature during the Conference.

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

By its resolution 45/204 of 21 December 1990,[83] adopted on the recommendation of the Second Committee[84] the General Assembly took note of the report of the Secretary-General of the United Nations Conference on Trade and Development on the negotiations on a draft international code of conduct on the transfer of technology.[85]

(*c*) Code of conduct on transnational corporations

By its resolution 45/186 of 21 December 1990,[86] adopted on the recommendation of the Second Committee,[87] the General Assembly confirming that there was substantial provisional understanding on the contents of the draft code of conduct on transnational corporations as presented to the President of the Economic and Social Council by the Chairman of the Commission on Transnational Corporations at its reconvened special session,[88] decided to request the President of the General Assembly, with the support of the Secretary-General, to arrange for intensive consultations aimed at achieving an early agreement on a code of conduct, for presentation to and adoption by the Assembly at its forty-sixth session.

(*d*) Office of the United Nations High Commissioner for Refugees[89]

During the reporting period phenomenal and very rapid developments in the international political, human rights and environmental arenas created a new context and focus of concerns, perceptions and interests. The impact of those events and developments on current and future refugee problems and on the role of the Office of the United Nations High Commissioner for Refugees had yet to become apparent or to be fully grasped. In many other respects, however, developments in the global refugee situation continued to be characterized by the three considerations, namely: the attainment of durable solutions to some of the world's long-lasting refugee situations; the deterioration, nevertheless, of the overall global refugee situation in that new influxes were occurring amidst a generally less receptive international environment for refugees and asylum-seekers; and finally, the financial crisis faced by the Office, which worsened considerably, putting in ever more serious jeopardy the capacity of the Organization to meet even the most basic needs of refugees.

In connection with the attainment of durable solutions, the single most notable of those developments was in Namibia. The emergence there of an independent State, on 21 March 1990, was preceded by the successful repatriation, between June and September 1989, of up to 43,000 Namibians as part of the implementation of the Independence Plan for Namibia under Security Council resolution 435 (1978) of 29 September 1978.

International protection involved using law and principles to secure the rights, security and welfare of refugees. Beyond attaining immediate objectives, such as the prevention of *refoulement*, the ultimate aim of protection was to achieve solutions to the problems of refugees, either through voluntary return to their countries of origin in conditions of safety, or through integration in new national communities. During the reporting period, many States continued to respect their commitments in that field and the vast majority of the world's refugees were admitted into the territory of States, granted at least temporary asylum and protected from *refoulement*. Nevertheless, in a number of instances admission and asylum were denied on various grounds. These included the refusal by States to examine asylum requests based upon a strict application of the notion of "country of first asylum", even where the persons concerned were not permitted to re-enter or remain in the country from which they had last come or where it was far from clear that they would receive human treatment.

No country acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol during the reporting period. The number of States parties to one or both of those instruments therefore remained at 106. Two States, Brazil and Italy, withdrew their geographical limitations to the 1951 Convention.

During the period under review, UNHCR continued to provide advice and training to government officials and others on the appropriate content of procedures for the determination of refugee status and how to implement it. In the context of the Comprehensive Plan of Action for Indo-Chinese Refugees, UNHCR assisted all receiving countries in South-East Asia in establishing procedures for the determination of refugee status and provided advice and guidance throughout the process both to the officials charged with their implementation and to asylum-seekers.

UNHCR also pursued its traditional promotion and dissemination activities with respect to refugee law and protection principles. The Centre for Documentation on Refugees continued to strengthen and systematize the information and documentation policies of the Office, particularly as they related to the protection of refugees. In

addition to the continued publication of its quarterly *Refugee Abstracts*, the Centre directed the development and subsequent publication by the International Refugee Documentation Network of an international thesaurus on refugee terminology. Finally, UNHCR continued to extend cooperation to Oxford University Press in its publication of the *International Journal of Refugee Law*, the first four issues of which appeared in 1989.

At the forty-first session of the Executive Committee of the Programme of the High Commissioner for Refugees, held at Geneva from 1 to 5 October 1990,[90] the Committee called upon States, UNHCR and other concerned parties to take all necessary measures to ensure that refugees were effectively protected and recalled in that regard the fundamental importance of the United Nations Convention relating to the Status of Refugees of 28 July 1951[91] and the Protocol relating to the Status of Refugees of 31 January 1967;[92] noted with appreciation the accomplishments of the Office in promoting and disseminating refugee law, particularly through the organization of protection training courses, and in maintaining a research capacity, and called upon the High Commissioner to consider how to pursue those activities within existing resources; stressed that all action taken on behalf of women who were refugees must be guided by the relevant international instruments relating to the status of refugees, as well as other applicable human rights instruments, in particular, for States parties thereto, the United Nations Convention on the Elimination of All Forms of Discrimination against Women;[93] approved the policy on refugee women as contained in document A/AC.96/754; and invited UNHCR to develop comprehensive guidelines on the protection of refugee women as a matter of urgency in order to give effect to its policy on refugee women.

By its resolution 45/140A of 14 December 1990,[94] adopted on the recommendation of the Third Committee,[95] the General Assembly strongly reaffirmed the fundamental nature of the function of the Office of the United Nations High Commissioner for Refugees to provide international protection and the need for States to cooperate fully with the Office in fulfilling that function, in particular by acceding to and fully and effectively implementing the relevant international and regional refugee instruments; recognized the urgent need to put all issues related to refugees, asylum-seekers and other migratory flows firmly on the international political agenda, especially in view of the fortieth anniversary of the Office of the High Commissioner and the 1951 Convention relating to the Status of Refugees, and in that connection welcomed initiatives to promote further awareness of and support for the Office, including accessions to that instrument; called upon States to give high priority to the rights of refugee children and to their survival, protection and development as reflected in the Convention on the Rights of the Child[96] and in the World Declaration on the Survival, Protection and Development of Children in the 1990s,[97] adopted by the World Summit for Children in New York on 30 September 1990; endorsed the High Commissioner's policy on refugee women, which provided for the integration of refugee women into all the programmes of the Office of the High Commissioner, as well as the conclusion on refugee women and international protection adopted by the Executive Committee of the Programme of the High Commissioner at its forty-first session;[98] and also endorsed the conclusion on the note on international protection adopted by the Executive Committee of the Programme of the High Commissioner at its forty-first session,[99] in which, in particular, the Executive Committee had recognized the importance of human rights and humanitarian principles and recognized that the current size and characteristics of the refugee and asylum problem necessitated appropriate reassessment of international responses to the problem to date, with a view to developing

comprehensive approaches to meet current realities, and at the same time noted the difference between refugees and persons seeking to migrate for economic and related reasons.

(e) International drug control

(1) *Status of international instruments*

In the course of 1990, 10 more States became parties to the 1971 Convention on Psychotropic Substances,[100] two more States became parties to the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961,[101] and five more States became parties to the Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 25 March 1972 amending the Single Convention on Narcotic Drugs, 1961.[102] On 11 November 1990, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988[103] entered into force, and as of the end of the year, 32 States had become parties to the Convention.

(2) *Seventeenth special session of the General Assembly*

By its resolution S-17/2 of 23 February 1990,[104] adopted on the recommendation of the Ad Hoc Committee of the Seventeenth Special Session,[105] the General Assembly, at that session, which was devoted to the question of international cooperation against illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances, adopted the Political Declaration and the Global Programme of Action on international cooperation against illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances, which was annexed to the resolution. Excerpts from the Political Declaration and the Global Programme of Action are reproduced below.

Political Declaration

We, the States Members of the United Nations,

. . .

Reaffirming our determination to combat the scourge of drug abuse and illicit trafficking in narcotic drugs and psychotropic substances in strict conformity with the principles of the Charter of the United Nations, the principles of international law, in particular respect for the sovereignty and territorial integrity of States, the principle of non-interference in the internal affairs of States and non-use of force or the threat of force in international relations, and the provisions of the international drug control conventions,

Reaffirming also the provisions set forth in the Single Convention on Narcotic Drugs of 1961, and in that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1961, the Convention on Psychotropic Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted in 1988,

. . .

Agree on the following:

. . .

5. We shall increase our efforts and resources in order to intensify international cooperation and concerted action, based upon the principle of shared responsibility, including the necessary cooperation and assistance to affected States, when requested, in the economic, health, social, judicial and law enforcement sectors in order to strengthen the capabilities of States to deal with the problem in all its aspects;

. . .

18. We shall further develop and utilize, to the maximum extent, existing bilateral and other international instruments or arrangements for enhancing international legal and law enforcement co-operation;

19. We reaffirm the principles set forth in the Declaration of the International Conference on Drug Abuse and Illicit Trafficking and undertake to apply, as appropriate, the recommendations of the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control;[106]

20. We urge States to ratify or accede to the United Nations conventions in the field of drug abuse control and illicit trafficking and, to the extent they are able to do so, to apply provisionally the terms of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;

. . .

GLOBAL PROGRAMME OF ACTION

I. INTRODUCTION

. . .

2. An important aspect of the fight against drug abuse has been the elaboration of international legal instruments. The adoption of the Single Convention on Narcotic Drugs of 1961 and of that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1961 and of the Convention on Psychotropic Substances of 1971 were first important steps in that direction.

. . .

4. In order to reinforce and supplement the measures provided in existing legal instruments and to counter the new magnitude and extent of illicit drug trafficking and its grave consequences, a United Nations plenipotentiary conference, held at Vienna from 25 November to 20 December 1988, adopted the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

. . .

C. *Control of supply of narcotic drugs and psychotropic substances*

1. *Eradication and substitution of illicit production of narcotic drugs, and eradication of illicit processing of such drugs and of illicit production and diversion of psychotropic substances*

38. States shall consider, at the national and international levels, means by which the internal sector of those economies that are affected by the illicit production and processing of narcotic drugs and psychotropic substances might be strengthened, in order to support and strengthen the implementation, by competent national authorities, of effective anti-drug programmes, including the following measures:

. . .

[39.] (*b*) Consideration by States of entering into multilateral, bilateral or regional agreements with countries affected by illicit drug production and processing, with a view to facilitating access by those countries to international markets and to assisting them in strengthening and adapting their internal capacity to produce exportable goods;

. . .

4. *Monitoring and control mechanisms*

45. States shall take all necessary measures, such as the conclusion of bilateral and regional agreements, to establish montioring and control systems to prevent diversion from legitimate purposes of specific chemical substances, materials and equipment frequently used in the illicit manfuacture of narcotic drugs and psychotropic substances, in particular through the applicaton of articles 12 and 13 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted in 1988.

. . .

D. *Suppression of illicit trafficking in narcotic drugs and psychotropic substances*

1. *Traffic*

51. States shall proceed rapidly and make every effort to ratify or accede to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in 1988, in order to enable the entry into force of the Convention, preferably by the end of 1990.

52. The United Nations, in particular the Division of Narcotic Drugs, the International Narcotics Control Board and the United Nations Fund for Drug Abuse Control, shall provide expertise and assistance to States, at their request, to enable them to establish the legislative and administrative measures for the ratification and effective implementation of the United Nations Convention.

53. States shall, to the extent and where they are able to do so, apply provisionally the measures set forth in the United Nations Convention.

54. Consistent with the United Nations Convention, consideration shall be given to the conclusion of bilateral, regional and multilateral agreements and other arrangements aimed at suppressing illicit trafficking in narcotic drugs and psychotropic substances.

55. States that have not yet done so shall consider ratification of or accession to the Single Convention on Narcotic Drugs of 1961 and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1961 and the Convention on Psychotropic Substances of 1971.

. . .

59. States shall make increased use of the meetings of heads of National Drug Law Enforcement Agencies and other intergovernmental organizations, such as the Customs Cooperation Council and the International Criminal Police Organization (Interpol), regional cooperation arrangements and other relevant institutional frameworks, for the purpose of co-ordinating cooperation in law enforcement and expanding programmes of training for law enforcement personnel in investigative matters and methods, interdiction and narcotics intelligence.

. . .

E. *Measures to be taken against the effects of money derived from, used in or intended for use in illicit drug trafficking, illegal financial flows and illegal use of the banking system*

62. Priority shall be accorded to the implementation of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in 1988, and the conclusion of bilateral, regional and multilateral agreements on tracing, freezing and seizure and forfeiture or confiscation of property and proceeds derived from, used in or intended for use in illicit drug trafficking.

63. Mechanisms shall be developed to prevent the banking system and other financial institutions from being used for the processing and laundering of drug-related money. To this end, consideration should be given by States to entering into bilateral, regional and multilateral agreements and developing mechanisms to trace property and proceeds derived from, used in or intended for use in drug-related activities through the international banking system, facilitate access to banking records and provide for the exchange of information between law enforcement, regulatory or investigative agencies concerning the financial flow of property or proceeds related to illicit drug trafficking.

. . .

66. States shall consider enacting legislation to prevent the use of the banking system for the processing and laundering of drug-related money, *inter alia*, through declaring such activities criminal offences.

67. States shall consider enacting legislation to permit the seizure and forfeiture of property and proceeds derived from, used in or intended for use in illicit drug trafficking. To that end, consideration should be given by States to concluding bilateral and multilateral agreements to enhance the effectiveness of international co-operation, taking into particular account article 5, paragraph 5, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

68. States shall encourage international, regional and national financial associations to develop guidelines to assist their members in cooperating with government authorities in identifying, detecting, tracing, freezing and seizing proceeds and property related to illicit trafficking in narcotic drugs and psychotropic substances.

69. The elaboration of international agreements providing for stringent controls on money derived from, used in or intended for use in drug-related activities and penalizing the laundering of such money might be considered. Such instruments might also deal with the forfeiture or confiscation of funds, proceeds and property acquired through revenues deriving from drug-related activities.

. . .

F. *Strengthening of judicial and legal systems, including law enforcement*

74. States shall, as soon as possible, ratify or accede to the United Nations conventions in the field of drug abuse control and illicit trafficking.

75. States in a position to do so and the United Nations, strengthening their action in coordination with the regional institutes of the United Nations with mandates in this sphere, shall provide advice and legal and technical assistance to enable States, at their request, to adapt their national legislation to international conventions and decisions dealing with drug abuse and illicit trafficking.

76. States are invited to give consideration to the model treaties on mutual assistance in criminal matters and on extradition, which contain specific provisions related to illicit traffic in narcotic drugs and psychotropic substances and are to be dealt with by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

77. States shall encourage international and regional organizations to elaborate model agreements on cooperation among customs officials, law enforcement agencies and other interested organs in the field of combating drug abuse and illicit trafficking.

78. The scope of international cooperation in support of technical assistance programmes aimed at the strengthening of judicial, legal and law enforcement systems, in particular in the field of the administration of justice, shall be extended. Particular attention shall be given to the training of personnel at all levels.

79. Measures to protect the judiciary from any form of exposure and intimidation threatening its independence and integrity shall be studied and promoted.

80. The United Nations shall act as a clearing-house for information on training programmes in drug law enforcement, including training for national narcotics agents in investigative methods, interdiction and narcotics intelligence.

81. Consideration shall be given to establishing a capability within the United Nations system to coordinate the provision by States of training and equipment to other States, at their request, for their own anti-drug operations, within their territories, to inhibit the use, interdict the supply and eliminate the illicit trafficking of drugs.

82. Since the International Law Commission has been requested to consider the question of establishing an international criminal court or other international trial mechanism with jurisdiction over persons alleged to be engaged in illicit trafficking in narcotic drugs across national frontiers, the Administrative Committee on Coordination shall consider, in its annual adjustments to the United Nations system-wide action plan on drug abuse control requested by the General Assembly in its resolution 44/141 of 15 December 1989, the report of the International Law Commission on the question.

83. States shall consider the appropriateness of establishing arrangements, on the basis of bilateral, regional and multilateral agreements, which would allow them to benefit from one another's criminal justice system in dealing with similar drug-related offences.

84. Consideration shall be given to establishing a register of anti-drug expertise and services, under the supervision of the Division of Narcotic Drugs, which could be made available to States, at their request.

85. A review should be undertaken of international and regional law enforcement activities funded or sponsored by the United Nations, as well as those of other intergovernmental organizations and regional arrangements, to ensure a coherent approach to law enforcement activities within the overall context of the Global Programme of Action.

. . .

H. *Resources and structure*

. . .

94. Attention shall be given to the need for (*a*) coherence of actions within the United Nations drug-related units and coordination, complementarity and non-duplication of all drug-related activities across the United Nations system; (*b*) integration of drug-related information within the United Nations system; (*c*) integration of the reduction of illicit demand in United Nations programming; (*d*) integration of law enforcement field expertise in United Nations programmes; (*e*) compliance with all non-discretionary obligations mandated by the three drug control conventions; and (*f*) an estimate of resources necessary to carry out these mandates successfully.

. . .

(3) Consideration by the General Assembly

By its resolution 45/147 of 18 December 1990,[107] adopted on the recommendation of the Third Committee[108] the General Assembly, conscious that the adoption of the Political Declaration and the Global Programme of Action at the seventeenth special session of the General Assembly was an important step in the harmonization of the efforts of all to combat that scourge of mankind, reaffirmed that the fight against drug abuse and illicit trafficking should continue to be based on strict respect for the principles enshrined in the Charter of the United Nations and international law, particularly respect for the sovereignty and territorial integrity of States, non-interference in the internal affairs of States and non-use of force or the threat of force in international relations; and affirmed that the international fight against drug trafficking should not in any way justify violation of the principles enshrined in the Charter of the United Nations and international law, particularly the right of all peoples freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and that every State had the duty to respect that right in accordance with the provisions of the Charter.

By its resolution 45/148 of the same date,[109] adopted also on the recommendation of the Third Committee,[110] the General Assembly reaffirmed the commitment expressed in the Global Programme of Action[111] adopted by the Assembly at its seventeenth special session on 23 February 1990 and the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control, as adopted by the International Conference on Drug Abuse and Illicit Trafficking;[112] and called upon States to take all possible steps to promote and implement individually and in cooperation with others the mandates and recommendations contained in the Global Programme of Action, with a view to translating the Programme into practical action to the widest possible extent at the national, regional and international levels. And by its resolution 45/149 of the same date,[113] adopted on the recommendation of the Third Commit-

tee,[114] the General Assembly requested the Commission on Narcotic Drugs to study the mandates and recommendations contained in the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control, the Global Programme of Action and other relevant documents, with a view to establishing a timetable for their implementation in the first five years of the United Nations Decade against Drug Abuse 1991-2000.

Furthermore, by its resolution 45/146 of the same date,[115] adopted also by the Third Committee,[116] the General Assembly urged States that had not yet done so to proceed as soon as possible to ratify or accede to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,[103] in order to make its provisions more universally effective; also urged States to establish the necessary legislative and administrative measures so that their internal juridical regulations might be compatible with the spirit and the scope of the Convention; and once again urged all States that had not yet done so to ratify or accede to the Single Convention on Narcotic Drugs of 1961,[101] and that Convention as amended by the 1972 Protocol,[102] and the Convention of Psychotropic Substances of 1971.[100]

By its resolution 45/179 of 21 December 1990,[117] adopted on the recommendation of the Third Committee,[118] the General Assembly, recognizing that the new dimensions taken on by the drug menace necessitated a more comprehensive and integrated approach to international drug control and a more efficient structure to ensure coordination, complementarity and non-duplication of activities across the United Nations system in order to use available resources in the most efficient way to enable the United Nations to play a central and greatly enhanced role in that field, took note with appreciation of the report of the Secretary-General[119] and the report of the Group of Experts, entitled "Drugs and the United Nations: meeting the challenge";[120] and requested the Secretary-General to create a single drug control programme, to be called the United Nations International Drug Control Programme, based at Vienna, and to integrate fully therein the structures and the functions of the Division of Narcotic Drugs of the Secretariat, the secretariat of the International Narcotics Control Board and the United Nations Fund for Drug Abuse Control with the objective of enhancing the effectiveness and efficiency of the United Nations structure for drug abuse control in keeping with the functions and mandates of the United Nations in that field.

(*f*) Human rights questions

(1) Status and implementation of international instruments

(i) *International Covenants on Human Rights*[121]

In 1990, four more States became parties to the International Covenant on Economic, Social and Cultural Rights,[122] four more States became parties to the International Covenant on Civil and Political Rights[123] and three more States became parties to the Optional Protocol to the International Covenant on Civil and Political Rights.[124]

By its resolution 45/135 of 14 December 1990,[125] adopted on the recommendation of the Third Committee,[126] the General Assembly took note with appreciation of the report of the Human Rights Committee on its thirty-seventh, thirty-eighth and thirty-ninth sessions,[127] including the suggestions and recommendations of a general nature approved by the Committee; again urged all States which had not yet done so to become parties to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and to consider

acceding to the Optional Protocols to the International Covenant on Civil and Political Rights; invited the States parties to the International Covenant on Civil and Political Rights to consider making the declaration provided for in article 41 of the Covenant; stressed the importance of avoiding the erosion of human rights by derogation, and underlined the necessity of strict observance of the agreed conditions and procedures for derogation under article 4 of the International Covenant on Civil and Political Rights, bearing in mind the need for States parties to provide the fullest possible information during states of emergency, so that the justification for and appropriateness of measures taken in those circumstances could be assessed; appealed to States parties to the Covenants that had exercised their sovereign right to make reservations in accordance with relevant rules of international law to consider whether any such reservations should be reviewed; and encouraged all Governments to publish the texts of the Covenants in as many languages as possible and to distribute them and make them known as widely as possible in their territories.

(ii) *International Convention on the Elimination of All Forms of Racial Discrimination*[128]

In 1990, two more States became parties to the International Convention on the Elimination of All Forms of Racial Discrimination.

In its resolution 45/89 of 14 December 1990,[129] adopted on the recommendation of the Third Committee,[130] the General Assembly reaffirmed once again its conviction that ratification of or accession to the Convention on a universal basis and implementation of its provisions were necessary for the realization of the objectives of the Second Decade to Combat Racism and Racial Discrimination;[131] requested those States which had not yet become parties to the Convention to ratify it or accede thereto; and called upon the States parties to the Convention to consider the possibility of making the declaration provided for in article 14 of the Convention.

(iii) *International Convention on the Suppression and Punishment of the Crime of Apartheid*[132]

In 1990, one more State became party to the International Convention on the Suppression and Punishment of the Crime of Apartheid.

By its resolution 45/90 of 14 December 1990,[133] adopted on the recommendation of the Third Committee,[134] the General Assembly underlined the importance of the universal ratification of the Convention, which would be an effective contribution to the fulfilment of the ideals fo the Universal Declaration of Human Rights and other human rights instruments; appealed once again to those States that had not yet done so to ratify or to accede to the Convention without further delay, in particular those States that had jurisdiction over transnational corporations operating in South Africa and without whose cooperation such operations could not be halted; and requested the Commission on Human Rights to intensify, in cooperation with the Special Committee against Apartheid, its efforts to compile periodically the progressive list of individuals, organizations, institutions and representatives of States deemed responsible for crimes enumerated in article II of the Convention, as well as those against whom or which legal proceedings had been undertaken.

(iv) *Convention on the Elimination of All Forms of Discrimination against Women*[135]

In 1990, four more States became parties to the Convention on the Elimination of All Forms of Discrimination against Women.

By its resolution 45/124 of 14 December 1990,[136] adopted on the recommendation of the Third Committee,[137] the General Assembly urged all States that had not yet ratified or acceded to the Convention to do so as soon as possible; and welcomed, in accordance with general recommendation No. 11 of the Committee on the Elimination of Discrimination against Women,[138] the initiatives taken to provide regional training courses on the preparation and drafting of reports of States parties for government officials and training and information seminars for States considering acceding to the Convention, and urged the relevant organs and organizations of the United Nations to support such initiatives.

(v) *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*[139]

By its resolution 45/142 of 14 December 1990,[140] adopted on the recommendation of the Third Committee,[141] the General Assembly reiterated its request to all States to become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as a matter of priority and once again invited all States, upon ratification of or accession to the Convention, or subsequently, to consider the possibility of making the declarations provided for in articles 21 and 22 of the Convention.

(vi) *Convention on the Rights of the Child*[142]

By its resolution 45/104 of 14 December 1990,[143] adopted on the recommendation of the Third Committee,[144] the General Assembly welcomed with deep satisfaction the entry into force of the Convention on the Rights of the Child on 2 September 1990 as a major step in international efforts to promote universal respect for and observance of human rights and fundamental freedoms; called upon all States that had not done so to sign, ratify or accede to the Convention as a matter of priority; and recognized the importance of the establishment of the Committee on the Rights of the Child as an essential mechanism for overseeing the effective implementation of the provisions of the Convention.

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

By its resolution 45/158 of 18 December 1990,[145] adopted on the recommendation of the Third Committee,[146] the General Assembly adopted and opened for signature, ratification and accession the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, contained in the annex to the resolution,[147] called upon all Member States to consider signing and ratifying or acceding to the Convention as a matter of priority and expressed the hope that it would enter into force at an early date.

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

By its resolution 45/85 of 14 December 1990,[148] adopted on the recommendation of the Third Committee,[149] the General Assembly, reaffirming that the effective

implementation of United Nations instruments on human rights was of major importance to the efforts made by the Organization, pursuant to the Charter of the United Nations and to the Universal Declaration of Human Rights,[150] to promote universal respect for and observance of human rights and fundamental freedoms, endorsed the conclusions and recommendations of the meetings of persons chairing the human rights treaty bodies, held at Geneva from 1 to 5 October 1990,[151] aimed at streamlining, rationalizing and otherwise improving reporting procedures, and supported the continuing efforts in that connection by the treaty bodies and the Secretary-General within their respective spheres of competence; once again expressed its satisfaction with the study by the independent expert[152] on possible long-term approaches to enhancing the effective operation of existing and prospective bodies established under United Nations instruments on human rights, which contained several recommendations on reporting and monitoring procedures, servicing and financing of supervisory bodies and long-term approaches to human rights standard-setting and implementation mechanisms; endorsed the recommendations of the Task Force on Computerization[153] appointed by the Secretary-General to prepare a study on computerizing the work of the treaty-monitoring bodies, with a view to increasing efficiency and facilitating compliance by States parties with their reporting obligations and the examination of reports by the treaty bodies; requested the Secretary-General to give high priority to establishing a computerized database to increase the efficiency and effectiveness of the functioning of the treaty bodies; and recalled the report of the Secretary-General[154] to the Committee on Economic, Social and Cultural Rights showing the extent of overlapping issues dealt with in international instruments on human rights, which would assist efforts to reduce, as appropriate, duplication in the supervisory bodies of issues raised with respect to any given State party.

(*g*) Universal realization of the right of people to self-determination

By its resolution 45/131 of 14 December 1990,[155] adopted on the recommendation of the Third Committee,[156] the General Assembly reaffirmed that the universal realization of the right of all peoples, including those under colonial, foreign and alien domination, to self-determination was a fundamental condition for the effective guarantee and observance of human rights and for the preservation and promotion of such rights. Furthermore, by its resolution 40/130 of the same date,[157] adopted also on the recommendation of the Third Committee,[158] the General Assembly called upon all States to implement fully and faithfully all the resolutions of the United Nations regarding the exercise of the right to self-determination and independence by peoples under colonial and foreign domination and reaffirmed the legitimacy of the struggle of peoples for independence, territorial integrity, national unity and liberation from colonial domination, apartheid and foreign occupation by all available means, including armed struggle.

(*h*) Human rights and scientific and technological developments

By its resolution 45/93 of 14 December 1990,[159] adopted on the recommendation of the Third Committee,[160] the General Assembly recalled the historic responsibility of the Governments of all countries of the world to preserve civilization and to ensure that everyone enjoyed his or her inherent right to life, and called upon them to do their utmost to assist in implementing the right to life through the adoption of appropriate

measures at both the national and the international levels; it also called upon all States, appropriate United Nations bodies, the specialized agencies and intergovernmental and non-governmental organizations concerned to take the necessary measures to ensure that the results of scientific and technological progress and the material and intellectual potential of mankind were used for the benefit of mankind and for promoting and encouraging universal respect for human rights and fundamental freedoms. By its resolution 45/92 of the same date,[161] adopted also on the recommendation of the Third Committee,[162] the Assembly welcomed the significant progress made by the Working Group of the Commission on Human Rights in the elaboration of a body of principles for the protection of persons with mental illness and for the improvement of mental health care, and urged the Group to complete its work expeditiously for submission to the Commission on Human Rights.

(*i*) Respect for the right of everyone to own property alone as well as in association with others and its contribution to the economic and social development of Member States

By its resolution 45/98 of 14 December 1990,[163] adopted on the recommendation of the Third Committee,[164] the General Assembly recognized that there existed in Member States many forms of legal property ownership, including private, communal, social and State forms, each of which should contribute to ensuring effective development and utilization of human resources by establishing sound bases for political, economic and social justice; affirmed, in accordance with article 30 of the Universal Declaration of Human Rights, that nothing in the Declaration, including the right of everyone to own property alone as well as in association with others, might be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms proclaimed therein; considered that further measures might be appropriate at the national level, consistent with national policies, to ensure respect for the right of everyone to own property alone as well as in association with others and the right not to be arbitrarily deprived of one's property, as set forth in article 17 of the Declaration of Human Rights, so as to protect and preserve those rights in relation to the following types of property: (*a*) personal property, including the residence of one's self and family; (*b*) economically productive property, including property associated with agriculture, commerce and industry; and urged States, therefore, in accordance with their constitutional systems and the Universal Declaration of Human Rights, to provide, where they had not done so, adequate constitutional and legal provisions to protect the right of everyone to own property alone as well as in association with others and the right not to be arbitrarily deprived of one's property.

(*j*) Need to ensure a healthy environment for the well-being of individuals

By its resolution 45/94 of 14 December 1990,[165] adopted on the recommendation of the Third Committee,[166] the General Assembly, recalling that, in accordance with the provisions of the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, everyone had the right to an adequate standard of living for his or her own health and well-being and that of his or

her family and to the continuous improvement of living conditions; considering that a better and healthier environment could contribute to the full enjoyment of human rights by all; reaffirming that, in accordance with the Declaration of the United National Conference on the Human Environment,[167] men and women had the fundamental right to freedom, equality and adequate conditions of life in an environment of a quality that permitted a life of dignity and well-being, and that they bore a solemn responsibility to protect and improve the environment for present and future generations; and welcoming Commission on Human Rights resolution 1990/41 of 6 March 1990[168] and Subcommission on Prevention of Discrimination and Protection of Minorities resolution 1990/7 of 30 August 1990,[169] in which they had decided to study the problems of the environment and its relation to human rights, recognized that all individuals were entitled to live in an environment adequate for their health and well-being and encouraged the Commission, with the assistance of its Subcommission, to continue studying the problems of the environment and its relation to human rights, with a view to submitting to the Preparatory Committee of the United Nations Conference on Environment and Development, through the Economic and Social Council, a report on the progress made on the matter.

(*k*) Use of mercenaries as a means to violate human rights and to impede the exercise of the right of peoples to self-determination

By its resolution 45/132 of 14 December 1990,[170] adopted on the recommendation of the Third Committee,[171] the General Assembly, welcoming the adoption of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries,[172] affirmed that the use of mercenaries and their recruitment, financing and training were offences of grave concern to all States and violated the purposes and principles enshrined in the Charter of the United Nations, and urged all States to take early action to sign, accede to or ratify the Convention, in order to expedite its entry into force.

(*l*) Summary or arbitrary executions

By its resolution 45/162 of 18 December 1990,[173] adopted on the recommendation of the Third Committee,[174] the General Assembly, having regard to the provisions of the International Covenant on Civil and Political Rights, in which it was stated that every human being had the inherent right to life, that that right should be protected by law and that no one should be arbitrarily deprived of his life; recalling Economic and Social Council resolution 1989/65 of 24 May 1989, containing the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions and resolution 1989/64 of the same date, entitled "Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty" and the recommendations contained therein, once again strongly condemned the large number of summary or arbitrary executions, including extralegal executions, that continued to take place in various parts of the world; welcomed the recommendations made by the Special Rapporteur to consider the questions related to summary or arbitrary executions in his reports[175] to the Commission on Human Rights at its forty-fourth, forty-fifth and forty-sixth sessions with a view to eliminating summary or arbitrary executions; again requested the Secretary-General to continue to use his best

endeavours in cases where the minimum standard of legal safeguards provided for in articles 6, 14 and 15 of the International Covenant on Civil and Political Rights appeared not to have been respected; and requested the Commission on Human Rights at its forty-seventh session, on the basis of the report of the Special Rapporteur to be prepared in conformity with Economic and Social Council resolutions 1982/35, 1983/36, 1984/35, 1985/40, 1986/36, 1987/60 and 1988/38, to make recommendations concerning appropriate action to combat and eventually eliminate the abhorrent practice of summary or arbitrary executions.

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

By its resolution 45/136 of 14 December 1990,[176] adopted on the recommendation of the Third Committee,[177] the General Assembly reaffirmed that freedom of thought, conscience, religion and belief was a right guaranteed to all without discrimination; urged States, therefore, in accordance with their respective constitutional systems and with such internationally accepted instruments as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,[178] to provide, where they had not already done so, adequate constitutional and legal guarantees of freedom of thought, conscience, religion and belief, including the provision of effective remedies where there was intolerance or discrimination based on religion or belief; called upon all States to recognize, as provided in the above-mentioned Declaration, the right of all persons to worship or assemble in connection with a religion or belief, and to establish and maintain places for those purposes; and noted that the Commission on Human Rights had welcomed the working paper prepared by the member of the Subcommission on Prevention of Discrimination and Protection of Minorities,[179] which contained a compilation of provisions relevant to the elimination of intolerance and discrimination based on religion or belief, as well as the issues and factors to be considered before any drafting of a further binding international instrument, and emphasized, in that connection, the relevance of General Assembly resolution 41/120 of 4 December 1986 entitled "Setting international standards in the field of human rights".

(*n*) Guidelines for the regulation of computerized personal data files

By its resolution 45/95 of 14 December 1990,[180] adopted on the recommendation of the Third Committee,[181] the General Assembly, bearing in mind Commission on Human Rights resolution 1990/42 of 6 March 1990 and Economic and Social Council resolution 1990/38 of 25 May 1990, entitled "Guidelines on the use of computerized personal files", adopted the guidelines for the regulation of computerized personal data files in their revised version;[182] and requested Governments to take into account those guidelines in their legislation and administrative regulations.

(*o*) New international humanitarian order

By its resolution 45/101 of 14 December 1990,[183] adopted on the recommendation of the Third Committee,[184] the General Assembly, taking note of the report of the Secretary-General[185] and the comments made by various Governments regarding the

humanitarian order and the work done in that regard by the Independent Commission on International Humanitarian Issues and convinced of the need for active follow-up to the recommendations and suggestions made by the Independent Commission,[186] and noting the role being played in that regard by the Independent Bureau for Humanitarian Issues set up for the purpose, invited the Independent Bureau to continue and further strengthen its essential role in following up the work of the Independent Commission.

(*p*) Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms

By its resolution 45/96 of 14 December 1990,[187] adopted on the recommendation of the Third Committee,[188] the General Assembly affirmed that a primary aim of international cooperation in the field of human rights was a life of freedom, dignity and peace for all peoples and for every human being, that all human rights and fundamental freedoms were indivisible and interrelated and that the promotion and protection of one category of rights should never exempt or excuse States from promoting and protecting the others; reiterated once again that the international community should accord, or continue to accord, priority to the search for solutions to mass and flagrant violations of human rights of peoples and individuals affected by situations such as those mentioned in paragraph 1(*e*) of General Assembly resolution 32/130, paying due attention also to other situations of violations of human rights; reaffirmed also that the right to development was an inalienable human right; reaffirmed further that international peace and security were essential elements for achieving full realization of the right to development; recognized that all human rights and fundamental freedoms were indivisible and interdependent; reaffirmed once again that, in order to facilitate the full enjoyment of all human rights without diminishing personal dignity, it was necessary to promote the rights to education, work, health and proper nourishment through the adoption of measures at the national level, including those that provided for the right of workers to participate in management, as well as the adoption of measures at the international level, including the establishment of the new international economic order; and decided that the approach to future work within the United Nations system on human rights matters should also take into account the content of the Declaration on the Right to Development[189] and the need for the implementation thereof. And by its resolution 45/97 of the same date,[190] adopted also on the recommendation of the Third Committee,[191] the General Assembly took note with interest of the report on the Global Consultation on the Realization of the Right to Development as a Human Right,[192] which had been organized by the Secretary-General in pursuance of General Assembly resolution 44/62 of 8 December 1989; and reiterated the need for a continuing evaluation mechanism so as to ensure the promotion, encouragement and reinforcement of the principles contained in the Declaration on the Right to Development.

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

By its resolution 45/99 of 14 December 1990,[193] adopted on the recommendation of the Third Committee,[194] the General Assembly encouraged all Member States to

make special efforts to provide, facilitate and encourage publicity for the activities of the United Nations in the field of human rights and to accord priority to the dissemination, in their respective national and local languages, of the texts of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international conventions, as well as to information and education on the practical ways in which the rights and freedoms enjoyed under those instruments could be exercised; urged all Member States to include in their educational curricula materials relevant to a comprehensive understanding of human rights issues, and encouraged all those responsible for training in law and its enforcement, the armed forces, medicine, diplomacy and other relevant fields to include appropriate human rights components in their programmes; and stressed the need for close cooperation between the Centre for Human Rights and the Department of Public Information, *inter alia*, in the implementation of the aims established for the World Public Information Campaign on Human Rights and the need for the United Nations to harmonize its activities in the field of human rights with those of other organizations, including the International Committee of the Red Cross, with regard to the dissemination of information on international humanitarian law, and UNESCO, with regard to education for human rights.

(*r*) World Conference on Human Rights

By its resolution 45/155 of 18 December 1990,[195] adopted on the recommendation of the Third Committee,[196] the General Assembly decided to convene at a high level a World Conference on Human Rights in 1993 with, *inter alia*, the following objectives:

(*a*) to review and assess the progress that had been made in the field of human rights since the adoption of the Universal Declaration of Human Rights and to identify obstacles to further progress in that area, and ways in which they could be overcome;

(*b*) to examine the relation between development and the enjoyment by everyone of economic, social and cultural rights as well as civil and political rights, recognizing the importance of creating the conditions whereby everyone might enjoy those rights as set out in the International Covenants on Human Rights; and

(*c*) to examine ways and means to improve the implementation of existing human rights standards and instruments.

(*s*) Crime prevention and criminal justice

(1) *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders*

By its resolution 45/121 of 14 December 1990,[197] adopted on the recommendation of the Third Committee,[198] the General Assembly expressed its satisfaction with the successful results achieved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Havana from 27 August to 7 September 1990; took note of the report of the Eighth Congress,[199] as well as the report of the Secretary-General on the implementation of the recommendations of the Seventh Congress[200] and his reports on the implementation of the conclusions of the Eighth Congress;[201] and welcomed the instruments and resolutions adopted by the Eighth Congress[202] and invited Governments to be guided by them in the formulation of appropriate legislation and policy directives and to make efforts to implement the principles contained in them and in the relevant instruments and resolutions approved

by previous congresses and other relevant resolutions, in accordance with the economic, social, legal, cultural and political circumstances of each country.

(2) *Convention on the Prevention and Punishment of the Crime of Genocide*[203]

By its resolution 45/152 of 18 December 1990,[204] adopted on the recommendation of the Third Committee,[205] the General Assembly, reaffirming once again its conviction that genocide was a crime that violated the norms of international law and ran counter to the spirit and aims of the United Nations, noted with satisfaction that more than one hundred States had ratified the Convention on the Prevention and Punishment of the Crime of Genocide or had acceded thereto and urged those States which had not yet become parties to the Convention to ratify it or accede thereto without further delay.

(3) *International cooperation for crime prevention and criminal justice in the context of development*

By its resolution 45/107 of 14 December 1990,[206] adopted on the recommendation of the Third Committee,[207] the General Assembly, convinced that crime prevention and criminal justice in the context of development should be oriented towards the observance of the principles contained in the Caracas Declaration,[208] the Milan Plan of Action,[209] the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order[210] and other relevant resolutions and recommendations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, adopted the recommendations on international cooperation for crime prevention and criminal justice in the context of development, as contained in the annex to the resolution.

ANNEX

Recommendations on international cooperation for crime prevention and criminal justice in the context of development

A. CRIME PREVENTION AND CRIMINAL JUSTICE IN THE CONTEXT OF DEVELOPMENT

1. Governments should reaffirm their commitment to respect the existing international treaties and their adherence to principles expressed in the Charter of the United Nations and in other relevant international instruments. Crime can also be prevented by ensuring that those principles are not sacrificed.

2. Member States should intensify the struggle against international crime by respecting and promoting the rule of law and legality in international relations and, for that purpose, they should complete and further develop international criminal law, fully implement the obligations following from international treaties and instruments in this field (*pacta sunt servanda*), and examine their national legislation in order to ensure that it meets the needs of international criminal law.

3. Governments should accord priority attention to the promulgation and implementation of appropriate laws and regulations to control and combat transnational crime and illegal international transactions, especially by the provision of proper collaborative schemes and trained personnel. Also, national laws should be reviewed in order to ensure a more effective and adequate response to the new forms of criminal activity, not only through the application of criminal penalties, but also through civil or administrative measures.

4. The national, regional and international aspects of growing pollution and the exploitation and destruction of the environment should be recognized and controlled as a matter of urgency, in view of the increasing and alarming devastation, deriving from various sources.

Besides measures of administrative law and liability under civil law, the role of criminal law as an instrument that can help to achieve such control should be kept under review. The desirability of elaborating guiding principles for the prevention of crimes against the environment should be considered.

5. In view of the fact that advanced technology and specialized technical knowledge are employed in criminal activities pursued in international trade and commerce, including computer fraud, by the misuse of banking facilities and the manipulation of tax laws and customs regulations, law enforcement and criminal justice officials should be properly trained and provided with adequate legal and technical means to be able to detect and investigate such offences. The coordination and cooperation of other relevant agencies at the national level should be ensured and their capacities further improved. The development and strengthening of direct arrangements of international cooperation between the various agencies of national criminal justice systems should also be pursued.

6. Since even legitimate enterprises, organizations and associations may sometimes be involved in transnational criminal activities affecting national economies, Governments should adopt measures for the control of such activities. They should also collect information from various sources so as to have a solid base for the detection and punishment of enterprises, organizations and associations, their officials, or both, if they are involved in such criminal activities, with a view also to preventing similar conduct in the future.

7. Note should be taken of the fact that many countries lack adequate laws to deal with the emerging manifestations of transnational crime and that the adoption and implementation of appropriate instruments and measures to prevent this type of criminality are urgently needed. In this regard, the exchange of information on existing laws and regulations should be encouraged in order to facilitate the dissemination and adoption of appropriate measures.

8. Because the corrupt activities of public officials can destroy the potential effectiveness of all types of governmental programmes, hinder development, and victimize individuals and groups, it is of crucial importance that all nations should (*a*) review the adequacy of their criminal laws, including procedural legislation, in order to respond to all forms of corruption and related actions designed to assist or to facilitate corrupt activities, and should have recourse to sanctions that will ensure adequate deterrence; (*b*) devise administrative and regulatory mechanisms for the prevention of corrupt practices or the abuse of power; (*c*) adopt procedures for the detection, investigation and conviction of corrupt officials; (*d*) create legal provisions for the forfeiture of funds and property from corrupt practices; and (*e*) take appropriate measures against enterprises involved in corruption. The Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the Secretariat should coordinate the elaboration of materials to assist countries in these efforts, including the development of a manual to combat corruption, and should provide specialized training to judges and prosecutors that would qualify them to deal with the technical aspects of corruption, as well as with the experiences derived from specialized courts handling such matters.

9. Noting the alarming threat posed by illicit trafficking in narcotic drugs and psychotropic substances, which is among the worst crimes that humanity is facing, and the action taken by United Nations drug control units and bodies in this field, and concerned that, despite all the efforts made at the national, regional and international levels, this phenomenon persists unabated, it is important that efforts to combat this type of criminality be given a central place in all crime prevention and criminal justice plans and programmes. The work of the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs in this area should be strengthened. Special assistance should be extended to developing countries for the implementation of drug abuse control programmes and the elaboration of collaborative prevention and control strategies.

10. The process of developing comprehensive model codes, especially at the regional and subregional levels, to combat crimes of transnational and international dimensions, should be encouraged. Also, efforts should be made to harmonize national criminal laws, so as to make them fully responsive to the realities and ramifications of such crimes. Practical arrangements, such as extradition, mutual assistance in criminal justice and the sharing and exchange of exper-

tise and information, should be pursued. Adequate attention should be given to effective enforcement mechanisms in order to minimize the consequences of transborder crimes, including their effect on countries not directly involved.

11. Appropriate educational policies should be developed for making the populations of Member States more sensitive to the problem through formal educational systems and general public information programmes, with a view to promoting awareness of the ways and means by which criminal victimization can be avoided, as well as acquainting the public at large with the objectives and processes of the criminal justice system.

12. In recognition of the need for specific preventive measures related to such types of criminality as burglary, violent theft and street crime, an inventory of preventive measures should be prepared by the United Nations on the basis of an in-depth assessment and evaluation of their effectiveness in various cultural, social, economic and political contexts.

13. With respect to the victims of crime and abuse of power, a guide containing an inventory of comprehensive measures for education on the prevention of victimization, and on the protection of, and assistance and compensation to, victims should be prepared. This guide should be applied in accordance with the legal, sociocultural and economic circumstances of each nation, taking into account the important role of non-governmental organizations in this sphere.

14. In view of its crucial function in crime prevention, the criminal justice system should be developed on the basis of the progressive rationalization and humanization of criminal laws and procedures, sentencing policies and dispositional alternatives, within the overall framework of social justice and societal aspirations.

15. A systematic approach to crime prevention planning should be pursued to provide for the incorporation of crime prevention policies into national development planning, starting from an overall reassessment of substantive criminal and procedural laws whenever appropriate. This approach would include the introduction of the processes of decriminalization, depenalization and diversion, as well as reforms of procedures that would ensure the support of members of the public and review of existing policies with a view to assessing their impact. It would also include appropriate links to be established between the criminal justice system and other development sectors, including education, employment, health, social policy and other related fields.

16. The trial process should be consonant with the cultural realities and social values of society, in order to make it understood and to permit it to operate effectively within the community it serves. Observance of human rights, equality, fairness and consistency should be ensured at all stages of the process.

B. International scientific and technical cooperation

17. In order to increase the effectiveness of international cooperation in crime prevention and criminal justice, concerted efforts should be made towards (*a*) the ratification and implementation of existing international instruments; (*b*) the development of bilateral and multilateral instruments; and (*c*) the preparation and elaboration of model instruments and standards for use at the national, bilateral, multilateral, subregional, regional and interregional levels.

18. The formulation of international instruments, standards and norms should include the following specific areas of concern: (*a*) judicial assistance treaties, in particular between common law and civil law countries, dealing with the means for obtaining evidence conforming to the requirements of the requesting State; (*b*) development of standardized requests for extradition and mutual assistance; (*c*) development of the means of providing assistance to victims of crime and abuse of power, with emphasis on the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,[211] and of providing adequate protection for witnesses; (*d*) further consideration of issues of transnational jurisdiction in order to assist in the process of responding to requests for extradition and mutual assistance and in the implementation of international instruments; and (*e*) elaboration of standards for international assistance in respect of bank secrecy, facilitating the seizure and confiscation of proceeds in bank accounts derived from criminal acts. In particular, banks and other financial institutions should be urged

to standardize their reporting requirements and documents so that these can be used more rapidly and effectively as evidence. More effective international standards to inhibit the laundering of money and investment connected with criminal activities, such as narcotics trafficking and terrorism, should also be developed.

19. Member States, intergovernmental and non-governmental organizations and international, national and private funding agencies should assist the United Nations in the establishment and operation of a global crime prevention and criminal justice information network. Member States are urged to contribute to this endeavour by financing equipment and expertise. Consideration should also be given to determining the categories of criminal justice data that can be provided and exchanged on a regular basis.

20. In accordance with the numerous decisions and resolutions of relevant organs of the United Nations, including the quinquennial United Nations congresses on the prevention of crime and the treatment of offenders, measures should be taken to strengthen programmes of international technical and scientific cooperation in the field of crime prevention and criminal justice on a bilateral and multilateral basis, as substantive components of broader development programmes, taking into account the special needs of developing countries and, in particular, the worsening socio-economic situation in many of them, which contributes to the increase of structural inequality and criminality.

21. In order to formulate and develop proper regional and interregional strategies of international, technical and scientific cooperation in combating crime and improving the effectiveness of preventive and criminal justice activities, the programmes of technical and scientific cooperation should be directed especially towards (*a*) reinforcement of the technical capacities of the criminal justice agencies; (*b*) an upgrading of the human and technical resources in all sectors of the criminal justice system in order to stimulate technical assistance, model and demonstration projects, research activities and training programmes, in close cooperation with the United Nations institutes for the prevention of crime and the treatment of offenders and competent non-government organizations; (*c*) the further development and improvement, at the national, regional, interregional and international levels, of information bases for the collection, analysis and dissemination of data on crime trends, innovative ways and methods of crime prevention and control, and the operation of criminal justice agencies, in order to provide an appropriate basis for policy-formulation and programme implementation; (*d*) the promotion, through educational programmes and training activities, of the implementation of United Nations norms, guidelines and standards in crime prevention and criminal justice; and (*e*) the elaboration and implementation of joint strategies and collaborative arrangements to deal with crime problems of mutual concern.

22. The Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs, as the focal point of United Nations activities in this field, the United Nations institutes for the prevention of crime and the treatment of offenders, the co-operating entities like the Arab Security Studies and Training Centre, the interregional advisory services in crime prevention and criminal justice, and other relevant United Nations bodies, as well as intergovernmental and non-governmental organizations enjoying consultative status with the Economic and Social Council, should be strengthened so as to increase the scope of their operations, improve their co-ordination and diversify forms and methods of technical and scientific cooperation.

23. The role of the Committee on Crime Prevention and Control as the principal body dealing with crime prevention and criminal justice matters, which is entrusted, *inter alia*, with the preparations for the United Nations congresses on the prevention of crime and the treatment of offenders, should be further enhanced so as to enable it to fulfil its important functions.

24. The capacity of the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs, as the only professional and specialized entity within the United Nations system with overall responsibility for its crime prevention and criminal justice programme, should be strengthened in terms of both human and financial resources. Prompt implementation of the General Assembly and Economic and Social Council resolutions related thereto is urgently needed. In particular, priority attention should be given to the imple-

mentation of paragraphs 4 and 5 of General Assembly resolution 42/59 of 30 November 1987, in which the Assembly approved the recommendations contained in Economic and Social Council resolutions 1986/11 and 1987/53, concerning the review of the functioning and programme of work of the United Nations in the field of crime prevention and criminal justice,[212] and requested the Secretary-General, *inter alia*, to take measures to ensure that the programme of work is supported by adequate resources; and paragraph 3 (*a*) of Economic and Social Council resolution 1987/53, in which the Council requested the Secretary-General to develop the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs as a specialized body and facilitating agent in the field of crime prevention and criminal justice. Attention should also be given to other relevant resolutions of the General Assembly and the Economic and Social Council, as well as to the recommendations of the regional preparatory meetings for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and of the Committee on Crime Prevention and Control.

25. The United Nations institutes for the prevention of crime and the treatment of offenders should further develop their research, training and technical assistance capacities, and widen their collaborative networks through more extensive reliance on non-governmental organizations and national research and educational institutions, in order to meet the growing requests from developing countries for technical and scientific assistance. The Governments concerned, relevant regional bodies and organizations and United Nations entities should actively assist the United Nations institutes for the prevention of crime and the treatment of offenders, and, in particular, should assist the African Institute for the Prevention of Crime and the Treatment of Offenders, in consolidating its status and further promoting its activities.

26. Governments should be invited to fund regional advisory services in their regions, directly or through the United Nations Development Programme, so as to develop further and complement existing structures and possibilities in this field. The regional commissions should be encouraged to do likewise and should be supported in their efforts to that end.

27. Special attention should be paid to strengthening the collaborative ties in the field of crime prevention and criminal justice between the Centre for Social Development and Humanitarian Affairs and the Department of Technical Cooperation for Development of the Secretariat, the United Nations Development Programme, the World Bank and other relevant entities, with a view to ensuring adequate resources for technical cooperation activities in crime prevention and criminal justice. Interested Governments should give priority to the inclusion of crime prevention and criminal justice projects in the national and regional programmes proposed for the support of the United Nations Development Programme.

28. In order to fully implement the mandates emerging from the crime prevention and criminal justice programme and to provide additional technical and scientific expertise and resources for matters of international cooperation in this field, broader involvement of, and assistance by, non-governmental organizations are required.

29. Governments and other funding agencies should contribute to the United Nations Trust Fund for Social Defence in order to enable the United Nations to implement, in an adequate and effective manner, programmes of technical and scientific cooperation in this field.

(4) *Review of the functioning and programme of work of the United Nations in crime prevention and criminal justice*

By its resolution 45/108 of 14 December 1990,[213] adopted on the recommendation of the Third Committee,[214] the General Assembly, taking note with appreciation of the report of the Committee on Crime Prevention and Control entitled "The need for the creation of an effective international crime and justice programme"[215] and noting the endorsement of the report by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, as well as the deliberations of the Congress thereon,[216] decided to establish an intergovernmental working group, which, on the basis of the above-mentioned report of the Committee on Crime Prevention and control, would produce a report elaborating proposals for an effective

crime prevention and criminal justice programme and suggesting how that programme could most appropriately be implemented, and, accordingly, requested the President of the General Assembly to appoint no more than thirty Member States on the basis of the principle of equitable geographical distribution to constitute the membership of the working group, and invited Member States to convene an early ministerial meeting: (*a*) to consider the report of the intergovernmental working group in order to decide what the future crime prevention and criminal justice programme should be; and (*b*) to consider, in that context, the possible need for a convention or other international instrument to develop the content, structure and dynamics of that programme, including mechanisms for setting priorities, securing the implementation of the programme and monitoring the results achieved.

(5) *United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)*

By its resolution 45/110 of 14 December 1990,[217] adopted on the recommendation of the Third Committee,[218] the General Assembly, recognizing the need to develop local, national, regional and international approaches and strategies in the field of non-institutional treatment of offenders and the need to formulate standard minimum rules, as emphasized in the section of the report of the Committee on Crime Prevention and Control on its fourth session, concerning the methods and measures likely to be most effective in preventing crime and improving the treatment of offenders,[219] and convinced that alternatives to imprisonment could be an effective means of treating offenders within the community to the best advantage of both the offenders and society, adopted the United Nations Standard Minimum Rules for Non-custodial Measures, contained in the annex to the resolution, and approved the recommendation of the Committee on Crime Prevention and Control that the Rules should be known as "the Tokyo Rules"; recommended the Tokyo Rules for implementation at the national, regional and interregional levels, taking into account the political, economic, social and cultural circumstances and traditions of countries; and called upon Member States to apply the Tokyo Rules in their policies and practice.

ANNEX

United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)

I. GENERAL PRINCIPLES

1. *Fundamental aims*

1.1 The present Standard Minimum Rules provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment.

1.2 The Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society.

1.3 The Rules shall be implemented taking into account the political, economic, social and cultural conditions of each country and the aims and objectives of its criminal justice system.

1.4 When implementing the Rules, Member States shall endeavour to ensure a proper balance between the rights of individual offenders, the rights of victims, and the concern of society for public safety and crime prevention.

1.5 Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

2. *The scope of non-custodial measures*

2.1 The relevant provisions of the present Rules shall be applied to all persons subject to prosecution, trial or the execution of a sentence, at all stages of the administration of criminal justice. For the purposes of the Rules, these persons are referred to as "offenders", irrespective of whether they are suspected, accused or sentenced.

2.2 The Rules shall be applied without any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.

2.3 In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way that consistent sentencing remains possible.

2.4 The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.

2.5 Consideration shall be given to dealing with offenders in the community, avoiding as far as possible resort to formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law.

2.6 Non-custodial measures should be used in accordance with the principle of minimum intervention.

2.7 The use of non-custodial measures should be part of the movement towards depenalization and decriminalization instead of interfering with or delaying efforts in that direction.

3. *Legal safeguards*

3.1 The introduction, definition and application of non-custodial measures shall be prescribed by law.

3.2 The selection of a non-custodial measure shall be based on an assessment of established criteria in respect of both the nature and gravity of the offence and the personality, the background of the offender, the purposes of sentencing and the rights of victims.

3.3 Discretion by the judicial or other competent independent authority shall be exercised at all stages of the proceedings by ensuring full accountability and only in accordance with the rule of law.

3.4 Non-custodial measures imposing an obligation on the offender, applied before or instead of formal proceedings or trial, shall require the offender's consent.

3.5 Decisions on the imposition of non-custodial measures shall be subject to review by a judicial or other competent independent authority, upon application by the offender.

3.6 The offender shall be entitled to make a request or complaint to a judicial or other competent independent authority on matters affecting his or her individual rights in the implementation of non-custodial measures.

3.7 Appropriate machinery shall be provided for the recourse and, if possible, redress of any grievance related to non-compliance with internationally recognized human rights.

3.8 Non-custodial measures shall not involve medical or psychological experimentation on, or undue risk of physical or mental injury to, the offender.

3.9 The dignity of the offender subject to non-custodial measures shall be protected at all times.

3.10 In the implementation of non-custodial measures, the offender's rights shall not be restricted further than was authorized by the competent authority that rendered the original decision.

3.11 In the application of non-custodial measures, the offender's right to privacy shall be respected, as shall be the right to privacy of the offender's family.

3.12 The offender's personal records shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the offender's case or to other duly authorized persons.

4. *Saving clause*

4.1 Nothing in the present Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners,[220] the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules),[221] the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment[222] or any other human rights instruments and standards recognized by the international community and relating to the treatment of offenders and the protection of their basic human rights.

II. Pre-trial stage

5. *Pre-trial dispositions*

5.1 Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or determination of proceedings, a set of established criteria shall be developed within each legal system. For minor cases the prosecutor may impose suitable non-custodial measures, as appropriate.

6. *Avoidance of pre-trial detention*

6.1 Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.

6.2 Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 6.1 and shall be administered humanely and with respect for the inherent dignity of human beings.

6.3 The offender shall have the right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed.

III. Trial and sentencing stage

7. *Social inquiry reports*

7.1 If the possibility of social inquiry reports exists, the judicial authority may avail itself of a report prepared by a competent, authorized official or agency. The report should contain social information on the offender that is relevant to the person's pattern of offending and current offences. It should also contain information and recommendations that are relevant to the sentencing procedure. The report shall be factual, objective and unbiased, with any expression of opinion clearly identified.

8. *Sentencing dispositions*

8.1 The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.

8.2 Sentencing authorities may dispose of cases in the following ways:

(*a*) Verbal sanctions, such as admonition, reprimand and warning;

(*b*) Conditional discharge;

(*c*) Status penalties;

(*d*) Economic sanctions and monetary penalties, such as fines and day-fines;

(*e*) Confiscation or an expropriation order;

(*f*) Restitution to the victim or a compensation order;

(*g*) Suspended or deferred sentence;

(*h*) Probation and judicial supervision;

(*i*) A community service order;

(*j*) Referral to an attendance centre;

(*k*) House arrest;

(*l*) Any other mode of non-institutional treatment;

(*m*) Some combination of the measures listed above.

IV. POST-SENTENCING STAGE

9. *Post-servicing dispositions*

9.1 The competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society.

9.2 Post-sentencing dispositions may include:

(*a*) Furlough and half-way houses;

(*b*) Work or education release;

(*c*) Various forms of parole;

(*d*) Remission;

(*e*) Pardon.

9.3 The decision on post-sentencing dispositions, except in the case of pardon, shall be subject to review by a judicial or other competent independent authority, upon application of the offender.

9.4 Any form of release from an institution to a non-custodial programme shall be considered at the earliest possible stage.

V. IMPLEMENTATION OF NON-CUSTODIAL MEASURES

10. *Supervision*

10.1 The purpose of supervision is to reduce reoffending and to assist the offender's integration into society in a way which minimizes the likelihood of a return to crime.

10.2 If a non-custodial measure entails supervision, the latter shall be carried out by a competent authority under the specific conditions prescribed by law.

10.3 Within the framework of a given non-custodial measure, the most suitable type of supervision and treatment should be determined for each individual case aimed at assisting the offender to work on his or her offending. Supervision and treatment should be periodically reviewed and adjusted as necessary.

10.4 Offenders should, when needed, be provided with psychological, social and material assistance and with opportunities to strengthen links with the community and facilitate their reintegration into society.

11. *Duration*

11.1 The duration of a non-custodial measure shall not exceed the period established by the competent authority in accordance with the law.

11.2 Provision may be made for early termination of the measure if the offender has responded favourably to it.

12. *Conditions*

12.1 If the competent authority shall determine the conditions to be observed by the offender, it should take into account both the needs of society and the needs and rights of the offender and the victim.

12.2 The conditions to be observed shall be practical, precise and as few as possible, and shall be aimed at reducing the likelihood of an offender relapsing into criminal behaviour and at increasing the offender's chances of social integration, taking into account the needs of the victim.

12.3 At the beginning of the application of a non-custodial measure, the offender shall receive an explanation, orally and in writing, of the conditions governing the application of the measure, including the offender's obligations and rights.

12.4 The conditions may be modified by the competent authority under the established statutory provisions, in accordance with the progress made by the offender.

13. *Treatment process*

13.1 Within the framework of a given non-custodial measure, in appropriate cases, various schemes, such as case-work, group therapy, residential programmes and the specialized treatment of various categories of offenders, should be developed to meet the needs of offenders more effectively.

13.2 Treatment should be conducted by professionals who have suitable training and practical experience.

13.3 When it is decided that treatment is necessary, efforts should be made to understand the offender's background, personality, aptitude, intelligence, values and, especially, the circumstances leading to the commission of the offence.

13.4 The competent authority may involve the community and social support systems in the application of non-custodial measures.

13.5 Case-load assignments shall be maintained as far as practicable at a manageable level to ensure the effective implementation of treatment programmes.

13.6 For each offender, a case record shall be established and maintained by the competent authority.

14. *Discipline and breach of conditions*

14.1 A breach of the conditions to be observed by the offender may result in a modification of revocation of the non-custodial measure.

14.2 The modification or revocation of the non-custodial measure shall be made by the competent authority; this shall be done only after a careful examination of the facts adduced by both the supervising officer and the offender.

14.3 The failure of a non-custodial measure should not automatically lead to the imposition of a custodial measure.

14.4 In the event of a modification or revocation of the non-custodial measure, the competent authority shall attempt to establish a suitable alternative non-custodial measure. A sentence of imprisonment may be imposed only in the absence of other suitable alternatives.

14.5 The power to arrest and detain the offender under supervision in cases where there is a breach of the conditions shall be prescribed by law.

14.6 Upon modification or revocation of the non-custodial measure, the offender shall have the right to appeal to a judicial or other competent independent authority.

VI. Staff

15. *Recruitment*

15.1 There shall be no discrimination in the recruitment of staff on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status. The policy regarding staff recruitment should take into consideration national policies of affirmative action and reflect the diversity of the offenders to be supervised.

15.2 Persons appointed to apply non-custodial measures should be personally suitable and, whenever possible, have appropriate professional training and practical experience. Such qualifications shall be clearly specified.

15.3 To secure and retain qualified professional staff, appropriate service status, adequate salary and benefits commensurate with the nature of the work should be ensured and ample opportunities should be provided for professional growth and career development.

16. *Staff training*

16.1 The objective of training shall be to make clear to staff their responsibilities with regard to rehabilitating the offender, ensuring the offender's rights and protecting society. Training should also give staff an understanding of the need to cooperate in and coordinate activities with the agencies concerned.

16.2 Before entering duty, staff shall be given training that includes instruction on the nature of non-custodial measures, the purposes of supervision and the various modalities of the application of non-custodial measures.

16.3 After entering on duty, staff shall maintain and improve their knowledge and professional capacity by attending in-service training and refresher courses. Adequate facilities shall be made available for that purpose.

VII. Volunteers and other community resources

17. *Public participation*

17.1 Public participation should be encouraged as it is a major resource and one of the most important factors in improving ties between offenders and undergoing non-custodial measures and the family and community. It should complement the efforts of the criminal justice administration.

17.2 Public participation should be regarded as an opportunity for members of the community to contribute to the protection of their society.

18. *Public understanding and cooperation*

18.1 Government agencies, the private sector and the general public should be encouraged to support voluntary organizations that promote non-custodial measures.

18.2 Conferences, seminars, symposia and other activities should be regularly organized to stimulate awareness of the need for public participation in the application of non-custodial measures.

18.3 All forms of the mass media should be utilized to help to create a constructive public attitude, leading to activities conducive to a broader application of non-custodial treatment and the social integration of offenders.

18.4 Every effort should be made to inform the public of the importance of its role in the implementation of non-custodial measures.

19. *Volunteers*

19.1 Volunteers shall be carefully screened and recruited on the basis of their aptitude for and interest in the work involved. They shall be properly trained for the specific responsibilities to be discharged by them and shall have access to support and counselling from, and the opportunity to consult with, the competent authority.

19.2 Volunteers should encourage offenders and their families to develop meaningful ties with the community and a broader sphere of contact by providing counselling and other appropriate forms of assistance according to their capacity and the offenders' needs.

19.3 Volunteers shall be insured against accident, injury and public liability when carrying out their duties. They shall be reimbursed for authorized expenditures incurred in the course of their work. Public recognition should be extended to them for the services they render for the well-being of the community.

VIII. Research, planning, policy formulation and evaluation

20. *Research and planning*

20.1 As an essential aspect of the planning process, efforts should be made to involve both public and private bodies in the organization and promotion of research on the non-custodial treatment of offenders.

20.2 Research on the problems that confront clients, practitioners, the community and policy makers should be carried out on a regular basis.

20.3 Research and information mechanisms should be built into the criminal justice system for the collection and analysis of data and statistics on the implementation of non-custodial treatment for offenders.

21. *Policy formulation and programme development*

21.1 Programmes for non-custodial measures should be systematically planned and implemented as an integral part of the criminal justice system within the national development process.

21.2 Regular evaluations should be carried out with a view to implementing non-custodial measures more effectively.

21.3 Periodic reviews should be conducted to assess the objectives, functioning and effectiveness of non-custodial measures.

22. *Linkages with relevant agencies and activities*

22.1 Suitable mechanisms should be evolved at various levels to facilitate the establishment of linkages between services responsible for non-custodial measures, other branches of the criminal justice system, social development and welfare agencies, both governmental and non-governmental, in such fields as health, housing, education and labour, and the mass media.

23. *International cooperation*

23.1 Efforts shall be made to promote scientific cooperation between counties in the field of non-institutional treatment. Research, training, technical assistance and the exchange of information among Member States on non-custodial measures should be strengthened, through the

United Nations institutes for the prevention of crime and the treatment of offenders, in close collaboration with the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the United Nations Secretariat.

23.2 Comparative studies and the harmonization of legislative provisions should be furthered to expand the range of non-institutional options and facilitate their application across national frontiers, in accordance with the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released.[223]

(6) *Basic principles for the treatment of prisoners*

By its resolution 45/111 of 14 December 1990,[224] adopted on the recommendation of the Third Committee,[225] the General Assembly, bearing in mind the long-standing concern of the United Nations for the humanization of criminal justice and the protection of human rights, and recognizing the usefulness of drafting a declaration on the human rights of prisoners, affirmed the Basic Principles for the Treatment of Prisoners, contained in the annex to the resolution, and requested the Secretary-General to bring them to the attention of Member States.

ANNEX

Basic Principles for the Treatment of Prisoners

1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.

2. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.

4. The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.

5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.

6. All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.

7. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.

8. Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.

9. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

10. With the participation and help of the community and social institution, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.

11. The above Principles shall be applied impartially.

(7) *United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)*

By its resolution 45/112 of 14 December 1990,[226] adopted on the recommendation of the Third Committee,[227] the General Assembly, taking into account the benefits of progressive policies for the prevention of delinquency and for the welfare of the community, adopted the United Nations Guidelines for the Prevention of Juvenile Delinquency, contained in the annex to the resolution, to be designated "the Riyadh Guidelines", and called upon Member States, in their comprehensive crime prevention plans, to apply the Riyadh Guidelines in national law, policy and practice and to bring them to the attention of relevant authorities, including policy makers, juvenile justice personnel, educators, the mass media, practitioners and scholars.

ANNEX

United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)

I. FUNDAMENTAL PRINCIPLES

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.

2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for the promotion of their personality from early childhood.

3. For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active role in partnership within society and should not be considered as mere objects of socialization or control.

4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme.

5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:

(*a*) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;

(*b*) Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;

(*c*) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;

(*d*) Safeguarding the well-being, development, rights and interests of all young persons;

(*e*) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood;

(*f*) Awareness that, in the predominant opinion of experts, labelling a young person as "deviant", "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

6. Community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort.

II. Scope of the guidelines

7. The present Guidelines should be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Declaration of the Rights of the Child and the Convention on the Rights of the Child, and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)[221] as well as other instruments and norms relating to the rights, interests and well-being of all children and young persons.

8. The present Guidelines should also be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. General prevention

9. Comprehensive prevention plans should be instituted at every level of government and include the following:

(*a*) In-depth analyses of the problem and inventories of programmes, services, facilities and resources available;

(*b*) Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;

(*c*) Mechanisms for the appropriate coordination of prevention efforts between governmental and non-governmental agencies;

(*d*) Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation;

(*e*) Methods for effectively reducing the opportunity to commit delinquent acts;

(*f*) Community involvement through a wide range of services and programmes;

(*g*) Close interdisciplinary cooperation between national, state, provincial and local governments, with the involvement of the private sector, representative citizens of the community to be served, and labour, child-care, health education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime;

(*h*) Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes;

(*i*) Specialized personnel at all levels.

IV. Socialization processes

10. Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration processes.

A. Family

11. Every society should place a high priority on the needs and well-being of the family and of all its members.

12. Since the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the

extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children. Adequate arrangements including day-care should be provided.

13. Governments should establish policies that are conducive to the bringing up of children in stable and settled family environments. Families in need of assistance in the resolution of conditions of instability or conflict should be provided with requisite services.

14. Where a stable and settled family environment is lacking and when community efforts to assist parents in this regard have failed and the extended family cannot fulfil this role, alternative placements, including foster care and adoption, should be considered. Such placements should replicate, to the extent possible, a stable and settled family environment, while, at the same time, establishing a sense of permanency for children, thus avoiding problems associated with "foster drift".

15. Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous, migrant and refugee families. As such changes may disrupt the social capacity of the family to secure the traditional rearing and nurturing of children, often as a result of role and culture conflict, innovative and socially constructive modalities for the socialization of children have to be designed.

16. Measures should be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and child care, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities.

17. Governments should take measures to promote family cohesion and harmony and to discourage the separation of children from their parents, unless circumstances affecting the welfare and future of the child leave no viable alternative.

18. It is important to emphasize the socialization function of the family and extended family; it is also equally important to recognize the future role, responsibilities, participation and partnership of young persons in society.

19. In ensuring the right of the child to proper socialization, Governments and other agencies should rely on existing social and legal agencies, but, whenever traditional institutions and customs are no longer effective, they should also provide and allow for innovative measures.

B. EDUCATION

20. Governments are under an obligation to make public education accessible to all young persons.

21. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:

(a) Teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilizations different from the child's own and for human rights and fundamental freedoms;

(b) Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;

(c) Involvement of young persons as active and effective participants in, rather than mere objects of, the educational process;

(d) Undertaking activities that foster a sense of identity with and of belonging to the school and the community;

(e) Encouragement of young persons to understand and respect diverse views and opinions, as well as cultural and other differences;

(f) Provision of information and guidance regarding vocational training, employment opportunities and career development;

(*g*) Provision of positive emotional support to young persons and the avoidance of psychological maltreatment;

(*h*) Avoidance of harsh disciplinary measures, particulary corporal punishment.

22. Educational systems should seek to work together with parents, community organizations and agencies concerned with the activities of young persons.

23. Young persons and their families should be informed about the law and their rights and responsibilities under the law, as well as the universal value system, including United Nations instruments.

24. Educational systems should extend particular care and attention to young persons who are at social risk. Specialized prevention programmes and educational materials, curricula, approaches and tools should be developed and fully utilized.

25. Special attention should be given to comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons. Teachers and other professionals should be equipped and trained to prevent and deal with these problems. Information on the use and abuse of drugs, including alcohol, should be made available to the student body.

26. Schools should serve as resource and referral centres for the provision of medical, counselling and other services to young persons, particulary those with special needs and suffering from abuse, neglect, victimization and exploitation.

27. Through a variety of educational programmes, teachers and other adults and the student body should be sensitized to the problems, needs and perceptions of young persons, particulary those belonging to underprivileged, disadvantaged, ethnic or other minority and low-income groups.

28. School systems should attempt to meet and promote the highest professonial and educational standards with respect to curricula, teaching and learning methods and approaches, and the recruitment and training of qualified teachers. Regular monitoring and assessment of performance by the appropriate professional organizations and authorities should be ensured.

29. School systems should plan, develop and implement extra-curricular activities of interest to young persons, in cooperation with community groups.

30. Special assistance should be given to children and young persons who find it difficult to comply with attendance codes, and to "drop-outs".

31. Schools should promote policies and rules that are fair and just; students should be represented in bodies formulating school policy, including policy on discipline, and decision-making.

C. COMMUNITY

32. Community-based services and programmes which respond to the special needs, problems, interests and concerns of young persons and which offer appropriate counselling and guidance to young persons and their families should be developed, or strengthened where they exist.

33. Communities should provide, or strengthen where they exist, a wide range of community-based support measures for young persons, including community development centres, recreational facilities and services to respond to the special problems of children who are at social risk. In providing these helping measures, respect for individual rights should be ensured.

34. Special facilities should be set up to provide adequate shelter for young persons who are no logner able to live at home or who do not have homes to live in.

35. A range of services and helping measures should be provided to deal with the difficulties experienced by young persons in the transition to adulthood. Such services should include special programmes for young abusers which emphasize care, counselling, assistance and therapy-oriented interventions.

36. Voluntary organizations providing services for young persons should be given financial and other support by Governments and other institutions.

37. Youth organizations should be created or strengthened at the local level and given full participatory status in the management of community affairs. These organizations should encourage youth to organize collective and voluntary projects, particularly projects aimed at helping young persons in need of assistance.

38. Government agencies should take special responsibility and provide necessary services for homeless or street children; information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons.

39. A wide range of recreational facilities and services of particular interest to young persons should be established and made easily accessible to them.

D. MASS MEDIA

40. The mass media should be encouraged to ensure that young persons have access to information and material from a diversity of national and international sources.

41. The mass media should be encouraged to portray the positive contribution of young persons to society.

42. The mass media should be encouraged to disseminate information on the existence of services, facilities and opportunities for young persons in society.

43. The mass media generally, and the television and film media in particular, should be encouraged to minimize the level of pornography, drugs and violence portrayed and to display violence and exploitation disfavourably, as well as to avoid demeaning and degrading presentations, especially of children, women and interpersonal relations, and to promote egalitarian principles and roles.

44. The mass media should be aware of its extensive social role and responsibility, as well as its influence, in communications relating to youthful drug and alcohol abuse. It should use its power for drug abuse prevention by relaying consistent messages through a balanced approach. Effective drug awareness campaigns at all levels should be promoted.

V. SOCIAL POLICY

45. Government agencies should give high priority to plans and programmes for young persons and should provide sufficient funds and other resources for the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services, including drug and alcohol abuse prevention and treatment, ensuring that such resources reach and actually benefit young persons.

46. The institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance. Criteria authorizing formal intervention of this type should be strictly defined and limited to the following situations: (*a*) where the child or young person has suffered harm that has been inflicted by the parents or guardians; (*b*) where the child or young person has been sexually, physically or emotionally abused by the parents or guardians; (*c*) where the child or young person has been neglected, abandoned or exploited by the parents or guardians; (*d*) where the child or young person is threatened by physical or moral danger due to the behaviour of the parents or guardians; and (*e*) where a serious physical or psychological danger to the child or young person has manifested itself in his or her own behaviour and neither the parents, the guardians, the juvenile himself or herself nor non-residential community services can meet the danger by means other than institutionalization.

47. Government agencies should provide young persons with the opportunity of continuing in full-time education, funded by the State where parents or guardians are unable to support the young persons, and of receiving work experience.

48. Programmes to prevent delinquency should be planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly.

49. Scientific information should be disseminated to the professional community and to the public at large about the sort of behaviour or situation which indicates or may result in physical and psychological victimization, harm and abuse, as well as exploitation, of young persons.

50. Generally, participation in plans and programmes should be voluntary. Young persons themselves should be involved in their formulation, development and implementation.

51. Governments should begin or continue to explore, develop and implement policies, measures and strategies within and outside the criminal justice system to prevent domestic violence against and affecting young persons and to ensure fair treatment to these victims of domestic violence.

VI. Legislation and juvenile justice administration

52. Governments should enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons.

53. Legislation preventing the vicimization, abuse, exploitation and the use for criminal activities of children and young persons should be enacted and enforced.

54. No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.

55. Legislation and enforcement aimed at restricting and controlling accessibility of weapons of any sort to children and young persons should be pursued.

56. In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offfence and not penalized if committed by a young person.

57. Consideration should be given to the establishment of an office of ombudsman or similar independent organ, which would ensure that the status, rights and interests of young persons are upheld and that proper referral to available services is made. The ombudsman or other organ designated would also supervise the implementation of the Riyadh Guidelines, the Beijing Rules and the Rules for the Protection of Juveniles Deprived of their Liberty. The ombudsman or other organ would, at regular intervals, publish a report on the progress made and on the difficulties encountered in the implementation of the instrument. Child advocacy services should also be established.

58. Law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possiblities for the diversion of young persons from the justice system.

59. Legislation should be enacted and strictly enforced to protect children and young persons from drug abuse and drug traffickers.

VII. Research, policy development and coordination

60. Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an intradisciplinary basis, interaction and co-ordination between economic, social, educational and health agencies and services, the justice system, youth, community and development agencies and other relevant institutions.

61. The exchange of information, experience and expertise gained through projects, programmes, practices and initiatives relating to youth crime, delinquency prevention and juvenile justice should be intensified at the national, regional and international levels.

62. Regional and international cooperation on matters of youth crime, delinquency prevention and juvenile justice involving practitioners, experts and decision makers should be further developed and strengthened.

63. Technical and scientific cooperation on practical and policy-related matters, particulary in training, pilot and demonstration projects, and on specific issues concerning the preven-

tion of youth crime and juvenile delinquency should be strongly supported by all Governments, the United Nations system and other concerned organizations.

64. Collaboration should be encouraged in undertaking scientific research with respect to effective modalities for youth crime and juvenile delinquency prevention and the findings of such research should be widely disseminated and evaluated.

65. Appropriate United Nations bodies, institutes, agencies and offices should pursue close collaboration and co-ordination on various questions related to children, juvenile justice and youth crime and juvenile delinquency prevention.

66. On the basis of the present Guidelines, the United Nations Secretariat, in co-operation with interested institutions, should play an active role in the conduct of research, scientific collaboration, the formulation of policy options and the review and monitoring of their implementation, and should serve as a source of reliable information on effective modalities for delinquency prevention.

(8) *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*

By its resolution 45/113 of 14 December 1990,[228] adopted on the recommendation of the Third Committee,[229] the General Assembly recognized that, because of their high vulnerability, juveniles deprived of their liberty required special attention and protection and that their rights and well-being should be guaranteed during and after the period when they were deprived of their liberty; adopted the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, contained in the annex to the resolution; and invited Member States to adapt, wherever necessary, their national legislation, policies and practices to the spirit of the Rules, and to bring them to the attention of relevant authorities and the public in general.

ANNEX

United Nations Rules for the Protection of Juveniles Deprived of Their Liberty

I. FUNDAMENTAL PERSPECTIVES

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.

2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.

3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.

4. The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.

5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.

6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the personnel of the

detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.

7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.

8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.

9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons.

10. In the event that the practical application of particular rules contained in sections II to V, inclusive, presents any conflict with the rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

II. Scope and application of the Rules

11. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority, while the objectives of social integration should be secured by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section III applies specifically to juveniles under arrest or awaiting trial.

16. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. Juveniles under arrest or awaiting trial

17. Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

(a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;

(b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;

(c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

IV. THE MANAGEMENT OF JUVENILE FACILITIES

A. RECORDS

19. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

20. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.

B. ADMISSION, REGISTRATION, MOVEMENT AND TRANSFER

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

(a) Information on the identity of the juvenile;

(b) The fact of and reasons for commitment and the authority therefor;

(c) The day and hour of admission, transfer and release;

(d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;

(e) Details of known physical and mental health problems, including drug and alcohol abuse.

22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

25. All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints, and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.

26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

C. CLASSIFICATION AND PLACEMENT

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detailed in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

D. PHYSICAL ENVIRONMENT AND ACCOMMODATION

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, account being taken of local standards. During sleeping hours there should be

regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it.

36. To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.

37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

E. EDUCATION, VOCATIONAL TRAINING AND WORK

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

39. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

40. Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.

41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

44. All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty.

45. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they

return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

46. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offence or to send it to his or her family or other persons outside the detention facility.

F. RECREATION

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

G. RELIGION

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.

H. MEDICAL CARE

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physican immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any

condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.

54. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testees in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

I. NOTIFICATION OF ILLNESS, INJURY AND DEATH

56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen.

57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.

58. A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member and should be provided with the opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative.

J. CONTACTS WITH THE WIDER COMMUNITY

59. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.

60. Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel.

61. Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be

assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.

62. Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.

K. LIMITATIONS OF PHYSICAL RESTRAINT AND THE USE OF FORCE

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administraton, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

L. DISCIPLINARY PROCEDURES

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

(*a*) Conduct constituting a disciplinary offence;

(*b*) Type and duration of disciplinary sanctions that may be inflicted;

(*c*) The authority competent to impose such sanctions;

(*d*) The authority competent to consider appeals.

69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

M. INSPECTION AND COMPLAINTS

72. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.

74. After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution.

75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

76. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

77. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

78. Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

N. RETURN TO THE COMMUNITY

79. All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.

80. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.

V. PERSONNEL

81. Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should

not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial. Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.

82. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.

83. To secure the foregoing ends, personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men. The personnel of juvenile detention facilities should be continually encouraged to fulfil their duties and obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective.

84. The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance co-operation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favourable to the efficient fulfilment of their duties.

85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.

86. The director of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and should carry out his or her duties on a full-time basis.

87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:

(a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;

(b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;

(c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;

(d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;

(e) All personnel should respect the right of the juvenile to privacy, and in particular should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;

(f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.

(9) *Model Treaty on Extradition*

By its resolution 45/116 of 14 December 1990,[230] adopted on the recommendation of the Third Committee,[231] the General Assembly, recognizing the importance of a model treaty on extradition as an effective way of dealing with the complex aspects and serious consequences of crime, especially in its new forms and dimensions, adopted the Model Treaty on Extradition contained in the annex to the resolution as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral agreements aimed at improving cooperation in matters of crime prevention and criminal justice and invited Member States, if they had not yet established treaty relations with other States in the area of extradition, or if they wished to revise existing treaty relations, to take into account, whenever doing so, the Model Treaty on Extradition.

ANNEX

Model Treaty on Extradition

The _____ and the _____

Desirous of making more effective the co-operation of the two countries in the control of crime by concluding a treaty on extradition,

Have agreed as follows:

Article 1

OBLIGATION TO EXTRADITE

Each Party agrees to extradite to the other, upon request and subject to the provisions of the present Treaty, any person who is wanted in the requesting State for prosecution for an extraditable offence or for the imposition or enforcement of a sentence in respect of such an offence.[232]

Article 2

EXTRADITABLE OFFENCES

1. For the purposes of the present Treaty, extraditable offences are offences that are punishable under the laws of both Parties by imprisonment or other deprivation of liberty for a maximum period of at least [one/two] year(s), or by a more severe penalty. Where the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for such an offence, extradition shall be granted only if a period of at least [four/six] months of such sentence remains to be served.

2. In determining whether an offence is an offence punishable under the laws of both Parties, it shall not matter whether:

(*a*) The laws of the Parties place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;

(*b*) Under the laws of the Parties the constituent elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the requesting State shall be taken into account.

3. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, exchange control or other revenue matters, extradition may not be refused on the ground that the law of the requested State does not impose the same kind of tax or duty or does not contain a tax, customs duty or exchange regulation of the same kind as the law of the requesting State.[233]

4. If the request for extradition includes several separate offences each of which is punishable under the laws of both Parties, but some of which do not fulfil the other conditions set out in

paragraph 1 of the present article, the requested Party may grant extradition for the latter offences provided that the person is to be extradited for at least one extraditable offence.

Article 3

MANDATORY GROUNDS FOR REFUSAL

Extraditional shall not be granted in any of the following circumstances:

(*a*) If the offence for which extradition is requested is regarded by the requested State as an offence of a political nature;[234]

(*b*) If the requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinions, sex or status, or that that person's position may be prejudiced for any of those reasons;

(*c*) If the offence for which extradition is requested is an offence under military law, which is not also an offence under ordinary criminal law;

(*d*) If there has been a final judgement rendered against the person in the requested State in respect of the offence for which the person's extradition is requested;

(*e*) If the person whose extradition is requested has, under the law of either Party, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;[235]

(*f*) If the person whose extradition is requested has been or would be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in the International Covenant on Civil and Political Rights, article 14;

(*g*) If the judgement of the requesting State has been rendered *in absentia*, the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defence and he has not had or will not have the opportunity to have the case retried in his or her presence.[236]

Article 4

OPTIONAL GROUNDS FOR REFUSAL

Extradition may be refused in any of the following circumstances:

(*a*) If the person whose extradition is requested is a national of the requested State. Where extradition is refused on this ground, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person in respect of the offence for which extradition had been requested;

(*b*) If the competent authorities of the requested State have decided either not to institute or to terminate proceedings against the person for the offence in respect of which extradition is requested;

(*c*) If a prosecution in respect of the offence for which extradition is requested is pending in the requested State against the person whose extradition is requested;

(*d*) If the offence for which extradition is requested carries the death penalty under the law of the requesting State, unless that State gives such assurance as the requested State considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out;[237]

(*e*) If the offence for which extradition is requested has been committed outside the territory of either Party and the law of the requested State does not provide for jurisdiction over such an offence committed outside its territory in comparable circumstances;

(*f*) If the offence for which extradition is requested is regarded under the law of the requested State as having been committed in whole or in part within that State.[238] Where extradition is refused on this ground, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person for the offence for which extradition had been requested;

(*g*) If the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the requesting State by an extraordinary or *ad hoc* court or tribunal;

(*h*) If the requested State, while also taking into account the nature of the offence and the interests of the requesting State, considers that, in the circumstances of the case, the extradition of that person would be incompatible with humanitarian considerations in view of age, health or other personal circumstances of that person.

Article 5

CHANNELS OF COMMUNICATION AND REQUIRED DOCUMENTS

1. A request for extradition shall be made in writing. The request, supporting documents and subsequent communications shall be transmitted through the diplomatic channel, directly between the ministries of justice or any other authorities designated by the Parties.

2. A request for extradition shall be accompanied by the following:

(*a*) In all cases,

(i) As accurate a description as possible of the person sought, together with any other information that may help to establish that person's identity, nationality and location;

(ii) The text of the relevant provision of the law creating the offence or, where necessary, a statement of the law relevant to the offence and a statement of the penalty that can be imposed for the offence;

(*b*) If the person is accused of an offence, by a warrant issued by a court or other competent judicial authority for the arrest of the person or a certified copy of that warrant, a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the alleged offence, including an indication of the time and place of its commission;[239]

(*c*) If the person has been convicted of an offence, by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence and by the original or certified copy of the judgement or any other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable, and the extent to which the sentence remains to be served;

(*d*) If the person has been convicted of an offence in his or her absence, in addition to the documents set out in paragraph 2 (*c*) of the present article, by a statement as to the legal means available to the person to prepare his or her defence or to have the case retried in his or her presence;

(*e*) If the person has been convicted of an offence but no sentence has been imposed, by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence and by a document setting out the conviction and a statement affirming that there is an intention to impose a sentence.

3. The documents submitted in support of a request for extradition shall be accompanied by a translation into the language of the requested State or in another language acceptable to that State.

Article 6

SIMPLIFIED EXTRADITION PROCEDURE

The requested State, if not precluded by its law, may grant extradition after receipt of a request for provisional arrest, provided that the person sought explicitly consents before a competent authority.

Article 7

CERTIFICATION AND AUTHENTICATION

Except as provided by the present Treaty, a request for extradition and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication.[240]

Article 8

ADDITIONAL INFORMATION

If the requested State considers that the information provided in support of a request for extradition is not sufficient, it may request that additional information be furnished within such reasonable time as it specifies.

Article 9

PROVISIONAL ARREST

1. In case of urgency the requesting State may apply for the provisional arrest of the person sought pending the presentation of the request for extradition. The application shall be transmitted by means of the facilities of the International Criminal Police Organization, by post or telegraph or by any other means affording a record in writing.

2. The application shall contain a description of the person sought, a statement that extradition is to be requested, a statement of the existence of one of the documents mentioned in paragraph 2 of article 5 of the present Treaty, authorizing the apprehension of the person, a statement of the punishment that can be or has been imposed for the offence, including the time left to be served and a concise statement of the facts of the case, and a statement of the location, where known, of the person.

3. The requested State shall decide on the application in accordance with its law and communicate its decision to the requesting State without delay.

4. The person arrested upon such an application shall be set at liberty upon the expiration of [40] days from the date of arrest if a request for extradition, supported by the relevant documents specified in paragraph 2 of article 5 of the present Treaty, has not been received. The present paragraph does not preclude the possibility of conditional release of the person prior to the expiration of the [40] days.

5. The release of the person pursuant to paragraph 4 of the present article shall not prevent rearrest and institution of proceedings with a view to extraditing the person sought if the request and supporting documents are subsequently received.

Article 10

DECISION ON THE REQUEST

1. The requested State shall deal with the request for extradition pursuant to procedures provided by its own law, and shall promptly communicate its decision to the requesting State.

2. Reasons shall be given for any complete or partial refusal of the request.

Article 11

SURRENDER OF THE PERSON

1. Upon being informed that extradition has been granted, the Parties shall, without undue delay, arrange for the surrender of the person sought and the requested State shall inform the requesting State of the length of time for which the person sought was detained with a view to surrender.

2. The person shall be removed from the territory of the requested State within such reasonable period as the requested State specifies and, if the person is not removed within that

period, the requested State may release the person and may refuse to extradite that person for the same offence.

3. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited, it shall notify the other Party. The two Parties shall mutually decide upon a new state of surrender, and the provisions of paragraph 2 of the present article shall apply.

Article 12

POSTPONED OR CONDITIONAL SURRENDER

1. The requested State may, after making its decision on the request for extradition, postpone the surrender of a person sought, in order to proceed against that person, or, if that person has already been convicted, in order to enforce a sentence imposed for an offence other than that for which extradition is sought. In such a case the requested State shall advise the requesting State accordingly.

2. The requested State may, instead of postponing surrender, temporarily surrender the person sought to the requesting State in accordance with conditions to be determined between the Parties.

Article 13

SURRENDER OF PROPERTY

1. To the extent permitted under the law of the requested State and subject to the rights of third parties, which shall be duly respected, all property found in the requested State that has been acquired as a result of the offence or that may be required as evidence shall, if the requesting State so requests, be surrendered if extradition is granted.

2. The said property may, if the requesting State so requests, be surrendered to the requesting State even if the extradition agreed to cannot be carried out.

3. When the said property is liable to seizure or confiscation in the requested State, it may retain it or temporarily hand it over.

4. When the law of the requested State or the protection of the rights of third parties so require, any property so surrendered shall be returned to the requested State free of charge after the completion of the proceedings, if the State so requests.

Article 14

RULE OF SPECIALITY

1. A person extradited under the present Treaty shall not be proceeded against, sentenced, detained, re-extradited to a third State, or subjected to any other restriction of personal liberty in the territory of the requesting State for any offence committed before surrender other than:

(*a*) An offence for which extradition was granted;

(*b*) Any other offence in respect of which the requested State consents.[241] Consent shall be given if the offence for which it is requested is itself subject to extradition in accordance with the present Treaty.[242]

2. A request for the consent of the requested State under the present article shall be accompanied by the documents mentioned in paragraph 2 of article 5 of the present Treaty and a legal record of any statement made by the extradited peson with respect to the offence.

3. Paragraph 1 of the present article shall not apply if the person has had an opportunity to leave the requesting State and has not done so within [30/45] days of final discharge in respect of the offence for which that person was extradited or if the person has voluntarily returned to the territory of the requesting State after leaving it.

Article 15

TRANSIT

1. Where a person is to be extradited to a Party from a third State through the territory of the other Party, the party to which the person is to be extradited shall request the other Party to permit the transit of that person through its territory. This does not apply where air transport is used and no landing in the territory of the other Party is scheduled.

2. Upon receipt of such a request, which shall contain relevant information, the requested State shall deal with this request pursuant to procedures provided by its own law. The requested State shall grant the request expeditiously unless its essential interests would be prejudiced thereby.[243]

3. The State of transit shall ensure that legal provisions exist that would enable detaining the person in custody during transit.

4. In the event of an unscheduled landing, the Party to be requested to permit transit may, at the request of the escorting officer, hold the person in custody for [48] hours, pending receipt of the transit request to be made in accordance with paragraph 1 of the present article.

Article 16

CONCURRENT REQUESTS

If a Party receives requests for extradition for the same person from both the other Party and a third State it shall, at its discretion, determine to which of those States the person is to be extradited.

Article 17

COSTS

1. The requested State shall meet the cost of any proceedings in its jurisdiction arising out of a request for extradition.

2. The requested State shall also bear the costs incurred in its territory in connection with the seizure and handing over of property, or the arrest and detention of the person whose extradition is sought.[244]

3. The requesting State shall bear the costs incurred in conveying the person from the territory of the requested State, including transit costs.

Article 18

FINAL PROVISIONS

1. The persent Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which such notice is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

DONE at _____ on _____ in the _____ and _____ languages, [both/all] texts being equally authentic.

(10) *Model Treaty on Mutual Assistance in Criminal Matters*

By its resolution 45/117 of 14 December 1990,[245] adopted on the recommendation of the Third Committee,[246] the General Assembly, recognizing the importance of a model treaty on mutual assistance in criminal matters as an effective way of dealing with the complex aspects and serious consequences of crime, especially in its new forms and dimensions, adopted the Model Treaty on Mutual Assistance in Criminal Matters together with the Optional Protocol thereto, contained in the annex to the resolution, as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral agreements aimed at improving cooperation in matters of crime prevention and criminal justice and invited Member States, if they had not yet established treaty relations with other States in the matter of mutual assistance in criminal matters, or if they wished to revise existing treaty relations, to take into account, whenever doing so, the Model Treaty.

ANNEX

Model Treaty on Mutual Assistance in Criminal Matters

The _____ and the _____

Desirous of extending to each other the widest measure of co-operation to combat crime,

Have agreed as follows:

Article 1

SCOPE OF APPLICATION[247]

1. The Parties shall, in accordance with the present Treaty, afford to each other the widest possible measure of mutual assistance in investigations or court proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting State.

2. Mutual assistance to be afforded in accordance with the present Treaty may include:

(*a*) Taking evidence or statements from persons;

(*b*) Assisting in the availability of detained persons or others to give evidence or assist in investigation;

(*c*) Effecting service of judicial documents;

(*d*) Executing searches and seizures;

(*e*) Examining objects and sites;

(*f*) Providing information and evidentiary items;

(*g*) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records.

3. The present Treaty does not apply to:

(*a*) The arrest or detention of any person with a view to the extradition of that person;

(*b*) The enforcement in the requested State of criminal judgements imposed in the requesting State except to the extent permitted by the law of the requested State and the Optional Protocol to the present Treaty;

(*c*) The transfer of persons in custody to serve sentences;

(*d*) The transfer of proceedings in criminal matters.

Article 2[248]

OTHER ARRANGEMENTS

Unless the Parties decide otherwise, the present Treaty shall not affect obligations subsisting between them whether pursuant to other treaties or arrangements or otherwise.

Article 3

DESIGNATION OF COMPETENT AUTHORITIES

Each Party shall designate and indicate to the other Party an authority or authorities by or through which requests for the purpose of the present Treaty should be made or received.

Article 4[249]

REFUSAL OF ASSISTANCE

1. Assistance may be refused if:[250]

(*a*) The requested State is of the opinion that the request, if granted, would prejudice its sovereignty, security, public order (*ordre public*) or other essential public interests;

(*b*) The offence is regarded by the requested State as being of a political nature;

(*c*) There are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions or that that person's position may be prejudiced for any of those reasons;

(*d*) The request relates to an offence that is subject to investigation or prosecution in the requested State or the prosecution of which in the requesting State would be incompatible with the requested State's law on double jeopardy (*ne bis in idem*);

(*e*) The assistance requested requires the requested State to carry out compulsory measures that would be inconsistent with its law and practice had the offence been the subject of investigation or prosecution under its own jurisdiction;

(*f*) The act is an offence udner military law, which is not also an offence under ordinary criminal law.

2. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions.

3. The requested State may postpone the execution of the request if its immediate execution would interfere with an ongoing investigation or prosecution in the requested State.

4. Before refusing a request or postponing its execution, the requested State shall consider whether assistance may be granted subject to certain conditions. If the requesting State accepts assistance subject to these conditions, it shall comply with them.

5. Reasons shall be given for any refusal or postponement of mutual assistance.

Article 5

CONTENTS OF REQUESTS

1. Requests for assistance shall include:[251]

(*a*) The name of the requesting office and the competent authority conducting the investigation or court proceedings to which the request relates;

(*b*) The purpose of the request and a brief description of the assistance sought;

(*c*) A description of the facts alleged to constitute the offence and a statement or text of the relevant laws, except in cases of a request for service of documents;

(*d*) The name and address of the person to be served, where necessary;

(*e*) The reasons for and details of any particular procedure or requirement that the requesing State wishes to be followed, including a statement as to whether sworn or affirmed evidence or statements are required;

(*f*) Specification of any time-limit within which compliance with the request is desired;

(*g*) Such other information as is necessary for the proper execution of the request.

2. Requests, supporting documents and other communications made pursuant to the present Treaty shall be accompanied by a translation into the language of the requested State or another language acceptable to that State.

3. If the requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request additional information.

Article 6

EXECUTION OF REQUESTS[252]

Subject to article 19 of the present Treaty, requests for assistance shall be carried out promptly, in the manner provided for by the law and practice of the requested State. To the extent consistent with its law and practice, the requested State shall carry out the request in the manner specified by the requesting State.

Article 7

RETURN OF MATERIAL TO THE REQUESTED STATE

Any property, as well as original records or documents, handed over to the requesting State under the present Treaty shall be returned to the requested State as soon as possible unless the latter waives its right of return thereof.

Article 8[253]

LIMITATION ON USE

The requesting State shall not, without the consent of the requested State, use or transfer information or evidence provided by the requested State for investigations or proceedings other than those stated in the request. However, in cases where the charge is altered, the material provided may be used in so far as the offence, as charged, is an offence in respect of which mutual assistance could be provided under the present Treaty.

Article 9

PROTECTION OF CONFIDENTIALITY[254]

Upon request:

(*a*) The requested State shall use its best endeavours to keep confidential the request for assistance, its contents and its supporting documents as well as the fact of granting of such assistance. If the request cannot be executed without breaching confidentiality, the requested State shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed;

(*b*) The requesting State shall keep confidential evidence and information provided by the requested State, except to the extent that the evidence and information is needed for the investigation and proceedings described in the request.

Article 10

SERVICE OF DOCUMENTS[255]

1. The requested State shall effect service of documents that are transmitted to it for this purpose by the requesting State.

2. A request to effect service of summonses shall be made to a requested State not less than [. . .][256] days before the date on which the appearance of a person is required. In urgent cases, the requested State may waive the time requirement.

Article 11[257]

OBTAINING OF EVIDENCE

1. The requested State shall, in conformity with its law and upon request, take the sworn or affirmed testimony, or otherwise obtain statements of persons or require them to produce items of evidence for transmission to the requesting State.

2. Upon the request of the requesting State, the parties to the relevant proceedings in the requesting State, their legal representatives and representatives of the requesting State may, subject to the laws and procedures of the requested State, be present at the proceedings.

Article 12

RIGHT OR OBLIGATION TO DECLINE TO GIVE EVIDENCE

1. A person who is required to give evidence in the requested or requesting State may decline to give evidence where either:

(*a*) The law of the requested State permits or requires that person to decline to give evidence in similar cirumstances in proceedings originating in the requested State; or

(*b*) The law of the requesting State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the requesting State.

2. If a person claims that there is a right or obligation to decline to give evidence under the law of the other State, the State where that person is present shall, with respect therein, rely on a certificate of the competent authority of the other State as evidence of the existence or non-existence of that right or obligation.

Article 13

AVAILABILITY OF PERSONS IN CUSTODY TO GIVE EVIDENCE OR TO ASSIST IN INVESTIGATIONS[258]

1. Upon the request of the requesting State, and if the requested State agrees and its law so permits, a person in custody in the latter State may, subject to his or her consent, be temporarily transferred to the requesting State to give evidence or to assist in the investigations.

2. While the person transferred is required to be held in custody under the law of the requested State, the requesting State shall hold that person in custody and shall return that person in custody to the requested State at the conclusion of the matter in relation to which transfer was sought or at such earlier time as the person's presence is no longer required.

3. Where the requested State advises the requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person referred to in article 14 of the present Treaty.

Article 14

AVAILABILITY OF OTHER PERSONS TO GIVE EVIDENCE OR ASSIST IN INVESTIGATIONS[259]

1. The requesting State may request the assistance of the requested State in inviting a person:

(*a*) To appear in proceedings in relation to a criminal matter in the requesting State unless that person is the person charged; or

(*b*) To assist in the investigations in relation to a criminal matter in the requesting State.

2. The requested State shall invite the person to appear as a witness or expert in proceedings or to assist in the investigations. Where appropriate, the requested State shall satisfy itself that satisfactory arrangements have been made for the person's safety.

3. The request or the summons shall indicate the approximate allowances and the travel and subsistence expenses payable by the requesting State.

4. Upon request, the requested State may grant the person an advance, which shall be refunded by the requesting State.

Article 15[260]

SAFE CONDUCT

1. Subject to paragraph 2 of the present article, where a person is in the requesting State pursuant to a request made under article 13 or 14 of the present Treaty:

(*a*) That person shall not be detained, prosecuted, punished or subjected to any other restrictions of personal liberty in the requesting State in respect of any acts or omissions or convictions that preceded the person's departure from the requested State;

(*b*) That person shall not, without that person's consent, be required to give evidence in any proceeding or to assist in any investigation other than the proceeding or investigation to which the request relates.

2. Paragraph 1 of the present article shall cease to apply if that person, being free to leave, has not left the requesting State within a period of [15] consecutive days, or any longer period otherwise agreed on by the Parties, after that person has been officially told or notified that his or her presence is no longer required or, having left, has voluntarily returned.

3. A person who does not consent to a request pursuant to article 13 or accept an invitation pursuant to article 14 shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure, notwithstanding any contrary statement in the request or summons.

Article 16

Provision of publicly available documents and other records[261]

1. The requested State shall provide copies of documents and records in so far as they are open to public access as part of a public register or otherwise, or in so far as they are available for purchase or inspection by the public.

2. The requested State may provide copies of any other document or record under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

Article 17

Search and seizure[262]

The requested State shall, in so far as its law permits, carry out requests for search and seizure and delivery of any material to the requesting State for evidentiary purposes, provided that the rights of *bona fide* third parties are protected.

Article 18

Certification and authentication[263]

A request for assistance and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication.

Article 19

Costs[264]

The ordinary costs of executing a request shall be borne by the requested State, unless otherwise determined by the Parties. If expenses of a substantial or extraordinary nature are or will be required to execute the request, the Parties shall consult in advance to determine the terms and conditions under which the request shall be executed as well as the manner in which the costs shall be borne.

Article 20

Consultation

The Parties shall consult promptly, at the request of either, concerning the interpretation, the application or the carrying out of the present Treaty either generally or in relation to a particular case.

Article 21

FINAL PROVISIONS

1. The present Treaty is subject to [ratification, acceptance or approval]. The instrumetns of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

DONE at _____ on _____ in the _____ and _____ languages, [both/all] texts being equally authentic.

Optional Protocol to the Model Treaty on Mutual Assistance in Criminal Matters concerning the proceeds of crime[265]

1. In the present Protocol "proceeds of crime" means any property suspected, or found by a court, to be property directly or indirectly derived or realized as a result of the commission of an offence or to represent the value of property and other benefits derived from the commission of an offence.

2. The requested State shall, upon request, endeavour to ascertain whether any proceeds of the alleged crime are located within its jurisdiction and shall notify the requesting State of the results of its inquiries. In making the request, the requestng State shall notify the requested State of the basis of its belief that such proceeds may be located within its jurisdiction.

3. In pursuance of a request made under paragraph 2 of the present Protocol, the requested State shall endeavour to trace assets, investigate financial dealings, and obtain other information or evidence that may help to secure the recovery of proceeds of crime.

4. Where, pursuant to paragraph 2 of the present Protocol, suspected proceeds of crime are found, the requested State shall upon request take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a court of the requesting State.

5. The requested State shall, to the extent permitted by its law, give effect to or permit enforcement of a final order forfeiting or confiscating the proceeds of crime made by a court of the requesting State or take other appropriate action to secure the proceeds following a request by the requesting State.[266]

6. The Parties shall ensure that the rights of *bona fide* third parties shall be respected in the application of the present Protocol.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Protocol.

DONE at _____ on _____ in the _____ and _____ languages, [both/all] texts being equally authentic.

(11) *Model Treaty on the Transfer of Proceedings in Criminal Matters*

By its resolution 45/118 of 14 December 1990,[267] adopted on the recommendation of the Third Committee,[268] the General Assembly, recognizing the importance of

a model treaty on the transfer of proceedings in criminal matters as an effective way of dealing with the complex aspects, consequences and modern evolution of transnational crime, adopted the Model Treaty on the Transfer of Proceedings in Criminal Matters, contained in the annex to the resolution, as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral or multilateral treaties aimed at improving cooperation in matters of crime prevention and criminal justice and invited Member States, if they had not yet established treaty relations with other States in regard to transfer of proceedings in criminal matters, or if they wished to revise existing treaty relations, to take the Model Treaty into acount whenever doing so.

ANNEX

Model Treaty on the Transfer of Proceedings in Criminal Matters

The _____ and the _____.

Desirous of further strengthening international co-operaton and mutual assistance in criminal justice, on the basis of the principles of respect for national sovereignty and jurisdiction and of non-interference in the internal affairs of States,

Believing that such co-operation should further the ends of justice, the social resettlement of offenders and the interests of the victims of crime,

Bearing in mind that the transfer of proceedings in criminal mattters contributes to effective administration of justice and to reducing conflicts of competence,

Aware that the transfer of proceedings in criminal matters can help to avoid pre-trial detention and thus reduce the prison population,

Convinced, therefore, that the transfer of proceedings in criminal matters should be promoted,

Have agreed as follows:

Article 1

SCOPE OF APPLICATION

1. When a person is suspected of having committed an offence under the law of a State which is a Contracting Party, that State may, if the interests of the proper administration of justice so require, request another State which is a Contracting Party to take proceedings in respect of this offence.

2. For the purpose of applying the present Treaty, the Contracting Parties shall take the necessary legislative measures to ensure that a request of the requesting State to take proceedings shall allow the requested State to exercise the necessary jurisdiction.

Article 2

CHANNELS OF COMMUNICATIONS

A request to take proceedings shall be made in writing. The request, supporting documents and subsequent communications shall be transmitted through diplomatic channels, directly between the Ministries of Justice or any other authorities designated by the Parties.

Article 3

REQUIRED DOCUMENTS

1. The request to take proceedings shall contain or be accompanied by the following information:

(*a*) The authority presenting the request;

(*b*) A description of the act for which transfer of proceedings is being requested, including the specific time and place of the offence;

(*c*) A statement on the results of investigations which substantiate the suspicion of an offence;

(*d*) The legal provisions of the requesting State on the basis of which the act is considered to be an offence;

(*e*) A reasonably exact statement on the identity, nationality and residence of the suspected person.

2. The documents submitted in support of a request to take proceedings shall be accompanied by a translation into the language of the requested State or into another language acceptable to that State.

Article 4

CERTIFICATION AND AUTHENTICATION

Subject to national law and unless the Parties decide otherwise, a request to take proceedings and the documents in support thereof, as well as the documents and other material supplied in response to such a request, shall not require certifications or authenication.[269]

Article 5

DECISION ON THE REQUEST

The competent authorities of the requested State shall examine what action to take on the request to take proceedings in order to comply, as fully as possible, with the request under their own law, and shall promptly communicate their decision to the requesting State.

Article 6

DUAL CRIMINALITY

A request to take proceedings can be complied with only if the act on which the request is based would be an offence if committed in the territory of the requested State.

Article 7

GROUNDS FOR REFUSAL

If the requested State refuses acceptance of a request for transfer of proceedings, it shall communicate the reasons for refusal to the requesting State. Acceptance may be refused if:[270]

(*a*) The suspected person is not a national of or ordinary resident in the requested State;

(*b*) The act is an offence under military law, which is not also an offence under ordinary criminal law;

(*c*) The offence is in connection with taxes, duties, customs or exchange;

(*d*) The offence is regarded by the requested State as being of a political nature.

Article 8

THE POSITION OF THE SUSPECTED PERSON

1. The suspected person may express to either State his or her interest in the transfer of the proceedings. Similary, such interest may be expressed by the legal representative or close relatives of the suspected person.

2. Before a request for transfer of proceedings is made, the requesting State shall, if practicable, allow the suspected person to present his or her views on the alleged offence and the intended transfer, unless that person has absconded or otherwise obstructed the course of justice.

Article 9

THE RIGHTS OF THE VICTIM

The requesting and requested States shall ensure in the transfer of proceedings that the rights of the victim of the offence, in particular his or her right to restitution or compensation, shall not be affected as a result of the transfer. If a settlement of the claim of the victim has not been reached before the transfer, the requested State shall permit the representation of the claim in the transferred proceedings, if its law provides for such a possibility. In the event of the death of the victim, these provisions shall apply to his or her dependants accordingly.

Article 10

EFFECTS OF THE TRANSFER OF PROCEEDINGS ON THE REQUESTING STATE (*ne bis in idem*)

Upon acceptance by the requested State of the request to take proceedings against the suspected person, the requesting State shall provisionally discontinue prosecution, except necessary investigation, including judicial assistance to the requested State, until the requested State informs the requesting State that the case has been finally disposed of. From that date on, the requesting State shall definitely refrain from further prosecution of the same offence.

Article 11

EFFECTS OF THE TRANSFER OF PROCEEDINGS ON THE REQUESTED STATE

1. The proceedings transferred upon agreement shall be governed by the law of the requested State. When charging the suspected person under its law, the requested State shall make the necessary adjustment with respect to particular elements in the legal description of the offence. Where the competence of the requested State is based on the provision set forth in paragraph 2 of article 1 of the present Treaty, the sanction pronounced in that State shall not be more severe than that provided by the law of the requesting State.

2. As far as compatible with the law of the requested State, any act with a view to proceedings or procedural requirements performed in the requesting State in accordance with its law shall have the same validity in the requested State as if the act had been performed in or by the authorities of that State.

3. The requested State shall inform the requesting State of the decision taken as a result of the proceedings. To this end a copy of any final decision shall be transmitted to the requesting State upon request.

Article 12

PROVISIONAL MEASURES

When the requesting State announces its intention to transmit a request for transfer of proceedings, the requested State may, upon a specific request made for this purpose by the requesting State, apply all such provisional measures, including provisional detention and seizure, as could be applied under its own law if the offence in respect of which transfer of proceedings is requested had been committed in its territory.

Article 13

THE PLURALITY OF CRIMINAL PROCEEDINGS

When criminal proceedings are pending in two or more States against the same suspected person in respect of the same offence, the States concerned shall conduct consultations to decide which of them alone should continue the proceedings. An agreement reached thereupon shall have the consequences of a request for transfer of proceedings.

Article 14

COSTS

Any costs incurred by a Contracting Party because of a transfer of proceedings shall not be refunded, unless otherwise agreed by both the requesting and requested States.

Article 15

FINAL PROVISIONS

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracing Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

DONE at _____ on _____ in the _____ and _____ languages, [both/all] texts being equally authentic.

(12) *Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released*

By its resolution 45/119 of 14 December 1990,[271] adopted on the recommendation of the Third Committee,[272] the General Assembly, convinced that the establishment of bilateral and multilateral arrangements for transfer of supervision of offenders conditionally sentenced or conditionally released would greatly contribute to the development of more effective international cooperation in penal matters, adopted the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released, contained in the annex to the resolution, as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral or multilateral treaties aimed at improving cooperation in matters of crime prevention and criminal justice and invited Member States, if they had not established treaty relations with other States in the area of the transfer of supervision of offenders conditionally released, or if they wished to revise existing treaty relations, to take into account the Model Treaty whenever doing so.

ANNEX

Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released

The _____ and the _____

Desirous of further strengthening international co-operation and mutual assistance in criminal justice, on the basis of the principles of respect for national sovereignty and jurisdiction and of non-interference in the internal affairs of States.

Believing that such co-operation should further the ends of justice, the social resettlement of sentenced persons and the interests of the victims of crime,

Bearing in mind that the transfer of supervision of offenders conditionally sentenced or conditionally released can contribute to an increase in the use of alternatives to imprisonment,

Aware that supervision in the home country of the offender rather than enforcement of the sentence in a country where the offender has no roots also contributes to an earlier and more effective reintegration into society,

Convinced, therefore, that the social rehabilitation of offenders and the increased application of alternatives to imprisonment would be promoted by facilitating the supervision of conditionally sentenced or conditionally released offenders in their State of ordinary residence,

Have agreed as follows:

Article 1

SCOPE OF APPLICATION

1. The present Treaty shall be applicable, if, according to a final court decision, a person has been found guilty of an offence and has been:

(a) Placed on probation without sentence having been pronounced;

(b) Given a suspended sentence involving deprivation of liberty;

(c) Given a sentence, the enforcement of which has been modified (parole) or conditionally suspended, in whole or in part, either at the time of the sentence or subsequently.

2. The State where the decision was taken (sentencing State) may request another State (administering State) to take responsibility for applying the terms of the decision (transfer of supervision).

Article 2

CHANNELS OF COMMUNICATIONS

A request for the transfer of supervision shall be made in writing. The request, supporting documents and subsequent communication shall be transmitted through diplomatic channels, directly between the Ministries of Justice or any other authorities designated by the Parties.

Article 3

REQUIRED DOCUMENTS

1. A request for the transfer of supervision shall contain all necessary information on the identity, nationality and residence of the sentenced person. The request shall be accompanied by the original or a copy of any court decision referred to in article 1 of the present Treaty and a certificate that this decision is final.

2. The documents submitted in support of a request for transfer of supervision shall be accompanied by a translation into the language of the requested State or into another language acceptable to that State.

Article 4

CERTIFICATION AND AUTHENTICATION

Subject to national law and unless the Parties decide otherwise, a request for transfer of supervision and the documents in support thereof, as well as the documents and other material supplied in response to such a request, shall not require certification or authentication[273]

Article 5

DECISION ON THE REQUEST

The competent authorities of the administering State shall examine what action to take on the request for supervision in order to comply, as fully as possible, with the request under their own law, and shall promptly communicate their decision to the sentencing State.

Article 6

DUAL CRIMINALITY[274]

A request for transfer of supervision can be complied with only if the act on which the request is based would constitute an offence if committed in the territory of the administering State.

Article 7

GROUNDS FOR REFUSAL[275]

If the administering State refuses acceptance of a request for transfer of supervision, it shall communicate the reasons for refusal to the sentencing State. Acceptance may be refused where:

(a) The sentenced person is not an ordinary resident in the administering State;

(b) The act is an offence under military law, which is not also an offence under ordinary criminal law;

(c) The offence is in connection with taxes, duties, customs or exchange;

(d) The offence is regarded by the administering State as being of a political nature;

(e) The administering State, under its own law, can no longer carry out the supervision or enforce the sanction in the event of revocation because of lapse of time.

Article 8

THE POSITION OF THE SENTENCED PERSON

Whether sentenced or standing trial, a person may express to the sentencing State his or her interest in a transfer of supervision and his or her willingness to fulfil any conditions to be imposed. Similarly, such interest may be expressed by his or her legal representative or close relatives. Where appropriate, the Contracting States shall inform the offender or his or her close relatives of the possibilities under the present Treaty.

Article 9

THE RIGHTS OF THE VICTIM

The sentencing State and the administering State shall ensure in the transfer of supervision that the rights of the victims of the offence, in particular his or her rights to restitution or compensation, shall not be affected as a result of the transfer. In the event of the death of the victim, this provision shall apply to his or her dependants accordingly.

Article 10

THE EFFECTS OF THE TRANSFER OF SUPERVISION ON THE SENTENCING STATE

The acceptance by the administering State of the responsibility for applying the terms of the decision rendered in the sentencing State shall extinguish the competence of the latter State to enforce the sentence.

Article 11

THE EFFECTS OF THE TRANSFER OF SUPERVISION ON THE ADMINISTERING STATE

1. The supervision transferred upon agreement and the subsequent procedure shall be carried out in accordance with the law of the administering State. That State alone shall have the right of revocation. That State may, to the extent necessary, adapt to its own law the conditions or measures prescribed, provided that such conditions or measures are, in terms of their nature or duration, not more severe than those pronounced in the sentencing State.

2. If the administering State revokes the conditional sentence or conditional release, it shall enforce the sentence in accordance with its own law without, however, going beyond the limits imposed by the sentencing State.

Article 12

REVIEW, PARDON AND AMNESTY

1. The sentencing State alone shall have the right to decide on any application to reopen the case.

2. Each Party may grant pardon, amnesty or commutation of the sentence in accordance with the provisions of its Constitution or other laws.

Article 13

INFORMATION

1. The Contracting Parties shall keep each other informed, in so far as it is necessary, of all circumstances likely to affect measures of supervision or enforcement in the administering State. To this end they shall transmit to each other copies of any relevant decisions in this respect.

2. After expiration of the period of supervision, the administering State shall provide to the sentencing State, at its request, a final report concerning the supervised person's conduct and compliance with the measures imposed.

Article 14

COSTS

Supervision and enforcement costs incurred in the administering State shall not be refunded, unless otherwise agreed by both the sentencing State and the administering State.

Article 15

FINAL PROVISIONS

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

DONE at _____ on _____ in the _____ and _____ languages, [both/all] texts being equally authentic.

4. LAW OF THE SEA

Status of the United Nations Convention on the Law of the Sea[276]

As of 31 December 1990, 159 States had signed and 45 States had ratified the United Nations Convention on the Law of the Sea.

Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea[277]

The Preparatory Commission met twice during 1990; it held its eighth session at Kingston from 5 to 30 March 1990, and a summer meeting in New York from 13 to 31 August 1990.

At the eighth session the Preparatory Commission extensively discussed the modalities for the implementation of the obligations of the registered pioneer investors and their certifying States. The matter was finally resolved during the summer meeting when, on 30 August 1990, the General Committee, on behalf of the Preparatory Commission, adopted the Understanding on the Fulfilment of Obligations by the Registered Pioneer Investors and their Certifying States.[278] On the adoption of the Understanding, the Chairman made the following statement:[279]

> "(*a*) Should any agreement be made which would affect in any way this Understanding, such adjustments as may be necessary shall be made to it;
>
> "(*b*) The required date for the submission of a plan of work by each registered pioneer investor under resolution II, paragraph 8 (*a*), shall be reviewed in the light of the assessment of the Group of Technical Experts in accordance with paragraph 12 of the Understanding."

The main elements of the Understanding related to (*a*) the payment of a fixed fee of $US 1 million commencing from the date of allocation of a pioneer area; (*b*) the carrying out of exploration in the area reserved for activities by the Authority; and (*c*) the training of personnel designated by the Authority.

At the eighth session and the summer meeting the Commission also completed the second reading of both the draft Agreement between the International Seabed Authority and the Government of Jamaica regarding the Headquarters of the International Seabed Authority[280] and the draft Protocol on the Privileges and Immunities of the International Seabed Authority.[281] On the issue of subsidiary organs, it was agreed that the Preparatory Commission should not make any recommendations to the Authority with regard to the establishment of such organs, the only exception being the Finance Committee.

The four Special Commissions of the Preparatory Commission had been considering the substantive work allocated to them. Special Commission 1, which was charged with the problems that would be encountered by developing land-based producer States from deep seabed mineral production, considered, at its summer meeting, a revised list of the provisional conclusions on the above-mentioned problems which had been prepared incorporating the comments and suggestions of delegations in the course of the first reading. The Commission gave preliminary consideration to the provisional conclusions, except those which were directly related to the issues under consideration in the Ad Hoc Working Group. The Ad Hoc Working Group was continuing its consideration of certain "hard-core issues", such as the system of compensation, compensation fund, effects of subsidized seabed mining and dependency thresholds and trigger thresholds. Special Commission 2, which was dealing with preparations for the establishment of the Enterprise — the operational arm of the Authority — had completed its work on the subject of training when the Preparatory Commission adopted, at the eighth session, a series of recommendations aimed at implementing the Preparatory Commission Training Programme.[282] Special Commission 3, which was preparing the rules, regulations and procedures for the exploration and exploitation of the deep seabed, concluded, during the eighth session, the first

reading of the draft regulations on production authorization[283] and began its consideration of the draft regulations on the protection and preservation of the marine environment from activities in the Area[284] which had been prepared by the Secretariat. Special Commission 4, which was mandated to prepare recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea, continued its consideration of the administrative arrangements, structure and financial implications of the Tribunal and the draft relationship arrangements between the United Nations and the International Tribunal for the Law of the Sea prepared by the Secretariat. The Special Commission also examined the draft agreement on cooperation and relationships between the Tribunal and the United Nations.[285]

The Secretary-General's report also provided in its part two a general overview of the activities of the Office of the Special Representative of the Secretary-General for the Law of the Sea.

Consideration by the General Assembly

By its resolution 45/145 of 13 December 1990,[286] the General Assembly recalled the historic significance of the United Nations Convention on the Law of the Sea as an important contribution to the maintenance of peace, justice and progress for all peoples of the world; invited all States to make renewed efforts to facilitate universal participation in the Convention; called upon all States that had not done so to consider ratifying or acceding to the Convention at the earliest possible date to allow the effective entry into force of the new legal regime for the uses of the sea and its resources; also called upon all States to safeguard the unified character of the Convention and related resolutions adopted therewith and to apply them in a manner consistent with that character and with their object and purpose; noted the progress being made by the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea in all areas of its work; noted with satisfaction the Understanding on the Fulfiment of Obligations by the Registered Pioneer Investors and their Certifying States adopted by the Preparatory Commission on 30 August 1990;[278] welcomed the report of the Secretary-General on the realization of benefits under the United Nations Convention on the Law of the Sea, in which were identified the needs of States in regard to the development and management of ocean resources;[287] and expressed its appreciation to the Secretary-General for the study on marine scientific research, in the light of the same Convention.[288]

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5. INTERNATIONAL COURT OF JUSTICE[289, 290]

Cases before the Court

A. CONTENTIOUS CASES BEFORE THE FULL COURT

(i) *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*[291]

At a meeting on 22 June 1990 called by the President of the Court to ascertain the views of Nicaragua and the United States of America on the date for opening of the oral proceedings on compensation in this case, the Agent of Nicaragua informed

the President of the position of his Government, already set out in a letter from the Agent to the Registrar of the Court dated 20 June 1990. He indicated that the new Government of Nicaragua was carefully studying the different matters it had pending before the Court; that the instant case was very complex and that, added to the many difficult tasks facing the Government, these were special circumstances that would make it extremely inconvenient for it to take a decision on what procedure to follow in this case during the coming months. The President, in the light of the position of the Government of Nicaragua, stated that he would inform the Court of that position and would in the meantime take no action to fix a date for hearings.

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

By an Order of 14 December 1989,[292] the Court decided that the time-limit for the filing by Honduras of a Counter-Memorial on the merits was extended from 19 February 1990 to a date to be fixed by an order to be made after 11 June 1990.

Subsequent to the date last mentioned, the President of the Court consulted the Parties, was informed that they did not desire the new time-limit for the Counter-Memorial to be fixed for the time being, and informed them that he would so advise the Court.

(iii) *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*

By an Order of 14 October 1988,[293] the Court, taking into account the views expressed by the Parties, fixed 1 August 1989 as the time-limit for the Memorial of Denmark and 15 May 1990 for the Counter-Memorial of Norway. Both the Memorial and Counter-Memorial were filed within the prescribed time-limits.

Taking into account an agreement between the Parties that there should be a Reply and a Rejoinder, the President of the Court, by an Order of 21 June 1990,[294] fixed 1 February 1991 as the time-limit for the Reply of Denmark and 1 October 1991 as that for the Rejoinder of Norway.

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

By an Order of 13 December 1989;[295] the Court, taking into account the views expressed by each of the Parties, fixed 12 June 1990 as the time-limit for the filing of the Memorial of the Islamic Republic of Iran and 10 December 1990 for the filing of the Counter-Memorial of the United States of America. Judge Oda appended a declaration to the Order of the Court;[296] Judges Schwebel and Shahabuddeen appended separate opinions.[297]

By an Order of 12 June 1990,[298] made in response to a request by the Islamic Republic of Iran and after the views of the United States of America had been ascertained, the President of the Court extended to 24 July 1990 the time-limit for the filing of the Memorial of the Islamic Republic of Iran and to 4 March 1991 the time-limit for the Counter-Memorial of the United States of America. The Memorial was filed within the prescribed time-limit.

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

By an Order of 18 July 1989,[299] the Court, having ascertained the views of the Parties, fixed 20 April 1990 as the time-limit for the Memorial of Nauru and 21 January 1991 for the Counter-Memorial of Australia. The Memorial was filed within the prescribed time-limit.

(vi) *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*

On 18 January 1990 a request was filed in the Registry whereby Guinea-Bissau, on the ground of actions stated to have been taken by the Senegalese Navy in a maritime area which Guinea-Bissau regarded as an area disputed between the Parties, requested the Court to indicate the following provisional measures:

> "In order to safeguard the rights of each of the Parties, they shall abstain in the disputed area from any act or action of any kind whatever, during the whole duration of the proceedings until the decision is given by the Court."

Having held public sittings on 12 February 1990 to hear the oral observations of both Parties on the request for provisional measures, the Court, in an Order of 2 March 1990[300] dismissed that request. A summary of this Order and the complete text of the operative paragraph are given below.

The Court began by recalling the history of the case and observed that Guinea-Bissau explained in its request for the indication of provisional measures that that request was prompted by

> "acts of sovereignty by Senegal which prejudge both the judgment on the merits to be given by the Court and the maritime delimitation to be effected subsequently between the States".

It then summarized the incidents which took place and which involved actions by both Parties with regard to foreign fishing vessels.

*

On the question of its jurisdiction the Court subsequently considered that, whereas on a request for provisional measures it need not, before deciding whether or not to indicate them, finally satisfy itself that it has jurisdiction on the merits of the case, yet it ought not to indicate such measures unless the provisions invoked by the Applicant appear, prima facie, to afford a basis on which the jurisdiction of the Court might be founded; and found that the two declarations made by the Parties under Article 36, paragraph 2, of the Statute and invoked by the Applicant did appear, prima facie, to afford a basis of jurisdiction.

It observed that that decision in no way prejudged the question of the jurisdiction of the Court to deal with the merits of the case.

*

Guinea-Bissau had requested the Court to exercise in the proceedings the power conferred upon it by Article 41 of the Statute of the Court "to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party".

The Court observed that the purpose of exercising that power was to protect "rights which are the subject of dispute in judicial proceedings",[301] that such measures were provisional and indicated "pending the final decision",[302] and that therefore they were to be measures such that they would no longer be required as such once the dispute over those rights had been resolved by the Court's judgment on the merits of the case.

It further noted that Guinea-Bissau recognized in its Application that the dispute of which it had seized the Court was not the dispute over maritime delimitation brought before the Arbitration Tribunal, but a "new dispute . . . relating to the applicability of the text issued by way of award of 31 July 1989"; that however it had been argued by Guinea-Bissau that provisional measures might be requested, in the context of judicial proceedings on a subsidiary dispute, to protect rights in issue in the underlying dispute; that the only link essential for the admissibility of measures was the link between the measures contemplated and the conflict of interests underlying the question or questions put to the Court — that conflict of interests being the conflict over maritime delimitation — and that this was so whether the Court was seized of a main dispute or of a subsidiary dispute, a fundamental dispute or a secondary dispute, on the sole condition that the decision by the Court on the questions of substance which were submitted to it be a necessary prerequisite for the settlement of the conflict of interests to which the measures related; that Guinea-Bissau claimed that the basic dispute concerned the conflicting claims of the Parties to control, exploration and exploitation of maritime areas, and that the purpose of the measures requested was to preserve the integrity of the maritime area concerned, and that the required relationship between the provisional measures requested by Guinea-Bissau and the case before the Court was present.

The Court observed that the Application instituting proceedings asked the Court to declare the 1989 award to be "inexistent" or, subsidiarily, "null and void", and to declare "that the Government of Senegal is thus not justified in seeking to require the Government of Guinea-Bissau to apply the so-called award of 31 July 1989"; that the Application thus asked the Court to pass upon the existence and validity of the award but did not ask the Court to pass upon the respective rights of the Parties in the maritime areas in question; it found that accordingly the alleged rights sought to be made the subject of provisional measures were not the subject of the proceedings before the Court on the merits of the case; and that any such measures could not be subsumed by the Court's judgment on the merits.

Moreover, a decision of the Court that the award was inexistent or null and void would in no way entail any decision that the Applicant's claims in respect of the disputed maritime delimitation were well founded, in whole or in part; the dispute over those claims would therefore not be resolved by the Court's judgment.

The operative paragraph of the Order is as follows:

"Accordingly,

THE COURT,

by fourteen votes to one,

Dismisses the request of the Republic of Guinea-Bissau, filed in the Registry on 18 January 1990, for the indication of provisional measures.

IN FAVOUR: *President* Ruda; *Vice-President* Mbaye; *Judges* Lachs, Elias, Oda, Ago, Schwebel, Sir Robert Jennings, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Pathak;

AGAINST: *Judge* ad hoc Thierry."

Judges Evensen and Shahabuddeen appended separate opinions to the Order.[303] Judge ad hoc Thierry appended a dissenting opinion.[304]

(vii) *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*[305]

At a meeting between the President of the Court and representatives of the Libyan Arab Jamahiriya and Chad held on 24 October 1990, it was agreed between the Agents of the Parties that the proceedings in the case under consideration had in effect been instituted by two successive notifications of the Special Agreement constituted by the Framework Agreement on the Peaceful Settlement of the Territorial Dispute between the Great Socialist People's Libyan Arab Jamahiriya and the Republic of Chad, done at Algiers on 31 August 1989, filed by the Libyan Arab Jamahiriya on 31 August 1990, and the communication from Chad filed on 3 September 1990, read in conjunction with the letter from the Agent of Chad of 28 September 1990, and that the procedure in the case should be determined by the Court on that basis, pursuant to Article 46, paragraph 2, of the Rules of the Court.

Having ascertained the views of the Parties, the Court decided by an order of 26 October 1990[306] that, as provided in Article 46, paragraph 2, of the Rules of Court, each Party should file a Memorial and Counter-Memorial, within the same time-limit, and fixed 26 August 1991 as the time-limit for the Memorials.

B. Contentious cases before a Chamber

Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)[307]

In an Order of 28 February 1990,[308] adopted by 12 votes to 3, the Court, having considered the observations submitted by the Parties on Nicaragua's application for permission to intervene in the case, and the Applicant's comments thereon, concluded that it was sufficiently informed of the views of the States concerned without there being any need for oral proceedings, and found that it was for the Chamber formed to deal with the case to decide whether the application for permission to intervene should be granted. Judge Oda appended a declaration,[309] and Judges Elias, Tarassov and Shahabuddeen appended dissenting opinions[310] to the order.

Between 5 and 8 June 1990 the Chamber, at five public sittings, heard oral arguments on the Nicaraguan Application for permission to intervene, presented on behalf of Nicaragua, El Salvador and Honduras.

At a public sitting held on 13 September 1990, the Chamber delivered its Judgment on the Application by Nicaragua for permission to intervene.[311] An analysis of the Judgment is given below and is followed by the text of the operative clause.[312]

I. *Proceedings and submissions by the Parties* (paras. 1-22)

By a joint notification dated 11 December 1986, filed in the Registry of the Court the same day, the Ministers for Foreign Affairs of the Republic of Honduras and the Republic of El Salvador transmitted to the Registrar a certified copy of a Special Agreement in Spanish, signed in the City of Esquipulas, Republic of Guatemala, on 24 May 1986. Its preamble refers to the conclusion on 30 October 1980, in Lima, Peru, of a General Peace Treaty between the two States, whereby, *inter alia,*

they delimited certain sections of their common land frontier; and it records that no direct settlement had been achieved in respect of the remaining land areas, or as regards "the legal situation of the islands and maritime spaces".

Article 2 of the Special Agreement, which defines the subject of the dispute, reads, in the translation approved by the Parties:

"The Parties request the Chamber:

1. To delimit the boundary line in the zones or sections not described in Article 16 of the General Treaty of Peace of 30 October 1980.

2. To determine the legal situation of the islands and maritime spaces."

On 17 November 1989 the Republic of Nicaragua filed a request for permission to intervene under Article 62 of the Statute of the Court in the proceedings instituted by the notification of the Special Agreement.

The Court, in an Order dated 28 February 1990,[313] found that it was for the Chamber formed to deal with the present case to decide whether Nicaragua's request should be granted.

II. *Nature and extent of the dispute* (paras. 23-33)

The Chamber observed that the dispute between El Salvador and Honduras which was the subject of the Special Agreement concerned several distinct though in some respects interrelated matters. The Chamber was asked first to delimit the land frontier line between the two States in the areas or sections not described in Article 16 of the General Peace Treaty concluded by them on 30 October 1980; Nicaragua was not seeking to intervene in this aspect of the proceedings. The Chamber was also to "determine the legal situation of the islands", and that of the "maritime spaces".

The geographical context of the island and maritime aspects of the dispute, and the nature and extent of the dispute as appeared from the Parties' claims before the Chamber, are as follows.

The Gulf of Fonseca lies on the Pacific coast of Central America, opening to the ocean in a generally south-westerly direction. The north-west coast of the Gulf is the land territory of El Salvador, and the south-east coast that of Nicaragua; the land territory of Honduras lies between the two, with a substantial coast on the inner part of the Gulf. The entrance to the Gulf, between Punta Amapala in El Salvador to the northwest, and Punta Cosigüina in Nicaragua to the south-east, is some 19 nautical miles wide. The penetration of the Gulf from a line drawn between these points varies between 30 and 32 nautical miles. Within the Gulf of Fonseca, there is a considerable number of islands and islets.

El Salvador asks that Chamber to find that

"El Salvador has and had sovereignty over all the islands in the Gulf of Fonseca, with the exception of the Island of Zacate Grande which can be considered as forming part of the coast of Honduras".

Honduras for its part invites the Chamber to find that the islands of Meanguera and Meanguerita are the only islands in dispute between the Parties, so that the Chamber is not, according to Honduras, called upon to determine sovereignty over any of the other islands, and to declare the sovereignty of Honduras over Meanguera and Meanguerita.

The Chamber considered that the detailed history of the dispute was not to the purpose, but that two events concerning the maritime areas must be mentioned. First,

the waters within the Gulf of Fonseca between Honduras and Nicaragua were to an important extent delimited in 1900 by a Mixed Commission established pursuant to a Treaty concluded between the two States on 7 October 1894, but the delimitation line did not extend so far as to meet a closing line between Punta Amapala and Punta Cosigüina.

The second event to be mentioned was the following. In 1916 El Salvador brought proceedings against Nicaragua in the Central American Court of Justice, claiming *inter alia* that the Bryan-Chamorro Treaty concluded by Nicaragua with the United States of America, for the construction of a naval base, "ignored and violated the rights of co-ownership possessed by El Salvador in the Gulf of Fonseca".

Nicaragua resisted the claim contending (*inter alia*) that the lack of demarcation of frontiers between the riparian States did "not result in common ownership". The Decision of the Central American Court of Justice dated 9 March 1917 records the unanimous view of the judges that the international status of the Gulf of Fonseca was that of "an historic bay possessed of the characteristics of a closed sea", and in its "Examination of facts and law", the Court found:

> "WHEREAS: The legal status of the Gulf of Fonseca having been recognized by this Court to be that of a historic bay possessed of the characteristics of a closed sea, the three riparian States of El Salvador, Honduras and Nicaragua are, therefore, recognized as coöwners of its waters, except as to the littoral marine league which is the exclusive property of each. . . .[314]

It is claimed by El Salvador in its Memorial in the present case that:

> "On the basis of the 1917 judgement an objective legal regime has been established in the Gulf. Even if initially the judgement was binding only in respect of the direct parties to the litigation. Nicaragua and El Salvador, the legal status recognized therein has been consolidated in the course of time; its effects extend to third States, and in particular, they extend to Honduras."

It further claims that the juridical situation of the Gulf "does not permit the dividing up of the waters held in condominium", with the exception of "a territorial sea within the Gulf", recognized by the Central American Court of Justice. It therefore asks the Chamber to adjudge and declare that:

> "The juridical position of the maritime spaces within the Gulf of Fonseca corresponds to the juridical position established by the Judgement of the Central American Court of Justice rendered March 9th 1917, as accepted and applied there after."

It also contends that

> "So far as the maritime spaces are concerned, the Parties have not asked the Chamber either to trace a line of delimitation or to define the Rules and Principles of Public International Law applicable to a delimitation of maritime spaces, either inside or outside the Gulf of Fonseca."

Honduras rejects the view that the 1917 Judgement produced or reflected an objective legal régime, contending that in the case of

> "a judgment or arbitral award laying down a delimitation as between the parties to a dispute, the solution therein adopted can only be opposed to the parties".

It also observes that

> "It is not the 1917 Judgement which confers sovereignty upon the riparian States over the waters of the Bay of Fonseca. That sovereignty antecedes considerably

that judgment between two riparian States, since it dates back to the creation of the three States concerned."

Honduras's contention as to the legal situation of the maritime spaces, to be examined further below, related to their delimitation between the Parties. It considers that the Chamber has jurisdiction under the Special Agreement to effect such delimitation, and has indicated what, in the view of Honduras, should be the course of the delimitation line.

As regards maritime spaces situated outside the closing line of the Gulf, Honduras asks the Chamber to find that the "community of interests" between El Salvador and Honduras as coastal States of the Gulf implies that they each have an equal right to exercise jurisdiction over such spaces. On this basis, it asks the Chamber to determine a line of delimitation extending 200 miles seaward, to delimit the territorial sea, the exclusive economic zone and the continental shelf of the two Parties. El Salvador, however, contends that the Chamber does not, under the Special Agreement, have jurisdiction to delimit maritime areas outside the closing line of the Gulf. El Salvador denies that Honduras has any legitimate claim to any part of the continental shelf or exclusive economic zone in the Pacific, outside the Gulf; it is however prepared to accept that this question be decided by the Chamber.

III. *Requirements for intervention under Article 62 of the Statute and Article 81 of the Rules of Court* (paras. 35-101)

In its Application for permission to intervene, filed on 17 November 1989, Nicaragua stated that the Application was made by virtue of Article 36, paragraph 1, and Article 62 of the Statute. An application under Article 62 is required by Article 81, paragraph 1, of the Rules of Court to be filed "as soon as possible, and not later than the closure of the written proceedings". The Application of Nicaragua was filed in the Registry of the Court two months before the time-limit fixed for the filing of the Parties' replies.

By Article 81, paragraph 2, of the Rules of Court, a State seeking to intervene is required to specify the case to which it relates and to set out:

"(*a*) the interest of a legal nature which the State applying to intervene considers may be affected by the decision in that case;

(*b*) the precise object of the intervention;

(*c*) any basis of jurisdiction which is claimed to exist as between the State applying to intervene and the Parties to the case".

The Chamber first examined arguments of El Salvador which were put forward as grounds for the Chamber to reject the Application of Nicaragua *in limine,* without there being any need for further examination of its compliance with Article 62 of the Statute of the Court. These arguments, none of which were upheld by the Chamber, related to the formal compliance of the Application with the requirements of Article 81, paragraph 2, of the Rules of Court, to the alleged "untimeliness" of the Application in view of requests contained in it which would be disruptive at the current advanced stage of the proceedings, and to the absence of negotiations prior to the filing of the Application.

(a) *Interest of a legal nature* (paras. 37 and 52-84)

Nicaragua stated in its Application that:

> "As can be appreciated in Article 2 of the Special Agreement . . . the Government of Nicaragua has an interest of a legal nature which must inevitably be affected by a decision of the Chamber." (para. 2.)

It then proceeded to enumerate the "particular considerations supporting this opinion". The Chamber observed that, as the Court had made clear in previous cases, a State applying for permission to intervene under Article 62 of the Statute had to show an "interest of a legal nature which may be affected" by the Court's decision in the case, or that *un intérêt d'ordre juridique est pour lui en cause* — the criterion stated in Article 62.

In the instant case, Nicaragua had gone further; citing the case concerning *Monetary Gold Removed from Rome in 1943,*[315] it had argued that its interests were so much part of the subject-matter of the case that the Chamber could not properly exercise its jurisdiction without the participation of Nicaragua. The Chamber therefore examined the way in which the interests of Albania would have formed "the very subject-matter of the decision" in the case concerning *Monetary Gold Removed from Rome in 1943,* and explained that the Court's finding in that case was that, while the presence in the Statute of Article 62 might implicitly authorize continuance of the proceedings in the absence of a State whose "interests of a legal nature" might be "affected", this did not justify continuance of proceedings in the absence of a State whose international responsibility would be "the very subject-matter of the decision". There had been no need to decide what the position would have been had Albania applied for permission to intervene under Article 62. The Chamber concluded that, if in the instant case the legal interests of Nicaragua would have formed part of "the very subject-matter of the decision", as Nicaragua had suggested, this would doubtless have justified an intervention by Nicaragua under Article 62 of the Statute, which laid down a less stringent criterion. The question would then have arisen, however, of whether such intervention under Article 62 of the Statute would have enabled the Chamber to pronounce upon the legal interests of Nicaragua which it was suggested by Nicaragua would have formed the very subject-matter of the decision. The Chamber would therefore first consider whether Nicaragua had shown the existence of an "interest of a legal nature which may be affected by the decision", so as to justify an intervention; and if such was the case, would then consider whether that interest might in fact form "the very subject-matter of the decision" as did the interests of Albania in the case concerning *Monetary Gold Removed from Rome in 1943.*

The Chamber further observed that Article 62 of the Statute contemplated intervention on the basis of an interest of a legal nature "which may be affected by the decision in the case". What had been requested of the Chamber by the Special Agreement in the instant case was not however a decision on a single circumscribed issue, but several decisions on various aspects of the overall dispute between the Parties. The Chamber had to consider the possible effect on legal interests asserted by Nicaragua of its eventual decision on each of the different issues which might fall to be determined, in order to define the scope of any intervention which might be found to be justified under Article 62 of the Statute. If a State could satisfy the Court that it had an interest of a legal nature which might be affected by the decision in the case, it might be permitted to intervene in respect of that interest. But that did not mean that the intervening State was then also permitted to make excursions into other aspects of the case; this was in fact recognized by Nicaragua. Since the scope of any permitted

intervention had to be determined, the Chamber had to consider the matters of the islands, the situation of the waters within the Gulf, the possible delimitation of the waters within the Gulf, the situation of the waters outside the Gulf, and the possible delimitation of the waters outside the Gulf.

Whether all of these matters were indeed raised by the wording of Article 2, paragraph 2, of the Special Agreement was itself disputed between the Parties to the case. Accordingly, the list of matters to be considered was in that phase of the proceedings to be entirely without prejudice to the meaning of Article 2, paragraph 2, as a whole, or of any of the terms as used in that Article. The Chamber clearly could not take any stand in the proceedings on the request for permission to intervene on the disputes between the Parties concerning the proper meaning of the Special Agreement; it had to determine the questions raised by Nicaragua's Application while leaving those questions of interpretation entirely open.

Burden of proof (paras. 61-63)

There was some argument before the Chamber on the question of the extent of the burden of proof on a State seeking to intervene. In the Chamber's opinion it was clear, first, that it was for a State seeking to intervene to demonstrate convincingly what it asserted, and thus to bear the burden of proof; and, second, that it had only to show that its interest "might" be affected, not that it would or had to be affected. What needed to be shown by a State seeking permission to intervene could only be judged *in concreto* and in relation to all the circumstances of a particular case. It was for the State seeking to intervene to identify the interest of a legal nature which it considered might be affected by the decision in the case, and to show in what way that interest might be affected: it was not for the Court itself — or in the instant case the Chamber — to substitute itself for the State in that respect. The Chamber also bore in mind in this connection that the Parties to the case were in dispute about the interpretation of the very provision of the Special Agreement invoked in Nicaragua's Application. It noted the reliance by Nicaragua on the principle of recognition, or on estoppel, but did not accept Nicargua's contentions in that respect.

The Chamber then turned to consideration of the several specific issues in the case which might call for decision, as indicated above, in order to determine whether it had been shown that such decision might affect a Nicaraguan interest of a legal nature.

1. *Legal situation of the islands* (paras. 65-66)

So far as the decision requested of the Chamber by the Parties is to determine the legal situation of the islands, the Chamber concluded that it should not grant permission for intervention by Nicaragua, in the absence of any Nicaraguan interest liable to be directly affected by a decision on that issue. Any possible effects of the islands as relevant circumstances for delimitation of maritime spaces fell to be considered in the context of the question of whether Nicaragua should be permitted to intervene on the basis of a legal interest which might be affected by a decision on the legal situation of the waters of the Gulf.

2. *Legal situation of the waters within the Gulf* (paras. 67-79)

(i) The regime of the waters

It is El Salvador's case that, as between El Salvador, Honduras and Nicaragua, there exists "a régime of community, co-ownership or joint sovereignty" over such of the waters of the Gulf of Fonseca "as lie outside the area of exclusive jurisdiction", an "objective legal régime" on the basis of the 1917 Judgement of the Central

American Court of Justice. On that basis, El Salvador considers that the juridical situation of the Gulf does not permit the dividing up of the waters held in condominium. El Salvador also contends that the Special Agreement does not confer jurisdiction to effect any such delimitation. Honduras on the other hand contends, *inter alia*, that "the Gulf's specific geographical situation creates a special situation between the riparian States which generates a community of interests" which in turn "calls for a special legal régime to determine their mutual relations"; that the community of interests "does not mean integration and the abolition of boundaries" but, on the contrary, "the clear definition of those boundaries as a condition of effective co-operation"; and that each of the three riparian States "has an equal right to a portion of the internal waters".

The Chamber considered that quite apart from the question of the legal status of the 1917 Judgement the fact, however, was that El Salvador now claimed that the waters of the Gulf were subject to a condominium of the coastal States, and had indeed suggested that that régime "would in any case have been applicable to the Gulf under customary international law". Nicaragua had referred to the fact that it plainly had rights in the Gulf of Fonseca, the existence of which was undisputed, and contended that

> "The condominium, if it is declared to be applicable, would by its very nature involve three riparians, and not only the parties to the Special Agreement."

In the opinion of the Chamber, this was a sufficient demonstration by Nicaragua that it had an interest of a legal nature in the determination of whether or not this was the régime governing the waters of the Gulf: the very definition of a condominium pointed to that conclusion. Furthermore, a decision in favour of some of the Honduran theses would equally be such as might affect legal interests of Nicaragua. The "community of interests" constituting the starting-point of the arguments of Honduras was a community which, like the condominiums claimed by El Salvador, embraced Nicaragua as one of the three riparian States, and Nicaragua had therefore to be interested also in that question. The Chamber, therefore, found that Nicaragua had shown to its satisfaction the existence of an interest of a legal nature which might be affected by its decision on those questions.

On the other hand, while the Chamber was thus satisfied that Nicaragua had a legal interest which might be affected by the decision of the Chamber on the question of whether or not the waters of the Gulf of Fonseca were subject to a condominium or a "community of interests" of the three riparian States, it could not accept the contention of Nicaragua that the legal interest of Nicaragua "would form the very subject-matter of the decision", in the sense in which that phrase was used in the case concerning *Monetary Gold Removed from Rome in 1943,* to describe the interests of Albania. It followed that the question of whether the Chamber would have power to take a decision on those questions, without the participation of Nicaragua in the proceedings, did not arise; but that conditions for an intervention by Nicaragua in that aspect of the case were nevertheless clearly fulfilled.

(ii) Possible delimitation of the waters

If the Chamber had not been satisfied that there was a condominium over the waters of the Gulf of such a kind as to exclude any delimitation, it might then have been called upon to effect a delimitation, if it had been satisfied that it had jurisdiction to do so. The Chamber had therefore to consider whether a decision as to delimitation of the waters of the Gulf might affect an interest of a legal nature appertaining to

Nicaragua, in order to determine whether Nicaragua should also be permitted to intervene in respect of that aspect of the case. It did not, however, have to consider the possible effect on Nicaragua's interests of every conceivable delimitation which might be arrived at; it is for the State seeking to intervene to show that its interests might be affected by a particular delimitation, or by delimitation in general. Honduras had already indicated in its pleadings how, in its view, the delimitation should be effected. El Salvador, consistently with its position, had not given its views on possible lines of delimitation. Nicaragua, for its part, had not given any indication of any specific line of delimitation which it considered would affect its interests.

The Chamber examined arguments put forward in the Nicaraguan Application as considerations supporting its assertion of a legal interest; it did not consider that an interest of a third State in the general legal rules and principles likely to be applied by the decision could justify an intervention, or that the taking into account of all the coasts and coastal relationships within the Gulf as a geographical fact for the purposes of a delimitation between El Salvador and Honduras meant that the interest of a third riparian State, Nicaragua, might be affected. The Chamber observed that the essential difficulty in which it found itself, on this matter of a possible delimitation within the waters of the Gulf, was that Nicaragua did not in its Application indicate any maritime spaces in which Nicaragua might have a legal interest which could be said to be such as to be affected by a possible delimitation line between El Salvador and Honduras.

Accordingly the Chamber was not satisfied that a decision in the instant case as to the law applicable to a delimitation, or effecting a delimitation, between Honduras and El Salvador, of the waters of the Gulf (except as regards the alleged "community of interests"), would affect Nicaragua's interests. The Chamber therefore considered that although Nicaragua had, for purposes of Article 62 of the Statute, shown an interest of a legal nature which might be affected by the Chamber's decision on the question of the existence or nature of the régime of condominium or community of interests within the Gulf of Fonseca, it had not shown such an interest which might be affected by the Chamber's decision on any question of delimitation within the Gulf. That finding also disposed of the question, referred to above, of the possible relevance of a decision in the island dispute.

3. *Legal situation of waters outside the Gulf* (paras. 80-84)

The Chamber then turned to the question of the possible effect on Nicaragua's legal interests of its future decision on the waters outside the Gulf. Honduras claims that by the Special Agreement

> "the Parties have necessarily endowed the Court with competence to delimit the zones of territorial sea and the exclusive economic zones pertaining to Honduras and El Salvador respectively"

and asks the Chamber to endorse the delimitation line advanced by Honduras for the waters outside the Gulf as "productive of an equitable solution". El Salvador interprets the Special Agreement as not authorizing the Chamber to effect any delimitation. Both Parties contended that Nicaragua had no legal interest which might be affected by the decision on the "legal situation" of the maritime spaces outside the Gulf and both Parties denied that the implementation by the Chamber of their respective interpretations of Article 2 could affect Nicaragua's legal interests.

The Chamber noted Honduras's demonstration of a proposed scheme of delimitation designed to avoid any impingement upon waters outside the Gulf which might conceivably be claimed by Nicaragua, upon which the Chamber could not pass in the

incidental proceedings, and before hearing argument on the merits. The demonstration did call for some response, in the form of an indication, by the State seeking to intervene, of how those proposals would affect a specific interest of that State, or what other possible delimitation would affect that interest. The charted proposition of Honduras thus gave Nicaragua the opportunity to indicate how the Honduran proposals might affect "to a significant extent" any possible Nicaraguan legal interest in waters west of that Honduran line. Nicaragua had failed to indicate how that delimitation, or any other delimitation regarded by it as a possibility, would affect an actual Nicaraguan interest of a legal nature. The Chamber therefore could not grant Nicaragua permission to intervene over the delimitation of the waters outside the Gulf closing line.

(b) *Object of the intervention* (paras. 85-92)

The Chamber then turned to the question of the object of Nicaragua's Application for permission to intervene in the case. A statement of the "precise object of the intervention" is required by Article 81, paragraph 2 (*b*), of the Rules of Court.

Nicaragua's indication, in its Application for permission to intervene, of the object of its intervention in the instant case, was as follows:

> "The intervention for which permission is requested has the following objects:
>
> *First,* generally to protect the legal rights of the Republic of Nicaragua in the Gulf of Fonseca and the adjacent maritime areas by all legal means available.
>
> *Secondly,* to intervene in the proceedings in order to inform the Court of the nature of the legal rights of Nicaragua which are in issue in the dispute. This form of intervention would have the conservative purpose of seeking to ensure that the determination of the Chamber did not trench upon the legal rights and interests of the Republic of Nicaragua . . ."

At the hearings, the Agent of Nicaragua emphasized its willingness to adjust to any procedure indicated by the Chamber. It had been contended, in particular by El Salvador, that Nicaragua's stated object was not a proper object.

In so far as the object of Nicaragua's intervention was "to inform the Court of the nature of the legal rights of Nicaragua which are in issue in the dispute", it could not be said that that object was not a proper one: it seemed indeed to accord with the function of intervention. The use in an Application to intervene of a perhaps somewhat more forceful expression ("trench upon the legal rights and interests") was immaterial, provided the object actually aimed at was a proper one. Secondly, it did not seem to the Chamber that for a State to seek by intervention "to protect its claims by all legal means" necessarily involved the inclusion in such means of "that of seeking a favourable judicial pronouncement" on its own claims. The "legal means available" must be those afforded by the institution of intervention for the protection of a third State's legal interests. So understood, that object could not be regarded as improper.

(c) *Basis of jurisdiction: valid link of jurisdiction* (paras. 93-101)

The Chamber further had to consider the argument of El Salvador that for Nicaragua to intervene it had in addition to show a "valid link of jurisdiction" between Nicaragua and the Parties. In its Application, Nicaragua did not assert the existence of

any basis of jurisdiction other than the Statute itself, and expressed the view that Article 62 did not require a separate title of jurisdiction.

The question was whether the existence of a valid link of jurisdiction with the parties to the case — in the sense of a basis of jurisdiction which could be invoked, by a State seeking to intervene in order to institute proceedings against either or both of the parties — is an essential condition for the granting of permission to intervene under Article 62 of the Statute. In order to decide the point the Chamber had to consider the general principle of consensual jurisdiction in its relation with the institution of intervention.

There can be no doubt of the importance of this general principle. The pattern of international judicial settlement under the Statute is that two or more States agree that the Court shall hear and determine a particular dispute. Such agreement may be given *ad hoc*, by Special Agreement or otherwise, or may result from the invocation, in relation to the particular dispute, of a compromissory clause of a treaty or of the mechanism of Article 36, paragraph 2, of the Court's Statute. Those States are the "parties" to the proceedings, and are bound by the Court's eventual decision because they have agreed to confer jurisdiction on the Court to decide the case, the decision of the Court having binding force as provided for in Article 59 of the Statute. Normally, therefore, no other State may involve itself in the proceedings without the consent of the original parties. Nevertheless, procedures for a "third" State to intervene in a case are indicated in Articles 62 and 63 of the Court's Statute. The competence of the Court in this matter of intervention is not, like its competence to hear and determine the dispute referred to it, derived from the consent of the parties to the case, but from the consent given by them, in becoming parties to the Court's Statute, to the Court's exercise of its powers conferred by the Statute. Thus the Court has the competence to permit an intervention even though it be opposed by one or both of the parties to the case. The nature of the competence thus created by Article 62 of the Statute is definable by reference to the object and purpose of intervention, as this appears from Article 62 of the Statute.

Intervention under Article 62 of the Statute is for the purpose of protecting a State's "interest of a legal nature" that might be affected by a decision in an existing case already established between other States, namely the parties to the case. It is not intended to enable a third State to tack on a new case, to become a new party, and so have its own claims adjudicated by the Court. Intervention cannot have been intended to be employed as a substitute for contentious proceedings. Acceptance of the Statute by a State does not of itself create jurisdiction to entertain a particular case: the specific consent of the parties is a prerequisite of that jurisdiction. If an intervener were held to become a party to a case merely as a consequence of being permitted to intervene in it, this would be a very considerable departure from the principle of consensual jurisdiction. It is therefore clear that a State which is allowed to intervene in a case does not, by reason only of being an intervener, become also a party to the case.

It thus follows from the juridical nature and from the purposes of intervention that the existence of a valid link of jurisdiction between the would-be intervener and the parties is not a requirement for the success of the application. On the contrary, the procedure of intervention is to ensure that a State with possibly affected interests may be permitted to intervene even though there is no jurisdictional link and it therefore cannot become a party. The Chamber therefore concluded that the absence of a jurisdictional link between Nicaragua and the Parties to this case was no bar to permission being given for intervention.

IV. *Procedural rights of State permitted to intervene* (paras. 102-104)

Since this was the first case in the history of the two Courts in which a State would have been accorded permission to intervene under Article 62 of the Statute, it appeared appropriate to give some indication of the extent of the procedural rights acquired by the intervening State as a result of that permission. In the first place, as has been explained above, the intervening State does not become party to the proceedings, and does not acquire the rights, or become subject to the obligations, which attach to the status of a party under the Statute and Rules of Court, or the general principles of procedural law. Nicaragua, as an intervener, has of course a right to be heard by the Chamber. That right is regulated by Article 85 of the Rules of Court, which provides for submission of a written statement, and participation in the hearings.

The scope of the intervention in this particular case, in relation to the scope of the case as a whole, necessarily involved limitations of the right of the intervener to be heard. An initial limitation was that it was not for the intervener to address argument to the Chamber on the interpretation of the Special Agreement concluded between the Parties on 24 May 1986, because the Special Agreement was, for Nicaragua, *res inter alios acta;* and Nicaragua had disclaimed any intention of involving itself in the dispute over the land boundary. The Chamber then summarized the aspects of the case in respect of which Nicaragua had shown the existence of an interest of a legal nature and those in respect of which it had not, with the consequent limitations on the scope of the intervention permitted.

Operative clause (para. 105)

"THE CHAMBER,

Unanimously,

1. *Finds* that the Republic of Nicaragua has shown that it has an interest of a legal nature which may be affected by part of the Judgment of the Chamber on the merits in the present case, namely its decision on the legal regime of the waters of the Gulf of Fonseca, but has not shown such an interest which may be affected by any decision which the Chamber may be required to make concerning the delimitation of those waters, or any decision as to the legal situation of the maritime spaces outside the Gulf, or any decision as to the legal situation of the islands in the Gulf;

2. *Decides* accordingly that the Republic of Nicaragua is permitted to intervene in the case, pursuant to Article 62 of the Statute, to the extent, in the manner and for the purposes set out in the present Judgment, but not further or otherwise."

*

Judge Oda appended a separate opinion as to the Judgment.[316]

*

By an Order of 14 September 1990,[317] the President of the Chamber, having ascertained the views of the Parties and of the intervening State, fixed 14 December 1990 as the time-limit for the submission by Nicaragua of a written statement and 14 March 1991 as the time-limit within which the Parties might, if they so desired, fur-

nish their written observations on the written statement of Nicaragua. Both the written statement by Nicaragua and the written observations thereon by the two Parties were filed within the prescribed time-limit.

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6. INTERNATIONAL LAW COMMISSION[318]

FORTY-SECOND SESSION OF THE COMMISSION[319]

The International Law Commission held its forty-second session at Geneva from 1 May to 20 July 1990. The Commission considered all items on its agenda.

On the question of the draft Code of Crimes against the Peace and Security of Mankind, the Commission had before it the eighth report of the Special Rapporteur on the topic,[320] which contained in particular three draft articles dealing respectively with complicity, conspiracy and attempt as well as two draft articles on illicit traffic in narcotic drugs. The report also contained a section entitled "Statute of an international criminal court". At the conclusion of its discussion, the Commission referred to the Drafting Committee the above-mentioned draft articles, together with revised versions thereof submitted by the Special Rapporteur in the light of the debate. Moreover, the Commission provisionally adopted, on the recommendation of the Drafting Committee, three new articles on the topic (with commentaries thereto) for inclusion in Chapter II of the Code, namely article 16 ("International terrorism"), article 18 ("Recruitment, use, financing and training of mercenaries"), and article X ("Illicit traffic in narcotic drugs"). The Commission also discussed the question of an article on breaches of treaties designed to ensure international peace and security, but it was not able to agree on guidelines for the future work of the Drafting Committee on this question. Furthermore, the Commission established a Working Group to consider the request addressed to it by the General Assembly in its resolution 44/39 of 4 December 1989 on the question of establishing an international criminal court or other international criminal trial mechanism with jurisdiction over persons alleged to have committed certain crimes. The Commission's examination of the question reflected a broad agreement in principle on the desirability of the establishment of a permanent international criminal court to be brought into relationship with the United Nations system, although different views were expressed as to the structure and scope of jurisdiction of such a court.[321]

Regarding the question of jurisdictional immunities of States and their property, the Commission had before it the third report of the Special Rapporteur[322] which contained, for a number of the articles adopted on first reading, revised texts proposed by the Special Rapporteur. At the conclusion of its discussions, the Commission referred articles 12 to 28 to the Drafting Committee. The Commission received from the Drafting Committee a report containing 16 articles adopted on second reading by the Commission at the current session. It took note of the report and decided to defer action on it until the next session.

With respect to the question of the law on the non-navigational uses of international watercourses, the Commission's discussions were held on the basis of the second part of the fifth report of the Special Rapporteur,[323] which contained in particular two draft articles respectively entitled "Relationship between navigational and non-navigational uses: absence of priority among users" and "Regulation of international

watercourses", as well as on the basis of the first part of the Special Rapporteur's sixth report,[324] which contained in particular three draft articles respectively entitled "Joint institutional management", "Protection of water resources and installations" and "Status of international watercourses and water installations in time of armed conflict" as well as an annex entitled "Implementation of the draft articles". At the conclusion of its discussions, the Commission referred to the Drafting Committee the above-mentioned draft articles as well as article 3, paragraph 1, and article 4 of the annex. The Commission furthermore provisionally adopted six new articles on the topic (with commentaries thereto), namely articles 22 ("Protection and preservation of ecosystems"), 23 ("Prevention, reduction and control of pollution"), 24 ("Introduction of alien or new species") and 25 ("Protection and preservation of the marine environment"), comprising part IV of the draft, entitled ("Protection and preservation"), as well as articles 26 ("Prevention and mitigation of harmful conditions") and 27 ("Emergency situations"), comprising part V, entitled "Harmful conditions and emergency situations". The second part of the sixth report of the Special Rapporteur[325] was not discussed for lack of time.

Regarding the question of State responsibility, the Commission had before it the second report of the Special Rapporteur,[326] which contained, *inter alia*, three draft articles respectively entitled "Reparation by equivalent", "Interest" and "Satisfaction and guarantees of non-repetition". At the conclusion of its discussions, the Commission referred all three draft articles to the Drafting Committee.

On the question of relations between States and international organizations (second part of the topic), the Commission's discussions were held on the basis of the fourth report of the Special Rapporteur,[327] which contained 11 draft articles, namely articles 1 to 4 comprising part I, entitled "Introduction"; articles 5 and 6 comprising part II, entitled "Legal personality"; and articles 7 to 11 comprising part III, entitled "Property, funds and assets". At the conclusion of its discussions, the Commission referred all 11 articles to the Drafting Committee. The fifth report of the Special Rapporteur[328] was not discussed for lack of time.

Regarding the question of international liability for injurious consequences arising out of acts not prohibited by international law, the Commission had before it the sixth report of the Special Rapporteur,[329] which contained, *inter alia,* 33 articles, namely articles 1 to 5 comprising chapter I, entitled "General provisions"; articles 6 to 10 comprising chapter II, entitled "Principles"; articles 11 to 20 comprising chapter III, entitled "Prevention"; articles 21 to 27 comprising chapter IV, entitled "Liability"; and articles 28 to 33 comprising chapter V, entitled "Civil liability". At the conclusion of its discussions, the Commission decided to revert at its next session to some policy and technical issues raised in the sixth report.

Consideration by the General Assembly

At its forty-fifth session, the General Assembly had before it the report of the International Law Commission on the work of its forty-second session.[330] By its resolution 45/41 of 28 November 1990,[331] adopted on the recommendation of the Sixth Committee,[332] the General Assembly took note of the report of the International Law Commission on the work of its forty-second session; requested the Commission to continue its work on the topics in its current programme, listed as items 3 to 8 in paragraph 9 of its report; invited the Commission, as it continued its work on the elaboration of the draft Code of Crimes against the Peace and Security of Mankind, to consider further and analyse the issues raised in its report concerning the question of

an international criminal jurisdiction, including the possibility of establishing an international criminal court or other international criminal trial mechanism; and expressed its appreciation for the efforts of the Commission to improve its procedures and methods of work, and to formulate proposals on its future programme of work.

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7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW[333]

TWENTY-THIRD SESSION OF THE COMMISSION[334]

The United Nations Commission on International Trade Law held its twenty-third session in New York from 25 June to 6 July 1990.

In connection with the question of international countertrade, the Commission had before it a report entitled "Draft legal guide on drawing up contracts in international countertrade transactions: sample chapters".[335] At the conclusion of its discussion on the report the Commission noted that there had been general agreement with the overall approach taken by the Secretariat in the draft chapters, both as to the structure of the legal guide and as to the nature of the description and advice contained therein. As to the procedure that should be followed to complete the preparation of the legal guide, the Commission decided that the Secretariat should prepare the remaining chapters and submit them, together with draft chapter VII,[336] to a working group for consideration. Furthermore, the Commission decided that the Secretariat should redraft the chapters submitted to it at its current session and the chapters to be submitted to the Working Group in the light of the discussion at the current session and at the session of the Working Group and should submit the final text of the legal guide to the Commission at its twenty-fifth session, to be held in 1992.

With respect to international payments, the Commission had before it the reports of the Working Group on the work of its nineteenth[337] and twentieth[338] sessions, which indicated that the Group had continued its consideration of the draft Model Law on International Credit Transfers. The Commission expressed its confidence that the Working Group would be able to resolve the outstanding issues before it so that a text could be presented to the Commission at its twenty-fourth session.

With regard to the question of procurement, the Commission had before it the report of the Working Group on the work of its eleventh session,[339] at which the Group had considered the draft of a model law on procurement prepared by the Secretariat.[340] During the discussion in the Commission the view was expressed that the work on the model law should take into account its possible relevance to procurement conducted by private companies. It was stated that for certain large purchases such companies were increasingly resorting to the types of procedures laid down in the draft model law. The Commission expressed appreciation for the work performed by the Working Group so far and requested it to proceed with its work expeditiously.

In connection with the question of guarantees and stand-by letters of credit, the Commission discussed the report of the Working Group on the work of its thirteenth session.[341] The Commission noted that the Working Group had commenced its work by considering possible issues of a uniform law as discussed in a note by the Secretariat.[342] Those issues related to the substantive scope of the uniform law, party autonomy and its limits, and possible rules of interpretation. The Commission also noted

that the Working Group had engaged in a preliminary exchange of views on issues relating to the form and time of establishment of the guarantee or stand-by letter of credit. The Commission further noted that the Working Group had requested the Secretariat to submit to the next session of the Group a first draft set of articles, with possible variants, on the above issues as well as a note discussing other possible issues to be covered by the uniform law. The Commission expressed its appreciation for the progress made by the Working Group so far and requested it to continue carrying out its task expeditiously.

The Committee also had before it the report entitled "Preliminary study of legal issues related to the formation of contracts by electronic means".[343] The report noted that in prior reports the subject had been considered under the general heading of "automatic data processing" (ADP) but that, in recent years, the term generally used to describe the use of computers for business applications had been changed to "electronic data interchange" (EDI). The Commission expressed its appreciation for the report submitted to it and requested the Secretariat to continue its examination of the legal issues related to the formation of contracts by electronic means and to prepare for the Commission at its twenty-fourth session the report that had been suggested. The Commission expressed the wish that the report would give it the basis on which to decide at that time what work might be undertaken by the Commission in the field.

With regard to the question of coordination of work, the Commission considered a report of the Secretary-General on current activities of international organizations related to the harmonization and unification of international trade law.[344] The Commission noted that the report was a valuable compilation of information on the activities of international organizations in this field and that it assisted the Commission in developing its own programme of work and fostering coordination in the activities of the various international organizations.

With respect to training and assistance, the Commission had before it a note by the Secretariat that set out the activities that had been carried out in this respect during the prior year as well as possible future activities in that field.[345] The Commission expressed its approval of the activities of the Secretariat that had led to the expanded programme of seminars and symposia. It requested the Secretariat to continue its efforts to secure the financial, staff and administrative support necessary to place the programme on a firm and continuing basis.

Consideration by the General Assembly

At its forty-fifth session, the General Assembly, by its resolution 45/42 of 28 November 1990,[346] adopted on the recommendation of the Sixth Committee,[347] took note with appreciation of the report of the United Nations Commission on International Trade Law on the work of its twenty-third session; reaffirmed the mandate of the Commission, as the core legal body within the United Nations system in the field of international trade law, to coordinate legal activities in this field in order to avoid duplication of effort and to promote efficiency, consistency and coherence in the unification and harmonization of international trade law; called upon the Commission to continue to take account of the relevant provisions of the resolutions concerning the new international economic order, as adopted by the General Assembly at its sixth[348] and seventh[349] special sessions; and repeated its invitation to those States which had not yet done so to consider signing, ratifying or acceding to the conventions elaborated under the auspices of the Commission.

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

(*a*) Observer status of national liberation movements recognized by the Organization of African Unity and/or by the League of Arab States

By its resolution 45/37 of 28 November 1990,[350] adopted on the recommendation of the Sixth Committee,[351] the General Assembly urged all States that had not done so, in particular those which were host to international organizations or to conferences convened by, or held under the auspices of, international organizations of a universal character, to consider as soon as possible the question of ratifying, or acceding to, the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character[352] and called once more upon the States concerned to accord to the delegations of the national liberation movements recognized by the Organization of African Unity and/or by the League of Arab States and accorded observer status by international organizations, the facilities, privileges and immunities necessary for the performance of their functions, in accordance with the provisions of the above-mentioned Convention.

(*b*) Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts

By its resolution 45/38 of 28 November 1990,[353] adopted on the recommendation of the Sixth Committee,[354] the General Assembly appreciated the virtually universal acceptance of the Geneva Conventions of 1949[355] and the increasingly wide acceptance of the two additional protocols;[356] appealed to all States parties to the Geneva Conventions of 1949 that had not done so to consider becoming parties also to the Additional Protocols at the earliest possible date; and called upon all States becoming parties to Protocol I to consider making the declaration provided for under article 90 of that Protocol.

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

By its resolution 45/39 of 28 November 1990,[357] adopted on the recommendation of the Sixth Committee,[358] the General Assembly took note of the report of the Secretary-General;[359] urged States to observe, implement and enforce the principles and rules of international law governing diplomatic and consular relations and, in particular, to ensure, in conformity with their international obligations, the protection, security and safety of the diplomatic and consular missions and representatives to international intergovernmental organizations and officials of such organizations officially present in territories under their jurisdiction, including practical measures to prohibit in their territories illegal activities of persons, groups and organizations that encouraged, instigated, organized, or engaged in the perpetration of acts against the security and safety of such missions, representatives and officials; also urged States to take all necessary measures at the national and international levels to prevent any acts of violence against the above-mentioned missions, representatives and officials and to bring offenders to justice; and called upon States that had not yet done so to consider becoming parties to the instruments relevant to the protection, security and safety of diplomatic and consular missions and representatives.

(*d*) United Nations Decade of International Law

By its resolution 45/40 of 28 November 1990,[360] adopted on the recommendation of the Sixth Committee,[361] the General Assembly, expressing its appreciation for the Secretary-General's report on the United Nations Decade of International Law[362] and having considered the report of the Sixth Committee on the matter,[363] adopted the programme for the activities to be commenced during the first term (1990-1992) of the Decade as an integral part of the resolution, to which it was annexed; and invited all international organizations and institutions referred to in the programme to undertake the relevant activities outlined therein.

ANNEX

Programme for the activities to be commenced during the first term (1990-1992) of the United Nations Decade of International Law

I. Promotion of the acceptance of and respect for the principles of international law

1. The General Assembly, bearing in mind that maintenance of international peace and security is the underlying condition for the success of the implementation of the programme of the United Nations Decade of International Law, calls upon States to act in accordance with international law, and particularly the Charter of the United Nations.

2. States are invited to consider, if they have not yet done so, becoming parties to existing multilateral treaties, in particular those relevant to the progressive development of international law and its codification. International organizations under whose auspices such treaties are concluded are invited to indicate whether they publish periodic reports on the status of ratifications of and accessions to multilateral treaties and, if they do not, to indicate whether in their view such a process would be useful. Consideration should be given to the question of treaties which have not achieved wider participation or entered into force after a considerable lapse of time and the circumstances causing the situation.

3. States and international organizations are encouraged to provide assistance and technical advice to States, in particular to developing countries, to facilitate their participation in the process of multilateral treaty-making, including their adherence to and implementation of such multilateral treaties.

4. States are encouraged to report to the Secretary-General on ways and means, as provided for by the multilateral treaties to which they are parties, regarding the implementation of such treaties. The Secretary-General is requested to prepare a report on the basis of this information and to submit it to the General Assembly.

II. Promotion of means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice

1. The United Nations system of organizations and regional organizations, including the Asian-African Legal Consultative Committee, as well as the International Law Association, the Institute of International Law, the Hispano-Luso-American Institute of International Law and other international institutions working in the field of international law, and national societies of international law, are invited to study the means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice, and to present suggestions for the promotion thereof to the Sixth Committee.

2. States are invited to make proposals to the Sixth Committee in respect of the promotion of means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice.

3. The Sixth Committee is requested to consider, taking into account the above-mentioned suggestions and proposals, and, where appropriate, on the basis of a report of the Special

Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, or of the Working Group on the United Nations Decade of International Law, the following questions:

(*a*) Strengthening the use of means and methods for the peaceful settlement of disputes, with particular attention to the role to be played by the United Nations, as well as methods for early identification and prevention of disputes and their containment;

(*b*) Procedures for the peaceful settlement of disputes arising in specific areas of international law;

(*c*) Ways and means of encouraging greater recognition of the role of the International Court of Justice and its wider use in the peaceful settlement of disputes;

(*d*) Enhancement of cooperation of regional organizations with the United Nations system of organizations in respect of the peaceful settlement of disputes.

III. Encouragement of the progressive development of international law and its codification

1. International organizations, including the United Nations system of organizations and regional organizations, are invited to submit to the Secretary-General of the United Nations summary information regarding the programmes and results of their work relevant to the progressive development of international law and its codification, including their suggestions for future work in their specialized field, with an indication of the appropriate forum to undertake such work. Similarly, the Secretary-General is requested to prepare a report on the relevant activities of the United Nations, including those of the International Law Commission. Such information should be presented in a report by the Secretary-General to the Sixth Committee.

2. On the basis of the information mentioned in paragraph 1 of the present section, States are invited to submit suggestions for consideration by the Sixth Committee and, as appropriate, recommendations. In particular, efforts should be made to identify areas of international law which might be ripe for progressive development or codification.

3. The Sixth Committee is requested to study, taking into account General Assembly resolution 684 (VII) of 6 November 1952, its coordinating role with respect to, *inter alia*, the drafting of provisions of a legal nature and the consistent use of legal terminology in international instruments adopted by the General Assembly.

4. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization is requested to continue studying possible measures to strengthen the United Nations system for the maintenance of international peace and security. States, particularly those that proposed the inclusion of this question in the programme for the Decade, are invited to present draft texts to the Secretary-General or the Special Committee for consideration.

IV. Encouragement of the teaching, study, dissemination and wider appreciation of international law

1. The Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law is requested, in the context of the Decade, to formulate relevant guidelines for the Programme's activities and to report to the Sixth Committee on the activities carried out under the Programme in accordance with such guidelines. Special emphasis should be given to supporting academic and professional institutions already carrying out research and education in international law, as well as to encouraging the establishment of such institutions where they might not exist, particularly in the developing countries. States are encouraged to contribute to the strengthening of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law.

2. States should encourage their educational institutions to introduce courses in international law for students studying law, political science, social sciences and other relevant disciplines; they should study the possibility of introducing topics of international law in the curricula of schools at the primary and secondary levels. Cooperation between institutions at the univer-

sity level among developing countries, on the one hand, and their cooperation with those of developed countries on the other, should be encouraged.

3. States should consider convening conferences of experts at the national and regional levels in order to study the question of preparing model curricula and materials for courses in international law, training of teachers in international law, preparation of textbooks on international law and the use of modern technology to facilitate the teaching of and research in international law.

4. *The United Nations system of organizations, regional organizations and States* should consider organizing seminars, symposia, training courses, lectures and meetings and undertaking studies on various aspects of international law. States and regional organizations have already expressed their readiness to undertake such activities on the following subjects: developing countries and international law (China); developing countries and international legislation on the environment (China); law of the sea (Yugoslavia); joint ventures in deep seabed mining (Asian-African Legal Consultative Committee); and promotion of the ratification of the United Nations conventions on refugees (Asian-African Legal Consultative Committee).

5. States are encouraged to organize special training in international law for legal professionals, including judges, and personnel of ministries of foreign affairs and other relevant ministries. The United Nations Institute for Training and Research, the United Nations Educational, Scientific and Cultural Organization, the Hague Academy of International Law and regional organizations are invited to cooperate in this respect with States.

6. Cooperation among developing countries, as well as between developed and developing countries, in particular among those persons who are involved in the practice of international law, for exchanging experience and for mutual assistance in the field of international law, including assistance in providing textbooks and manuals of international law, is encouraged.

7. In order to make better known the practice of international law, States, regional and other international organizatons should endeavour to publish, if they have not done so, summaries, repertories or yearbooks of their practice.

8. It would be conducive to the teaching and dissemination of international law if all judgments and advisory opinions of the International Court of Justice were available in all official languages of the United Nations. As envisaged in General Assembly resolution 44/28 of 4 December 1989 and bearing in mind the wishes expressed by States, the Sixth Committee will consider, at the forty-sixth session of the Assembly, the Secretary-General's report containing a study of alternative means of making the publications of the International Court of Justice available in all the other official languages in addition to French and English, within the existing overall level of appropriations and in a way which meets the concerns expressed by the Court. Such a study should also consider the possibility, within existing overall level of appropriations, of compiling and publishing thematic and analytical summaries of the judgments and advisory opinions of the International Court of Justice.

9. Other international courts and tribunals, including the European Court of Human Rights and the Inter-American Court of Human Rights, are invited to disseminate more widely their judgements and advisory opinions, and to consider preparing thematic or analytical summaries thereof.

10. International organizatons are requested to publish treaties concluded under their auspices, if they have not yet done so. Timely publication of the United Nations *Treaty Series* is encouraged and efforts directed towards adopting an electronic form of publication should be continued. Timely publication of the *United Nations Juridical Yearbook* is also encouraged.

V. Procedures and organizational aspects

1. The Sixth Committee, working primarily through its Working Group and with the assistance of the Secretariat, will be the coordinating body of the programme for the United Nations Decade of International Law. The question of the use of an intra-sessional, inter-sessional or existing body to carry out specific activities of the programme may be considered by the General Assembly.

2. The Sixth Committee is requested to continue to prepare the programme of activities for the Decade.

3. All the organizations and institutions referred to and invited to submit reports to the Secretary-General under sections I to IV above are requested to submit interim or final reports preferably at the forty-sixth session but not later than the forty-seventh session of the General Assembly.

4. States are encouraged to establish, as necessary, national, subregional and regional committees which may assist in the implementation of the programme for the Decade. Non-governmental organizations are encouraged to promote the purposes of the Decade within the fields of their activities, as appropriate.

5. It is recognized that, within the existing overall level of appropriations, adequate financing for the implementation of the programme for the Decade is necessary and should be provided. Voluntary contributions from Governments, international organizations and other sources, including the private sector, would be useful and are strongly encouraged. To this end, the establishment of a trust fund to be administered by the Secretary-General might be considered by the General Assembly.

(*e*) Consideration of the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and of the draft optional protocols thereto

By its resolution 45/43 of 28 November 1990,[364] adopted on the recommendation of the Sixth Committee,[365] the General Assembly expressed its satisfaction at the useful informal consultations that had been held during its forty-fifth session to study the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and the draft optional protocols thereto,[366] as well as the question of how to deal further with those draft instruments with a view to facilitating the reaching of a generally acceptable decision in the latter respect, and took note of the oral report of the Chairman of the Sixth Committee on those consultations;[367] and decided that those informal consultations would be resumed at its forty-sixth session.

(*f*) Questions concerning the Charter of the United Nations and the strengthening of the role of the Organization

In accordance with General Assembly resolution 44/37 of 4 December 1989, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization met at United Nations Headquarters from 12 February to 2 March 1990.[368]

With respect to the topic of the maintenance of international peace and security, the Special Committee had before it a revised version of a working paper entitled "Fact-finding by the United Nations to assist in the maintenance of international peace and security" submitted by Belgium, the Federal Republic of Germany, Italy, Japan, New Zealand and Spain at the 1989 session of the Committee[369] and a revised version of a working paper entitled "Fact-finding activities by the United Nations in the context of the maintenance of international peace and security" submitted by Czechoslovakia and the German Democratic Republic at the 1989 session of the Committee.[370] The working papers were discussed by the Special Committee's Working Group jointly. On the basis of that discussion and further work done by the co-sponsors, a unified document was prepared and presented by the co-sponsors.[371] The first

12 paragraphs of the document were subject to extensive comments during the informal consultations held by the Chairman, while the rest of the paragraphs benefited from general observations. In the Working Group, the Chairman observed that the document had been generally welcomed and the efforts of the co-sponsors in producing it appreciated.

Dealing with the topic of the peaceful settlement of disputes between States, the Special Committee held a general exchange of views on the question since there were no specific proposals before the Committee on this item of its mandate. Moreover, the Special Committee examined the report of the Secretary-General on the progress of work on the draft handbook on the peaceful settlement of disputes between States.[372] The Committee took note of the report.

With regard to the topic of the rationalization of existing procedures of the United Nations, the Special Committee had before it a revised version of a draft document submitted by France and the United Kingdom,[373] a proposal contained in a conference room paper submitted by the Union of Soviet Socialist Republics at its 1989 session and set out in paragraph 101 of that session's report[374] and a document submitted by the Chairman following informal consultations.[375] As a result of intensive work, the Special Committee completed the draft document on the rationalization of existing United Nations procedures, which it submitted to the General Assembly for consideration and adoption.

The Special Committee had also before it a document entitled "New issues for consideration in the Special Committee", submitted by the Union of Soviet Socialist Republics,[376] which was not considered during the session.

At its forty-fifth session, by its resolution 45/44 of 28 November 1990,[377] adopted on the recommendation of the Sixth Committee,[378] the General Assembly took note of the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization and requested the Special Committee, at its session in 1991:

(*a*) to accord priority to the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations and, in that context:

(i) to endeavour to complete its consideration of the proposal on fact-finding by the United Nations in the field of the maintenance of international peace and security with a view to submitting its conclusions to the General Assembly at its forty-sixth session;

(ii) to consider the proposals relating to the maintenance of international peace and security that had been submitted to the Special Committee during its session in 1990, as well as those which might be submitted to it at its session in 1991;

(*b*) to continue its work on the question of the peaceful settlement of disputes between States and, in that context:

(i) to consider proposals relating to that question that might be submitted to the Special Committee;

(ii) to consider the final text of the draft handbook on the peaceful settlement of disputes between States with a view to recommending its publication to the General Assembly at its forty-sixth session. Moreover, by its resolution 45/45 of the same date,[379] adopted also on the recommendation of the Sixth Committee,[380] the General Assembly approved the conclusions of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization concerning

the rationalization of existing United Nations procedures, as set forth in the annex to the resolution; and decided that those conclusions should be reproduced as an annex to its rules of procedure.

ANNEX

Conclusions of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization concerning the rationalization of existing United Nations procedures

1. Without prejudice to Article 18 of the Charter of the United Nations and with a view to facilitating the work of the United Nations, including, whenever possible, the adoption by the General Assembly of agreed texts of resolutions and decisions, informal consultations should be carried out with the widest possible participation of Member States.

2. When an electronic voting system is available for recording how votes were cast, a roll-call vote should as far as possible not be requested.

3. Before the end of each session of the General Assembly, the General Committee should, in the light of the experience it has acquired during that session, consider drawing up its observations on the organization of the work of the session, with a view to facilitating the organization of the work of future sessions of the Assembly.

4. The agenda of the General Assembly should be simplified by grouping or merging, to the extent possible, related items and, where it is appropriate for discussion of a particular item, by setting an interval of more than a year between the discussions on it. For this purpose, the Chairman of the Main Committee concerned or, as appropriate, the President of the Assembly, should undertake consultations with delegations.

5. The General Committee should consider, at the beginning of each session of the General Assembly, recommending that certain Main Committees should meet in sequential order, taking into account such matters as the number of meetings required for the consideration of the questions with which they are charged at that session, the organization of the work of the whole session and the problem of participation of smaller delegations.

6. In making recommendations as to how agenda items should be allocated to the Main Committees and to the plenary Assembly, the General Committee should ensure the best use of the expertise of the Committees.

7. When the General Assembly considers whether it needs to establish subsidiary organs, in accordance with Article 22 of the Charter, it should give careful consideration as to whether the subject-matter in question could be dealt with by existing organs, including its Main Committees and their working groups. Subsidiary organs should seek constantly to improve their procedures and methods of work in order to ensure effective consideration of questions allocated to them by the Assembly.

8. The dates and length of the sesssions of bodies of the General Assembly that meet inter-sessionally should be determined as soon as possible by the Assembly, as appropriate, following advice from the Committee on Conferences, on the proposal of the Secretary-General. The Assembly should take account of the past experience, the state of current work in regard to the mandate given to the body in question and the need to avoid as far as possible overlapping meetings of bodies that deal with subject-matter of a similar nature.

9. Informal consultations about the work of bodies of the General Assembly that meet inter-sessionally should continue to be held in advance of the sessions of such bodies in order to facilitate the conduct of their sessions, especially as regards the composition of the bureau and the organization of work.

10. Resolutions should request observations from States or reports by the Secretary-General in so far as they are likely to facilitate the implementation of the resolutions or the continued examination of the question.

9. RESPECT FOR THE PRIVILEGES AND IMMUNITIES OF OFFICIALS OF THE UNITED NATIONS AND THE SPECIALIZED AGENCIES AND RELATED ORGANIZATIONS

By its resolution 45/240 of 21 December 1990,[381] adopted on the recommendation of the Fifth Committee,[382] the General Assembly, recalling Articles 100 and 105 of the Charter of the United Nations, took note with grave concern of the report of the Secretary-General,[383] submitted on behalf of the Administrative Committee on Coordination, and of the developments indicated therein, in particular the significant number of new cases of arrest and detention; called upon all Member States scrupulously to respect the privileges and immunities enjoyed by officials of the United Nations and the specialized agencies and related organizations and to refrain from any acts that would impede such officials in the performance of their functions, thereby seriously affecting the proper functioning of the organizations; urged Member States and others responsible for the illegal detention of United Nations staff members to release them immediately; called upon those Member States holding under arrest or detention officials of the United Nations and the specialized agencies and related organizations to enable the Secretary-General or the executive head of the organization concerned to exercise fully the right of functional protection inherent in the relevant multilateral conventions and bilateral agreements, particularly with respect to immediate access to detained staff members; called upon the staff of the United Nations and the specialized agencies and related organizations to comply fully with the provisions of Article 100 of the Charter and with the obligations resulting from the Staff Regulations and Rules of the United Nations, in particular regulation 1.8, and from the equivalent provisions governing the staff of the other agencies; took note with concern of the restrictions on duty travel of officials as indicated in the report of the Secretary-General; urged all Member States that had not yet become parties to the existing international legal instruments covering the question of privileges and immunities of officials, in particular to the Convention on the Privileges and Immunities of the United Nations[384] and the Convention on the Privileges and Immunities of the Specialized Agencies,[385] to do so promptly; welcomed the advisory opinion of 15 December 1989 of the International Court of Justice on the applicability of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations[386] that that section was applicable to persons other than United Nations officials to whom a mission had been entrusted by the Organization and who were therefore entitled to enjoy the privileges and immunities provided for in that section with a view to the independent exercise of their function; and requested the Secretary-General, as Chairman of the Administrative Committee on Coordination, to review and appraise the measures already taken to enhance the proper functioning, safety and protection of international civil servants.

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10. COOPERATION BETWEEN THE UNITED NATIONS AND THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

By its resolution 45/4 of 16 October 1990,[387] the General Assembly noted with appreciation the continuing efforts of the Asian-African Legal Consultative Committee towards strengthening the role of the United Nations and its various organs,

including the International Court of Justice, through programmes and initiatives undertaken by the Consultative Committee; noted with satisfaction the commendable progress achieved towards enhancing cooperation between the United Nations and the Consultative Committee in wider areas; and noted with appreciation the decision of the Consultative Committee to participate actively in the programmes of the United Nations Decade of International Law.

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11. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH[388]

UNITAR's training programme included courses in multilateral diplomacy, international law and international cooperation for members of permanent missions to the United Nations in New York and at Geneva as well as workshops on international legal instruments and the structure, retrieval and use of United Nations documentation as well as a hi-tech symposium on computer-communication systems in the 1990s.

UNITAR also continued to organize at The Hague the joint United Nations/UNITAR international law fellowship programme for government legal advisers from developing countries, in conjunction with the summer session of the Hague Academy of International Law, as well as the international law seminar at Geneva.

Under UNITAR's research programme several publications on the United Nations and on multilateral diplomacy and international cooperation were issued. They include: *International Administration: Law and management practices in international organizations;* Sidney Dell, *The United Nations and International Business;* Shabtai Rosenne and Terry D. Gill, *The World Court: What It Is and How It Works; The United Nations System at Geneva — Scope and Practices of Multilateral Diplomacy and Cooperation.*

At its forty-fifth session, the General Assembly, by its resolution 45/219 of 21 December 1990,[389] adopted on the recommendation of the Second Committee,[390] took note of the report of the Secretary-General prepared pursuant to General Assembly resolution 44/175[391] and the report of the Executive Director of the United Nations Institute for Training and Research; and requested the Secretary-General to appoint an appropriately qualified high-level independent consultant who would submit a report directly to the Secretary-General containing, *inter alia*, recommendations on the continued relevance of the mandate of the Institute, taking into account the relevant resolutions of the General Assembly and other research and training activities of the United Nations system, a review and assessment of all aspects of the current activities of the Institute and their benefits to the United Nations and its Member States, *inter alia,* in the fields of the maintenance of peace and security and the promotion of economic and social development, and an assessment of whether those activities could be more effectively carried out by the Institute or by other bodies in the United Nations system; as well as on the feasibility of utilizing the facilities of the Institute for the training of personnel for peace-keeping operations.

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

1. INTERNATIONAL LABOUR ORGANISATION[392]

The International Labour Conference (ILC), which held its 77th session at Geneva in June 1990, adopted certain amendments to its Standing Orders:[393]

(*a*) Amendments to article 2, paragraph 3 (*j*) (Right of admission to sittings of the Conference);

(*b*) A new paragraph 4 to article 2 (Right of admission to sittings of the Conference);

(*c*) Amendments to article 19, paragraph 7 (Methods of voting (in the Plenary));

(*d*) A new paragraph 14 to article 19 (Methods of voting (in the Plenary));

(*e*) A new paragraph 11 to article 65 (Methods of voting (in the Conference Committees));

(*f*) A new section J (Suspension of a provision of the Standing Orders), article 76, to part II (Standing Orders concerning special subjects).

The International Labour Conference at the same session adopted the following instruments: a Convention concerning Safety in the Use of Chemicals at Work[394] and a Recommendation supplementing it,[395] a Convention concerning Night Work[396] and a Recommendation supplementing it;[397] and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948.[398]

The Committee of Experts on the Application of Conventions and Recommendations met at Geneva from 8 to 21 March 1990 and presented its report.[399]

The Governing Body Committee on Freedom of Association met at Geneva and approved reports Nos. 270[400] and 271[400] at its 245th session (February-March 1990); reports Nos. 272,[401] 273,[401] and 274[401] at its 246th session (May-June 1990); and reports Nos. 275[402] and 276[402] at its 248th session (November 1990).

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2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

(*a*) Constitutional and general legal matters

(i) *Draft headquarters Agreement for the World Food Programme*

At its fifty-fourth session, the Committee on Constitutional and Legal Matters (CCLM) reviewed the Draft headquarters Agreement for the World Food Programme (WFP), a joint programme of FAO and the United Nations. In particular, CCLM examined certain amendments proposed by the Government of Italy relating to the inviolability and protection of the headquarters, the immunity of the officials of the Programme and certain restrictions of enjoyment of privileges and immunities.

CCLM concluded that the draft WFP headquarters Agreement would have a substantial impact on the relationship between WFP, on the one hand, and FAO and the

United Nations on the other. In consequence thereof, it recommended that the question of the desirability of such a change be passed upon the Governing Bodies of WFP.

(ii) *FAO headquarters Agreement*

The main headquarters seat put at the disposal of FAO by the Government of Italy not being spacious enough to accommodate all headquarters staff, FAO had been renting for some years further office space. In this respect, the Government of Italy accorded to FAO a special contribution towards meeting the rental expenses incurred by FAO in connection therewith.

An exchange of letters between the Permanent Representative of Italy to FAO and the Director-General took place on 16 October 1990 to give a proper legal basis to this arrangement. It was agreed that certain premises rented by FAO for the purpose of accommodating its headquarters staff would be included in the definition of the headquarters Seat in the headquarters Agreement and that the entire rental would be paid by the Italian Government in fulfilment of its obligations with respect to the provision of headquarters premises.

(iii) *Form of membership for regional economic integration organizations in FAO*

Further to the discussions held by the Director-General with the Commission of the European Economic Community (EEC) and to the report of CCLM, the Council considered, during its ninety-eighth session, the options for a form of membership for regional economic integration organizations.

The Council underlined that any solution adopted would have to be applicable to any regional economic integration organization to which competence had been transferred by its member States in fields of activity of FAO even though, at this stage, it appeared that EEC was the only regional economic integration organization meeting such criteria.

The Council noted the letter received from the President of the Council of the European Communities whereby the said Council requested that the Constitution of FAO be amended to enable the European Communities to accede to FAO on the basis of a member status commensurate with its powers.

In that respect, it was recognized that a number of problems would require further study and reflection, and in particular, the exercise of membership rights by regional economic integration organizations. The Council noted that the discussions between FAO and EEC had been based on the criterion of the alternative nature of the exercise of membership rights, which implies that either the regional economic integration organization or its member States, but not both, would exercise the rights, depending on which had competence in the matter concerned. The Council also recognized that the application of such criterion called for a solution to be agreed upon with respect to certain practical matters such as the modalities for the exercise of the right to speak and to vote in the context of various degrees of transfer of competence between a regional economic integration organization and its member States. It stressed that the number of votes of a regional economic integration organization should not exceed the number of votes of its member States.

There was general agreement in the Council that the membership status of regional economic integration organizations should be *sui generis* and that there would need to be a clear and precise legal definition of the attributes of such membership and a description of the modalities of their exercise.

The Council also underlined the need for a very precise and complete definition of the competence of regional economic integration organizations. A statement of competence listing the areas of competence transferred by, or shared with, their member States would need to be drawn and some mechanisms would need to be set up to allow FAO's member nations to identify at any time whether the competence on any matter lay with the regional economic integration organization or with its member States.

The Council also reviewed the desirability of amending article XIV of the FAO Constitution to allow participation by regional economic integration organizations in agreements concluded thereunder. In view of the problems which have arisen in the past in that respect, the Council concluded that this issue could be considered by the Conference at its session in November 1991.

Finally, the Council requested the Director-General to hold further talks with EEC and that the secretariat prepare detailed documentation on the issues discussed during its ninety-eighth session, including drafts of possible amendments to the Basic Texts of the organization. It also requested that the matter be considered by CCLM at its fifty-sixth session and that CCLM report thereon to the Council at its session in June 1991. The Council requested, in addition, that the Finance Committee be kept fully informed.

(iv) *Change in status of member nations*

The Council was informed that formal notice of the merger of the Yemen Arab Republic and the People's Democratic Republic of Yemen, both members nations of FAO, had been received on 10 October 1990.

It was also informed of the notification received by the organization on 3 October 1990 that on the same day the German Democratic Republic had acceded to the Federal Republic of Germany.

The Council noted that matters relating to membership in the organization and assessment of contributions to the budget of the organization were matters within the purview of the Conference. It also noted that the question concerning the reassessment of the scale of contributions and in particular the retroactive effect of these changes of status on contributions, if any, might need to be referred to CCLM before being submitted for decision to the Conference.

(*b*) Activities of legal interest relating to commodities

The coming into force of the Agreement establishing the Common Fund for Commodities, on 19 June 1989, could provide a new and important role for the Intergovernmental Groups on Commodities of FAO if, as seems probable, a number of them are designated as the eligible International Commodity Bodies to identify, sponsor and monitor research, development and promotion projects for financing from the Second Account from the Common Fund.

Following upon the requests of individual Groups, endorsed by the Committee on Commodity Problems, the Council and the Conference of FAO, the Director-General requested in the course of 1990 the designation of the Intergovernmental Groups on Hard Fibres, Bananas, Rice, Meat, Oilseeds, Oils and Fats, Tea and Citrus Fruit, the Subgroup on Hides and Skins and the Subcommittee on Fish Trade as eligible International Commodity Bodies under the Agreement.

(c) Activities of legal interest relating to fisheries

Regulatory measures recommended by FAO Regional Fishery Bodies

a. *Indian Ocean Fishery Commission (IOFC)*

At its eleventh session, held at Bangkok from 9 to 12 July 1990, the Committee for the Management of Indian Ocean Tuna considered the recommendations embodied in resolution 44/225 of the General Assembly of the United Nations on large-scale pelagic driftnet fishing and its impact on the living resources of the world's oceans and seas. It recommended a moratorium on all large-scale pelagic driftnet fishing on the high seas of the Indian Ocean by June 1992, with the understanding that such measures be taken (based upon statistically sound analysis to be jointly made by the concerned parties of the Indian Ocean) to prevent unacceptable impacts of such fishing practices in the Indian Ocean and to ensure the conservation of the living resources of the Indian Ocean. Among the possible measures to be taken urgently, the Committee recommended that observers be placed on board vessels using large pelagic driftnets on the high seas of the Indian Ocean.

b. *Western Central Atlantic Fisheries Commission (WECAFC)*

At its seventh session, held at Kingston, Saint Vincent and the Grenadines, from 8 to 14 November 1990, WECAFC recommended, in accordance with resolution 44/225 of the General Assembly of the United Nations, the imposition of a moratorium on large-scale pelagic driftnet fishing on the high seas of the whole area of competence of the Commission by 30 June 1992. In doing so, the Commission noted that no effective conservation and management measures were known which could control this fishery and recommended that the statistical analysis mentioned in the United Nations resolution be carried out rapidly in order to determine the management and conservation measures required for the utilization of some of these gears. The Commission also specifically recommended that, in accordance with the United Nations resolution, large-scale pelagic driftnets should not be redeployed in the region.

(d) Legislative matters

(i) *Activities connected with international meetings*

FAO participated in and provided contributions to the following international meetings:

Meeting of Legal and Technical Experts to Review the Proposed Legal Framework of the Action Plan for the South Asian Seas Region, UNEP, Bangkok, 5-9 February 1990;

Meeting of Legal and Technical Experts to Review the Proposed Legal Framework of the Action Plan for the East Asian Seas Region, UNEP, Bangkok, 12-16 February 1990;

Regional Workshop on Harmonization of Pesticides Registration Requirements, FAO–Japan, Beijing, 14-18 May 1990;

"Pesticides en Afrique = donateurs et industries", SPV (Service protection des végétaux), Montpellier, France, 3-5 April 1990;

Meeting on policy on access to exclusive economic zones of Caribbean Community (CARICOM) Member States, May 1990;

Meeting of the Follow-up Committee of the Ministerial Conference on Fisheries Cooperation among African Atlantic Coastal States, 29-31 May 1990;

Biotechnology Law forum, University of Perugia, Perugia, Italy, 31 May-1 June 1990;

Réunion internationale d'experts en droit de l'environnement, Institut des hautes études internationales, Paris, 5-6 June 1990;

Regional Seminar on Water Legislation and Administration, organized by FAO with the sponsorship of the Organisation of Eastern Caribbean States (OECS), St. Lucia, 11-13 June 1990;

Séminaire sur l'harmonisation des législations phytosanitaires des Etats membres de la Commission du Pacifique-Sud — SPV (Service protection des végétaux), Montpellier, France, 9-12 July 1990;

Expert Consultation on Plant Quarantine Harmonization, Asian and Pacific Plant Protection Commission, Bangkok, 30 July-5 August 1990;

7th International Congress of Pesticide Chemistry, International Union of Pure and Applied Chemistry, Hamburg, Germany, 5-10 August 1990;

Regional Seminar on Food Safety Legislation, WHO, Kuala Lumpur, 27-30 August 1990;

Ad hoc Working Group of Government Representatives to Prepare for Negotiations on a Framework Convention on Climate Change, Geneva, 24-26 September 1990;

Consultation of the FAO/WHO Working Group on Legal Aspects of Water Supply and Wastewater Management, Geneva, 25-27 September 1990;

Meeting to Draft a Ministerial Declaration for the Second World Climate Conference, 27-29 September 1990;

Cours de pratique de droit du développement, Institut international du développement, Rome, 1-2 October 1990;

VIII[e] Congrès international du droit de l'alimentation, Association européenne du droit de l'alimentation (AEDA), Luxembourg, 10-12 October 1990;

Preparatory Meeting of Experts on Soviet Land Law, FAO, Rome, 22-23 October 1990;

Réunion mondiale des associations de droit de l'environnement, Centre international de droit comparé de l'environnement, Limoges, 13-15 November 1990.

(ii) *Legislative assistance and advice in the field*

During 1990, legislative assistance and advice were given to various countries on the following topics:

a. *Agrarian law*

Burkina Faso (range management), Central African Republic (soil conservation), Congo (agrarian and rural land law), Djibouti (agrarian and rural land law), Ethiopia (land use planning), Guinea (agrarian and rural land law), Mali (rural land law), Morocco (protection of agricultural land), Niger (rural land law), Rwanda (rural land law), Togo (agrarian and rural land law).

b. *Water legislation*

Burundi, Chile, Guinea, Indonesia, Zanzibar (water users' associations).

c. *Animal health and production legislation*

Rwanda, Burkina Faso.

d. *Plant protection legislation*

Burundi, Mali, Mauritania, Rwanda, Syrian Arab Republic, Uganda.

e. *Plant production and seed legislation*

Indonesia (seed), India (plant breeders' rights), Pakistan (cotton standards).

f. *Pesticide legislation*

Burundi, Mali, Mauritania, Rwanda, Pakistan.

g. *Food legislation*

Guinea-Bissau.

h. *Fisheries legislation*

Angola, Burundi, Cape Verde, CARICOM, Gambia, Guinea-Bissau, Malta, Madagascar, Mauritania, Myanmar, Namibia, Rwanda, Somalia, Sao Tome and Principe, Suriname, Viet Nam, West Africa (Senegal, Mauritania, Guinea, Guinea-Bissau: monitoring, control and surveillance).

i. *Forestry and wildlife legislation*

Bhutan (forestry), Cape Verde (forestry), Malawi (forestry), Malaysia (forestry), Mauritania (wildlife), Mauritius (wildlife), Myanmar (forestry), Saint Vincent and the Grenadines (forestry and wildlife), Samoa (watershed), Sierra Leone (forestry), Somalia (wildlife), Uganda (wildlife), Viet Nam (forestry).

j. *Environment legislation*

Guinea.

(iii) *Legal assistance and advice not involving field missions*

Advice or documentation was furnished to Governments, agencies or educational centres, at their request, on a range of topics including:

Agrarian and rural land law (Bolivia, Cape Verde, Guinea-Bissau, Mali, Madagascar, Sao Tome and Principe, Senegal, Uganda).

Animal, plant and food legislation (Myanmar, Mali, Tunisia).

Forestry and wildlife legislation (Brazil, Guinea-Bissau, Honduras, Mozambique, Peru, United Republic of Tanzania).

Environmental legislation (Turkey, Zambia).

(iv) *Legislative research and publications*

Research was conducted, *inter alia*, on:

Regulation of driftnet fishing on the high seas;

Activities conducted by FAO in the field of international environmental law;

Pesticide registration procedures;

European Economic Community food law;

Comparative law of irrigated areas.

(v) *Collection, translation and dissemination of legislative information*

In 1990, FAO published the annual *Food and Agricultural Legislation.*

Annotated lists of relevant laws and regulations relating to food legislation were also published in the semi-annual *Food and Nutrition Review.*

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3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

HUMAN RIGHTS

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

The Committee on Conventions and Recommendations met in private session at UNESCO headquarters from 2 to 4 May 1990 and from 2 to 4 October 1990, in order to examine communications which had been transmitted to it in accordance with decision 104 EX/3.3 of the Executive Board.

At its spring session, the Committee examined 32 communications, of which 21 were examined with a view towards their admissibility and 11 were examined on their substance. Of the 21 communications examined as to admissibility, none was declared admissible, none was declared irreceivable and seven were struck from the list since they were considered as having been settled. The examination of 14 communications was suspended. The Committee presented its report to the Executive Board at its 134th session.

At its fall session, the Committee had before it 25 communications, of which 19 were examined as to their admissibility and six were examined on their substance. Of the 19 communications examined as to their admissibility, six were declared admissible, one was declared irreceivable and two were struck from the list since they were considered as having been settled or did not, upon examination of the merits, appear to warrant further action. The examination of 16 communications was suspended. The Committee presented its report on its examination of these communications to the Executive Board at its 135th session.

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4. INTERNATIONAL CIVIL AVIATION ORGANIZATION

(*a*) Legal meetings

A session of the Special Subcommittee of the Legal Committee was held at Montreal from 9 to 19 January to study the subject of a draft instrument relating to the marking of explosives for detectability, and to prepare a draft instrument for further consideration by the 27th Session of the Legal Committee. This subject had been

included by the Council, on 29 June 1989, in the general work programme of the Legal Committee as the subject of its highest priority; this action was endorsed by the 27th session of the Assembly in resolution A27-8.

As a result of its deliberations, the Legal Subcommittee prepared a draft text and indicated that the subject was ripe for consideration by the 27th session of the Legal Committee, and on 25 January the Council noted the report of the Legal Subcommittee.

The 27th session of the Legal Committee was held at Montreal from 27 March to 12 April. In accordance with the directives issued by the Council, the main agenda item of the session was the subject "Development of an instrument relating to the marking of explosives for detectability".

The Legal Committee studied the subject on the basis of the report of the Legal Subcommittee, and as a result of its discussions and deliberations prepared the text of a draft Convention on the marking of plastic and sheet explosives for the purpose of detection. The Legal Committee considered that the text was ready for presentation to States as a final draft under the terms of Assembly resolution A7-6 and presented it to the Council for consideration and action under the terms of that resolution.

On 14 June and 4 July, the Council noted the report of the Legal Committee and requested the Secretary General to circulate the draft prepared by the Legal Committee, together with the report thereon, as well as a draft technical annex prepared by an Ad Hoc Group of Specialists, to States and certain international organizations for comments.

The Council decided, on 4 July, to convene at Montreal from 12 February to 1 March 1991 an International Conference on Air Law to consider, with a view to approving, the texts for inclusion in a Convention on the marking of plastic [and sheet] explosives for the purpose of detection as prepared by the 27th session of the Legal Committee.

(*b*) Work programme of the Legal Committee of ICAO

The 27th session of the Legal Committee held in March-April reviewed its general work programme as approved by the Council at the fourth meeting of its 128th session on 15 November 1989. The Committee decided that the item "Preparation of a new legal instrument regarding the marking of explosives for detectability" should be removed from the general work programme since the Legal Committee had completed its work on the subject. Consequently the Committee established, subject to the approval of the Council, the following general work programme, in that order of priority:

(1) Action to expedite ratification of Montreal Protocols Nos. 3 and 4 of the "Warsaw System";

(2) Legal aspects of global air-ground communications;

(3) Institutional and legal aspects of future air navigation systems;

(4) United Nations Convention on the Law of the Sea — implications, if any, for the application of the Chicago Convention, its Annexes and other international air law instruments;

(5) Liability of air traffic control agencies;

(6) Study of the instruments of the "Warsaw System".

At the sixth meeting of its 131st session, the Council approved the general work programme of the Legal Committee as set out above.

(c) Resolutions adopted by the 28th session (Extraordinary) of the ICAO Assembly which are of legal significance

(i) *Resolution A28-1: Amendment to article 50(a) of the Convention on International Civil Aviation*

By resolution A28-1, the Assembly, which was held from 22 to 26 October 1990, adopted at Montreal on 26 October 1990 the "Protocol relating to an amendment to article 50(a) of the Convention on International Civil Aviation". The Protocol, which increases the membership of the ICAO Council from 33 to 36, shall come into force in respect of the States which have ratified it on the date on which the 108th instrument of ratification is deposited.

(ii) *Resolution A28-2: Ratification of the Protocol amending article 50(a) of the Convention on International Civil Aviation*

This resolution recommends to all Contracting States that they ratify urgently this amendment to the Convention.

(iii) *Resolution A28-3: Possible operating restrictions on subsonic jet aircraft which exceed the noise levels in volume I, chapter 3, of annex 16*

States are urged in Resolving Clause 1 of this resolution not to introduce any new operating restrictions on aircraft which exceed the noise levels specified in volume 1, chapter 3, of annex 16 (chapter 3 aircraft) to the Convention on International Civil Aviation before considering a number of factors listed therein. States which decide to introduce restrictions on the operations of aircraft which comply with the noise certification standards in volume 1, chapter 2, of annex 16 (chapter 2 aircraft) but which exceed the noise levels in volume 1, chapter 3, of annex 16 are urged not to begin a phase-in period for any restrictions on such chapter 2 aircraft prior to 1 April 1995, and to allow any chapter 2 aircraft presently operating to their territories to be withdrawn gradually over a period of not less then seven years, making the earliest end of the phase-in period 1 April 2002. The resolution also urged States not to restrict, prior to 1 April 1995, the operations of any aircraft less than 25 years after the date of its first individual certificate of airworthiness, or of any presently existing wide-body aircraft or any aircraft fitted with high by-pass ratio engines. Furthermore, the States imposing operating restrictions are strongly encouraged to take into account the problems of operators in developing countries where they are unable to replace chapter 2 aircraft before the end of the phase-in period, provided there is proof of a purchase order or leasing contract for a replacement chapter 3 aircraft and the first date of delivery of the aircraft has been accepted. States are further urged, if and when any new noise certification standards are introduced which are more stringent than those in volume 1, chapter 3, of annex 16, not to impose any operating restrictions on chapter 3 compliant aircraft.

Resolution A28-3 supersedes resolution A26-11 and, in respect of noise aspects, resolution A23-10.

(iv) *Resolution A28-7: Aeronautical consequences of the Iraqi invasion of Kuwait*

This resolution condemns the violation of the sovereignty of the airspace of Kuwait and the plunder of Kuwait International Airport by Iraqi armed forces, including the seizure and removal to Iraq of 15 aircraft of Kuwait Airways and their purported registration by Iraq. Iraq is called upon to facilitate the early recovery by their owners of foreign registered aircraft stranded at Kuwait International Airport. The resolution further "declares that the unilateral registration of aircraft of Kuwait Airways as Iraqi aircraft is null and void and calls upon the Iraqi Government to return the Kuwaiti aircraft to the legitimate Government of Kuwait." All States in whose territory any of these aircraft are found are requested to hand them over to the legitimate Government of Kuwait. States are also requested not to supply Iraq, its companies or nationals, whether directly or indirectly, with any spare parts, equipment or supplies or services to enable Iraq to use the aircraft.

(*d*) Privileges, immunities and facilities

On 15 June 1990, during its 130th session, the Council approved the text of a new revised headquarters Agreement between ICAO and the Government of Canada and authorized the President of the Council to sign it on behalf of the Organization. The Agreement, which was signed at Montreal on 9 October by the President of the Council, follows closely the relevant provisions of the Vienna Convention on Diplomatic Relations, to which Canada is a party, and of the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947. The Agreement will be submitted to the Canadian Parliament for legislative implementation and thereafter it will enter into force with an exchange of notes between the President of the Council and the Government of Canada.

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5. WORLD HEALTH ORGANIZATION

(*a*) Constitutional and legal development

During 1990, Namibia (formerly an associate member of WHO) and Belize became members of WHO, as of 23 April and 23 August 1990 respectively, by deposit of an instrument of acceptance of the Constitution, as provided for in articles 4 and 79 (*b*) of the Constitution. On 23 May the Yemen Arab Republic and the People's Democratic Republic of Yemen merged into a single member under the name of Yemen. On 3 October the Federal Republic of Germany and the German Democratic Republic were united and formed a single member under the designation of Germany. The number of members at the end of 1990 thus remained at 166.

The amendments to articles 24 and 25 of the Constitution, adopted in 1986 by the Thirty-ninth World Health Assembly to increase the membership of the Executive Board from 31 to 32, had been accepted by 66 member States on 31 December 1990.

(*b*) Health legislation

WHO's Health Legislation Programme continued to focus on two primary functions, the first being direct technical cooperation with member States seeking to review and/or update their laws and regulations in the health and environmental sec-

tors; for example, WHO supported national workshops in health legislation in China and Viet Nam, while consultant missions were undertaken in six countries. The second function is to promote the international transfer and exchange of information in health legislation (an activity which WHO inherited from the Paris-based International Office of Public Hygiene). The cornerstone of this "clearinghouse" function remained the quarterly journal, the *International Digest of Health Legislation* (and its French-language counterpart, the *Recueil international de Législation sanitaire*). Regional health legislation information systems were operated by WHO's Regional Offices for the Americas (in Washington) and Europe (in Copenhagen).

The Programme retained its strong interest in HIV/AIDS legislation, and regional workshops on the legal and ethical aspects of HIV infection and AIDS were held at Brazzaville, Santiago de Chile, and Seoul. WHO was also represented at several national and international conferences on health/medical law and cognate areas, including the Council of Europe's XXth Colloquy on European Law devoted to the topic "Law and Moral Dilemmas Affecting Life and Death" (Glasgow, 10-12 September 1990). WHO staff also attended, and delivered papers at, major meetings on the legal and ethical aspects of organ transplantation.

In the course of 1990, WHO convened two Informal Consultations on Organ Transplantation, their objective being to provide guidance to the Director-General in the implementation of the two resolutions on the subject that had been adopted by the World Health Assembly in 1987 (WHA40.13, on "Development of guiding principles for human organ transplants") and 1989 (WHA42.5, on "Preventing the purchase and sale of human organs"). The reports of these consultations[403] were widely distributed.

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6. WORLD BANK

(*a*) IBRD, IFC, IDA — membership

During 1990, Bulgaria, Czechoslovakia and Namibia became members of the International Bank for Reconstruction and Development (the Bank), Algeria, Cape Verde, Czechoslovakia, Namibia and Romania became members of the International Finance Corporation (the Corporation or IFC) and Czechoslovakia became a member of the International Development Association (the Association or IDA). At the end of the year, membership in these organizations stood at 154, 139 and 138, respectively.

In May and June 1990, the Bank Group organizations received letters from the Minister for Foreign Affairs of the Republic of Yemen notifying them that by virtue of the merger of the Yemen Arab Republic and the People's Democratic Republic of Yemen on 22 May 1990 the Republic of Yemen was a single member of the Bank, the Association and the Corporation with a single subscription and subject to the provisions of the respective Articles of Agreement. At the time, both the Yemen Arab Republic and the People's Democratic Republic of Yemen were members of the Bank and IDA, but only the Yemen Arab Republic was a member of IFC. On 13 July 1990 the Executive Directors of the Bank and IDA and the Board of Directors of the Corporation took note of the communications of the Republic of Yemen and decided to substitute the Republic of Yemen to the Yemen Arab Republic and the People's Democratic Republic of Yemen as being a single member subject to the Articles of Agree-

ment, and to make the necessary adjustments in the member's capital subscription and voting power.

On 3 October 1990 the Bank received a communication from the Executive Director of the Bank appointed by Germany, stating that "through the accession of the German Democratic Republic to the Federal Republic of Germany with effect from 3 October 1990, the two German States have united to form one sovereign State, which as a single member of the [. . .] Bank remains bound by the provisions of the Articles of Agreement of the [. . .] Bank." Similar communications were received by IFC, IDA, the Multilateral Investment Guarantee Agency (MIGA) and ICSID. At the time, only the Federal Republic of Germany was a member of the World Bank Group organizations. The Bank and its affiliates noted the change and noted that as a result of unification, suppliers and contractors from all parts of Germany had become eligible for financing under Bank and IDA loans and credits as of 3 October 1990.

(*b*) Multilateral Investment Guarantee Agency

(i) *Membership*

During 1990, Botswana, Czechoslovakia, Fiji, Malta, Mauritius, Namibia, Poland, Saint Vincent and Swaziland became members of MIGA. By the end of 1990, the MIGA Convention had been signed by 83 countries. Fifty-nine of these had also ratified the Convention, and of these, 55 countries had fulfilled all membership requirements and were members of MIGA.

(ii) *Guarantee operations*

As of 31 December 1990 MIGA had received a total of 321 applications for guarantee, submitted by investors from 18 member States with respect to projects in 48 developing member countries. As of the same date, MIGA had executed four contracts of guarantee representing, in the aggregate, $US $132.3 million of coverage. These contracts were issued to investors in two member countries for investments in three host countries. The projects involve mining, manufacturing and agribusiness.

(iii) *Agreements with member States*

Pursuant to article 23 (*b*) 9 (ii) of the Convention, MIGA endeavours to conclude bilateral investment protection agreements with member States. Such agreements are designed to ensure that MIGA, with respect to investments guaranteed by it, has treatment at least as favourable as that agreed by the member concerned for the most favoured guarantee agency or State in an agreement relating to investment. During 1990, MIGA entered into such agreements with Bangladesh, Ghana, Hungary and Poland.

Pursuant to article 18 (*c*), MIGA also negotiates agreements on the use of local currency which are designed to enable MIGA to dispose freely of local currency acquired by it in conjunction with a claim resulting from an inconvertibility loss. During 1990, MIGA entered into such agreements with Bangladesh, Chile, Ecuador, Egypt, Ghana, Hungary, Poland and Turkey.

Under article 15 of the Convention, MIGA must obtain the approval of the host country before issuing a guarantee. In order to expedite this process, MIGA negotiates with its member States arrangements which provide a degree of automaticity to the host country approval. During 1990, guidelines for approval of MIGA guarantees

were concluded with Angola, Bangladesh, Burkina, Faso, Congo, Ecuador, Egypt, Ghana, Mali, Poland, Turkey and Zaire.

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

(i) *Signatures and ratifications*

During 1990, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention)[404] was signed by China and ratified by Tonga, bringing the number of the signatory States and Contracting States to 99 and 92 respectively.

(ii) *Disputes before the Centre*

In June 1990, awards were rendered in two cases, *Amco Asia Corporation et al. v. Republic of Indonesia* (Case ARB/81/1) and *Asian Agricultural Products Ltd. v. Democratic Socialist Republic of Sri Lanka* (Case ARB/87/3).

Also in June 1990, the Ad Hoc Committee constituted under article 52 of the ICSID Convention to consider applications to annul the second award made in *Klöckner Industrie-Anlagen GmbH et al. v. Republic of Cameroon and Société camerounaise des engrais S.A.* (Case ARB/81/2) rendered its decision rejecting the annulment applications in their entirety.

On 18 October 1990, the Secretary-General of the Centre registered applications to annul the above-mentioned award in the *Amco Asia* case, the second award to have been rendered in that case.

During November 1990, the proceedings were discontinued in three further arbitration cases following amicable settlements by the parties of the disputes concerned. The discontinued cases were *Colt Industries Operating Corp., Firearms Division v. Government of the Republic of Korea* (Case ARB/84/2); *Maritime International Nominees Establishment v. Republic of Guinea* (Case ARB/84/4), a case that had been resubmitted to ICSID arbitration following the partial annulment of a first award; and *Mobil Oil New Zealand Ltd., Mobil Oil Corporation and Mobil Petroleum Company, Inc. v. New Zealand Government* (Case ARB/87/2). These discontinuances brought to 14 the number of ICSID cases to have been amicably settled, as compared to only eight that have ended with final awards.

As of 31 December 1990, the following four cases were pending before the Centre:

(i) *Amco Asia et al. v. Republic of Indonesia* (Case ARB/81/1) (Annulment);

(ii) *SPP (ME) v. Arab Republic of Egypt* (Case ARB/84/3);

(iii) *Société d'études de travaux et de gestion S.A. — SETIMEG v. Republic of Gabon* (Case ARB/87/1);

(iv) *Manufacturers Hanover Trust Company v. Arab Republic of Egypt and the General Authority for Investment and the Free Zones* (Case ARB/89/1).

7. INTERNATIONAL MONETARY FUND

MEMBERSHIP

During 1990, three countries became members of the Fund: the Czech and Slovak Federal Republic, on 20 September 1990, with a quota of SDR 590 million; Bulgaria, on 25 September 1990, with a quota of SDR 310 million; and Namibia, on 25 September 1990, with a quota of SDR 70 million. Following the merger of the Yemen Arab Republic and the People's Democratic Republic of Yemen, the Fund's Executive Board decided, in June 1990, that the Republic of Yemen is a single member of the Fund with a quota of SDR 120.5 million.

During the course of 1990, the Fund received membership applications from Mongolia and Switzerland.

PROPOSED THIRD AMENDMENT TO THE FUND'S ARTICLES OF AGREEMENT

Pursuant to a resolution adopted on 28 June 1990, the Board of Governors approved the text of an amendment of the Fund's Articles of Agreement which, once effective, would provide for the suspension of voting and related rights of members that do not fulfil their obligations under the Articles of Agreement. The proposed amendment is designed to strengthen the Fund's ability to deal with members with overdue financial obligations to the Fund that persist in not cooperating with the Fund in the elimination of these arrears. Activation of the provision for suspension in an individual case would require a 70 per cent majority of the total voting power in the Fund's Executive Board.

In order for the proposed amendment to become effective, it will have to be accepted by three fifths of the Fund's members, having 85 per cent of the total voting power.

NINTH GENERAL REVIEW OF QUOTAS

On 28 June 1990, the Board of Governors of the Fund authorized an increase in the total of the Fund quotas from SDR 90.1 billion to SDR 135.2 billion. The Board of Governors' resolution specifies that the proposed quota increase will not take effect until the proposed Third Amendment of the Articles becomes effective. Moreover, during the period ending 30 December 1991, no increase in quota may take effect until the Fund determines that members having no less than 85 per cent of the total quotas as of 30 May 1990 have consented to the increases which have been proposed for them in the resolution. After 30 December 1991, however, the quota increase may take effect once members having not less than 70 per cent of the total of quotas on 30 May 1990 consent to their proposed increase. Members with overdue obligations to the General Resources Account may not consent to the proposed increase until they become current in these obligations.

THE FUND'S RESPONSES TO THE MIDDLE EAST CRISIS

The Fund responded to the Middle East crisis by adapting its existing instruments and introducing new forms of temporary financing designed to assist, in particular, those countries most directly affected. In doing so, the Fund had three specific goals: to increase, where appropriate, financing to members with Fund arrangements already in force; to modify and expand support provided by the Fund's Compensatory and Contingency Financing Facility (CCFF), notably with temporary financing to help offset the higher cost of oil and gas imports; and to encourage members to formulate

suitable contingency plans against future external economic shocks. The specific actions taken by the Fund to achieve these goals were as follows:

1. Decided to rephase or accelerate disbursement of funds to members under stand-by arrangements or arrangements under the Fund's Extended Fund Facility (EFF), the Structural Adjustment Facility (SAF) or Enhanced Structural Adjustment Facility (ESAF).

2. Relaxed certain limits on access to Fund financing. Limits on Fund financing available to a member are expressed in terms of a percentage of a member's quota in the Fund. Through 31 December 1991, the access limits are up to 110 per cent a year, 330 per cent over three years; and cumulative access of 440 per cent of quota, net of scheduled repurchases.

3. Increased flexibility regarding the availability of low-cost credit extended to poorer countries adopting comprehensive policy reforms under the ESAF. The amounts committed under ESAF arrangements may now be increased not only at the time of approval of an annual arrangement but also at the time of a mid-term review. Moreover, an additional fourth-year arrangement may be granted if the Fund is satisfied that the performance of the member under the arrangement has been satisfactory and that the member has adopted appropriately strong measures to improve its balance-of-payments position.

4. Broadened coverage of services (non-goods trade) eligible for compensatory financing under the CCFF. Previously, the Fund compensated for shortfalls in earnings from exports of goods and two categories of services — workers' remittances and receipts from tourism. The amendment of the provisions extends eligibility for such financial compensation to practically all services such as receipts from pipelines, canals, shipping, transportation, construction and insurance. The new policy also permits quicker access to compensatory credit in the wake of a steep fall in export receipts, by permitting the member to use a greater amount of estimated, rather than actual, data to calculate the shortfall.

5. Introduced a new but temporary oil element of the CCFF. This element compensates members until the end of 1991 for excess costs of their imports of crude petroleum, petroleum products and natural gas. As with other compensatory elements of the CCFF (those financing shortfalls in export earnings and increases in the cost of cereal imports), the excess in the cost of oil imports must be temporary and largely beyond the member country's control.

6. Added flexibility in obtaining contingency financing in the framework of Fund arrangements for members adopting corrective policies. This is accomplished by facilitating the attachment of a contingency mechanism to Fund arrangements at the time of a review, provided it is done at least six months prior to their expiration. Such contingency funds would become available if an unexpected shock threatened to undermine the reform effort.

The oil element of the CCFF and the relaxation of access limits will remain in force only until the end of 1991. The remaining policy changes will continue and will be re-evaluated as part of the Executive Board's periodic reviews of its various instruments.

Revision of procedures for dealing with members with overdue financial obligations to the Fund

The Executive Board adopted a timetable of procedures for dealing with members with overdue financial obligations to the Fund in August 1989. As part of the

cooperative strategy on overdue obligations which was endorsed by the Fund's Interim Committee in August 1990, this timetable was revised so as to give greater strength to the remedial and deterrent measures available to the Fund in the area of arrears.

As compared with the procedures adopted by the Executive Board in 1989, the revised timetable sets maximum time-limits between the date for the emergence of arrears to the Fund and a declaration of ineligibility, and makes explicit the timing of a declaration of non-cooperation and the initiation of the procedures for compulsory withdrawal from the Fund. It also includes the possible use of the suspension of voting and related rights once the proposed Third Amendment of the Articles of Agreement, which would make such a suspension possible, becomes effective.

The "rights" approach

In May 1990, the Fund's Interim Committee endorsed the concept of a "rights" approach, under which a member with protracted arrears to the Fund could earn rights towards future financing by the Fund by establishing a track record of performance related to programme implementation and the elimination of arrears.

On 20 June 1990, the Executive Board agreed on key elements of the programmes to be pursued and the financing of accumulated rights. It was decided that the programmes should be consistent with the macroeconomic and structural policy standards associated with programmes supported by arrangements under the Extended Fund Facility and ESAF. The member would also be expected to make maximum efforts to reduce its outstanding overdue obligations to the Fund during the period of the programme, which would generally be three years. Finally, the member would be expected, with the assistance of creditors and donors, to generate the financing needed to meet the requirements of its financing programme and, at a minimum, to remain current on obligations falling due to the Fund and the World Bank.

Rights would accumulate evenly throughout the programme with the possibility of some front-loading of rights within the first annual Fund-monitored programme. The monitoring of performance, and hence the accumulation of rights, would be on a quarterly basis. Upon the successful completion of the programme, prior clearance of the member's arrears to the Fund and approval by the Fund of a successor arrangement, the member would be able to encash its accumulated rights as the first disbursement under the successor financial arrangement.

Extended burden sharing

Effective 1 July 1990, the Fund's Executive Board extended the mechanism of sharing among its members the burden of overdue obligations in order to protect the Fund against risks associated with the credit extended for the encashment of the "rights" earned by members in the context of the Fund-monitored programmes described in the previous section. These funds are also intended to provide additional liquidity to the financing of these encashments.

The amount of funds to be utilized for this purpose, SDR 1 billion, will be raised over a period of about five years through a further adjustment to the rate of charge on the use of the Fund's ordinary resources and, subject to the floor to the rate of remuneration of 80 per cent of the SDR interest rate, a further adjustment to the rate of remuneration paid to members whose currencies are being used by the Fund. The resources so generated are to be held in a second Special Contingent Account (SCA-2). When all outstanding purchases related to the encashment of rights have been

repurchased, any balances held in this account will be distributed to members that paid additional charges or received reduced remuneration.

Rate of charge on use of ordinary resources

The Executive Board of the Fund decided that, during the financial year 1991 (from 1 May 1990 through 30 April 1991), the rate of charge on the use of the Fund's ordinary resources would continue to be set as a proportion of the SDR interest rate under rule T-1 and that the proportion would be 91.3. Upon review at mid-year, this proportion was reduced to 87.8 per cent in view of the favourable developments in the Fund's income position.

SDR valuation basket

On 5 October 1990, the Executive Board of the Fund, after reviewing the list of the currencies in the SDR valuation basket, and the weights of these currencies, decided that, effective 1 January 1991, the list of the currencies in the basket shall remain the same, and the weight of each of these currencies to be used to calculate the amount of each of these currencies in the basket would be 40 per cent for the United States dollar, 21 per cent for the deutsche mark, 17 per cent for the Japanese yen, and 11 per cent each for the French franc and pound sterling.

Status under article VIII or article XIV

Under article XIV of the Fund's Articles of Agreement, a member may choose, when joining the Fund, to avail itself of transitional arrangements, thereby maintaining and adapting existing restrictions on payments and transfers for current international transactions. Article VIII, however, prohibits members from imposing such restrictions without the approval of the Fund. During 1990, two members, namely, Thailand and Turkey, accepted the obligations of article VIII, sections 2, 3, and 4, raising to 68 the number of members that have accepted these obligations.

Buffer Stock Financing Facility

After examining the terms of the 1987 International Natural Rubber Agreement (INRA), the Fund's Executive Board decided, on 4 April 1990, that its Buffer Stock Financing Facility (BSFF) may be used for the financing of eligible members' compulsory contributions to the buffer stock of INRA.

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8. UNIVERSAL POSTAL UNION

UPU has undertaken the study of the legal and administrative problems entrusted by the 1989 Washington Congress to the Executive Council. Among the most significant problems which may be of interest to other organizations, the following should be particularly noted:

Second phase of the transfer to the Council of part of the legislative function of the Congress;

Structure of the Convention, of the Agreements and of their Regulations;

Strengthening of the priority activities of the Union;

Future improvement of organization of work of the Union;

Postal parcels — Harmonization of conditions of acceptance and supplementary services;

Postal parcel services adapted to the requirements of the market.

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9. INTERNATIONAL MARITIME ORGANIZATION

(*a*) Membership of the Organization

The following country became a member of the International Maritime Organization: Sao Tome and Principe (9 July 1990). Macao became an associate member on 2 February 1990. As at 31 December 1990, the number of members of IMO was 134. (These figures reflect the changes in membership resulting from the merging of the Yemen Arab Republic and the People's Democratic Republic of Yemen into the Republic of Yemen (22 May 1990) and the accession of the German Democratic Republic into the Federal Republic of Germany (3 October 1990)). There are also two associate members.

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

During 1990, the Legal Committee continued its consideration of a possible convention on liabilty and compensation in connection with the carriage of hazardous and noxious goods by sea (HNS Convention). The Committee considered documents submitted by member Governments and observers, including draft conventions submitted by several Governments under the "lead country" procedure. The main substantive issues addressed referred to the definition of HNS substances, the limitation amounts and the main features of the liability to be shared between the shipowner and the cargo interests. The need for a two-tier system and the relationship between a prospective HNS treaty and other existing treaty instruments were also analysed. The Committee invited the submission of a draft convention to form the basis of the further deliberations of the Committee. This item would be given priority also in 1991.

(*c*) Wreck removal and related issues

It was suggested the delegations interested in the consideration of this matter might prepare a document for the consideration of the Legal Committee between 1990 and 1994, depending on the availability of time.

(*d*) Possible work on the draft convention on offshore mobile craft

The Legal Committee decided to request the Comité maritime international (CMI) to undertake preliminary work with a view to updating the draft convention on offshore mobile craft prepared by CMI in 1977. CMI agreed to this request.

(*e*) Preparations for a new legal instrument regarding the marking of explosives for their detectability

The Legal Committee recommended the IMO should continue to be closely involved in the work undertaken by ICAO for the preparation of a diplomatic conference on the new legal instrument regarding the marking of explosives for detectability.

(*f*) Follow-up work in connection with the Basel Convention

The Legal Committee Requested the IMO secretariat to follow actively the work undertaken under the auspices of UNEP in the preparation of a future protocol to the Basel Convention, and to contribute as necessary to that work.

(*g*) Amendment to rule VI of the York-Antwerp Rules, 1974

The Legal Committee expressed approval of the amended text of Article VI of the York-Antwerp Rules prepared by CMI. The action was taken in response to the resolution to the 1989 Conference on Salvage which had requested that appropriate steps be taken by IMO to ensure the speedy amendment of the York-Antwerp Rules.

(*h*) Law of the sea

Suitable arrangements have been made to keep the United Nations Office for Ocean Affairs and the Law of the Sea and the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea duly informed of developments in the work of IMO, and vice versa.

(*i*) Changes in status of IMO Conventions

(i) *Protocol of 1990 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974.*

This Protocol was adopted by the International Conference on the Revision of the 1974 Athens Convention on 30 March 1990 and opened for signature on 1 June 1990. In accordance with its terms, the Protocol is to enter into force 90 days following the date on which 10 States have expressed their consent to be bound by it. As at 31 December 1990, the Protocol had been signed, subject to ratification, by one State.

(ii) *International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990*

This Convention was adopted by the Conference on International Cooperation on Oil Pollution Preparedness, Response and Cooperation on 30 November 1990 and opened for signature on the same day. In accordance with its terms, the Convention is to enter into force 12 months after the date on which no less than 15 States have become Contracting States. As at 31 December 1990, the Convention had been signed, subject to ratification, by 15 States.

(iii) *1989 amendment to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, as amended*

The Contracting Parties to the Convention adopted, at their Twelfth Consultative Meeting on 3 November 1989, resolution LDC.37(12) concerning the amendment to Annex III to the Convention. The amendment entered into force on 19 May 1990, in accordance with the terms of the resoultion and article XV(2) of the Convention.

(iv) *1989 amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973*

These amendments were adopted by the Marine Environment Protection Committee on 17 March 1989, by resolution MEPC.34(27). The conditions for their entry into force were met on 12 April 1990, and the amendments entered into force on 13 October 1990, in accordance with the terms of the resolution.

(v) *1989 amendments to the IBC Code* (under MARPOL 1973/78 and SOLAS 74)

These amendments were adopted by the Marine Environment Protection Committee on 17 March 1989, by resolution MEPC.32(27), and by the Maritime Safety Committee on 11 April 1989 by resolution MSC.14(57). The conditions for their entry into force were met on 12 April 1990 and the amendments entered into force on 13 October 1990 in accordance with the terms of the resolutions.

(vi) *1989 amendments to the BCH Code* (under MARPOL 1973/78)

These amendments were adopted by the Marine Environment Protection Committee on 17 March 1989 by resolution MEPC.33(27). The conditions for their entry into force were met on 12 April 1990 and the amendments entered into force on 13 October 1990 in accordance with the terms of the resolution.

(vii) *1989 amendment to the Convention on International Regulations for Preventing Collisions at Sea, 1972, as amended*

This amendment was adopted by the Assembly on 19 October 1989. The conditions for its entry into force were met on 19 April 1990 and the amendment entered into force on 19 April 1991 in accordance with the terms of the Assembly resolution.

(viii) *1989 (Annex V) amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973*

These amendments were adopted by the Marine Environment Protection Committee on 17 October 1989 by resolutions MEPC.36(28). The conditions for their entry into force were met on 17 August 1990 and the amendments entered into force on 18 February 1991, in accordance with the terms of the resolution.

(ix) *1989 amendments to the Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended*

This amendment was adopted by the Assembly on 19 October 1989. The conditions for its entry into force were met on 19 April 1990 and the amendment entered into force on 19 April 1991 in accordance with the terms of the Assembly resolution.

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10. WORLD INTELLECTUAL PROPERTY ORGANIZATION

(*a*) Constitutional and Procedural Questions:

(i) *Membership*

During 1990, the following States became parties to the Convention Establishing the World Intellectual Property Organization[405] or to treaties administered by WIPO or took certain action in respect of those treaties:

(*a*) *Convention Establishing the World Intellectual Property Organization.* Singapore (10 December 1990). At the end of 1990, the number of States members of WIPO was 125;

(*b*) *Berne Convention for the Protection of Literary and Artistic Works.*[406] Honduras (25 January 1990), Malaysia (1 October 1990), Poland (articles 1 to 21 and the Appendix excepted) (4 August 1990) and the United Kingdom (2 January 1990) became parties to the Paris Act (1971) of the Berne Convention. In accordance with a declaration of the Government of Egypt (14 March 1990), that country availed itself of the faculty provided in articles II and III of the Appendix (Special Provisions Regarding Developing Countries) to the Paris Act of the said Convention. On 3 October 1990, the German Democratic Republic ceased to be a member of the Berne Union. At the end of 1990, the number of States members of the Berne Union was 84;

(*c*) *Madrid Agreement concerning the International Registration of Marks.*[407] On 3 October 1990, the German Democratic Republic ceased to be a member of the Madrid Union. At the end of 1990, the number of States members of the Madrid Union was 29;

(*d*) *The Hague Agreement concerning the International Deposit of Industrial Designs.*[408] On 3 October 1990, the German Democratic Republic ceased to be a member of the Hague Union. At the end of 1990, the number of States members of the Hague Union was 19;

(*e*) *Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks.*[409] Japan (20 February 1990) became party to the Geneva Act (1977) of that Agreement. On 3 October 1990, the German Democratic Republic ceased to be a member of the Nice Union. At the end of 1990, the number of States members of the Nice Union was 33;

(*f*) *Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.*[410] Lesotho (26 January 1990) and Honduras (16 February 1990) became parties to the said Convention. At the end of 1990 the number of States party to the Rome Convention was 35;

(*g*) *Locarno Agreement Establishing an International Classification for Industrial Designs.*[411] Austria (26 September 1990) and the Federal Republic of Germany (25 October 1990) became parties to that Agreement. On 3 October 1990, the German Democratic Republic ceased to be a member of the Locarno Agreement. At the end of 1990, the number of States members of the Locarno Agreement was 16;

(*h*) *Patent Cooperation Treaty.*[412] Canada (2 January 1990), Greece (chapter II excluded) (9 October 1990) and Poland (25 December 1990) became parties to that Treaty. The Government of the Republic of Korea (1 September 1990) withdrew its declaration under article 64 (1) (*a*) (chapter II). At the end of 1990, the number of States party to the Patent Cooperation Treaty was 45;

(*i*) *International Patent Classification Agreement.*[413] On 3 October 1990, the German Democratic Republic ceased to be a member of the IPC Union. At the end of 1990, the number of States members of the IPC Union was 26;

(*j*) *Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Dupication of their Phonograms.*[414] Honduras (6 March 1990) became a party to that Convention. At the end of 1990, the number of States party to the Geneva Convention (Phonograms) was 43;

(*k*) *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the purposes of Patent Procedure.*[415] On 3 October 1990, the German Democratic Republic ceased to be a member of the Budapest Union. At the end of 1990, the number of States members of the Budapest Union was 23.

(ii) *Amendments*

No amendments to the WIPO Convention or the treaties administered by WIPO were adopted in 1990.

(*b*) Development of the legislative infrastructure and institution building in developing countries in the field of industrial property and copyright and neighbouring rights

WIPO continued to cooperate, on request, with Governments or groups of Governments of developing countries on the adoption of the new laws and regulations, or the modernization of existing ones, in the fields of industrial property and copyright and neighbouring rights, and on the creation or modernization of institutions for the administration of industrial property and copyright and neighbouring rights.[416]

(*c*) Collection of intellectual property laws and treaties

WIPO continued to keep up to date its collection of the texts of laws and regulations of all countries and treaties dealing with industrial property, copyright and neighbouring rights, both in their original languages and in English and French translations. The texts concerning industrial property were published in "Industrial Property Laws and Treaties" (Lois et traités de propriété industrielle) and in the monthly periodical *Industrial Property/la Propriété industrielle*, whereas the texts concerning copyright and neighbouring rights were published in the monthly periodicals *Copyright/Le droit d'auteur.* Summaries of the latter texts were also published in "Copyright Law Survey" (Résumé de lois sur le droit d'auteur).

(*d*) Intellectual property questions of topical interest

(i) *Industrial property questions*

Settlement of intellectual property disputes between States. The Committee of Experts on the Settlement of Intellectual Property Disputes between States held two sessions. At the first session discussions were based on a memorandum prepared by the International Bureau which identified the main issues to be solved in a possible treaty.[417] At the second session discussions were based on two documents, also prepared by the International Bureau, one setting forth principles for a draft treaty[418] and the other containing a compilation of provisions on dispute settlement in a number of treaties.[419] The envisaged system for the settlement of disputes provides for consultations, good offices, conciliation and mediation, submission of the dispute to a panel and arbitration.

Harmonization of certain provisions in laws for the protection of inventions. The eighth session of the committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions was held, in two parts, at Geneva, in June and October. Discussions were based on the draft treaty on the harmonization of patent laws and draft regulations,[420] prepared by the International Bureau, as well as on proposals and comments made by a number of delegations. The Committee of Experts examined all the provisions of the draft treaty and regulations.[421] The Preparatory Meeting for the Conclusion of a Treaty Supplementing the Paris Convention as far as Patents are Concerned met at Geneva in June and November. The discussions of the Preparatory Meeting were based on a memorandum of the Director General[422] and dealt with the following matters in respect of which decisions were taken:[423] the substantive document to be submitted to the Diplomatic Conference; the languages of

the preparatory documents; the languages of interpretation; the draft agenda; the draft rules of procedure; the States and organizations to be invited; and the wording of the invitations. A Consultative Meeting of Developing Countries on the Harmonization of Patent Laws was held in June at Geneva; discussions were based on three documents prepared by the International Bureau of WIPO: "Provisions of Special Interest to Developing Countries in the Draft Treaty on the Harmonization of Patent Laws," "Exclusions from Patent Protection" and "Duration of Patents."[424] The Executive Committee of the International Union for the Protection of Industrial Property (Paris Union), at its session held in September-October, decided to accept the invitation extended by the Government of the Netherlands to host in June at The Hague the Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as far as Patents are Concerned.[425]

Harmonization of laws for the protection of marks. The second session of the Committee of Experts on the Harmonization of Laws for the Protection of Marks was held in June at Geneva. Discussions were based on the draft Trademark Law Treaty, prepared by the International Bureau.[426]

International protection of geographical indications. The first session of the Committee of Experts on the International Protection of Geographical Indications was held in May-June at Geneva. Discussions were based on a document prepared by the International Bureau entitled "The Need for a New Treaty and its Possible Contents."[427] The Committee of Experts agreed that the International Bureau would prepare a preliminary draft of a treaty to be submitted to a subsequent session.[428]

(ii) *Copyright questions*

Model Provisions for Legislation in the Field of Copyright. The Committee of Experts on Model Provisions for Legislation in the Field of Copyright held its third session in July at Geneva. Discussions were based on a Memorandum prepared by the International Bureau containing the provisions of the draft Model Law on Copyright.[429] The Committee discussed in chapter I of the Model Law (Definitions) the sections devoted to the notions of audiovisual work, author, broadcasting, collective work, and in chapter II (Subject-matter of protection) the section concerning subject-matter of protection (works, including items on basic elements of the definitions of literary and artistic works, protection of computer programs, protection of sound recordings and protection of folklore) and the section on subject-matter not protected. The Committee discussed in chapter III (Rights protected) the sections on moral rights and economic rights, and in chapter IV (Limitations on economic rights) the sections on free use for teaching, free reproduction by libraries and archives, non-voluntary licences for reprographic reproduction for internal purposes, free reproduction and adaptation of computer programs, free resale and lending and non-voluntary licences for public lending. The Committee also discussed the questions on the duration of protection (chapter V), ownership of rights (chapter VI), transfer of rights, licences, waiving the exercise of moral rights (chapter VII) — in particular, the sections concerning the form of contracts and waiving of exercise of moral rights — collective administration of economic rights (chapter VIII), and obligations concerning equipment needed for acts covered by protection (chapter IX) — in particular, the sections on obligations concerning equipment (protection against uses conflicting with normal exploitation of works) and control of uses of works and possible provisions against unauthorized decoders.[430] The final version of the Model Law on Copyright is to be prepared by the International Bureau.

(e) Exploration of intellectual property questions in possible need of norm setting

In the course of 1990, the International Bureau initiated work on the preparation of studies relating to the role of intellectual property in the field of franchising, on artificial intelligence, on individual (as distinguished from collective) contracts assigning or licensing rights in the field of copyright, on character merchandising and on insurance against the risks of litigation concerning the validity of patents.

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11. INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

SUBSTITUTION OF MEMBERSHIP: THE REPUBLIC OF YEMEN

The Minister for Foreign Affairs of the Republic of Yemen (Yemen), through a letter dated 24 July 1990 to the President of IFAD, notified IFAD that, as of 22 May 1990, the Yemen Arab Republic and the People's Democratic Republic of Yemen had merged to form the Republic of Yemen (Yemen), with Sana'a as the capital. Consequently, Yemen has replaced the Yemen Arab Republic and the People's Democratic Republic of Yemen as a single member of IFAD. The letter specifies that Yemen is fully bound by the Agreement Establishing IFAD and affirms that "all agreements, obligations and arrangements, including pledges for the Third Replenishment of IFAD's Resources, existing between the International Fund for Agricultural Development on the one hand and either the People's Democratic Republic of Yemen and/or the Yemen Arab Republic on the other, which were in force or effect on 21 May 1990, remain valid, effective and in force in accordance with their terms and conditions, *mutatis mutandis*," as the agreements, obligations and arrangements of Yemen.

This was the first occasion on which two of IFAD's members had merged to form a single State. No provisions in the Agreement Establishing IFAD or any of its other legal documents provided for such a case. Therefore, to resolve this issue, IFAD applied the general principles of international law on "State succession", which leave decisions regarding the membership status of a new State to the law and practice of the organization concerned. Also, IFAD considered the precedents from other international financial institutions and the acceptance made by the Secretary-General of the United Nations that Yemen had automatically substituted for its two predecessor States as a Member of the United Nations.

In particular, IFAD considered that, in the practice of international organizations, executive heads of these organizations exercise their own discretion and judgement in deciding whether to seek the endorsement of any of their governing bodies for the substitution of a new State for its predecessor members. If necessary, the executive head of the concerned organization submits the notification received from the appropriate authority, usually a formal communication from the Minister for Foreign Affairs of the new State or of the merging States, together with his comments thereon, to the appropriate governing body of the organization, which either takes note of the communication from the new State or takes such decisions as may be needed on any particular issue concerning the relationship between such State and the organization.

Consequently, the President of IFAD recommended, and the Executive Board approved, that:

(*a*) Yemen substitute the Yemen Arab Republic and the People's Democratic Republic of Yemen, as a single non-original member of IFAD in Category III,[431] as a result of their constitutional merger;

(*b*) the substitution of the membership by Yemen in IFAD, in relation to all matters between Yemen and IFAD, take effect from the date on which the Yemen Arab Republic and the People's Democratic Republic of Yemen officially merged to form Yemen (22 May 1990) and such substitution be recorded, to that effect, in the minutes of the fortieth session of the Executive Board. IFAD shall, accordingly, make such amendments as may be necessary to its records.[432]

The President, in his recommendation, confirmed that the action taken by the Executive Board on this matter did not contravene the provisions of the Agreement Establishing IFAD. The fortieth session of the Executive Board took note of the President's recommendation and notified all members, governors and the depositary of the Agreement Establishing IFAD of the above-mentioned change. The Governing Council of IFAD was also notified thereof during its fourteenth session, held on 29 and 30 May 1991.

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12. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

In addition to providing legal advice and assistance to the principal organs of UNIDO, the Director-General and various departments in the organization, including subsidiary or affiliated administrative structures, such as the International Centre for Genetic Engineering and Biotechnology, the Legal Service of UNIDO continued to deal with matters related to the completion of the conversion of UNIDO into a specialized agency. The activities can be summed up as follows:

(*a*) Constitutional matters

With the merger of the Democratic Yemen and Yemen into one single sovereign State — the Republic of Yemen[433] — and the accession of the German Democratic Republic to the Federal Republic of Germany[434] by the end of 1990, 151 States were members of UNIDO.

(*b*) Agreements with intergovernmental, non-governmental, governmental and other organizations

Based on the Guidelines regarding Relationship Agreements with Organizations of the United Nations System other than the United Nations, and with other Intergovernmental and Governmental Organizations, and regarding Appropriate Relations with Non-governmental and other Organizations, adopted by the General Conference,[435] UNIDO concluded the following agreements in 1990:

(i) Upon approval by the Industrial Development Board at its second[436] and fifth[437] sessions, relationship agreements with the following intergovernmental organizations not in the United Nations system:[438]

Relationship Agreement with the Agency for Cultural and Technical Cooperation (ACCT), signed on 22 November 1990;

Relationship Agreement with the Central African States Development Bank (BDEAC), signed on 5 January and 13 February 1990;

Relationship Agreement with the International Centre for Scientific and Technical Information (ICSTI), signed on 22 September and 29 October 1990;

Relationship Agreement with the Commission of the Cartagena Agreement (JUNAC), signed on 16 November 1989 and 22 January 1990;

Relationship Agreement with the South Asia Cooperative Environment Programme (SACEP), signed on 9 November and 27 December 1990;

Relationship Agreement with the West African Development Bank (WADB), signed on 18 May 1990.

(ii) Agreements or working arrangements with the following Governments or governmental organizations:

Letter of understanding with the Government of Costa Rica, signed on 5 April 1990;

Memorandum of understanding with the Government of Cuba on a joint programme of international cooperation in the area of sugar cane derivatives, signed on 18 June 1990;

Exchange of letters with the Permanent Representative of France to UNIDO concerning specific activities in the food industry sector, signed on 7 and 8 August 1990;

Agreement regarding cooperation with the Italian Institute of Foreign Trade, signed on 23 April 1990;

Exchange of letters with the Research Area of Trieste regarding the extension until 31 December 1990 of the 1989 agreement and related rental agreement, dated 10 May and 5 June 1990; a further exchange of letters regarding the extension until 31 December 1991 of the 1989 agreement and related rental agreement, dated 8 November and 19 December 1990;

Memorandum of understanding on industrial development with the Government of Turkey, signed on 10 July 1990.

(c) Agreements with the United Nations or its organs

(i) With the United Nations: UNIDO concluded an agreement on arrangements for the sale of UNIDO publications.[438]

(ii) With the United Nations Centre for Human Settlements (HABITAT): UNIDO signed an agreement on the co-sponsorship of the Second Consultation on the Wood and Wood Products Industry.[438]

(iii) With the International Trade Centre UNCTAD/GATT: UNIDO signed a memorandum of understanding concerning cooperation.[438]

(iv) With UNDP: UNIDO signed an arrangement concerning the Junior Professional Officer programme (based on the memorandum of understanding concerning the integration of the UNIDO field service within the UNDP field office).[438]

(*d*) Standard Basic Cooperation Agreement

Such agreements were concluded with Burundi, Cuba, and Togo.[438]

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13. INTERNATIONAL ATOMIC ENERGY AGENCY

CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL[439]

During 1990, there were no new adherences. By the end of 1990 there were 27 parties to the Convention.

CONVENTION ON EARLY NOTIFICATION OF A NUCLEAR ACCIDENT[440]

CONVENTION ON ASSISTANCE IN THE CASE OF A NUCLEAR ACCIDENT OR RADIOLOGICAL EMERGENCY[441]

During 1990, eight more States — Argentina, Brazil, Canada, Italy, Republic of Korea, Nigeria, Romania and the United Kingdom — and two international Organizations — the Food and Agriculture Organization of the United Nations and the World Meteorological Organization — adhered to the Notification Convention. By the end of 1990, there were 54 parties to the Convention.

In 1990, nine more States — Argentina, Brazil, Finland, Italy, Republic of Korea, Libyan Arab Jamahiriya, Nigeria, Romania and the United Kingdom — and two international organizations — the Food and Agriculture Organization of the United Nations and the World Meteorological Organization — adhered to the Convention on Assistance. By the end of 1990, there were 50 parties to the Convention.

VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE, 1963[442]

One State — Poland — expressed its consent to be bound by the Convention during 1990. By the end of the year, there were 14 parties to the Convention.

The Director General of IAEA, in his capacity as the depositary of the Vienna Convention, received the required number of requests for the convening of a revision conference in accordance with article XXVI (1) of the Convention.

JOINT PROTOCOL RELATING TO THE APPLICATION OF THE VIENNA CONVENTION AND THE PARIS CONVENTION

Two States — Hungary and Poland — expresed consent to be bound by the Protocol during 1990. Thus, by the end of the year the Protocol had been signed by 22 States and 5 States had adhered to it (4 are parties to the Vienna Convention, 1 is party to the Paris Convention). Pursuant to article VII of the Joint Protocol, adherence of at least five States party to the Vienna Convention and five States party to the Paris Convention is required for the entry into force of the Protocol.

EXAMINATION OF THE QUESTION OF LIABILITY FOR NUCLEAR DAMAGE

At its session in February 1990, the IAEA Board of Governors established a Standing Committee on Liability for Nuclear Damage. The tasks of the committee are: to consider civil and State liability for nuclear damage and the relationship

between them; to keep under review problems relating to the Vienna Convention; and to make the necessary preparations and arrangements for a revision conference for the Vienna Convention. It is open to all member States; other States and interested organizations may be invited as observers. The new Standing Committee replaced both the Working Group established in 1989 and the Standing Committee on Civil Liability established in 1963.

In 1990, the Committee held two sessions, in April and October, during which a consensus was reached on the need to revise the existing civil liability conventions. In this context, specific draft amendments to the Vienna Convention relating, *inter alia*, to the concept of nuclear damage, geographical scope, application to military installations, financial limit of liability and time-limits for submission of claims were agreed upon as a basis for future consideration. Consideration was also given to the establishment of a system of supplementary funding for compensation for nuclear damage in addition to the liability of the operator as well as to the establishment of an international claims settlement procedure. Issues of State liability were also considered.

The report of the first sesson of the Standing Committee was considered by the Board of Governors in September. The thirty-fourth session of the General Conference, acting upon the relevant report by the Board, reiterated the priority it attached to the question of liability for nuclear damage and requested the Board to submit a progress report to its next session.[443]

Safeguards Agreements

During 1990, Safeguards Agreements were concluded between IAEA and four States: Kiribati, Malta, Togo and Pakistan. The Agreeements with Kiribati, Malta and Togo were concluded pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).

The Agreements with Kiribati[444] and Malta,[445] as well as the Safeguards Agreements concluded in 1988 with Saint Lucia[446] and in 1989 with Tunisia[447] and Viet Nam,[448] entered into force in 1990. The Agreement with Algeria,[449] which was in force provisionally in 1989, entered into force definitively in 1990.

The NPT Safeguards Agreement with the German Democratic Republic ceased to be in force on 3 October 1990, the date on which the German Democratic Republic acceded to the Federal Republic of Germany. As a consequence, the Safeguards Agreement between the non-nuclear-weapon States of the European Atomic Energy Community (EURATOM), EURATOM and the Agency[450] — applies to the territory of the former German Democratic Republic as of the date of its accession to the Federal Republic of Germany.

By the end of 1990, there were 177 Safeguards Agreements in force with 104 States,[451] 84 of which were concluded pursuant to the NPT and/or the Treaty of Tlatelolco with 88 non-nuclear-weapon States and 3 nuclear-weapon States.

Code of Practice on the International Transboundary Movement of Radioactive Waste[452]

In September 1990, the General Conference, at its 34th session, adopted the Code of Practice on the International Transboundary Movement of Radioactive Waste, as elaborated by the Technical Working Group of Experts. The Code affirms the sovereign right of every State to prohibit the movement of radioactive waste into, from or through its territory. It requires that transboundary movements of radioactive

waste should only take place in accordance with internationally accepted safety standards, with prior notification and consent of the sending, receiving and transit States and in accordance with their respective laws and regulations; the Code prescribes that all States involved should have the administrative and technical capacity as well as the regulatory structure required to manage and dispose of radioactive wastes in a manner consistent with international safety standards.

AFRICAN REGIONAL COOPERATIVE AGREEMENT[453]

The African Regional Cooperative Agreement for Research, Development and Training related to Nuclear Energy (AFRA) entered into force on 4 April 1990. By the end of the year, it had been accepted by nine States.

PUBLICATION OF LEGAL SERIES NO. 15

A compilation of bilateral, regional and multilateral agreements provided by member States of the IAEA relating to cooperation in the field of nuclear safety was published in 1990.

NOTES

[1] Adopted without a vote.

[2] *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 42* (A/45/42), sect. IV, p. 15; also reproduced in *The United Nations Disarmament Yearbook*, vol. 15: 1990 (United Nations publication, Sales No. E.91.IX.8), p. 13.

[3] Adopted without a vote.

[4] *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 42* (A/45/42), sect. II, para. 7.

[5] Adopted without a vote.

[6] A/45/372 and Corr.1.

[7] Adopted by a recorded vote of 133 to 3, with 16 abstentions.

[8] A/45/568.

[9] Adopted without a vote.

[10] Adopted by a recorded vote of 123 to 6, with 22 abstentions.

[11] Adopted by a recorded vote of 131 to none, with 22 abstentions.

[12] Adopted by a recorded vote of 99 to none, with 50 abstentions.

[13] Adopted without a vote.

[14] Adopted by a recorded vote of 132 to 12, with 9 abstentions.

[15] General Assembly resolution S-10/2; see *Official Records of the General Assembly, Tenth Special Session, Supplement No. 4* (A/S-10/4), sect. III.

[16] Adopted by a recorded vote of 126 to 14, with 12 abstentions.

[17] Adopted by a recorded vote of 146 to one, with 6 abstentions.

[18] Adopted by a recorded vote of 125 to 17, with 10 abstentions.

[19] Adopted without a vote.

[20] A/45/373, annex; the study was subsequently issued as a United Nations publication under the title *Nuclear weapons: a comprehensive study* (Sales No. E.91.IX.10).

[21] United Nations, *Treaty Series*, vol. 729, p. 161.

[22] Adopted by a recorded vote of 127 to 3, with 17 abstentions.

[23] United Nations, *Treaty Series*, vol. 480, p. 43.

[24] Adopted by a recorded vote of 140 to 2, with 6 abstentions.

[25] Adopted by a recorded vote of 116 to 2, with 28 abstentions.

[26] Adopted by a recorded vote of 145 to none, with 3 abstentions.

[27] United Nations, *Treaty Series*, vol. 634, p. 281.

[28] Adopted by a recorded vote of 141 to none, with 3 abstentions.

[29] Adopted by a recorded vote of 145 to none, with 4 abstentions.

[30] Adopted without a vote.

[31] See note 15 above.

[32] Adopted by a recorded vote of 98 to 2, with 50 abstentions.

[33] Adopted by a recorded vote of 114 to 3, with 28 abstentions.

[34] General Assembly resolution 2832 (XXVI) of 16 December 1971.

[35] Adopted by a recorded vote of 128 to 4, with 17 abstentions.

[36] Adopted without a vote.

[37] For the text see *The United Nations Disarmament Yearbook*, vol. 15: 1990 (United Nations publication, Sales No. E.91.IX.8), appendix IV.

[38] League of Nations, *Treaty Series*, vol. XCIV (1929), p. 65.

[39] Adopted by a recorded vote of 149 to none, with 1 abstention.

[40] Adopted without a vote.

[41] Adopted without a vote.

[42] Adopted by a recorded vote of 141 to 1, with 11 abstentions.

[43] Adopted by a recorded vote of 144 to none, with 9 abstentions.

[44] *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 42* (A/45/42), para. 34.

[45] All three resolutions as well as the decision were adopted without a vote.

[46] For the text see A/CONF/95/15 and Corr.1-5. See also *Juridical Yearbook, 1980*, p. 113.

[47] See A/45/363, para. 4.

[48] *International Legal Materials*, vol. XXX, No. 1 (January 1991), p. 1.

[49] CD/1070, 4 March 1991.

[50] A/42/521-S/19085; see *Official Records of the Security Council, Forty-second Year, Supplement for July, August and September 1990*, document S/19085.

[51] They are General Assembly resolutions 45/55 B, entitled "Confidence-building measures in outer space", adopted by a recorded vote of 149 to none, with 1 abstention; 45/58 J entitled "Confidence- and security-building measures and conventional disarmament in Europe", adopted without a vote; 45/58 M entitled "Regional disarmament, including confidence-building measures", adopted without a vote; 45/58 O entitled "Defensive security concepts and policies", adopted by a recorded vote of 149 to none, with 5 abstentions; 45/58 T entitled "Regional disarmament", adopted by a recorded vote of 142 to none, with 10 abstentions; 45/62 F entitled "Implementation of the guidelines for appropriate types of confidence-building measures", adopted without a vote; and decisions 45/416 entitled "Naval armaments and disarmaments", adopted by a recorded vote of 152 to one, with no abstentions; and 45/418, entitled "Conventional disarmament on a regional scale", adopted without a vote.

[52] General Assembly resolution 2734 (XXV); reproduced in *Juridical Yearbook, 1970*, p. 62.

[53] Adopted by a recorded vote of 123 to 1, with 29 abstentions.

[54] See A/45/791.

[55] For the report of the Subcommittee, see A/AC.105/457.

[56] A/AC.105/C.2/L.154/Rev.5.

[57] A/AC.105/C.2/L.177.

[58] A/AC.105/C.2/15 and Add.1-9.

[59] A/AC.105/C.2/16 and Add.1-8.

[60] See *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 20 (A/45/20)*, chap. II, sect. C.

[61] Adopted without a vote.

[62] See A/45/821 and Corr.1.

[63] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (resolution 2222 (XXI), annex); Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (resolution 2345 (XXII), annex); Convention on International Liability for Damage Caused by Space Objects (resolution 2777 (XXVI), annex); Convention on Registration of Objects Launched into Outer Space (resolution 3235 (XXIX), annex); Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (resolution 34/68, annex).

[64] Adopted by a recorded vote of 98 to none, with 7 abstentions.

[65] See A/45/789.

[66] Adopted by a recorded vote of 107 to none, with 7 abstentions.

[67] See A/45/789.

[68] For detailed information, see *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 25* (A/45/25).

[69] Ibid., annex.

[70] *International Legal Materials*, vol. XXVI, No. 6 (November 1987), p. 1529.

[71] Ibid., p. 1550.

[72] *International Legal Materials*, vol. XXVIII, No. 3 (May 1989), p. 657.

[73] UNEP/GCSS.II/2 and Corr.1 and 2, paras. 51-52; and UNEP/GCSS.II/2/Add.3, paras. 24-32.

[74] For detailed information, see *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 46* (A/45/46).

[75] All decisions of the Committee were adopted by consensus.

[76] United Nations, *Treaty Series*, vol. 1046, p. 120.

[77] A/CONF.151/PC/10, annex I.

[78] Adopted without a vote.

[79] See A/45/850.

[80] *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 46* (A/45/46), annex I.

[81] Adopted without a vote.

[82] See A/45/851.

[83] Adopted without a vote.

[84] See A/45/849/Add.3.

[85] A/45/588.

[86] Adopted without a vote.

[87] See A/45/848.

[88] See E/1990/94, annex.

[89] For detailed information, see *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 12* (A/45/12), and ibid., *Supplement No. 12A* (A/45/12/Add.1).

[90] For detailed information, see *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 12A* (A/45/12/Add.1).

[91] United Nations, *Treaty Series*, vol. 189, p. 137.

[92] Ibid., vol. 606, p. 267.

[93] Ibid., vol. 1249, p. 13; also reproduced in *Juridical Yearbook, 1979*, p. 115.

[94] Adopted without a vote.

[95] See A/45/763.

[96] General Assembly resolution 44/25, annex.

[97] A/45/625, annex.

[98] *Official Records of the General Assembly, Forty-second Session, Supplement No. 12A* (A/42/12/Add.1), para. 23.

[99] Ibid., *Forty-fifth Session, Supplement No. 12A* (A/45/12/Add.1), para. 21.

[100] United Nations, *Treaty Series*, vol. 1019, p. 175.

[101] Ibid., vol. 976, p. 3.

[102] Ibid., p. 105.

[103] E/CONF.82/15 and Corr.2; issued also as a United Nations publication (Sales No. E.91.XI.6).

[104] Adopted without a vote.

[105] See A/S-17/11.

[106] *Report of the International Conference on Drug Abuse and Illicit Trafficking, Vienna, 17-26 June 1987* (United Nations publication, Sales No. E.87.I.18), chap. I, sect. A.

[107] Adopted without a vote.

[108] See A/45/754.

[109] Adopted without a vote.

[110] See A/45/754.

[111] See General Assembly resolution S-17/2, annex.

[112] See *Report of the International Conference on Drug Abuse and Illicit Trafficking, Vienna, 17-26 June 1987* (United Nations publication, Sales No. E.87.I.18), chap. I, sect. A.

[113] Adopted without a vote.

[114] See A/45/764.

[115] Adopted without a vote.

[116] See A/45/764.

[117] Adopted without a vote.

[118] See A/45/764.

[119] A/45/652.

[120] See A/45/652/Add.1, annex.

[121] See General Assembly resolution 2200 A (XXI), annex; also reproduced in *Juridical Yearbook, 1966*, p. 170.

[122] United Nations, *Treaty Series*, vol. 993, p. 3.

[123] Ibid., vol. 999, p. 171.

[124] Ibid.

[125] Adopted without a vote.

[126] See A/45/761.

[127] *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40, vols. I and II* (A/45/40).

[128] See General Assembly resolution 2106 A (XX), annex; reproduced in *Juridical Yearbook, 1965*, p. 63; see also United Nations, *Treaty Series*, vol. 660, p. 195.

[129] Adopted without a vote.

[130] See A/45/746.

[131] See General Assembly resolution 38/14.

[132] See General Assembly resolution 3068 (XXVIII), annex; reproduced in *Juridical Yearbook, 1973*, p. 70; see also United Nations, *Treaty Series*, vol. 1015, p. 243.

[133] Adopted by a recorded vote of 120 to 1, with 30 abstentions.

[134] See A/45/747.

[135] See General Assembly resolution 34/180, annex; also reproduced in *Juridical Yearbook, 1979*, p. 115.

[136] Adopted without a vote.

[137] See A/45/757.

[138] *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 38* (A/44/38), sec. V.

[139] See General Assembly resolution 39/46, annex; also reproduced in *Juridical Yearbook, 1984*, p. 135.

[140] Adopted without a vote.

[141] See A/45/765.

[142] General Assembly resolution 44/25 of 20 November 1989, annex.

[143] Adopted without a vote.

[144] See A/45/753.

[145] Adopted without a vote.

[146] See A/45/838.

[147] The text of the Convention is reproduced in chapter IV of the present volume.

[148] Adopted without a vote.

[149] See A/45/745.

[150] General Assembly resolution 217 A (III).

[151] See A/45/636, annex.

[152] See A/45/668, annex.

[153] See E/CN.4/1990/39, annex.

[154] E/C.12/1989/3.

[155] Adopted without a vote.

[156] See A/45/759.

[157] Adopted by a recorded vote of 113 to 15, with 23 abstentions.

[158] See A/45/759.

[159] Adopted without a vote.

[160] See A/45/749.

[161] Adopted without a vote.

[162] See A/45/749.

[163] Adopted without a vote.

[164] See A/45/750.

[165] Adopted without a vote.

[166] See A/45/749.

[167] *Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972* (United Nations publication, Sales No. E.73.II.A.14 and corrigendum), chap. I.

[168] See *Official Records of the Economic and Social Council, 1990, Supplement No. 2* and corrigendum (E/1990/41), chap. II, sect. A.

[169] See E/CN.4/1991/2-E/CN.4/Sub.2/1990/59.

[170] Adopted by a recorded vote of 121 to 10, with 21 abstentions.

[171] See A/45/759.

[172] General Assembly resolution 44/34, annex.

[173] Adopted without a vote.

[174] See A/45/838.

[175] E/CN.4/1988/22 and Add.1 and 2, E/CN.4/1989/25 and E/CN.4/1990/22 and Corr.1 and Add.1.

[176] Adopted without a vote.

[177] See A/45/762.

[178] General Assembly resolution 36/55 of 25 November 1981.

[179] E/CN.4/Sub.2/1982/32.

[180] Adopted without a vote.

[181] See A/45/749.

[182] E/CN.4/1990/72.

[183] Adopted without a vote.

[184] See A/45/751.

[185] A/45/524.

[186] *Winning the Human Race? The Report of the Independent Commission on International Humanitarian Issues* (London and New Jersey, Zed Books Ltd., 1988).

[187] Adopted by a recorded vote of 121 to 1, with 29 abstentions.

[188] See A/45/750.

[189] General Assembly resolution 41/128, annex.

[190] Adopted without a vote.

[191] See A/45/750.

[192] E/CN.4/1990/9/Rev.1.

[193] Adopted without a vote.

[194] See A/45/750.

[195] Adopted without a vote.

[196] See A/45/838.

[197] Adopted without a vote.

[198] See A/45/756.

[199] See A/CONF.144/28.

[200] A/45/324.

[201] A/45/629.

[202] See A/CONF.144/28, chap. I.

[203] United Nations, *Treaty Series*, vol. 78, p. 277.

[204] Adopted without a vote.

[205] See A/45/838.

[206] Adopted without a vote.

[207] See A/45/756.

[208] General Assembly resolution 35/171, annex.

[209] See *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

[210] Ibid., sect. B.

[211] General Assembly resolution 40/34, annex.

[212] See E/1987/43.

[213] Adopted without a vote.

[214] See A/45/756.

[215] E/1990/31/Add.1.

[216] See A/CONF.144/28, chap. IV.

[217] Adopted without a vote.

[218] See A/45/756.

[219] E/CN.5/536, annex IV.

[220] See *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.88.XIV.1), sect. G.

[221] General Assembly resolution 40/33, annex.

[222] General Assembly resolution 43/173, annex.

[223] General Assembly resolution 45/119, annex.

[224] Adopted without a vote.

[225] See A/45/756.

[226] Adopted without a vote.

[227] See A/45/756.

[228] Adopted without a vote.

[229] See A/45/756.

[230] Adopted without a vote.

[231] See A/45/756.

[232] Reference to the imposition of a sentence may not be necessary for all countries.

[233] Some countries may wish to omit this paragraph or provide an optional ground for refusal under article 4.

[234] Some countries may wish to add the following text: "Reference to an offence of a political nature shall not include any offence in respect of which the Parties have assumed an obligation, pursuant to any multilateral convention, to take prosecutorial action where they do not extradite, or any other offence that the Parties have agreed is not an offence of a political character for the purpose of extradition."

[235] Some countries may wish to make this an optional ground for refusal under article 4.

[236] Some countries may wish to add to article 3 the following ground for refusal: "If there is insufficient proof, according to the evidentiary standards of the requested State, that the person whose extradition is requested is a party to the offence". (See also note 239.)

[237] Some countries may wish to apply the same restriction to the imposition of a life, or indeterminate, sentence.

[238] Some countries may wish to make specific reference to a vessel under its flag or an aircraft registered under its law at the time of the commission of the offence.

[239] Countries that require a judicial assessment of the sufficiency of evidence may wish to add the following clause: "and sufficient proof in a form acceptable under the law of the requested State, establishing, according to the evidentiary standards of that State, that the person is a party to the offence". (See also note 236.)

[240] The laws of some countries require authentication before documents transmitted fom other countries can be admitted in their courts and, therefore, would require a clause setting out the authentication required.

[241] Some countries may wish to add, as a third case, explicit consent of the person.

[242] Some countries may not wish to assume that obligation and may wish to include other grounds in determining whether or not to grant consent.

[243] Some countries may wish to agree on other grounds for refusal, which may also warrant refusal for extradition, such as those related to the nature of the offence (e.g., political, fiscal, military) or to the status of the person (e.g., their own nationals).

[244] Some countries may wish to consider reimbursement of costs incurred as a result of withdrawal of a request for extradition or provisional arrest.

[245] Adopted without a vote.

[246] See A/45/756.

[247] Additions to the scope of assistance to be provided, such as provisions covering information on sentences passed on nationals of the Parties, can be considered bilaterally. Obviously, such assistance must be compatible with the law of the requested State.

[248] Article 2 recognizes the continuing role of informal assistance between law enforcement agencies and associated agencies in different countries.

[249] Article 4 provides an illustrative list of the grounds for refusal.

[250] Some countries may wish to delete or modify some of the provisions or include other grounds of refusal, such as those related to the nature of the offence (e.g., fiscal), the nature of the applicable penalty (e.g., capital punishment), requirements of shared concepts (e.g., double jurisdiction, no lapse of time) or specific kinds of assistance (e.g., interception of telecommunications, performing deoxyribonucleic-acid (DNA) tests). In particular, some countries may wish to include as grounds for refusal the fact that the act on which the request is based would not be an offence if committed in the territory of the requested State (dual criminality).

[251] This list can be reduced or expanded in bilateral negotiations.

[252] More detailed provisions may be included concerning the provision of information on the time and place of execution of the request and requiring the requested State to inform promptly the requesting State in cases where significant delay is likely to occur or where a decision is made not to comply with the request and the reasons for refusal.

[253] Some countries may wish to omit article 8 or modify it, e.g., restrict it to fiscal offences.

[254] Provisions relating to confidentiality will be important for many countries but may present problems to others. The nature of the provisions in individual treaties can be determined in bilateral negotiations.

[255] More detailed provisions relating to the service of documents, such as writs and judicial verdicts, can be determined bilaterally. Provisions may be desired for the service of documents by mail or other manner and for the forwarding of proof of service of the documents. For example, proof of service could be given by means of a receipt dated and signed by the person served or by means of a declaration made by the requested State that service has been affected, with an indication of the form and date of such service. One or other of these documents could be sent promptly to the requesting State. The requested State could, if the requesting State so requests, state whether service has been affected in accordance with the law of the requested State. If service could not be effected, the reasons could be communicated promptly by the requested State to the requesting State.

[256] Depending on travel distance and related arrangements.

[257] Article 11 is concerned with the obtaining of evidence in judicial proceedings, the taking of a person's statement by a less formal process and the production of items of evidence.

[258] In bilateral negotiations, provisions may also be introduced to deal with such matters as the modalities and time of restitution of evidence and the setting of a time-limit for the presence of the person in custody in the requesting State.

[259] Provisions relating to the payment of the expenses of the person providing assistance are contained in paragraph 3 of article 14. Additional details, such as provision for the payment of costs in advance, can be the subject of bilateral negotiations.

[260] The provisions in article 15 may be required as the only way of securing important evidence in proceedings involving serious national and transnational crime. However, as they may raise difficulties for some countries, the precise content of the article, including any additions or modifications, can be determined in bilateral negotiations.

[261] The question may arise as to whether this should be discretionary. This provision can be the subject of bilateral negotiations.

[262] Bilateral arrangements may cover the provision of information on the results of search and seizure and the observance of conditions imposed in relation to the delivery of seized property.

[263] The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts, and, therefore, would require a clause setting out the authentication required.

[264] More detailed provisions may be included. For example, the requested State would meet the ordinary cost of fulfilling the request for assistance except that the requesting State would bear (*a*) the exceptional or extraordinary expenses required to fulfil the request, where required by the requested State and subject to previous consultations; (*b*) the expenses associated with conveying any person to or from the territory of the requested State, and any fees, allowances or expenses payable to that person while in the requesting State pursuant to a request under article 11, 13 or 14; (*c*) the expenses associated with conveying custodial or escorting officers; and (*d*) the expenses involved in obtaining reports of experts.

[265] The present Optional Protocol is included on the ground that questions of forfeiture are conceptually different from, although closely related to, matters generally accepted as falling

within the description of mutual assistance. However, States may wish to include these provisions in the text because of their importance in dealing with organized crime. Moreover, assistance in forfeiting the proceeds of crime has now emerged as a new instrument in international cooperation. Provisions similar to those outlined in the present Protocol appear in many bilaterial assistance treaties. Further details can be provided in bilateral arrangements. One matter that could be considered is the need for other provisions dealing with issues related to bank secrecy. An addition could, for example, be made to paragraph 4 of the present Protocol providing that the requested State shall, upon request, take such measures as are permitted by its law to require compliance with monitoring orders by financial institutions. Provision could be made for the sharing of the proceeds of crime between the Contracting States or for consideration of the disposal of the proceeds on a case-by-case basis.

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

[267] Adopted without a vote.

[268] See A/45/756.

[269] The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts and, therefore, would require a clause setting out the authentication required.

[270] When negotiating on the basis of the present Model Treaty, States may wish to add other grounds for refusal or conditions to this list, relating, for example, to the nature or gravity of the offence, to the protection of fundamental human rights or to considerations of public order.

[271] Adopted without a vote.

[272] See A/45/756.

[273] The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts and, therefore, would require a clause setting out the authentication required.

[274] When negotiating on the basis of the present Model Treaty, States may wish to waive the requirement of dual criminality.

[275] When negotiating on the basis of the present Model Treaty, States may wish to add other grounds for refusal or conditions to this list, relating, for example, to the nature or gravity of the offence, to the protection of fundamental human rights or to considerations of public order.

[276] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/122; see also *The Law of the Sea: United Nations Convention on the Law of the Sea with Index and Final Act of the Third United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. E.83.V.5).

[277] For detailed information on the work of the Preparatory Commission, see the report of the Secretary-General (A/45/721 and Corr.1).

[278] LOS/PCN/L.87 and Corr.1, annex.

[279] LOS/PCN/L.87, para. 40.

[280] LOS/PCN/WP.47/Rev.1.

[281] LOS/PCN/WP.49/Rev.1.

[282] LOS/PCN/SCN.2/L.7.

[283] LOS/PCN/SCN.3/WP.6/Add.1.

[284] LOS/PCN/SCN.3/WP.6/Add.5.

[285] LOS/PCN/SCN.4/WP.9.

[286] Adopted by a recorded vote of 140 to 2, with 6 abstentions.

[287] A/45/712.

[288] A/45/563.

[289] For the composition of the Court, see General Assembly decision 45/307.

[290] As of 31 December 1990, the number of States recognizing the jurisdiction of the Court as compulsory in accordance with declarations filed under Article 36, paragraph 2, of the Statute of the International Court of Justice stood at 51.

[291] For detailed information, see *I.C.J. Yearbook 1989-1990*, No. 44, and *I.C.J. Yearbook 1990-1991*, No. 45.

[292] *I.C.J. Reports 1989*, p. 174.

[293] *I.C.J. Reports 1988*, p. 66.

[294] *I.C.J. Reports 1990*, p. 89.

[295] *I.C.J. Reports 1989*, p. 132.

[296] Ibid., p. 135.

[297] Ibid., pp. 136-144 and 145-160.

[298] *I.C.J. Reports 1990*, p. 86.

[299] *I.C.J. Reports 1989*, p. 12.

[300] *I.C.J. Reports 1990*, p. 64.

[301] *Aegean Sea Continental Shelf, I.C.J. Reports 1976*, p. 9, para. 25; *United States Diplomatic and Consular Staff in Tehran, I.C.J. Reports 1979*, p. 19, para. 36.

[302] Article 41, paragraph 2, of the Statute.

[303] *I.C.J. Reports 1990*, pp. 72-73 and 74-78.

[304] Ibid., pp. 79-84.

[305] For detailed information, see *I.C.J. Yearbook 1990-1991*, No. 45.

[306] *I.C.J. Reports 1990*, p. 149.

[307] For detailed information, see *I.C.J. Yearbook 1990-1991*, No. 45, p. 160.

[308] *I.C.J. Reports 1990*, p. 3.

[309] Ibid., pp. 7-8.

[310] Ibid., pp. 9-10, 11-17 and 18-62.

[311] Ibid., p. 92.

[312] An analysis of the judgment is taken from *I.C.J. Yearbook 1990-1991*, No. 45, p. 162.

[313] *I.C.J. Reports 1990*, p. 3.

[314] *American Journal of International Law*, 1917, p. 716.

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

[316] *I.C.J. Reports 1990*, p. 138.

[317] Ibid., p. 146.

[318] For the membership of the Commission, see *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 10* (A/45/10), chap. I.

[319] For detailed information, see *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 10* (A/45/10).

[320] A/CN.4/430 and Add.1.

[321] For details, see *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 10* (A/45/10), chap. II, sect. C.

[322] A/CN.4/431 and Corr.1.

[323] A/CN.4/421/Add.2.

[324] A/CN.4/427 and Corr.1.

[325] A/CN.4/427/Add.1.

[326] A/CN.4/425 and Corr.1 and A/CN.4/425/Add.1 and Corr.1.

[327] A/CN.4/424 and Corr.1.

[328] A/CN.4/432.

[329] A/CN.4/428 and Corr.1, 2 and 4.

[330] *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 10* (A/45/10).

[331] Adopted without a vote.

[332] See A/45/735.

[333] For the membership of the Commission, see *Official Records of the General Assembly, Thirty-fifth session, Supplement No. 17*, (A/45/17), chap. I, sect. B.

[334] For detailed information, see *Yearbook of the United Nations Commission on International Trade Law*, vol. XXI: 1990 (United Nations publication, Sales No. E.91.V.6).

[335] A/CN.9/332 and Add.1-7.

[336] Ibid., Add.8.

[337] A/CN.9/328.

[338] A/CN.9/329.

[339] A/CN.9/331.

[340] A/CN.9/WG.V/WP.24, with a commentary in A/CN.9/WG.V/WP.25.

[341] A/CN.9/330.

[342] A/CN.9/WG.II/WP.65.

[343] A/CN.9/333.

[344] A/CN.9/336.

[345] A/CN.9/339.

[346] Adopted without a vote.

[347] See A/45/736.

[348] General Assembly resolutions 3201 (S-VI) and 3202 (S-VI).

[349] General Assembly resolution 3362 (S-VII).

[350] Adopted by a recorded vote of 116 to 9, with 26 abstentions.

[351] See A/45/730.

[352] *Official Records of the United Nations Conference on the Representation of States in Their Relations with International Organizations, Vienna, 4 February–14 March 1975*. vol. II (United Nations publication, Sales No. E.75.V.12), document A/CONF.67/16, p. 208.

[353] Adopted without a vote.

[354] See A/45/731.

[355] United Nations, *Treaty Series*, vol. 75, p. 2.

[356] Ibid., vol. 1125, p. 3.

[357] Adopted by a recorded vote of 148 to 1.

[358] See A/45/732.

[359] A/45/455 and Add.1-3.

[360] Adopted without a vote.

[361] See A/45/733.

[362] A/45/430 and Corr.1 and Add.1-3.

[363] See A/C.6/45/L.5.

[364] Adopted without a vote.

[365] See A/45/738.

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

[367] Ibid., *Forty-fifth Session, Sixth Committee*, 42nd meeting, and corrigendum.

[368] For the report of the Special Committee, see *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 33* (A/45/33).

[369] A/AC.182/L.60/Rev.1.

[370] A/AC.182/L.62/Rev.1.

[371] A/AC.182/L.66.

[372] A/CN.182/L.64.

[373] A/CN.182/L.43/Rev.5.

[374] *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 33* (A/44/33).

[375] A/CN.182/L.67.

[376] A/CN.182/L.65.

[377] Adopted by a recorded vote of 147 to none, with one abstention.

[378] See A/45/739.

[379] Adopted by a recorded vote of 149 to none, with one abstention.

[380] See A/45/739.

[381] Adopted without a vote.

[382] See A/45/898.

[383] A/C.5/45/10 and Corr.1.

[384] General Assembly resolution 22 A (I); see also United Nations, *Treaty Series*, vol. 1, p. 15.

[385] General Assembly resolution 179 (II); see also United Nations, *Treaty Series*, vol. 33, p. 261.

[386] *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, I.C.J. Reports 1989*, p. 177.

[387] Adopted without a vote.

[388] For detailed information, see *Official Record of the General Assembly, Forty-Fifth Session, Supplement No. 14* (A/45/14); the report covers the period July 1988–June 1990.

[389] Adopted without a vote.

[390] See A/45/855.

[391] A/45/634.

[392] With regard to the adoption of instruments, information on the preparatory work, which by virtue of the double discussion procedure normally covers a period of two years, is given in order to facilitate reference work in the year during which the instrument was adopted.

[393] ILC, 77th session, 1990, *Record of Proceedings*, No. 2; No. 16; No. 19, pp. 1-2; English, French, Spanish. ILO *Official Bulletin*, vol. LXXIII, 1990, Series A, No. 2, pp. 121-122.

[394] ILO *Official Bulletin*, vol. LXXIII, 1990, Series A, No. 2, pp. 71-79; English, French, Spanish. Regarding preparatory work, see: *First discussion* — Safety in the Use of Chemicals at Work, ILC, 76th Session (1989), report VI (1) and report VI (2); 57 and 114 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC, 76th session (1989), *Record of Proceedings*, No. 23; No. 31, pp. 18-22; English, French, Spanish. *Second discussion* — Safety in the Use of Chemicals at Work, ILC, 77th session (1990), report V (1), report V (2A) and report V (2B); 19, 87 and 38 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC, 77th session (1990), *Record of Proceedings*, No. 24; No. 30; No. 31, p. 6; English, French, Spanish.

[395] ILO *Official Bulletin*, vol. LXXIII, 1990, Series A, No. 2, pp. 84-92; English, French, Spanish. See also ILC, 77th session (1990), *Record of Proceedings*, No. 24, pp. 15-23, 29-34; No. 30; No. 31, p. 6; English, French, Spanish.

[396] ILO *Official Bulletin*, vol. LXXIII, 1990, Series A, No. 2, pp. 79-84; English, French, Spanish. Regarding preparatory work, see: *First discussion* — Night Work, ILC, 76th session (1989), report V (1) and report V (2); 83 and 140 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC, 76th session (1989), *Record of Proceedings*, No. 30; No. 33; English, French, Spanish. *Second discussion* — Night Work, ILC, 77th session (1990), report IV (1), report IV (2A), report IV (2B); 13, 109, 26 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC, 77th session (1990), *Record of Proceedings*, No. 26; No. 31, pp. 1 and 6, pp. 16-17; No. 33, pp. 1 and 16; English, French, Spanish.

[397] ILO *Official Bulletin*, vol. LXXIII, 1990, Series A, No. 2, pp. 92-96; English, French, Spanish. See also ILC, 77th session (1990), *Record of Proceedings*, No. 26; No. 31, pp. 1-6, 16-17; No. 33, p. 1; English, French, Spanish.

[398] ILO *Official Bulletin*, vol. LXXIII, 1990, Series A, No. 2, pp. 96-98; English, French, Spanish. See also ILC, 77th session (1990), *Record of Proceedings*, No. 26; No. 31, pp. 1-9, pp. 16-17; No. 33, p. 16; English, French, Spanish.

[399] This report has been published as report III (Part 4) to the 77th session of the Conference and comprises two volumes: vol. A: General Report and Observations concerning particular Countries, report III(4A), 500 p.; English, French, Spanish. Vol. B: General Survey of the Reports on the Merchant Shipping (Minimum Standards) Convention (No. 147) and the Merchant Shipping (Improvement of Standards) Recommendation (No. 155), 1976, report III(4B), 187 p.; English, French, Spanish.

[400] ILO *Official Bulletin*, vol. LXXIII, 1990, Series B, No. 1.

[401] Ibid., vol. LXXIII, 1990, Series B, No. 2.

[402] Ibid., vol. LXXIII, 1990, Series B, No. 3.

[403] Unpublished documents WHO/HLE/90.1 and WHO/HLE/90.2.

[404] The text of the ICSID Convention is reproduced in the United Nations *Juridical Yearbook, 1966*, p. 196.

[405] United Nations, *Treaty Series*, vol. 828, p. 3.

[406] Ibid., vol. 828, p. 221.

[407] Ibid., vol. 828, p. 389.

[408] League of Nations, *Treaty Series*, vol. 74, p. 343.

[409] United Nations, *Treaty Series*, vol. 550, p. 45; vol. 828, p. 191; and vol. 1154, p. 89.

[410] Ibid., vol. 496, p. 43.

[411] Ibid., vol. 828, p. 435.

[412] United Kingdom *Treaty Series*, 78 (1978).

[413] Ibid., 113 (1975).

[414] United Nations, *Treaty Series*, vol. 866, p. 67.

[415] *International Legal Materials*, vol. XVII, p. 285.

[416] For the details of this cooperation, see "Activities in the Year 1990, Report of the Director General", WIPO document AB/XXII/8, paras. 338-610.

[417] WIPO document SD/CE/I/2.

[418] WIPO document SD/CE/II/2.

[419] WIPO documents SD/CE/I/3 and SD/CE/II/3.

[420] WIPO documents HL/CE/VIII/2, 3 and 4.

[421] WIPO documents HL/CE/VIII/26 and 31.

[422] WIPO documents PLT/PM/2 and 4.

[423] WIPO documents PLT/PM/5 and 8.

[424] WIPO documents HL/CM/1, HL/CM/INF/1 Rev. and HL/CM/INF/2.

[425] WIPO document P/EC/XXVI/3, paragraph 9.

[426] WIPO documents HM/CE/II/2 and 3.

[427] WIPO document GEO/CE/I/2.

[428] WIPO document GEO/CE/3.

[429] WIPO document CE/MPC/III/2.

[430] WIPO document CE/MPC/III/3.

[431] The Yemen Arab Republic and the People's Democratic Republic of Yemen were non-original members of IFAD in Category III. Their membership was approved by the first session of the Governing Council on 13 December 1977 and became effective on 6 February 1979 and 13 December 1977, respectively, once they had deposited their instruments of accession to the Agreement Establishing IFAD with the Secretary-General of the United Nations.

[432] EB 90/40/R.33.

[433] IDB.6/23/Rev.1.

[434] IDB.7/36.

[435] GC.1/INF.6.

[436] IDB.2/Dec.28.

[437] IDB.5/Dec.40.

[438] Annual report of UNIDO 1990 (IDB.8/10), appendix J.

[439] Reproduced in IAEA document INFCIRC/274/Rev.1; see also United Kingdom Command Paper No. 8112.

[440] Reproduced in IAEA document INFCIRC/335.

[441] Reproduced in IAEA document INFCIRC/336.

[442] United Nations, *Treaty Series*, vol. 1063, p. 265; the text of the Convention is also published in *IAEA Legal Series*, No. 4.

[443] GC (XXXIV)/RES/529.

[444] Reproduced in IAEA document INFCIRC/390.

[445] Reproduced in IAEA document INFCIRC/387.

[446] Reproduced in IAEA document INFCIRC/379.

[447] Reproduced in IAEA document INFCIRC/381.

[448] Reproduced in IAEA document INFCIRC/376.

[449] Reproduced in IAEA document INFCIRC/361.

[450] Reproduced in IAEA document INFCIRC/193.

[451] IAEA also applies safeguards to nuclear facilities at Taiwan, Province of China.

[452] Reproduced in IAEA document INFCIRC/386.

[453] Reproduced in IAEA document INFCIRC/377.

Chapter IV

TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Treaties concerning international law concluded under the auspices of the United Nations

INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES.[1] ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 18 DECEMBER 1990[2]

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

PREAMBLE

The States Parties to the present Convention,

Taking into account the principles embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights,[3] the International Covenant on Economic, Social and Cultural Rights,[4] the International Covenant on Civil and Political Rights,[4] the International Convention on the Elimination of All Forms of Racial Discrimination,[5] the Convention on the Elimination of All Forms of Discrimination against Women[6] and the Convention on the Rights of the Child,[7]

Taking into account also the principles and standards set forth in the relevant instruments elaborated within the framework of the International Labour Organisation, especially the Convention concerning Migration for Employment (No. 97), the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143), the Recommendation concerning Migration for Employment (No. 86), the Recommendation concerning Migrant Workers (No. 151), the Convention concerning Forced or Compulsory Labour (No. 29) and the Convention concerning Abolition of Forced Labour (No. 105),

Reaffirming the importance of the principles contained in the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization,[8]

Recalling the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[9] the Declaration of the Fourth United Nations Congress

on the Prevention of Crime and the Treatment of Offenders,[10] the Code of Conduct for Law Enforcement Officials[11] and the Slavery Conventions,[12]

Recalling that one of the objectives of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, and bearing in mind the expertise and experience of that organization in matters related to migrant workers and members of their families,

Recognizing the importance of the work done in connection with migrant workers and members of their families in various organs of the United Nations, in particular in the Commission on Human Rights and the Commission for Social Development, and in the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, as well as in other international organizations,

Recognizing also the progress made by certain States on a regional or bilateral basis towards the protection of the rights of migrant workers and members of their families, as well as the importance and usefulness of bilateral and multilateral agreements in this field,

Realizing the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community,

Aware of the impact of the flows of migrant workers on States and people concerned, and desiring to establish norms which may contribute to the harmonization of the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and members of their families,

Considering the situation of vulnerability in which migrant workers and members of their families frequently find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment,

Convinced that the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

Taking into account the fact that migration is often the cause of serious problems for the members of the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,

Bearing in mind that the human problems involved in migration are even more serious in the case of irregular migration and convinced therefore that appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights,

Considering that workers who are non-documented or in an irregular situation are frequently employed under less favourable conditions of work than other workers and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,

Considering also that recourse to the employment of migrant workers who are in an irregular situation will be discouraged if the fundamental human rights of all migrant workers are more widely recognized and, moreover, that granting certain additional rights to migrant workers and members of their families in a regular situation will encourage all migrants and employers to respect and comply with the laws and procedures established by the States concerned,

Convinced, therefore, of the need to bring about the international protection of the rights of all migrant workers and members of their families, reaffirming and establishing basic norms in a comprehensive convention which could be applied universally,

Have agreed as follows:

PART I

SCOPE AND DEFINITIONS

Article 1

1. The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

2. The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.

Article 2

For the purposes of the present Convention:

1. The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

2. (*a*) The term "frontier worker" refers to a migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week;

(*b*) The term "seasonal worker" refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year;

(*c*) The term "seafarer", which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he or she is not a national;

(*d*) The term "worker on an offshore installation" refers to a migrant worker employed on an offshore installation that is under the jurisdiction of a State of which he or she is not a national;

(*e*) The term "itinerant worker" refers to a migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her occupation;

(*f*) The term "project-tied worker" refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer;

(*g*) The term "specified-employment worker" refers to a migrant worker:

(i) Who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or

(ii) Who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or

(iii) Who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief;

and who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or she no longer undertakes that specific assignment or duty or engages in that work;

(*h*) The term "self-employed worker" refers to a migrant worker who is engaged in a remunerated activity otherwise than under a contract of employment and who earns his or her living through this activity normally working alone or together with members of his or her family, and to any other migrant worker recognized as self-employed by applicable legislation of the State of employment or bilateral or multilateral agreements.

Article 3

The present Convention shall not apply to:

(*a*) Persons sent or employed by international organizations and agencies or persons sent or employed by a State outside its territory to perform official functions, whose admission and status are regulated by general international law or by specific international agreements or conventions;

(*b*) Persons sent or employed by a State or on its behalf outside its territory who participate in development programmes and other co-operation programmes, whose admission and status are regulated by agreement with the State of employment and who, in accordance with that agreement, are not considered migrant workers;

(*c*) Persons taking up residence in a State different from their State of origin as investors;

(*d*) Refugees and stateless persons, unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned;

(*e*) Students and trainees;

(*f*) Seafarers and workers on an offshore installation who have not been admitted to take up residence and engage in a remunerated activity in the State of employment.

Article 4

For the purposes of the present Convention the term "members of the family" refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.

Article 5

For the purposes of the present Convention, migrant workers and members of their families:

(*a*) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employ-

ment pursuant to the law of that State and to international agreements to which that State is a party;

(*b*) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (*a*) of the present article.

Article 6

For the purposes of the present Convention:

(*a*) The term "State of origin" means the State of which the person concerned is a national;

(*b*) The term "State of employment" means a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be;

(*c*) The term "State of transit" means any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of habitual residence.

PART II

NON-DISCRIMINATION WITH RESPECT TO RIGHTS

Article 7

States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

PART III

HUMAN RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

Article 8

1. Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention.

2. Migrant workers and members of their families shall have the right at any time to enter and remain in their State of origin.

Article 9

The right to life of migrant workers and members of their families shall be protected by law.

Article 10

No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 11

1. No migrant worker or member of his or her family shall be held in slavery or servitude.

2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.

3. Paragraph 2 of the present article shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.

4. For the purpose of the present article the term "forced or compulsory labour" shall not include:

(*a*) Any work or service not referred to in paragraph 3 of the present article normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;

(*b*) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(*c*) Any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.

Article 12

1. Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching.

2. Migrant workers and members of their families shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.

3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

4. States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 13

1. Migrant workers and members of their families shall have the right to hold opinions without interference.

2. Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.

3. The exercise of the right provided for in paragraph 2 of the present article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(*a*) For respect of the rights or reputation of others;

(*b*) For the protection of the national security of the States concerned or of public order (*ordre public*) or of public health or morals;

(*c*) For the purpose of preventing any propaganda for war;

(*d*) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Article 14

No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, correspondence or other communications, or to unlawful attacks on his or her honour and reputation. Each migrant worker and member of his or her family shall have the right to the protection of the law against such interference or attacks.

Article 15

No migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment, the assets of a migrant worker or a member of his or her family are expropriated in whole or in part, the person concerned shall have the right to fair and adequate compensation.

Article 16

1. Migrant workers and members of their families shall have the right to liberty and security of person.

2. Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

3. Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedures established by law.

4. Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.

5. Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.

6. Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that while awaiting trial they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.

7. When a migrant worker or a member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other manner:

(*a*) The consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefor;

(*b*) The person concerned shall have the right to communicate with the said authorities. Any communication by the person concerned to the said authorities shall be forwarded without delay, and he or she shall also have the right to receive communications sent by the said authorities without delay;

(*c*) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his or her legal representation.

8. Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.

9. Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.

Article 17

1. Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.

2. Accused migrant workers and members of their families shall, save in exceptional circumstances, be separated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. Any migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial.

4. During any period of imprisonment in pursuance of a sentence imposed by a court of law, the essential aim of the treatment of a migrant worker or a member of his or her family shall be his or her reformation and social rehabilitation. Juvenile offenders shall be separated from adults and be accorded treatment appropriate to their age and legal status.

5. During detention or imprisonment, migrant workers and members of their families shall enjoy the same rights as nationals to visits by members of their families.

6. Whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children.

7. Migrant workers and members of their families who are subjected to any form of detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation.

8. If a migrant worker or a member of his or her family is detained for the purpose of verifying any infraction of provisions related to migration, he or she shall not bear any costs arising therefrom.

Article 18

1. Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a

suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

2. Migrant workers and members of their families who are charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.

3. In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:

(*a*) To be informed promptly and in detail in a language they understand of the nature and cause of the charge against them;

(*b*) To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing;

(*c*) To be tried without undue delay;

(*d*) To be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require and without payment by them in any such case if they do not have sufficient means to pay;

(*e*) To examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;

(*f*) To have the free assistance of an interpreter if they cannot understand or speak the language used in court;

(*g*) Not to be compelled to testify against themselves or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.

6. When a migrant worker or a member of his or her family has, by a final decision, been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to that person.

7. No migrant worker or member of his or her family shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of the State concerned.

Article 19

1. No migrant worker or member of his or her family shall be held guilty of any criminal offence on account of any act or omission that did not constitute a criminal offence under national or international law at the time when the criminal offence was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when it was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, he or she shall benefit thereby.

2. Humanitarian considerations related to the status of a migrant worker, in particular with respect to his or her right of residence or work, should be taken into account in imposing a sentence for a criminal offence committed by a migrant worker or a member of his or her family.

Article 20

1. No migrant worker or member of his or her family shall be imprisoned merely on the ground of failure to fulfil a contractual obligation.

2. No migrant worker or member of his or her family shall be deprived of his or her authorization of residence or work permit or expelled merely on the ground of failure to fulfil an obligation arising out of a work contract unless fulfilment of that obligation constitutes a condition for such authorization or permit.

Article 21

It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family.

Article 22

1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.

2. Migrant workers and members of their families may be expelled from the territory of a State Party only in pursuance of a decision taken by the competent authority in accordance with law.

3. The decision shall be communicated to them in a language they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated. The persons concerned shall be informed of these rights before or at the latest at the time the decision is rendered.

4. Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.

5. If a decision of expulsion that has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him or her from re-entering the State concerned.

6. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities.

7. Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his or her family who is subject to such a decision may seek entry into a State other than his or her State of origin.

8. In case of expulsion of a migrant worker or a member of his or her family the costs of expulsion shall not be borne by him or her. The party concerned may be required to pay his or her own travel costs.

9. Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his or her family acquired in accordance with the law of that State, including the right to receive wages and other entitlements due to him or her.

Article 23

Migrant workers and members of their families shall have the right to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin or of a State representing the interests of that State whenever the rights recognized in the present Convention are impaired. In particular, in case of expulsion, the person concerned shall be informed of this right without delay and the authorities of the expelling State shall facilitate the exercise of such right.

Article 24

Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law.

Article 25

1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:

(*a*) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by this term;

(*b*) Other terms of employment, that is to say, minimum age of employment, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment.

2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.

3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of any such irregularity.

Article 26

1. States Parties recognize the right of migrant workers and members of their families:

(*a*) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;

(*b*) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;

(*c*) To seek the aid and assistance of any trade union and of any such association as aforesaid.

2. No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (*ordre public*) or the protection of the rights and freedoms of others.

Article 27

1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

Article 28

Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

Article 29

Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.

Article 30

Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public preschool educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.

Article 31

1. States Parties shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin.

2. States Parties may take appropriate measures to assist and encourage efforts in this respect.

Article 32

Upon the termination of their stay in the State of employment, migrant workers and members of their families shall have the right to transfer their earnings and savings and, in accordance with the applicable legislation of the States concerned, their personal effects and belongings.

Article 33

1. Migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit as the case may be concerning:

(*a*) Their rights arising out of the present Convention;

(*b*) The conditions of their admission, their rights and obligations under the law and practice of the State concerned and such other matters as will enable them to comply with administrative or other formalities in that State.

2. States Parties shall take all measures they deem appropriate to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate, they shall cooperate with other States concerned.

3. Such adequate information shall be provided upon request to migrant workers and members of their families, free of charge, and, as far as possible, in a language they are able to understand.

Article 34

Nothing in the present part of the Convention shall have the effect of relieving migrant workers and the members of their families from either the obligation to comply with the laws and regulations of any State of transit and the State of employment or the obligation to respect the cultural identity of the inhabitants of such States.

Article 35

Nothing in the present part of the Convention shall be interpreted as implying the regularization of the situation of migrant workers or members of their families who are non-documented or in an irregular situation or any right to such regularization of their situation, nor shall it prejudice the measures intended to ensure sound and equitable conditions for international migration as provided in part VI of the present Convention.

PART IV

OTHER RIGHTS OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES WHO ARE DOCUMENTED OR IN A REGULAR SITUATION

Article 36

Migrant workers and members of their families who are documented or in a regular situation in the State of employment shall enjoy the rights set forth in the present part of the Convention in addition to those set forth in part III.

Article 37

Before their departure, or at the latest at the time of their admission to the State of employment, migrant workers and members of their families shall have the right to be fully informed by the State of origin or the State of employment, as appropriate, of all conditions applicable to their admission and particularly those concerning their stay and the remunerated activities in which they may engage as well as of the requirements they must satisfy in the State of employment and the authority to which they must address themselves for any modification of those conditions.

Article 38

1. States of employment shall make every effort to authorize migrant workers and members of their families to be temporarily absent without effect upon their authorization to stay or to work, as the case may be. In doing so, States of employment shall take into account the special needs and obligations of migrant workers and members of their families, in particular in their States of origin.

2. Migrant workers and members of their families shall have the right to be fully informed of the terms on which such temporary absences are authorized.

Article 39

1. Migrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there.

2. The rights mentioned in paragraph 1 of the present article shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals, or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 40

1. Migrant workers and members of their families shall have the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests.

2. No restrictions may be placed on the exercise of this right other than those that are prescribed by law and are necessary in a democratic society in the interests of national security, public order (*ordre public*) or the protection of the rights and freedoms of others.

Article 41

1. Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.

2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

Article 42

1. States Parties shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families and shall envisage, as appropriate, the possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions.

2. States of employment shall facilitate, in accordance with their national legislation, the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.

3. Migrant workers may enjoy political rights in the State of employment if that State, in the exercise of its sovereignty, grants them such rights.

Article 43

1. Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to:

(*a*) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;

(*b*) Access to vocational guidance and placement services;

(*c*) Access to vocational training and retraining facilities and institutions;

(*d*) Access to housing, including social housing schemes, and protection against exploitation in respect of rents;

(*e*) Access to social and health services, provided that the requirements for participation in the respective schemes are met;

(*f*) Access to cooperatives and self-managed enterprises, which shall not imply a change of their migration status and shall be subject to the rules and regulations of the bodies concerned;

(*g*) Access to and participation in cultural life.

2. States Parties shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the rights mentioned in paragraph 1 of the present article whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.

3. States of employment shall not prevent an employer of migrant workers from establishing housing or social or cultural facilities for them. Subject to article 70 of the present Convention, a State of employment may make the establishment of such facilities subject to the requirements generally applied in that State concerning their installation.

Article 44

1. States Parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the families of migrant workers.

2. States Parties shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.

3. States of employment, on humanitarian grounds, shall favourably consider granting equal treatment, as set forth in paragraph 2 of the present article, to other family members of migrant workers.

Article 45

1. Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to:

(*a*) Access to educational institutions and services, subject to the admission requirements and other regulations of the institutions and services concerned;

(*b*) Access to vocational guidance and training institutions and services, provided that requirements for participation are met;

(*c*) Access to social and health services, provided that requirements for participation in the respective schemes are met;

(*d*) Access to and participation in cultural life.

2. States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.

3. States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.

4. States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin.

Article 46

Migrant workers and members of their families shall, subject to the applicable legislation of the States concerned, as well as relevant international agreements and the obligations of the States concerned arising out of their participation in customs unions, enjoy exemption from import and export duties and taxes in respect of their personal and household effects as well as the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment:

(*a*) Upon departure from the State of origin or State of habitual residence;

(*b*) Upon initial admission to the State of employment;

(*c*) Upon final departure from the State of employment;

(*d*) Upon final return to the State of origin or State of habitual residence.

Article 47

1. Migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or any other State. Such transfers shall be made in conformity with procedures established by applicable legislation of the State concerned with in conformity with applicable international agreements.

2. States concerned shall take appropriate measures to facilitate such transfers.

Article 48

1. Without prejudice to applicable double taxation agreements, migrant workers and members of their families shall, in the matter of earnings in the State of employment:

(*a*) Not be liable to taxes, duties or charges of any description higher or more onerous than those imposed on nationals in similar circumstances;

(*b*) Be entitled to deductions or exemptions from taxes of any description and to any tax allowances applicable to nationals in similar circumstances, including tax allowances for dependent members of their families.

2. States Parties shall endeavour to adopt appropriate measures to avoid double taxation of the earnings and savings of migrant workers and members of their families.

Article 49

1. Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to migrant workers authorization of residence for at least the same period of time as their authorization to engage in remunerated activity.

2. Migrant workers who in the State of employment are allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permits or similar authorizations.

3. In order to allow migrant workers referred to in paragraph 2 of the present article sufficient time to find alternative remunerated activities, the authorization of

residence shall not be withdrawn at least for a period corresponding to that during which they may be entitled to unemployment benefits.

Article 50

1. In the case of death of a migrant worker or dissolution of marriage, the State of employment shall favourably consider granting family members of that migrant worker residing in that State on the basis of family reunion an authorization to stay; the State of employment shall take into account the length of time they have already resided in that State.

2. Members of the family to whom such authorization is not granted shall be allowed before departure a reasonable period of time in order to enable them to settle their affairs in the State of employment.

3. The provisions of paragraphs 1 and 2 of the present article may not be interpreted as adversely affecting any right to stay and work otherwise granted to such family members by the legislation of the State of employment or by bilateral and multilateral treaties applicable to that State.

Article 51

Migrant workers who in the State of employment are not permitted freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. Such migrant workers shall have the right to seek alternative employment, participation in public work schemes and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work.

Article 52

1. Migrant workers in the State of employment shall have the right freely to choose their remunerated activity, subject to the following restrictions or conditions.

2. For any migrant worker a State of employment may:

(*a*) Restrict access to limited categories of employment, functions, services or activities where this is necessary in the interests of this State and provided for by national legislation;

(*b*) Restrict free choice of remunerated activity in accordance with its legislation concerning recognition of occupational qualifications acquired outside its territory. However, States Parties concerned shall endeavour to provide for recognition of such qualifications.

3. For migrant workers whose permission to work is limited in time, a State of employment may also:

(*a*) Make the right freely to choose their remunerated activities subject to the condition that the migrant worker has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed two years;

(*b*) Limit access by a migrant worker to remunerated activities in pursuance of a policy of granting priority to its nationals or to persons who are assimilated to them for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has resided lawfully in

its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed five years.

4. States of employment shall prescribe the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his or her own account. Account shall be taken of the period during which the worker has already been lawfully in the State of employment.

Article 53

1. Members of a migrant worker's family who have themselves an authorization of residence or admission that is without limit of time or is automatically renewable shall be permitted freely to choose their remunerated activity under the same conditions as are applicable to the said migrant worker in accordance with article 52 of the present Convention.

2. With respect to members of a migrant worker's family who are not permitted freely to choose their remunerated activity, States Parties shall consider favourably granting them priority in obtaining permission to engage in a remunerated activity over other workers who seek admission to the State of employment, subject to applicable bilateral and multilateral agreements.

Article 54

1. Without prejudice to the terms of their authorization of residence or their permission to work and the rights provided for in articles 25 and 27 of the present Convention, migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of:

(*a*) Protection against dismissal;

(*b*) Unemployment benefits;

(*c*) Access to public work schemes intended to combat unemployment;

(*d*) Access to alternative employment in the event of loss of work or termination of other remunerated activity, subject to article 52 of the present Convention.

2. If a migrant worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State of employment, on terms provided for in article 18, paragraph 1, of the present Convention.

Article 55

Migrant workers who have been granted permission to engage in a remunerated activity, subject to the conditions attached to such permission, shall be entitled to equality of treatment with nationals of the State of employment in the exercise of that remunerated activity.

Article 56

1. Migrant workers and members of their families referred to in the present part of the Convention may not be expelled from a State of employment, except for reasons defined in the national legislation of that State, and subject to the safeguards established in part III.

2. Expulsion shall not be resorted to for the purpose of depriving a migrant worker or a member of his or her family of the rights arising out of the authorization of residence and the work permit.

3. In considering whether to expel a migrant worker or a member of his or her family, account should be taken of humanitarian considerations and of the length of time that the person concerned has already resided in the State of employment.

PART V

PROVISIONS APPLICABLE TO PARTICULAR CATEGORIES OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

Article 57

The particular categories of migrant workers and members of their families specified in the present part of the Convention who are documented or in a regular situation shall enjoy the rights set forth in part III and, except as modified below, the rights set forth in part IV.

Article 58

1. Frontier workers, as defined in article 2, paragraph 2 (*a*), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by reason of their presence and work in the territory of the State of employment, taking into account that they do not have their habitual residence in that State.

2. States of employment shall consider favourably granting frontier workers the right freely to choose their remunerated activity after a specified period of time. The granting of that right shall not affect their status as frontier workers.

Article 59

1. Seasonal workers, as defined in article 2, paragraph 2 (*b*), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status in that State as seasonal workers, taking into account the fact that they are present in that State for only part of the year.

2. The State of employment shall, subject to paragraph 1 of the present article, consider granting seasonal workers who have been employed in its territory for a significant period of time the possibility of taking up other remunerated activities and giving them priority over other workers who seek admission to that State, subject to applicable bilateral and multilateral agreements.

Article 60

Itinerant workers, as defined in article 2, paragraph 2 (*e*), of the present Convention, shall be entitled to the rights provided for in part IV that can be granted to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status as itinerant workers in that State.

Article 61

1. Project-tied workers, as defined in article 2, paragraph 2 (*f*), of the present Convention, and members of their families shall be entitled to the rights provided for in part IV except the provisions of article 43, paragraphs 1 (*b*) and (*c*), article 43, paragraph 1 (*d*), as it pertains to social housing schemes, article 45, paragraph 1 (*b*), and articles 52 to 55.

2. If a project-tied worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State which has jurisdiction over that employer, on terms provided for in article 18, paragraph 1, of the present Convention.

3. Subject to bilateral or multilateral agreements in force for them, the States Parties concerned shall endeavour to enable project-tied workers to remain adequately protected by the social security systems of their States of origin or habitual residence during their engagement in the project. States Parties concerned shall take appropriate measures with the aim of avoiding any denial of rights or duplication of payments in this respect.

4. Without prejudice to the provisions of article 47 of the present Convention and to relevant bilateral or multilateral agreements, States Parties concerned shall permit payment of the earnings of project-tied workers in their State of origin or habitual residence.

Article 62

1. Specified-employment workers, as defined in article 2, paragraph 2 (*g*), of the present Convention, shall be entitled to the rights provided for in part IV, except the provisions of article 43, paragraphs 1 (*b*) and (*c*), article 43, paragraph 1 (*d*), as it pertains to social housing schemes, article 52, and article 54, paragraph 1 (*d*).

2. Members of the families of specified-employment workers shall be entitled to the rights relating to family members of migrant workers provided for in part IV of the present Convention, except the provisions of article 53.

Article 63

1. Self-employed workers, as defined in article 2, paragraph 2 (*h*), of the present Convention, shall be entitled to the rights provided for in part IV with the exception of those rights which are exclusively applicable to workers having a contract of employment.

2. Without prejudice to articles 52 and 79 of the present Convention, the termination of the economic activity of the self-employed workers shall not in itself imply the withdrawal of the authorization for them or for the members of their families to stay or to engage in a remunerated activity in the State of employment except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted.

PART VI

PROMOTION OF SOUND, EQUITABLE, HUMANE AND LAWFUL CONDITIONS IN CONNECTION WITH INTERNATIONAL MIGRATION OF WORKERS AND MEMBERS OF THEIR FAMILIES

Article 64

1. Without prejudice to article 79 of the present Convention, the States Parties concerned shall as appropriate consult and cooperate with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families.

2. In this respect, due regard shall be paid not only to labour needs and resources, but also to the social, economic, cultural and other needs of migrant workers and members of their families involved, as well as to the consequences of such migration for the communities concerned.

Article 65

1. States Parties shall maintain appropriate services to deal with questions concerning international migration of workers and members of their families. Their functions shall include, *inter alia:*

(*a*) The formulation and implementation of policies regarding such migration;

(*b*) An exchange of information, consultation and cooperation with the competent authorities of other States Parties involved in such migration;

(*c*) The provision of appropriate information, particularly to employers, workers and their organizations on policies, laws and regulations relating to migration and employment, on agreements concluded with other States concerning migration and on other relevant matters;

(*d*) The provision of information and appropriate assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, remunerated activities, exit and return, as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations.

2. States Parties shall facilitate as appropriate the provision of adequate consular and other services that are necessary to meet the social, cultural and other needs of migrant workers and members of their families.

Article 66

1. Subject to paragraph 2 of the present article, the right to undertake operations with a view to the recruitment of workers for employment in another State shall be restricted to:

(*a*) Public services or bodies of the State in which such operations take place;

(*b*) Public services or bodies of the State of employment on the basis of agreement between the States concerned;

(*c*) A body established by virtue of a bilateral or multilateral agreement.

2. Subject to any authorization, approval and supervision by the public authorities of the States Parties concerned as may be established pursuant to the legislation and practice of those States, agencies, prospective employers or persons acting on their behalf may also be permitted to undertake the said operations.

Article 67

1. States Parties concerned shall co-operate as appropriate in the adoption of measures regarding the orderly return of migrant workers and members of their families to the State of origin when they decide to return or their authorization of residence or employment expires or when they are in the State of employment in an irregular situation.

2. Concerning migrant workers and members of their families in a regular situation, States Parties concerned shall co-operate as appropriate, on terms agreed upon by those States, with a view to promoting adequate economic conditions for their resettlement and to facilitating their durable social and cultural reintegration in the State of origin.

Article 68

1. States Parties, including States of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:

(*a*) Appropriate measures against the dissemination of misleading information relating to emigration and immigration;

(*b*) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons, groups or entities which organize, operate or assist in organizing or operating such movements;

(*c*) Measures to impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation.

2. States of employment shall take all adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation, including, whenever appropriate, sanctions on employers of such workers. The rights of migrant workers *vis-à-vis* their employer arising from employment shall not be impaired by these measures.

Article 69

1. States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist.

2. Whenever States Parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.

Article 70

States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.

Article 71

1. States Parties shall facilitate, whenever necessary, the repatriation to the State of origin of the bodies of deceased migrant workers or members of their families.

2. As regards compensation matters relating to the death of a migrant worker or a member of his or her family, States Parties shall, as appropriate, provide assistance to the persons concerned with a view to the prompt settlement of such matters. Settlement of these matters shall be carried out on the basis of applicable national law in accordance with the provisions of the present Convention and any relevant bilateral or multilateral agreements.

PART VII

APPLICATION OF THE CONVENTION

Article 72

1. (*a*) For the purpose of reviewing the application of the present Convention, there shall be established a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter referred to as "the Committee");

(*b*) The Committee shall consist, at the time of entry into force of the present Convention, of ten and, after the entry into force of the Convention for the forty-first

State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention.

2. (*a*) Members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties, due consideration being given to equitable geographical distribution, including both States of origin and States of employment, and to the representation of the principal legal systems. Each State Party may nominate one person from among its own nationals;

(*b*) Members shall be elected and shall serve in their personal capacity.

3. The initial election shall be held no later than six months after the date of the entry into force of the present Convention and subsequent elections every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to all States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties that have nominated them, and shall submit it to the States Parties not later than one month before the date of the corresponding election, together with the curricula vitae of the persons thus nominated.

4. Elections of members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the States Parties present and voting.

5. (*a*) The members of the Committee shall serve for a term of four years. However, the terms of five of the members elected in the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting of States Parties;

(*b*) The election of the four additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of the present article, following the entry into force of the Convention for the forty-first State Party. The term of two of the additional members elected on this occasion shall expire at the end of two years; the names of these members shall be chosen by lot by the Chairman of the meeting of States Parties;

(*c*) The members of the Committee shall be eligible for re-election if renominated.

6. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party that nominated the expert shall appoint another expert from among its own nationals for the remaining part of the term. The new appointment is subject to the approval of the Committee.

7. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee.

8. The members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide.

9. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.[13]

Article 73

1. States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee a report on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the present Convention:

(*a*) Within one year after the entry into force of the Convention for the State Party concerned;

(*b*) Thereafter every five years and whenever the Committee so requests.

2. Reports prepared under the present article shall also indicate factors and difficulties, if any, affecting the implementation of the Convention and shall include information on the characteristics of migration flows in which the State Party concerned is involved.

3. The Committee shall decide any further guidelines applicable to the content of the reports.

4. States Parties shall make their reports widely available to the public in their own countries.

Article 74

1. The Committee shall examine the reports submitted by each State Party and shall transmit such comments as it may consider appropriate to the State Party concerned. This State Party may submit to the Committee observations on any comment made by the Committee in accordance with the present article. The Committee may request supplementary information from States Parties when considering these reports.

2. The Secretary-General of the United Nations shall, in due time before the opening of each regular session of the Committee, transmit to the Director-General of the International Labour Office copies of the reports submitted by States Parties concerned and information relevant to the consideration of these reports, in order to enable the Office to assist the Committee with the expertise the Office may provide regarding those matters dealt with by the present Convention that fall within the sphere of competence of the International Labour Organisation. The Committee shall consider in its deliberations such comments and materials as the Office may provide.

3. The Secretary-General of the United Nations may also, after consultation with the Committee, transmit to other specialized agencies, as well as to intergovernmental organizations, copies of such parts of these reports as may fall within their competence.

4. The Committee may invite the specialized agencies and organs of the United Nations, as well as intergovernmental organizations and other concerned bodies, to submit, for consideration by the Committee, written information on such matters dealt with in the present Convention as fall within the scope of their activities.

5. The International Labour Office shall be invited by the Committee to appoint representatives to participate, in a consultative capacity, in the meetings of the Committee.

6. The Committee may invite representatives of other specialized agencies and organs of the United Nations, as well as of intergovernmental organizations, to be present and to be heard in its meetings whenever matters falling within their field of competence are considered.

7. The Committee shall present an annual report to the General Assembly of the United Nations on the implementation of the present Convention, containing its own considerations and recommendations, based, in particular, on the examination of the reports and any observations presented by States Parties.

8. The Secretary-General of the United Nations shall transmit the annual reports of the Committee to the States Parties to the present Convention, the Economic and Social Council, the Commission on Human Rights of the United Nations, the Director-General of the International Labour Office and other relevant organizations.

Article 75

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

3. The Committee shall normally meet annually.

4. The meetings of the Committee shall normally be held at United Nations Headquarters.

Article 76

1. A State Party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Convention. Communications under this article may be received and considered only if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(*a*) If a State Party to the present Convention considers that another State Party is not fulfilling its obligations under the present Convention, it may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(*b*) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(*c*) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged;

(*d*) Subject to the provisions of subparagraph (*c*) of the present paragraph, the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the present Convention;

(*e*) The Committee shall hold closed meetings when examining communications under the present article;

(*f*) In any matter referred to it in accordance with subparagraph (*b*) of the present paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph (*b*), to supply any relevant information;

(*g*) The States Parties concerned, referred to in subparagraph (*b*) of the present paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(*h*) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (*b*) of the present paragraph, submit a report, as follows:

(i) If a solution within the terms of subparagraph (*d*) of the present paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (*d*) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant to the issue between them.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of the present article shall come into force when ten States Parties to the present Convention have made a declaration under paragraph 1 of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by any State Party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 77

1. A State Party to the present Convention may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim that their individual rights as established by the present Convention have been violated by that State Party. No communication shall be received by the Committee if it concerns a State Party that has not made such a declaration.

2. The Committee shall consider inadmissible any communication under the present article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the present Convention.

3. The Committee shall not consider any communications from an individual under the present article unless it has ascertained that:

(*a*) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(*b*) The individual has exhausted all available domestic remedies; this shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to that individual.

4. Subject to the provisions of paragraph 2 of the present article, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to the present Convention that has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

5. The Committee shall consider communications received under the present article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

6. The Committee shall hold closed meetings when examining communications under the present article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of the present article shall come into force when ten States Parties to the present Convention have made declarations under paragraph 1 of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by or on behalf of an individual shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

Article 78

The provisions of article 76 of the present Convention shall be applied without prejudice to any procedures for settling disputes or complaints in the field covered by the present Convention laid down in the constituent instruments of, or in conventions adopted by, the United Nations and the specialized agencies and shall not prevent the States Parties from having recourse to any procedures for settling a dispute in accordance with international agreements in force between them.

PART VIII

GENERAL PROVISIONS

Article 79

Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States Parties shall be subject to the limitations set forth in the present Convention.

Article 80

Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the

United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention.

Article 81

1. Nothing in the present Convention shall affect more favourable rights or freedoms granted to migrant workers and members of their families by virtue of:

(*a*) The law or practice of a State Party; or

(*b*) Any bilateral or multilateral treaty in force for the State Party concerned.

2. Nothing in the present Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act that would impair any of the rights and freedoms as set forth in the present Convention.

Article 82

The rights of migrant workers and members of their families provided for in the present Convention may not be renounced. It shall not be permissible to exert any form of pressure upon migrant workers and members of their families with a view to their relinquishing or forgoing any of the said rights. It shall not be possible to derogate by contract from rights recognized in the present Convention. States Parties shall take appropriate measures to ensure that these principles are respected.

Article 83

Each State Party to the present Convention undertakes:

(*a*) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(*b*) To ensure that any person seeking such a remedy shall have his or her claim reviewed and decided by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(*c*) To ensure that the competent authorities shall enforce such remedies when granted.

Article 84

Each State Party undertakes to adopt the legislative and other measures that are necessary to implement the provisions of the present Convention.

PART IX

FINAL PROVISIONS

Article 85

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 86

1. The present Convention shall be open for signature by all States. It is subject to ratification.

2. The present Convention shall be open to accession by any State.

3. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

Article 87

1. The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the present Convention after its entry into force, the Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification or accession.

Article 88

A State ratifying or acceding to the present Convention may not exclude the application of any Part of it, or, without prejudice to article 3, exclude any particular category of migrant workers from its application.

Article 89

1. Any State Party may denounce the present Convention, not earlier than five years after the Convention has entered into force for the State concerned, by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of the receipt of the notification by the Secretary-General of the United Nations.

3. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

4. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 90

1. After five years from the entry into force of the Convention a request for the revision of the Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting shall be submitted to the General Assembly for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Convention and any earlier amendment that they have accepted.

Article 91

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of signature, ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 92

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention that is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by that paragraph with respect to any State Party that has made such a declaration.

3. Any State Party that has made a declaration in accordance with paragraph 2 of the present article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

Article 93

1. The present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

NOTES

[1] The Convention has not yet entered into force.

[2] General Assembly resolution 45/158, annex.

[3] General Assembly resolution 217 A (III).

[4] General Assembly resolution 2200 A (XXI), annex.

[5] General Assembly resolution 2106 A (XX), annex.

[6] General Assembly resolution 34/180, annex.

[7] General Assembly resolution 44/25, annex.

[8] United Nations, *Treaty Series,* vol. 429, p. 93.

[9] General Assembly resolution 39/46, annex.

[10] See *Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Kyoto, Japan, 17-26 August 1970: report prepared by the Secretariat* (United Nations publication, Sales No. E.71.IV.8).

[11] General Assembly resolution 34/169, annex.

[12] See *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.88.XIV.1).

[13] United Nations, *Treaty Series,* vol. I, p. 15.

Chapter V[1]

DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Decisions of the Administrative Tribunal of the United Nations[2]

1. JUDGEMENT NO. 482 (25 MAY 1990): QIU, ZHOU AND YAO V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[3]

Claims to be reinstated as staff members of the United Nations — Obligation of the Secretary-General to give reasonable consideration to granting career appointments to staff on fixed-term appointments, including fixed-term appointments on secondment, with five years of continuing good service, under Articles 100 and 101 of the Charter of the United Nations, the Staff Rules and Regulations and General Assembly resolutions 37/126 and 38/232 — Conditions laid down for an official to be on secondment — Limits to the Secretary-General's discretionary powers — An exceptional character of the case justifying the payment of higher compensation

The Applicants, whose five-year fixed-term appointments had expired, sought to be reinstated as staff members of the United Nations. Their letters of appointment stated that they were on secondment from their Government. When their appointments were due to expire the Administration did not submit the recommendations for a probationary appointment to the appropriate appointment and promotion bodies but requested their Government to extend the Applicants' secondment for two years. The Government did not extend the secondment. Consequently, the Administration did not offer the Applicants new appointments.

In similar letters the Applicants requested the Respondent to grant them career appointments on the ground that they had fulfilled the requirements set forth in General Assembly resolutions 37/126 of 10 December 1982 and 38/232 of 20 December 1983.

Their request having been denied, the Applicants filed an application seeking to be reinstated as staff members of the United Nations. In that connection, the Applicants requested the Tribunal to recognize that the denial by the Respondent of further employment for the Applicants was illegal because the Applicants had not been given any reasonable consideration, in contravention of General Assembly resolution 37/126, section IV, paragraph 5, according to which staff members on fixed-term appointment upon completion of five years of continuing good service shall be given every reasonable consideration for a career appointment, and that the Respondent's decision had been arbitrary, based on illegal considerations, such as the wishes of the Applicants' Government, that is, a consideration contrary to the Charter and constituting an abuse of power. In the event of compensation being paid in lieu of reappointment, the Applicants requested the granting of an award in the amount of three years' net base salary in view of the special circumstances of the case.

The Tribunal found that the conditions laid down for an official to be on secondment had not been fulfilled in the case under consideration. The Applicants' status had not been, in fact, "defined in writing by the competent authorities in documents specifying the conditions and particularly the duration of the secondment". The Applicants had not been on genuine secondment within the meaning given to that term in Administrative Tribunal Judgement No. 192, which reaffirmed the definition established in Judgement No. 92, *Higgins* (1964): ". . . the term 'secondment' . . . implies that the staff member is posted away from his establishment of origin but has the right to revert to employment in that establishment at the end of the period of secondment and retains his right to promotion and to retirement benefits . . ."[4] The Tribunal held that the secondment of the Applicants had not been effected in conformity with the principles applicable. Secondment was an objective situation. It was not for the United Nations Administration or the Government in question or staff members to invoke a secondment which did not exist. Accordingly, the Tribunal considered that it had not been for the Respondent either to request authorization of, or to comply with, the decision of a Government in order to renew the Applicants' contracts. That being so, the Tribunal found that the decision not to renew the Applicants' fixed-term contracts had been vitiated by extraneous reasons contrary to the interests of the United Nations, incompatible with Article 100 of the Charter.

As regards career appointments, the Tribunal considered that they had been withheld because of the Government's position concerning the rotation system. The Tribunal noted that, in the opinion of the Government in question, the rotation system categorically ruled out career appointments. The Tribunal considered that the Secretary-General could not defer to that opposition by the Government without being in breach of his obligations under the Charter and the Staff Rules and Regulations, as well as under General Assembly resolutions 37/126 and 38/232.

Consequently, the Tribunal found that the Secretary-General's decisions to refuse the Applicants' request for career appointments exceeded the limits of his discretion. His decision was based on reasons which were contrary to the interests of the United Nations, erroneous or inaccurate as to fact and specious. It ignored the basic principles of the international civil service, as enunciated in Articles 100 and 101 of the Charter.

The Tribunal furthermore considered that the Secretary-General had wrongly refused the Applicants career appointments, contrary to General Assembly resolutions 37/126 and 38/232.

With regard to the question of compensation, the Tribunal noted that the Applicants had displayed outstanding professional ability and competence, that they had had a reasonable expectancy of permanent employment and a career in the United Nations, that the Administration had not acted in the Applicants' case with the prudence, care and attention to be expected of an international organization with regard to personnel questions and, lastly, that the rule that compensation may not exceed two years' net base salary would not adequately compensate the Applicants for the injury they had sustained and would sustain if they were not granted career appointments.

Consequently, the Tribunal considered that the case was an "exceptional case" justifying the payment of higher compensation than the Tribunal would normally award.

For the above reasons, the Tribunal rescinded the Secretary-General's decision not to grant the Applicants career appointments in the circumstances provided for in

General Assembly resolutions 37/126 and 38/232, decided that they should be granted such appointments as from 1 February 1990 and fixed the compensation to be paid to each of the Applicants at three years' net base salary if the Secretary-General decided not to grant the Applicants career appointments.

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2. JUDGEMENT NO. 492 (2 NOVEMBER 1990): DAUCHY V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[5]

"Replacement" practice developed by the Secretary-General in relation to a specific category of Member State — Claim that this practice is inconsistent with Article 101, paragraph 3, of the Charter of the United Nations, regulation 4.4 of the Staff Regulations and the general principles governing the international civil service — Interpretation of General Assembly resolution 35/210, section I, paragraph 4 — Liability of the Organization

The case concerned the long-standing practice of the Secretary-General, developed in relation to Member States whose nationals served primarily on fixed-term contracts, of systematically replacing departing nationals of those Member States by candidates of the same nationality. The Applicant claimed that this practice was inconsistent with Article 101, paragraph 3, of the Charter of the United Nations and regulation 4.4 of the Staff Regulations and was incompatible with the principles of the international civil service, including those of nondiscrimination and of equal treatment, and had resulted in a violation of her right to full and fair consideration for the post of Director of her Division.

The Respondent contended that the Applicant had been considered for promotion to the post in question and that the replacement of a Soviet national by another Soviet national could not be deemed to be improper as such replacements were specifically authorized by the General Assembly in its resolution 35/210, section I, paragraph 4, in which the Secretary-General was requested:

> "to continue to permit replacement by candidates of the same nationality within a reasonable time-frame in respect of posts held by staff members on fixed-term contracts, whenever this is necessary to ensure that the representation of Member States whose nationals serve primarily on fixed-term contracts is not adversely affected".

The Tribunal observed that the above-quoted paragraph was permissive but not obligatory and that, while the Secretary-General was authorized to designate a Soviet national to fill the contested post, he was not obliged to do so. The Tribunal further observed that the selection process applied in the case under consideration had inevitably ruled out the question of promoting the Applicant to the post to which she legitimately aspired. In the words of the Tribunal, "in the very particular circumstances of this case, even the most serious consideration of the Applicant, given in all good faith, could not have had any effect. It could not have led anywhere. The entire exercise proceeded as if the Applicant had not been considered."[6]

The Tribunal concluded that the question had arisen of the responsibility of the Administration. After noting that the Applicant could have expected to crown what was generally acknowledged to be a brilliant career by becoming Director of her Division, a promotion which would have been especially desirable as only a few women

reached positions of directors of United Nations services, the Tribunal decided that the judgement under consideration, which placed on record the Applicant's excellent performance, provided appropriate partial reparation and should be included in her official status file. It further ordered the Respondent to pay to the Applicant the sum of US $5,000 in damages.

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3. JUDGEMENT NO. 499 (8 NOVEMBER 1990): AMOA V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[7]

Request of a former staff member of the United Nations for reinstatement and compensation on the ground that he had an expectancy of continued employment with the United Nations and for damages on account of delays by the Joint Appeals Board

During the course of his employment with the United Nations, the Applicant listed as his wife, simultaneously, two different persons for different purposes related to his employment. When the Administration confronted him with the facts in 1978, the Applicant wrote a memorandum admitting that "arising from a customary and a de facto conjugal relationship which existed between his second wife and himself, he used her as [his] dependent spouse for the purpose of medical insurance and passport coverage". Pending the results of the investigations concerning the allegations against the Applicant, his fixed-term appointment had been extended on a month-to-month basis. On 25 April 1980, the then Assistant Secretary-General, Office of Personnel Services, advised the Secretary-General that in his opinion the Applicant had failed to conform to the highest standards of integrity required for a United Nations staff member, under Article 101, paragraph 3, of the Charter of the United Nations, that he should be considered unfit for further service with the Organization and that his appointment should be terminated. He recommended that the Applicant's month-to-month contract, which was due to expire, not be extended further. Accordingly, on 26 June 1980, the Applicant was notified of the decision that his appointment, which was due to expire, would not be extended further.

On 22 April 1981, the Applicant requested the Secretary-General to review the above-mentioned decision not to extend his fixed-term appointment for having "failed to conform to the highest standards of integrity required of a United Nations official", and on 17 June 1981 the Applicant filed an appeal with the Joint Appeals Board against the decision of 26 June 1980.

The Respondent's reply to the statement of appeal was submitted on 19 November 1985.

The Joint Appeals Board, in its report of 6 May 1988, concluded that the four-year delay in the submission of the Respondent's reply to the statement of appeal was directly the result of the Administration's inexcusable failure to provide adequate support for the appeals machinery, and accordingly recommended the award of two months' net base salary to the Applicant.

The report concluded further that the Applicant had had a legitimate expectancy of continued employment until 31 December 1980 and that, in accordance with the established jurisprudence of the United Nations Administrative Tribunal, the Applicant should be compensated for the decision not to extend his contract beyond 31 July 1980. The report also held that the failure to provide the Applicant with a copy of the contested memorandum of 25 April 1980 had not constituted a violation of due pro-

cess. The report did conclude, however, that the decision not to extend the Applicant's contract, which had been taken in lieu of assigning appropriate disciplinary measures within the context of paragraph 1 of staff regulation 10.2, had been improper and constituted an incomplete disciplinary procedure. It observed further that the maintaining of files and the communicating of information to the effect that the Applicant's non-renewal had been for disciplinary reasons, constituted an abuse of power and was violative of the basic principle of fairness between the Organization and its staff members.

Accordingly, the Board recommended an award to the Applicant in the amount of two months' net base salary. It recommended further that all material relating to the incomplete disciplinary proceeding be expunged from the Applicant's files. The Respondent accepted the Board's recommendations.

On 6 January 1989, the Applicant filed with the Tribunal the application, containing the following principal pleas: (1) the Respondent's decision not to extend the Applicant's appointment had been prejudiced and should be declared illegal; (2) the Respondent had acted in bad faith in delaying the appeal for seven years; (3) the Respondent's illegal decision not to extend the Applicant's appointment was also libellous and he was entitled to punitive damages.

On the merits of the case, the Tribunal found that the Applicant essentially sought a fundamental revision of the conclusions and recommendations of the Joint Appeals Board which had been accepted by the Respondent, the Applicant's main plea being that the Board had not taken sufficiently into account the illegal wrongs the Applicant had suffered and had been deficient in its analysis and recognition of facts, with the result that the Applicant had been deprived of remedies and compensation to which he believed himself to be entitled.

The Tribunal observed that the one and only substantial question before it was whether the Respondent's failure to show to the Applicant the memorandum of 25 April 1980, which the then Assistant Secretary-General for Personnnel Services had written to the Secretary-General, through the Legal Counsel, constituted an infringement of the Applicant's rights under the relevant procedure for disciplinary cases, either emanating from administrative instructions or from the applicable staff regulations and rules. The memorandum in question had been prepared as a follow-up action of an investigation instituted by the Respondent on the allegation that the Applicant had two wives. The report of the Investigation Team had been shown to the Applicant and his comments obtained in accordance with personnel directive PD/I/76 of 1 January 1976 entitled "'Disciplinary procedure for staff serving at offices away from Headquarters and Geneva".

The Tribunal had not been able to find any substance in the Applicant's allegations that the memorandum in question offended the general sense of fairness, if not the Applicant's specific rights, and was of the opinion that it had been not necessary for the Respondent to communicate to the Applicant the contents of the memorandum.

The Tribunal agreed with the Joint Appeals Board that the confusion about whether to separate the Applicant through disciplinary action or through recourse to the easy and quick device of ending his fixed-term contract should have been avoided. It noted that it would have been more straightforward to follow one or the other course, and not to institute a disciplinary case and then end up with the sudden termination of a month-to-month fixed-term contract. However, the Tribunal did not question the right of the Respondent to judge comprehensively the suitability of any staff

member for any appointment on the basis of all available data; that right could be challenged when it could be established, *inter alia*, that the assessment was vitiated by prejudice or any other extraneous factors. In the case under consideration, the right of the Respondent was not being impugned, but it was asserted that the procedure followed had infringed due process by confusing disciplinary action with discretion not to renew a fixed-term contract.

In view of the above and in the light of the recommendation already made by the Joint Appeals Board and accepted by the Respondent, the Tribunal was of the view that the Applicant was not entitled to any further relief for the wrongs he had suffered. The Tribunal also approved of the Board's conclusion that the Applicant could normally have expected to continue to serve on short fixed-term appointments until the end of 1981, and that the decision to employ the Applicant on a month-to-month basis, even if it had been within the Respondent's power and had been known to the Applicant, had been taken without sufficient justification. Accordingly, the Tribunal ordered the Respondent to pay the Applicant the sum of US $10,931.20, plus 10 per cent interest from the date when the Joint Appeals Board's recommendation had been accepted by the Respondent until the date when payment was finally made to the Applicant.

For the foregoing reasons and except as provided in the preceding paragraph, the application was rejected in its entirety.

B. Decisions of the Administrative Tribunal of the International Labour Organisation[8]

1. JUDGEMENT NO. 1000 (23 JANUARY 1990): CLEMENTS, PATAK AND ROEDL V. THE INTERNATIONAL ATOMIC ENERGY AGENCY[9]

New salary scales for General Service staff drawn up by the International Civil Service Commission — Complainants were objecting to a flat 2.4 per cent reduction in salary that purported to offset the value of the so-called "Commissary benefit" — Annex II, paragraph B.1, of the Agency's Provisional Staff Regulations, providing that the pay shall normally be based on "the best prevailing conditions of employment in the locality" (Fleming principle) — Question whether the Commissary benefit was relevant in determining the best local conditions

The complainants were employed in the General Service category of staff at the headquarters of the International Atomic Energy Agency in Vienna. They sought the quashing of decisions by the Director General of the Agency setting their pay according to new salary scales introduced as from 1 October 1987. It was the International Civil Service Commission[10] that had drawn up those salary scales, and the complainants were objecting to a flat 2.4 per cent reduction in salary that purported to offset the value of the so-called "Commissary benefit" enjoyed by Agency staff.

The origin of the complaints lay in a provision that also set the context of the dispute: annex II, paragraph B.1, of the Agency's Provisional Staff Regulations. That provision stipulated that the pay of staff in the General Service and other locally recruited categories should normally be based on "the best prevailing conditions of employment in the locality" (the so-called "Fleming principle").

The complainants objected to the reduction on two grounds. First, they submitted that the Commissary benefit was irrelevant in determining the best local conditions — the yardstick in the Agency's rules, that the methodology was therefore fundamentally flawed and that the Agency's action on staff pay was null and void. Their second objection was that even if the Tribunal endorsed the methodology it had been so arbitrarily applied that, again, the impugned decisions were flawed.

The complainants' objections to the Commission's recommendations and to the decisions impugned must be viewed against the rule about the best prevailing local conditions of employment, which was in the Staff Regulations of the organization. The introduction to the 1982 report on the methodology stressed in paragraph 3 the importance of the rule of parity.[11] General Service pay in the Agency was to be compared with typical pay on the local employment market. Therefore, the effect of taking into account any item other than salary proper in calculating the pay of the international staff was to cancel an equivalent portion of the items taken into account in calculating local pay and to lower correspondingly the level of parity required by the Agency's rules. It was necessary to determine at the outset which payments should be taken into account for the purpose of comparison with local conditions. The Tribunal held that something like the Commissary benefit could not count in such a comparison. It was not provided for in the Staff Regulations or financial rules, and though the Agency had negotiated for it for the staff's sake it was a form of tax relief that the host country bestowed by way of a privilege on those who had access to the Commissary and at no cost whatever to the organization.

The Tribunal observed that in following the Commission's conclusions in its report of 1987 about how to take account of the Commissary benefit the Agency had altered the salary scales by introducing an irrelevant factor, the effect being to lower salaries and lighten the Agency's own burden as employer. That reason alone was a sufficient one for quashing the decisions to take account of the value of the Commissary benefit for the purpose of comparing pay and ensuring parity. There was no need to go into the complainants' further objections to the calculation of the Commissary benefit and to the way in which it affected the salary scales. It was sufficient to say that the Commission's approach, which involved the use of some thoroughly unreliable lump-sum estimates, had been an inadmissible way of carrying out a survey which would eventually affect the pay of a large category of staff and, indirectly, their pension entitlement as well.

For the above reasons, the Tribunal set aside the decisions that had set the complainants' pay in keeping with salary scales that had come into effect on 1 October 1987.

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2. JUDGEMENT NO. 1012 (23 JANUARY 1990): AELVOET AND OTHERS V. THE EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION[12]

Reduction of staff's salary — Question whether the complainants may challenge the Director General's decisions to apply the general measures to them and thereby also challenge the lawfulness of the Permanent Commission's decisions — Pay slips issued on the basis of the Commission's decision that still had to come into effect

The complainants asked the Tribunal to quash the initial action taken towards making staff pay 5 per cent lower in the European Organisation for the Safety of Air Navigation (EUROCONTROL) than in the European Communities, the amount of the reduction since 1 July 1986 having been 0.7 per cent. They wanted EUROCONTROL to pay back to them, with interest, the sums wrongly withheld since that date in keeping with the decision to reduce pay.

The Permanent Commission for the Safety of Air Navigation, the governing board of EUROCONTROL, had on 7 July 1987 taken a provisional decision changing the policy of maintaining the pay of Agency staff on a par with that of staff of the European Communities. Its decision was to keep to the policy of alignment, but as from 1 July 1986 to make the net pay of EUROCONTROL staff 0.7 per cent lower than that of staff in the Communities. That was the first step in an exercise which was to be spread over three years and to introduce a 5 per cent differential in pay between the two organizations.

The Director General of EUROCONTROL, the "appointing authority", had conveyed the matter to the staff in office notes dated 23 and 29 July 1987, and in July, August and September 1987 the staff had accordingly received pay slips informing them both of payment of sums due in arrears and of reductions in current monthly salary.

The Commission on 12 November 1987 had approved its decision of 7 July. Thereafter hundreds of EUROCONTROL officials had submitted appeals to the Director General. Having received no answer within the time-limit of four months set in the Staff Regulations, three of them filed their complaints with the Tribunal on 25 February 1988. Others awaited an express decision before doing so. The decision came on 18 April and the joint complaint was lodged with the Tribunal on 15 July.

In the statement of their claims, the complaints explained that what they were challenging were the individual decisions which had applied the general decision and which had first come to their notice on receiving their pay slips showing the payment of arrears and the monthly reductions.

The Tribunal stated that, in line with the principles it had affirmed in Judgements Nos. 624[13] and 902,[14] the complainants might challenge the Director General's decisions to apply the general measures to them and might thereby also challenge the lawfulness of the Commission's decisions. The Tribunal would therefore entertain any plea to the effect that those measures ran counter to general rules and principles governing the international civil service.

Having been issued before the Commission's decision setting the new pay scales and making sure the reduction had taken effect, the pay slips had no basis in law and had to be set aside in so far as they caused the complainants injury. EUROCONTROL should therefore reimburse them for the sums withheld and pay them interest thereon as from the date on which the deduction had been made.

The Tribunal observed that, though the pay slips were set aside in so far as they reduced pay, the complainants went much further in that what they also inpugned was the lawfulness of the actual reduction. Though the pay slips were plainly unlawful because the Commission's decision still had to come into effect, they applied only to the period they covered and could not be treated as giving effect to a decision that had not yet become final.

Since not a single complainant had challenged an individual decision subsequent to 12 November 1987, the Tribunal was bound to declare the claims irreceivable in so far as they objected to future reductions in pay.

For the above reasons, the Tribunal set aside the pay slips issued by EUROCONTROL before the Permanent Commission's decision of 12 November 1987 had taken effect in so far as they reduced staff pay by 0.7 per cent and ordered the Organisation to refund the sums withheld and to pay interest thereon at the rate of 10 per cent a year as from the date of withholding. The Tribunal dismissed the complainants' other claims.

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3. JUDGEMENT NO. 1033 (26 JUNE 1990): HEITZ V. THE INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS[15]

Tribunal's competence to hear the complaint of an official employed by the organization that has not recognized the Tribunal's jurisdiction — The administrative arrangements provided for in its Agreement with the World Intellectual Property Organization do not impair its distinct legal identity

The complainant, an official of the International Union for the Protection of New Varieties of Plants (UPOV), submitted that the Tribunal was competent to hear his complaint by virtue of regulation 11.2 of the WIPO Staff Regulations, which directly applied to UPOV staff. Though UPOV had not addressed to the Director-General of the International Labour Office a declaration recognizing the Tribunal's jurisdiction, the Swiss authorities assimilated UPOV staff to WIPO staff and WIPO's recognition applied *mutatis mutandis* to the staff of UPOV.

The issue in the case was how to determine the complainant's take-home pay after deletion of regulation 3.1 bis from the Staff Regulations that applied to him. The staff formerly had had protection under that provision against fluctuations in the rate of exchange between the Swiss franc and the United States dollar, the currency in which salaries were determined.

The Tribunal observed that it was beyond dispute that the defendant organization had made no declaration recognizing the Tribunal's jurisdiction under article II (5) of its statute. The complainant submitted that the Tribunal was competent by virtue of an Agreement which UPOV had concluded with WIPO on 26 November 1982. Under article 4 (1) of the Agreement, the Secretary General of UPOV was also the Director General of WIPO. He endorsed the complainant's submissions on the Tribunal's competence and took the view that by virtue of article 8 of that Agreement the staff of UPOV were assimilated to WIPO staff and that the remedies prescribed in the WIPO Staff Regulations were available to UPOV staff as well.

The Tribunal found that the above arguments afforded no grounds for the Tribunal's declaring that it was competent to hear the case. According to article II (5) of its statute, it was competent to hear a complaint only if the international organization that employed the complainant had addressed to the Director-General of the International Labour Office a declaration of recognition in accordance with its Constitution or internal administrative rules and if the Governing Body of the International Labour Office had approved the declaration.

The Tribunal stated further that under article 24 of the Paris Convention of 1961,[16] as amended, UPOV had legal personality of its own and the administrative arrangements provided for in its Agreement with WIPO did not impair its distinct identity. The reasons why the complainant might not appeal were that even though the WIPO Staff Regulations and Staff Rules applied to him as an employee of UPOV he was not an official of WIPO, and the organization that did employ him had not recognized the jurisdiction of the Tribunal under article II (5) of its statute. The Tribunal was therefore not competent to hear the complaint.

For the above reasons, the Tribunal dismissed the complaint.

C. Decisions of the World Bank Administrative Tribunal[16]

DECISION NO. 93 (25 MAY 1990): WAHIE V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT[17]

Applicant's contention that the Respondent should restore her right to expatriate benefits upon renunciation by the Applicant of her duty station country citizenship and resumption of G-4 visa status — Staff rules 6.13 and 6.14 concerning expatriate benefits — Tribunal's understanding of the rationale behind the system of expatriate benefits and its approach to citizenship

The Applicant joined the Bank on 14 January 1974 as a telephone operator. Since she was an Indian national with United States permanent resident status, she was given all expatriate benefits attached to her status in accordance with the Bank regulations in force at the time. Two weeks later the Respondent changed its policy on expatriate benefits and the Applicant was given the option to retain her United States permanent resident status with the entitlement in effect at the time she had joined the Bank or to change to G-4 visa status by 30 June 1974 and thereby become eligible for broader benefits. She chose the latter. Subsequently, she changed again to United States permanent resident status, but without losing her expatriate benefits in accordance with the regulations in force at the time. Effective 1 June 1984, the Applicant acquired United States citizenship and, consequently, became ineligible for expatriate benefits. On 30 January 1985, the Bank announced to all staff some changes on expatriate benefits the purposes of which were, *inter alia*, to rationalize the eligibility criteria for such benefits and in particular to restrict the eligibility of those staff who were not G-4 visa holders. According to the new staff rules, 6.13 and 6.14, effective 29 January 1985, all new staff who had held United States permanent resident status or United States citizenship at any time in the 12 months prior to appointment to the Bank would be ineligible for expatriate benefits. Staff who were currently eligible for expatriate benefits, whether they had G-4 visas or permanent resident status, would continue to be eligible for existing benefits as long as their status did not change. Staff with G-4 visas who changed to permanent resident status would lose eligibility for expatriate benefits, except for those who had already formally applied for permanent resident status or who did so not later than 28 January 1986. Three years later, on 19 October 1987, the Applicant formally requested the Director, Compensation, to change her status to that of G-4 and to give her all the expatriate benefits attached to it because she could not afford on her own to send her children to school in India, nor could she afford to visit her relatives in her home country from time to time. On 30 October 1987 the Director, Compensation, replied that the rule's silence concerning

the consequences of relinquishing citizenship of the duty station country did not create a right to the reacquisition of expatriate benefits in that circumstance, and that the clear implication of staff rule 6.13, supported by its drafting history, was that there would not be a reacquisition of expatriate benefits. He concluded that the Applicant would not be entitled to expatriate benefits if she gave up her United States citizenship.

The Applicant contended that the Respondent could not validly refuse to grant her expatriate benefits if she renounced her duty station country citizenship.

The Tribunal observed that in deciding to acquire United States citizenship on 1 June 1984 the Applicant should and could have investigated the legal and financial consequences of her decision due to the absence of any provision allowing restoration of financial benefits in case of subsequent renunciation of that citizenship. On her appointment to the Bank the Applicant had been informed of the conditions of eligibility for home leave, education and repatriation benefits, by a letter dated 7 March 1974. The information in the letter should have alerted the Applicant to the fact that eligibility required maintaining the status of non-citizen of the duty station country.

In reaching the above conclusion the Tribunal had borne in mind its understanding of the rationale behind the whole system of expatriate benefits and the proper approach to citizenship as a reflection of allegiance to and connection with a particular State. To provide for the reacquisition of certain economic benefits when a staff member renounces his or her nationality might encourage a casual approach to the responsibilities and implications of citizenship. The Applicant did not conceal the real purpose of her decisions first to acquire United States citizenship and then to consider renouncing it.

The Tribunal did not accept the Applicant's contention that by denying her re-eligibility for expatriate benefits if she renounced her United States citizenship the Respondent would be interfering with the right of staff members freely to acquire and reassume their citizenship. The Applicant remained free to renounce her previously acquired United States citizenship and to revert to G-4 visa status, but she could not use that freedom as the basis for requiring the Respondent to grant her certain benefits. The Respondent's regulation of eligibility for expatriate benefits was a proper exercise of its power to regulate the rights and obligations of staff members.

The Tribunal concluded that, by denying the Applicant's request to regain expatriate benefits on her renunciation of United States citizenship, the Respondent had not violated any element of the Applicant's rights under her contract of employment or terms of appointment.

For the above reasons, the Tribunal decided to dismiss the application.

NOTES

[1] In view of the large number of judgements which were rendered in 1990 by administrative tribunals of the United Nations and related intergovernmental organizations, only those judgements which are of general interest have been summarized in the present edition of the *Yearbook*. For the integral text of the complete series of judgements rendered by the three tribunals, namely Judgements Nos. 471 to 501 of the United Nations Administrative Tribunal, Judgements Nos. 987 to 1096 of the Administrative Tribunal of the International Labour Organisation and Decisions Nos. 87 to 99 of the World Bank Administrative Tribunal, see, respectively: docu-

ments AT/DEC/471 to 501; *Judgements of the Administrative Tribunal of the International Labour Organisation*: 68th, 69th and 70th Ordinary Sessions; and *World Bank Administrative Tribunal Reports*, 1990.

[2] Under article 2 of its statute, the Administrative Tribunal of the United Nations is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members.

The Tribunal shall be open: (*a*) to any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who has succeeded to the staff member's rights on his death; and (*b*) to any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied.

Article 14 of the statute states that the competence of the Tribunal may be extended to any specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. Such agreements have been concluded, pursuant to the above provisions, with two specialized agencies: the International Civil Aviation Organization and the International Maritime Organization. In addition, the Tribunal is competent to hear applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund.

[3] Mr. Roger Pinto, President; Mr. Jerome Ackerman, First Vice-President; and Mr. Ahmed Osman, Second Vice-President.

[4] United Nations Administrative Tribunal Judgement No. 192, *Levcik* (1974), para. IV.

[5] Mr. Roger Pinto, President; Mr. Ahmed Osman, Vice-President; and Mr. Francisco A. Forteza, Member.

[6] In a subsequent case dealing with a claim which, in the words of the Tribunal, "falls squarely within the jurisprudence established in its recent Judgement No. 492 (*Dauchy*)", the Tribunal confirmed that the replacement policy was inconsistent with the Staff Rules and Regulations, adding that it was also contrary to Article 101, paragraph 3, of the Charter (Judgement No. 533 (*Araim*)).

[7] Mr. Roger Pinto, President; Mr. Samar Sen and Mr. Arnold Kean, Members.

[8] The Administrative Tribunal of the International Labour Organisation is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of the staff regulations of the International Labour Organisation and of the other international organizations that have recognized the competence of the Tribunal, namely, as at 31 December 1990, the World Health Organization (including the Pan American Health Organization), the United Nations Educational, Scientific and Cultural Organization, the International Telecommunication Union, the World Meteorological Organization, the Food and Agriculture Organization of the United Nations, the European Organization for Nuclear Research, the General Agreement on Tarriffs and Trade, the International Atomic Energy Agency, the World Intellectual Property Organization, the European Organisation for the Safety of Air Navigation, the Universal Postal Union, the European Patent Organization, the European Southern Observatory, the Intergovernmental Council of Copper-Exporting Countries, the European Free Trade Association, the Inter-Parliamentary Union, the European Molecular Biology Laboratory, the World Tourism Organization, the African Training and Research Centre in Administration for Development, the Intergovernmental Organisation for International Carriage by Rail, the International Center for the Registration of Serials, the International Office of Epizootics, the United Nations Industrial Development Organization, the International Criminal Police Organization and the International Fund for Agricultural Development. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour

Organisation and disputes relating to the application of the regulations of the former Staff Pension Fund of the International Labour Organisation.

The Tribunal is open to any official of the above-mentioned organizations, even if his employment has ceased, to any person on whom the official's rights have devolved on his death and to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the staff regulations upon which the official could rely.

[9] Mr. Jacques Ducoux, President, Miss Mella Carroll, Judge, and Mr. Pierre Pescatore, Deputy Judge.

[10] Set up by the General Assembly of the United Nations by resolution 3357 (XXIX) of 18 December 1974 (ICSC/1/Rev.1).

[11] Report of the Commission dated 15 September 1982 on its 16th session, Documents of the General Assembly's 37th session, Supplement No. 30, A/37/30.

[12] Mr. Jacques Ducoux, President; Miss Mella Carroll, Judge, and Mr. Pierre Pescatore, Deputy Judge.

[13] *In re* Giroud No. 2 and Lovrecich.

[14] *In re* Aelvoet and others.

[15] Mr. Jacques Ducoux, President, Miss Mella Carroll, Judge, and Mr. Pierre Pescatore, Deputy Judge.

[16] United Nations, *Treaty Series*, vol. 815, p. 89.

[17] The World Bank Administrative Tribunal is competent to hear and pass judgement upon any applications alleging non-observance of the contract of employment or terms of appointment, including all pertinent regulations and rules in force at the time of the alleged non-observance, of members of the staff of the International Bank for Reconstruction and Development, the International Development Association and the International Finance Corporation (referred to collectively in the statute of the Tribunal as "the Bank Group").

The Tribunal is open to any current or former member of the staff of the Bank Group, any person who is entitled to a claim upon a right of a member of the staff as a personal representative or by reason of the staff member's death and any person designated or otherwise entitled to receive a payment under any provision of the staff Retirement Plan.

[18] Mr. P. Weil, President; Mr. A. K. Abdul-Magd and E. Lauterpacht, Vice-Presidents; and Mr. F. K. Apaloo, Mr. R. A. Gorman, Mr. E. Jiménez de Aréchaga and Tun M. Suffian, Judges.

Chapter VI

SELECTED LEGAL OPINIONS OF THE SECRETARIATS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Legal opinions of the Secretariat of the United Nations
(Issued or prepared by the Office of Legal Affairs)

1. FLAG ETIQUETTE CODE TO BE FOLLOWED ON NAVAL VESSELS PROVIDED BY A TROOP-CONTRIBUTING COUNTRY TO THE UNITED NATIONS OBSERVER GROUP IN CENTRAL AMERICA — PRACTICE CONCERNING THE USE OF THE UNITED NATIONS FLAG ON VESSELS, PURSUANT TO THE 1958 GENEVA CONVENTION ON THE HIGH SEAS, STATUS AGREEMENTS CONCLUDED BETWEEN THE UNITED NATIONS AND HOST COUNTRIES AND THE UNITED NATIONS FLAG CODE AND REGULATIONS

Memorandum to the Director, Field Operations Division, Office of General Servies

1. By your memorandum of 4 April 1990 you have sought the advice of this Office concerning the appropriate flag etiquette code to be followed on naval vessels provided by a troop-contributing country to the United Nations Observer Group in Central America (ONUCA). In responding to your request, it is necessary in the first instance to consider the legal basis for, and the existing practice concerning, the use of the United Nations flag on vessels, and to clarify the purpose for which the United Nations flag will be displayed.

2. The possibility for intergovernmental organizations to fly their flags on ships while in the service of the organizations is provided for in general terms in article 7 of the 1958 Geneva Convention on the High Seas,[1] which states as follows:

> "The provisions of the preceding articles [on the right of States to sail ships under their flag, on the conditions for granting nationality to ships, etc.] do not prejudice the question of ships employed in the official service of an intergovernmental organization flying the flag of the organization."

As far as vessels contributed to peace-keeping operations of the United Nations are concerned, the status agreements concluded between the United Nations and host countries in connection with some of these operations (e.g., United Nations Suez Canal Clearance Operation (UNEF), United Nations Operations in the Congo, United Nations Transition Assistance Group (UNTAG)) contain more detailed provisions on the right of the peace-keeping forces to fly the United Nations flag on vessels participating in that operation. Section 15 of the UNTAG status agreement,[2] for example, provides *inter alia* as follows:

"UNTAG shall display the United Nations flag at or on its headquarters, camps and other premises, vehicles, *vessels* and otherwise as agreed to in consultation between the Special Representative and the Government." (emphasis added)

A further legal document which provides guidance on the use of the United Nations flag is the United Nations Flag Code and Regulations.[3] As far as peace-keeping operations are concerned, the relevant provision is section 4(2) of the Flag Code which provides the following:

"The Flag shall be used by any unit acting on behalf of the United Nations such as any Committee or Commission or other entity established by the United Nations in such circumstances not covered in this Code as may become necessary in the interests of the United Nations."

3. As far as the practice of the Organization is concerned, the United Nations flag has been displayed on vessels on a number of occasions. The most notable examples have been in the context of UNEF and the United Nations Interim Force in Lebanon (UNIFIL). Apart from peace-keeping operations, the flag of the United Nations has been used, for example, on vessels owned by the United Nations Korean Reconstruction Agency, in the United Nations Special Fund Caribbean Fishery Project and in the 1972 United Nations Relief Operation in Dacca. In addition, the Secretary-General has occasionally authorized the use of the United Nations flag, alongside the flag of registration, on private ships which wanted to show in this way their support for the United Nations. In the case of peace-keeping operations, vessels employed by the Organization were authorized to fly the United Nations flag sometimes alone, sometimes together with the flag of the country of registration, and this both in the case of vessels chartered by the United Nations or contributed by participating States. The vessels in question were authorized to fly the United Nations flag alone generally only in exceptional cases and when journeys of short length and duration were involved.

4. It is important in the context of your request to consider the purposes for which flags are displayed on vessels. Generally speaking, flags are displayed for three different purposes: (1) to show the country where the vessel is registered, i.e., its nationality; (2) to make known a particular status enjoyed by that ship in virtue of the services it is performing; (3) for purposes of courtesy in accordance with maritime law and practice. According to international law, the maritime flag flown by a ship indicates its nationality. This has far-reaching consequences because it identifies the law and jurisdiction applicable to events taking place aboard the ship, including criminal jurisdiction. International law further requires a ship to show its national flag when entering or leaving a port or when it is challenged on the high seas. The purpose of flying flags such as the United Nations flag is entirely different. International organizations are not States and would not be in a position to exercise jurisdiction on a ship, except in a very limited sense. The flag of the United Nations, or of other organizations such as the International Committee of the Red Cross, rather serves the purpose of identifying those vessels which are performing certain functions on behalf or in the service of the organization, and of showing that their special status entitles them to the privileges and immunities accorded to those organizations under the applicable international instruments.

5. Turning to the specific questions raised in your memorandum, international law, United Nations rules and the Organization's practice should be utilized in determining which flags should be flown aboard the patrol vessels contributed to ONUCA

and how those flags should be flown. As to the first question, on the basis of the foregoing we are of the view that the only flags to be flown are the flag of the country of registration, the United Nations flag and the courtesy flag of the country in whose territorial waters the ship is sailing. We would suggest that no other flags such as the flags of contributing countries, nationals of which are aboard the vessels as observers, be flown. There is no legal requirement that these flags be flown; they would not serve any meaningful purpose and could even generate confusion during operation. Secondly, the applicable rules of international law and the Flag Code and Regulations provide guidance regarding the manner of display of the flags. In this connection, I would like to draw your attention to section 3 (1) of the Flag Code which provides: "The flag of the United Nations shall not be subordinated to any other flag". In addition, section II 1 (*d*) of the Flag Regulations states the following:

> "On no account may any flag displayed with the United Nations Flag be displayed on a higher level than the United Nations Flag and on no account may any flag so displayed with the United Nations Flag be larger than the United Nations Flag."

The above-mentioned rules on the nationality of ships lead to the conclusion that the United Nations flag cannot be a substitute for the "civil ensign" of the ship, which remains the flag of the country of registration. Therefore, the United Nations flag must not be displayed in such a way as to create confusion as to the nationality of the ship. Following what appears to be the general maritime practice, the national flag should fly from the stern of the ship. In order to clearly differentiate the two flags, and at the same time respect the above-mentioned provisions of the Flag Code, the United Nations flag should be longer than or of the same size as the national flag and should fly from the top of the mainmast. As far as the courtesy flag is concerned, we understand that as a custom it is smaller than the flag of registration, and it should also be smaller than the United Nations flag. As far as the exact arrangement of the flags is concerned, we would leave that to the experts on the understanding that the United Nations Flag Code is respected both with regard to size of flags and their height.

12 April 1990

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2. Invitation to the United Nations to observe presidential elections in a Member State — General rule that the Organization does not monitor elections in Member States — Basis for the Secretary-General's authority to send observer teams

Memorandum to the Under-Secretary-General for Sepcial Political Questions, Regional Cooperation, Decolonization and Trusteeship

1. Further to our discussion on the invitation to the United Nations to observe presidential elections in a Member State, I have the following observations to make concerning the recommendations contained in your note of 18 January 1990 to the Secretary-General. In your note you state that it is necessary to ascertain (*a*) whether

the Secretary-General has the authority to send observer teams to monitor elections in independent countries; (*b*) whether supplementary funds would be needed to be approved or whether there are existing funds which can provide for such a contingency; (*c*) what would be the exact role of United Nations observers in the process; and (*d*) whether the Secretary-General would be obliged to prepare and submit an independent report.

2. With regard to the question of the Secretary-General's authority, the general rule is that the United Nations does not monitor elections in Member States because this would infringe upon Article 2, paragraph 7, of the Charter of the United Nations. Over the years, this policy has been consistently maintained wth very few exceptions. In 1977, the United Nations sent an observer team to observe (not monitor) the plebiscite held in Panama on the Panama Canal Treaties. Authority for this observer mission, however, was derived from General Assembly resolutions and the plebiscite was not a national presidential election but a vote concerning an important international treaty. The current observation being undertaken in Nicaragua (United Nations Observer Mission to Verify the Electoral Process in Nicaragua) which is in relation to a legislative election is justified as an exception to the rule because general authority to send an observation group derives from General Assembly resolutions and the election is deemed to be an integral part of the Central American peace process under the Esquipulas Agreement[4] concerning which both the General Assembly and the Security Council have mandated the Secretary-General. In the case of [name of a Member State], the Secretary-General has no authority to send observer teams under any provision of the Charter and, as far as we are aware, no authority exists on the basis of any General Assembly or Security Council resolution or decision.

3. With regard to the question of funding, while this is not, strictly speaking, a legal question, it is clear that such an operation would require substantial funding and that, therefore, some provision would have to be made. The necessary provision of funds might be covered by the allocation for unforeseen and extraordinary expenses which is approved by the General Assembly in the regular budget. This is a matter to be taken up with the Secretary-General and the Controller.

4. As far as the role of United Nations observers is concerned, we note that the request received from the Acting President of the State concerned appeals to the Secretary-General "to certify the fairness" of the election. Broadly speaking, this would mean that the United Nations would be called upon to certify that the conduct of the election, in all its phases, meets internationally recognized standards. As you know from our experience in Namibia, this is a complex and difficult task. In any event, before deciding to send observer teams, the exact role of such observers would have to be defined as clearly as possible and, as pointed out above, mandated by a legislative organ.

5. Finally, you asked whether the Secretary-General would be obliged to prepare and submit an independent report. In our view, such a report would be necessary since the sending of an observer team would be meaningless unless the Secretary-General is in a position to certify the results.

25 January 1990

3. QUESTIONS WHETHER THE UNITED NATIONS CHILDREN'S FUND OR THE UNICEF GREETING CARD OPERATION COULD BE A SHAREHOLDER IN A PRINTING COMPANY AND WHETHER UNICEF STAFF MEMBERS COULD SERVE ON THE BOARD OF DIRECTORS OF THE COMPANY — INCOMPATIBILITY OF THESE ACTIVITIES WITH THE CHARACTER AND STATUS OF THE UNITED NATIONS, OF WHICH UNICEF IS A SUBSIDIARY ORGAN

Memorandum to the Director, Office of Administrative Management, United Nations Children's Fund

1. Reference is made to your memorandum of 16 August 1990, whereby we were requested to advise on whether UNICEF or the UNICEF Greeting Card Operation (GCO) could be a shareholder in a printer's company in a Member State — which, as we note, is to become an independent shareholder company under the laws of that State — and whether UNICEF staff members could serve on the Board of Directors of the company, once it is incorporated.

2. Our comments set out below are equally applicable to UNICEF and to UNICEF GCO, since both are one and the same legal entity. "Greeting Card Operation" (GCO) is, as you know, defined in article I of the UNICEF Financial Regulations and Rules[5] as an "*organizational entity established within UNICEF* to generate public support and funds for UNICEF, mainly through the production and marketing of greeting cards and other products" (emphasis added).

UNICEF as a shareholder in the printer's company

3. The participation of UNICEF as a shareholder in a private company would submit the Organization to the regulations and rules of the national law governing corporate entities, and would thus be incompatible with the character and status of the United Nations, of which UNICEF is a subsidiary organ. As a United Nations organ, UNICEF enjoys, under Article 104 of the United Nations Charter and the Convention on the Privileges and Immunities of the United Nations, certain privileges and immunities, including immunity from legal process. Yet, as a shareholder in a private corporation, UNICEF would be subject to any legislative controls imposing fiduciary duties and liabilities for the acts of the corporation.

Participation of UNICEF's representatives on the Board of Directors of the printer's company

4. From the excerpts of the company's rules and regulations submitted to us, we note that two out of the five directors on the Board are proposed to be UNICEF's representatives. Under the said rules and regulations the Board of Directors would be involved in a variety of supervisory, managerial and financial activities, among which are the drawing and/or receipt of monies, bills of exchange, promissory notes and the execution of any dealings relating to money transaction (article 41 of the company's rules and regulations). Thus, the participation of UNICEF's representatives on the Board of Directors could subject them, and possibly UNICEF itself which they would represent, to the national law of the State in question for the regularity of the operational and financial activities of the corporation. Furthermore, it would seem to us that the participation of UNICEF's representatives on the Board of Directors would not be compatible with their status as international civil servants.

Suggested alternative

5. We understand that the proposed participation by UNICEF as a shareholder in the printer's company is intended to ensure the proper and efficient continuation of a project supported by UNICEF. We consider that these objectives could still be accomplished by establishing a national committee for UNICEF in the country concerned, if one does not already exist, to represent UNICEF's interests in the printer's company and to perform the functions now proposed to be carried out by UNICEF staff.

24 April 1990

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4. ADVISABILITY OF THE UNITED NATIONS ENTERING INTO A PROFIT-MAKING JOINT VENTURE WITH A PRIVATE PUBLISHING FIRM — PURPOSE OF THE CURRENT COMMERCIALLY ORIENTED ACTIVITIES OF THE UNITED NATIONS — PARTICIPATION IN A PROFIT-ORIENTED COMMERCIAL JOINT VENTURE COULD PUT THE STATUS AND CHARACTER OF THE ORGANIZATION IN QUESTION

Memorandum to the Executive Officer, Department of Public Information

1. This responds to your memorandum of 8 May 1990 requesting our opinion on the advisability of the United Nations entering into a profit-making joint venture with a private publishing firm which would manage and market the United Nations publication *Development Business*. It is envisaged that this joint venture would compete with private-sector publishing firms marketing similar publications inside and outside the United States.

2. While in some paragraphs of your memorandum you ask a number of very specific questions arising out of the proposed joint venture, all these rest on the assumption that a joint venture of the kind contemplated can or would be entered into. In view of our conclusions on this basic issue, we do not see the need to deal with those questions. In addressing the basic issue, our understanding is that the joint venture would be run on commercial lines with a view to profit.

A. CURRENT COMMERCIALLY ORIENTED ACTIVITIES OF THE UNITED NATIONS

3. Apart from the philatelic sales by the United Nations Postal Administration which has been established by the General Assembly expressly in order to issue and sell United Nations postage stamps and various postal stationery items, outside United Nations activities of a commercial nature, such as publication of books and magazines, or film productions, have been undertakings in which the main function was to publicize United Nations causes and objectives. If the United Nations entrusts such projects to a contractor, the Organization takes careful measures to maintain editorial and financial control over the enterprise and to avoid the impression of endorsing the services of the contractor. A close examination of United Nations film production, for example, reveals that the commercial element is not predominant. Normally, the production is financed by the United Nations which in turn retains the copyright. While the producer may be given the right to distribute the film commercially and be obligated in return to pay royalties on the revenue received from such distribution, the primary purpose of such an arrangement would be the publicizing of a United Nations theme or cause and not revenue gathering.

4. It is also relevant to note that guidelines (e.g., Joint United Nations Information Committee guidelines, external publishing guidelines, etc.) and control mechanisms (e.g., the Publication Board) have been established to ensure that the outside activity is compatible with the interests of the Organization. Thus, permission to use the United Nations emblem is only granted if the outside activity is essentially United Nations supportive and not purely commercial.[6]

B. THE JOINT VENTURE CONTEMPLATED BY THE DEPARTMENT OF PUBLIC INFORMATION

5. The joint venture contemplated by the Department of Public Information would result in the association of the United Nations with a private firm (under one legal form or another) with a view to mutual profit. Such joint ventures are carefully regulated in most legal systems in the public interest and with a view to protecting the third parties with which they deal. In particular, the joint venture would be subject to national trade and tax laws. In its actual operations, no meaningful distinction could be made between the United Nations and its joint venture partner. To our knowledge the United Nations has never engaged in such a profit-making joint venture with a commercial concern and it is extremely doubtful whether the Untied Nations can do so for the reasons set forth below.

C. PRINCIPLES AND OBJECTIVES OF THE UNITED NATIONS

6. In our view, the proposed United Nations activity — participation in an independent commercial venture directed to producing revenue — would not be within the scope of the principles and objectives of the United Nations, as set forth in the Charter of the United Nations. While some legislative basis might exist for the publication of *Development Business,* that basis could not justify the carrying out of a commercial activity of the type envisaged.

D. PRIVILEGES AND IMMUNITIES

7. The United Nations is an intergovernmental organization with a noble mandate of immense importance set out in the Charter of the United Nations. In order to facilitate the fulfilment of this mandate, the Organization enjoys privileges and immunities as stated in Article 105 of the Charter and specified in the 1946 Convention on the Privileges and Immunities of the United Nations. These privileges and immunities include, among others, immunity from every form of legal process and fiscal immunities. They are granted on the understanding that the Organization pursues only its Charter objectives. If, however, the Organization were to participate in a commercial joint venture, it would (at least in respect of the joint venture) have to waive its privileges and immunities, the granting of which would no longer be justified.[7] Moreover, participation in a commercial joint venture could put the status and character of the Organization in question.

E. CONCLUSION

8. For the reasons set out above, we do not believe that the proposed joint venture can be entered into. We consider this to be so, even if the revenue derived by the United Nations from the project is to be devoted to United Nations programmes.

23 July 1990

5. QUESTION WHETHER THE UNITED NATIONS DEVELOPMENT PROGRAMME COULD BECOME A FOUNDING MEMBER OF A CORPORATE BODY UNDER THE NATIONAL LAW OF A MEMBER STATE — CHARACTER OF UNITED NATIONS ACTIVITIES IN THE TERRITORIES OF MEMBER STATES — SUBMISSION OF UNDP TO THE NATIONAL LAW OF THE CORPORATE BODY COULD BE CONSTRUED TO CONSTITUTE A WAIVER OF THE PRIVILEGES AND IMMUNITIES TO WHICH UNDP IS ENTITLED

Memorandum to the Director, Policy Division, Bureau for Programme Policy and Evaluation, United Nations Development Programme

1. This responds to your memorandum of 26 June 1990 by which you sought a legal opinion on whether UNDP could become a founding member of the International Institute for Management in [name of a Member State] (the Institute). We understand from the documents you attached that the Institute is actually to be founded as a national body incorporated under the Company Laws of [name of the Member State concerned], as a company limited by guarantee, without share capital.

General

2. The involvement of UNDP as a founding member of a corporate body under the national law of a Member State raises a number of conceptual and practical problems. These problems stem from the character of the United Nations, of which UNDP is a part, as an international organization operating in the territories of Member States, and the status of its staff members, as international civil servants. The United Nations and its staff enjoy specific privileges and immunities in the host country which may be in conflict with the idea of active participation in the establishment and operation of a corporate body under national law.

The character of United Nations activities in the territories of Member States

3. UNDP is a subsidiary organ of the Untied Nations and, within the general mandate conferred upon it by the resolutions of the General Assembly, it enjoys in the territories of the Member States such capacities as may be necessary for the exercise of its functions and the fulfilment of its purposes (Article 104 of the Charter of the United Nations). We do not consider that UNDP as such has, under its mandate, the capacity to establish or participate in the establishment of a legal entity under the national laws of a Member State.

Submission of UNDP to the national law of the Institute

4. Quite apart from the question of legal capacity, UNDP, as a founding member of the Institute, would, unlike any of the other founding members, be immune from legal process by virtue of the privileges and immunities it enjoys under the Convention on the Privileges and Immunities of the United Nations. This, despite the fact that the Institute would be subject to the laws of the State in question concerning the regularity of its establishment and conduct of its activities. Thus, neither the Institute nor the Government nor any party aggrieved by the acts or omissions of the Institute could obtain effective remedies against UNDP.

5. Furthermore, UNDP's submission to the domestic law of the host country could, in case of a claim arising out of UNDP's involvement in the operation of the corporate body, be construed to constitute a waiver of the privileges and immunities to which UNDP is entitled. Such an implied waiver in advance would be contrary to

the practice followed by the United Nations, whereby the immunities of the Organization may only be waived expressly and on an ad hoc basis by the Secretary-General (sections 2 and 20 of the Convention, respectively). In this regard, it should be noted that the authority to waive the immunities of the United Nations has not been delegated.

Participation of UNDP staff members

6. The participation of UNDP in the incorporation and operation of the Institute would necessarily mean that UNDP staff members would be required to participate in the affairs of the Institute, possibly with rights to vote. They would thus subject themselves to the local law of the State in question in respect of their activities within the Institute. To the extent that the staff members would perform the said activities in a representative capacity of UNDP, their actions could also result in legal liability for UNDP itself. Although, according to the Memorandum of Association of the Institute, the liability of members is limited to 20 pounds in the event of the Institute being wound up, the very concept of UNDP or its staff being held liable in such circumstances would in our view be incompatible with the status of the Organization.

Conclusion

7. It follows from the above that the participation of UNDP or its staff in the establishment or operation of the Institute is not legally permissible and, therefore, would not be advisable.

1 August 1990

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6. POSSIBLE COLLABORATION BETWEEN THE UNITED NATIONS CENTRE FOR HUMAN SETTLEMENTS (HABITAT) AND NATIONAL COMMITTEES FOR UNCHS FOR FUND-RAISING PURPOSES — PRECEDENTS OF THE RELATIONSHIP OF THE UNITED NATIONS CHILDREN'S FUND AND THE UNITED NATIONS DEVELOPMENT FUND FOR WOMEN WITH THEIR NATIONAL COMMITTEES — TERMS OF REFERENCE OF UNCHS

Memorandum to the Officer-in-Charge, United Nations Centre for Human Settlements (Habitat)

1. This responds to your memorandum of 5 September 1990 requesting this Office's views with respect to the possible collaboration between United Nations Centre for Human Settlements (Habitat) and individual national committees of UNHCS for fund-raising purposes, and in which you refer to the precedents of the relationship of the United Nations Children's Fund (UNICEF) and the United Nations Development Fund for Women (UNIFEM) with their national committees.

The UNICEF and UNIFEM precedents

2. The relationship between UNICEF and its national committees is based on General Assembly resolution 57 (I) of 11 December 1946 which in paragraph 2 (*a*) stipulates that "[the Fund] shall be *authorized* to receive funds, contributions or other

assistance from [Governments, *voluntary agencies, individual or other sources*]" (emphasis added); (see also paragraph 2 of General Assembly resolution 417 (V) of 1 December 1950). It is also provided for in the UNICEF Financial Regulations and Rules which stipulate, in regulation 4.3, that contributions "may be received by UNICEF, unsolicited or as a result of fund-raising activities, through the national committees for UNICEF and otherwise".

3. Similarly, the relationship of UNIFEM with its national committees is foreseen in General Assembly resolution 37/62 of 3 December 1982, in which the Assembly considered "that fund-raising . . . activities have a vital role to play in maintaining and increasing the financial viability and effectiveness of the Fund" and expressed "its appreciation for the support which *national committees* for the Fund, national United Nations associations and other non-governmental organizations have given to the work of the Fund" (paragraphs 8 and 9, emphasis added).

4. As is explained below, however, the function of UNCHS consists in coordinating possible sources of financing *governmental programmes* pertaining to human settlements and in providing assistance arrangements between donors and recipients. As such, it would seem that those functions are financed by Governments rather than through individual contributions or fund-raising activities.

Terms of reference of UNCHS (Habitat)

5. The United Nations Habitat and Human Settlements Foundation was established by General Assembly resolution 3327 (XXIX) of 16 December 1974 on the basis of decision 16(A)(II) of the Governing Council of the United Nations Environment Programme. In that resolution, the Assembly had stated that the "primary operative objective of the Foundation will be to assist in *strengthening national environmental programmes relating to human settlements*" (emphasis added). The Executive Director of UNEP was charged under the resolution with the responsibility, under the authority and guidance of the Governing Council of UNEP, of administering the Foundation and providing the technical and financial services related to that institution. By General Assembly resolution 32/162 of 19 December 1977, the responsibilities of the Governing Council were transferred to the Commission on Human Settlements, and provision was made for the establishment of a United Nations Centre for Human Settlements (UNCHS) (Habitat) to be headed by its own Executive Director. In that resolution, the Assembly reaffirmed that "action [to improve the quality of life of all people in human settlements] is *primarily the responsibility of Governments*", and that "the *international community* should provide, *both at the global and regional levels, encouragement and support to Governments determined to take effective action* to ameliorate conditions, especially for the least advantaged, in rural and urban human settlements" (see preambular clauses of resolution 32/162, emphasis added), and charged the Commission with the responsibilities:

"(*a*) To assist *countries and regions* in increasing their own efforts to solve human settlement problems;

"(*b*) To promote greater international cooperation in order to increase the availability of resources of developing countries and regions;

"(*c*) . . .;

"(*d*) To strengthen cooperation and co-participation in this domain among all countries and regions" (see paragraph II (3) of resolution 32/162, emphasis added).

To that end, the Commission was given, *inter alia*, the following functions:

"(*d*) To give overall policy guidance and carry out supervision of the operations of the United Nations Habitat and Human Settlement Foundation;

"(*e*) To review and approve periodically the utilization of funds at its disposal for carrying out human settlements activities at the *global, regional and subregional levels*;

"(*f*) To provide overall direction to the secretariat of the Centre referred to in section III below"; (see paragraph II (4) of resolution 32/162, emphasis added).

6. The Executive Director of UNCHS (Habitat) was given the responsibility to administer the Habitat Foundation and to exercise the functions previously performed by the Executive Director of UNEP over the Foundation under General Assembly resolution 3327 (XXIX).

7. In the note by the Secretary-General to the General Assembly regarding the administrative arrangements of the Habitat Foundation (A/C.5/32/24 of 17 October 1977), the Secretary-General proposed as follows:

"The financial operations of the Foundation are to be governed by the Financial Regulations and Rules of the United Nations, including any necessary special or clarifying financial rules required to meet the authorized purposes of the Foundation. These will be promulgated by the Secretary-General, including such additional financial rules as may be required to further control the activities under the Financial Regulations described in paragraph 42 and annex II, if they should be approved by the General Assembly. While it would be the intention of the Secretary-General to delegate much of the authority so provided, he would retain custody of the funds of the Foundation and the right to further amend or change the relevant financial rules as conditions may require". (ibid., para. 43)

Following acceptance of those proposals by the General Assembly, the Secretary-General promulgated special Financial Rules applicable to the Foundation (330 Series to the United Nations Financial Regulations and Rules).

8. Rule 307.5(*a*) of the 300 Series — Financial Rules provides that "the Executive Director [of UNCHS (Habitat)] is hereby delegated authority to accept voluntary contributions, gifts or donations *for purposes consistent with those of the Foundation*" (emphasis added). While this rule would seem on its face to authorize the receipt of contributions, etc., without limitation as to source, it must however be construed in the light of General Assembly resolution 3327 (XXIX) which provides that the primary sources of funds for the Foundation would come essentially from Member States by way of voluntary grants. Consequently, although there would be no impediment for the Executive Director to accept voluntary contributions and donations from private sources, direct solicitation and fund-raising activities through national committees as proposed do not seem to have been envisaged, since they do not fall within the terms of reference of UNCHS as contained in General Assembly resolutions 3327 (XXIX) and 32/162.

9. It appears therefore that UNCHS (Habitat) will require prior, express authorization from its constitutive body to engage in direct fund-raising for its programmes and to establish national committees for that purpose.

18 September 1990

7. CLAIM BY THE TOKYO ENERGY ANALYSIS GROUP THAT ITS COPYRIGHT ON THE "OLSC", A SOFTWARE COMPONENT USED IN A UNITED NATIONS SOFTWARE PROGRAM ENTITLED "ENERPLAN", WOULD BE INFRINGED BY THE DEPARTMENT OF TECHNICAL COOPERATION FOR DEVELOPMENT'S MODIFICATION OF ENERPLAN — COPYRIGHT AND SOFTWARE PROTECTION UNDER THE UNIVERSAL COPYRIGHT CONVENTION AND THE BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS — COPYRIGHTABILITY OF COMPUTER SOFTWARE UNDER UNITED STATES LAW

Memorandum to the Officer-in-Charge, Energy Resources Branch, Natural Resources and Energy Division, Department of Technical Cooperation for Development

1. This refers to the letter of 30 May 1990 sent by the Tokyo Energy Analysis Group (the Group), alleging that the Group's copyright on the "OLSC", a software component used in a United Nations software program entitled "ENERPLAN", would be infringed by the modification of ENERPLAN by the Department of Technical Cooperation for Development (DTCD).

2. On the basis of the documents forwarded to us earlier, we provide below the facts, the law regulating copyright and our opinion with respect to the above issue.

Summary of facts

3. The Natural Resources and Energy Division of DTCD developed in 1984-1985 a microcomputer software ("ENERPLAN"), which is to be used by planners and policy-makers in the developing countries when formulating national energy plans. The three members of the Group were recruited by the Division as consultants to help develop the software programme.

4. For the purpose of designing and developing ENERPLAN, an already developed and commercialized software component was used ("OLSC"), which had been authored and copyrighted by the three consultants both in the United States and in Japan.

5. The understanding between DTCD and the three consultants was that, in developing the software program, the possible need to convert the program to other language(s) in the future should be taken into account. It was further understood that ENERPLAN would have possibilities permitting the users to feed exogenous variables or parameters to the model to be developed without using OLSC.

ENERPLAN III and claim of copyright infringement

6. At the beginning of 1990, and in view of numerous problems experienced with ENERPLAN, DTCD decided to undertake modifications of the software program. The new version, which is entitled "ENERPLAN III", will be written in computer languages other than that previously used in ENERPLAN and, while the interface of the program is to be completely redesigned, no code of the original ENERPLAN will be required for such redesigning, and the OLSC component will not be included in ENERPLAN III.

7. Upon being informed of DTCD's plans, the Group requested that DTCD not proceed with the planned modifications, as they might involve or affect the copyrighted OLSC component, and further stated that their copyright covered not only the

source code, but also the organization and structural details of the program, as well as its screen display.

Copyright protection under international conventions

8. Copyright protection on the global level is regulated by international conventions and bilateral treaties dealing with copyright. Those instruments leave a large measure of autonomy to national regulation. It is, however, still important to examine the legal mechanisms afforded by the two major international conventions for protection of copyright, i.e., the Universal Copyright Convention (UCC)[8] and the Berne Convention for the Protection of Literary and Artistic Works,[9] to determine what their effect is on computer software.

The Universal Copyright Convention

9. Article I of the UCC protects "literary, scientific and artistic works, including writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture." The UCC does not provide any additional substantive protection of copyright beyond the protection granted by national legislation. Under its terms, each contracting State shall give adequate and effective protection to the rights of authors and other copyright proprietors of literary, scientific and artistic work (UCC, art. I). The Convention does not describe the details of protection, but substantially leaves the mode and extent of protection to the legislation of each member State (UCC, art. II). Because the UCC is only a national treatment agreement, computer programs will only be protected in countries where domestic copyright law is applicable to software. The United States is a member of the UCC, and therefore the United States law on copyright is the only applicable statutory law to a suit held in United States courts.

The Berne Convention for the Protection of Literary and Artistic Works

10. Article 2 of the Berne Convention defines literary and artistic works as including "every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression", and sets forth a non-exclusive catalogue of covered works that include books and other writings, illustrations, plans, architectural and scientific works. Similar to the UCC, the Berne Convention provides for national treatment (art. 4(1)), and therefore, computer programs will only be protected in countries where domestic copyright law is applicable to computer programs. The United States does not adhere to the Berne Convention because the Convention abandons formalities to acquire protection, and because it offers protection to moral rights which are not recognized by the United States.

Software protection under the UCC and the Berne Convention

11. Having regard to the fact that both conventions afford no more than national protection of copyrights, and before discussing national laws on copyright, it is necessary to ascertain whether computer programs are within the subject matter of protected material under those conventions.

12. Neither convention refers explicitly to computer programs, and neither lists or defines computer software, or what constitutes infringement or unauthorized use of software. In a recent study concerning the existing protection under international conventions, the World Intellectual Property Organization conducted a survey of member

nations and received replies from 26 countries, the majority of which indicated that computer software was not protected, or was insufficiently protected by existing treaties (see C. Melilema, "Copyright Protection for Computer Software: An International View", 11(1) *Syracuse Journal of International Law and Commerce,* 87, 104-105 (1984)). There is, therefore, at the present time no consensus among the nations that are members of the two major international copyright conventions concerning the inclusion of computer programs in the list of works protected by those copyright conventions.

Copyright protection under United States law

13. The next consideration is the extent to which software is protected under United States law, as the members of the Group allege that they have registered the OLSC component with the United States Copyright Office, and as United States law would be the only applicable statutory law to a suit held in United States courts.

Copyrightability of computer software under United States law

14. Section 102 (*a*) of the 1976 Copyright Act protects "original works of authorship fixed in any tangible medium of expression, now know or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device" (17 *U.S.C.* Section 102 (*a*)). That same section provides also seven illustrative examples of such "works of authorship", which include "literary works". The legislative reports accompanying the 1976 Act make clear that the term "literary works" is defined as encompassing computer programs and databases (see H.R. REP. No. 94-1476, 94th Cong., 2d Sess. 54 (1976), quoted in W.F. Patry, *Latman's — The Copyright Law* (1986) at p. 59, n.191).

15. The 1980 Computer Software Copyright Act, which amended some sections of the 1976 Copyright Act, provided a statutory definition of the term "computer program": "A 'computer program' is a set of statements or instructions to be used directly or indirectly in a computer program in order to bring about a certain result" (17 *U.S.C.* Section 101 (1980)).

16. Section 102 (*b*) of the 1976 Act provides that "[i]n no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated or embodied in such work". Thus, while the *expression* of an idea or principle may be copyrighted, that *idea* or *principle* is not afforded copyright protection.

17. The statutory language of the above-quoted provisions makes clear that under United States law, copyright protection is given to original expression embodied in computer programs, but not to any idea, method or process described by that expression. The issue, therefore, is not whether or not computer programs are copyrightable, but discovering the protectible elements in individual computer programs, in order to determine which particular components are (unprotectible) ideas and which are (protectible) expressions of an idea.

Scope of Protection

18. Computer software includes not only the computer program in its various manifestations, but also the documentation created in connection with or for use with

that program (see *University Computing Co. v. Lykes — Youngstown Corp.*, 504 F.2d 518, 527 (5th Cir. 1974)). The debate today is not whether software is protectible in the abstract, but whether a particular form of representation of the software is protectible. The forms in which software can be represented include:

(*a*) The basic algorithms or methods implemented in the program;

(*b*) The program itself in source code and object code versions;

(*c*) The supporting documentation, including the program descriptions, flow charts, instruction manuals, operator's manuals and other materials that explain the operations of the program (See WIPO, Model Provisions on the Protection of Computer Software, 9-12 (1978)).

19. *Apple Computer Inc. v. Franklin Computer Corp.* was the first significant and far-reaching decision on protection of computer software (714 F.2d 1240 (3d Cir. 1983). In that case, the court held that object code is protectible by copyright. The court also reasoned that, if only one or a few other expressions are possible for a particular idea, the expression is "necessarily dictated by the underlying subject matter", and therefore, the idea and expression have merged and are not protected by copyright. If, however, "other programs can be written or created which perform the same function as . . . Apple's operating system program, then that program is an expression of the idea and hence copyrightable." (*idem*, at p. 1253; see also *Stern Elecs., Inc. v. Kaufman,* 669 F.2d 852, 855 n.3 (2d Cir. 1982)). In *Whelan Associates, Inc. v. Jaslow Dental Lab., Inc., et al.,* (797 F.2d 1222 (3d Cir. 1986)), the court stated: ". . . We must determine whether the structure (or sequence and organization) of a computer program is protectible by copyright, or whether the protection of the copyright law extends only as far as the literal computer code. The district court found that the copyright law covered these non-literal elements of the program, and we agree."

20. In a recent case on whether copyright protection extends to all elements of computer programs that embody original expression, whether literal or non-literal, the court articulated the legal test for the copyrightability of such elements as follows: "If, however, the expression of an idea has elements that go beyond all functional elements of the idea itself, and beyond the obvious, and if there are numerous other ways of expressing the non-copyrightable idea, then those elements of expression, if original and substantial, are copyrightable." (*Lotus Development Corp. v. Paperback Software International and Stephenson Software, Ltd.,* Civil Action No. 87-76-K, U.S. District Court for Massachusetts, 60 (1990)). In the court's reasoning, therefore, for the expression of an idea to be copyrightable, it has to meet the following four criteria: it has to be original; it has to embody more than just functional elements, i.e., it has to be substantial; it has to go beyond the obvious; and it is not the only possible way in which the idea can be expressed (*idem*, at p. 58).

What constitutes infringement of copyright

21. The Copyright Act does not define "infringement". In place of such a definition, Section 501 (*a*) provides that "[a]nyone who violates any of the exclusive rights of the copyright owner as provided by Sections 106 through 118, . . . , is an infringer of the copyright".

22. Having regard to that provision, it is clear that infringement occurs when one or more of the copyright owner's exclusive rights have been violated. Those rights are shaped not only by the grants in Section 106 but by the limitations in Sec-

tions 107-118 as well. Of particular relevance for the purpose of determining whether or not a computer program has been infringed, is the exclusive right of the copyright owner to reproduce the copyrighted work, or to authorize that work's reproduction (see 17 *U.S.C.* Section 106 (1)). Any unauthorized reproduction or copying of the copyrighted work would, therefore, constitute infringement.

23. The determination of whether a copyright has been infringed has been left to the courts. As copying is rarely done blatantly, usually, the copyright owner must make out a circumstantial case based on *access* and *similarity*. "Access" means that the alleged infringer had an opportunity to copy the protected material. The concept of "similarity", as elaborated in a recent court's decision, requires that the copyright owner must "demonstrate substantial similarity in both ideas and expression . . .", which ". . . would permit a reasonable person to find an unlawful appropriation, a capture by the infringing work of the 'total concept and feel' of [the infringed] work". (See *Johnson Controls v. Phoenix Control Systems,* 886 F.2d 1173 (9th Cir. 1989).)

Permissible use of copyrighted work

24. Section 117 of the Copyright Act, as revised by the 1980 amendments, limits the scope of the exclusive right of the copyright owner to reproduce or authorize the reproduction of the copyrighted work, as follows:

> "Notwithstanding the provisions of Section 106, it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:
>
> "(1) that such [a new] copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or
>
> "(2) that such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.
>
> "Any exact copies prepared in accordance with the provisions of this section may be leased, sold, or otherwise transferred, along with the copy from which such copies were prepared, only as part of the lease, sale, or other transfer of all rights in the program. Adaptations so prepared may be tranferred only with the authorization of the copyright owner."

25. In the light of that provision, it is clear that the permissible use of copyrighted works includes adaptations as part of the lawful utilization of the program. Moreover, this privilege is accorded to lawful "owners" and does not require prior authorization from the copyright holder. The scope of such lawful utilization was understood to be as follows:

> "Because of a lack of complete standardization among programming languages and hardware in the computer industry, one who rightfully acquires a copy of a program frequently cannot use it without adapting it to that limited extent which will allow its use in the possessor's computer. The copyright law . . . should no more prevent such use than it should prevent rightful possessors from loading programs into their computers. Thus, a right to make those changes necessary to enable the use for which it was both sold and purchased should be provided. *The conversion of a program from one higher-level language to another to facilitate use would fall within this right as would the right to add features to the program*

that were not present at the time of rightful acquisition. These rights would necessarily be more private in nature than the right to load a program by copying it and could only be exercised so long as they did not harm the interests of the copyright proprietor . . . *Should proprietors feel strongly that they do not want rightful possessors of copies of their programs to prepare such adaptations,* they could, of course, make such *desires a contractual matter."* (quoted in F. W. Neitzke, *A Software Law Primer,* 18 (1984), emphasis added)

Opinion

26. ENERPLAN is the property of DTCD. The copyrighted OLSC component, included in some versions of ENERPLAN, was used by permission of the authors, and DTCD acknowledges the latter's copyright on that component.

27. Even though DTCD has not registered any version of ENERPLAN with the United States Copyright Office, protection of it is not forfeited by such omission to register. Registration is merely a prerequisite to bringing a suit for infringement and is not required for the purpose of granting protection to copyrightable works. Indeed, copyright protection automatically attaches to a work as it is "fixed in a tangible medium of expression" (see 17 *U.S.C.* Section 102 (*a*)). DTCD retains, therefore, exclusive rights with respect to ENERPLAN, which rights include the right to reproduce the work and the right to prepare derivative works based upon the pre-existing work (see 17 *U.S.C.* Section 106 (1), (2)).

28. DTCD's exclusive right to prepare derivative works, as that term is defined by Section 101 of the Copyright Act[10] is curtailed only by the rights of the authors of the copyrighted OLSC component (see 17 *U.S.C* Section 103).[11] DTCD has, therefore, the right to undertake any modification or alteration of ENERPLAN without consulting the authors, but only in so far as such modifications do not affect or involve the OLSC component.

29. DTCD has also the right to make adaptations to ENERPLAN, even in those versions of the program that include the copyrighted OLSC component, as part of its lawful utilization of the program. As previously indicated (see paras. 24-25 above), the right of the owner of a copy of a computer program to make adaptations to that computer program limits the exclusive right of the copyright owner with respect to the software, but only if such adaptations are necessary for utilizing the computer program and only in so far as the new copies so prepared are not leased, sold or otherwise tranferred without the copyright owner's authorization.

Conclusion

30. DTCD retains the exclusive right to reproduce ENERPLAN in its original version, which includes the copyrighted OLSC component, which is used by permission of the authors.

31. DTCD further retains the exclusive right to prepare derivative works of "ENERPLAN" without, however, using the copyrighted OLSC component. This is particularly relevant in the case under consideration, as the preparation of ENERPLAN was designed in a way that would permit such derivative works, i.e., through conversion into other computer languages, etc., without using the OLSC component (see para. 5 above).

32. As the new software program, entitled ENERPLAN III, does not include any portion of OLSC or any other previously copyrighted material, it is our opinion

that ENERPLAN III, being a derivative wok of the original ENERPLAN, does not infringe on the rights of the authors of the OLSC component.

23 August 1990

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8. AWARD OF THE 1988 NOBEL PEACE PRIZE TO THE UNITED NATIONS PEACE-KEEPING FORCES — PRACTICAL AND LEGAL OBSTACLES TO THE EXERCISE BY THE UNITED NATIONS PEACE-KEEPING FORCES OF THE RIGHT TO NOMINATE CANDIDATES PROVIDED FOR BY THE SPECIAL REGULATIONS GOVERNING THE AWARD OF THE PRIZE

Memorandum to the Executive Assistant to the Secretary-General, Assistant Secretary-General

1. This responds to your memorandum of 6 December 1989 informing us that, after the Secretary-General received the Nobel Peace Prize (the Prize) in 1988 on behalf of the United Nations Peace-keeping Forces, he has been twice called upon to propose a candidate for the Prize. You requested our advice as to whether (*a*) the incumbent Secretary-General is entitled to make such proposals to the Nobel Peace Prize Committee and, if so, (*b*) whether future Secretaries-General would also be entitled to make such proposals.

2. Under the terms of the will of the late Alfred Nobel, the Prize is awarded by the Norwegian Nobel Committee (the Committee), which is elected by the Norwegian Storting. Special Regulations governing the award of the Prize were adopted by the Committee on 10 April 1905. Paragraph 3 of those Regulations provides that "the right to submit proposals for the award of the Nobel Peace Prize shall be enjoyed by: . . . 7. Persons who have been awarded the Nobel Peace Prize". Paragraph 4 of the Regulations specifies that "the Nobel Peace Prize may also be awarded to institutions and associations". It is to be noted that, under paragraph 3 of the Regulations referred to above, there is no obligation to submit proposals.

3. The Committee awarded the 1988 Prize to the United Nations Peace-keeping Forces and invited the Secretary-General to receive the Prize on their behalf at a prize-awarding ceremony to be held on 10 December 1988, as indicated in a letter of 29 September 1988 addressed by the Chairman of the Committee to the Secretary-General. It is to be noted that the Prize was not awarded to any specific United Nations Peace-keeping Force, but to the Peace-keeping Forces in general.

4. A United Nations Peace-keeping Force is a subsidiary organ of the United Nations, normally established pursuant to a resolution of the Security Council and falling under its authority. The Secretary-General is responsible to the Security Council for the organization, conduct and direction of the Force, and keeps the Council fully informed of developments relating to the functioning of the Force. The Secretary-General may, therefore, be regarded as the chief executive officer of every Peace-keeping Force, and it was presumably in recognition of this capacity that he was invited to receive the Prize on behalf of the Forces. It is also to be noted that the Secretary-General was invited by the Committee to give the lecture which article 9 of the Statutes of the Nobel Foundation requires the Prize winner to give. We therefore feel that, if it is desired to submit proposals on behalf of the Peace-keeping Forces,

and it is feasible to do so, the Secretary-General would be the appropriate channel through which to submit the proposals.

5. Nevertheless, the question arises whether the Prize winner in question — the United Nations Peace-keeping Forces — is able to choose a person, institution or association to be proposed to the Committee, since the Forces lack a legal personality of their own. As noted previously, the award was to the Peace-keeping Forces in general, and it is impossible to envisage a procedure or machinery by which the Forces could make a choice. Furthermore, even if such a procedure or machinery existed, the Forces have been given no mandate to make such a choice. The Secretary-General, while closely associated in the manner described above in paragraph 4 with the Forces, and therefore perhaps capable of representing the Forces in all matters relating to United Nations peace-keeping, could not be regarded as representing the Forces in matters extraneous thereto.

6. Other component parts of the United Nations or members of the United Nations family, recipients of the Peace Prize in earlier years, have not made nominations. UNICEF has no record of having been requested to make nominations and none have in fact been made by it. UNHCR did receive requests but has taken the position that the High Commissioner has no power to do so and that it would be too troublesome to obtain an agency decision on this question. ILO also received requests to make nominations but has taken the same position as the UNHCR. In addition, ILO feels that paragraph 3.7 of the Special Regulations, mentioned above in paragraph 2, may be interpreted as giving the right to make nominations only to natural persons.

7. While it is unlikely that the Committee would refuse to receive proposals for the award of the Prize submitted by the Secretary-General, we are of the opinion that, having regard to the difficulties noted in paragraph 5 above and in view of the absence of nominations from other United Nations organs and members of the United Nations family, recipients of the Prize, it would not be desirable to submit proposals.

8. Paragraph 3 of the Special Regulations governing the award of the Prize does not specify a time-limit within which a Prize winner can submit proposals for the award of the Prize, and accordingly proposals can be submitted on behalf of the Peace-keeping Forces as long as those Forces exist. If, contrary to our opinion expressed in paragraph 7 above, it is considered desirable that proposals be submitted by the Secretary-General on behalf of the Forces, such proposals could be submitted by both the present and future incumbents of the office of Secretary-General.

2 February 1990

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9. Question of the status of the United Nations Council for Namibia after Namibian independence

Memorandum to the Officer-in-Charge, Office of the United Nations Commissioner for Namibia

1. I wish to refer to your memorandum of 8 March 1990 by which you conveyed to me the request for advice of the President of the United Nations Council for Namibia on the status of that body after Namibian independence on 21 March 1990.

2. From a constitutional and legal standpoint, the United Nations Council for Namibia is a subsidiary organ of the General Assembly established pursuant to General Assembly resolution 2248 (S-V) of 19 May 1967. Under the terms of that resolution, the Council was endowed by the General Assembly with broad administrative, executive and legislative powers until the achievement of Namibian independence. Over the course of the past 23 years, the mandate of the Council has been further modified by numerous resolutions of the General Assembly under which the Council has continued to function as a subsidiary organ fulfilling its role as an administering authority for the Territory.

3. While the constitutive resolution (2248 (S-V) of 19 May 1967) and subsequent resolutions of the General Assembly imply in substantive terms that the mandate of the Council is fulfilled and that, therefore, the Council ceases to exist upon Namibian independence, no automatic dissolution of the Council is foreseen in these resolutions. The independence of Namibia on 21 March 1990 will not, therefore, automatically trigger the dissolution of the Council, which will continue to exist from a purely legal point of view as a duly constituted subsidiary organ of the General Assembly until such time as the Assembly itself decides otherwise.

4. This is not to say, of course, that all of the activities of the Council will survive the independence of Namibia. Some activities of the Council will automatically lose their *raison d'être* or will by their very nature be assumed by the new Government of Namibia. These include activities such as the representation of Namibia, participation in treaties, membership in intergovernmental organizations, policy-making functions, issuance of travel documents and the dissemination of information. Other activities, however, such as assistance activities and fellowship programmes, will continue by virtue of existing General Assembly resolutions. In due course, the General Assembly will no doubt wish to review such activities and take the action which it deems necessary and appropriate.

5. As far as the question of status is concerned, therefore, one may conclude that the legal status of the Council for Namibia as a subsidiary organ of the General Assembly remains unchanged until such time as the General Assembly decides otherwise.

9 March 1990

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10. LEGAL STATUS OF THE INTERNATIONAL TRADE CENTRE AND APPLICABILITY TO THE CENTRE OF GENERAL ASSEMBLY RESOLUTIONS REGARDING THE PARTICIPATION OF THE PALESTINE LIBERATION ORGANIZATION IN UNITED NATIONS MEETINGS — USE OF THE DESIGNATION "PALESTINE" IN PLACE OF THE DESIGNATION "PLO"

Cable to the Senior Legal Officer, United Nations Conference on Trade and Development

Reference is made to your memorandum of 16 February 1990 concerning an informal request made by Palestine to participate as an observer in the forthcoming session of the Joint Advisory Group (JAG) on the International Trade Centre (ITC). Our views in this connection are as follows:

(*a*) On 12 December 1967 the General Assembly approved by resolution 2297 (XXII), the accord between UNCTAD and GATT on the establishment of ITC "to be

operated jointly by UNCTAD and GATT on a continuing basis and in equal partnership". In 1974, the legal status of ITC was confirmed by the General Assembly as that of a "subsidiary organ of both the United Nations and GATT", the former acting through UNCTAD.[12]

(*b*) We note that at meetings of the Joint Advisory Group on the International Trade Centre UNCTAD/GATT, the observers indicated in paragraph 7 of your memorandum participate on the basis of notifications sent by the ITC secretariat. We note also that in the Group's practice, entities such as Palestine and national liberation movements recognized by the Organization of African Unity (OAU) have not been notified of sessions of JAG.

(*c*) With regard to Palestine, the General Assembly in resolution 3237 (XXIX) of 22 November 1974 invited the Palestine Liberation Organization (PLO) to participate in the capacity of observer in the sessions and the work of the General Assembly (paragraph 1) and in the sessions and the work of all international conferences convened under the auspices of the General Assembly (paragraph 2). It also considered that the PLO is entitled to participate as an observer in the sessions and the work of all international conferences convened under the auspices of other organs of the United Nations (paragraph 3). Furthermore, as you know, by resolution 43/177 of 15 December 1988, the General Assembly decided that, as of that date, the designation "Palestine" should be used in place of the designation "PLO" in the United Nations system, without prejudice to the observer status and functions of the PLO within the United Nations system, in conformity with the relevant United Nations resolutions and practice.

(*d*) Since ITC has been recognized by the General Assembly as a subsidiary organ of both the United Nations and GATT and since the annual meeting of JAG is convened by ITC to review ITC activities and formulate recommendations to governing bodies of GATT and UNCTAD, such meetings would, as far as the United Nations is concerned, fall within the ambit of resolution 3237 XXIX (paragraph 3). Thus, in response to your question, the United Nations would have no legal objection to the participation of Palestine as an observer in JAG meetings.

1 March 1990

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11. Question whether the Trade and Development Board may adopt a resolution on economic problems arising from the Gulf crisis in the light of Article 12 of the Charter of the United Nations

Memorandum to the Secretary-General of the United Nations Conference on Trade and Development

1. This is in reply to your memorandum dated 12 October 1990 in which you informed me that the President of the Trade and Development Board of UNCTAD requested my advice on whether or not it would be in keeping with Article 12 of the Charter of the United Nations if the Trade and Development Board were to adopt a resolution on the "economic consequences of the Gulf crisis" or incorporate the substance of its views in a broader resolution dealing with current developments in the world economy.

2. Article 12, paragraph 1, of the Charter of the United Nations provides that:

> "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests."

You correctly presume that by implication Article 12, paragraph 1, also applies to subsidiary organs of the General Assembly, including UNCTAD and its organs, such as the Trade and Development Board.

3. The Security Council is seized of the situation between the Member States concerned and it has adopted a number of resolutions concerning that situation. In addition, at the request of the Permanent Representative of one of the Member States concerned, the General Asembly decided on 21 September 1990 to include on its agenda an item concerning the Gulf crisis. In practice, Article 12 has not been interpreted as barring the General Assembly from generally considering, discussing and making recommendations on items which are on the agenda of the Security Council. This is particularly so if the titles of the items before the Council and before the General Assembly are not identical.

4. One of the Security Council resolutions concerning the Gulf crisis, namely resolution 669 (1990) of 24 September 1990, relates to the particular subject-matter raised in your memorandum and the text in question, although the latter is of a broader scope than the Security Council resolution. By resolution 669 (1990) the Security Council entrusted its Committee established under resolution 661 (1990) concerning the situation between the two States concerned, commonly known as the Sanctions Committee, with the task of examining requests for assistance under the provisions of Article 50 of the Charter of the United Nations and making recommendations to the President of the Security Council for appropriate action. In the particular case of [name of a Member State], the Sanctions Committee submitted such a report with its recommendations to the Council on 18 September 1990 (S/21786), that is, before the adoption of resolution 669 (1990). The members of the Security Council passed the report and its recommendations to the Secretary-General for appropriate action.

5. We have examined the draft resolution on "Economic consequences of the latest crisis" which addresses in a general way the problems faced by the countries adversely affected by this crisis and the need for a multilateral financial response, and recommends that the General Assembly take certain steps in this respect. As such it does not seem to be within the purview of the phrase "any recommendation with regard to that dispute or situation".

6. In the light of its substance and in the light of the practice of the United Nations, we are of the opinion that Article 12 of the Charter is not an obstacle to the adoption of a recommendation to the General Assembly of the kind contained in the draft resolution before the Trade and Development Board of UNCTAD.

17 October 1990

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12. EXECUTION OF PROJECTS FUNDED BY THE UNITED NATIONS DEVELOPMENT PROGRAMME IN THE FRAMEWORK OF ITS DEVELOPMENTAL COOPERATION AND TECHNICAL ASSISTANCE ACTIVITIES — ARRANGEMENTS FOR PROJECT EXECUTION BETWEEN UNDP AND OTHER UNITED NATIONS ENTITIES FORMING PART OF THE ORGANIZATION — IMPLICATIONS OF ARTICLES VI AND VII OF THE STANDARD BASIC EXECUTING AGENCY AGREEMENT FROM THE VIEWPOINT OF THE UNITED NATIONS IN CASES WHERE THE DEPARTMENT OF TECHNICAL COOPERATION FOR DEVELOPMENT EXECUTES UNDP PROJECTS — CLARIFICATION ON THE MEANING OF THE TERM "ACCOUNTABILITY" IN THE AGREEMENT IN THE CONTEXT OF PROJECT IMPLEMENTATION BY AN EXECUTING AGENCY TO UNDP

Memorandum to the Director, Policy, Programming and Development Planning Division, Department of Technical Cooperation for Development

1. This responds to your memorandum of 23 October 1989 by which you sought our comments specifically on the implications of articles VI (Recruitment of personnel and procurement of goods) and article VII (Accountability) of the Standard Basic Executing Agency Agreement (SBEA) from the viewpoint of the United Nations in cases where the Department of Technical Cooperation for Development (DTCD) executes UNDP projects. In the meantime, however, we understand that DTCD has signed the SBEA. Hence, our observations on the specific issues you raised should serve as guidelines at the concrete level of individual implementation.

2. Before considering your queries, we believe that some general remarks directed to the specific United Nations-UNDP relationship are advisable. As you know, UNDP was established by the General Assembly as a subsidiary organ of the United Nations and charged with the funding and coordination of developmental cooperation and technical assistance activities. When the General Assembly adopted the Consensus Resolution,[13] it essentially endorsed the recommendations contained in the 1969 "Study of the Capacity of the United Nations Development System".[14] That study envisaged that projects funded by UNDP would be executed by an agency on the basis of a "contract" containing the respective obligations of the parties. The agency would have a contractual obligation to UNDP for the proper performance of the project entrusted to it. In implementation of the above-mentioned Consensus Resolution, regulation 8.10 (B) of the UNDP Financial Regulations and Rules requires that "Agreements shall be entered into between UNDP and executing agencies which are organizations of the United Nations system, specifying the general terms and conditions which are to govern UNDP's assistance to projects for which that organization has been designated as an executing agency".

3. In 1977 the General Assembly decided by its resolution 32/197 to take measures which would also enable subsidiary organs of the United Nations to function as "executing agencies". Accordingly, DTCD was established to "assist and advise the Secretary-General in regard to technical cooperation activities for which the United Nations is executing agency", and the status of executing agency was expressly conferred upon the five regional economic commissions.[15]

4. It follows from the foregoing that a designation as an executing agency enables a department of the United Nations or a United Nations subsidiary organ to act as an independent entity for the purpose of project execution. In this respect these United Nations entities assume a distinct legal status in order to enter into the necessary arrangements for project execution. However, based on the fact that all such parties (DTCD, UNDP and regional commissions) form part of the United Nations, it

was considered inappropriate to have United Nations entities enter into a formal agreement *inter se* as contracting parties. Instead, a less formal operational framework was adopted whereby DTCD and the regional commissions merely expressed their consent through a letter stating that they would be guided by the terms of the SBEA "to the extent applicable".

5. As to the general question concerning difficulties with the applicable conditions of service with respect to the recruitment of personnel (article VI (1) of the SBEA), the following can be stated: while the International Civil Service Commission, which was established by the General Assembly for the purpose of "the regulation and coordination of conditions of service of the United Nations common system", has laid down the basic conditions of service for all staff, including project personnel (e.g., national professional officers), the General Assembly none the less also expressed the view in the Consensus Resolution (paragraphs 45 to 48) that the UNDP Administrator should develop conditions of service "that will attract and retain candidates".

6. As you know, UNDP has indeed introduced categories of personnel, such as the internationally recruited project professional personnel and nationally recruited project professional personnel, whose terms of service drastically depart from those approved for staff of the United Nations as set forth in the Staff Regulations and Rules and the respective Secretary-General's bulletins and administrative instructions.[16] Despite the existence of the above-mentioned UNDP personnel categories, in the absence of a decision of a United Nations deliberative body concerning such categories, it is our view that DTCD is not bound to adopt categories which are inconsistent with United Nations regulations and rules, and may conduct its own recruitment under such conditions of service as it considers permissible under the Staff Regulations and Rules of the United Nations. In this regard, you will note that the new text deviates from the old 1975 SBEA text in so far as the last half-sentence of article VI (1), which in its entirety reads: "The Executing Agency agrees to give sympathetic consideration to any such conditions of service recommended to it by the UNDP, and shall adopt such conditions of service to the maximum extent possible", has been deleted. The present text reads: "The Executing Agency agrees to give sympathetic consideration to the adoption of any such conditions".

7. With regard to the procurement of goods and services (article VI (2) of the SBEA), your query (although not explicit) appears to be whether it is legally possible for DTCD and regional commissions to comply with the decision of the UNDP Governing Council to grant "preferential treatment up to 15 per cent of the purchase price in respect of local procurement of indigenous equipment and supplies of developing countries . . ." even though the Financial Regulations and Rules of the United Nations have not incorporated such a principle.

8. The requirement of giving preference to procurement from local suppliers in developing countries was established in the Consensus Resolution, and has since been reiterated in a series of General Assembly resolutions. Since those resolutions contained requests addressed to UNDP, it was only appropriate for the Governing Council to implement them. We consider that DTCD also has no option but to give effect to those resolutions. If the existing Financial Regulations and Rules of the United Nations are inadequate, then special arrangements may have to be made to enable DTCD to comply, by the issuance of a supplement to those Regulations and Rules. The issue of preferential treatment in respect of local procurement might in fact be one of the matters that should be discussed by the Task Force envisaged in 1987,

which should be reactivated, and special rules to be contained in a separate supplement to the Financial Regulations and Rules of the United Nations applicable to procurement by DTCD as an executing agency of UNDP may have to be formulated.

9. You also wanted clarification on the meaning of the term "accountability" in the SBEA in the context of project implementation by an executing agency to UNDP (article VII). The concept of accountability is contained in paragraph 43 of the Consensus Resolution, which provides that "every executing agent will be accountable to the Administrator for the implementation of Programme assistance to projects". In turn, the Administration of UNDP is accountable to the Governing Council.

In this context the Governing Council has, on many occasions, similarly urged that the executing agencies should be fully accountable to UNDP for the fulfilment of their obligations, such as the responsibility for the proper utilization of funds budgeted for the project, for meeting the target dates and successfully completing the project activities and, in general, for the proper performance of all obligations agreed upon between the executing agency and the UNDP in the SBEA or the project document signed by the executing agency, UNDP and the recipient Government.

10. In the light of the above, the Administrator has the responsibility to monitor the performance of the executing agencies and to report thereon to the Governing Council. The Governing Council has the duty to take such action as is necessary to effect corrective measures to ensure proper performance of project activities by the executing agencies either on its own or through recommendations for appropriate action to be taken by the Economic and Social Council or the General Assembly. In general, it would be correct therefore to state that the executing agencies are legally and operationally answerable to the Administrator for the proper implementation of projects.

19 January 1990

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13. Legal status of the United Nations Development Programme — Question whether UNDP has the capacity to acquire real property

Memorandum to the Director, Division for Administrative and Management Services, United Nations Development Programme

1. This is in reference to our telephone conversation of today and your request for confirmation that the United Nations Development Programme has the capacity to acquire real property in a Member State.

2. The United Nations Development Programme is a subsidiary body of the United Nations, having been established by the General Assembly by its resolutions 1240 (XIII), 1383 (XIV) and 2688 (XXV), in pursuance of Article 22 of the Charter of the United Nations. Article 104 of the Charter provides that "the Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes". The United Nations Development Programme has been charged by the General Assembly to provide "systematic and sustained assistance in fields essential to the integrated technical, economic and social development of the less developed countries",[17] and to this end has been authorized to establish field offices under the charge of a resident representative exercising authority over the programme activities in the country in receipt of such assistance.[18]

3. In recognition of the need for the Organization to have certain privileges and facilities, including the capacity to enter into contracts and to acquire property in the discharge of its functions, the General Assembly adopted a Convention on the Privileges and Immunities of the United Nations, to which the State concerned is a party. That Convention provides in article I, section 1 (*b*), that the Organization shall possess juridical personality and shall have the capacity to acquire and dispose of immovable and movable property.

4. In the light of the above, the Resident Representative in the Member State in question has the authority to conclude contractual arrangements for the acquisition of real property on behalf of the United Nations Development Programme.

1 March 1990

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14. QUESTION WHETHER OFFICERS OF THE EXECUTIVE COMMITTEE OF THE PROGRAMME OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES SERVE *IN PERSONAM* OR WHETHER THE STATES THEY REPRESENT HOLD THE POST — APPLICABILITY OF RULE 19 OF THE RULES OF PROCEDURE OF THE FUNCTIONAL COMMISSIONS OF THE ECONOMIC AND SOCIAL COUNCIL UNDER RULE 15 OF THE RULES OF PROCEDURE OF THE EXECUTIVE COMMITTEE OF THE HIGH COMMISSIONER'S PROGRAMME

Cable to the Senior Legal Officer, United Nations Office at Geneva

1. This is with reference to your memoranda on the interpretation of rule 19 of the rules of procedure of the functional commissions of the Economic and Social Council dated 20 and 21 September 1990. By those memoranda, you forwarded a request from the Chairman of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees for our advice on whether the officers of the Executive Committee serve *in personam* or whether the States which they represent hold the posts.

2. The latest version of the rules of procedure to the Executive Committee of the High Commissioner's Programme[19] include the following relevant provisions:

Rule 10

"The Committee shall, at the first meeting of the first regular session in any one year, elect the officers of the Committee: Chairman, Vice-chairman and Rapporteur, who will serve in these functions until the Committee's next regular session.

Rule 11

"The officers of the Committee shall hold office until their successors are elected. The Vice-chairman, acting as Chairman, shall have the same duties and powers as the Chairman."

Rule 15

". . .

". . . On all matters not covered by these rules, the Chairman shall apply the rules of procedure of the Functional Commissions of the Economic and Social Council."

3. In your memorandum of 20 September 1990 and in the letter to you of 21 September 1990 from the Chairman of the Executive Committee of the High Commis-

sioner's Programme, reference is made to rule 19 of the rules of procedure of the functional commissions of the Economic and Social Council, which reads as follows:

> "If the Chairman or any other officer is unable to carry out his functions or ceases to be a representative of a member of the commission or if the State of which he is a representative ceases to be a member of the commission he shall cease to hold such office and a new officer shall be elected for the unexpired term."

4. Reference should also be made to the latest report of the Executive Committee of the High Commissioner's Programme which, in listing the Committee's officers, indicates the States they represent.[20]

5. It is clear from the above report that the Executive Committee of the High Commissioner's Programme follows the standard practice of United Nations bodies of electing from among representatives of States members of the body *persons* to serve as officers. A few exceptions to this practice exist (such as Vice-Presidents of the General Assembly), but the Executive Committee is not one. Rule 19 of the rules referred to above reflects the standard practice.

6. Thus, if an officer of the Executive Committee is no longer able to serve in that capacity because he/she no longer represents the member State on that body, a vacancy arises which should be filled according to the usual procedures and practices. While it often happens that such a vacancy is filled by a person representing the same State as did the departing officer, such a practice is neither automatic nor required; it is a question to be determined by the members of the body concerned.

26 September 1990

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15. Legal requirements for associate membership in the Economic and Social Commission for Asia and the Pacific — Paragraphs 2, 4 and 5 of the terms of reference of ESCAP

Memorandum to the Executive Secretary of the Economic and Social Commission for Asia and the Pacific

1. Please refer to your cable of 12 December 1989 in which you requested our opinion and advice regarding a possible application for associate membership in ESCAP for a Territory.

2. According to paragraph 5 of the terms of reference of ESCAP,[21] an associate membership in ESCAP should meet the following two requirements:

(*a*) The Territory in question must be within the geographical scope of ESCAP as defined in paragraph 2 of its terms of reference;

(*b*) The application must be made by a member responsible for the international relations of the Territory concerned.

3. With respect to the first requirement, The territory in question is not a Territory enumerated in paragraph 2 of ESCAP's terms of reference. It would, therefore, be necessary first to initiate an amendment to paragraph 2 to include the Territory concerned in the geographical scope of ESCAP. Such an amendment can only be done by the Economic and Social Council itself. Indeed, this procedure has been followed in previous cases (e.g., the Cook Islands, the Trust Territory of the Pacific Islands).

4. As to the second requirement, the State responsible for the Territory's international relations is not a member of ESCAP. Another State concerned is an ESCAP member, but is not, in law at present, responsible for the Territory's international relations. It is, however, known that negotiations are being conducted between those two States with a view to determining the future legal status of the Territory in question. In view of this very special circumstance, we believe that the term "member" in paragraph 5 of the ESCAP terms of reference could be interpreted as comprising the State for the sole purpose of presenting the application for the Territory in question which otherwise would be blocked at least for a considerable time; this could not have been the intention of the framers of the terms of reference. Of course, all members of ESCAP would have to agree to that interpretation.

5. On the basis of the above observations, if this matter is to be pursued, the following steps would need to be considered:

(*a*) A formal application would have to be presented by the State responsible for the international relations of the Territory concerned pursuant to paragraph 5 of the Commission's terms of reference;

(*b*) The Commission would have to consider and take a decision on the application;

(*c*) The Commission would then need to request the Economic and Social Council to amend paragraph 2 of the Commission's terms of reference so as to name the Territory in question in the geographical scope of the Commission. This could be done by a draft resolution from the Commission submitted to the Council;

(*d*) Paragraph 4 of the terms of reference of the Commission would also have to be amended by the Economic and Social Council to include the Territory in question as an associate member.

6. The Council may amend paragraphs 2 and 4 of the Commission's terms of reference at the same time. This would not, however, prevent the Commission from taking a decision on the application for the Territory in question prior to the amendment; the decision of the Commission would only enter into force after the terms of reference of the Commission had been amended by the Council.

11 January *1990*

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16. EVENTUALITY THAT THERE MIGHT BE NO AGREEMENT ON THE CANDIDATE FOR THE CHAIRMANSHIP OF THE ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC — APPLICABILITY OF RULE 41 OF THE COMMISSION'S RULES OF PROCEDURE — QUESTION WHETHER A MEMBER OF THE COMMISSION MAY INSIST ON A SECRET BALLOT WHEN THERE IS AN AGREED SLATE FOR A CERTAIN REGION AND THE NUMBER OF CANDIDATES CORRESPONDS TO THE NUMBER OF SEATS TO BE FILLED — RULE 68 OF THE RULES OF PROCEDURE OF THE ECONOMIC AND SOCIAL COUNCIL AND RULE 66 OF THE RULES OF PROCEDURE OF THE FUNCTIONAL COMMISSIONS OF THE ECONOMIC AND SOCIAL COUNCIL

Cable to the Executive Secretary of the Economic and Social Commission for Asia and the Pacific

This is with reference to your note of 31 May 1990 requesting our view on the applicability of rule 41 of the Commission's rules of procedure[22] in the event that there is no agreement on the candidate for chairmanship. Our view is as follows:

Pursuant to rules 13 and 41 of the Commission's rules of procedure, the officers of the Commission are to be elected by secret ballot at the Commission's first meeting of the year. The relevant practice of both the General Assembly and of the Economic and Social Council in this regard confirms that the Commission is permitted not to resort to voting if there is an agreed candidate. Indeed, as you stated, that has been the consistent practice of ESCAP in this respect. This practice may continue so long as consensus is obtained. But whenever consensus is not obtained, rule 41 becomes applicable.

As to whether a member may insist on a secret ballot when there is an agreed slate for a certain region and the number of candidates from that region corresponds to the number of the seat to be filled, the relevant rules of procedure of the Economic and Social Council (rule 68) and of the functional commissions of the Council (rule 66) show that secret ballot may be dispensed with only in the absence of any objection. If there is any objection, election must be done by secret ballot. We are of the view that this rule should also be followed by ESCAP.

1 June 1990

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17. QUESTION WHETHER IT WOULD BE PERMISSIBLE UNDER THE STATUTE OF THE INTERNATIONAL CIVIL SERVICE COMMISSION FOR THE SECRETARY-GENERAL TO RECOMMEND THE APPOINTMENT OF A PERSON AS A MEMBER OF THE COMMISSION FOR THE STATUTORY TERM OF FOUR YEARS WHILE ALSO RECOMMENDING THAT THAT PERSON BE DESIGNATED AS CHAIRMAN FOR A LESSER PERIOD

Internal note

The issue

1. The Director of the Department of Administration and Management requested an opinion on the question whether it would be permissible, under the International Civil Service Commission statute, for the Secretary-General to recommend the appointment of a person as a member of the Commission for the statutory term of four years, while also recommending that that person be designated as Chairman for a lesser period. A reason for this request is an ongoing comprehensive review of the functions and structure of ICSC.

2. We advised that such a recommendation would be legally acceptable for the reasons set out below.

(i) *ICSC statute*

3. Chapter II of the ICSC statute deals with the composition and appointment of the Commission and provides, in relevant part, as follows:

"Article 2

"The Commission shall consist of fifteen members appointed by the General Assembly, of whom two, who shall be designated Chairman and Vice-Chairman respectively, shall serve full-time.

"Article 3

"1. The members of the Commission shall be appointed in their personal capacity as individuals of recognized competence who have had substantial ex-

perience of executive responsibility in public administration or related fields, particularly in personnel managment.

"2. The members of the Commission, no two of whom shall be nationals of the same State, shall be selected with due regard for equitable geographical distribution.

"Article 4

"1. After appropriate consultations with Member States, with the executive heads of the other organizations and with staff representatives, the Secretary-General, in his capacity as Chairman of the Administrative Committee on Coordination, shall compile a list of candidates for appointment as Chairman, Vice-Chairman and members of the Commission and shall consult with the Advisory Committee on Administrative and Budgetary Questions before consideration and decision by the General Assembly.

"2. In the same way, the names of candidates shall be submitted to the General Assembly to replace members whose terms of office have expired or who have resigned or otherwise ceased to be available.

"Article 5

"1. The members of the Commission shall be appointed by the General Assembly for a term of four years and may be reappointed. Of the members initially appointed, however, the terms of five members shall expire at the end of three years, and the terms of five other members at the end of two years.

"2. A member appointed to replace a member whose term of office has not expired shall hold office for the remainder of his or her predecessor's term.

"3. A member of the Commission may resign on giving three months' notice to the Secretary-General."

(ii) *Analysis*

4. Article 5 makes it clear that the General Assembly must appoint members for a term of four years, except when the appointment is made to fill a casual vacancy.

5. Under article 2 the Chairman and Vice-Chairman are selected from among the members. There is no specific requirement that the Assembly must designate a member as Chairman for the full term, although we understand that such has been the practice until now.

6. It should be noted that on 24 July 1979, this Office gave an opinion[23] to the effect that a person who had been appointed a member *and designated Chairman or Vice-Chairman for the four-year period* ought not be able to resign as Chairman or Vice-Chairman and retain membership *without the approval of the General Assembly* (emphasis added). That opinion recognizes that the Assembly could designate a member as Chairman for less than the four-year term.

7. Since the General Assembly may designate a Chairman for less than four years, it follows that the Secretary-General could make a recommendation that the Assembly so do, as long as the Secretary-General follows the consultation procedure set out in article 4.1 of the ICSC statute.

22 October 1990

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18. Exclusive jurisdiction of the Secretary-General over the granting of international status to staff members of the United Nations

Letter to the Director of the Legal Department of the Ministry of Foreign Affairs of a Member State

The United Nations Office at Geneva has brought to my attention a case concerning respect by the authorities of [name of a Member State] for the international status of a staff member of the United Nations. It is this matter that I should like to raise with you, with a request for your support.

More precisely, the case involves recognition by the competent authorities of your country of the Secretary-General's exclusive jurisdiction over the granting of international status to staff members, more specifically to translators and interpreters holding short-term contracts. One of them, a national of your country, has received several short-term appointments at the United Nations Office at Geneva. In common with his colleagues in that category of United Nations staff, he came under the authority of the United Nations and enjoyed the privileges and immunities that go with that status.

His international status has been questioned by the tax authorities of your country, which claim that his appointments with the United Nations have not been of sufficient duration to qualify him for that status and the respective tax regime.

The decision by those tax authorities to tax income which the staff member in question earned from the United Nations prompted the United Nations Office at Geneva to intervene.

I am transmitting herewith a copy of one of the communications from the United Nations Office at Geneva and a copy of the notification of the rejection of the claim which the staff member concerned received from the competent tax authorities.

In this connection, I should like to confirm that international status is based on criteria which the Secretary-General alone is empowered to define, according to the requirements for the smooth functioning of the Organization which he heads. He is therefore the sole authority competent to determine which categories of employees are accorded international status.

You will agree that if the Secretary-General's competence in this area is recognized, there would be no basis for taxing income which the person in question received from the United Nations as a staff member.

I thank you in advance for intervening on my behalf with the competent authorities of your State.

3 December 1990

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19. Rules applicable to the conduct by staff members of outside activities of a substantive nature

Memorandum to the Officer-in-Charge, Personnel Policy and Services Section, Division of Personnel, United Nations Children's Fund

Introduction

1. This responds to your memorandum of 12 July 1990 whereby you requested our advice in respect of two staff members who wish to engage in activities outside their official duties. The activities at issue concern, in the first case, full membership

on a part-time basis in a Presidential Commission appointed by the President of a Member State to draft a new constitution, and in the second case, membership on the Advisory Board of a nongovernmental organization involved, *inter alia*, in efforts to extend the right to health to all citizens of a given State.

Rules governing the activities of United Nations staff members

2. The basic rules governing the activities of United Nations staff members are set forth in Article 100 (*l*) of the Charter of the United Nations, in regulations 1.2 and 1.4 of the Staff Regulations and rule 101.6 of the Staff Rules, in the Report on Standards of Conduct in the International Civil Service 1954[24] and in paragraphs 4 and 5 of administrative instruction ST/AI/190/Rev.1.

3. Article 100 (*l*) of the Charter of the United Nations lays down the principle of the exclusive responsibility of the international civil service towards the Organization. United Nations staff members are thus precluded from seeking or receiving instructions from any Government or authority external to the United Nations, and from engaging in "any action which might reflect on their position as international officials responsible only to the Organization".

4. Regulation 1.2 of the Staff Regulations of the United Nations provides that:

> "Staff members are subject to the authority of the Secretary-General and to assignment by him to any of the activities or offices of the United Nations. They are responsible to him in the exercise of their functions. *The whole time of staff members shall be at the disposal of the Secretary-General . . .*" (emphasis added)

Regulation 1.4 of the Staff Regulations of the United Nations further provides that:

> "Members of the Secretariat shall conduct themselves at all times in a manner befitting their status as international civil servants. *They shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations . . .*" (emphasis added)

5. Staff members cannot engage in any continuing or recurring outside activity of a substantive nature, unless they have been authorized to do so by the Secretary-General. Authorization may be given only if:

(*a*) The activity is compatible with the proper discharge of the staff member's duties with the United Nations (regulation 1.4; section VII of the Standards of Conduct; paragraph 4 (*a*) of ST/AI/190/Rev.1);

(*b*) The activity does not interfere with the work of the staff member, nor with his ability to accept new assignments (paragraph 4 (*b*) of ST/AI/190/Rev.1);

(*c*) Proper account has been taken of the relationship between the outside activity and the staff member's official duties, and between his emoluments from the United Nations and remuneration received from the outside activities (paragraph 5 of ST/AI/190/Rev.1).

Applicability of the rules governing the activities of staff members to the cases under consideration

A. *Membership in a Presidential Commission*

6. The membership of a UNICEF staff member in a Presidential Commission appointed to draft a new constitution is objectionable on all of the three above-men-

tioned accounts. The drafting of a national constitution is by its very nature a political process which is bound to affect a wide range of national issues, some of which might be highly controversial. Taking part in such a process might impinge upon the independence, integrity and impartiality of the international civil servant, and should therefore not be authorized.

7. In addition, membership in the said Presidential Commission raises questions of remuneration and of interference with the staff member's work. If participation in the Commission is remunerated by the Government of the State concerned, account should be taken of regulation 1.6 of the Staff Regulations which stipulates that no staff member shall accept any honour, decoration, favour, gift or *remuneration from any Government* (emphasis added), except with the approval of the Secretary-General; which approval "shall be granted only in exceptional cases and where such acceptance is not incompatible with the terms of regulation 1.2 of the Staff Regulations and with the individual's status as an international civil servant".

8. In your memorandum you mention that active participation of the staff member in the Presidential Commission would be on a *part-time basis*. Such part-time involvement would be in violation of regulation 1.2 of the Staff Regulations, and of paragraph 4 (*b*) of administrative instruction ST/AI/190/Rev.1, mentioned above.

B. *Membership on the Advisory Board of a non-governmental organization*

9. From the relevant correspondence it is not clear to us what functions the staff member concerned would be required to perform, other than lending his endorsement and his name to the work of a non-governmental organization. In your memorandum, however, you mentioned that it is the intention of the organization in question to use in its letterheads the name of UNICEF next to the name of the staff member concerned.

10. Using the name of UNICEF in such a manner would imply participation of the staff member in the Advisory Board in his *official capacity* as a UNICEF staff member, and would thus associate UNICEF with an activity which is not a part of the approved UNICEF Programme of Cooperation in the country. For this reason it is not appropriate for UNICEF to lend its name, or to be involved, including, in particular, through representation of one of its staff members, in the work of the non-governmental organization concerned in the State in question.

6 September 1990

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20. REQUEST BY THE GOVERNMENT OF A MEMBER STATE FOR THE SERVICES OF A STAFF MEMBER TO ASSIST IT IN LEGAL MATTERS — UNITED NATIONS POLICY WITH RESPECT TO SECONDMENT OR LOAN OF STAFF TO A GOVERNMENT — BASIS ON WHICH THE TOKTEN AND THE OPAS/OPEX PROGRAMMES OPERATE

Memorandum to the Under-Secretary-General, Department for Special Political Questions, Regional Cooperation, Decolonization and Trusteeship

This refers to your letter dated 6 November regarding a request by the Government of a Member State for the services of a staff member of its citizenship to assist it in legal matters.

It has been the policy of the United Nations not to second or loan staff members to Governments, including the national Government of a staff member. The rationale behind this policy is that a staff member on secondment or loan retains his status as a staff member of the United Nations and, as such, remains subject to article I of the Staff Regulations setting forth the duties, obligations and privileges of United Nations staff members. It would, therefore, be problematic for a staff member on secondment or loan to comply with regulation 1.3 of the Staff Regulations, which enjoins staff not to accept instructions from any Government or from any other authority external to the Organization.

The TOKTEN [Transfer of Knowledge through Expatriate Nationals] programme administered by UNDP, to which you refer, operates on a different basis. Expatriate nationals recruited under the programme are not staff members. The employment contracts they sign with the United Nations define their status as "independent contractors" and specify that they are not to be regarded as "staff members of the United Nations".

The only other programme administered by the United Nations for assistance to Governments is the OPAS/OPEX, established by General Assembly resolutions 1256 (XIII) and 1946 (XVIII). Persons recruited under this programme hold government appointments but, in order to supplement their government salaries, they are also granted United Nations contracts. However, in these contracts it is expressly stated that such persons are not to be staff members of the United Nations.

We therefore consider that the best course of action in this case would be for the staff member to be separated from service, and that the organization should at the same time undertake to use its best efforts to reappoint him. The person could then be engaged under the TOKTEN or the OPAS programmes.

14 November 1990

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21. Claim of the right of authorship by a former staff member of the United Nations Children's Fund — Rule 112.7 of the Staff Rules of the United Nations

Memorandum to the Officer-in-Charge, Personnel Policy and Services Section, Division of Personnel, United Nations Children's Fund

1. This responds to your memorandum of 1 June 1990 requesting our advice on a claim by a former staff member of the United Nations Children's Fund of the right of authorship for three books she wrote during the performance of her functions as a UNICEF official between 1978 and 1980.

2. We note that the books in question have already been published through an arrangement between UNICEF and a local publisher in a Member State. We therefore assume that the question of copyright in those books has already been settled and that the requisite copyright symbol appropriately appears on the inside cover of each book claiming such rights for the United Nations.

3. However, even if the copyright notice was not inserted in the published books, we still consider that it is the United Nations (UNICEF), and not the person concerned, which is entitled to the rights of authorship. The books were prepared as part of her official duties, when she was employed by UNICEF, and thus the proprietary rights in the books must be determined in accordance with the appropriate provi-

sions of the Staff Rules and Regulations of the United Nations, in particular rule 112.7 entitled "Proprietary rights", which reads:

> "All rights, including title, copyright and patent rights, in any work performed by a staff member as part of his or her official duties shall be vested in the United Nations."

4. In the light of the clear policy stated in rule 112.7, there is no doubt that all proprietary rights in the three books which the person concerned wrote while employed by UNICEF as part of her official functions belong to the United Nations. We suggest that the person in question be so informed, in response to her claim, and that, if the copyright notice in the name of the United Nations was not inserted in the first edition of the books, it be included in all subsequent reprints thereof.

11 June 1990

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22. CLAIM BY A FORMER UNITED NATIONS STAFF MEMBER ON ACCOUNT OF AN ACCIDENT ON UNITED NATIONS PREMISES — QUESTION WHETHER THE LOCAL COMPENSATION LAW IS APPLICABLE WITHIN THE UNITED NATIONS HEADQUARTERS DISTRICT — RELEVANT PROVISIONS OF THE AGREEMENT BETWEEN THE UNITED NATIONS AND THE HOST COUNTRY — PROVISIONS OF THE STAFF RULES AND REGULATIONS OF THE UNITED NATIONS GOVERNING COMPENSATION IN THE EVENT OF DEATH, INJURY OR ILLNESS ATTRIBUTABLE TO THE PERFORMANCE OF OFFICIAL DUTIES ON BEHALF OF THE UNITED NATIONS — NON-APPLICABILITY OF NATIONAL LABOUR LAWS

Letter addressed to a Workers' Compensation Board in a Member State

Reference is made to your letter of 10 July 1990 whereby you requested the United Nations to provide information with respect to compliance with section 50 of the New York Workers' Compensation Law. We note that your letter refers to a former United Nations staff member who met with an accident on 31 October 1989.

The applicability of the New York Workers' Compensation Law within the United Nations Headquarters district must be considered in the light of the Agreement between the United Nations and the United States of America Regarding the Headquarters of the United Nations.[25] Section 8 of the Agreement provides that the United Nations is empowered "to make regulations, operative within the headquarters district, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. *No federal, state or local law or regulation of the United States which is inconsistent with a regulation of the United Nations authorized by this section shall, to the extent of such inconsistency, be applicable within the headquarters district.*" (emphasis added)

Pursuant to section 8 of the Headquarters Agreement and to Article 101 (1) of the Charter of the United Nations, the General Assembly established the Staff Rules and Regulations of the United Nations and the Secretary-General promulgated Staff Rules governing, *inter alia*, compensation in the event of death, injury or illness attributable to the performance of officjal duties on behalf of the United Nations.[26] Accordingly, any United States legislation which is inconsistent with the above-mentioned regulations and rules should, pursuant to section 8 of the Headquarters Agreement, be considered inapplicable within the United Nations Headquarters district.

The freedom of international organizations — of which the United Nations is the most notable example — to enact their own regulations and rules governing conditions of service, and the non-applicability thereto of national labour laws, was recognized in the Case of *Broadbent v. Organization of American States* (628 F.2d27 (D.C. Cir. 1980)).[27] The Court of Appeals for the District of Columbia Circuit held, in connection with the question of immunity from suit, that:

> "The United States has accepted without qualification the principles that international organizations must be free to perform their functions and that no member State may take action to hinder the organization. The unique nature of the international civil service is relevant . . . An attempt by the courts of one nation to adjudicate the personnel claims of international civil servants would entangle those courts in the internal administration of those organizations. Denial of immunity opens the door to divided decisions of the courts of different member States passing judgement on the rules, regulations and decisions of the international bodies. Undercutting uniformity in the application of staff rules or regulations would undermine the ability of the organization to function effectively" (at pages 34-35).

As to the case in question, the claimant was at the time of the alleged accident a United Nations staff member. Under section IV of appendix D, she has the right to submit, within four months of the accident, a claim for compensation to the Advisory Board on Compensation Claims (ABCC). Our enquiries with ABCC revealed that the person in question has indeed submitted a claim for compensation, which claim is being currently processed by the Board.

27 August 1990

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23. PETITION BY A COMPANY FOR AN ORDER STAYING THE ARBITRATION COMMENCED BY THE UNITED NATIONS — IMMUNITY OF THE UNITED NATIONS FROM EVERY FORM OF LEGAL PROCESS UNDER THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Letter to a Justice of the Supreme Court of New York

I wish to refer to the petition by a company for an order staying the arbitration commenced by the United Nations, and the documents accompanying that petition, copies of which were mailed to the United Nations by the attorneys for the petitioner.

In that connection, I wish to direct Your Honour's attention to the fact that the United Nations is immune from every form of legal process under the Convention on the Privileges and Immunities of the United Nations (hereinafter referred to as "the Convention"),[28] to which the United States is a party, and that the United Nations also enjoys immunity under the United States International Organizations Immunities Act (hereinafter referred to as "the Act"). The immunity of the United Nations was also expressly acknowledged and reserved by the company concerned and the United Nations in the contract containing the arbitration clause which is the subject of the petition by the company (see article VIII, section 18.2, of the contract). I also wish to inform Your Honour that, because of the immunity of the United Nations, I have returned the documents referred to in the preceding paragraph to the attorneys for the petitioner.

Without prejudice to or in any way waiving the immunity from legal process of the United Nations, which immunity is hereby expressly reserved, I should like to bring to Your Honour's attention the fact that the arbitral tribunal to be constituted under the auspices of the Arbitration Association of the United States in the arbitral proceedings instituted by the United Nations is the forum to deal with the issues raised by the company, and that the United Nations has agreed in the contract to be bound by any determination of the arbitral tribunal on those issues. Providing for arbitration of disputes thus fulfils the obligation placed on the United Nations by articles VIII, section 29 of the Convention to "make provisions for appropriate modes of settlement of: (*a*) Disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party. . ." .

12 December 1990

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24. PRACTICE OF THE UNITED NATIONS WITH RESPECT TO THE APPLICATION OF VALUE-ADDED TAX TO PURCHASES OF GOODS AND SERVICES FOR OFFICIAL USE — ARTICLE II, SECTION 8, OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS — QUESTION WHETHER STAFF MEMBERS ENJOY PERSONAL EXEMPTION FROM SUCH TAXES IN RELATION TO PURCHASES OF GOODS AND SERVICES NOT INTENDED FOR OFFICIAL UNITED NATIONS USE

Memorandum to the Senior Policy Officer (Legal), Division of Personnel, United Nations Development Programme

1. I wish to refer to your memorandum of 22 February on the value-added tax (VAT) applied in (name of a Member State).

2. In United Nations practice, VAT is deemed to be an indirect tax within the meaning of article II, section 8, of the Convention on the Privileges and Immunities of the United Nations, to which the Member State concerned acceded on 23 December 1949. Section 8 of the Convention provides, *inter alia*, that "when the United Nations is making *important purchases for official use* of property on which . . . duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax" (emphasis added). While the language of section 8 does not place any obligations on States regarding the remission or return of duty or tax, the practice of Member States parties to the Convention shows that remission or return of indirect taxes on important purchases of goods and services for official use is generally granted. In this regard, either an administrative arrangement is made by the local United Nations office with the national tax authorities or a formal exchange of letters is concluded between the United Nations and the Member State concerned.

3. While in general the practice described in paragraph 2 above is followed by many Member States, it should be noted that some have declined to make the administrative arrangements referred to in section 8 of the Convention. No clear pattern emerges from the practice in Latin America.

4. The relevant provisions of the Convention do not provide for personal exemption from such taxes for staff members or for reimbursement of such taxes paid by staff members for the purchase of goods and services not intended for official use by the United Nations. However, the Government of one Member State recently decided not only to reimburse VAT payments made by the Organization but also VAT

payments on personal purchases made by staff members and their families, other than its nationals serving in this country.

6 March 1990

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25. LIMITATION IMPOSED IN A MEMBER STATE ON EXEMPTION FROM PAYMENT OF VALUE-ADDED TAX ON PURCHASES MADE BY THE UNITED NATIONS DEVELOPMENT PROGRAMME FOR THE CONSTRUCTION OF THE UNDP OFFICE BUILDING IN THE STATE CONCERNED — UNITED NATIONS POLICY AND PROCEDURE WITH RESPECT TO THE PAYMENT OF VALUE-ADDED TAX — ARTICLE II, SECTION 8, OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Memorandum to the Chief, Treasury Section, Division of Finance, United Nations Development Programme

1. I wish to refer to your memorandum of 7 May 1990 on the tax treatment applied to UNDP in (name of a Member State).

2. Under the terms of the note verbale, dated 31 January 1989, addressed to the Minister of Construction and Urban Affairs by the Ministry of Finance of the Member State in question, the exemption from payment of value-added tax (VAT) granted to UNDP is limited to "the alterations to the building where the Mission of UNDP is located". In the note verbale of 23 February 1989 addressed to the UNDP Resident Representative by the Ministry of Construction and Urban Affairs, it is indicated that the exemption authorized related only to non-imported goods and services purchased for the construction of the UNDP office building in the State concerned and that such authorization was valid only during the period of the construction.

3. We assume from the first paragraph of your memorandum that UNDP is not normally exempt from VAT on any purchase made in the State in question. If that assumption is correct, you may wish to bring to the attention of the relevant authorities the general policy of the United Nations with respect to VAT, with a view to resolving any difficulty being encountered by UNDP in this matter.

4. The United Nations generally regards VAT as an indirect tax within the meaning of article II, section 8, of the Convention on the Privileges and Immunities of the United Nations, to which the State concerned succeeded on 8 December 1961. While that section does not provide for an exemption from such taxes, it does oblige Members, whenever possible, to "make appropriate administrative arrangements for the remission or return of the amount of duty or tax" paid on "important purchases for official use". Such appropriate administrative arrangements in the form of, *inter alia*, exchange of letters have been effected between the United Nations and some Member States imposing VAT on purchases made by the United Nations or a body or organ thereof.

5. We would suggest, in the light of the above, that the subject of an exchange of letters between the United Nations and the State in question with respect to reimbursement of VAT paid by UNDP and other United Nations entities operating in this State, be raised with the Government. The Office of Legal Affairs would be willing to provide a draft of such an exchange of letters.

22 May 1990

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26. IMPOSITION OF VALUE-ADDED TAX ON THE SALE OF UNITED NATIONS CHILDREN'S FUND GREETING CARDS AND RELATED MATERIALS IN A MEMBER STATE BY THE NATIONAL COMMITTEE FOR UNICEF — QUESTION WHETHER UNICEF OWNS ALL GREETING CARD OPERATION PRODUCTS UNTIL SOLD AND IS ENTITLED TO REIMBURSEMENT OF VALUE-ADDED TAX — ARTICLE II, SECTIONS 7 AND 8, OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Memorandum to the Director, Greeting Card Operation, United Nations Children's Fund

1. This is in reference to your memorandum of 21 June 1990 requesting our assistance in connection with the value-added tax (VAT) imposed on the sale of UNICEF greeting cards and related materials in (name of a Member State) by the National Committee for UNICEF.

2. From the correspondence attached to your memorandum, we understand that the Government in question has refused, since 1987, to grant to the National Committee for UNICEF the exemption from or refund of the VAT the latter used to enjoy on the sale of UNICEF cards and related materials in that country.

3. The relationship between UNICEF and the National Committee is governed by the Recognition Agreement of 1977 and related supplementary agreements. Pursuant to paragraph 8 of the Recognition Agreement, the Committee may "subject to a supplemental agreement, act as sales agent or distributor for the marketing, distribution and sale of products such as greeting cards and calendars available through UNICEF Greeting Card Operation". By virtue of paragraph 5 of the Supplementary Agreement No. 2 of 1983, the National Committee is responsible, *inter alia*, for "the sales of GCO products". Furthermore, paragraph 6 of that same supplementary agreement provides that "UNICEF owns all GCO products until sold and the Committee acts as an agent for UNICEF, the principal, which enjoys the protection of the privileges and immunities of the United Nations". As the GCO and related UNICEF products are, until sold, property of UNICEF, the latter should be considered as making the sales through its agent, the National Committee. As a subsidiary organ of the United Nations, UNICEF enjoys the privileges and immunities provided for in the 1946 Convention on the Privileges and Immunities of the United Nations, to which the State concerned is a party.

4. Section 7 of article II of the Convention provides in subparagraph (*a*) for exemption from all "direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services". While there is no express provision on the matter of the value-added tax, this tax and sales taxes in general are dealt with under the provisions of section 8 of the Convention, which entitles the Organization to the remission or return of the amount of duty or tax when "making important purchases for official use of property on which such duties and taxes have been charged or are chargeable". The Convention, furthermore, provides that members "will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax".

5. It should also be emphasized that UNICEF Greeting Card Operation sales constitute an important official activity of UNICEF and are significantly different from sales by national charities inasmuch as the sales are by an international organization and the funds realized are used for international public purposes. The payment of VAT on the UNICEF Greeting Card Operation sales undoubtedly has an adverse effect on the amount realized therefrom by UNICEF and therefore on the purposes such sales serve.

6. In view of the foregoing, UNICEF may, along the lines of this memorandum, request the Government concerned for an exemption from or refund of VAT on the sales of the GCO and related UNICEF products.

11 July 1990

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27. QUESTION WHETHER THE UNITED NATIONS SHOULD CLAIM EXEMPTION FROM EXCISE TAX ON THE SALE OF CHEMICALS WHICH DEPLETE THE OZONE LAYER IMPOSED BY A DOMESTIC LAW ENACTED IN PURSUANCE OF THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEPLETE THE OZONE LAYER — PURPOSE OF THE MONTREAL PROTOCOL

Memorandum to the Chief of the Commercial, Purchase and Transportation Service, Office of General Services

1. This is in reply to your memorandum of 28 September 1990 requesting our advice as to whether the United Nations should be accorded exemption from excise tax on the sale of chemicals which deplete the ozone layer imposed by a domestic law.

2. The Government concerned enacted the above-quoted law in pursuance of the Montreal Protocol on Substances that Deplate the Ozone Layer[29] ("Montreal Protocol"), negotiated as a Protocol to the 1985 Vienna Convention for the Protection of the Ozone Layer.[30] The Protocol entered into force on 1 January 1989 and establishes specific obligations to limit and reduce the consumption and production of chemicals that deplete the ozone layer. The Government also promulgated amendments to the environmental tax regulations relating to the Internal Revenue Code. Furthermore, final and temporary regulations were issued which stipulate that "sales to state and local Governments, to the Federal Government, and to non-profit educational organizations are not exempt from the tax". Under the above legal instruments, Freon #12, which was purchased by and sold to the United Nations, is an ozone-depleting chemical (ODC) which, when sold, is taxed in the amount of $1.37 (base tax amount) per pound. The tax forms part of the purchase price of the ODC.

3. With regard to the question of tax exemption under the Convention on the Privileges and Immunities of the United Nations, section 8 of article II refers specifically to exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid. Section 8 provides as follows:

> "While the United Nations *will not, as a general rule, claim exemption* from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax." (emphasis added)

The Convention therefore does not accord to the United Nations automatic exemption. However, the Organization is entitled to request that a Government make administrative arrangements for the remission or return of the excise tax if an important purchase for official use is made.

4. It has been a consistent position of the Organization that a purchase constitutes an "important purchase" when (*a*) the amount of tax and the proportion that

amount bears to the total purchase price is sufficient to consider the tax as an undue burden upon the Organization or (*b*) the purchase occurs on a recurring basis.

5. While we note that the tax imposed on the price of Freon #12 amounts to nearly half of the actual product price, we consider seeking remission or return of the tax to be unwarranted for the following reasons.

6. The purpose of the Montreal Protocol is to ensure the control of the production and use of ODCs by the parties to the Protocol. Taxation of the manufacture and consumption of ODCs is generally considered a means to bring about the desired objective. In this regard, we note that the host country regulations specifically exclude normally tax-exempt legal entities from tax exemption, albeit not international organizations. However, we do not think that such omission would support a United Nations request for tax exemption. As pointed out, the Organization is not entitled to exemption or remission; it may only make a request for exemption, which a Member State may accommodate. In this respect, we have reservations about the United Nations making a request. Such a request would be anomalous in that the very Organization which, through the Convention and Protocol, seeks reduction in the use of ODCs, would be attempting to exempt itself from a control measure imposed to secure a reduction. Furthermore, the parties to the Vienna Convention for the Protection of the Ozone Layer as well as to the Protocol are called upon to cooperate with and through international organizations, bodies and agencies in promoting awareness of the environmental effects of the emission of ODCs. It is clearly intended, therefore, that the United Nations cooperate in implementing "control measures" in order to bring about further reductions of production or consumption of ODCs.

7. In the light of the above, it is our view that the Organization in the exercise of its discretion and judgement should not claim exemption from the excise duty in question. In addition, the Buildings Management Service, in pursuance of the objectives of the Protocol, should actively look into the possibility of replacing Freon #12 by other chemicals or reducing its use.

31 October 1990

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28. TAXATION OF THE UNITED NATIONS JOINT STAFF PENSION FUND IN A MEMBER STATE — CHARACTER OF THE TURNOVER TAX, STAMP DUTY TAX AND OTHER TAXES RELATED TO THE SECURITIES ACTIVITIES OF THE FUND — ARTICLE II, SECTION 7 (*a*), OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Memorandum to the Chief, Investment Management Service

1. This is with reference to your memorandum of 25 May 1990 requesting our views concerning the question of imposition of turnover taxes, stamp duty taxes and other taxes which are related to the securities activity of the United Nations Joint Staff Pension Fund (UNJSPF) in (name of a Member State).

2. It is to be noted that imposition of the above-referenced taxes should be considered in the light of the Convention on the Privileges and Immunities of the United Nations. Under article II, section 7 (*a*), of the Convention, to which the State in question acceded without reservation in 1947, the United Nations, the assets, income and other property of the Organization shall be exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services".

3. In our view, the taxes in question do not represent "charges for public utility services" and should be considered as direct taxes, since their incidence falls directly on the Organization. The term "public utility services" has a restrictive connotation. It is applicable to particular supplies or services rendered (principally gas, electricity, water and transport) which can be specifically identified, described or calculated. The United Nations has consistently taken this position, which was extensively covered in the *study on Relations between States and intergovernmental organizations*.[31]

4. As for withholding taxes on cash dividends paid on securities, including securities forming part of the assets of UNJSPF, in our view they represent taxes on the dividends and, as such, should also be considered as direct taxes levied on income and assets of the owner of the securities. The fact that the tax is withheld at the source does not convert it into a tax against the corporation as such. Therefore the United Nations is entitled to exemption from the tax in question as well.

11 July 1990

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29. QUESTION OF EXEMPTION FROM CUSTOMS DUTIES FOR ARTICLES IMPORTED FOR SALE BY THE NATIONAL COMMITTEE FOR UNICEF — LEGAL ASPECTS OF THE RELATIONSHIP BETWEEN UNICEF AND THE NATIONAL COMMITTEE FOR UNICEF — OBJECTIVES OF UNICEF GREETING CARD OPERATION — ARTICLE II, SECTION 7, OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Note verbale to the Permanent Representative of a Member State to the United Nations

The Legal Counsel of the United Nations presents his compliments to the Permanent Representative of (name of a Member State) to the United Nations and has the honour to refer to the question of exemption from customs duties of articles imported into the country for sale by the National Committee for UNICEF.

The Legal Counsel has been informed that the Customs Board had rejected a request by the National Committee for UNICEF to grant exemption from customs duties for UNICEF products on grounds of its alleged inconsistency with the relevant provisions of article II, section 7, of the 1946 Convention on the Privileges and Immunities of the United Nations. In particular, the Customs Board concluded that "articles imported by the National Committee for UNICEF do not appear to be of such nature that they should be considered as imported by UNICEF", and, therefore, the Committee was not "entitled to exemption from customs duties and taxes" under the Convention.

The Legal Counsel would like to take this opportunity to clarify the legal aspects of the relationship between UNICEF and the National Committee for UNICEF, as well as the legal nature and objectives of UNICEF Greeting Card projects.

The relationship between UNICEF and the National Committee in question is governed by the Recognition Agreement of 1977 and the Supplementary Agreements. Pursuant to paragraph 8 of the Recognition Agreement, the Committee could, "subject to a supplemental agreement, act as sales agent or distributor for the marketing, distribution and sale of products such as greeting cards and calendars available through UNICEF Greeting Card Operation". By virtue of paragraph 5 of the 1984 Supplementary Agreement II, the Committee became responsible for "the sales of

GCO products" as well as for the "development, organization of distribution and sales channels". It should be taken into consideration that under the unequivocal terms of paragraph 6 of the latter Agreement, "UNICEF owns all GCO products until sold and the Committee acts as an agent for UNICEF, the principal, which enjoys the protection of the privileges and immunities of the United Nations".

Accordingly, the National Committee should be considered as a sales agent acting for UNICEF. Consequently, the provisions of section 7 of the Convention on the Privileges and Immunities of the United Nations are applicable and, therefore, articles under GCO projects, until sold, are to be considered property of UNICEF, which is an organ of the United Nations.

It should be recalled that section 7 of the Convention provides, in subparagraph (*b*), for exemption from customs duties on articles imported for United Nations *official use*, and in subparagraph (*c*), for exemption from customs duties for all United Nations *publications*. Governments in countries where cards are sold have generally recognized that it would be inappropriate, as a matter of principle as well as law, for a Member State to impose customs duties on UNICEF GCO projects which are internationally determined and financed by contributions from Governments and from private sources. In most cases where the issue has been raised at all, the term "official use" has been interpreted to include UNICEF fund-raising activities, so as to exempt the cards and calendars under paragraph 7 (*b*), or such materials have been treated as "publications" under paragraph 7 (*c*) of the Convention.

In the light of the foregoing observations, the Legal Counsel trusts that the competent authorities of (name of a Member State) will review their position with a view to granting exemption from customs duties for the articles imported into the country by the National Committee for UNICEF.

4 January 1990

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30. QUESTION OF THE SALE IN A MEMBER STATE OF USED VEHICLES BELONGING TO THE UNITED NATIONS DEVELOPMENT PROGRAMME — DOMESTIC REGULATIONS PREVENTING THE UNDP OFFICE FROM DISPOSING OF ITS USED VEHICLES THROUGH COMPETITIVE BIDDING AS PROVIDED FOR IN THE FINANCIAL REGULATIONS AND RULES OF UNDP — ARTICLE II, SECTION 7 (*b*), OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS — RULE 114.35 OF THE FINANCIAL REGULATIONS AND RULES OF UNDP

Memorandum to the Officer-in-Charge, Division for Administrative and Management Services, United Nations Development Programme

1. This is with reference to the memorandum of 23 November 1990 in which the advice of this Office has been requested in connection with a matter involving the sale of used UNDP vehicles in (name of a Member State) following the issuance of a circular dated 25 May 1990 by the Government of the State in question. The circular, which sets out the procedures that must be followed by international organizations, and diplomatic and consular missions in the State concerned, has the effect of preventing the UNDP office from disposing of its used vehicles through competitive bidding as provided for in the Financial Regulations and Rules of UNDP.

2. We have examined this matter in the light of the Convention on the Privileges and Immunities of the United Nations, the application of which to the State in question is provided for in the Standard Basic Assistance Agreement (SBAA) of 18

February 1977 between the UNDP and the said State. An analysis of the relevant provisions of the Convention shows that the resale of United Nations imported articles is not covered by the privileges and immunities of the Organization. Under article II, section 7 (*b*), of the 1946 Convention concerning the privileges that the Organization enjoys with respect to articles imported or exported for its official use, such articles "will not be sold in the country into which they were imported except under conditions agreed with the Government of that country". It is therefore clear that the sale of United Nations imported articles requires the agreement of the Government of the host country concerned.

3. On the other hand, in the case of UNDP, the rules governing the sale of property are contained in the Financial Regulations and Rules of UNDP, specifically in rule 114.35. In the light of that rule, it would seem that in any agreement between UNDP and a Government pursuant to section 7 (*b*) of the 1946 Convention, UNDP must observe the provisions of the above-mentioned rule, i.e., competitive bidding subject to the terms of that rule. Accordingly, the sale of UNDP used vehicles in the State concerned must take into consideration the provisions of the above-mentioned Financial Regulations and Rules. In support of UNDP's position, it might be argued that under article I, paragraph 2, of the SBAA, assistance by UNDP ". . . shall be furnished and received in accordance with the relevant applicable resolutions and decisions of the competent UNDP organs. . ." . The Financial Regulations and Rules of UNDP approved by the Governing Council undoubtedly fall within the meaning of "decisions of the competent UNDP organs".

4. In the light of the foregoing considerations, every effort should be made to persuade the authorities of the State concerned that while UNDP respects the obligation to agree with the Government on conditions for the resale of imported vehicles, for its part the Government must give proper consideration to the Financial Regulations and Rules which call for competitive bidding. In the event that such a *démarche* is unsuccessful, alternative procedures within the meaning of rule 114.35 may have to be considered.

21 December 1990

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31. ADVISORY OPINION OF THE INTERNATIONAL COURT OF JUSTICE OF 15 DECEMBER 1989 ON THE APPLICABILITY OF ARTICLE VI, SECTION 22, OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS IN THE CASE OF A SPECIAL RAPPORTEUR OF THE SUBCOMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES OF THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS — QUESTION WHETHER IN THE LIGHT OF THE ADVISORY OPINION THE MEMBERS AND ALTERNATE MEMBERS OF THE UNITED NATIONS JOINT STAFF PENSION BOARD REPRESENTING THE GOVERNING BODIES OF THE FUND'S MEMBER ORGANIZATIONS, WHO ARE AT THE SAME TIME REPRESENTATIVES OF THEIR STATES TO THE UNITED NATIONS, ARE ENTITLED TO UNITED NATIONS LAISSEZ-PASSER AND MULTIPLE ENTRY VISAS — ARTICLE VII, SECTIONS 24, 25 AND 26, OF THE CONVENTION

Memorandum to the Secretary of the United Nations Joint Staff Pension Board

1. This is with reference to your memorandum of 11 May 1990 requesting an analysis as to the impact of the advisory opinion of the International Court of Justice of 15 December 1989[32] on the applicability of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations ("the General Conven-

tion") on the status of the members and alternate members of the United Nations Joint Staff Pension Board (UNJSPB) representing the governing bodies of the Fund's member organizations, who are at the same time representatives of their States to the United Nations in New York. In particular you wish to know whether members and alternate members of UNJSPB are entitled to multiple United States entry visas.

2. In paragraph 48 of its advisory opinion, ICJ reflected the information supplied to the Court by the Secretary-General setting out examples of categories of persons considered to be "experts on missions" for the United Nations. The paragraph contains no specific reference to members of UNJSPB, nor does annex I to the written statement submitted on behalf of the Secretary-General. The examples provided can, however, by no means be regarded as exhaustive. They necessarily refer for the most part only to categories in respect of whom a legal question had arisen at one point or another. It is to be noted that members of UNJSPB, in accordance with article 5 of the Regulations of the Board,[33] are elected or appointed in their personal capacities, i.e., not as representatives of States. Considering the fact that ICJ observed, in paragraph 48, that "[i]n addition, many committees, commissions or similar bodies whose members serve, not as representatives of States, but in a personal capacity, have been set up within the Organization", the Court's conclusion that persons so appointed, and in particular the members of these committees and commissions, have been regarded as "experts on missions" within the meaning of section 22 should be considered applicable to the above-referenced categories of members of UNJSPB.

3. The Court further concluded, in paragraph 52 of its advisory opinion, that persons (other than United Nations officials) to whom a mission has been entrusted by the Organization, i.e., experts on missions, are entitled to enjoy the privileges and immunities provided for in section 22 of article VI of the General Convention with a view to the independent exercise of their functions. Experts enjoy these functional privileges and immunities during the whole period of such missions, whether or not they travel. The Court also took the view that these privileges and immunities, which include *inter alia* immunity from personal arrest or detention, "may be invoked as against the State of nationality or of residence unless a reservation to section 22 of the General Convention has been validly made by that State". At present, only two States have made such reservations.[34]

4. In the light of the above observations, the legal status of the Pension Board members concerned may be defined as follows: While performing functions on the Pension Board within the host country, they continue to enjoy the diplomatic immunities laid down in article IV of the Convention in addition to those to which they are entitled as experts on missions for the United Nations. In all other countries, while performing functions in connection with the Pension Board, such members enjoy the privileges and immunities granted to experts on missions under article VI of the Convention.

5. It is to be noted that the advisory opinion does not touch upon the questions of entitlement to hold a United Nations laissez-passer or issuance of multiple entry visas for experts on missions. As to the laissez-passer, this matter is regulated by the provisions of article VII of the General Convention. Pursuant to section 24, the Organization may issue United Nations laissez-passer only to its officials. Experts on missions, according to section 26, are entitled to "have a certificate that they are travelling on the business of the United Nations". The detailed regulations concerning this matter are set out in the "Guide to the issuance of United Nations travel documents".[35] They unequivocally provide that experts on missions are not entitled to United Nations laissez-passer but may be issued United Nations certificates.[36]

6. As regards the question of issuance of multiple entry visas, according to the provisions of sections 25 and 26 of the General Convention, the host country is under an obligation to deal with applications for visas (where required) as speedily as possible. Neither the General Convention nor the Headquarters Agreement of 1947[37] provide for multiple entry visas for any of the categories of persons specified in these agreements, i.e., representatives of Members, officials or experts. (The issuance of multiple entry G-4 visas valid one year for United Nations officials of certain nationalities is carried out by the competent authorities of the host country on the basis of unilateral decisions.)

20 June 1990

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32. QUESTION OF THE STANDARD OF TRAVEL APPLICABLE TO MEMBERS OF THE COMMITTEE ON THE EXERCISE OF THE INALIENABLE RIGHTS OF THE PALESTINIAN PEOPLE WHO ARE APPOINTED TO REPRESENT THE COMMITTEE ITSELF AT SEMINARS, SYMPOSIA AND OTHER MEETINGS AWAY FROM HEADQUARTERS — RULES CONTAINED IN SECRETARY-GENERAL'S BULLETIN ST/SGB/107/REV.5 GOVERNING THE PAYMENT OF TRAVEL EXPENSES FOR MEMBERS OF ORGANS OR SUBSIDIARY ORGANS OF THE UNITED NATIONS

Memorandum to the Deputy Controller, Office of the Controller

1. This is in response to your memorandum of 14 November 1990 requesting the views of this Office regarding the standard of travel applicable to members of the Committee on the Exercise of the Inalienable Rights of the Palestinian People ("the Committee") when attending seminars, symposia and other meetings away from Headquarters. In this regard, we have taken note of the position expressed by the Chairman of the Committee on this matter in his letter to the Controller of 31 October 1990.

2. For the reasons set out in detail in our opinion attached hereto, we are of the view that, in the light of the inherent ambiguities in the relevant legislative texts and of the variations in current practice, it is not possible for this Office to give a general answer as to whether delegations or representatives of the Committee are always, or never, entitled to business-class travel in the above-cited instances. However, after having considered the facts of the present situation in the context of the applicable legal framework, we feel that it would be difficult to deny the Committee Chairman's claim that the members concerned are appointed to represent the Committee itself (and not their respective Governments) at the subject meetings and to perform a number of tasks on its behalf and that, therefore, such members are entitled to travel by air in the class immediately below first-class (i.e., business-class standards). In our opinion, we also reiterate the recommendation made by this Office in previous memoranda that the General Assembly should be asked to provide clarification in respect of the rules governing travel entitlements for such subsidiary organs of the United Nations.

21 December 1990

Legal opinion

A. FACTUAL BACKGROUND

1. This opinion is in response to a memorandum of 14 November 1990 from the Deputy Controller indicating that the Office of the Controller was requested

recently by the Executive Officer for the Offices of the Secretary-General to "confirm the standard of travel applicable to members of the Committee on the Exercise of the Inalienable Rights of the Palestinian People". For our consideration, the Deputy Controller has forwarded a copy of the memorandum that she sent to the Executive Officer, of 21 August 1990, presenting the position of her Office on this matter.

2. In the above-cited memoranda, the Deputy Controller explains that it is clear from General Assembly resolution 3376 (XXX), by which the Assembly established the Committee, that the Committee is composed of representatives of Member States and that the Assembly did not make any exceptional arrangements for the travel of its members. Further, in referring to the current rules governing the payment of travel expenses and subsistence allowances in respect of members of organs or subsidiary organs of the United Nations as presented in ST/SGB/107/Rev.5 of 18 July 1989, she points out that the Committee does not appear in the lists contained in annexes II or III thereto of continuing organs and subsidiary organs whose members are entitled to reimbursement of travel and/or subsistence expenses. On this basis, the Deputy Controller states that, when the Committee holds its meetings in New York, its members are not entitled to either travel expenses or subsistence allowances. On the other hand, she explains that resources are provided under sections 1A and 1B of the proposed programme budget for the biennium 1990-1991[38] "to cover the costs of travel and subsistence of members of the Committee to attend conferences, seminars and other meetings that the Committee considers appropriate to attend" and that a difference of opinion has arisen regarding the standard of travel applicable in such instances. In this regard, the Deputy Controller indicates that a statement of her Office's position was read to the Committee at its 171st meeting on 25 October 1990 and that, subsequently, the Committee Chairman requested, in a 31 October letter to the Controller, a review of their interpretation of the rules in the light of comments made by members and observers of the Committee at that meeting. The Deputy Controller summarizes the respective positions taken on this issue as follows:

> "The position taken by the Committee is that its Chairman and four members represent the Committee rather than their Governments when they travel to such meetings and are therefore entitled to travel in accommodation in the class immediately below first-class (i.e., according to the standards established for committees composed of experts serving in a personal capacity).
>
> "On the other hand, if members of a committee which is composed of representatives of Member States travel in their official capacity as a delegation of that committee, it seems to us that payment of travel expenses should be limited to the cost of economy class accommodation in accordance with paragraph 6 (*a*) of ST/SGB/107/Rev.5. . ."[39] (paras. 6 and 7)

3. As regards the position expressed by the Committee Chairman in his letter, we note that he emphasized that such members of the Committee are designated to attend the seminars, symposia and meetings as representatives of the Committee itself and to perform important tasks on its behalf, in stating:

> ". . . [T]he Committee found it somewhat difficult to understand the interpretation given by your Office to the words 'in their official capacity' regarding the travel of the members of *its* delegations to regional seminars, symposia and other meetings. The Committee considers that its representatives to such meetings are designated by name — usually at the ambassadorial level — by the Committee itself. They do not, therefore, represent their own Governments but the Committee itself, on whose behalf they perform a number of important and sensitive tasks such as chairing all or part of the meetings and drafting the final conclu-

sions and recommendations or guiding the panelists or non-governmental organizations in the drafting of their final documents. Further, when one of the designated ambassadors cannot travel, he/she is usually replaced by the ambassador of another country and not by another member of his/her permanent mission, a fact which clearly shows that the delegates in question are representatives of the Committee and not of their own Governments. . ."

We also note that the Chairman referred to previous practice in expressing his hope that a review by the Controller's Office "will lead to a restoration of the practice followed until recently, which would enable the Committee to continue to carry out its mandated programme of meetings without impediments".

4. In order for this Office to address the question of the standard of travel applicable to Committee members when attending the above-cited meetings away from Headquarters, it is necessary to examine the enabling legislation in respect of the Committee in conjunction with the relevant rules governing travel entitlements.

B. APPLICABLE LEGAL FRAMEWORK

1. Legislation concerning the Committee on the Exercise of the Inalienable Rights of the Palestinian People

5. The General Assembly, in its resolution 3376 (XXX) of 10 November 1975, decided:

". . . to establish a Committee on the Exercise of the Inalienable Rights of the Palestinian People composed of twenty Member States to be appointed by the General Assembly at the current session".[40] (para. 3)

It is thus clear from the establishing resolution that the Committee is composed of Member States, and is also a subsidiary organ of the General Assembly. It is further relevant to take into account that the General Assembly, although it has not taken any specific decision regarding travel of the Committee as a whole, has authorized the Committee to send delegations or representatives to conferences and meetings considered by it to be appropriate. Most recently, the Assembly, by its resolution 44/41 A of 6 December 1989, authorized the Committee:

". . . to continue to exert all efforts to promote the implementation of its recommendations, *including representation at conferences and meetings and the sending of delegations*, to make such adjustments in its approved programme of seminars and symposia and meetings for non-governmental organizations as it may consider necessary, and to report thereon to the General Assembly at its forty-fifth session and thereafter".[41] (para. 4) (emphasis added)

Moreover, the General Assembly has annually approved budgetary appropriations to cover the costs of travel for Committee members attending such international conferences and meetings. In this regard, the Deputy Controller has noted that the proposed programme budget for the biennium 1990-1991,[42] approved by the General Assembly in its resolutions 44/202 A, B and C of 21 December 1989, specifies, in paragraph 1.53 of section 1.A.7, the resources required for such travel of representatives of the Committee as follows:

"The requirements under this heading ($93,200) provide for the anticipated travel costs of Committee members to international conferences and meetings that the Committee considers appropriate to attend. . . The conferences include those organized by specialized agencies, intergovernmental, governmental and non-governmental organizations that may deal with, among other issues, the question of Palestine."[43]

2. *Rules governing travel entitlements for members of organs or subsidiary organs of the United Nations*

6. While it is clear from the above-cited General Assembly resolutions that authorization has been provided to the Committee to send delegations or representatives to international conferences and meetings, it is necessary — in so far as the Assembly did not address the standard of travel to be accorded — to ascertain whether these Committee representatives are entitled to business-class travel in such instances. In so far as the fundamental principles governing the payment of travel and subsistence expenses are contained in General Assembly resolution 1798 (XVII) of 11 December 1962, it is worthwhile, in addressing the subject question, to examine these principles.

7. As a basic principle, General Assembly resolution 1798 (XVII) provides in paragraph 2 (*a*), that "[t]ravel and subsistence expenses shall be paid in respect of members of organs and subsidiary organs who serve in an individual personal capacity and not as representatives of Governments". The second basic principle established by this resolution is contained in paragraph 2 (*b*) which provides that "neither travel nor subsistence expenses shall be paid in respect of members of organs or subsidiary organs who serve as representatives of Governments". This principle, however, is subject to certain exceptions specified in paragraph 3 of the resolution. Paragraph 3 (*b*) thereof exceptionally provides for the payment of travel and subsistence expenses to the following persons who are authorized by the organ concerned to perform official functions on behalf of that organ:

> "(i) The chairman or the rapporteur of a subsidiary organ who is called upon to present the report of such subsidiary organ to a parent organ;
>
> "(ii) One member of an organ or subsidiary organ serving as its designated representative at meetings of a second organ or subsidiary organ;
>
> "(iii) One representative of a Member State or one alternate participating in a subsidiary organ instituted by the General Assembly or the Security Council and which is required, by a decision of the parent organ, to work away from United Nations Headquarters in the performance of a special task . . ."

Thus, resolution 1798 (XVII), in effect, refers to three different categories:

(*a*) Members of organs and subsidiary organs who serve in an "individual personal capacity and *not* as representatives of Governments": they are entitled to travel and subsistence expenses (para. 2 (*a*));

(*b*) Representatives of Governments serving, in that capacity, as members of organs and subsidiary organs: they are ordinarily not entitled to any travel or subsistence expenses (para. 2 (*b*)), except for those entitled to travel expenses under paragraph 3 (*a*); and

(*c*) Representatives of Governments serving as members of organs and subsidiary organs, who exceptionally act as quasi-representatives of the United Nations organ concerned and are therefore entitled to travel and subsistence expenses (para. 3 (*b*)). (It should be noted (from para. 2 (*b*) and the introduction to para. 3) that the persons in this category are still considered representatives of Governments, although they are entrusted by the organ concerned with specific representational responsibilities.)

8. Subsequently, the General Assembly, by its resolution 2489 (XXIII) of 21 December 1968, reaffirmed the basic principles governing the payment of travel and subsistence costs of members of organs and subsidiary organs as laid down in General

Assembly resolution 1798 (XVII) as well as the basic principles adopted at its 1082nd plenary meeting governing the payment of honoraria to such persons. The Assembly further decided therein to establish additional rules to govern such payments to individuals appointed by organs or subsidiary organs to undertake in their personal capacity the performance of special studies or other ad hoc tasks on behalf of the bodies involved. In this regard, paragraph 3 of the resolution provides as follows:

"*The General Assembly*

"Decides that the following additional rules shall become effective as from 1 January 1969:

"(*a*) A clear distinction shall be drawn between:

"(i) Individuals appointed by organs or subsidiary organs to undertake in their personal capacity the performance of special studies or other ad hoc tasks on behalf of the bodies involved;

"(ii) Experts or consultants appointed by the Secretary-General to assist him in the performance of special studies or other ad hoc tasks entrusted to the Secretariat;

"(*b*) Cases falling under category (i) above shall be governed by the rules established by the General Assembly in its resolution 1798 (XVII) on the payment of travel and subsistence costs of members of organs and subsidiary organs of the United Nations and the decision taken by the General Assembly at its sixteenth session on the payment of honoraria, namely, that neither a fee nor any other remuneration in addition to travel expenses and a subsistence allowance at the standard rate shall normally be payable; . . ."

9. In view of the above, it is important to note that the rules contained in the Secretary-General's bulletin ST/SGB/107/Rev.5 governing the payment of travel entitlements were established pursuant to General Assembly resolution 1798 (XVII) of 11 December 1962,[44] as amended by resolutions 2245 (XXI) of 20 December 1966, 2489 (XXIII) of 21 December 1968, 2491 (XXIX) of 21 December 1968, 41/176 of 5 December 1986, 41/213 of 19 December 1986, 42/214 of 21 December 1987, 42/225 (section VI) of 21 December 1987 and 43/217 (section IX) of 21 December 1988. Paragraph 4 of the Secretary-General's bulletin — corresponding to paragraph 2 (*b*) of resolution 1798 (XVII) — specifies that "[e]xcept as provided in paragraph 3 [thereof], neither travel nor subsistence shall be paid in respect of members of organs or subsidiary organs who serve as representatives of Governments, unless the resolution establishing the organ or subsidiary organ provides otherwise." Paragraph 3 of the bulletin provides that travel and subsistence expenses shall be paid in the following cases:

"(*a*) In respect of members of organs or subsidiary organs who serve as such in their individual personal capacity and not as representatives of Governments;

"(*b*) In respect of individuals appointed by organs or subsidiary organs to undertake in their personal capacity the performance of special studies or other ad hoc tasks on behalf of the bodies involved;

"(*c*) In respect of the following persons regardless of whether they serve in their individual personal capacity or as representatives of Governments:

(i) The Chairman or the rapporteur of a subsidiary organ who is called upon to present the report of such subsidiary organ to a parent organ;

(ii) One member of an organ or subsidiary organ serving as its designated representative at meetings of a second organ or subsidiary organ;

(iii) One representative of a Member State or one alternate participating in a subsidiary organ instituted by the General Assembly or by the Security Council that is required, by a decision of the parent organ, to work away from its assigned headquarters in the performance of a special task;

(iv) Members of the Board of Auditors."

The validity of these rules would appear to be beyond question, as paragraph 3 (*a*) is taken verbatim from paragraph 2 (*a*) of resolution 1798 (XVII) and paragraph 3 (*c*) is taken almost verbatim from paragraph 3 (*b*) of that resolution, while paragraph 3 (*b*) is taken verbatim from paragraph 3 (*a*) (i) of General Assembly resolution 2489 (XXIII).

10. In respect of those cases in which travel expenses shall be paid by the United Nations, the bulletin also specifies the standard of travel accommodation applicable to such persons. In this regard, paragraph 6 (*a*) provides:

"Payment of travel expenses by the United Nations will be limited to the cost of economy class accommodation by air or its equivalent by recognized public transport via a direct route, with the following exceptions:

(i) The limit on payment of travel expenses will be the cost of first-class accommodation by air or its equivalent by recognized public transport via a direct route in respect of one representative of each Member State designated as a least developed country attending regular, special or special emergency sessions of the General Assembly;

(ii) The limit on payment of travel expenses will be the cost of accommodation in the class immediately below first-class by air or its equivalent by recognized public transport via direct route in respect of all members of organs or subsidiary organs who serve in their individual capacities, as distinct from those serving as representatives of Governments; and in respect of the individuals referred to in paragraph 3 (*b*) above; . . ."

11. It is apparent that, in cases such as the present, difficulties could arise in the application of paragraph 3 (*b*) of the bulletin in that its language tends to confound the categories referred to in paragraph 7 above, as the individuals appointed "in their personal capacity" to perform certain tasks on behalf of the organ concerned — who are entitled to payment of travel and subsistence expenses and, moreover, *travel at the business-class level* pursuant to paragraph 6 (*a*) (ii) — are actually governmental representatives serving on that organ who are ordinarily not entitled to payment of such costs. In so far as paragraph 3 (*b*) of the Bulletin is general in its wording, and does not limit eligibility to only members of particular bodies, it cannot be said that the business-class travel entitlement provided under paragraph 6 (*a*) (ii), may only be accorded to members of certain designated bodies. Furthermore, as a result of this inherent ambiguity in the rules, it is not unlikely that an organ would request business-class travel for certain of its members in cases where such members, although serving on that organ as representatives of Governments, have been selected by the organ to carry out particular tasks in their individual capacities. The significance of this "loophole" provision is apparent in considering that, under the terms of para-

graph 6 (*a*) of the bulletin, payment of travel expenses by the United Nations is limited to the cost of economy-class accommodation with only three exceptions.

C. CONCLUDING REMARKS

12. In considering the request of the Committee Chairman within the above framework, it is thus relevant to consider whether the present case falls within the spirit of the exception of paragraph 3 (*b*) of the bulletin, i.e., whether the Committee members designated to attend the above-cited international conferences and meetings can be regarded in such instances as "individuals appointed by organs or subsidiary organs to undertake in their personal capacity the performance of . . . ad hoc tasks on behalf of the bodies involved". As regards such an assessment, we would initially state that we do not believe that, in the light of the existing legislative texts and of the variations in current practice, it is possible for this Office to give a general answer either to the effect that such delegations/representatives of the Committee are always entitled to business-class travel or that they are never entitled to business-class travel. In paragraphs 7 and 11 above, and in previous exchanges of memoranda on similar subjects, we have highlighted that the existing legislation on travel entitlements is inherently ambiguous in that it appears to presuppose a clear-cut distinction between "representatives of Governments" and "persons who serve in their individual capacities", which is not always the case. While it may be difficult in certain circumstances — where the organ concerned is composed of representatives of Member States and those persons have been serving as Government representatives — to decide whether one or more of these persons who have been specifically requested by that organ to travel and represent it have been "appointed . . . to undertake in their personal capacity the performance of . . . ad hoc tasks on behalf of the bodies involved", it cannot be said a priori that service of a representative of a Member State on an organ automatically prevents later appointment in a personal capacity; the facts of each case have to be examined.

13. In considering the present situation, it is particularly relevant to take into account: (*a*) the Chairman's letter to the Controller (which refers to the comments in the record of the Committee's 171st meeting) indicating that the members attending the subject conferences/meetings are clearly appointed to represent the Committee itself and to perform a number of important tasks on its behalf, and (*b*) the very particular circumstances created by General Assembly resolution 44/41 A of 6 December 1989 (and resolutions to the same effect issued in previous years) whereby the Assembly authorized the Committee to exert all efforts to send delegations or representatives to such conferences/meetings. In the light of these factors, it is our view that it could be justifiably maintained that the members of the Committee, in attending the subject conferences and meetings, are not serving as "representatives of Governments" but as persons specifically designated by the Committee to represent that organ at forums for the purpose of performing special tasks connected with the mandate entrusted to it by the General Assembly. It could therefore be concluded that, for the purpose of attending such conferences/meetings, the persons concerned should be regarded as serving in their individual capacities and would accordingly be entitled to business-class travel under paragraphs 3 (*b*) and 6 (*a*) of the Secretary-General's bulletin.[45]

14. However, as there is nothing in the record to indicate the clear intention of the General Assembly in respect of the standard of travel to be accorded to Committee members in such instances (i.e., the relevant resolutions being silent on this point),

the Controller may wish to refer this matter to the Advisory Committee on Administrative and Budgetary Questions (ACABQ) for its views, particularly considering that (*a*) ACABQ previously reviewed the general subject of travel entitlements in 1988 (see document A/43/7/Add.8 of 22 November 1988), and (*b*) whichever way the question of the level of travel entitlements for Committee members is resolved could have an effect on the level of entitlements to be accorded to representatives or delegations of other United Nations subsidiary organs of similar composition in comparable circumstances. While it appears to us that the existing legislation grants business-class travel entitlement for the Committee members attending the subject meetings, we feel that it would be appropriate for ACABQ to advise the General Assembly as to whether to confirm this view, instruct otherwise or issue new provisions (e.g., more clearly delineate the "ground rules" governing the extent to which an organ composed of representatives of Member States may designate such persons to serve in their personal capacity to perform tasks on its behalf).

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33. REFUSAL BY A DIPLOMAT TO FOLLOW AN ORDER BY A CUSTOMS OFFICER OF A RECEIVING STATE TO OPEN THE TRUNK OF A DIPLOMATIC CAR — LEGAL STATUS OF THE MEANS OF TRANSPORT OF A DIPLOMATIC MISSION — ARTICLES 22, 30 AND 36 OF THE 1961 VIENNA CONVENTION ON DIPLOMATIC RELATIONS — ARTICLE IV, SECTION 9, OF THE INTERIM ARRANGEMENT ON PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS CONCLUDED BETWEEN THE SECRETARY-GENERAL AND THE SWISS FEDERAL COUNCIL, OF 11 JUNE 1946

Memorandum to the Senior Legal Officer, Office of the Director-General, United Nations Office at Geneva

1. This is with reference to your memorandum of 9 April 1990 in which you seek our opinion on and interpretation of article 36, paragraph 2, of the 1961 Vienna Convention on Diplomatic Relations[46] in connection with the refusal by a diplomat to follow an order by a customs officer of the receiving State to open the trunk of a diplomatic car.

2. In our view, such matters should primarily be considered in the context of the provisions of article 22, paragraph 3, and article 30, paragraph 2, of the Vienna Convention rather than those of article 36.

3. Paragraph 2 of article 36 is conceived to regulate an immunity from inspection of the personal baggage of a diplomatic agent. It provides for such inspection only in case there are serious grounds for presuming that the personal baggage contains *inter alia* articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State.

4. It should be noted that the legal status of diplomatic means of transport of the mission is governed by the provisions of paragraph 3 of article 22 of the Convention, which stipulates that "... the means of transport of the mission shall be immune from search, requisition, attachment or execution."

5. Pursuant to paragraph 2 of article 30 of the Convention, the property of a diplomatic agent himself also enjoys the status of inviolability. The term "property of a diplomatic agent", among other elements, encompasses his motor vehicle. This interpretation was given in particular in the commentary of the International Law Commission to article 28 of its draft articles on diplomatic intercourse and immuni-

ties, which later became article 30 of the Convention. The Commission, in its report covering the work of its tenth session (1958), stated that "so far as movable property is concerned . . . the inviolability primarily refers to goods in the diplomatic agent's residence; but *it also covers other property such as his motor car . .* "[47] (emphasis added)

6. Therefore, in the light of the foregoing clarifications, we are of the opinion that a motor vehicle belonging either to the mission or to a diplomatic agent should enjoy immunity from search as well as other immunities associated with inviolability (for example, requisition, attachment, execution). Consequently, a request to open the trunk of a diplomatic car seems to be at variance with the provisions of the Vienna Convention on Diplomatic Relations referred to above.

7. The above-mentioned provisions are applicable to the mission staff at Geneva by virtue of the obligations of Switzerland pursuant to article IV, section 9, of the Interim Arrangement on Privileges and Immunities of the United Nations concluded between the Secretary-General of the United Nations and the Swiss Federal Council of 11 June 1946.[48] Section 9 (*g*) provides that representatives of Member States shall enjoy "such other privileges, immunities, and facilities . . . as diplomatic agents enjoy . . .". This general clause should be considered as encompassing all pertinent norms regulating the diplomatic status as codified in existing international agreements.

30 April 1990

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34. CONSULTANTS, FELLOWS AND EXPERTS OF THE UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH APPOINTED UNDER ARTICLE VI, PARAGRAPH 2, OF THE STATUTE OF UNITAR — CLARIFICATION OF THE MEANING OF THE TERMS "OFFICIALS" AND "EXPERTS ON MISSIONS" AS USED IN THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS AND THE RELEVANT ANNEXES OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES

Memorandum to the Executive Director of the United Nations Institute for Training and Research

1. This is with reference to our recent telephone conversation and your request that we examine article VI of the statute of UNITAR, as amended in 1988 and 1989,[49] with a view to amending it further, in particular its paragraph 2, to permit consultants, fellows, and experts appointed by the Executive Director to be granted certain privileges and immunities of the United Nations, especially while in travel status. The paragraph in question reads as follows:

> "2. For the purpose of contributing to the analysis and planning of the activities of the Institute or for special assignments in connection with the Institute's programmes of training and research, the Executive Director may arrange for the services of consultants, fellows and experts, who shall not be considered as officials of the United Nations and who shall not be regarded as members of the staff of the Institute or of the United Nations."[50]

2. The Secretariat also obtains the services of consultants and experts who are not "staff members" or "officials" of the Organization.[51] These individuals are employed as contractors under various types of Special Service Agreements. These

Agreements specifically provide that the individual contractor is not an "official" or "staff member" of the United Nations, but that such individual contractor may be given the status of "expert on mission" while travelling on United Nations official business. The usual clause inserted in the Special Service Agreements used by the United Nations reads as follows:

> "Individuals engaged under a special service agreement as individual contractors serve in their personal capacity and not as representatives of a Government or of any other authority external to the United Nations. Individual contractors are neither 'staff members' under the Staff Regulations of the United Nations nor 'officials' for the purpose of the Convention of 13 February 1946 on the privileges and immunities of the United Nations. Individual contractors may, however, be given the status of 'experts on mission' in the sense of section 22 of article VI of the Convention. If individual contractors are required to travel on behalf of the United Nations, they may be given a United Nations certificate in accordance with section 26 of article VII of the Convention."

3. A clause similar to the one quoted above could be incorporated by UNITAR in the contracts it concludes with the consultants, fellows and experts engaged under paragraph 2 of article VI of the UNITAR statute, in which case the purpose contemplated in your request for amending the statute of UNITAR in order to grant the persons in question certain of the privileges and immunities enjoyed by United Nations staff members could be achieved without such an amendment. In our view, the process of effecting further amendments to the statute should preferably be avoided until sufficient time has elapsed to permit an informed judgement on its efficacy.

4. Please find attached herewith, for your information, a copy of a note clarifying the meaning of the terms "officials" and "experts on mission" drafted by the Office of Legal Affairs at the request of UNDP and incorporated in UNDP/ADM/FIELD/762 and UNDP/ADM/HQTRS/503 of 17 April 1981.

18 January 1990

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35. LEGAL STATUS OF LOCALLY RECRUITED OFFICIALS OF THE UNITED NATIONS — ALL UNITED NATIONS OFFICIALS ARE EXEMPT FROM TAXES ON THEIR UNITED NATIONS SALARIES AND EMOLUMENTS IRRESPECTIVE OF THEIR NATIONALITY OR RESIDENCE — ARTICLE V, SECTION 18 (*b*) OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Note verbale to the Permanent Representative of a Member State to the United Nations

The Legal Counsel of the United Nations presents his compliments to the Permanent Representative of (name of a Member State) to the United Nations and has the honour to refer to the question of taxation on salaries of nationals or residents of the State in question employed as United Nations officials.

The Legal Counsel's attention has been drawn to the fact that locally recruited staff members who are nationals or residents of your country are required by the appropriate authorities to pay local income tax on their United Nations salaries and emoluments. Moreover, when travelling on official business, the staff members concerned are not granted the needed exit permits without producing evidence of having paid the taxes. Such actions are at variance with the relevant provisions of the existing

agreements between the United Nations and your country, in particular, the Convention on the Privileges and Immunities of the United Nations,[28] to which your country has been a party since 1972. The Legal Counsel, therefore, wishes to clarify the legal status of locally recruited officials as follows.

Article V, section 18 (*b*), of the above-mentioned Convention stipulates that "[o]fficials of the United Nations shall . . . (*b*) [b]e exempt from taxation on the salaries and emoluments paid to them by the United Nations". The rationale for this exemption is that equality in conditions of service, irrespective of nationality, is essential in the international civil service and that no country should derive any national financial advantage from the presence of international organization staff on its territory.

In this connection it should be noted that the definition of the term "officials" was established by the General Assembly in resolution 76 (I) of 7 December 1946. In that resolution the General Assembly approved "the granting of the privileges and immunities referred to in articles V and VII of the Convention . . . to all members of the staff of the United Nations, with the exception of those who are recruited locally and assigned to hourly rates". This definition allows of no distinction among staff members of the United Nations on the basis of natonality or residence.

Therefore, in the view of the Legal Counsel, the taxation of the salaries and emoluments of locally recruited United Nations officials is wrong in law.

The Legal Counsel trusts that in the light of the foregoing observations the necessary measures will be taken by the appropriate authorities with a view to reconciling the internal domestic regulations and practice of the State concerned with its international obligations referred to above.

30 January 1990

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36. PRIVILEGES AND IMMUNITIES ENJOYED BY SHORT-TERM CONSULTANTS — APPLICATION OF THE HOST COUNTRY REGULATIONS ON MOTOR VEHICLES TO PERSONS ENTITLED TO DUTY-FREE IMPORTATION OF AUTOMOBILES — PROVISIONS OF THE 1954 ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC HEADQUARTERS AGREEMENT

Memorandum to the Chief, Administrative Division, Economic and Social Commission for Asia and the Pacific

1. This is with reference to your memoranda of 18 May and 4 July 1990 requesting our comments on several matters concerning the 1954 Economic and Social Commission for Asia and the Pacific (ESCAP) Headquarters Agreement[52] and certain domestic regulations.

2. As to the applicability of article IX, section 21, of the Headquarters Agreement to short-term consultants, it should be noted that according to that section, "those persons who, *without being officials of the ECAFE,*[53] are performing missions for the United Nations in relation with the ECAFE in Thailand, shall enjoy the privileges and immunities specified in section 17 of article VIII" (emphasis added). It should also be noted that the expression "officials of the ECAFE" is defined in article I, section 1 (*h*), as "all staff members of the United Nations Secretariat, other than manual workers locally recruited, *who are at any time working with the ECAFE,* and

whose names are communicated from time to time to the appropriate Thai authorities" (emphasis added). Consequently, section 21, referring to persons not being United Nations staff members, should be considered as applicable to short-term consultants, who are accordingly entitled in the host country to the privileges and immunities specified in section 17 of the Headquarters Agreement. It is understood that the relevant provisions of that section do provide for exemption from taxation on the salaries and emoluments paid to persons specified in section 21.

3. As regards the issuance of visas to persons within the scope of section 21, these matters are regulated by the provisions of sections 22 and 23 of the Agreement. The host country authorities, therefore, are under an obligation to deal with applications for visas *as speedily as possible* and to grant facilities for speedy travel. Neither the Convention on the Privileges and Immunities of the United Nations[28] nor the Headquarters Agreement provide for multiple entry visas for any of the categories of persons specified in these instruments, i.e., representatives of Members, officials or experts on mission. Usually, the issuance of multiple entry visas is carried out by the competent authorities of the host country on the basis of unilateral decisions.

4. We are inclined to share your interpretation of the provisions of subsection (i) of section 17 of the Headquarters Agreement. That subsection consists of two separate basic elements. In the first place, it provides for the right to import free of duty furniture and effects, subject to a six-month initial time-limit. Secondly, the importation of automobiles is specifically made subject to the same regulations as are in force for the resident members of diplomatic missions of comparable rank. In this connection, we also agree with your interpretation of the relevant domestic automobile regulations. In the case in question, we suggest that you proceed on the basis of this interpretation. For this purpose you may wish to request a clarification on the part of the host country Government as to the exact legal basis of the six-month limit and its interpretation of the relevant requirements in the light of the Headquarters Agreement.

5. As regards the possible retroactive application of the new domestic automobile regulation of 1989, the Ministry of Foreign Affairs of the host country, in a letter dated 23 November 1989, stated that the 1983 regulation was no longer effective, implying an ineffectiveness as of the date of the coming into force of the new regulation, which, according to article 10 thereof, was 19 June 1989. Staff members who purchased a duty-free vehicle before that date are therefore not encumbered by any additional restrictions imposed by the 1989 regulation.

6. As to the definition of an ESCAP official or staff member in article I, section 1 (*h*), of the Agreement, that definition differs slightly from that of United Nations officials as reflected in General Assembly resolution 76 (I) of 7 December 1946. Under the latter definition, United Nations officials "should include all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates". With a view to maintaining consistency as between the various United Nations regional organs, this definition should, in our view, be maintained as strictly as possible.

7. Finally, concerning the desirability for all or some parts of the Headquarters Agreement to be renegotiated, we should like to draw your attention to article XII, section 25 (*a*), of the Agreement, under which the Government and the United Nations may enter into such supplementary agreements as may be necessary within the scope of the Agreement. We would suggest that you address to the Government concerned requests for clarification of any matters relating either to the Agreement or

to the domestic regulations. If necessary, such clarifications could be reached by means of an exchange of letters of agreement, in accordance with section 25 (*a*).

13 July 1990

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37. TAXATION BY THE AUTHORITIES OF A MEMBER STATE OF LOCALLY RECRUITED NATIONALS OR PERMANENT RESIDENTS OF THAT STATE EMPLOYED BY THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES — ARTICLE V, SECTION 18 (*c*), OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Note verbale to the Permanent Representative of a Member State to the United Nations

The Legal Counsel of the United Nations presents his compliments to the Permanent Representative of (name of a Member State) to the United Nations and has the honour to refer to the question of taxation on the salaries and emoluments of locally recruited nationals or permanent residents of the United Nations High Commissioner for Refugee Branch Office.

The Legal Counsel has recently been informed that the competent authorities, following a number of approaches by UNHCR clarifying the United Nations position on taxation of its officials, maintain their position that locally recruited personnel of the UNHCR Branch Office are liable to pay national income tax.

This position cannot be reconciled with the relevant provisions of the existing international agreements and, in particular, with the Convention on the Privileges and Immunities of the United Nations to which (name of the Member State) became a party on 30 July 1956 without making a reservation on the question of taxation.

The Legal Counsel therefore wishes to clarify the legal status of United Nations locally recruited officials and their obligations *vis-à-vis* the internal revenue authorities.

Article V, section 18 (*b*) of the Convention on the Privileges and Immunities of the United Nations stipulates that officials of the United Nations shall be exempt "from taxation on the salaries and emoluments paid to them by the United Nations". The rationale for this exemption is that equality in conditions of service, irrespective of nationality, is essential in the international civil service and that no country should derive any national financial advantage from the presence on its territory of international staff who receive salaries from the Organization which employs them.

For the purpose of section 18 (*b*) of the said Convention, a definition of the term "officials" was established by the General Assembly in resolution 76 (1) of 7 December 1946. In that resolution, the General Assembly approved the granting of the privileges and immunities referred to in articles V and VII of the Convention (i.e., including the provision on exemption from taxation) "to all members of the staff of the United Nations, with the exception of those who are recruited locally *and* are assigned to hourly rates" (emphasis added). Accordingly, this definition allows for no distinction among staff members of the United Nations on the basis of nationality or residence. Therefore, in the view of the United Nations, the taxation of the salaries and emoluments of locally recruited UNHCR personnel not assigned to hourly rates would be wrong in law and inconsistent with the obligations of the Permanent Repre-

sentative's country under the Convention on the Privileges and Immunities of the United Nations.

The Legal Counsel also wishes to draw attention to section 34 of the Final article of the Convention in which it is presumed that "when an instrument of accession is deposited on behalf of any Member, the Member will be in a position under its own law to give effect to the terms of this Convention".

The Legal Counsel trusts that this matter will be reviewed by the competent authorities with a view to reconciling internal domestic legislation and practice with the international obligations referred to above.

27 December 1990

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38. EXEMPTION OF UNITED NATIONS OFFICIALS FROM NATIONAL SERVICE OBLIGATIONS — ARTICLE V, SECTION 18 (*c*), OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS — ARRANGEMENTS SET OUT IN APPENDIX C OF THE STAFF RULES WITH RESPECT TO MILITARY SERVICE IN THE CASE OF GOVERNMENTS WHICH HAVE NOT ACCEDED TO THE EXEMPTION PROVIDED FOR IN THE CONVENTION

Memorandum to the Under-Secretary-General, Department of Administration and Management

1. I wish to refer to the memorandum of 27 August 1990 concerning national service obligations of United Nations officials.

2. Although the Convention on the Privileges and Immunities of the United Nations[28] provides in article V, section 18 (*c*), that officials of the United Nations shall "be immune from national service obligations", a formal reservation with respect to that section was made by (name of a Member State) when depositing its instrument of accession on 29 April 1970. The Member State in question stated that section 18 (*c*) shall not apply with respect to its nationals and aliens admitted for permanent residence. Accordingly, the Member State concerned is under no legal obligation either to cancel or to defer any national service obligation incumbent upon a United Nations official.

3. Arrangements relating to military service in the case of Governments which have not acceded to the exemption provided for in the Convention are set out in appendix C of the Staff Rules. While paragraph (*b*) of appendix C provides that requests to Governments to defer or exempt staff members shall be made by the Secretary-General, such requests can, of course, be made by officials to whom the Secretary-General has delegated authority in the area of personnel administration. In the present case, if a request is made, the letter could be signed by the Executive Director of UNICEF.

4. While this Office has no further comment to make on the proposed draft letter, we would suggest that, before making a formal request, UNICEF might consider making an informal approach through the Mission of the Member State in question. Should the official concerned be called for reserve duty, certain administrative implications follow under appendix C.

29 August 1990

B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations

Legal opinions of the secretariat of the United Nations Industrial Development Organization (Issued or prepared by the Legal Service)

1. UNITED NATIONS SANCTIONS AGAINST IRAQ — SHIPMENT OF EQUIPMENT TO A PROJECT IN IRAQ — *FORCE MAJEURE*

Memorandum to the Chief, Purchase Section, Department of Administration

1. I refer to the routing slip dated 17 August 1990 asking for advice with respect to a purchase order to a member State firm concerning equipment to be delivered to a project in Iraq. My comments are as follows.

2. Security Council resolution 661 (1990) of 6 August 1990 reads in part:

"*The Security Council*,

"...

"*Acting* under Chapter VII of the Charter [of the United Nations],

"...

3. *Decides* that all States shall prevent:

"...

"(*c*) The sale or supply by their nationals or from their territories or using their flag vessels of any commodities or products, including weapons or any other military equipment, whether or not originating in their territories but not including supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs, to any person or body in Iraq or Kuwait or to any person or body for the purposes of any business carried on in or operated from Iraq or Kuwait, and any activities by their nationals or in their territories which promote or are calculated to promote such sale or supply or such commodities or products;

"...

"5. *Calls upon* all States, including States non-members of the United Nations, to act strictly in accordance with the provisions of the present resolution notwithstanding any contract entered into or licence granted before the date of the present resolution;"

3. This resolution constitutes *a decision* of the Security Council in accordance with Article 39 of the Charter of the United Nations, which is binding on all States. All States are therefore under an international legal obligation to take measures to prevent the activities listed in subparagraph (*c*) above.

4. Under embargo legislation of the State concerned issued in compliance with the Security Council resolution, the shipment of the equipment in question to Iraq by the member State firm would be illegal and will not be effected, as I am informed.

5. As far as UNIDO is concerned, it is in accordance with its Constitution a subject of international law. As such — and as an international organizaton of the United Nations system — it has to comply with decisions of the Security Council that are binding on all States, including UNIDO's member States, even if the resolution does not specifically address international organizations. It follows that UNIDO may not undertake any activity in furtherance of the activities banned by the Security

Council or request others to commit such activities. In the case at hand, therefore, UNIDO may no longer request that the equipment be shipped.

6. Regarding UNIDO's contractual relationship with the firm concerned and the question whether UNIDO could invoke clause VIII of the General Conditions governing the purchase order dealing with *force majeure,* I should like to comment as follows:

(*a*) It seems that the requirements of the first sentence of clause VIII are fulfilled, as the inability to ship the goods is due to "laws or regulations" which neither party is able to overcome. However, if I understand it correctly, the Vendor has only telephoned UNIDO but has not invoked *force majeure* in writing as required under the second sentence of the clause. Once the Vendor has submitted the required information, "UNIDO shall then have the right to terminate the contract by giving in writing seven days notice of termination to the Vendor". This does not mean that UNIDO has to terminate the contract at the present time since UNIDO may agree with the Vendor on any other course of action and UNIDO, in particular, may request the Vendor to preserve (store) the goods at a reasonable cost. Therefore, before considering termination, I suggest that the relevant service of the Department of Administration, as appropriate in consultation with the substantive section, assess whether the goods are of a nature that they could be stored for some time so that if the economic embargo by the United Nations against Iraq is lifted and the corresponding regulations of the State concerned are abolished, the goods can be delivered without further delaying the project. In this case the reasonable storage charges would be paid by UNIDO.

(*b*) In this connection I would like to recall clause 11 of annex A, General conditions of contract, annexed to our Service and Turnkey Contracts, which provides *inter alia* that "the obligations and responsibilities of the Contractor . . . shall be suspended to the extent of his inability to perform them and for as long as such inability continues. During such suspension and in respect of work suspended, the Contractor shall be entitled only to reimbursement by UNIDO, against appropriate vouchers, of the essential costs of maintenance of any of the Contractor's equipment . . ." Only if the Contractor is rendered permanently unable to perform his obligation does UNIDO have the right to terminate. Inability to perform for less than 90 days shall only be deemed temporary inability to perform. It seems therefore that termination of the contract at this point may be a somewhat hasty decision.

(*c*) However, should the substantive section be of the opinion that the set-up of the project would make termination preferable already now, the Vendor must comply with the requirement of the second sentence of clause VIII, i.e., he must invoke *force majeure* as a reason for non-delivery in writing within 15 days of the occurrence of *force majeure*.

(*d*) In any case, at present no funds should be transferred to the Vendor, pending agreement on the final disposition of the mutual obligations of the parties.

29 August 1990

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2. MERGER OF DEMOCRATIC YEMEN AND THE YEMEN ARAB REPUBLIC — UNIFICATION OF THE GERMAN DEMOCRATIC REPUBLIC AND THE FEDERAL REPUBLIC OF GERMANY

Note to the Director-General

1. Certain legal questions, especially with respect to assessed contributions for 1991, arise in connection with both Yemen and Germany — and should be treated in a consistent manner.

2. The effect of the merger of North and South Yemen [Democratic Yemen and the Yemen Arab Republic] on the obligation to pay assessed contributions is addressed in paragraphs 51 to 53 of the report of the United Nations General Assembly's Committee on Contributions to the General Assembly at its forty-fifth session,[54] presently under way. UNIDO has not, to my knowledge, received any other communication than a copy of the joint communication of the Ministries of Foreign Affairs of the two States, addressed to the Secretary-General of the United Nations. In documentation for the November session of the Industrial Development Board, however, Yemen will be shown as being responsible for the assessed contributions of both North and South Yemen. In taking this step, UNIDO's secretariat will thus take the same position as recommended by the United Nations Committee on Contributions to the General Assembly.

3. In the case of Germany, not only is the assessed contribution of the German Democratic Republic for 1991 substantial but the legal obligation of the united Germany (Federal Republic of Germany) has been called into question by articles 11 and 12 of the Unification Treaty concluded on 31 August 1990 between the Federal Republic of Germany and the German Democratic Republic.[55] In fact, article 12 does not accept that obligations of the German Democratic Republic automatically devolve on the Federal Republic of Germany, but offers discussions or consultations with the treaty partners of the former Federal Republic of Germany, whereupon the united Germany will determine its position. The potential significance of articles 11 and 12 for UNIDO derives from the fact that these provisions have been quoted in a note verbale, dated 4 October 1990, from the Permanent Mission of the Federal Republic of Germany to UNIDO in which it is stated that "the Federal Republic of Germany will proceed in accordance with these provisions". Generally accepted rules of international law do not permit a successor State, or two uniting States, unilaterally to decide the extent to which the (rights and) obligations of a predecessor State shall continue in force, however. It would therefore be legally advisable at the present time to formally recall the applicable rules of international law and on this basis to state the obligation of the Federal Republic of Germany/united Germany to meet the financial obligation of the German Democratic Republic with respect to the assessed contributions for 1991.

4. While international law — as codified in two international conventions[56] — is firm concerning the devolution of debts,[57] succession in respect of a treaty does not take place if "it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation" (article 31.1 of the Vienna Convention on the Succession of States in respect of Treaties). Considering that the German Democratic Republic State Planning Commmission has been dissolved, I would suggest that UNIDO take the initiative to propose consultations on the continued applicability or expiry of the Working Arrangement on

group training concluded in 1987 with the German Democratic Republic State Planning Commission.

25 October 1990

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3. COMMENTS ON A NOTE VERBALE DATED 4 OCTOBER 1990 FROM THE PERMANENT MISSION OF THE FEDERAL REPUBLIC OF GERMANY REGARDING THE CONTINUED APPLICATION OF TREATIES OF THE FEDERAL REPUBLIC OF GERMANY AND THE GERMAN DEMOCRATIC REPUBLIC IN ACCORDANCE WITH THE GERMAN UNIFICATION TREATY

Letter to the Permanent Representative of the Permanent Mission of the Federal Republic of Germany to the United Nations Industrial Development Organization

I have the honour to refer to the note verbale dated 4 October 1990 from the Permanent Mission of the Federal Republic of Germany addressed to the United Nations Industrial Development Organization, which advised that with regard to the continued application of treaties of the Federal Republic of Germany and the treatment of treaties of the German Democratic Republic, following its accession to the Federal Republic of Germany with effect from 3 October 1990, the Federal Republic of Germany will proceed in accordance with articles 11 and 12 of the Treaty of 31 August 1990 between the Federal Republic of Germany and the German Democratic Republic on the Establishment of German Unity (Unification Treaty).[55]

I further have the honour to take this opportunity to refer to the generally accepted, and applicable, rules of international law on the legal succession of States as codified in the Vienna Conventions on Succession of States in respect of Treaties, of 23 August 1978, and on Succession of States in respect of State Property, Archives and Debts, of 8 April 1983.[58] In this connection, I wish to recall that normally the international legal obligations and rights of a predecessor State under treaties in force in respect of a territory at the date of succession do not devolve on the successor State by reason only of the fact that the predecessor State and the successor State have concluded an agreement to that effect.

It is a fundamental rule of general international law that when States unite and so form one successor State, any treaty in force at the date of succession of States in respect of any of them normally continues in force in respect of the successor State and any financial obligation of the predecessor State arising in conformity with international law towards another State, an international organization or any other subject of international law passes to the successor State.

In the light of the foregoing rules, I would like to refer, in particular, to the financial obligation of the German Democratic Republic towards UNIDO arising out of the decision taken by the General Conference of UNIDO at its third session to assess the German Democratic Republic a certain contribution to the organization's regular budget for the fiscal period 1990-1991. While the share for fiscal year 1990 has been received, the share for fiscal year 1991 remains an outstanding financial obligation which under the rules of international law has devolved to the Federal Republic of Germany. Since according to article 15.2 of the Constitution of UNIDO the scale of assessments of member States shall be based to the extent possible on the scale most recently employed by the United Nations, I would anticipate UNIDO's General Conference at its next session, scheduled for November 1991, to assess the

united Germany on the basis of a revised scale meanwhile adopted by the General Assembly of the United Nations.

As far as succession in respect of treaties is concerned, I should like to refer to the Working Arrangement between the State Planning Commission of the German Democratic Republic and the United Nations Industrial Development Organization, which entered into force on the date of its signature, 13 October 1987. Taking into account the changed conditions for the continued operation of the Working Arrangement, which are inherent in the unification of Germany, I wish to propose that consultations be held as soon as possible between the appropriate successor authorities of the Federal Republic of Germany and the secretariat of UNIDO with a view to determining the continued application, adjustment or expiry of said Working Arrangement.

29 October 1990

NOTES

[1] United Nations, *Treaty Series,* vol. 450, p. 81.

[2] S/20412/Add.1.

[3] ST/SGB/132.

[4] "Procedure for the establishment of a firm and lasting peace in Central America", signed at Guatemala City on 7 August 1987 (A/42/521-S/19085, annex).

[5] E/ICEF/1988/AB/L.3.

[6] See the legal opinion published in the United Nations, *Judicial Yearbook, 1979,* p. 178.

[7] For example:

(1) How can the Organization, which will be on an equal footing with its business partner, maintain tax-exempt status in accordance with Section 7 of the Convention on Privileges and Immunities?

(2) How can the Organization assert that information concerning financial or other particulars with respect to the joint venture transactions is privileged in accordance with section 4 of the Convention?

(3) How can the Organization be considered objective if it is committed to assisting a business partner in making profits?

[8] United Nations, *Treaty Series,* vol. 216, p. 132 and vol. 943, p. 178.

[9] United Nations, *Treaty Series,* vol. 331, p. 217 (1948 text).

[10] Section 101 of the Copyright Act defines "derivative works" as works "based upon one or more pre-existing works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation or any other form in which a work may be recast, transformed or adapted. A work consisting of editorial revisions, annotations, elaborations or other modifications which, as a whole, represents an original work of authorship, is a 'derivative work' ". In that connection, it should be noted that the right to prepare derivative works is one of the exclusive rights of the *copyright owner*, and should not be confused with the right to make adaptations of computer works, which is a right granted to the lawful *owner* of a copy of a computer program (see paras. 24-25 above).

[11] Section 103 of the Copyright Act reads:

> "(*a*) The subject matter of copyright as specified by Section 102 includes compilations and derivative works, but *protection for a work enjoying pre-existing material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully.*

"(*b*) *The copyright in a* compilation or *derivative work extends only to the material contributed by the author of such work, as distinguished from the pre-existing material.* The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, and copyright protection in the pre-existing material." (emphasis added)

[12] General Assembly decision of 18 December 1974, on the programme budget for the biennium 1974-1975, para. (g). See also documents A/9608/Add.9 and A/C.5/1604.

[13] General Assembly resolution 2688 (XXV) of 11 December 1970.

[14] *A Study of the Capacity of the United Nations Development System,* vols. I and II (United Nations publication, Sales No. E.70.I.10), known informally as "the Jackson report".

[15] General Assembly resolution 33/202.

[16] See in that regard ST/SGB/177 of 19 November 1982 on "Policies for obtaining the services of individuals on behalf of the Organization"; ST/AI/295 of 19 November 1982 on "Temporary staff and individual contractors"; and ST/AI/297 of 19 November 1982 on "Technical cooperation personnel and OPAS officers".

[17] General Assembly resolution 1240 (XIII), part B, sect. I, para. 1 (b).

[18] General Assembly resolution 2688 (XXV), annex, paras. 63-64.

[19] A/AC.96/187/Rev.4.

[20] *Official Records of the General Assembly, Forty-fourth Session. Supplement No. 12A* (A/44/12/Add.1), para. 6.

[21] *Official Records of the Economic and Social Council, Fifty-ninth Session, Supplement No. 7* (E/5656), annex III, p. 143.

[22] *Official Records of the Economic and Social Council, 1978, Supplement No. 8* (E/1978/48), annex V, p. 95.

[23] United Nations, *Juridical Yearbook, 1979,* p. 176.

[24] International Civil Service Advisory Board, *Report on Standards of Conduct in the International Civil Service 1954* (COORD/CIVIL/5).

[25] Incorporated in the United States Headquarters Agreement, Public Law 80-357, 4 August 1974.

[26] Appendix D to Staff Rules.

[27] See *Juridical Yearbook, 1980,* p. 224.

[28] United Nations, *Treaty Series,* vol. 1, p. 15.

[29] UNEP/IG.53/5/Rev.1. See also *International Legal Materials,* vol. XXVI, No. 6 (November 1987), p. 1550.

[30] International Legal Materials, vol. XXVI, No. 6 (November 1987), p. 1529.

[31] *Yearbook of the International Law Commission,* 1967, vol. II, documents A/CN.4/195 and Add.1, p. 133; see also the supplementary study of 1985, document A/CN.4/L.383/Add.1.

[32] *I.C.J. Reports 1989,* p. 177.

[33] Document JSPB/G.4/Rev.13/Amend.1 of April 1988.

[34] Mexico and the United States of America.

[35] Document PAH/INF.78/2 of 1 June 1978.

[36] Ibid., para. 27 (*a*) and 29-32.

[37] United Nations, *Treaty Series,* vol. 11, p. 11.

[38] *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 6* (A/44/6/Rev.1), vol. I.

[39] In explaining the position of her Office, the Deputy Controller focuses on the reference to "official capacity" in the text of the programme budget in stating:

"According to the text of paragraph 1.104 of the programme budget for the biennium 1990-1991[38] (and comparable paragraphs in prior biennium budgets), 'it is anticipated that five members of the Committee (the Chairman and four other members)

would travel *in their official capacity* to attend a total of six regional seminars as well as symposiums and meetings.' (emphasis added) We assumed that the reference to official capacity was meant to indicate that the members travel as representatives of their Governments and not in an individual capacity . . ."

[40] It should be noted that the Committee's membership was increased from 20 to 23 by the Assembly at its thirty-first session.

[41] In previous years, the General Assembly has provided authorization to the same effect in its resolutions 33/28 B of 7 December 1978 (para. 3), 34/65 C of 12 December 1979 (para. 3), 35/169 C of 15 December 1980 (para. 3), 36/120 A of 10 December 1981 (para. 3), 37/86 A of 10 December 1982 (para. 4), 38/58 A of 13 December 1983 (para. 5), 39/49 A of 11 December 1984 (para. 4), 40/96 A of 12 December 1985 (para. 4), 41/43 A of 2 December 1986 (para. 4), 42/66 A of 2 December 1987 (para. 4) and 43/175 A of 15 December 1988 (para. 4).

[42] *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 6* (A/44/6/Rev.1), vols. I and II.

[43] We also note that paragraph 1.104 of section 1.B.3 (*b*) of the programme budget, dealing with travel of representatives of the Division for Palestinian Rights, requests funds for travel of Committee members to meetings organized by the Division in stating:

> "Resources in the amount of $662,700 . . . are requested to cover the costs of travel and subsistence of Committee members and of expert participants attending the meetings organized by the Division . . ."

[44] The General Assembly, in its resolution 1798 (XVII), paragraph 6, "[a]uthorize[d] the Secretary-General to establish such administrative rules and procedures as may be necessary for the implementation of the present resolution."

[45] As for the Deputy Controller's concern regarding certain language in the programme budget text relating to travel by the Committee members, it is our view that such documents, which do not constitute administrative rules and are simply narratives explaining budgetary appropriations, cannot derogate from the language and intent of General Assembly resolutions and rules issued by the Secretary-General; in any event, we do not consider that the language of the relevant sections of the programme budget is inconsistent with such legislative texts (see para. 5 above).

[46] United Nations, *Treaty Series,* vol. 500, p. 95.

[47] *Official Records of the General Assembly, Thirteenth Session, Supplement No. 9* (A/3859), chap. III, part II, sect. I,C, para. (3) of commentary to article 28.

[48] United Nations, *Treaty Series,* vol. 1, p. 163.

[49] A/43/697/Add.1. Article VI of the statute was not materially affected by the 1988 revisions of the statute, made pursuant to General Assembly resolution 42/197; it was separately amended in 1989 to clarify the status of UNITAR full-time senior fellows further to General Assembly resolution 43/201 and the UNITAR Executive Board's deliberations at its twenty-seventh session on the same subject. The text of article VI as amended was approved by the General Assembly by its resolution 44/175 (para. 4).

[50] See annex II to the Secretary-General's report to the General Assembly (A/44/611).

[51] "Staff members" are individuals with letters of appointment issued under the 100, 200 or 300 Series of the Staff Rules and Regulations. The term "officials" as used in the Convention on the Privileges and Immunities of the United Nations has been interpreted by the General Assembly to mean "all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates" (See General Assembly resolution 76 (I)).

[52] United Nations, *Treaty Series,* vol. 260, p. 35.

[53] ESCAP was originally known as the Economic Commission for Asia and the Far East (ECAFE); its name was officially changed as of 1 August 1974.

[54] *Official Records of the General Assembly, Forty-fifth Sesssion, Supplement No. 11* (A/45/11).

[55] *International Legal Materials,* vol. XXX, p. 457 (1991).

[56] That is, the Vienna Convention on Succession of States in respect of Treaties of 23 August 1978 (for the text, see *Official Records of the United Nations Conference on Succession of States in respect of Treaties, Vienna, 4 April-6 May 1977 and 31 July-23 August 1978,* vol. III, Documents of the Conference (United Nations publication, Sales No. E.79.V.10), document A/CONF.80/31; and *Juridical Yearbook 1978,* p. 106) and the Vienna Convention on Succession of States in respect of State Property, Archives and Debts of 8 April 1983 (for the text, see A/CONF.117/14 and *Juridical Yearbook 1983,* p. 139). The Conventions have not entered into force due to lack of sufficient ratifications. Nevertheless, the Conventions largely codify already accepted rules and were adopted by international conferences of all States after careful preparation by the International Law Commission of the United Nations.

[57] Article 39 of the Vienna Convention on Succession of States in respect of State Property, Archives and Debts simply provides that "when two or more States unite and so form one successor State, the State debt of the predecessor State shall pass to the successor State."

[58] See note 56 above.

Part Three

JUDICIAL DECISIONS ON QUESTIONS RELATING TO THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter VII

DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

[No decision or advisory opinion from international tribunals on questions relating to the United Nations and related intergovernmental organizations to be reported for 1990.]

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

[No decisions of national tribunals on questions relating to the United Nations and related intergovernmental organizations were communicated for 1990.]

Part Four
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