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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 thirty-sixth 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 1998. Decisions given in 1998 by the 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 1998.

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.

ABBREVIATIONS

ECA	Economic Commission for Africa
ECE	Economic Commission for Europe
ECLAC	Economic Commission for Latin America and the Caribbean
ESCAP	Economic and Social Commission for Asia and the Pacific
FAO	Food and Agriculture Organization of the United Nations
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association
IFAD	International Fund for Agricultural Development
IFC	International Finance Cooperation
ILO	International Labour Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
ITU	International Telecommunication Union
MIGA	Multilateral Investment Guarantee Agency
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
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
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
WFP	World Food Programme
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

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

Switzerland

Directive on hiring of private servants by international civil servants[1]

Preamble

International civil servants who work for intergovernmental international organizations which have entered into a Headquarters Agreement[2] with Switzerland, and who qualify for diplomatic status, enjoy the same privileges as diplomatic agents. The Vienna Convention on Diplomatic Relations dated 18 April 1961 (hereinafter referred to as "the Convention") applies to this type of international official by analogy. The legal framework governing their privileges and immunities is defined by the Convention and by the Headquarters Agreement.

Certain categories of international civil servants may, under certain conditions, employ a private servant who is eligible to hold a legitimation card issued by the Federal Department of Foreign Affairs (DFAE). The terms of any employment contract are subject to the following rules and regulations drawn up by the DFAE as the authority having jurisdiction to determine the status of holders of diplomatic legitimation cards in Switzerland.

1. *Scope and definitions*

1.1. *International civil servant*

The expression "international civil servant" means a natural person, male or female, employed by an intergovernmental international organization which has entered into a Headquarters Agreement with Switzerland, and to whom such organization has given the status of international civil servant in full.

Persons affected by this Directive and covered by the expression "international civil servants" are members of the senior management team, high-ranking officials and professional category staff (see article 2 of this Directive).

1.2. *Private servant*

The expression "private servant" as defined in article 1, letter (*h*), of the Convention means a natural person, male or female, who is employed in the domestic service of an international civil servant.

Private servants are eligible to hold a DFAE type "F" legitimation card. This Directive applies to them.

1.3. *Service staff*

According to article 1, letter (*g*), of the Convention, the expression "members of the service staff" means members of the staff of the mission employed in the service of the mission. This category was attributed, by analogy, to persons holding high rank within the international organizations. With effect from the date of entry into force of this Directive, all persons in the domestic service of international officials, regardless of the rank of the latter, shall henceforth be deemed to be "private servants", as per article 1, letter (*h*), of the Convention, and are thus eligible to hold a DFAE type "F" legitimation card.

1.4. *Parties*

For the purposes of this Directive, the term "parties" means the employer and the private servant.

2. *Persons entitled to hire private servants*

Under the terms of this Directive, the only persons entitled to hire private servants under the legitimation card scheme are persons residing in Switzerland as follows:

— Members of the senior management team (legitimation card, type "B");

— High-ranking officials (legitimation card, type "C");

— Professional category officials (legitimation card, type "D").

Officials of the general services category and those international civil servants who are Swiss nationals do not have the right to hire a private servant under the DFAE legitimation card scheme.

3. *Conditions of entry and residence for private servants*

3.1. *General principles*

Subject to the exceptions set out below (paragraph 3.2 of this Directive), the private servant must meet all the following conditions:

— Be aged 18 or over;

— Not be a member of the employer's family or of the family of another member of the organization;

— Hold a valid national passport;

— Not be a refugee or a person recognized as stateless by a foreign State;

— Be single, widowed or divorced;

— Enter Switzerland unaccompanied;

— Work full-time for a single employer;

— Be part of the employer's household;

— Have been made aware that his or her residence in Switzerland is authorized only for as long as he or she is in the service of a member of a mission or an international civil servant entitled to hire a private servant.

3.2. *Exceptions*

3.21. *Working for two employers at the same time*

A private servant hired in accordance with the terms of paragraph 3.1 may, in exceptional circumstances, be authorized to work for two employers. The employers

must both be authorized to hire a private servant eligible under the DFAE legitimation card scheme. The first of the two employers to hire the servant shall, in the eyes of the Swiss authorities, be deemed to be the principal employer and shall be liable for all the obligations and responsibilities arising from the hiring. However, the second employer must pay his contribution of social and welfare charges pro rata.

3.22. *Separate household*

Where, in exceptional cases, the employer is not in a position to provide the private servant with board and lodging in accordance with terms of paragraph 6.5 of this Directive below, he must pay for the servant to live in outside accommodation in Switzerland.

3.23. *Married couple, with or without children*

In exceptional and justified cases, a married couple with or without children may be allowed to accompany their employer to Switzerland, provided that they were both in the service of that same employer prior to his posting to Switzerland.

The length of stay of the couple shall be limited strictly to the length of stay of the employer whom they have accompanied, and it is not possible for them to change employer.

Married couples with children must ensure that their children are cared for outside Switzerland throughout the whole of their stay in Switzerland.

3.3. *Length of employment*

The contract of employment is for an indefinite or fixed period of time. The contract takes effect from the arrival of the private servant in Switzerland or, if he or she is already in Switzerland under another authorization (change of employer), as soon as he or she is hired.

The employment contract may be terminated in accordance with paragraph 6.9 of this Directive.

3.4. *Change of employer*

A private servant may change employer at any time provided that, within a maximum of one month from the date of termination of current employment, he or she finds work with another employer authorized to hire a private servant under the DFAE legitimation card scheme, failing which the private servant must leave Switzerland.

4. *Hiring a private servant abroad: conditions and procedure*

4.1. *Foreigners subject to visa requirements*

4.11. *Necessary documents*

The following documents are required to start the process:

— The employer must sign the *declaration of guarantee* in 3 originals;

— The private servant must sign his or her *private servant's declaration* also in 3 originals.

4.12. *Procedure*

The employer's organization forwards the three duly signed copies of the employer's declaration of guarantee and the three duly signed copies of the servant's

declaration to the Swiss Mission, together with a copy of the private servant's passport. The Swiss Mission will stamp these documents and return two copies of the employer's declaration of guarantee and two copies of the servant's declaration to the employer's organization. One copy of each document is intended for the employer, and the other for the private servant.

4.13. *Issuing the visa*

The private servant must go in person to the Swiss Representation in his or her place of residence to obtain a visa, and produce the following documents:

— His or her original copy of the employer's declaration of guarantee, signed by the employer and stamped by the Swiss Mission;

— His or her original copy of the servant's declaration, signed by him- or herself and stamped by the Swiss Mission;

— His or her national passport valid for a minimum of six months after the date of his or her entry into Switzerland.

4.2. *Foreigners not subject to visa requirements*

4.21. *Necessary documents*

The following documents are required to start the process:

— The employer must sign the *declaration of guarantee* in 3 originals;

— The private servant must sign his or her *private servant's declaration* also in 3 originals.

4.22. *Procedure*

The employer's organization will forward the three duly signed copies of the employer's declaration of guarantee and the three duly signed copies of the private servant's declaration to the Swiss Mission for stamping, together with a covering note and a copy of the private servant's passport. The Swiss Mission will return two original copies of the declaration of guarantee and two original copies of the servant's declaration to the employer's organization, together with a covering letter confirming that the private servant will be issued a legitimation card. One of the copies of each document is intended for the employer, and the other for the servant. A copy of the covering note is forwarded to the servant for presentation, together with a valid passport, to the Swiss border police on entry into Switzerland.

4.3. *Legitimation card*

Upon arrival in Switzerland of the private servant, the employer's organization will forward the following supporting documents to the Swiss Mission in order to obtain the legitimation card:

— An application form for registration, in duplicate;

— Three recent, good-quality, passport-sized photographs;

— The original passport.

5. *Hiring a private servant in Switzerland: conditions and procedure*

5.1. *The general rule*

A private servant may be locally hired subject to the following exceptions.

5.2. *Exceptions*

The following persons may not be locally hired:

— Persons who are in an irregular situation;

— Persons against whom a deportation order, or an order to return to their country of origin, is pending;

— Asylum-seekers whose application is pending, is subject to an appeal or has been rejected;

— Persons who are staying temporarily in Switzerland (tourists, visitors, students, trainees, people attending a health cure, seasonal workers, etc.);

— Former holders of type "F" legitimation cards whose former employment has been terminated over a month ago;

— Former holders of type "E" legitimation cards whose former employment has been terminated over a month ago or who do not meet the conditions of entry in paragraph 3 of this Directive.

5.3. *Legitimation card*

Before work commences, the employer's organization will forward the following supporting documents to the Swiss Mission in order to obtain the legitimation card:

— Three original copies of the employer's declaration of guarantee, signed by the employer;

— Three original copies of the private servant's declaration, signed by the private servant;

— The application for registration in duplicate;

— Three recent, good-quality, passport-sized photographs;

— The original passport.

5.4. *Swiss nationals and residence or permanent residence permit-holders*

Swiss nationals and persons in possession of a residence permit type "B" or a permanent residence permit type "C" may be hired as private servants in accordance with the ordinary laws of Switzerland. These persons are not entitled to a legitimation card.

6. *Rights and obligations of the contracting parties*

In order to avoid any difficulties in the future, the Swiss authorities strongly recommend that the parties sign an employment contract along the lines of the specimen contract attached hereto.

6.1. *The private servant's working conditions*

6.11. *Protection and respect*

The employer undertakes to protect the health of the private servant, to respect his person and to uphold his dignity by providing appropriate working conditions.

6.12. *Appropriate working conditions*

The term "appropriate working conditions" means providing the private servant with a suitable living environment. The term shall also cover the duty to protect

the servant's rights as an individual, to respect his person, to observe agreed hours of work and to pay for overtime, to honour agreed days of rest per week, to agree to periods of annual paid vacation and public holidays, to meet conditions of board and lodging, to meet obligations to pay insurance, salary and to provide any other facility offered to the private servant.

6.2. *The private servant's duty of care and loyalty*

The private servant undertakes to carry out the tasks assigned to him or her with care and diligence. He or she shall be bound by a duty of care and loyalty to his or her employer and shall treat any information which comes to his or her knowledge in the course of his or her work in a confidential manner.

6.3. *Hours of work and overtime*

6.31. *Hours of work*

The average working week must not exceed 49 hours.

6.32. *Overtime*

Depending on the circumstances, the employer may require that the private servant work overtime to the extent that the servant is able to take this on. Accumulated overtime must not exceed five hours per week.

An hour of "overtime" means an hour of work carried out in excess of the basic number of hours per day. The basic number of hours per day is obtained by dividing the working week by 5.5 (for example, 49 divided by 5.5 equals 8.9 basic working hours per day).

The employer may, with the private servant's agreement, spread compensation over a period of three months by giving time off in lieu, provided that such time off shall be equal to the overtime worked. Any hours of overtime that are not compensated for by time off in lieu shall be paid for at the rate of 125 per cent, taking the gross salary (that is, the amount of salary in cash plus the value of benefits in kind) as a basis for the calculation. All hours of overtime worked must be shown on the employee's monthly wage slip.

6.4. *Days off per week, daily rest periods, annual paid vacation and public holidays*

6.41. *Days off per week*

A private servant is entitled to one and a half days off per week. In theory, this should be a full day on Sunday, and a half day at some other time during the week not followed by a period of being on duty in the evening. If the day of rest cannot be granted on a Sunday, the employer and the private servant may agree, in writing, on another day off in lieu during the week. However, the private servant may ask to have a minimum of 26 Sundays off per year.

6.42. *Daily rest periods*

The private servant must be allowed a minimum break of half an hour for the midday and evening meals, and an additional hour's break during the course of the day; these breaks are not included in the hours of work.

6.43. *Annual paid vacation*

The private servant has the right to four weeks of paid vacation per annum. Up until his or her 20th birthday, he or she has the right to take five weeks' paid holiday per annum. A private servant who has spent 20 years or more in his or her employer's service is entitled to five weeks' paid vacation per annum. A private servant who is aged 50 years or more and who has been in his or her employer's service for 5 years or more is also entitled to five weeks' paid vacation per annum.

As a general rule, vacations must be taken during the year of service in which they are granted; they must be of at least two consecutive weeks' duration and the balance may only be broken down in exceptional cases. All periods of annual vacation must be agreed between the private servant and his or her employer so as to fit in with the interests of the employer's household.

During his or her paid vacation, the private servant is entitled to allowances for food.

Any periods of vacation which the private servant spends with the employer do not count as vacation unless there is a written agreement to that effect signed by both parties.

6.44. *Public holidays*

A private servant has the right to the day off to observe nine public holidays per year.

In the Canton of Geneva these are as follows: 1 January, Good Friday, Easter Monday, Ascension Thursday, Whitmonday, 1 August (Swiss National Day), Geneva Fast Day, Christmas Day (25 December) and 31 December.

In the Canton of Vaud, the public holidays are as follows: 1 January, 2 January, Good Friday, Easter Monday, Ascension Thursday, Whitmonday, 1 August (Swiss National Day), Federal Fast Day, Christmas Day (25 December).

These public holidays may be altered by agreement signed by both parties, to take into account religious or national factors, but on no account may their number be less than nine days per annum.

Where a private servant is called upon to work during a public bank holiday or on a holiday agreed in writing, he or she must be compensated by a day off in lieu or by being paid at overtime rate.

6.5. *Board and lodging*

The private servant is entitled to a room of his or her own which meets health and safety requirements, which can be locked with a key, is well-lit, well-heated and ventilated and equipped with the necessary furniture (bed, table, chair, locking wardrobe), and access to suitable toilet and washing facilities. He or she has the right to wholesome food in sufficient quantities.

6.6. *Salary*

6.61. *Freedom of contract*

As a general rule, Swiss law provides that workers' remuneration is subject to freedom of contract. Thus, the amount of salary paid can be freely agreed between the parties provided that this is done in a written contract signed by both parties, and provided also that there is no obvious disproportion between the amount of work

proposed and the remuneration. Any such disproportion would constitute an excessive, unfair loss under the terms of paragraph 1, article 21, of the Swiss Code of Obligations,[3] and the salary clause could be declared flawed and invalid by a Swiss Court. This rule also applies to the private servants of international civil servants.

6.62. *Jurisprudence*

If either there is no written contract, or if the contract is declared flawed and invalid, the Court may order the employer to pay a different salary from that which he intended to pay or which he had paid, and which may vary from canton to canton depending on the place of residence.

In the canton of Geneva there are standard terms and conditions of contract for workers in domestic service. As at 1 January 1998, these provide for a monthly salary of SwF 2,290.–. The Industrial Tribunal of Geneva (*Tribunal des Prud'hommes*) has ruled that salary paid to a private servant of an international civil servant should be equivalent to 2/3 of the salary set under the standard terms and conditions of contract for workers in domestic service, namely SwF 1,526.– per month, because the private servant receives bed and board, and is exempt from Swiss taxes. However, this precedent does not take into account items for which the employer is liable under this Directive, for example: the obligation to take out sickness insurance, make social security payments, pay return air fare or fares, etc.

In the canton of Vaud, there is a standard contract for private household staff which does not set any minimum wage.

In the canton of Geneva, and in accordance with article 33, paragraph 1, of the Law on the Industrial Hearings Tribunal (*Tribunal des Prud'hommes*)[4] if the employer is not present or is not represented at the court hearing, the court will rule entirely in favour of the plaintiff (private servant), since the latter's claims will not have been refuted in any way by the defendant (employer). Other cantons may apply similar practices to such matters.

6.63. *Payment of salary*

Salary and any other allowances or benefits should be paid to the private servant at the end of every month; with each payment the employer should hand his employee a salary slip. A specimen salary slip is attached.

In the event of any dispute, it is incumbent on the employer to bring proof of payment of the amount due to the employee.

The DFAE recommend that salary and allowances be paid into a bank or postal account opened in the private servant's name in Switzerland.

6.7. *Unfitness for work*

6.71. *Unfitness for work*

If the private servant is prevented from working through no fault of his or her own for reasons that are inherently personal such as, in particular, illness, accident, pregnancy or confinement, the servant is entitled to continue to receive his or her salary for a limited period of time, as follows:

— For a period of three weeks, if the unfitness for work occurs during the first year of service;

— For a period of four weeks, if the unfitness for work occurs during the second year of service;

— For a period of nine weeks, if the unfitness for work occurs during the third or fourth year of service;

— For a period of 13 weeks, if the unfitness for work occurs after the fifth and up to the ninth year of service; and after the ninth year of service, for an appropriate period in proportion.

In the event of the private servant being unfit for work, the employer shall continue to pay his employee that portion of his or her salary relating to benefits in kind (board and lodging). The employer shall be liable for this until he has been discharged of the liability by the relevant authority.

6.72. *Pregnancy, confinement and delivery*

In the event of pregnancy, confinement and delivery, the private servant is entitled to her salary and her benefits in kind even if she has been prevented from working for reasons of ill-health or accident in the course of that year's service.

6.73. *Maternity leave*

A woman on maternity leave should not be expected to resume her duties for a period of eight weeks after the birth; at her request, however, the employer may curtail this period to six weeks provided that the private servant is certified medically fit to resume her duties by a doctor. During this period, the private servant is entitled to her salary and her benefits in kind as per paragraph 6.71 of this Directive.

6.8. *Temporary prohibition on termination of employment by the employer in certain circumstances*

6.81. *Temporary prohibition on termination of employment*

Under Swiss law, there is a period during which a temporary prohibition of termination of employment is placed on the employer, as follows:

— During total or partial unfitness for work resulting from ill-health or accident for which the private servant is not responsible for a period of 30 days in the course of the first year of service, 90 days from the second to the fifth year of service and 180 days from the sixth year of service onwards;

— During pregnancy and during the 16 weeks following confinement and delivery.

6.82. *Suspensive effect*

Any notice of termination of contract notified during one of the periods set out in paragraph 6.81 of this Directive is invalid and without effect. If notice of termination was given but had not expired before one of these periods of temporary prohibition, then the notice is suspended for the duration of the said period and only starts to run again after the end of the said period.

6.9. *Termination of employment*

Any employer or private servant who terminates employment must abide by the following conditions of termination:

6.91. *During the trial period*

Either party may terminate the contract with seven days' notice at any time during the trial period. The trial period is usually considered to be the first month of

employment. Different arrangements may be agreed in writing, but the trial period may not exceed three months.

6.92. *After the trial period*

Indefinite period contract of employment. Either party may terminate the contract with one month's notice, after the trial period. This period may be altered by written agreement, but a period of less than one month may not be agreed.

Fixed period contract of employment. In theory, this type of contract may not be terminated prior to the expiry date fixed in the contract, unless there is a written, signed agreement between the parties.

6.93. *End of employer's term of office*

Where the employer's term of office or duty in Switzerland comes to an end due to posting, recall or retirement, he may terminate the employment contract in writing in compliance with the notice periods set out at paragraphs 6.91 and 6.92 of this Directive.

6.94. *Form of notice of dismissal*

The employer must notify staff of dismissal in writing and give the reasons. The private servant must also give notice in writing. The employer is bound to inform the Swiss Mission of the termination of contract.

6.95. *Salary and allowances*

During the whole of the notice period, unless agreed otherwise with his or her employer, the private servant must continue to perform his or her duties. He or she is entitled to be paid all salary and allowances, even if it has been agreed that he or she should no longer perform his or her duties. The employer must also continue to honour his commitments (payment of insurance premiums, board, lodging, etc.), even if he is not in a position to accept work performed by the private servant or where the latter is unfit for work.

6.96. *End of employment*

The private servant must leave the territory of Switzerland at the end of his employment, unless he or she secures further employment with an employer authorized to hire servants under the legitimation card scheme, within one month from the end of his or her employment.

6.97. *Seeking new employment*

The employer shall allow the employee to take the necessary time to seek new employment during his or her working hours.

6.98. *Return travel costs*

If the private servant leaves Switzerland, the employer is bound to meet the travel costs of the employee returning to his or her country of origin at the end of his or her employment, whatever the circumstances of termination of the latter. He may not deduct this cost from the employee's salary.

The employer remains liable for this obligation so long as he has not been released therefrom by the relevant authority.

6.99. *Expiry of rights*

The private servant who holds a legitimation card may not claim any right to preferential treatment with regard to work, temporary or long-term residence, or with regard to prolonging his or her stay in Switzerland after cancellation of the legitimation card.

6.10. *Right to a legitimation card*

6.101. *Application for the legitimation card*

Upon arrival of the private servant in Switzerland or as soon as he or she is hired in Switzerland, the employer undertakes to make prompt application to the Swiss Mission for a legitimation card on behalf of the private servant (procedure: see paragraphs 4.3 and 5.3 of this Directive).

6.102. *Possession of the legitimation card*

The legitimation card is to be in the possession of the private servant throughout the whole of his or her stay in Switzerland.

6.103. *Surrender of the legitimation card*

Once the employment is terminated, for whatever reason, the employer is bound to inform the Swiss Mission promptly. The private servant must surrender his/her legitimation card to his former employer, who will forward it to the Swiss Mission. The employer may not recruit new staff until this formality has been completed.

7. *Change in civil status*

7.1. *Change in civil status*

The employer is bound to inform the Swiss Mission promptly of any change in civil status involving the private servant (marriage, birth, death, divorce). He must enclose a photocopy of the relevant certificate of entry in the civil registers with his correspondence.

7.2. *Marriage*

Where a private servant gets married in Switzerland or abroad, he or she no longer meets the conditions of entry and thus forfeits his or her right to a legitimation card on expiry of his or her current employment. The spouse of such private servant does not qualify for a legitimation card.

8. *Insurances*

8.1. *AVS/AI/APG/AC insurances*

8.11. *Compulsory affiliation to the Swiss State scheme*

Private servants are automatically affiliated in the Swiss social insurance schemes, namely *assurance-vieillesse et survivants*—Old-age and survivors' insurance (hereinafter called AVS), *assurance invalidité*—Disability insurance (hereinafter called AI), *allocations pour perte de gain*—Loss of earnings benefits scheme (hereinafter called APG) and *assurance-chômage*—Unemployment insurance (hereinafter called AC). These social insurances form a whole which is not divisible.

Contributions are paid half by the employer and half by the private servant. The employer is liable to pay the whole of the premiums due and deducts the servant's share from his or her salary.

The pensions and welfare benefits payment clearing house in the canton (hereinafter "payments agency") where the work is performed (employer's place of permanent residence) has jurisdiction for membership and cover.

8.12. *Exemption from affiliation*

Where the servant is affiliated in a scheme run by another State and where the employer is able to produce an original certificate of insurance for approval by the relevant payments agency, the private servant may be exempted from contributing to a Swiss scheme by the said authority.

8.13. *Contribution refund*

In the event of the private servant leaving Switzerland and where he or she is not a national of a country with which Switzerland has signed a convention on social security, the private servant will be repaid the total amounts (the employer's and the employee's share) he or she has paid in AVS contributions, after a qualifying period of one year. Where a convention has been signed, the private servant shall be entitled to a monthly pension payment on reaching retirement age, whatever his or her place of residence, provided that he or she has contributed to the AVS scheme for a minimum period of eleven (11) months.

8.2. *Professional provident fund*

Affiliation to a professional provident fund scheme is compulsory for all salary and wage earners subject to AVS/AI/APG/AC contributions, whose annual gross salary (in cash and in kind) is equal to or in excess of SwF 23,880.– or SwF 1,990.– per month (valid as at 1 January 1998). Private servants who fulfil these conditions are automatically affiliated in a Swiss provident fund scheme (hereinafter called "LPP") by their employer. The AVS payments agency in the canton where the employer has his place of permanent residence has jurisdiction for affiliation and cover. Contributions are paid, where appropriate, half by the employer and half by the employee. The employer is responsible for payment of the whole of the premiums, and deducts the servant's share from his or her salary.

In the event of the private servant leaving Switzerland for good, he or she shall be repaid the total amount of contributions paid into the old-age pension (the employer's share and the employee's share), except for those shares relating to death and disability.

8.3. *Sickness insurance*

8.31. *Compulsory affiliation*

Private servants in Switzerland are subject to compulsory affiliation under the sickness insurance scheme set in place by the Federal Law dated 18 March 1994 on sickness insurance (hereinafter "LAMal"). The employer assumes liability for this and pays the whole of the premiums.

8.32. *Exemption from affiliation*

Where the servant is affiliated in a scheme run by another State and where the employer is able to produce an original certificate of insurance for approval by the

relevant payments agency, the private servant may be exempted from Swiss compulsory sickness insurance by the said authority.

8.33. *Employer's liability*

Towards the Swiss authorities, the employer is liable for all medical expenses incurred throughout the duration of the employment in accordance with paragraph 3.3, and after the termination of employment for as long as he has not been released therefrom by the relevant authorities.

8.4. *Accident insurance*

8.41. *Compulsory insurance*

The employer must insure his private servant against accidents. Accident insurance covers work-related and personal accident and occupational diseases. Compulsory insurance premiums against work-related accidents and occupational diseases are the liability of the employer. Compulsory insurance premiums against personal accident are the liability of the private servant.

8.42. *Exemption from compulsory insurance*

The employer is not obliged to insure his or her private servant against accident if he or she is insured in another State.

8.43. *Employer's liability*

The employer is responsible for payment of the whole of the premiums for this compulsory insurance and deducts the private servant's share (the premium for personal accident insurance) from his or her salary.

Towards the Swiss authorities and in accordance with paragraph 3.3 of this Directive, the employer is liable for all medical costs incurred by the private servant throughout the whole of the duration of his or her employment, and remains liable after the contract of employment has been terminated for as long as he has not been discharged from this obligation by the relevant authorities.

8.5. *Loss of earnings insurance*

Insurance for loss of earnings (or optional sick-pay allowance insurance) in the event of the private servant being unfit for work is recommended with an insurance company or a sickness fund. In the event of unfitness for work due to ill-health, accident or confinement and delivery, the insurance pays a temporary daily allowance as stipulated in the insurance contract. It is possible to insure for part or the whole of the monthly salary or salary.

8.6. *Family allowances/child benefit*

A private servant who is subject to AVS/AI/APG/AC contributions and who has dependent infant or minor children is entitled to family allowances. These are fixed in accordance with the age(s) of any child(ren).

The law of Geneva provides that neither the employer nor the private servant has to make any contribution in order to receive family allowances. This is a free state benefit.

The law of the canton of Vaud provides that the employer should pay a contribution calculated as a percentage on payroll. This contribution is due even if the

private servant does not qualify for family allowance. It is a mutual fund. The Vaud payments agency has jurisdiction for membership and cover.

9. *Information for the private servant*

The private servant must present him- or herself in person at the offices of the Swiss Mission in order to receive his or her legitimation card and a copy of this Directive.

The employer must inform his private servant of all communications from the Swiss authorities which could affect his or her status or which could concern him or her.

10. *Employer's privileges and immunities*

Signature of an employment contract by the employer does not signify or entail any waiver by him of his privileges and immunities.

11. *Tax privileges for the private servant*

11.1. *Tax privileges*

A private servant who holds a legitimation card is exempt from paying Swiss income tax or duty on salary or salary received for work performed in the course of his or her job.

11.2. *Privileges and immunities*

The private servant is not entitled to any privilege or immunity.

12. *Non-compliance with this Directive*

In the event that the provisions of this Directive are not complied with, the Swiss authorities reserve the right to apply the pertinent legislation and in particular the provisions of the Vienna Convention on Diplomatic Relations dated 18 April 1961.

13. *Final provisions*

The amounts and figures set out in this Directive are valid and apply at the time of entry into force of the Directive. They are subject to revision from time to time by the employer in accordance with periodical information provided by the Swiss Mission.

This Directive replaces Swiss Mission Directive OI 3, OI 4 and OI 6 dated 1 April 1987 and official circulars from the Swiss Mission No. OI 5 dated 30 August 1995, and No. OI 11 dated 8 February 1996.

14. *Transitional provisions*

14.1. *Coming into force*

This Directive comes into force on 1 May 1998.

14.2. *Pre-existing employment agreements*

Private servants who were hired prior to 1 May 1998 are subject to the provisions of this Directive with effect from this date. Conditions relating to salary, work, insurance, etc., must be brought into line with this new scheme within a period of three months from entry into force, that is to say, before 1 August 1998. However, salary and employment conditions which are more advantageous than those provided under this Directive are exempt from any modification.

14.3. *Private servants who hold type "E" legitimation card*

A private servant who was hired prior to 1 May 1998 and who holds a type "E" legitimation card may retain his or her legitimation card provided he or she remains in the same employer's service. In the event of a change of employer, the private servant will be automatically entitled to a type "F" legitimation card, provided he or she meets the conditions laid down by this Directive.

If the private servant meets the conditions laid down by this Directive, he or she may exchange the type "E" legitimation card for a type "F" legitimation card.

NOTES

[1] Entered into force on 1 May 1998.

[2] List of international organizations concerned (as of 1 January 1998): Bank for International Settlements, European Free Trade Association, European Organization for Nuclear Research (CERN), ILO, Information Technology Review Board (ECE), Interfaculty Institute of Central and East Europe (IEO/UNESCO), International Civil Defence Organization, International Committee of the Red Cross, International Federation of Red Cross and Red Crescent Societies, International Textiles and Clothing Bureau, International University in Geneva, IOM, ITU, Organization for Security and Cooperation in Europe, South Centre, Union for the Protection of New Varieties of Plants, United Nations Office at Geneva, UPU, WHO, WMO and WTO.

[3] Article 21, paragraph 1, of the Swiss Code of Obligations: "In the event of any obvious disproportion between the services promised by one party and the payment promised in consideration therefor by the other party, the injured party may, within one year, declare the contract terminated and claim restitution of what he has paid, if it is determined that the loss was due to his financial difficulties, irresponsibility or inexperience."

[4] Article 33, paragraph 1, of the Law on the Industrial Hearings Tribunal of Geneva: "If the defendant fails to attend the hearing despite having been duly summoned to appear, and does not justify his absence, the court will rule in the defendant's absence and in the plaintiff's favour, except where the court does not have jurisdiction or if the plaintiff's claims are not based on the facts set out or the evidence produced."

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 States acceded to the Convention in 1998:[2]

State	*Date of receipt of instrument of accession*
Kazakhstan	26 August 1998
Portugal	14 October 1998
Venezuela	21 December 1998

As at 31 December 1998, there were 140 States parties to the Convention.[3]

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2. AGREEMENTS RELATING TO INSTALLATIONS AND MEETINGS

(*a*) Exchange of letters constituting an agreement between the United Nations and the Government of Nepal concerning the tenth United Nations Meeting on Peace and Disarmament in the Asia-Pacific Region, entitled "The 10th Anniversary of the Kathmandu Process", to be held in Kathmandu from 22 to 24 February 1981.[4] New York, 26 and 28 January 1998.

I

LETTER FROM THE UNITED NATIONS

26 January 1998

Dear Mr. Ambassador,

As you are aware, the United Nations Department for Disarmament Affairs, through its Regional Centre for Peace and Disarmament in Asia and the Pacific

located in Kathmandu, is organizing the tenth United Nations Meeting on Peace and Disarmament in the Asia-Pacific Region, entitled "The 10th Anniversary of the Kathmandu Process". The meeting will take place from 22 to 24 February 1998 in Kathmandu.

Some 40 participants have been invited to the Meeting, most of whom are from the Asia-Pacific region. Five staff members of the Department for Disarmament Affairs will attend.

I would like to propose that the following terms apply to the Meeting:

(*a*) The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the Meeting. The participants invited under 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;

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

(*c*) Personnel provided by the Government, if any, 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;

(*d*) All participants and all persons performing functions in connection with the Meeting shall have the right of unimpeded entry into and exit from Nepal. Visas and entry permits, where required, shall be granted as speedily as possible and free of charge;

(*e*) 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 persons, or damage to or loss of property in the premises provided for the Meeting; (ii) the employment for the Meeting of personnel provided or arranged by your Government. Your Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand;

(*f*) Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations or of any other applicable agreement, shall, unless the Parties otherwise agree, be submitted to a tribunal of three arbitrators, one of whom shall be appointed by the Secretary-General of the United Nations, one by the Government, and the third, who shall be the chairman, by the other two arbitrators. If either Party does not appoint an arbitrator within three months of the other Party having notified the name of its arbitrator or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them appoint the chairman, then such arbitrator shall be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the Parties, the tribunal shall adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the Parties and take all decisions by a two-thirds majority. Its decisions on all questions of procedure and substance shall be final and, even if rendered in default of one of the Parties, be binding on both of them.

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 Nepal for the Meeting.

(*Signed*) Jayantha DHANAPALA
Under-Secretary-General for Disarmament Affairs

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF NEPAL TO THE UNITED NATIONS

28 January 1998

Excellency,

I have the honour to acknowledge the receipt of your letter dated 26 January 1998, which reads as follows:

> "As you are aware, the United Nations Department for Disarmament Affairs, through its Regional Centre for Peace and Disarmament in Asia and the Pacific located in Kathmandu, is organizing the tenth United Nations Meeting on Peace and Disarmament in the Asia-Pacific Region, entitled 'The 10th Anniversary of the Kathmandu Process'. The meeting will take place from 22 to 24 February 1998 in Kathmandu.
>
> "Some 40 participants have been invited to the Meeting, most of whom are from the Asia-Pacific region. Five staff members of the Department for Disarmament Affairs will attend.
>
> "I would like to propose that the following terms apply to the Meeting:"

[See letter I]

On behalf of His Majesty's Government of Nepal, I have the honour to accept the proposal.

(*Signed*) Narendra BIKRAM SHAH

(*b*) Exchange of letters constituting an agreement between the United Nations and the Government of Norway concerning arrangements regarding the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context, of the Economic Commission for Europe, to be held in Oslo from 18 to 20 May 1998.[5] Geneva, 4 February and 7 April 1998

I

LETTER FROM THE UNITED NATIONS

4 February 1998

Sir,

I have the honour to give you below the text of arrangements between the United Nations and the Government of Norway (hereinafter referred to as "the Government") in connection with the Meeting of the Parties to the Convention on

Environmental Impact Assessment in a Transboundary Context, of the Economic Commission for Europe, to be held, at the invitation of the Government, in Oslo from 18 to 20 May 1998.

"Arrangements between the United Nations and the Government of Norway regarding the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context, of the Economic Commission for Europe, to be held in Oslo from 18 to 20 May 1998

"1. Participants in the Meeting will be invited by the Executive Secretary of the United Nations Economic Commission for Europe in accordance with the rules of procedure of the Commission and its subsidiary organs.

"2. In accordance with United Nations General Assembly resolution 47/202, Part A, paragraph 17, adopted by the General Assembly on 22 December 1992, the Government will assume responsibility for any supplementary expenses arising directly or indirectly from the Meeting, namely :

(*a*) To supply to the United Nations staff members who are to be brought to Oslo air tickets, economy class, Geneva-Oslo-Geneva, to be used on the airlines that cover this itinerary;

(*b*) To supply vouchers for air freight and excess baggage for documents and records; and

(*c*) To pay to the staff members, on their arrival in Norway, according to United Nations rules and regulations, a subsistence allowance in local currency at the Organization's official daily rate applicable at the time of the Meeting, together with terminal expenses up to 108 United States dollars per traveller, in convertible currency, provided that the traveller submits proof of having incurred such expenses.

"3. The Government will provide for the Meeting adequate facilities, including personnel resources, space and office supplies as described in the attached annex.

"4. The 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 Meeting; (ii) the transportation provided 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 resulting from the performance of the services rendered under this Agreement, except where it is agreed by the Secretary-General of the United Nations and the Government that such claims arise from gross negligence or wilful misconduct of such persons.

"5. The Convention of 13 February 1946 on the Privileges and Immunities of the United Nations, to which Norway is a party, shall be applicable to the Meeting, 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 Meeting 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 Meeting shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Meeting;

(*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 Meeting;

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

"6. The rooms, offices and related localities and facilities put at the disposal of the Meeting 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.

"7. The Government shall notify the local authorities of the convening of the Meeting and request appropriate protection.

"8. Any dispute concerning the interpretation or implementation of these arrangements, except for a dispute subject to the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations or of any other applicable agreement, will, unless the parties agree otherwise, be submitted to a tribunal of three arbitrators, one of whom will be appointed by the Secretary-General of the United Nations, one by the Government and the third, who will be the Chairman, by the other two arbitrators. If either party does not appoint an arbitrator within three months of the other party having notified the name of its arbitrator or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them, appoint the Chairman, then such arbitrator will be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the parties, the tribunal will adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the parties, and take all decisions by a two-thirds majority. Its decisions on all questions of procedure and substance will be final and, even if rendered in default of one of the parties, be binding on both of them."

*
* *

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 Norway which shall enter into force on the date of your reply and shall remain in force for the duration of the Meeting and for such additional period as is necessary for its preparation and winding up.

(*Signed*) Vladimir PETROVSKY
Director-General
United Nations Office at Geneva

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF NORWAY IN GENEVA

7 April 1998

Sir,

I have the honour to refer to your letter of 4 February 1998 regarding the text of arrangements between the United Nations and the Government of Norway in connection with the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context, of the Economic Commission for Europe, to be held in Oslo from 18 to 20 May 1998.

The Ministry of Environment in Oslo has been in direct contact with the Secretariat of the Convention concerning the interpretation of some of the elements in the above-mentioned text. I understand that this relates in particular to the annex and to paragraphs I and III therein. On the paragraph on space facilities, my Government is of the view that the office facilities are taken care of through an arrangement where the Chairman/Vice-Chairman and the ECE Secretariat have a common office. Further on, my Government interprets the paragraph on local personnel so that the personnel must speak at least *one* of those three languages that are listed.

Based on the understanding stated in the above paragraph, I am pleased to inform you that the Norwegian Government can accept the text and that your letter of 4 February 1998 and this letter shall constitute an agreement between the United Nations and the Government of Norway which shall enter into force as from the date of this letter.

(*Signed*) Bjorn SKOGMO
Ambassador, Permanent Representative

(*c*) Exchange of letters constituting an agreement between the United Nations and the Government of the Netherlands concerning the in-kind donation of a functional main courtroom for the International Tribunal for the Former Yugoslavia. The Netherlands, 18 February 1998[6]

I

LETTER FROM THE MINISTRY OF FOREIGN AFFAIRS OF THE NETHERLANDS

18 February 1998

I have the honour to refer to the discussions which have been held recently between representatives of this Ministry, the Department of State of the United States of America and the United Nations International Tribunal for the Former Yugoslavia ("Tribunal"), on the immediate requirement for additional courtroom facilities for the Tribunal and the intention of the Governments of the Netherlands and the United States to offer to the Tribunal as an in-kind donation a functional main courtroom.

It is my understanding that these discussions have led to the following conclusions:

(*a*) The Governments of the Netherlands and the United States will jointly donate in kind a functional main courtroom to the Tribunal.

(*b*) To this end the Government of the Netherlands will make available the amount of f. 3.3 million and the Government of the United States the amount of US$ 1 million. Moreover the Government of Canada has indicated its willingness to make available Can$ 200,000, which may also be used for this project in the event the above-mentioned funds are not sufficient for the completion of the courtroom.

(*c*) The Government of the Netherlands will construct and equip such a courtroom.

(*d*) The Tribunal is prepared to accept the offer of an in-kind donation of a fully functioning main courtroom from the Governments of the Netherlands and the United States of America.

(*e*) Under the terms of its lease, the Tribunal may construct internal improvements to its premises, be it that the owner may require the premises to be returned by the Tribunal in its original condition. Nonetheless, the owner of the premises of the Tribunal has been informed of the forthcoming construction of a second main courtroom and has made no objections to it.

In the light of the above and subject to the necessary construction permits being granted by the municipality of The Hague, the Government of the Netherlands hereby offers to the Tribunal as an in-kind donation, to construct a functional courtroom, including architectural services, engineering, construction services, equipment, materials, labour and other means necessary to construct such a courtroom and in accordance with the following provisions:

1. The courtroom shall be designed, constructed and equipped by the Netherlands Government in accordance with the specifications set forth in annex A1 and A2.

2. The specifications in annex A1 and A2 have been jointly developed by representations of the Netherlands Government and of the Tribunal. The specifications have been agreed upon as meeting the requirements of the Tribunal, and are therefore final. No further changes will be made to the specifications other than as a consequence of unforeseen technical construction requirements. Such changes to the specifications will be made by mutual consent between the Netherlands Government and the Tribunal. However, the total costs of the construction shall never exceed the available financial resources specified in subparagraph (*b*) above.

3. In order to facilitate the consultative process mentioned in paragraph 2, and to supervise the actual construction activities, a technical advisory committee will be set up, consisting of two representatives of the Netherlands Government and two representatives of the Tribunal.

4. For the construction of the courtroom, the Netherlands Government or a party designated by it will enter into a construction contract with a commercial building contractor to complete the construction elements set forth in the specifications and into contracts with other vendors for the purchase of materials, equipment and services in accordance with the specifications. Any such contracts with third parties will incorporate the relevant provisions in this letter with regard to the rights and responsibilities of the Government of the Netherlands and the Tribunal.

5. The Government of the Netherlands will endeavour to complete the construction of the courtroom by 7 June of this year.

6. Upon the date of completion of the construction of the courtroom in accordance with the specifications, the courtroom will form an integral part of the premises of the Tribunal and the Tribunal will have full control over the use of the

courtroom. All equipment and other movable parts of the courtroom will be the property of the Tribunal.

7. The Netherlands Government will ensure that all contracts which it has entered into for the construction and equipping of the courtroom shall include warranties no less favourable than those customarily given by first-rate contractors in the Netherlands. Upon the date of completion of the construction of the courtroom, the Netherlands will assign and transfer in writing to the Tribunal all contractual rights, warranties and claims which it may have under any contracts, warranties and agreements it has entered into with any other party for the construction of the courtroom, as well as for all equipment provided for in the specifications. The Netherlands will, to the fullest extent possible, provide in all contracts relating to the courtroom that the rights and warranties thereunder will be assigned to the Tribunal upon the completion date of the construction of the courtroom and that the contractor shall expressly consent to such assignments.

8. The Tribunal will be entitled to all intellectual property and other proprietary rights, including but not limited to patents, copyrights and trademarks, with regard to drawings, documents and other materials, including those in electronic form, which bear a direct relation to or are prepared or collected in consequence of the construction of the second main courtroom, except documents or materials or portions thereof, in which the Netherlands or any of its designees/contractors had proprietary rights prior to this exchange of letters or prior to the date of contracts entered into by the Netherlands and its designees/contractors for the implementation of this exchange of letters.

9. The Netherlands Government will ensure that all its contractors, including particularly its architect, construction contractor and equipment vendors, and designees which engage in activities relating to the courtroom shall be adequately insured (to the standard of the best practices in the Netherlands) to cover for all risks and liability which may arise as a result of the activities related to the construction and equipping of the courtroom. Such insurance includes coverage for errors and omissions, for professional liability, for workers' compensation (or the equivalent thereof), for damage to the Tribunal's premises and injuries to its staff and for injuries to third parties and their property which arise out of the activities related to the construction and equipping of the courtroom.

10. The Netherlands Government will ensure that all contracts it enters into with construction contractors and other vendors will contain provision for the insurance and liability coverage specified in paragraph 9 and include the Tribunal and the United Nations as additional insured.

11. The Netherlands Government acknowledges the strict security requirements which the Tribunal must maintain on its premises. It undertakes to ensure that the Tribunal's rules and procedures relating to security are reflected in any contracts or arrangements in which it or its designees may enter into with any third party including, wherever possible, incorporation of the Tribunal's standard contractual language regarding security, as set forth in annex B,[6] in such contracts. The Tribunal will endeavour to ensure that its security requirements will not result in undue delay in the completion of the courtroom.

12. The Netherlands Government further undertakes to ensure that, wherever possible, the provisions of the relevant standard United Nations terms and conditions of contract, as set forth in annex C,[6] are incorporated in all contracts and arrangements with third parties relating to the courtroom, to the benefit of the Tribunal.

13. Any dispute, controversy or claim arising out of or relating to this exchange of letters shall be settled by negotiation, or by a mutually agreed mode of settlement.

In view of the conclusions mentioned under subparagraphs (*a*) to (*d*) above, I would appreciate receiving your confirmation that the Tribunal accepts the offer of the Government of the Netherlands to construct a second main courtroom in accordance with the provisions set out above.

(*Signed*) Tjaco T. VAN DEN HOUT
Deputy Secretary-General
Ministry of Foreign Affairs

II

LETTER FROM THE UNITED NATIONS

18 February 1998

Dear Mr. van den Hout,

I was honoured to receive your letter of 18 February 1998, in which you conveyed the offer of the Netherlands Government to construct, as an in-kind donation, a functional main courtroom for the International Tribunal for the Former Yugoslavia.

I have the honour to confirm that your letter fully reflects the understandings of the International Tribunal on this matter. Accordingly, it is with much pleasure that I can confirm that the International Tribunal for the Former Yugoslavia accepts the offer of the Netherlands Government in accordance with the provisions set out in your letter.

(*Signed*) Dorothee DE SAMPAYO GARRIDO-NIJGH
Registrar

(*d*) Exchange of letters constituting an agreement between the United Nations and the Government of Belgium concerning the arrangements for the Conference in Support of the Fundamental Rights of the Palestinian People, to be held in Brussels from 24 to 26 February 1998. New York, 20 February 1998 [7]

I

LETTER FROM THE UNITED NATIONS

20 February 1998

Excellency,

I have the honour to refer to General Assembly resolution 51/24 on the "Question of Palestine" adopted on 4 December 1996, in particular to paragraph 2 thereof, by which the Assembly requested the Secretary-General to ensure that the Division for Palestinian Rights of the Secretariat continued to discharge the tasks detailed in previous resolutions, in consultation with the Committee on the Exercise of the Inalienable Rights of the Palestinian People and under its guidance. Accordingly, the

Committee included the organization of international meetings, regional seminars and symposia in its programme of work.

The Committee has received with appreciation the acceptance of Your Excellency's Government to the holding in Brussels from 24 to 26 February 1998 of the Conference in Support of the Fundamental Rights of the Palestinian People, organized by the Committee in cooperation with the Organization of the Islamic Conference and the League of Arab States. The number of persons who will participate in the Conference is expected to be about 200 and they will include representatives of States, including members of the Committee on the Exercise of the Inalienable Rights of the Palestinian People and observers on that Committee, eminent personalities, parliamentarians, representatives of interested intergovernmental organizations, individuals drawn from the academic community and others interested in the question of Palestine, as well as representatives of non-governmental organizations.

All practical arrangements for the Conference will be the responsibility of the United Nations.

With the present letter, I have the honour to propose to your Government that the following terms should apply to the Conference:

(*a*) 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 Conference. The representatives of States invited by the United Nations to participate in the Conference 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 and all other 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 Conference shall enjoy the privileges and immunities provided under articles V and VII of the Convention. Officials of the specialized agencies participating in the Conference 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;

(*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 United Nations officials performing functions in connection with the Conference shall have the right of unimpeded entry into and exit from Belgium. Visas and entry permits, where required, shall be granted as speedily as possible upon application and free of charge for holders of diplomatic, service and special passports and valid travel documents;

(*e*) The Government of Belgium 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 or loss of property in conference or office premises provided for the Conference;

(ii) The transportation, if provided by the Government of Belgium; and

(iii) The employment for the Conference of personnel, if provided or arranged by the Government of Belgium.

(*f*) The Government of Belgium shall indemnify and hold harmless the United Nations and its officials in respect of any such action, claim or other demand except when such injury or damage was caused by gross negligence or wilful misconduct of United Nations personnel.

(*g*) Any dispute between the Government of Belgium and the United Nations concerning the interpretation or application of the Agreement which is not settled by negotiation shall be resolved in accordance with the provisions of article VIII, section 30, of the Convention on the Privileges and Immunities of the United Nations.

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 Belgium and the United Nations concerning the arrangements for the Conference.

(*Signed*) Kieran PRENDERGAST
Under-Secretary-General for Political Affairs

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF BELGIUM TO THE UNITED NATIONS

20 February 1998

Mr. Under-Secretary-General,

I have the honour to refer to your letter dated 20 February 1998, which reads as follows:

[See letter I]

I have the honour to inform you that my Government accepts the proposal contained in your letter dated 20 February 1998 and that your letter and the present letter in reply from my Government, shall constitute an agreement between the Government of Belgium and the United Nations concerning the arrangements for the Conference.

In that respect, I would like to recall the requirements concerning the application of privileges and immunities of a fiscal nature as set out in the attached annex.

Please accept, Mr. Under-Secretary-General, the assurances of my highest consideration.

(*Signed*) Alex REYN
Ambassador
Permanent Representative of Belgium
to the United Nations

(*e*) Special agreement between the United Nations and the International Tribunal for the Law of the Sea extending the jurisdiction of the United Nations Administrative Tribunal to the International Tribunal for the Law of the Sea, with respect to applications by staff members of the International Tribunal for the Law of the Sea alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund. Signed at Hamburg on 18 February 1998 and at New York on 25 February 1998[8]

Whereas, in accordance with article 3 of the Regulations of the United Nations Joint Staff Pension Fund (hereinafter referred to as "the Pension Fund"), the General Assembly of the United Nations, upon the recommendation of the United Nations Joint Staff Pension Board; and after acceptance by the International Tribunal for the Law of the Sea (hereinafter referred to as "the International Tribunal") of the Regulations of the Pension Fund and agreement reached with the Board as to the conditions governing the admission of the International Tribunal to membership in the Pension Fund, by its resolution 51/217 of 18 December 1996 decided to admit the International Tribunal to membership in the Pension Fund, as from 1 January 1997;

Whereas, by its resolution 678 (VII) of 21 December 1952, the General Assembly of the United Nations recommended that the specialized agencies which are member organizations of the Pension Fund accept the jurisdiction of the United Nations Administrative Tribunal (hereinafter referred to as "the Administrative Tribunal") in matters involving applications alleging non-observance of the Regulations of the Pension Fund;

Whereas, it is desirable that other member organizations of the Pension Fund also accept the jurisdiction of the Administrative Tribunal in such matters;

Whereas, the States Parties to the United Nations Convention on the Law of the Sea, by a decision taken at their Fourth Meeting held from 4 to 8 March 1996, authorized the acceptance by the International Tribunal of the jurisdiction of the Administrative Tribunal in the matters referred to above, and thereafter the International Tribunal endorsed this decision;

Whereas, the United Nations Joint Staff Pension Board, at its session held in April 1953, recorded its understanding that for matters involving the Regulations of the Pension Fund, full faith, credit and respect shall be given to the proceedings, decisions and jurisprudence of the Administrative Tribunal, if any, of the agency concerned relating to the staff regulations of that agency, as well as to the established procedures for the interpretation of such staff regulations;

Now, therefore, it is agreed as follows:

Article I

1. The Administrative Tribunal shall be competent to hear and pass judgement, in accordance with the applicable provisions of its Statute and its Rules, upon applications alleging non-observance of the Regulations of the Pension Fund presented by:

(*a*) Any staff member of the International Tribunal, eligible under article 21 of the Regulations to become a participant in the Fund, even after his or her employment has ceased, and any person who has succeeded to such staff member's rights on his or her death;

(*b*) Any other person who can show that he or she is entitled to rights under the Regulations of the Pension Fund by virtue of the participation in the Fund of a staff member of the International Tribunal.

2. In the event of a dispute as to whether the Administrative Tribunal has competence, the matter shall be settled by the decision of that Tribunal.

Article II

The judgements of the Administrative Tribunal shall be final and without appeal and the International Tribunal agrees, insofar as it is affected by any such judgement, to give full effect to its terms.

Article III

1. The administrative arrangements necessary for the functioning of the Administrative Tribunal with respect to cases arising under this Agreement shall be made by the Secretary-General of the United Nations in consultation with the Registrar of the International Tribunal.

2. The additional expenses which may be incurred by the United Nations in connection with the proceedings of the Administrative Tribunal relating to cases arising under this Agreement shall be borne by the Pension Fund. These additional expenses shall include:

(*a*) Any travel and subsistence expenses of the members of the Administrative Tribunal and its staff when such expenses are specially required for dealing with cases under this Agreement and are in excess of those required by that Tribunal for dealing with cases relating to staff members of the United Nations;

(*b*) Any wages of temporary staff, cables, telephone communications and other "out-of-pocket" expenses when such expenses are specially required for dealing with cases under this Agreement.

Article IV

This Agreement, of which the English and French texts are equally authentic, has been duly signed in duplicate in each of these languages, at the sites and on the dates appearing under the respective signatures, and shall enter into force as from 1 January 1997.

For the International Tribunal for the Law of the Sea:	*For the United Nations:*
18 February 1998	25 February 1998
[*Signature*]	[*Signature*]
G. E. CHITTY	Joseph E. CONNOR
At Hamburg	At New York

(*f*) Memorandum of Understanding on cooperation between the United Nations and the Government of Iraq. Signed at Baghdad on 23 February 1998[9]

1. The Government of Iraq reconfirms its acceptance of all relevant resolutions of the Security Council, including resolutions 687 (1991) and 715 (1991). The Government of Iraq further reiterates its undertaking to cooperate fully with the United Nations Special Commission (UNSCOM) and the International Atomic Energy Agency (IAEA).

2. The United Nations reiterates the commitment of all Member States to respect the sovereignty and territorial integrity of Iraq.

3. The Government of Iraq undertakes to accord to UNSCOM and IAEA immediate, unconditional and unrestricted access in conformity with the resolutions referred to in paragraph 1. In the performance of its mandate under the Security Council resolutions, UNSCOM undertakes to respect the legitimate concerns of Iraq relating to national security, sovereignty and dignity.

4. The United Nations and the Government of Iraq agree that the following special procedures shall apply to the initial and subsequent entries for the performance of the tasks mandated at the eight presidential sites in Iraq as defined in the annex to the present Memorandum:

(*a*) A Special Group shall be established for this purpose by the Secretary-General in consultation with the Executive Chairman of UNSCOM and the Director General of IAEA. This Group shall comprise senior diplomats appointed by the Secretary-General and experts drawn from UNSCOM and IAEA. The Group shall be headed by a Commissioner appointed by the Secretary-General;

(*b*) In carrying out its work, the Special Group shall operate under the established procedures of UNSCOM and IAEA, and specific detailed procedures which will be developed given the special nature of the presidential sites, in accordance with the relevant resolutions of the Security Council;

(*c*) The report of the Special Group on its activities and findings shall be submitted by the Executive Chairman of UNSCOM to the Security Council through the Secretary-General.

5. The United Nations and the Government of Iraq further agree that all other areas, facilities, equipment, records and means of transportation shall be subject to UNSCOM procedures hitherto established.

6. Noting the progress achieved by UNSCOM in various disarmament areas, and the need to intensify efforts in order to complete its mandate, the United Nations and the Government of Iraq agree to improve cooperation, and efficiency, effectiveness and transparency of work, so as to enable UNSCOM to report to the Security Council expeditiously under paragraph 22 of resolution 687 (1991). To achieve this goal, the Government of Iraq and UNSCOM will implement the recommendations directed at them as contained in the report of the emergency session of UNSCOM held on 21 November 1997.

7. The lifting of sanctions is obviously of paramount importance to the people and Government of Iraq and the Secretary-General undertook to bring this matter to the full attention of the members of the Security Council.

SIGNED this 23rd day of February 1998 in Baghdad in two originals in English.

For the United Nations:

(*Signed*) Kofi A. ANNAN
Secretary-General

For the Republic of Iraq:

(*Signed*) Tariq AZIZ
Deputy Prime Minister

(*g*) Agreement between the United Nations (United Nations Centre for Human Settlements (Habitat)) and the Government of the Federative Republic of Brazil concerning the operation in Brazil of the Habitat Regional Office for Latin America and the Caribbean. Signed at Brasília on 10 March 1998[10]

Whereas, the Commission on Human Settlements at its fifteenth session, held at the United Nations Centre for Human Settlements (UNCHS) (Habitat) headquarters in Nairobi, Kenya, in May 1995, adopted resolution 15/7, which urged the Executive Director to hasten steps towards the establishment of the UNCHS (Habitat) Regional Office for the Latin American and Caribbean region;

Whereas, at the same fifteenth session of the Commission, the delegation of Brazil officially submitted an offer, through the contribution of the Municipality of Rio de Janeiro, to host the proposed Habitat Regional Office for Latin America and the Caribbean;

Whereas, UNCHS (Habitat), having reviewed all offers received from Governments of the region, officially announced, during the third session of the Preparatory Committee for the Habitat II Conference, held in New York in February 1996, that a choice was made in favour of the offer of the Government of Brazil to locate the said office in Rio de Janeiro;

Now therefore, the Government of the Federative Republic of Brazil (hereinafter referred to as the "Government") and the United Nations Centre for Human Settlements (Habitat) (hereinafter referred to as "Habitat") hereby agree as follows:

Article I

1. The Habitat Regional Office for Latin America and the Caribbean shall be established in Rio de Janeiro under the terms and conditions contained in the offer from the Mayor of Rio de Janeiro to the Assistant Secretary-General of UNCHS (Habitat), dated 14 August 1995, detailing that Municipality's financial and in-kind contribution which is further reflected in the Project Document "BRA/96/014—Strengthening Cooperation in Latin America and the Caribbean in the Field of Human Settlements", signed on the occasion of the Habitat II Conference, on 2 June 1996.

2. The Office shall be recognized as representing an organization of the United Nations, and therefore as an integral part of the United Nations.

Article II

IMMUNITY FROM LEGAL PROCESS

1. The Government recognizes the immunity from legal process of the Habitat Regional Office for Latin America and the Caribbean, which shall be under the control and administration of UNCHS/Habitat-Nairobi, as provided in this Agreement.

2. The Habitat Regional Office for Latin America and the Caribbean shall be inviolable.

3. Without prejudice to the provisions of article VII, UNCHS/Habitat undertakes not to permit its Office for Latin America and the Caribbean to be used as a refuge for persons who are attempting to avoid arrest under any law of Brazil, or

who are required by the Government, or are endeavouring to avoid service of legal process or a judicial proceeding.

Article III

COMMUNICATIONS

1. The Habitat Regional Office for Latin America and the Caribbean shall enjoy, in respect of its official communications, treatment not less favourable than that accorded by the Government to any other Government or international organization, including foreign diplomatic missions in Brazil. The Office and its internationally recruited personnel shall be included in the Diplomatic List.

2. The Habitat Regional Office for Latin America and the Caribbean shall be entitled, for its official purposes, to use transport facilities on the same terms as may have been granted to resident diplomatic missions.

3. No censorship shall be applied to the Habitat Regional Office for Latin America and the Caribbean official correspondence or other communications. Such immunity shall extend to printed matter, photographs, slides, films and sound recordings, this list being subject to amplification. UNCHS/Habitat shall have the right to use codes and to dispatch and receive correspondence either by courier or in sealed pouches, which shall have the same immunities and privileges as diplomatic couriers and pouches. No provision in this paragraph shall be construed as precluding the adoption of appropriate security measures, to be determined by agreement between the Government and UNCHS/Habitat.

Article IV

UNCHS/HABITAT PROPERTY AND TAXATION

1. UNCHS/Habitat and its property, wherever located and by whomsoever held, shall enjoy immunity from legal process except in as far as UNCHS/Habitat may have expressly waived its immunity in specific cases.

2. The property and assets of UNCHS/Habitat, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of interference, whether by executive, administrative, juridical or legislative action.

3. The archives of the Habitat Regional Office for Latin America and the Caribbean and, in general, all documents belonging to or held by UNCHS/Habitat shall be inviolable.

4. The assets, income and other property of UNCHS/Habitat shall be exempt:

(*a*) From any form of direct taxation; it is understood, however, that UNCHS/Habitat will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(*b*) From custom duties and from prohibitions and restrictions on imports in respect of articles imported or exported by UNCHS/Habitat for its official use, on the understanding, however, that articles imported under such exemption shall not be sold within the country except under conditions agreed between the Government and UNCHS/Habitat;

(*c*) From custom duties, other levies and other prohibitions and restrictions in respect of the import, sale and export of its publications.

Article V

FINANCIAL AND EXCHANGE FACILITIES

1. UNCHS/Habitat shall not be subject to any financial controls, regulations or moratoria and shall be fully entitled:

(*a*) To purchase from authorized commercial agencies, hold and make use of negotiable currencies; to operate foreign currency accounts; and to purchase through authorized institutions, hold and use of funds and securities;

(*b*) To transfer funds, securities and foreign currencies to or from Brazil from or to any other country, or within Brazil itself.

2. In exercising its rights under this article, UNCHS/Habitat shall pay due regard to any representations made by the Government, and shall give effect to such representation so far as this is possible without detriment to the interests of UNCHS/Habitat.

Article VI

TRANSIT AND RESIDENCE

1. The competent authorities shall not impede the transit to or from the Habitat Regional Office for Latin America and the Caribbean of the following persons:

(*a*) Officials of UNCHS/Habitat and their families;

(*b*) Persons, other than officials of the Habitat Regional Office for Latin America and the Caribbean and their spouses, invited on official business to the Office;

(*c*) Other persons invited to the Habitat Regional Office for Latin America and the Caribbean on official business, on secondment from Governments or institutions associated with the Office's work.

2. The Director of the Habitat Regional Office for Latin America and the Caribbean shall communicate to the Government the names of the persons mentioned in paragraph 1 of this Article prior to their missions.

3. This article does not imply exemption from the obligation to produce evidence to establish that persons claiming the rights granted under this article are included in the categories specified in paragraph 1, nor from the application of quarantine and health regulations.

Article VII

UNCHS/HABITAT OFFICIALS

1. The Government shall accord to the permanent senior officials of UNCHS/Habitat, recognized as such by the Ministry of External Relations, to the extent permitted under the laws of Brazil, the immunities and privileges specified in Article 105, paragraph 2, of the Charter of the United Nations.

2. The said officials shall enjoy exemption from the payment of customs duties on imports in respect of articles imported for their official or personal use.

3. Within the territory of Brazil, the internationally recruited UNCHS/Habitat officials shall enjoy the following privileges and immunities:

(*a*) Immunity from personal arrest or detention, from seizure of their personal and official baggage; from legal process of any kind in respect of words spoken or written and of all acts performed by them in their official capacity, such immunity

to continue notwithstanding that the persons concerned have ceased to be officials of UNCHS/Habitat;

(*b*) Exemption from any form of direct taxation on salaries, remuneration and allowances paid by the United Nations as well income derived from sources outside Brazil; exemption in respect of themselves, their spouses and relatives dependent on them, from registration as aliens and immigration restrictions;

(*c*) Freedom for officials to maintain, within Brazil or elsewhere, foreign securities, foreign currency accounts and movable and immovable property; and at the termination of their UNCHS/Habitat appointment the right to take out of Brazil, without hindrance, their funds in the same currencies and up to the same amounts as they brought into Brazil through authorized channels;

(*d*) The same repatriation facilities and the same right to protection by the Brazilian authorities in respect of themselves, their families and dependants as are accorded to members of diplomatic missions and international organizations, in times of international tensions;

(*e*) The right to import, free of customs duties and other levies, prohibitions and restrictions on imports, their furniture and effects. The right to import duty free one motor vehicle (or to purchase duty free a locally manufactured one) on first taking up their posts in Brazil, renewable, upon sale of the previous one, every three years (or less if so stipulated by the relevant authorities) for an imported vehicle and every year for a locally manufactured one.

4. All officials of the Habitat Regional Office shall be provided by the Ministry of External Relations with an identity card certifying that they are UNCHS/Habitat officials enjoying the privileges and immunities set forth in this Agreement.

5. The privileges and immunities accorded by virtue of this Agreement are granted in the interests of UNCHS/Habitat and not for the personal benefit of the individuals themselves. The Executive Director shall waive the immunity of any official in any case where, in his/her opinion, such immunity impedes the course of justice and can be waived without prejudice to the interests of UNCHS/Habitat.

6. UNCHS/Habitat and its officials shall cooperate at all times with the competent authorities to facilitate the proper administration of justice, ensure the observance of police regulations and prevent the occurrence of any abuses in the exercise of the privileges and immunities specified in this Agreement.

Article VIII

PERSONS OTHER THAN UNCHS/HABITAT OFFICIALS

Persons who, without being officials of UNCHS/Habitat, are members of UNCH/Habitat missions or are invited by UNCHS/Habitat to its Regional Office for Latin America and the Caribbean for official purposes, shall enjoy the privileges and immunities specified in article VII, paragraph 3, with the exception of the rights mentioned in subparagraphs (*c*) and (*e*) of the paragraph.

Article IX

LAISSEZ-PASSER

The Government shall recognize and accept as a valid travel document equivalent to a passport the United Nations laissez-passer issued to UNCHS/Habitat officials.

Article X

ADMINISTRATIVE AND FINANCIAL OBLIGATIONS OF UNCHS/HABITAT AND OF THE GOVERNMENT

1. UNCHS/Habitat's contribution to the maintenance of the Regional Office shall consist of:

(*a*) The salaries of the Director and international officers of the Office and such other international personnel as may be assigned to the Office from time to time;

(*b*) Payment for other types of collaboration such as consultant services, ad hoc assignments, etc.;

(*c*) Contributions to cover, whenever necessary, short-term assignments of experts to facilitate the study of specific problems in Latin America and the Caribbean as part of its work programme for the countries of the region;

(*d*) Contributions to cover, whenever necessary, in full and/or in part the cost of events like conferences, seminars or training courses which may be deemed useful in accordance with the Office's mandate and work programme.

2. The Government is under no obligation to contribute financially to the maintenance of the Office; the financial contribution set forth in the offer by the Municipality of Rio de Janeiro, via the letter by Mayor Cesar Maia of 14 August 1995, shall be considered as the only binding financial agreement.

3. UNCHS/Habitat shall submit to the Government each year a report on the disbursements against the Government's contributions.

4. UNCHS/Habitat and the Government shall together undertake to review the budget of the Habitat Regional Office biennially, or at shorter intervals as may be agreed from time to time by UNCHS/Habitat and the Government, with a view to adjusting, if necessary, the contributions to it.

5. The Executive Director and the Director of the Habitat Regional Office for Latin America and the Caribbean shall take every precaution to prevent any abuse in the exercise of the privileges or immunities conferred by virtue of this Agreement, and for this purpose shall establish such rules and regulations as they may deem necessary and expedient for officials of UNCHS/Habitat and members of UNCHS/Habitat missions.

6. Should the Government consider that an abuse has occurred in the exercise of any privilege or immunity conferred by virtue of this Agreement, the Executive Director and the Director of the Habitat Regional Office for Latin America and the Caribbean shall, at the request of the Government, consult with the competent Brazil authorities to determine whether such an abuse has been committed. If such consultations fail to achieve results satisfactory to the Executive Director, the Director of the Habitat Regional Office for Latin America and the Caribbean and the Government, the matter shall be settled in accordance with the procedure laid down in article XI.

Article XI

SUPPLEMENTARY AGREEMENTS AND SETTLEMENT OF DISPUTES

1. The Convention on the Privileges and Immunities of the United Nations and this Agreement shall, insofar as they relate to the same matter, be treated wherever possible as complementary.

2. Any difference between the Government and UNCHS/Habitat arising out of the interpretation or application of this Agreement or any supplementary Agreement, or any question connected with the Habitat Regional Office for Latin America and the Caribbean or with relations between UNCHS/Habitat and the Government, shall be settled in accordance with the procedure laid down in article VII, section 30, of the Convention on the Privileges and Immunities of the United Nations.

Article XII

1. The present Agreement shall enter into force immediately upon ratification by the Government.

2. Consultations with respect to amendment of this Agreement may be entered into at the request of the Government or of UNCHS/Habitat. Any such amendment shall be adopted by mutual consent.

3. This Agreement shall be interpreted in the light of its primary purpose, which is to enable UNCHS/Habitat to discharge its responsibilities fully and efficiently and to attain its objectives.

4. Wherever this Agreement lays obligations on the competent Brazil authorities, the ultimate responsibility for the fulfilment of such obligations shall rest with the Government.

5. This Agreement and any supplementary Agreement entered into between the Government and UNCHS/Habitat within the scope of its provisions shall cease to have effect six months after either of two Contracting Parties shall have given notice in writing to the other of its decision to terminate the Agreement, except as regards the provisions applicable to the normal cessation of UNCHS/Habitat's activities in Brazil and the disposal of its property in Brazil.

IN WITNESS WHEREOF the Government and UNCHS/Habitat have signed this Agreement in duplicate in the Portuguese and English languages this 10th day of March 1998.

For the Government of the Federative Republic of Brazil:	*For the United Nations Centre for Human Settlements (Habitat)*:
[*Signature*]	[*Signature*]
Luiz Felipe LAMPREIA	Roberto OTTOLENGHI
Ministro de Estado, das Relações Exteriores	*Diretor*

(*h*) Agreement between the Government of Norway and the United Nations on the enforcement of sentences of the International Tribunal for the Former Yugoslavia. Signed at The Hague on 24 April 1998[11]

The Government of Norway, (hereinafter called the "requested State"), and

The United Nations, acting through the International Tribunal for the Former Yugoslavia (hereinafter called "the International Tribunal"),

Recalling article 27 of the Statute of the International Tribunal adopted by the United Nations Security Council in its resolution 827 (1993) of 25 May 1993, according to which imprisonment of persons sentenced by the International Tribunal shall be served in a State designated by the International Tribunal from a list of States which have indicated to the Security Council their willingness to accept convicted persons,

Noting the willingness of the requested State to enforce sentences imposed by the International Tribunal and to accept a limited number of convicted persons upon request from the International Tribunal, based on an individual assessment by that State in each particular case,

Recalling the provisions of the Standard Minimum Rules for the Treatment of Prisoners approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2067 (LXII) of 13 May 1977 (hereinafter called the "Standard Minimum Rules for the Treatment of Prisoners"), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly in its resolution 43/173 of 9 December 1988 (hereinafter called the "Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment"), and the Basic Principles for the Treatment of Prisoners adopted by the General Assembly in its resolution 45/111 of 14 December 1990 (hereinafter called the "Basic Principles for the Treatment of Prisoners"),

In order to give effect to the judgements and sentences of the International Tribunal,

Have agreed as follows:

Article 1

PURPOSE AND SCOPE OF THE AGREEMENT

This Agreement shall regulate matters relating to or arising out of all requests to the requested State to enforce sentences imposed by the International Tribunal.

Article 2

PROCEDURE

1. A request to enforce a sentence as contemplated in this Agreement shall be made by the Registrar of the International Tribunal (hereinafter: "the Registrar"), with the approval of the President of the International Tribunal, to the requested State.

2. The Registrar shall provide the following documents to the requested State when making the request:

(*a*) A certified copy of the judgement;

(*b*) A statement indicating how much of the sentence has already been served, including information on any pre-trial detention;

(*c*) When appropriate, any medical or psychological reports on the convicted person, any recommendation for his further treatment in the requested State and any other factor relevant to the enforcement of the sentence.

3. All requests to the requested State shall be made through its Ministry of Justice.

4. The requested State shall submit the request to the competent national authorities, in accordance with the national law of the requested State.

5. The competent national authorities of the requested State shall promptly decide upon the request of the Registrar.

Article 3

ENFORCEMENT

1. In enforcing the sentence pronounced by the International Tribunal, the competent national authorities of the requested State shall be bound by the duration of the sentence.

2. The conditions of imprisonment shall be governed by the law of the requested State, subject to the supervision of the International Tribunal, as provided for in articles 6 to 8 and paragraphs 2 and 3 of article 9 below.

3. If, pursuant to the applicable national law of the requested State, the convicted person is eligible for early release, the requested State shall notify the Registrar accordingly.

4. The President of the International Tribunal shall determine, in consultation with the judges of the International Tribunal, whether any early release is appropriate. The Registrar shall inform the requested State of the President's determination. If the President determines that an early release is not appropriate, the requested State shall act accordingly.

5. Conditions of imprisonment shall be compatible with the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Basic Principles for the Treatment of Prisoners.

Article 4

TRANSFER OF THE CONVICTED PERSON

The Registrar shall make appropriate arrangements for the transfer of the convicted person from the International Tribunal to the competent authorities of the requested State. Prior to his transfer, the convicted person will be informed by the Registrar of the contents of this Agreement.

Article 5

NON BIS IN IDEM

The convicted person shall not be tried before a court of the requested State for acts constituting serious violations of international humanitarian law under the Statute of the International Tribunal, for which he has already been tried by the International Tribunal.

Article 6

INSPECTION

1. The competent authorities of the requested State shall allow the inspection of the conditions of detention and treatment of the prisoner(s) by the International Committee of the Red Cross (ICRC) at any time and on a periodic basis, the frequency of visits to be determined by ICRC. ICRC will submit a confidential report based on the findings of these inspections to the requested State and to the President of the International Tribunal.

2. The requested State and the President of the International Tribunal shall consult each other on the findings of the reports referred to in paragraph 1. The President of the International Tribunal may thereafter request the requested State to report to him any changes in the conditions of detention suggested by ICRC.

Article 7

INFORMATION

1. The requested State shall immediately notify the Registrar:

(*a*) Two months prior to the completion of the sentence;

(*b*) If the convicted person has escaped from custody before the sentence has been completed;

(*c*) If the convicted person has deceased.

2. Notwithstanding the previous paragraph, the Registrar and the requested State shall consult each other on all matters relating to the enforcement of the sentence upon the request of either party.

Article 8

PARDON AND COMMUTATION OF SENTENCES

1. If, pursuant to the applicable national law of the requested State, the convicted person is eligible for pardon or commutation of the sentence, the requested State shall notify the Registrar accordingly.

2. The President of the International Tribunal shall determine, in consultation with the judges of the International Tribunal, whether pardon or commutation of the sentence is appropriate. The Registrar shall inform the requested State of the President's determination. If the President determines that a pardon or commutation of the sentence is not appropriate, the requested State shall act accordingly.

Article 9

TERMINATION OF ENFORCEMENT

1. The enforcement of the sentence shall cease:

(*a*) When the sentence has been completed;

(*b*) Upon the demise of the convicted;

(*c*) Upon the pardon of the convicted;

(*d*) Following a decision of the International Tribunal as referred to in paragraph 2.

2. The International Tribunal may at any time decide to request the termination of the enforcement in the requested State and transfer the convicted person to another State or to the International Tribunal.

3. The competent authorities of the requested State shall terminate the enforcement of the sentence as soon as it is informed by the Registrar of any decision or measure as a result of which the sentence ceases to be enforceable.

Article 10

IMPOSSIBILITY TO ENFORCE SENTENCE

If, at any time after the decision has been taken to enforce the sentence, for any legal or practical reasons, further enforcement has become impossible, the requested State shall promptly inform the Registrar. The Registrar shall make the appropriate arrangements for the transfer of the convicted person. The competent authorities of the requested State shall allow for at least sixty days following the notification of the Registrar before taking other measures on the matter.

Article 11

COSTS

The International Tribunal shall bear the expenses related to the transfer of the convicted person to and from the requested State, unless the parties agree otherwise. The requested State shall pay all other expenses related to the incarceration.

Article 12

ENTRY INTO FORCE

This Agreement shall enter into force upon signature.

Article 13

DURATION OF THE AGREEMENT

1. This Agreement shall remain in force as long as sentences of the International Tribunal are being enforced by the requested State under the terms and conditions of this Agreement.

2. Upon consultation, either party may terminate this Agreement, with two months' prior notice to the other party. This Agreement shall, however, in any case continue to be applicable to sentences under this Agreement which have not been completed or terminated and, if applicable, to the transfer of the convicted person as provided for in article 10 which has not been effected.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Agreement.

DONE at The Hague this twenty-fourth day of April 1998, in duplicate, in the English language.

For the Government of Norway:
[*Signature*]
Bjørn BARTH
Ambassador

For the United Nations:
[*Signature*]
Dorothee DE SAMPAYO GARRIDO-NIJGH
Registrar
International Tribunal for the Former Yugoslavia

(*i*) Exchange of letters constituting an agreement between the United Nations and the Government of Fiji on the arrangements for the Pacific Regional Seminar concerning the International Decade for the Eradication of Colonialism, to be held at Nadi from 16 to 18 June 1998. New York, 30 April 1998[12]

I

LETTER FROM THE UNITED NATIONS

30 April 1998

Excellency,

I have the honour to refer to the arrangements for the Pacific Regional Seminar in accordance with the Plan of Action concerning the International Decade for the Eradication of Colonialism, to be organized by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Inde-

pendence to Colonial Countries and Peoples at the Fiji Mocambo Hotel, Nadi, Fiji, from 16 to 18 June 1998. With the present letter, I wish to obtain your Government's acceptance of the following arrangements:

1. The Seminar will be attended by approximately 60 participants, including members of the Special Committee of 24, representatives of the administering Powers, of United Nations bodies, international organizations, of the peoples of Non-Self-Governing Territories, experts, representatives of non-governmental organizations and observers, and assisted by approximately 5 United Nations staff members.

2. The Government of Fiji will assign one (1) Protocol Officer to assist in the planning and coordination of the Seminar.

3. *Entry visa*

The Government of Fiji, through its Immigration Division, will assign officers to provide entry visas to the participants upon their arrival at Nadi, Fiji, and to facilitate their processing through customs.

4. *Premises for the Seminar*

The Government of Fiji will assist the United Nations in making the arrangements for conference hall facilities and equipment.

5. *Communication equipment*

The Government of Fiji will make the necessary arrangements for the installation of telex, telephone and facsimile facilities at the site of the Seminar. Rental, installation and other charges for these facilities will be borne by the United Nations.

6. *Office equipment*

The Government of Fiji, in cooperation with the office of the United Nations Development Programme in Suva will make arrangements with private companies to hire office equipment needed for the conduct of the Seminar.

7. *Accommodation*

While arrangements for the accommodation of participants will be the responsibility of the individual participants themselves, the Government of Fiji will assist in facilitating such arrangements at reasonable commercial rates.

8. *Transportation*

The Government of Fiji will, as a matter of courtesy, provide two (2) VIP cars and one (1) 25-seater bus for use of the delegations, participants and officials on arrivals and departures to and from the airport to the hotel as well as other official use as appropriate.

9. *Liaison Officers*

The Government of Fiji will provide six (6) Foreign Service trainees as Liaison Officers to the Seminar and as guides to delegations and participants.

10. *Local support staff*

The Government of Fiji will provide the following ten (10) support staff to the Seminar:

(*a*) Three (3) secretaries;

(*b*) Three (3) administrative assistants;

(*c*) Four (4) machine operators.

The United Nations will meet the cost of overtime of the above staff where necessary.

11. *Security*

The security coverage for the Seminar will be the responsibility of the Government of Fiji in conjunction with the Fiji Mocambo Hotel.

12. *Medical facilities*

The Government of Fiji will be responsible for making arrangements for medical treatment and admission to a hospital to be provided for Seminar participants should this be necessary.

13. *Tax exemption*

The Government of Fiji shall exempt United Nations personnel, holders of diplomatic passports and special invitees/guests from airport departure tax.

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. Representatives of non-governmental organizations and intergovernmental organizations shall enjoy immunity from legal process in respect of words spoken or written or any act performed by them in connection with their participation in the Seminar. The other 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 on the Privileges and Immunities of the United Nations.

(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 or arranged 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 Fiji. Visas and entry permits, where required, shall be granted free of charge and as promptly as possible.

(*c*) It is further understood that the Government of Fiji will be responsible for dealing with any action, claim or other demand against the United Nations arising out of (i) death, injury to persons or damage to property in conference or office premises provided for the Seminar; (ii) death, injury or damage to persons or property occurring during use of the transportation referred to in paragraph 8 above; 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.

(*d*) Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations or any other applicable agreement shall, unless the parties otherwise agree, be submitted to a tribunal of three arbitrators, one of whom shall be appointed by the Secretary-General of the United Nations, one by the Government and the third, who shall be the Chairman, by the other two arbitrators. If either party does not appoint an arbitrator within three months of the other party having notified the name of its arbitrators, or if the first two arbitrators do not within three months of the appointment, or nomination of the second one of them appoint the Chairman, then such arbitrator shall be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the parties, the Tribunal shall adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the parties, and take all decisions by a two-thirds majority. Its decisions on all questions of procedure and substance shall be final and, even if rendered in default of one of the parties, be binding on both of them.

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 Fiji regarding the provision of host facilities by your Government for the Seminar.

(*Signed*) Jin YONGJIAN
Under-Secretary-General
for General Assembly Affairs and Conference Services

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF FIJI TO THE UNITED NATIONS

30 April 1998

Excellency,

The Government of Fiji has duly studied all aspects of your letter which was forwarded on 30 April 1998 and wishes to state that the Government of Fiji agrees with the provisions of the said letter. This exchange of letters shall constitute an agreement between the United Nations and the Government of Fiji as host country regarding the provisions for the Pacific Regional Seminar.

Kindly accept, Excellency, the assurances of the highest consideration of the Permanent Mission of Fiji to the United Nations, which has been fully authorized to respond on behalf of the Government of Fiji.

(*Signed*) Poseci W. BUNE
Ambassador/Permanent Representative

(j) Exchange of letters constituting an agreement between the United Nations and Sierra Leone on the status of the United Nations Observer Mission in Sierra Leone. New York, 29 July 1998[13]

I

LETTER FROM THE UNITED NATIONS

29 July 1998

Dear Mr. President,

I have the honour to refer to Security Council resolution 1181 (1998) of 13 July 1998, by which the Council decided to establish a United Nations Observer Mission in Sierra Leone (UNOMSIL) with the mandate described in paragraph 6 of the above-mentioned resolution.

In order to facilitate the fulfilment of the purposes of UNOMSIL, I propose that your Government, in implementation of its obligations under Article 105 of the Charter of the United Nations, extend to UNOMSIL, as an organ of the United Nations, its property, funds and assets and its members listed in subparagraphs (*a*), (*b*) and (*c*) below, the privileges and immunities provided in the Convention on the Privileges and Immunities of the United Nations, to which Sierra Leone is a party (the Convention). Additional facilities as provided herein are also required for the contractors and their employees engaged by the United Nations to perform services and/or supply equipment, provisions, supplies, materials and other goods in support of UNOMSIL ("United Nations contractors").

In view of the special importance of the functions which UNOMSIL will perform in Sierra Leone, I propose in particular that your Government extend to:

(*a*) The Special Representative of the Secretary-General, the Chief Military Observer and other high-ranking members of UNOMSIL, whose names shall be communicated to the Government, the privileges and immunities, exemptions and facilities which are enjoyed by diplomatic envoys in accordance with international law;

(*b*) The officials of the United Nations assigned to serve with UNOMSIL, the privileges and immunities to which they are entitled under articles V and VII of the Convention. Locally recruited members of UNOMSIL shall enjoy the immunities concerning official acts and exemption from taxation and national service obligations provided for in sections 18 (*a*), (*b*) and (*c*) of the Convention;

(*c*) Military observers, civilian police advisers and civilian support staff shall enjoy the privileges and immunities accorded to experts performing missions for the United Nations under article VI of the Convention;

(*d*) United Nations contractors, other than nationals of Sierra Leone, engaged exclusively to support the activities of Sierra Leone shall be accorded repatriation facilities in time of international crisis and exemption from taxes in Sierra Leone on the services provided to UNOMSIL, including corporate, income, social security and other similar taxes arising directly from the provision of such services.

UNOMSIL and its members shall respect all local laws and regulations. The Special Representative of the Secretary-General shall take all appropriate measures to ensure the observance of those obligations. The Government shall respect the exclusively international nature of UNOMSIL.

The privileges and immunities necessary for the fulfilment of the functions of UNOMSIL also include:

(i) Unrestricted freedom of entry and exit, without delay or hindrance, of its members and United Nations contractors, their property, supplies, equipment and spare parts and means of transport;

(ii) Unrestricted freedom of movement throughout the country of its members and United Nations contractors, their property, equipment and means of transport. UNOMSIL, its members, United Nations contractors and their vehicles, vessels and aircraft shall use roads, bridges, canals and other waters, port facilities and airfields without the payment of dues, tolls, landing fees, parking fees, overflight fees, port fees and charges, including wharfage charges. However, exemption from charges which are in fact charges for services rendered will not be claimed;

(iii) Prompt issuance by the Government of all necessary authorizations, permits and licences for the importation of equipment, provisions, supplies, materials and other goods used in support of UNOMSIL, including in respect of importation by United Nations contractors, free of any restrictions and without the payment of duties, charges or taxes including value-added tax;

(iv) Acceptance by the Government of permits of licences issued by the United Nations for the operation of vehicles used in support of UNOMSIL; acceptance by the Government, or where necessary validation by the Government, free of charge and without any restriction, of licences and certificates already issued by appropriate authorities in other States in respect of aircraft and vessels used in support of UNOMSIL; prompt issuance by the Government, free of charge and without any restrictions, of necessary authorizations, licences and certificates, where required, for the acquisition, use, operation and maintenance of aircraft and vessels used in support of UNOMSIL;

(v) The right to fly the United Nations flag on UNOMSIL premises, including its headquarters, regional headquarters, vehicles, aircraft and vessels used in support of UNOMSIL;

(vi) The right to unrestricted communication by radio, satellite or other forms of communication with United Nations Headquarters and between the various offices and to connect with the United Nations radio and satellite network, as well as by telephone, telegraph or other means. The frequencies on which the communication by radio will operate shall be decided upon in cooperation with the Government; and

(vii) The right to make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of UNOMSIL. The Government shall be informed of the nature of such arrangements, and shall not interfere with or apply censorship to the mail of UNOMSIL or its members.

It is understood that the Government of Sierra Leone shall provide at no cost to the United Nations, in agreement with the Special Representative of the Secretary-General, all such premises as may be required for conducting the operational and administrative activities of UNOMSIL. All premises used by UNOMSIL and its members shall be inviolable and subject to the exclusive control and authority of the United Nations.

It is expected that the Government of Sierra Leone shall provide UNOMSIL, where necessary and upon request of UNOMSIL, with maps and other information, including locations of minefields and other dangers and impediments, which may be useful in facilitating its tasks and movements. Upon the request of the Special Representative of the Secretary-General, armed escorts shall be provided to protect UNOMSIL personnel during the exercise of their functions.

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 Sierra Leone on the status of UNOMSIL and its members with immediate effect.

(*Signed*) Kofi A. ANNAN

II

LETTER FROM THE MINISTER FOR FOREIGN AFFAIRS OF SIERRA LEONE

29 July 1998

Excellency,

I have the honour to refer to your letter of today's date, addressed to His Excellency the President of Sierra Leone, conveying to him the provisions of the Status of Mission Agreement outlining the privileges, immunities, rights and facilities of the United Nations Observer Mission in Sierra Leone (UNOMSIL).

In this connection, I should like to draw your attention to the position of my Government in respect of two of the provisions of the Status of Mission Agreement. The first concerns item (*d*) on page 2, which we understand to mean that the Government will provide repatriation facilities to United Nations contractors in time of international crisis, but that the Government will not bear the costs relating to such repatriation. With regard to the first paragraph on page 4, the Government of Sierra Leone wishes to state that it is not in a position to provide premises at no cost to the United Nations. It is therefore proposed that these provisions read as follows:

"It is, however, understood that the Government of Sierra Leone shall provide the United Nations with such premises whenever possible for the conduct of the operational, and administrative activities of UNOMSIL. All premises used by UNOMSIL and its members shall be inviolable and subject to the exclusive control and authority of the United Nations."

On the basis of these understandings, I have pleasure in accepting the Status of Mission Agreement.

(*Signed*) Dr. Sama BANYA
Minister for Foreign Affairs

(*k*) Agreement between the United Nations, the Secretariat of the United Nations Convention to Combat Desertification and the Government of the Federal Republic of Germany concerning the headquarters of the Convention Permanent Secretariat. Signed in Bonn on 18 August 1998[14]

The United Nations, the Government of the Federal Republic of Germany and the Secretariat of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (the Convention),

Whereas the first session of the Conference of the Parties to the Convention by its decision 5/COP.1 of 10 October 1997, decided to accept the offer of the Government of the Federal Republic of Germany to host the Secretariat of the United Nations Convention to Combat Desertification (Convention Secretariat);

Whereas in the offer of the Government of the Federal Republic of Germany, it agreed to apply the terms and conditions of the Headquarters Agreement of the United Nations Volunteers Programme analogously to the secretariats of the United Nations Framework Convention on Climate Change and the Convention to Combat Desertification;

Whereas the Conference of the Parties to the Convention to Combat Desertification, in paragraphs 3 and 4 of its decision 3/COP.1 of 10 October 1997, further decided to accept the offer of the Secretary-General of the United Nations on the institutional linkage between the Convention Secretariat and the United Nations;

Whereas the General Assembly, by its resolution 52/198 of 18 December 1997, endorsed the institutional linkage between the Convention Secretariat and the United Nations, as adopted by the Conference of the Parties in its decision 3/COP.1;

Whereas article 4, paragraph 3, of the Headquarters Agreement of the United Nations Volunteers Programme provides that it "may also be made applicable, mutatis mutandis, to other intergovernmental entities, institutionally linked to the United Nations, by agreement among such entities, the Government and the United Nations";

Whereas article 4, paragraph 2, of the Agreement between the United Nations and the Government of the Federal Republic of Germany concerning the Occupancy and Use of the United Nations Premises in Bonn concluded on 13 February 1996, inter alia, provides that "(t)he United Nations shall make available appropriate space in the Premises to the secretariat of the United Nations Framework Convention on Climate Change … as well as, subject to availability of space, to other intergovernmental entities institutionally linked to the United Nations";

Whereas the United Nations acknowledges that the offer of the Government of the Federal Republic of Germany to provide, inter alia, premises in Bonn to the Convention Secretariat, free of rent and on a permanent basis, has been accepted by the Conference of the Parties to the Convention;

Whereas the Secretariat of the Convention and the Government of the Federal Republic of Germany intend to make appropriate arrangements specifying the particular elements contained in the latter's offer to host the Convention Secretariat;

Whereas the offer of the Government of the Federal Republic of Germany, as contained in documents A/AC.241/54/Add.2 and A/AC.241/63, inter alia, expresses the interest of the Government of the Federal Republic of Germany in concluding an agreement to host the Secretariat of the Convention against Desertification that would ensure the availability of all the necessary facilities in the Federal Republic of Germany to enable the Convention Secretariat to perform its functions;

Whereas the Conference of the Parties, at its first session held at Rome, in its decision 5/COP.1, "encourages the Executive Secretary as a matter of urgency to negotiate a headquarters agreement in an appropriate manner with the Government of the Federal Republic of Germany in accordance with its offer, and upon such terms and conditions as are appropriate and necessary, in consultation with the Secretary-General, and to submit it to the Conference of the Parties for adoption at a subsequent session";

Whereas, in the same decision, the Conference of the Parties also stresses that, with a view to enabling the Convention Secretariat to effectively discharge its functions under the Convention, such an agreement should, in particular, reflect the following:

(*a*) The Convention Secretariat should possess in the host country such legal capacity as is necessary for the effective discharge of its functions under the Convention, in particular to contract, to acquire and dispose of movable and immovable property and to institute legal proceedings;

(*b*) The Convention Secretariat should enjoy in the territory of the host country such privileges and immunities as are necessary for the effective discharge of its functions under the Convention;

(*c*) The representatives of the Parties and observer States (and regional economic integration organizations) to the Convention as well as the officials of the Convention Secretariat should similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions under the Convention;

Whereas the Secretariat's functions referred to in article 23 of the Convention are being carried out on an interim basis by the secretariat (referred to as "interim secretariat" in article 1 (*e*) in this Agreement) established by the General Assembly of the United Nations in its resolution 47/188 of 22 December 1992 and continued by virtue of decision 4/COP.1 of 10 October 1997 and resolution 52/198 of 18 December 1997 of the General Assembly of the United Nations;

Desiring to conclude an agreement regulating matters arising from the applicability, mutatis mutandis, of the Headquarters Agreement of the United Nations Volunteers Programme to the Secretariat of the Convention to Combat Desertification;

Have agreed as follows:

Article 1

DEFINITIONS

For the purpose of the present Agreement, the following definitions shall apply:

(*a*) "the Headquarters Agreement of the United Nations Volunteers Programme" means the Agreement between the United Nations and the Federal Republic of Germany concerning the Headquarters of the United Nations Volunteers Programme concluded on 10 November 1995, and the Exchange of Notes of the same date between the Administrator of the United Nations Development Programme and the Permanent Representative of Germany to the United Nations concerning the interpretation of certain provisions of the Agreement (the Agreement and Exchange of Notes are appended in the annex);

(*b*) "the Convention" means the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, adopted in Paris on 17 June 1994;

(*c*) "the Conference of the Parties" means the Conference of the Parties to the Convention, the supreme body of the Convention, under article 22 thereof;

(*d*) "the Convention Secretariat" means the Permanent Secretariat established under article 23 of the Convention;

(*e*) "the Executive Secretary" means the head of the Convention Secretariat, appointed by the Secretary-General of the United Nations, after consultation with

the Conference of the Parties through its Bureau (decision 4/COP.1, para. 4), or, until such appointment takes effect, the head of the interim secretariat;

(*f*) "Officials of the Convention Secretariat" means the Executive Secretary and all members of the staff of the Convention Secretariat, irrespective of nationality, with the exception of those who are locally recruited and assigned to hourly rates;

(*g*) "Headquarters" means the premises made available to, occupied and used by the Convention Secretariat in accordance with this Agreement or any other supplementary Agreement with the Government of the Federal Republic of Germany.

Article 2

PURPOSE AND SCOPE OF THE AGREEMENT

This Agreement shall regulate matters relating to or arising out of the applicability, mutatis mutandis, of the Headquarters Agreement of the United Nations Volunteers Programme to the Convention Secretariat.

Article 3

APPLICATION OF THE HEADQUARTERS AGREEMENT OF THE UNITED NATIONS VOLUNTEERS PROGRAMME

1. The Headquarters Agreement of the United Nations Volunteers Programme shall be applicable, mutatis mutandis, to the Convention Secretariat in accordance with the provisions of the present Agreement.

2. Without prejudice to the provisions in paragraph 1 above, for the purposes of the present Agreement the references to:

(*a*) "the United Nations", in article 1 (*m*), in article 4, paragraph 1, in article 19, paragraph 2, in article 23 and article 26, paragraph 1 (*a*), of the Headquarters Agreement of the United Nations Volunteers Programme, shall be deemed to mean the Convention Secretariat or the Conference of the Parties, as appropriate; and, with respect to article 19, paragraph 3, of the same Agreement, shall be deemed to mean the United Nations and the Convention Secretariat;

(*b*) "the United Nations Volunteers" in article 5, paragraph 2, and in articles 7, 8, 9, 10, 11, 12, 14, 17, 21 and 26 of the Headquarters Agreement of the United Nations Volunteers Programme, shall be deemed to mean the Convention Secretariat;

(*c*) "the Executive Coordinator", in articles 8, 11, 14, 19, paragraph 3, and in articles 20, 21 and 22 of the Headquarters Agreement of the United Nations Volunteers Programme, shall be deemed to mean the Executive Secretary;

(*d*) "the representatives of members", throughout the Headquarters Agreement of the United Nations Volunteers Programme, shall be deemed to include the representatives of Parties and of Observer States (and regional economic integration organizations) to the Convention;

(*e*) "officials", "officials of the United Nations Volunteers" or "officials of the Programme", throughout the Headquarters Agreement of the United Nations Volunteers Programme, shall be deemed to mean officials of the Convention Secretariat;

(*f*) "persons", in articles 20 and 21 of the Headquarters Agreement of the United Nations Volunteers Programme, shall be deemed to include all persons referred to in the present Agreement, including interns of the Convention Secretariat;

(*g*) "the Party" or "Parties", in article 19, paragraph 3, and in articles 24 and 26, paragraph 2, of the Headquarters Agreement of the United Nations Volunteers Programme, shall be deemed to mean the Parties under the present Agreement;

(*h*) "the Headquarters district", throughout the Headquarters Agreement of the United Nations Volunteers Programme, shall be deemed to mean the Headquarters of the Convention Secretariat.

3. Without prejudice to the provisions in article 21 of the Headquarters Agreement of the United Nations Volunteers Programme, arrangements shall also be made to ensure that visas, entry permits or licences, where required for persons entering the host country on official business of the Convention, are delivered at the port of entry to the Federal Republic of Germany, to those persons who were unable to obtain them elsewhere prior to their arrival.

Article 4

LEGAL CAPACITY

1. The Convention Secretariat shall possess in the host country the legal capacity:

(*a*) To contract;

(*b*) To acquire and dispose of movable and immovable property;

(*c*) To institute legal proceedings.

2. For the purpose of this article, the Convention Secretariat shall be represented by the Executive Secretary.

Article 5

IMMUNITY OF PERSONS ON OFFICIAL BUSINESS OF THE CONVENTION

Without prejudice to the pertinent provisions of the Headquarters Agreement of the United Nations Volunteers Programme, all persons invited to participate in the official business of the Convention shall enjoy immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of their business. They shall also be accorded inviolability for all papers and documents.

Article 6

FINAL PROVISIONS

1. The provisions of this Agreement shall be complementary to the provisions of the Headquarters Agreement of the United Nations Volunteers Programme. Insofar as any provision of this Agreement and any provision of the Headquarters Agreement of the United Nations Volunteers Programme relate to the same subject matter, each of those provisions shall be applicable and neither shall narrow the effect of the other.

2. This Agreement may be amended by mutual consent at any time at the request of any Party to the present Agreement.

3. The present Agreement shall cease to be in force twelve months after any of the Parties gives notice in writing to the others of its decision to terminate the

Agreement. This Agreement shall, however, remain in force for such additional period as might be necessary for the orderly cessation of activities of the Convention Secretariat in the Federal Republic of Germany and the disposition of its property therein, and the resolution of any dispute between the Parties to the present Agreement.

4. (*a*) Any bilateral dispute between any two of the Parties concerning the interpretation or application of this Agreement or the regulations of the United Nations Volunteers Programme which cannot be settled amicably shall be submitted, at the request of either party to the dispute, to an arbitral tribunal, composed of three members. Each party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman. If one of the parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other party to make such an appointment, the other party may request the President of the International Court of Justice to make the necessary appointment. If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either party may invite the President of the International Court of Justice to make the necessary appointment.

(*b*) Any dispute among the three Parties concerning the interpretation or application of this Agreement or the regulations of the United Nations Volunteers Programme which cannot be settled amicably shall be submitted, at the request of any party to the dispute, to an arbitral tribunal, composed of five members. Each party shall appoint one arbitrator and the three arbitrators thus appointed shall together appoint fourth and fifth arbitrators and the first three shall jointly designate either the fourth or the fifth arbitrator as chairman of the arbitral tribunal. If any of the parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from another party to make such an appointment, such other party may request the President of the International Court of Justice to make any necessary appointments. If the three arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the fourth or fifth arbitrator or designation of the chairman, any party may invite the President of the International Court of Justice to make any necessary appointments or designation.

(*c*) The Parties shall draw up a special agreement determining the subject of the dispute. Failing the conclusion of such an agreement within a period two months from the date on which arbitration was requested, the dispute may be brought before the arbitral tribunal upon the application of any Party. Unless the Parties decide otherwise, the arbitral tribunal shall determine its own procedure. The expenses of the arbitration shall be borne by the parties as assessed by the arbitrators. The arbitral tribunal shall reach its decision by a majority of votes on the basis of the applicable rules of international law. In the absence of such rules, it shall decide *ex aequo et bono*. The decision shall be final and binding on the parties to the dispute, even if rendered in default of one or two of the parties to the dispute.

5. The provisions of this Agreement shall be applied provisionally as from the date of signature, as appropriate, pending the fulfilment of the formal requirements for its entry into force referred to in paragraph 6 below.

6. This Agreement shall enter into force on the day following the date of receipt of the last of the notifications by which the Parties will have informed each other of the completion of their respective formal requirements.

DONE in Bonn, on 18 August 1998, in triplicate, in the German and the English languages, both texts being equally authentic.

For the Secretariat of the United Nations Convention to Combat Desertification:

[*Signature*]
Hama Arba DIALLO
Executive Secretary

For the Government of the Federal Republic of Germany:

[*Signature*]
Hans-Friedrich VON PLOETZ
State Secretary of the Federal Foreign Office

For the United Nations:

[*Signature*]
Sharon CAPELING-ALAKIJA
Executive Coordinator
United Nations Volunteers

(*l*) Exchange of letters concerning an arrangement between the United Nations and the Government of Slovakia constituting an agreement regarding the Seminar on Improving Working Conditions and Increasing Productivity in Forestry, and the twenty-second session of the joint FAO/ECE/ILO Committee on Forest Technology, Management and Training, of the Economic Commission for Europe, to be held in Banská Štiavnica from 9 to 11 September and in Zvolen from 14 to 16 September 1998. Geneva, 25 August and 3 September 1998[15]

I

LETTER FROM THE UNITED NATIONS

25 August 1998

Madam,

I have the honour to give you below the text of arrangements between the United Nations and the Government of Slovakia (hereinafter referred to as "the Government") in connection with the Seminar on Improving Working Conditions and Increasing Productivity in Forestry, and the twenty-second session of the Joint FAO/ECE/ILO Committee on Forest Technology, Management and Training, of the Economic Commission for Europe, to be held, at the invitation of the Government, respectively in Banská Štiavnica from 9 to 11 September 1998 and in Zvolen from 14 to 16 September 1998.

"Arrangements between the United Nations and the Government of Slovakia regarding the Seminar on Improving Working Conditions and Increasing Productivity in Forestry, and the twenty-second session of the joint FAO/ECE/ILO Committee on Forest Technology, Management and Training, of the Economic Commission for Europe, to be held respectively in Banská Štiavnica from 9 to 11 September and in Zvolen from 14 to 16 September 1998

"1. Participants in the Meetings will be invited by the Executive Secretary of the United Nations Economic Commission for Europe in accordance with the rules of procedure of the Commission and its subsidiary organs.

"2. In accordance with paragraph 17 of General Assembly resolution 47/202 A of 22 December 1992, the Government will assume responsibility

for any supplementary expenses arising directly or indirectly from the Meetings, namely:

(*a*) To supply to all FAO/ECE/ILO staff members who are to be brought to Banská Štiavnica and Zvolen, air tickets, economy class, Geneva-Bratislava-Geneva, to be used on the airlines that cover this itinerary, and onward travel to Banská Štiavnica and Zvolen;

(*b*) To pay to all staff members, on arrival in Slovakia, according to United Nations rules and regulations, a subsistence allowance in local currency at the Organization's official daily rate applicable at the time of the Meetings, together with terminal expenses up to 108 United States dollars per traveller, in convertible currency, provided that the traveller submits proof of having incurred such expenses.

"3. The Government will provide for the Meetings adequate facilities, including personnel resources, space and office supplies as described in the attached annex.

"4. The Government 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 to property in conference or office premises provided for the Meetings; (*b*) the transportation provided by the Government; and (*c*) the employment for the Meetings of personnel provided or arranged by the Government; and the Government shall hold the United Nations harmless in respect of any such action, claim or other demand.

"5. The Convention of 13 February 1946 on the Privileges and Immunities of the United Nations, to which Slovakia is a party, shall be applicable to the Meetings, in particular:

(*a*) Experts on mission for the United Nations in connection with the Meetings shall enjoy the privileges and immunities provided under articles VI and VII of the Convention. Officials of the United Nations participating in or performing functions in connection with the Meetings 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 Meetings shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Meetings;

(*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 Meetings;

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

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

"7. The Government shall notify the local authorities of the convening of the Meetings and request appropriate protection.

"8. Any dispute concerning the interpretation or implementation of these arrangements, except for a dispute subject to the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations or of any other applicable agreement, will, unless the parties agree otherwise, be submitted to a tribunal of three arbitrators, one of whom will be appointed by the Secretary-General of the United Nations, one by the Government and the third, who will be the Chairman, by the other two arbitrators. If either party does not appoint an arbitrator within three months of the other party having notified the name of its arbitrator or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them, appoint the Chairman, then such arbitrator will be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the parties, the tribunal will adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the parties and take all decisions by a two-thirds majority. Its decisions on all questions of procedure and substance will be final and, even if rendered in default of one of the parties, be binding on both of them.

"9. These arrangements shall also apply to the Study Tour being arranged in conjunction with the Seminar, on 12 and 13 September 1998."

*
* *

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 Slovakia which shall enter into force on the date of your reply and shall remain in force for the duration of the Meetings and for such additional period as is necessary for its preparation and winding up.

(*Signed*) Vladimir PETROVSKY
Director-General
United Nations Office at Geneva

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF SLOVAKIA TO THE UNITED NATIONS

3 September 1998

Sir,

I have the honour to transmit to you the answer concerning the text of arrangements between the United Nations and the Government of the Slovak Republic.

The Government of the Slovak Republic agrees with the text of the "Arrangements between the United Nations and the Government of Slovakia regarding the Seminar on Improving Working Conditions and Increasing Productivity in Forestry, and the twenty-second session of the Joint FAO/ECE/ILO Committee on Forest Technology, Management and Training, of the Economic Commission for Europe, to be held respectively in Banská Štiavnica from 9 to 11 September and in Zvolen from 14 to 16 September 1998" and the Ministry of Agriculture of the Slovak Republic will be responsible for the implementation of these arrangements.

The Government of the Slovak Republic also confirms that the "Agreement between the United Nations and the Government of Slovakia" will enter into force

on the date of this letter and shall remain in force for the duration of the Meetings and for such additional period as is necessary for its preparation and winding up.

(*Signed*) Maria KRASNOHORSKÁ
Ambassador
Permanent Representative

(*m*) Exchange of letters constituting an agreement between the United Nations and the Government of Botswana concerning the arrangements for the Workshop on the United Nations/Sida International Training Course on Remote Sensing for Educators, Gaborone, 18 to 21 October 1998. Vienna, 11 September and 13 October 1998[16]

I

LETTER FROM THE UNITED NATIONS

11 September 1998

I have the honour to refer to the recommendations of the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE 82). In accordance with those recommendations, the United Nations Office for Outer Space Affairs has, during the past eight years, organized as an activity of its Space Applications Programme, in cooperation with the Swedish International Development Cooperation Agency (Sida) and Stockholm University, an annual training course on remote-sensing education for educators. This programme was once again hosted by the Government of Sweden in 1998, pursuant to General Assembly resolution 52/56 of 10 December 1997.

As a follow-up to this annual training course, the United Nations has received with appreciation an offer from the Department of Environmental Sciences at the University of Botswana to host the above-mentioned Workshop, which has as its main objective the evaluation of the experiences of past participants of the training course and the subsequent determination of the future direction of the course. The Workshop specifically targets past participants from Africa who have attended the course during the years 1990 to 1996, and will be co-sponsored by the Swedish International Development Cooperation Agency (Sida) and the United Nations Space Applications Programme.

The Swedish International Development Cooperation Agency (Sida), on behalf of the Government of Sweden, and the Office for Outer Space Affairs, on behalf of the United Nations, will finance the travel of a maximum of forty-five (45) participants from Africa to the Workshop.

In addition, the Swedish International Development Cooperation Agency (Sida), on behalf of the Government of Sweden, will provided room, board, local transportation and an allowance for incidental expenses for a maximum of forty-five (45) participants from Africa to the Workshop.

In order to facilitate the holding of this Workshop in Gaborone from the 18 to 21 October 1998, with the present letter I seek your Government's agreement to the following:

1. 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 Workshop.

2. 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 Workshop shall enjoy such facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Workshop.

3. Personnel provided by the University of Botswana and any other 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 Workshop.

4. All participants and all persons performing functions in connection with the Workshop shall have the right of unimpeded entry into and exit from Botswana. Upon presentation by the United Nations of a list of participants well in advance, visas and entry permits, where required, shall be granted free of charge and as promptly as possible.

5. Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations or of any other applicable agreement, shall, unless the parties otherwise agree, be submitted to a tribunal of three arbitrators, one of whom shall be appointed by the Secretary-General of the United Nations, one by the Government and the third, who shall be the Chairman, by the other two arbitrators. If either party does not appoint an arbitrator or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them appoint the Chairman, then such arbitrator shall be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the parties, the tribunal shall adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the parties and take all decisions by a two-thirds majority. Its decisions on all questions of procedure and substance shall be final and, even if rendered in default of one of the parties, be binding on both of them.

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 the Republic of Botswana and the United Nations concerning the arrangements for the Workshop.

(*Signed*) Pino ARLACCHI
Director-General
United Nations Office at Vienna

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF BOTSWANA TO THE UNITED NATIONS

13 October 1998

Dear Sir,

Workshop on the United Nations/Sida International Training Course on Remote Sensing for Educators, Gaborone, 18-21 October 1998

I have the honour to refer to your letter of 11 September 1998 concerning the above-captioned subject. It is my pleasure to inform that the Government of the

Republic of Botswana agrees to your proposal as contained in paragraphs 5 and 6 of that letter.

(*Signed*) Legwaila J. M. J. LEGWAILA
Ambassador, Permanent Representative

(*n*) Exchange of letters constituting an agreement between the United Nations and the Government of Romania on the United Nations Regional Preparatory Conference for Eastern Europe on the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III Conference), Bucharest, 25 to 29 January 1999. Vienna, 30 September and 23 October 1998[17]

I

LETTER FROM THE UNITED NATIONS

30 September 1998

Sir,

United Nations Regional Preparatory Conference for Eastern Europe on the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III Conference), in cooperation with the Government of Romania (Bucharest, 25-29 January, 1999)

In its resolution 52/56 of 10 December 1997, the General Assembly endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the United Nations Programme on Space Applications should organize regional preparatory meetings for the UNISPACE III Conference. In organizing those meetings and other activities, account should be taken of the need to have the widest participation possible, including the participation of private industry.

As you are aware, the United Nations and the Government of Romania (the Government) have had discussions on the above-mentioned subject through the Permanent Mission of Romania to the United Nations, Vienna. The objective of the Conference will be to discuss matters of regional interest for the UNISPACE III Conference and to prepare recommendations for consideration by the Conference in July 1999.

On behalf of the United Nations, I would be most grateful to receive your Government's acceptance of the following arrangements.

A. *The United Nations*

1. The United Nations shall provide up to US$ 20,000 to cover the costs of round-trip international air travel (economy class) to Bucharest, for 10 to 15 participants in need among nominees from developing countries in the Eastern Europe region.

2. The cost of travel and per diem of up to two staff members of the Office for Outer Space Affairs of the United Nations Secretariat shall be borne by the United Nations.

3. The cost of travel and per diem of representatives of the United Nations system shall be borne by the concerned organizations.

B. *Language and participation*

1. The total number of participants will be limited to 120.

2. The official language of the Conference will be English.

C. *The Government of Romania*

1. The Government will act as host to the Preparatory Conference, which will be held in Bucharest.

2. The Government will also designate an official representing the Romanian Space Agency to act as liaison officer between the United Nations and the Government for making the necessary arrangements concerning the contributions described in the following paragraph.

3. The Government will provide and defray the costs of:

(*a*) Room and board for up to ten participants from developing countries in the Eastern Europe region;

(*b*) Appropriate premises and equipment (including duplication facilities and consumables) for holding the Conference;

(*c*) Appropriate premises for the offices and for the other working areas of the United Nations Secretariat staff responsible for the Conference, the liaison officer and the local personnel mentioned below;

(*d*) Adequate furniture and equipment for the premises referred to in (*b*) and (*c*) above to be installed prior to the start of the Conference and maintained in good repair by appropriate personnel for the duration of the Conference;

(*e*) Amplification and audio-visual projection equipment as well as tape recorders and tapes as may be necessary and technicians to operate them for the Conference;

(*f*) The local administrative personnel required for the proper conduct of the Conference, including reproduction and distribution of presented papers and other documents in connection with the Conference;

(*g*) Communication facilities (telex, facsimile, telephone) for official use in connection with the Conference, office supplies and equipment for the conduct of the Conference;

(*h*) Customs clearance and transportation between the port of entry and the location of the Conference for any equipment required in connection with the Conference;

(*i*) All official transportation within Romania for all participants in the Conference;

(*j*) Local transportation, including airport reception during arrival and departure for all participants at the Conference;

(*k*) Local transportation for the United Nations staff responsible for the Conference for official purposes;

(*l*) Arrangements of adequate accommodations in hotels at reasonable commercial rates for persons other than those identified in (*a*) above, who are participating in, attending or servicing the Conference, at the expense of these same persons;

(*m*) The services of a travel agency to confirm or make new bookings for the departure of participants upon the conclusion of the Conference;

(*n*) Medical facilities for first aid in emergencies within the area of the Conference. For serious emergencies, the Government shall ensure immediate transportation and admission to a hospital; and

(*o*) Security protection as may be required to ensure the well-being of all participants in the Conference and the efficient functioning of the Conference free from interference of any kind.

D. *Privileges and immunities*

I further wish to propose that the following terms shall apply to the Conference:

1. (*a*) The Convention on the Privileges and Immunities of the United Nations (1946), ratified by Romania on 5 July 1956, shall be applicable in respect of the Conference. The participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations under 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. Officials of the specialized agencies participating in the Conference 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 (1947).

(*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 of Romania 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.

2. All participants and all persons performing functions in connection with the Conference shall have the right of unimpeded entry into and exit from Romania. Visas and entry permits, where required, shall be granted free of charge. When applications are made four weeks before the opening of the Conference, visas shall be granted not later than two weeks before the opening of the Conference. 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.

3. 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 or damage to person or property in conference or office premises provided for the Conference;

(ii) The transportation provided by your Government;

(iii) The employment for the Conference 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.

4. Any dispute concerning the interpretation or implementation of these terms except for a dispute subject to the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations or of any other applicable agreement, shall, unless the parties otherwise agree, be submitted to a tribunal of

three arbitrators, one of whom shall be appointed by the Secretary-General of the United Nations, one by the Government, and the third, who shall be the chairman, by the other two arbitrators. If either party does not appoint an arbitrator within three months of the other party having notified the name of its arbitrator or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them appoint the chairman, then such arbitrator shall be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the parties, the tribunal shall adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the parties, and take all decisions by a two-thirds majority. Its decisions on all questions of procedure and substance shall be final and, even if rendered in default of one of the parties, be binding on both of them.

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 Romania regarding the provision of host facilities by your Government for the Conference.

(*Signed*) Pino ARLACCHI
Director-General
United Nations Office at Vienna

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF ROMANIA TO THE UNITED NATIONS, VIENNA

23 October 1998

Dear Mr. Director-General,

As you already know, the Romanian Government through the specialized agencies attaches great importance to hosting the United Nations Preparatory Conference for Eastern Europe on UNISPACE III (Bucharest, 25-29 January 1999).

Therefore, it is a great pleasure for me to inform you that my Government agrees with the proposals you made in your letter of 30 September 1998 on the arrangements of the above Conference.

(*Signed*) Traian CHEBELEU
Ambassador

(*o*) Exchange of letters constituting an agreement between the United Nations and the Government of Greece concerning arrangements for the Athens Meeting of the Georgian and Abkhaz Sides on Confidence-Building Measures, from 16 to 18 October 1998. Georgia, 10 October 1998[18]

I

LETTER FROM THE UNITED NATIONS

10 October 1998

Excellency,

In keeping with the interest expressed by the Government of Greece in hosting the Meeting of the Georgian and Abkhaz Sides on Confidence-Building Measures,

part of the Geneva peace process, and based on agreements reached by Ambassador Liviu Bota, Special Representative of the Secretary-General for Georgia, with the Parties, the aforementioned Meeting is scheduled to take place in Athens from 16 to 18 October 1998.

The delegations of the Georgian and Abkhaz sides will consist of approximately twenty (20) members each. In addition, each delegation may bring up to three technical support staff.

The Meeting will also be attended by three representatives of the Russian Federation in its capacity as facilitator; and by one or two representatives each of the Organization for Security and Cooperation in Europe, and the countries composing the group of Friends of the Secretary-General—France, Federal Republic of Germany, Russian Federation, United Kingdom of Great Britain and Northern Ireland and United States of America.

The Executive Secretary of the Joint/Bilateral Coordination Commission will also attend.

The Special Representative of the Secretary-General will chair the Meeting and provide good offices. He will be assisted by his Deputy Head of the United Nations Observer Mission in Georgia; a Senior Political Adviser; a Political Affairs Officer and the Special Assistant to the Special Representative of the Secretary-General. The team of the Special Representative will also include two interpreters and one international secretary.

It is understood that the Government of Greece will provide accommodation and meals for all the participants, appropriate conference facilities, computers and other necessary equipment, local transportation and logistical back-up. The Meeting will be held, and all participants will be accommodated, in the hotel Astir Palace, Vouliagmeni. In addition, the Government of Greece will also pay for the services, including transportation, of the two international interpreters and one international secretary.

I wish with the present letter to propose that the following terms shall apply to the Meeting:

1. The 1946 Convention on the Privileges and Immunities of the United Nations (hereinafter referred to as "the General Convention") and the 1961 Vienna Convention on Diplomatic Relations (hereinafter referred to as "the Vienna Convention") shall be applicable mutatis mutandis to the Meeting and persons involved therein, as appropriate.

2. For the purpose of the General Convention, the premises provided by the Government of Greece for the Meeting shall be deemed to constitute premises of the United Nations in the sense of section 3 of the General 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 Meeting, including the preparatory stage and the winding-up.

3. All participants in the Meeting and persons performing services for the Meeting shall be accorded such privileges and immunities, exemptions and facilities and security coverage as are necessary for the independent exercise of their functions in connection with the Meeting.

4. The representatives or observers of States shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents in accordance

with international law and in particular under the General Convention and the Vienna Convention. They shall, inter alia, enjoy:

(*a*) Personal inviolability, including immunity from arrest or detention;

(*b*) Immunity from criminal, civil and administrative jurisdiction in conformity with article 31 of the Vienna Convention;

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

(*d*) The right to use codes and to receive papers and correspondence by courier or in sealed bags in accordance with article 27 of the Vienna Convention;

(*e*) Exemption from immigration restrictions, alien registration or national service obligations;

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

(*g*) The same immunities and facilities in respect of their official and personal baggage as are accorded to diplomatic agents.

5. The representatives and/or observers of the Abkhaz authorities invited by the United Nations to participate in the Meeting shall be accorded the privileges, immunities and facilities as are enjoyed by experts on mission for the United Nations under articles VI and VII of the General Convention. They shall, inter alia, enjoy:

(*a*) Immunity from personal arrest and detention and from seizure of their official and personal baggage;

(*b*) Immunity from legal process of every kind in respect of words spoken or written and acts done by them in the course of the Meeting. Such immunity shall continue to be accorded after termination of the Meeting;

(*c*) Inviolability for themselves, their residences and for all papers and documents;

(*d*) Immunity from national service obligations;

(*e*) Immunity from immigration restrictions and alien registration;

(*f*) The right to use codes and to receive papers and correspondence by courier or in sealed bags;

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

(*h*) The same immunities and facilities in respect of their official and personal baggage as are accorded to diplomatic envoys.

6. The persons referred to in paragraph 5 above, during their stay in Greece in connection with the Meeting, shall not be prosecuted or subjected to any other restriction of their liberty by the competent authorities of Greece in respect of acts or convictions prior to their entry into the territory of Greece.

7. The privileges, immunities and facilities referred to in paragraph 5 above, except for the provisions of paragraph 5 (*b*), shall cease when any person entitled thereto, having had, for a period of fifteen (15) consecutive days from the date of the official closure of the Meeting, an opportunity to leave Greece, has nevertheless remained in the territory of Greece, or having left it, has returned, unless such return was required for the continuation of the Meeting.

8. Officials of the United Nations participating in or performing services for the Meeting, regardless of their nationality, shall be accorded the privileges, immunities and other facilities as provided for in articles V and VII of the General Convention.

9. Personnel provided by the Government of Greece for the servicing of the Meeting shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with the Meeting. They shall be accorded such other facilities as may be necessary for the independent exercise of their functions.

10. All persons referred to in paragraphs 4, 5 and 8 above shall be notified as such by the United Nations to the Government of Greece. They shall have the right of unimpeded entry into, exit from, and movement within Greece, as appropriate and for the purposes of the Meeting. They shall be granted facilities for speedy travel. Visas, entry/exit permits or licences, where required, shall be granted free of charge and as promptly as possible. Arrangements shall also be made to ensure that visas and entry permits for the duration of the Meeting are delivered at the airport of arrival for those participants who were unable to obtain them prior to their arrival.

11. The Government of Greece shall recognize and accept the United Nations laissez-passer as a valid travel document.

12. The competent authorities of Greece shall take effective and adequate actions which may be required to ensure the appropriate security, safety and protection of persons referred to in this Agreement, indispensable for the effective functioning of the Meeting in an atmosphere of security and tranquillity and free from interference of any kind. The Government shall furnish such police protection as may be required. While such police services shall be under the direct supervision and control of a senior officer provided by the Government, this officer shall work in close cooperation with a designated senior official of the United Nations.

13. The Government of Greece shall ensure that adequate accommodation in hotels or residences is available for persons, other than those mentioned above, who might attend the Meeting.

14. Medical facilities adequate for first aid in emergencies shall be provided by the Government within the Meeting area. For serious emergencies, the Government shall ensure immediate transportation and admission to a hospital.

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

(*a*) Injury to persons or damage to or loss of property in the Meeting premises 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 that are provided by or are under the control of the Government;

(*c*) The employment for the Meeting of the personnel provided by the Government;

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

16. Any dispute between the United Nations and the Government concerning the interpretation or application of this Agreement that is not settled by negotiation

or other agreed mode of settlement shall be referred at the request of either Party for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General of the United Nations, one to be named by the Government and the third, who shall be the chairman, to be chosen by the first two; if either Party fails to appoint an arbitrator within sixty (60) days of the appointment by the other Party, or if these two arbitrators should fail to agree on the third arbitrator within sixty (60) days of their appointment, the President of the International Court of Justice may make any necessary appointments at the request of either Party. However, any such dispute that involves a question regulated by the Convention on the Privileges and Immunities of the United Nations shall be dealt with in accordance with section 30 of that Convention.

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 Greece regarding the provision of host facilities by your Government for the Athens Meeting of the Georgian and Abkhaz Sides on Confidence-Building Measures, under the auspices of the United Nations.

(*Signed*) Liviu BOTA
Special Representative of the Secretary-General for Georgia

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF GREECE TO THE UNITED NATIONS

10 October 1998

Your Excellency,

I have the pleasure to acknowledge the receipt of your letter dated 10 October 1998.

Availing myself of this opportunity, I would also like to confirm that the Hellenic Government fully agrees with the content of this letter.

(*Signed*) Tassos KRIEKOUKIS
Ambassador Extraordinary and Plenipotentiary of Greece

(*p*) Agreement between the United Nations and the Government of the People's Democratic Republic of Algeria on the status of the United Nations Mission for the Referendum in Western Sahara. Signed at New York on 3 November 1998[19]

I

DEFINITIONS

1. For the purposes of the present Agreement, the following definitions shall apply:

(*a*) "MINURSO" means the United Nations Mission for the Referendum in Western Sahara, established in accordance with Security Council resolution 690 (1991) of 20 April 1991 and the mandate of which has been extended by various

Security Council resolutions, the most recent being resolution 1204 (1998) of 30 October 1998. MINURSO was strengthened pursuant to Security Council resolution 1148 (1998) of 26 January 1998. It comprises:

(i) The "Special Representative" appointed by the Secretary-General of the United Nations. Except in paragraph 29 below, any reference in the present Agreement to the Special Representative shall also include any member of MINURSO to whom the Special Representative may have delegated his authority;

(ii) The "civilian component", made up of United Nations officials and of personnel provided by participating States at the request of the Secretary-General;

(iii) The "military component", made up of military and civilian personnel provided by participating States at the request of the Secretary-General;

(iv) The "security component", made up of civilian police officers made available to MINURSO by participating States at the request of the Secretary-General;

(*b*) "mission area" means the Territory of Western Sahara and designated sites in neighbouring countries in which MINURSO is performing any of its functions; any reference in this Agreement to the mission area means such sites, main roads and air traffic lanes necessary for the conduct of MINURSO activities as have been identified jointly by the Government of the People's Democratic Republic of Algeria and the Special Representative in the Tindouf administrative district;

(*c*) "member of MINURSO" means any member of the civilian or military component or the security component;

(*d*) "participating State" means a State contributing personnel, services, equipment, provisions, supplies, stores and other goods to the civilian or military component or the security component of MINURSO;

(*e*) "the Government" means the Government of the People's Democratic Republic of Algeria;

(*f*) "the 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*) "contractors" means individuals or legal entities and their employees and subcontractors, other than members of MINURSO, whom the United Nations hires to provide services and/or to supply equipment, provisions, stores and other goods to support MINURSO activities. Such contractors shall not be considered third-party beneficiaries within the meaning of the present Agreement;

(*h*) "vehicles" means civilian and military vehicles used by the United Nations and operated by members of MINURSO and by contractors hired to support MINURSO activities;

(*i*) "vessels" means civilian and military vessels used by the United Nations and operated by members of MINURSO and by contractors hired to support MINURSO activities;

(*j*) "aircraft" means civil and military aircraft used by the United Nations and operated by members of MINURSO and by contractors hired to support MINURSO activities.

II

Application of the present Agreement

2. Subject to the provisions of paragraphs 5 and 6 below, taking into account the obligations of MINURSO and of the Government and unless specifically provided otherwise, the provisions of the present Agreement and any obligation undertaken by the Government or any privilege, immunity, facility or concession granted to MINURSO or to any member or contractor thereof apply in the mission area.

III

Application of the Convention

3. MINURSO, its property, funds and assets, and its members, including the Special Representative, shall enjoy the privileges and immunities specified in the present Agreement as well as those provided for in the Convention, to which Algeria is a party.

4. Article II of the Convention, which applies to MINURSO, shall also apply to the property, funds and assets of participating States used in connection with MINURSO.

IV

Status of MINURSO

5. MINURSO and its members shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the provisions and the spirit of the present Agreement. MINURSO and its members shall respect all local laws and regulations. The Special Representative shall take all appropriate measures to ensure the observance of those obligations.

6. The Government undertakes to respect the exclusively international nature of MINURSO.

7. Without prejudice to the mandate of MINURSO and its international status:

(*a*) The United Nations shall ensure that MINURSO conducts its mission in a manner fully consistent with the principles and rules of international conventions on the conduct of military personnel. Such international conventions include the four Geneva Conventions of 12 August 1949 and the Protocols Additional thereto of 8 June 1977 and the UNESCO International Convention for the Protection of Cultural Property in the Event of Armed Conflict;

(*b*) The Government undertakes to treat MINURSO military personnel at all times in a manner fully consistent with the principles and rules of international conventions applicable to the treatment of military personnel. Such international conventions include the four Geneva Conventions of 12 August 1949 and the Protocols Additional thereto of 8 June 1977.

8. MINURSO and the Government shall ensure that their respective military personnel are fully cognizant of the principles and rules of the international instruments referred to in paragraph 7 above.

United Nations flag and vehicle markings

9. The Government recognizes the right of MINURSO to display within the mission area the United Nations flag on its camps or other premises, ve-

hicles, vessels and otherwise as decided by the Special Representative. Other flags or pennants may be displayed only in exceptional cases and subject to the Government's express consent.

10. MINURSO vehicles, vessels and aircraft shall carry a distinctive United Nations identification, which shall be notified to the Government.

Communications

11. MINURSO shall enjoy the facilities with respect to communications provided in article III of the Convention and shall, in coordination with the Government, use such facilities as may be required for the performance of its task. Issues with respect to communications which may arise and which are not specifically provided for in the present Agreement shall be dealt with pursuant to the relevant provisions of the Convention.

12. Subject to the provisions of paragraph 11:

(*a*) MINURSO shall have the right to install, in consultation with the Government, and to operate United Nations radio stations to disseminate information about its mandate. MINURSO shall also have authority to install radio sending and receiving stations as well as satellite systems to connect appropriate points within the mission area with each other and with United Nations offices in other countries, and to exchange traffic with the United Nations global telecommunications network. United Nations radio stations and telecommunication services shall be operated in accordance with the International Telecommunication Convention and Regulations and the frequencies on which any such stations may be operated shall be decided upon in cooperation with the Government and shall be communicated by the United Nations to the International Frequency Regulation Board;

(*b*) MINURSO shall enjoy the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, telegraph, facsimile or any other means, and of establishing the necessary facilities for maintaining such communications within and between its premises, including the laying of cables and landlines and the establishment of fixed and mobile radio sending, receiving and repeater stations. The frequencies on which the radio will operate shall be decided upon in cooperation with the Government. It is understood that connections with the local system of telegraphs, telex and telephones may be made only after consultation and in accordance with arrangements with the Government, it being further understood that the use of the local system of telegraphs, telex and telephones will be charged at the most favourable rate;

(*c*) MINURSO may make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from its members. The Government shall be informed of the nature of such arrangements and shall not interfere with or apply censorship to the mail of MINURSO or its members. In the event that postal arrangements applying to private mail of members of MINURSO are extended to transfers of currency or the transport of packages and parcels, the conditions under which such operations are conducted shall be agreed with the Government.

Travel and transport

13. MINURSO and its members shall enjoy, together with its contractors, vehicles, vessels, aircraft and equipment, freedom of movement throughout the mis-

sion area. That freedom shall, with respect to large movements of personnel, stores, vehicles or aircraft through airports or on railways or roads used for general traffic within the mission area, be coordinated with the Government. The Government undertakes to supply MINURSO, where necessary, with maps and other information, including locations of minefields and other dangers and impediments, which may be useful in facilitating its movements.

14. MINURSO vehicles shall not be subject to registration or licensing by the Government, provided that all such vehicles shall have identification documents drawn up by the United Nations and shall carry the third-party insurance required by relevant legislation.

15. MINURSO and its members, together with its contractors, vehicles, vessels and aircraft, may use roads, bridges, canals and other waters, port facilities and airfields without the payment of dues, tolls or charges, including wharfage charges. However, MINURSO will not claim exemption from charges which are in fact charges for services rendered.

Privileges and immunities of MINURSO

16. MINURSO, as a subsidiary organ of the United Nations, enjoys the status, privileges and immunities of the United Nations in accordance with the Convention. The provision of article II of the Convention which applies to MINURSO shall also apply to the property, funds and assets of participating States used in connection with the national contingents serving in MINURSO, as provided for in paragraph 4 of the present Agreement. The Government recognizes the right of MINURSO in particular:

(*a*) To import, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of MINURSO or for resale in the commissaries provided for hereinafter;

(*b*) To establish, maintain and operate commissaries in its camps and posts for the benefit of its members, but not of locally recruited personnel or of contractors. Such commissaries may provide goods of a consumable nature and other articles to be specified in advance. The Special Representative shall take all necessary measures to prevent abuse of such commissaries and the sale or resale of such goods to persons other than members of MINURSO, and he shall give sympathetic consideration to observations or requests of the Government concerning the operation of the commissaries;

(*c*) To clear ex customs and excise warehouse, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of MINURSO or for resale in the commissaries provided for above;

(*d*) To re-export or otherwise dispose of such equipment, as far as it is still usable, all unconsumed provisions, supplies and other goods so imported or cleared ex customs and excise warehouse which are not transferred, or otherwise disposed of, on terms and conditions to be agreed upon, to the competent local authorities or to an entity nominated by them.

17. To the end that the importation, clearances, transfer or exportation referred to in paragraph 16 may be effected with the least possible delay, a mutually satisfactory procedure, including documentation, shall be agreed upon between MINURSO and the Government.

V

FACILITIES FOR MINURSO AND ITS CONTRACTORS

Premises required for the operational and administrative activities of MINURSO and for accommodating its members

18. The Government shall, subject to the resources available, provide without cost to MINURSO and in agreement with the Special Representative such sites and other premises as may be necessary for the conduct of the operational and administrative activities of MINURSO and for the accommodation of its members. Without prejudice to the fact that all such premises remain Algerian territory, they shall be inviolable and subject to the exclusive control and authority of the United Nations. Where United Nations military personnel are co-located with Algerian military personnel, a permanent, direct and immediate access by MINURSO to those premises shall be guaranteed.

19. The Government undertakes to assist MINURSO as far as possible in obtaining and making available, where applicable, water, electricity and other facilities free of charge, or, where this is not possible, at the most favourable rate, and in the case of interruption or threatened interruption of service, to give as far as is within its powers the same priority to the needs of MINURSO as to essential government services. Where such utilities or facilities are not provided free of charge, payment shall be made by MINURSO on terms to be agreed with the competent authority. MINURSO shall be responsible for the maintenance and upkeep of facilities so provided.

20. MINURSO shall have the right, where necessary, to generate, within its premises, electricity for its use and to transmit and distribute such electricity.

21. The United Nations alone may consent to the entry of any government officials or of any other person not a member of MINURSO to such premises.

Provisions, supplies and services and sanitary arrangements

22. The Government agrees to grant all the authorizations and licences and all the permits necessary for the importation of equipment, provisions, supplies, stores and other goods at MINURSO expense, including their importation free of duties, charges or taxes, including contractors' value-added tax.

23. The Government undertakes to assist MINURSO as far as possible in obtaining equipment, provisions, supplies and other goods and services from local sources required for its subsistence and operations. With regard to equipment, provisions, supplies and other goods purchased officially on the local market for the exclusive use of MINURSO and its contractors, the Government shall take the necessary administrative steps to exempt locally purchased goods from value-added tax, duties and other charges. On the basis of observations made and information provided by the Government in that respect, MINURSO shall avoid any adverse effect on the local economy. The Government shall exempt MINURSO and its contractors from general sales taxes in respect of all official local purchases.

24. To enable contractors to provide proper support services to MINURSO, the Government agrees to grant contractors facilities enabling them to enter and leave the mission area and to be repatriated in times of international crisis. To this end, the Government shall issue to contractors promptly, free of charge and without restrictions all necessary visas, permits and authorizations.

25. Contractors, other than Algerian nationals, serving the United Nations and hired exclusively to support MINURSO activities shall be exempt from payment of taxes on the services provided to MINURSO, including corporation tax, income tax, social security tax and other similar taxes arising directly from the provision of such services, as well as value-added tax.

26. MINURSO and the Government shall cooperate with respect to sanitary services and shall extend to each other the fullest cooperation in matters concerning health, particularly with respect to the control of communicable diseases, in accordance with international conventions.

Recruitment of local personnel

27. MINURSO may recruit locally such personnel as it requires. Upon the request of the Special Representative, the Government undertakes to facilitate the recruitment of qualified local staff by MINURSO and to accelerate the process of such recruitment.

Currency

28. MINURSO shall use Algerian dinars in the mission area.

VI

Status of the members of MINURSO

Privileges and immunities

29. The Special Representative, the Deputy Special Representative, the Force Commander of the military component, the Police Commissioner in charge of the security component and such high-ranking members of the Special Representative's staff as may be agreed upon with the Government shall have the status specified in sections 19 and 27 of the Convention, provided that the privileges and immunities therein referred to shall be those accorded to diplomatic envoys by international law.

30. Officials of the United Nations assigned to the civilian component to serve with MINURSO remain officials of the United Nations entitled to the privileges and immunities of articles V and VII of the Convention.

31. Military observers, members of the security component and civilian personnel other than United Nations officials whose names are for the purpose notified to the Government by the Special Representative shall be considered as experts on mission within the meaning of articles VI and VII of the Convention.

32. Military personnel of national contingents assigned to the military component of MINURSO shall have the privileges and immunities specifically provided for in the present Agreement.

33. Unless otherwise specified in the present Agreement, locally recruited members of MINURSO shall enjoy the immunities concerning official acts and exemption from taxation and national service obligations provided for in section 18 (*a*), (*b*) and (*c*) of the Convention.

34. Members of MINURSO shall be exempt from taxation on the pay and emoluments received from the United Nations or from a participating State and any income received from outside the mission area. They shall also be exempt from all

other direct taxes, except municipal rates for services enjoyed, and from all registration fees and charges.

35. Members of MINURSO shall have the right to import free of duty their personal effects in connection with their arrival in the mission area. They shall be subject to the laws and regulations of Algeria governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in the mission area with MINURSO. Special facilities will be granted by the Government for the speedy processing of entry and exit formalities for all members of MINURSO, including the military component, upon prior written notification. On departure from the mission area, members of MINURSO may, notwithstanding the above-mentioned exchange regulations, take with them such funds as the Special Representative certifies were received in pay and emoluments from the United Nations or from a participating State and are a reasonable residue thereof. Special arrangements shall be made for the implementation of the present provisions in the interests of the Government and the members of MINURSO.

36. The Special Representative shall cooperate with the Government and shall render all assistance within his power in ensuring the observance of the customs and fiscal laws and regulations of Algeria by the members of MINURSO, in accordance with the present Agreement.

Entry, residence and departure

37. The Special Representative and members of MINURSO shall, whenever so required by the Special Representative, have the right to enter, reside in and depart from the mission area, in accordance with the present Agreement.

38. The Government undertakes to facilitate the entry into and departure from the mission area of the Special Representative and of the members of MINURSO, and shall be kept informed of such movement. To this end, the Government shall expedite the issuance without charge of visas for the Special Representative and members of MINURSO. Members of MINURSO must have identification documents issued by the United Nations while in the mission area and current passports with movement orders issued by the United Nations for all departures from and entries into Algerian territory. The Special Representative and members of MINURSO shall be exempt from immigration inspection and restrictions on entering or departing from the mission area. They shall also be exempt from any regulations governing the residence of aliens in the mission area, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in the mission area.

39. For the purpose of such entry or departure, members of MINURSO shall only be required to have: (*a*) an individual or collective movement order issued by or under the authority of the Special Representative or any appropriate authority of a participating State; and (*b*) a personal identity card issued in accordance with paragraph 40 of the present Agreement, except in the case of first entry, when the personal identity card issued by the appropriate authorities of a participating State shall be accepted in lieu of the said identity card.

Identification

40. The Special Representative shall issue to each member of MINURSO before or as soon as possible after such member's first entry into the mission area,

as well as to all locally recruited personnel and to contractors, a numbered identity card, which shall show full name, date of birth, title or rank, service (if appropriate) and photograph. Except as provided for in paragraph 39 of the present Agreement, such identity card shall be the only document required of a member of MINURSO.

41. Members of MINURSO as well as locally recruited personnel and contractors shall be required to present, but not to surrender, their MINURSO identity cards upon demand of an appropriate official of the Government.

Uniform and arms

42. Military members and civilian police members of MINURSO shall wear, while performing official duties, the national military or police uniform of their respective States with standard United Nations accoutrements. United Nations Security Officers and Field Service Officers may wear the United Nations uniform. The wearing of civilian dress by the above-mentioned members of MINURSO may be authorized by the Special Representative at other times. Military members and civilian police members of MINURSO and United Nations Security Officers designated by the Special Representative may possess and carry their service weapons in the mission area while on duty in accordance with their orders.

Permits and licences

43. The Government agrees to accept as valid, without tax or fee, a permit or licence issued by the Special Representative for the operation by any member of MINURSO, including locally recruited personnel, of any MINURSO transport or communication equipment and for the practice of any profession or occupation in connection with the functioning of MINURSO, provided that no licence to drive a vehicle or pilot an aircraft shall be issued to any person who is not already in possession of an appropriate and valid licence.

44. The Government agrees to accept as valid, and, if appropriate, to validate free of charge and without restrictions, licences and certificates issued by the competent authorities of other States relating to aircraft and vessels. Without prejudice to the foregoing, the Government also agrees to grant promptly, free of charge and without restrictions, the necessary authorizations, licences and certificates, as appropriate, for the purchase, use, operation and maintenance of aircraft and vessels.

45. Without prejudice to the provisions of paragraph 42, the Government further agrees to accept as valid, without tax or fee, a permit or licence issued by the Special Representative to a member of MINURSO for the carrying or use of firearms or ammunition in connection with the functioning of MINURSO in the mission area.

Military police, arrest and transfer of custody and mutual assistance

46. The Special Representative shall take all appropriate measures to ensure the maintenance of discipline and good order among members of MINURSO, as well as locally recruited personnel. To this end, personnel designated by the Special Representative shall police the premises of MINURSO and such areas where its members are deployed. Elsewhere, such personnel shall be employed subject to arrangements with the Government and in liaison with it only insofar as the Special Representative considers such employment necessary to maintain discipline and order among members of MINURSO.

47. The military police of MINURSO shall have the power of arrest in the mission area over the military members of MINURSO. Military personnel placed under arrest outside their own contingent areas shall be transferred to their contingent commander for appropriate disciplinary action. The personnel mentioned in paragraph 46 above may take into custody any other person who commits an offence or creates a disturbance on the premises of MINURSO. Such other person shall be delivered immediately to the nearest appropriate official of the Government for the purpose of dealing with the offence or disturbance on such premises.

48. Subject to the provisions of paragraphs 29 and 31, officials of the Government may take into custody any member of MINURSO:

(*a*) When so requested by the Special Representative; or

(*b*) When such a member of MINURSO is apprehended in the commission or attempted commission of a criminal offence. Such person shall be delivered immediately, together with any weapons or other item seized, to the nearest appropriate representative of MINURSO, whereafter the provisions of paragraph 53 shall apply mutatis mutandis.

49. When a person is taken into custody under paragraph 47 or paragraph 48 (*b*), MINURSO or the Government, as the case may be, may make a preliminary interrogation but may not delay the transfer of custody. Following such transfer, the person concerned shall be made available upon request to the arresting authority for further interrogation.

50. MINURSO and the Government shall assist each other in carrying out all necessary investigations into offences in respect of which either or both have an interest, in the production of witnesses and in the collection and production of evidence, including the seizure of and, if appropriate, the handing over of items connected with an offence. The handing over of any such items may be made subject to their return within a period of time specified by the authority delivering them. Each shall notify the other of the disposition of any case in the outcome of which the other may have an interest or in which there has been a transfer of custody under the provisions of paragraphs 47 to 49.

51. The Government shall ensure the prosecution of persons subject to its criminal jurisdiction who are accused of acts in relation to MINURSO or its members which, if committed in relation to the forces of the Government, would have rendered such acts liable to prosecution.

Jurisdiction

52. All members of MINURSO including locally recruited personnel shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue even after they cease to be members of or employed by MINURSO and after the expiration of the other provisions of the present Agreement.

53. Should the Government consider that any member of MINURSO has committed a criminal offence, it shall promptly inform the Special Representative and present to him any evidence available to it. Subject to the provisions of paragraph 29:

(*a*) If the accused person is a member of the civilian component or a member of the security component or a civilian member of the military component, the Special Representative shall conduct any necessary supplementary inquiry and then agree with the Government whether or not criminal proceedings should be insti-

tuted. Failing such agreement, the question shall be resolved as provided in paragraph 59 of the present Agreement;

(*b*) Military members of the military component of MINURSO shall be subject to the exclusive jurisdiction of their respective participating States in respect of any criminal offences which may be committed by them in the mission area.

54. If any civil proceeding is instituted against a member of MINURSO before any Algerian court, the Special Representative shall be notified immediately, and he shall certify to the court whether or not the proceeding is related to the official duties of such member:

(*a*) If the Special Representative certifies that the proceeding is related to official duties, such proceeding shall be discontinued and the provisions of paragraph 57 of the present Agreement shall apply;

(*b*) If the Special Representative certifies that the proceeding is not related to official duties, the proceeding may continue. If the Special Representative certifies that a member of MINURSO is unable because of official duties or authorized absence to protect his interests in the proceeding, the court shall at the defendant's request suspend the proceeding until the elimination of the disability, but for not more than 90 days. Property of a member of MINURSO that is certified by the Special Representative to be needed by the defendant for the fulfilment of his official duties shall be free from seizure for the satisfaction of a judgement, decision or order. The personal liberty of a member of MINURSO shall not be restricted in a civil proceeding, whether to enforce a judgement, decision or order, to compel an oath or for any other reason.

Deceased members

55. The Special Representative shall have the right to take charge of and dispose of the body of a member of MINURSO, as well as that member's personal property, in accordance with United Nations procedures.

VII

Limitations on the liability of the United Nations

56. Third-party claims for property losses or damage or for personal injury, illness or death linked to MINURSO or directly attributable to it (excluding losses, damage or injury attributable to operational necessity) which cannot be settled in accordance with United Nations internal procedures shall be settled in accordance with article 57 of the present Agreement, provided that the claims are submitted within six months of the time when the loss, damage or personal injury was sustained or, if the claimant was not and could not reasonably have been aware of the damage or loss, within six months of the time when it was discovered by the claimant, but not in any event later than one year after the termination of the mandate of MINURSO. Once its liability has been established, the United Nations shall pay compensation, subject to the financial limitations approved by the General Assembly in its resolution 52/247 of 26 June 1998.

VIII

Settlement of disputes

57. Except as provided in paragraph 59, any dispute or claim of a private law character, not relating to damage attributable to the operational necessity of MINURSO, to which MINURSO or a member thereof is a party and over which the

Algerian courts do not have jurisdiction because of a provision of the present Agreement shall be settled by a standing claims commission to be established for that purpose. The Secretary-General of the United Nations and the Government shall each appoint a member of the commission and a chairman shall be appointed jointly by the Secretary-General and the Government. If the second member of the commission has not been appointed within 30 days of the appointment of the first member, the President of the International Court of Justice may, at the request of the party which appointed the first member, appoint the second member of the commission. If no agreement on the appointment of the chairman has been reached by the two parties within 30 days of the appointment of the second member of the commission, the President of the International Court of Justice may, at the request of either party, appoint the chairman. Any vacancy on the commission shall be filled by the same method prescribed for the original appointment, provided that the 30-day period there prescribed shall start as soon as there is a vacancy in the chairmanship. The commission shall determine its own procedures, provided that any two members shall constitute a quorum for all purposes (except for a period of 30 days after the creation of a vacancy) and all decisions shall require the approval of any two members. The awards of the commission shall be final and binding. The awards of the commission shall be notified to the parties and, if against a member of MINURSO, the Special Representative or the Secretary-General of the United Nations shall use his best endeavours to ensure compliance.

58. Disputes concerning the terms of employment and conditions of service of locally recruited personnel shall be settled by the administrative procedures to be established by the Special Representative.

59. Any other dispute between MINURSO and the Government concerning the interpretation or application of the present Agreement shall, unless otherwise agreed by the parties, be submitted to a tribunal of three arbitrators. The provisions relating to the establishment and procedures of the claims commission shall apply, mutatis mutandis, to the establishment and procedures of the tribunal. The decisions of the tribunal shall be final and binding on both parties.

60. All differences between the United Nations and the Government arising out of the interpretation or application of the present arrangements which involve a question of principle concerning the Convention shall be dealt with in accordance with the procedure of section 30 of the Convention.

IX

SUPPLEMENTAL ARRANGEMENTS

61. The Special Representative and the Government may conclude supplemental arrangements to the present Agreement.

X

LIAISON

62. The Special representative and the Government shall take appropriate measures to ensure close and reciprocal liaison at every appropriate level.

XI

MISCELLANEOUS PROVISIONS

63. Wherever the present Agreement refers to the privileges, immunities and rights of MINURSO and to the facilities the Government undertakes to provide to

MINURSO and contractors, the Government shall have the ultimate responsibility for the implementation and fulfilment of such privileges, immunities, rights and facilities by the appropriate local authorities.

64. The present Agreement shall enter into force on the date of its signature by the Secretary-General of the United Nations or on his behalf and by the Government of Algeria.

65. The present Agreement shall remain in force until the departure of the final element of MINURSO, except that:

(*a*) The provisions of paragraphs 52, 59 and 60 shall remain in force;

(*b*) The provisions of paragraphs 56 and 57 shall remain in force until all claims submitted in accordance with paragraph 56 have been settled.

DONE at New York, on 3 November 1998, in duplicate in the Arabic and French languages, both texts being equally authentic.

For the United Nations:	*For the Government of the People's Democratic Republic of Algeria*:
[*Signature*]	[*Signature*]
Mr. BERNARD MIYET	H.E. Mr. Abdallah BAALI
Under-Secretary-General	*Ambassador Extraordinary and Plenipotentiary*
Department of Peacekeeping Operations	*Permanent Representative to the United Nations*

(*q*) Memorandum of Understanding between the United Nations and the Federal Government of Austria for the loan of prison staff to the International Tribunal for the Former Yugoslavia. Signed at The Hague on 4 November 1998[20]

Whereas the United Nations Security Council, in its resolutions 808 (1993) of 22 February 1993 and 827 (1993) of 25 May 1993, decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace (hereinafter "the International Tribunal"),

Whereas by paragraph 5 of resolution 827 (1993) the Security Council urged States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel,

Whereas by her letter of 27 March 1997 to diplomatic missions of all States Members of the United Nations, the Registrar of the International Tribunal requested the assistance of States in providing, on either a reimbursable or a non-reimbursable loan, the services of qualified prison staff,

And whereas the Federal Government of Austria (hereinafter "the Government"), in response to the Registrar's request, offered to make available to the International Tribunal, on a reimbursable basis, the services of qualified penitentiary personnel to assist in the operation of the detention facilities of the International Tribunal (hereinafter "the Detention Unit"),

Now therefore the United Nations and the Government (hereinafter "the Parties") have agreed as follows.

Article I

OBLIGATIONS OF THE GOVERNMENT

1. The Government shall provide to the International Tribunal for the duration and purpose of this Agreement the services of qualified penitentiary personnel (hereinafter "the loaned personnel"), listed in annex I hereto, to serve as prison officers and guards for the Detention Unit. Changes and modifications to the annex may be made with the agreement of the Parties.

2. The Government shall be responsible for all salaries, including overtime, social security benefits and travel to and from the place of residence to the site of the Detention Unit of the loaned personnel, subject to reimbursement by the United Nations as hereinafter provided.

3. The Government undertakes to ensure that during the entire period of service under this Agreement, the loaned personnel are covered by adequate medical and life insurance as well as insurance coverage for service-incurred illness, disability or death, as required by applicable Austrian law.

4. The International Tribunal shall retain the right to decide upon the suitability of the loaned personnel and may, upon one month's written notice, terminate the services of any of the loaned personnel following their assignment to the International Tribunal.

Article II

OBLIGATIONS OF THE UNITED NATIONS

1. The United Nations shall provide the loaned personnel with office space, uniforms, equipment and other resources necessary to carry out the tasks assigned to them at the Detention Unit.

2. The United Nations does not accept any liability for claims for compensation in respect of illness, injury or death arising out of or related to the provision of services under this Agreement, except where such illness, injury or death results directly from the gross negligence of the officials or staff of the United Nations.

Article III

REIMBURSEMENT

1. The International Tribunal shall pay the Government for the services of the loaned personnel, on the basis of 68,620.– Netherlands guilders per person per year, prorated on a monthly basis, according to the services performed.

2. Payment shall be made in arrears. The first payment shall be due on 31 May 1999. No additional or further payments shall be due in respect of the loaned personnel.

Article IV

OBLIGATIONS OF THE LOANED PERSONNEL

1. The Government agrees to the terms and obligations specified below, and shall, as appropriate, ensure that the loaned personnel performing services under this Agreement comply with these obligations:

(*a*) The loaned personnel shall perform their functions under the authority and in full compliance with the instructions of the Registrar and the Commanding Officer of the Detention Unit, and any person acting on their behalf;

(*b*) The loaned personnel shall undertake to respect the impartiality and independence of the International Tribunal and shall neither seek nor accept instructions regarding the services performed under this Agreement from any Government or from any authority external to the International Tribunal;

(*c*) The loaned personnel shall refrain from any conduct which would adversely reflect on the International Tribunal or the United Nations and shall not engage in any activity which is incompatible with the aims and objectives of the United Nations;

(*d*) The loaned personnel shall comply with all rules, regulations, instructions, procedures or directives issued by the International Tribunal;

(*e*) The loaned personnel shall exercise the utmost discretion in all matters relating to their functions and shall not communicate, at any time, without the authorization of the Registrar, to the media or to any institution, person, Government or other authority external to the International Tribunal, any information that has not been made public, and which has become known to them by reason of their association with the International Tribunal. They shall not use any such information without the written authorization of the Registrar, and in any event, such information shall not be used for personal gain. These obligations do not lapse upon expiration of this Agreement;

(*f*) The members of the loaned personnel shall sign an undertaking in the form attached to this Agreement in annex II.

2. The primary place of duty of the loaned personnel will be the Detention Unit. The loaned personnel may also be required by the Registrar or the Commanding Officer of the Detention Unit to assist with additional duties at other premises within the control or jurisdiction of the International Tribunal.

Article V

LEGAL STATUS OF THE LOANED PERSONNEL

1. The loaned personnel shall not be considered in any respect as being officials or staff of the United Nations.

2. The loaned personnel shall be considered "persons performing missions for the Tribunal". Persons performing missions for the Tribunal shall enjoy the privileges, immunities and facilities under articles VI and VII of the General Convention, which are necessary for the independent exercise of their duties for the Tribunal. The right and the duty to waive the immunity in any particular case where it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which it is granted, shall lie with the President of the Tribunal after consultation with the Austrian Government.

Article VI

CONSULTATION

The United Nations and the Government shall consult with each other in respect of any matter that may arise in connection with this Agreement.

Article VII

SETTLEMENT OF DISPUTES

Any dispute, controversy or claim arising out of or relating to this Agreement shall be settled by negotiation or other mutually agreed mode of settlement.

Article VIII

ENTRY INTO FORCE, DURATION AND TERMINATION

This Agreement shall enter into force upon 10 (ten) days from the date of the signature thereof, and shall remain in force until 31 May 1999, unless terminated earlier by either Party upon one month's written notice to the other Party. The Agreement may be extended with the consent of both Parties on the same conditions and for a further agreed period.

Article IX

AMENDMENT

This Agreement may be amended by written agreement of both Parties. Each Party shall give full consideration to any proposal for an amendment made by the other Party.

IN WITNESS WHEREOF, the respective representatives of the United Nations and the Federal Government of Austria have signed this Agreement.

DONE at The Hague, this fourth day of November in the year 1998, in two originals in the English language.

For the United Nations:
[*Signature*]
JEAN JACQUES HEINTZ
Deputy Registrar
International Tribunal
for the Former Yugoslavia

For the Federal Government of Austria:
[*Signature*]
ALEXANDER CHRISTIANI
Ambassador of Austria
to the Netherlands

(*r*) Agreement between the United Nations and the Government of Canada concerning the privileges, immunities and other facilities of the United Nations officials servicing the Secretariat of the Multilateral Fund for the Implementation of the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer. Signed at Cairo on 23 November 1998[21]

The United Nations and the Government of Canada, hereinafter referred to as the "Parties",

Whereas in accordance with the decision taken by the first meeting of the States parties to the Vienna Convention for the Protection of the Ozone Layer (Helsinki, 26-28 April 1989), the United Nations Environment Programme has been requested to carry out secretariat functions for the Secretariat of the Vienna Convention and 1987 Montreal Protocol on Substances that Deplete the Ozone Layer,

Whereas in accordance with the decisions taken by the States parties to the 1987 Montreal Protocol at their second meeting (London, 27-29 June 1990) and their fourth Meeting (Copenhagen, 23-25 November 1992) and by the Executive Committee of the Multilateral Fund for the Implementation of the Montreal Protocol

at its first meeting in Montreal (19-21 September 1990), the Government of Canada offered to host the Secretariat of the Multilateral Fund and to cover any additional costs of its location and operation in Canada, relative to the cost associated with the headquarters of the United Nations Environment Programme and to adjust these costs on an annual basis,

Whereas the Multilateral Fund has been made operative by the Executive Committee as from 1 January 1991,

Whereas the Convention on the Privileges and Immunities of the United Nations, to which Canada has been a party since 22 January 1948, applies to United Nations officials servicing the Secretariat of the Multilateral Fund,

Whereas the Government of Canada has agreed to ensure the availability of all the necessary facilities for United Nations officials to perform their functions in connection with the Multilateral Fund, and

Whereas the United Nations and the Government of Canada desire to conclude an Agreement to regulate matters resulting from the establishing in Montreal and operating in Canada of the Secretariat of the Multilateral Fund,

Have agreed as follows:

Article 1

DEFINITIONS

In this Agreement:

(*a*) "Multilateral Fund" means the Multilateral Fund for the Implementation of the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer and its amendments;

(*b*) "Secretariat" means the Secretariat of the Multilateral Fund;

(*c*) "officials of the Secretariat" means United Nations officials assigned by the United Nations to service the Secretariat, irrespective of nationality, with the exception of those who are recruited locally and are assigned to hourly rates; and

(*d*) "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.

Article 2

PRIVILEGES AND IMMUNITIES OF OFFICIALS OF THE SECRETARIAT

The officials of the Secretariat shall enjoy in Canada the following privileges and immunities:

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

(*b*) Exemption from taxation on the salaries and emoluments paid to them by the Multilateral Fund;

(*c*) Immunity for themselves, their spouses and relatives dependent on them from immigration restrictions and alien-registration procedures;

(*d*) Immunity from national service obligations;

(*e*) The same repatriation facilities in time of international crisis for themselves, their spouses and relatives dependent on them as are accorded to diplomatic agents;

(*f*) The same exchange facilities as are accorded to officials of comparable rank forming part of diplomatic missions in Canada; and

(*g*) The right to import free of duty their furniture and effects, including motor vehicles, at the time of first entry into Canada, or in the case of former residents of Canada returning to Canada to resume residence in Canada after having been residents of another country, the right, subject to the applicable legislation, to import free of duty their furniture and effects, including motor vehicles, at the time of their return to Canada.

Article 3

DIPLOMATIC PRIVILEGES, IMMUNITIES AND FACILITIES

1. In addition to the immunities and privileges specified in article 2, the Chief Officer, and his or her spouse and relatives dependent on him or her, unless they are Canadian citizens or are permanent residents in Canada as defined by applicable Canadian legislation, shall be accorded the same privileges, immunities and facilities as are enjoyed by diplomatic agents and their families in Canada.

2. In addition to the immunities and privileges specified in article 2, officials of the Secretariat belonging to senior categories determined by the Chief Officer in consultation with the Secretary-General of the United Nations and accepted by the Government of Canada, and their spouses and relatives dependent on them, unless they are Canadian citizens or are permanent residents in Canada as defined by applicable Canadian legislation, shall be accorded the privileges, immunities and facilities as are granted to diplomatic agents of comparable rank in Canada.

Article 4

EMPLOYMENT OF DEPENDANTS

Dependants of officials of the Secretariat shall, upon application, receive authorization for employment in Canada.

Article 5

WAIVER OF IMMUNITIES

Privileges and immunities are granted to officials of the Secretariat in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General of the United Nations shall have the right and the duty to waive the immunity of any United Nations official in any case where, in his opinion, the immunity would impede the course of justice and could be waived without prejudice to the interests of the United Nations.

Article 6

RESPECT FOR THE LAWS AND REGULATIONS OF CANADA

1. Without prejudice to their privileges and immunities, it is the duty of all officials of the Secretariat to respect the laws and regulations of Canada. They also have a duty not to interfere in the internal affairs of Canada.

2. The United Nations shall cooperate at all times with the appropriate authorities of Canada to facilitate the proper administration of justice, secure the observance of police regulations and avoid the occurrence of any abuse in connection with the privileges, immunities and facilities referred to in this Agreement.

Article 7

NOTIFICATION PROCEDURE

The Chief Officer shall promptly notify the Minister for Foreign Affairs of Canada of the names and categories of persons referred to in this Agreement and any change in their status.

Article 8

IDENTITY CARD AND UNITED NATIONS LAISSEZ-PASSER

1. The Government of Canada shall provide all officials of the Secretariat with an identity card certifying their status under this Agreement.

2. The Government of Canada shall recognize and accept United Nations laissez-passers held by officials of the Secretariat as valid travel documents. Visas, where required, shall be granted free of charge and as promptly as possible.

Article 9

SETTLEMENT OF DISPUTES

1. Without prejudice to article VIII of the Convention, any dispute concerning the interpretation or implementation of this Agreement that is not settled by negotiation or other agreed method of settlement shall, at the request of either Party, be referred to a tribunal of three arbitrators, one to be chosen by the Minister for Foreign Affairs of Canada, one to be named by the Secretary-General of the United Nations and the third to be appointed by the two arbitrators. If, within thirty days of the request for arbitration, either Party has not appointed an arbitrator or if, within fifteen days of the appointment of two arbitrators, the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator.

2. The procedure of arbitration shall be determined by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the disputes.

Article 10

FINAL PROVISIONS

1. When a provision of this Agreement and a provision of the Convention deal with the same subject, both provisions shall be considered complementary. Whenever possible, both of them shall be applied and neither shall restrict the force of the other.

2. This Agreement shall enter into force upon signature.

3. This Agreement may be amended by mutual consent at any time at the request of either Party.

4. This Agreement shall continue in effect indefinitely.

5. This Agreement shall cease to be in force if the Secretariat of the Multilateral Fund is relocated from the territory of Canada, except for such provisions as may be applicable in connection with the orderly termination of the operations of the Secretariat of the Multilateral Fund in Canada.

IN WITNESS WHEREOF the undersigned, duly authorized to that effect, have signed this Agreement.

DONE in duplicate at Cairo on this 23rd day of November 1998, in the English and the French languages, both texts being equally authentic.

For the United Nations:
[*Signature*]
Clauss TÖPFER
Executive Director of the United Nations Environment Programme
United Nations Under-Secretary-General for the Multilateral Fund

For the Government of Canada:
[*Signature*]
Marie-Andrée BEAUCHEMIN
Ambassador of Canada to Egypt

(*s*) Exchange of letters constituting an agreement between the United Nations and the Government of Italy concerning arrangements for the Bethlehem 2000 International Conference organized by the Committee on the Exercise of the Inalienable Rights of the Palestinian People, to be held in Rome on 18 and 19 February 1999. New York, 28 and 30 December 1998[22]

I

LETTER FROM THE UNITED NATIONS

28 December 1998

Excellency,

I have the honour to refer to resolution 52/50 on the "Question of Palestine" adopted by the General Assembly on 9 December 1997, in particular to paragraph 3 thereof, by which the Assembly requested the Secretary-General to ensure that the Division for Palestinian Rights of the Secretariat continued to discharge the tasks detailed in previous resolutions, in consultation with the Committee on the Exercise of the Inalienable Rights of the Palestinian People and under its guidance. Accordingly, the Committee included the organization of international events and regional meetings in its programme of work.

The Committee has received with appreciation the acceptance of Your Excellency's Government to the holding in Rome on 18 and 19 February 1999 of the Bethlehem 2000 International Conference organized by the Committee on the Exercise of the Inalienable Rights of the Palestinian People. The number of persons who will participate in the Conference is expected to be about 200, and they will include representatives of States, including members and observers of the Committee, eminent personalities, parliamentarians, representatives of interested intergovernmental organizations, individuals drawn from the academic community and others interested in the subject, as well as representatives of non-governmental organizations. The public meetings of the Conference shall be open to representatives of information media accredited by the United Nations at its discretion.

The United Nations will make the required practical arrangements for the Conference. The Government of Italy shall make the necessary security arrangements to ensure the efficient functioning of the Conference without interference of any kind.

With the present letter I have the honour to propose to your Government that the following terms shall apply to the Conference:

1. The Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946, to which Italy became a party on 3 February 1958, shall be applicable in respect of the Conference. The representatives of States invited by the United Nations to participate in the Conference 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 and all other participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on missions 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. Officials of the specialized agencies participating in the Conference 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;

2. 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;

3. Without prejudice to the provisions in paragraphs 1 and 2 above, all persons performing functions in connection with the Conference and all those invited to the Conference shall enjoy the privileges, immunities and facilities necessary for the independent exercise of their functions in connection with the Conference;

4. All participants invited by the United Nations shall have the right of entry into and exit from Italy, and no impediment shall be imposed on their transit to and from the conference area. Visas and entry permits, where required, shall be granted to all those invited to the Conference free of charge, as speedily as possible. Arrangements shall also be made to ensure that visas for the duration of the Conference are delivered at the airport of arrival to those who were unable to obtain them prior to their arrival;

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

(*a*) Injury to persons or damage to or loss of property in conference or office premises provided for the Conference;

(*b*) The transportation, if provided by the Government; and

(*c*) The employment for the Conference of personnel, if provided or arranged by the Government.

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

where it is agreed by the Parties hereto that such damage, loss or injury is caused by the gross negligence or wilful misconduct of the United Nations personnel;

7. The Government shall allow the temporary transportation, tax-free 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 Conference. It shall issue without delay to the United Nations any necessary import and export permits for this purpose;

8. Any dispute concerning the interpretation or application of this Agreement, except for a dispute subject to the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations or of any other applicable Agreement shall, unless the Parties otherwise agree, be submitted to a tribunal of three arbitrators, one of whom shall be appointed by the Secretary-General of the United Nations, one by the Government, and the third, who shall be the chairman, by the other two arbitrators. If either Party does not appoint an arbitrator within three months of the appointment by the other Party having notified the name of its arbitrator, or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them appoint the chairman, then such arbitrator shall be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the Parties, the tribunal shall adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the Parties, and take all decisions by a two-thirds majority. Its decision on all questions of procedure and substance shall be final and, even if rendered in default of one of the Parties, be binding on both of them.

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 Italy and the United Nations concerning the arrangements for the Conference.

(*Signed*) KIERAN PRENDERGAST
Under-Secretary-General for Political Affairs

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF ITALY TO THE UNITED NATIONS

30 December 1998

Dear Under-Secretary-General,

I have the honour to acknowledge receipt of your letter of 28 December 1998, which reads as follows:

[See letter I]

I have the honour to inform you that the Italian Government agrees with the contents of the letter quoted above.

(*Signed*) F. Paolo FULCI
Ambassador

3. AGREEMENTS RELATING TO THE UNITED NATIONS CHILDREN'S FUND

Basic Cooperation Agreement between the United Nations (United Nations Children's Fund) and the Government of the Republic of Panama. Panama, 4 June 1998[23]

Preamble

The United Nations Children's Fund and the Government of the Republic of Panama

Whereas the United Nations Children's Fund (UNICEF) was established by the General Assembly of the United Nations by its resolution 57 (I) of 11 December 1946 as an organ of the United Nations and, by this and subsequent resolutions, was charged with the responsibility of meeting, through the provision of financial support, supplies, training and advice, the emergency and long-range needs of children and their continuing needs and providing services in the fields of maternal and child health, nutrition, water supply, basic education and supporting services for women in developing countries, with a view to strengthening, where appropriate, activities and programmes of child survival, development and protection in countries with which UNICEF cooperates, and

Whereas UNICEF and the Government of the Republic of Panama wish to establish the terms and conditions under which UNICEF shall, in the framework of the operational activities of the United Nations and within its mandate, cooperate in programmes in the Republic of Panama,

Now, therefore, UNICEF and the Government, in a spirit of friendly cooperation, have entered into the present Agreement.

Article I

DEFINITIONS

For the purpose of the present Agreement, the following definitions shall apply:

(*a*) "appropriate authorities" means central, local and other competent authorities under the law of the country;

(*b*) "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;

(*c*) "experts on mission" means experts coming within the scope of articles VI and VII of the Convention;

(*d*) "Government" means the Government of the Republic of Panama;

(*e*) "Greeting Card Operation" means the organizational entity established within UNICEF to generate public awareness, support and additional funding for UNICEF mainly through the production and marketing of greeting cards and other products;

(*f*) "head of the office" means the official in charge of the UNICEF office;

(*g*) "country" means the country where a UNICEF office is located or which receives programme support from a UNICEF office located elsewhere;

(*h*) "Parties" means UNICEF and the Government;

(*i*) "persons performing services for UNICEF" means individual contractors, other than officials, engaged by UNICEF to perform services in the execution of programmes of cooperation;

(*j*) "programmes of cooperation" means the programmes of the country in which UNICEF cooperates, as provided in article III below;

(*k*) "UNICEF" means the United Nations Children's Fund;

(*l*) "UNICEF office" means any organizational unit through which UNICEF cooperates in programmes; it may include the field offices established in the country;

(*m*) "UNICEF officials" means all members of the staff of UNICEF employed under the Staff Regulations and Rules of the United Nations, with the exception of persons who are recruited locally and assigned to hourly rates, as provided in General Assembly resolution 76 (I) of 7 December 1946.

Article II

SCOPE OF THE AGREEMENT

1. The present Agreement embodies the general terms and conditions under which UNICEF shall cooperate in programmes in the country.

2. UNICEF cooperation in programmes in the country shall be provided consistent with the relevant resolutions, decisions, regulations and rules and policies of the competent organs of the United Nations, including the Executive Board of UNICEF.

Article III

PROGRAMMES OF COOPERATION AND MASTER PLAN OF OPERATIONS

1. The programmes of cooperation agreed to between UNICEF and the Government shall be contained in a master plan of operations to be concluded between UNICEF, the Government and, as the case may be, other participating organizations.

2. The master plan of operations shall define the particulars of the programmes of cooperation, setting out the objectives of the activities to be carried out, the undertakings of UNICEF, the Government and the participating organizations and the estimated financial resources required to carry out the programmes of cooperation.

3. The Government shall permit UNICEF officials, experts on mission and persons performing services for UNICEF to observe and monitor all phases and aspects of the programmes of cooperation.

4. The Government shall keep such statistical records concerning the execution of the master plan of operations as the Parties may consider necessary and shall supply any of such records to UNICEF at its request.

5. The Government shall cooperate with UNICEF in providing the appropriate means necessary for adequately informing the public about the programmes of cooperation carried out under the present Agreement.

Article IV

UNICEF OFFICE

1. UNICEF may establish and maintain an office in the country as the Parties may consider necessary to facilitate the implementation of the programmes of cooperation.

2. UNICEF may, with the agreement of the Government, establish and maintain a regional/area office in the country to provide programme support to other countries in the region/area.

3. In the event that UNICEF does not maintain an office in the country, it may, with the agreement of the Government, provide support for programmes of cooperation agreed to between UNICEF and the Government under the present Agreement through a UNICEF regional/area office established in another country.

Article V

ASSIGNMENT TO UNICEF OFFICE

1. UNICEF may assign to its office in the country officials, experts on mission and persons performing services for UNICEF, as is deemed necessary by UNICEF, to provide support to the programmes of cooperation in connection with:

(*a*) The preparation, review, monitoring and evaluation of the programmes of cooperation;

(*b*) The shipment, receipt, distribution or use of the supplies, equipment and other materials provided by UNICEF;

(*c*) Advising the Government regarding the progress of the programmes of cooperation;

(*d*) Any other matters relating to the application of the present Agreement.

2. UNICEF shall, from time to time, notify the Government of the names of UNICEF officials, experts on mission and persons performing services for UNICEF; UNICEF shall also notify the Government of any changes in their status.

Article VI

GOVERNMENT CONTRIBUTION

1. The Government shall provide to UNICEF as mutually agreed upon and to the extent possible:

(*a*) Appropriate office premises for the UNICEF office, alone or in conjunction with the United Nations system organizations;

(*b*) Costs of postage and telecommunications for official purposes;

(*c*) Local services such as equipment, fixtures and maintenance of office premises;

(*d*) Transportation for UNICEF officials, experts on mission and persons performing services for UNICEF, all of them in the performance of their official functions in the country.

2. The Government shall also assist UNICEF:

(*a*) In the location of suitable housing accommodation for internationally recruited UNICEF officials, experts on mission and persons performing services for UNICEF;

(*b*) In the installation and supply of utility services, such as water, electricity, sewerage, fire protection services and other services, for UNICEF office premises.

3. In the event that UNICEF does not maintain a UNICEF office in the country, the Government undertakes to contribute towards the expenses incurred by UNICEF in maintaining a UNICEF regional/area office elsewhere, from which support is provided to the programmes of cooperation in the country, up to a mutually agreed amount, taking into account contributions in kind, if any.

Article VII

UNICEF SUPPLIES, EQUIPMENT AND OTHER ASSISTANCE

1. UNICEF's contribution to programmes of cooperation may be made in the form of financial and other assistance. Supplies, equipment and other assistance intended for the programmes of cooperation under the present Agreement shall be transferred to the Government upon arrival in the country, unless otherwise provided in the master plan of operations.

2. UNICEF may place on the supplies, equipment and other materials intended for programmes of cooperation such markings as are deemed necessary to identify them as being provided by UNICEF.

3. The Government shall grant UNICEF all necessary permits and licences for the importation of the supplies, equipment and other materials under the present Agreement. It shall agree to exempt UNICEF from all direct taxes, customs duties and other related taxes and levies, be responsible for, and shall meet the costs associated with, the receipt, unloading, storage, insurance, transportation and distribution of such supplies, equipment and other materials after their arrival in the country.

4. While paying due respect to the principles of international competitive bidding, UNICEF will attach high priority to the local procurement of supplies, equipment and other materials which meet UNICEF requirements in quality, price and delivery terms.

5. The Government shall exert its best efforts, and take the necessary measures, to ensure that the supplies, equipment and other materials, as well as financial and other assistance intended for programmes of cooperation, are utilized in conformity with the purposes stated in the master plan of operations and are employed in an equitable and efficient manner without any discrimination based on sex, race, creed, nationality or political opinion. No payment shall be required of any recipient of supplies, equipment and other materials furnished by UNICEF unless, and only to such extent as, provided in the relevant master plan of operations.

6. No direct taxes, value-added tax, fees, tolls or duties shall be levied on the supplies, equipment and other materials intended for programmes of cooperation in accordance with the master plan of operations. In respect of supplies and equipment purchased locally for programmes of cooperation, the Government shall, in accordance with section 8 of the Convention, make appropriate administrative arrangements for the remission or return of any excise duty or tax payable as part of the price.

7. The Government shall, upon request by UNICEF, return to UNICEF any funds, supplies, equipment and other materials that have not been used in the programmes of cooperation. It is understood that articles imported into Panama under the exemption set out above will not be sold in the country, except under conditions agreed with the Government.

8. The Government shall maintain proper accounts, records and documentation in respect of funds, supplies, equipment and other assistance under this Agreement. The form and content of the accounts, records and documentation required shall be as agreed upon by the Parties. Authorized officials of UNICEF shall have access to the relevant accounts, records and documentation concerning distribution of supplies, equipment and other materials, and disbursement of funds.

9. The Government shall, as soon as possible, but in any event within sixty (60) days after the end of each of the UNICEF financial years, submit to UNICEF progress reports on the programmes of cooperation and certified financial statements, audited in accordance with existing government rules and procedures.

Article VIII

INTELLECTUAL PROPERTY RIGHTS

1. The Parties agree to cooperate and exchange information on any discoveries, inventions or works, resulting from programme activities undertaken under the present Agreement, with a view to ensuring their most efficient and effective use and exploitation by UNICEF and the Government under applicable law.

2. Patent rights, copyright rights and other similar intellectual property rights in any discoveries, inventions or works under paragraph 1 of this article resulting from programmes in which UNICEF cooperates may be made available by UNICEF free of royalties to other Governments with which UNICEF cooperates for their use and exploitation in programmes.

Article IX

APPLICABILITY OF THE CONVENTION

The Convention shall be applicable mutatis mutandis to UNICEF, its office, property, funds and assets and to its officials and experts on mission in the country.

Article X

LEGAL STATUS OF UNICEF OFFICE

1. UNICEF, its property, funds and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.

2. (*a*) The premises of the UNICEF office shall be inviolable. The property and assets of UNICEF, wherever located 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.

(*b*) The appropriate authorities shall not enter the office premises to perform any official duties, except with the express consent of the head of the office and under conditions agreed to by him or her.

3. The appropriate authorities shall exercise due diligence to ensure the security and protection of the UNICEF office, and to ensure that the tranquillity of the office is not disturbed by the unauthorized entry of persons or groups of persons from outside or by disturbances in its immediate vicinity.

4. The archives of UNICEF, and in general all documents belonging to it, wherever located and by whomsoever held, shall be inviolable.

Article XI

UNICEF FUNDS, ASSETS AND OTHER PROPERTY

1. Without being restricted by financial controls, regulations or moratoria of any kind:

(*a*) UNICEF may hold and use funds, gold or negotiable instruments of any kind and maintain and operate accounts in any currency and convert any currency held by it into any other currency;

(*b*) UNICEF shall be free to transfer its funds, gold or currency from one country to another or within any country, to other organizations or agencies of the United Nations system;

(*c*) UNICEF shall be accorded the most favourable, legally available rate of exchange for its financial activities.

2. UNICEF, its assets, income and other property shall:

(*a*) Be exempt from all direct taxes, value-added tax, fees, tolls or duties; it is understood, however, that UNICEF will not claim exemption from taxes which are, in fact, no more than charges for public utility services, rendered by the Government or by a corporation under government regulation, at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemized;

(*b*) Be exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by UNICEF for its official use. It is understood, however, that articles imported under such exemptions will not be sold in the country into which they were imported except under conditions agreed with the Government;

(*c*) Be exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

Article XII

GREETING CARDS AND OTHER UNICEF PRODUCTS

Any materials imported or exported by UNICEF or by national bodies duly authorized by UNICEF to act on its behalf, in connection with the established purposes and objectives of the UNICEF Greeting Card Operation, shall be exempt from all customs duties, prohibitions and restrictions, and the sale of such materials for the benefit of UNICEF shall be exempt from all national and local taxes.

Article XIII

UNICEF OFFICIALS

1. Officials of UNICEF shall:

(*a*) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with UNICEF;

(*b*) Be exempt from taxation on the salaries and emoluments paid to them by UNICEF;

(*c*) Be immune from national service obligations;

(*d*) Be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;

(*e*) Be accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable ranks forming part of diplomatic missions to the Government;

(*f*) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;

(*g*) Have the right to import free of duty their furniture, personal effects and all household appliances, at the time of first taking up their post in the host country, except the costs associated with the transportation, storage and similar services.

2. The head of the UNICEF office and other senior officials, as may be agreed between UNICEF and the Government, shall enjoy the same privileges and immunities accorded by the Government to members of diplomatic missions of comparable ranks. For this purpose, the name of the head of the UNICEF office may be incorporated in the diplomatic list.

3. UNICEF officials shall also be entitled to the following facilities applicable to members of diplomatic missions of comparable ranks:

(*a*) To import free of customs and excise duties limited quantities of certain articles intended for personal consumption in accordance with existing national legislation;

(*b*) To import a motor vehicle free of customs and excise duties, including value-added tax, in accordance with existing national legislation.

Article XIV

EXPERTS ON MISSION

1. Experts on mission shall be granted the privileges and immunities specified in article VI, sections 22 and 23, of the Convention.

2. Experts on mission may be accorded such additional privileges, immunities and facilities as may be agreed upon between the Parties.

Article XV

PERSONS PERFORMING SERVICES FOR UNICEF

1. Persons performing services for UNICEF shall:

(*a*) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with UNICEF;

(*b*) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys.

2. For the purpose of enabling them to discharge their functions independently and efficiently, persons performing services for UNICEF may be accorded

such other privileges, immunities and facilities as specified in article XIII above, as may be agreed upon between the Parties.

Article XVI

ACCESS FACILITIES

UNICEF officials, experts on mission and persons performing services for UNICEF shall be entitled:

(*a*) To prompt clearance and issuance, free of charge, of visas, licences or permits, where required;

(*b*) To unimpeded access to or from the country, and within the country, to all sites of cooperation activities, to the extent necessary for the implementation of programmes of cooperation.

Article XVII

LOCALLY RECRUITED PERSONNEL ASSIGNED TO HOURLY RATES

The terms and conditions of employment for persons recruited locally and assigned to hourly rates shall be in accordance with the relevant United Nations resolutions, decisions, regulations and rules and policies of the competent organs of the United Nations, including UNICEF. Locally recruited personnel shall be accorded all facilities necessary for the independent exercise of their functions for UNICEF.

Article XVIII

FACILITIES IN RESPECT OF COMMUNICATIONS

1. UNICEF shall enjoy, in respect of its official communications, treatment not less favourable than that accorded by the Government to any diplomatic mission (or intergovernmental organization) in matters of establishment and operation, priorities, tariffs, charges on mail and cablegrams and on teleprinter, facsimile, telephone and other communications, as well as rates for information to the press and radio.

2. No official correspondence or other communication of UNICEF shall be subjected to censorship. Such immunity shall extend to printed matter, photographic and electronic data communications and other forms of communications as may be agreed upon between the Parties. UNICEF shall be entitled to use codes and to dispatch and receive correspondence either by courier or in sealed pouches, all of which shall be inviolable and not subject to censorship.

3. UNICEF shall have the right to operate radio and other telecommunication equipment on United Nations registered frequencies and those allocated by the Government between its offices, within and outside the country, and in particular with UNICEF headquarters in New York.

4. UNICEF shall be entitled, in the establishment and operation of its official communications, to the benefits of the International Telecommunication Convention (Nairobi, 1982) and the regulations annexed thereto.

Article XIX

FACILITIES IN RESPECT OF MEANS OF TRANSPORTATION

The Government shall grant UNICEF necessary permits or licences for, and shall not impose undue restrictions on, the acquisition or use and maintenance by UNICEF of civil aeroplanes and other craft required for programme activities under the present Agreement.

Article XX

WAIVER OF PRIVILEGES AND IMMUNITIES

The privileges and immunities accorded under the present Agreement are granted in the interests of the United Nations, and not for the personal benefit of the persons concerned. The Secretary-General of the United Nations has the right and the duty to waive the immunity of any individual referred to in articles XIII, XIV and XV in any case where, in his opinion, such immunity impedes the course of justice and can be waived without prejudice to the interests of the United Nations and UNICEF.

Article XXI

CLAIMS AGAINST UNICEF

1. UNICEF cooperation in programmes under the present Agreement is provided for the benefit of the Government and people of the country and, therefore, the Government shall bear all the risks of the operations under the present Agreement.

2. The Government shall, in particular, be responsible for dealing with all claims arising from or directly attributable to the operations under the present Agreement that may be brought by third parties against UNICEF, UNICEF officials, experts on mission and persons performing services on behalf of UNICEF and shall, in respect of such claims, indemnify and hold them harmless, except where UNICEF and the Government agree that the particular claim or liability was caused by gross negligence or wilful misconduct.

3. If UNICEF and the Government are unable to reach an agreement on whether a particular claim or liability was caused by gross negligence or wilful misconduct, the dispute shall be resolved in accordance with the provisions of article XXII below.

Article XXII

SETTLEMENT OF DISPUTES

Any dispute between UNICEF and the Government relating to the interpretation and application of the present Agreement which is not settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairman. If within thirty (30) days of the request for arbitration either Party has not appointed an arbitrator, or if within fifteen (15) days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure for the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

Article XXIII

ENTRY INTO FORCE

1. The present Agreement shall enter into force on the day after both Parties have notified each other in writing that the legal requirements for entry into force have been complied with.

2. The present Agreement supersedes and replaces all previous Basic Agreements, including addenda thereto, between UNICEF and the Government.

Article XXIV

AMENDMENTS

The present Agreement may be modified or amended only by written agreement between the Parties hereto.

Article XXV

TERMINATION

The present Agreement shall cease to be in force six months after either of the Parties gives notice in writing to the other of its decision to terminate the Agreement. The Agreement shall, however, remain in force for such an additional period as might be necessary for the orderly cessation of UNICEF activities, and the resolution of any disputes between the Parties.

IN WITNESS WHEREOF, the undersigned, being duly appointed representative of UNICEF and duly authorized plenipotentiary of the Government, have on behalf of the Parties signed the present Agreement, in the English and Spanish languages, both texts being equally authentic.

DONE at Panama, this fourth day of June, nineteen hundred ninety-eight.

For the United Nations Children's Fund:

[*Signature*]
Aida OLIVER
Resident Project Officer

For the Federal Government:

[*Signature*]
Ricardo Alberto ARIAS ARIAS
Minister of Foreign Relations

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* *

Similar agreements were concluded between UNICEF and the Governments of the Republic of Armenia, signed at Yerevan on 4 August 1998, and the Republic of Zimbabwe, signed at Harare on 28 August 1998.

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4. AGREEMENTS RELATING TO THE UNITED NATIONS DEVELOPMENT PROGRAMME

(*a*) Letter of agreement between the United Nations Development Programme and the United Nations Industrial Development Organization concerning collaboration between the two organizations. Signed at New York on 31 October 1998[24]

New York, 31 October 1998

Dear Colleague,

Collaboration between UNDP and UNIDO

We are pleased to share with you, as an annex to this letter, further arrangements for collaboration between UNDP and UNIDO.

Measures referred to in this letter are supplementary to those contained in the annex to the jointly signed letter of UNIDO and UNDP dated 26 October 1996 on coordination arrangements between UNIDO and UNDP.

We are confident that the measures described in this annex will serve to build stronger bridges for substantive cooperation between our two organizations. We encourage you to help implement cooperation in the areas suggested and to provide us feedback on results achieved.

(*Signed*) James Gustave SPETH
Administrator
UNDP

(*Signed*) CARLOS MAGARIÑOS
Director-General
UNIDO

ANNEX ON COLLABORATION BETWEEN UNDP AND UNIDO

1. *Basic principles*

Collaboration between UNDP and UNIDO is based on the complementarity between the concepts of sustainable human development and sustainable industrial development. The synergies between economic growth, employment generation and regeneration of the environment offer a new basis to enhance the already existing collaboration between the organizations at both the policy and the operational levels.

Such cooperation is welcomed by members of UNIDO and UNDP as part of the efforts to gain efficiency within the United Nations system and to optimize resources in favour of programmes and projects in programme countries.

Enhanced collaboration will contribute to the implementation of the Secretary-General's proposals for United Nations reform.

2. *Objectives*

The objectives of enhanced cooperation between UNIDO and UNDP are as follows:

(*a*) Full utilization of the respective organizations' comparative advantages and capacities, including the role of UNDP as funder and manager of the United Nations resident coordinator system, with the aim of maximizing, at the country level, programme delivery, coordination and collaborative programming;

(*b*) To avoid duplication of effort;

(*c*) To optimize resources available through official development assistance channels and other sources;

(*d*) Development of innovative arrangements with the private sector;

(*e*) To enhance the focus of cooperation on high-impact programmes, particularly to benefit African and least developed countries;

(*f*) To implement specific recommendations related to both organizations as contained in the Secretary-General's reform proposals.

3. *Areas of collaboration*

Based on the legislation emanating from the triennial policy reviews of operational activities, the following areas are to be included in cooperation between UNIDO and UNDP:

(*a*) Collaborative programming through use of, where appropriate and invited by the relevant authorities, the following planned or programming instruments: country cooperation frameworks, country strategy notes, the common country assessments, and the United Nations development assistance frameworks;

(*b*) Strengthening the role of UNDP as funder and manager of the resident coordinator system;

(*c*) Support of the modality of national execution with use of sectoral knowledge and capacity of UNIDO in projects related to sustainable industrial development where appropriate;

(*d*) Support of decentralization and delegation of authority processes of both organizations;[a]

(*e*) To explore, where possible, enhanced harmonization of procedures;

(*f*) Where feasible, establishment of common premises and information systems;

(*g*) Engagement in resource mobilization at the country level for collaborative programming efforts;

(*h*) Coordination with regard to security and emergency arrangements;

(*i*) Support for joint training activities through the United Nations Staff College.

4. *Programmes and projects in the context of sustainable human development and sustainable industrial development*

The following programmes to be covered by this letter have already been included in exchanges of letters between the Director-General of UNIDO and the Administrator of UNDP:

(*a*) Industrial energy efficiency, including the use of sustainable forms of production and use of energy in collaborative programming at the country level;

(*b*) Transfer and adaptation of clean technologies in industrial production in programme countries;

(*c*) Waste management;

(*d*) UNDP Public-Private Partnerships Programme;

(*e*) Global Environment Facility: use of UNIDO capacities as implementing partner (article 28 of the Instrument);

(*f*) Alliance for Africa's Industrialization (joint UNIDO–African Development Bank project) and other programmes in Africa, where applicable;

(*g*) Support to the Strategic Alliance for Investment Promotion in Developing Countries (UNCTAD-UNIDO agreement);

(*h*) UNDP/UNIDO work in employment creation and sustainable livelihood, such as the training project carried out in Sri Lanka to enhance competitiveness of small and medium-scale industry, using the UNIDO Computer Model for Feasibility Analysis and Reporting (COMFAR).

5. *Termination*

The present annex is concluded for an indefinite period on the understanding, however, that each Party shall have the right to terminate it upon twelve (12) months' written notice of termination to the other Party.

6. *Entry into force*

This annex shall enter into force upon signature by the Executive Heads of UNDP and UNIDO of the letter to which this instrument constitutes an annex.

Focal points in the UNDP Bureau for Resources and External Affairs and the New York Office of UNIDO will ensure implementation of the cooperation sought through this letter. The two organizations shall review implementation on an annual basis.

[a] UNIDO Country Directors Global Meeting report.

(*b*) Agreement between the United Nations Development Programme and the Government of New Zealand for the provision of personnel to support unexploded ordnance operations in the Lao People's Democratic Republic. Signed at New York on 18 December 1998[25]

Whereas the United Nations Development Programme and the Government of the Lao People's Democratic Republic have entered into a Trust Fund Agreement for the clearance of unexploded ordnance ("UXO") signed on 18 July 1995, attached as annex 1,

Whereas the Government of New Zealand (hereinafter referred to as "the Donor") has expressed its interest in making available to the United Nations Development Programme the services of technical advisers and related assistance, to support the demining activities in the Lao People's Democratic Republic, identified pursuant to the Terms of Reference of the United Nations Development Programme Trust Fund,

Whereas the Government of the Lao People's Democratic Republic has been duly informed of the contribution to be made by the Donor and has agreed to the provision of technical advisers to the Lao National UXO Programme (hereinafter referred to as "UXO Lao"),

Now therefore, the United Nations Development Programme and the Donor (hereinafter referred to as the "Parties") have agreed as follows:

Article I

DURATION OF THE AGREEMENT

1. The Agreement shall enter into force on signature. Unless otherwise mutually determined by the Parties, the technical advisers shall be withdrawn from the project by 30 June 1999. The Agreement shall expire on the withdrawal of the technical advisers from UXO Lao.

2. Termination shall not take effect until the technical advisers have been repatriated or otherwise left the Lao People's Democratic Republic.

Article II

OBLIGATIONS OF THE DONOR

1. The Donor shall make available for the duration and purpose of this Agreement two or more technical advisers (hereinafter referred to as "the Team"). The names of the initial members of the Team are listed in annex 2 hereto. The names of any additional or subsequent members of the Team shall be provided to the United Nations Development Programme and the Government of the Lao People's Democratic Republic prior to their arrival in the Lao People's Democratic Republic.

2. The Donor shall designate a member of the Team as Team Leader and shall inform the United Nations Development Programme and UXO Lao accordingly.

3. The Donor shall be responsible for the payment of the salaries to which the members of the Team are entitled.

4. The Donor shall ensure that, during the entire period of service under this Agreement, the members of the Team are participants in a national health-care scheme, or have adequate medical coverage, and are covered by appropriate

arrangements assuring compensation in the case of illness, disability or death. The Donor shall be responsible for any costs related to the provision of insurance under this section.

5. The Donor shall not be responsible for any other costs associated with the services to be provided under this Agreement.

Article III

OBLIGATIONS OF THE TEAM

The Donor agrees to the terms and obligations specified below, and shall accordingly ensure that the Team members performing services under this Agreement are instructed to comply with these obligations:

1. The members of the Team shall function under the direct supervision of the Team Leader.

2. The Team Leader shall function under the general supervision of the Resident Representative of the United Nations Development Programme in the Lao People's Democratic Republic.

3. The Team shall provide technical and management advisory services and shall conduct training activities for capacity-building that will enable the Government of the Lao People's Democratic Republic through UXO, to carry out the demining programmes in accordance with the Terms of Reference of the United Nations Development Programme Trust Fund.

4. The Team shall not engage directly in any mine-clearance activity.

5. The members of the Team shall neither seek nor accept instructions regarding the services to be provided under this Agreement from any authority external to the United Nations Development Programme.

6. The members of the Team shall refrain from any conduct which would adversely reflect on the United Nations and shall not engage in any activity which is incompatible with the aims and objectives of the United Nations or the mandate of the United Nations Development Programme.

7. The members of the Team shall exercise their utmost discretion in all matters relating to their functions, and shall not communicate, at any time, without the authorization of the Resident Representative of the United Nations Development Programme in the Lao People's Democratic Republic, or to the media or to any institution, person, Government or other authority external to the United Nations Development Programme, any information that has not been made public, and which has become known to them by reason of their functions under this Agreement. They shall not use any such information without the authorization of the Resident Representative of the United Nations Development Programme in the Lao People's Democratic Republic, and in any event, such information shall not be used for personal gain. These obligations do not lapse upon termination of this Agreement.

8. The Team Leader shall submit regular progress reports to the Resident Representative of the United Nations Development Programme in the Lao People's Democratic Republic on the activities performed by the Team.

9. The Team Leader shall submit at the end of the assignment to the Resident Representative of the United Nations Development Programme in the Lao People's Democratic Republic, a final report on the activities performed by the Team during the entire duration of the assignment.

Article IV

LEGAL STATUS OF MEMBERS OF THE TEAM

1. The members of the Team shall not be considered in any respect as being officials or staff members of the United Nations or the United Nations Development Programme. They shall have the legal status of "experts on mission" in accordance with sections 22 and 23 of article VI of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 (hereinafter referred to as "the General Convention"), attached hereto as annex 3.

2. The members of the Team shall be issued identity certificates in accordance with section 26 of article VII of the General Convention.

Article V

OBLIGATIONS OF THE UNITED NATIONS DEVELOPMENT PROGRAMME

1. The United Nations Development Programme shall pay the in-country costs and the costs of transporting the Team to and from the Lao People's Democratic Republic, including the costs for medical and/or security evacuation, on the understanding that the Donor shall contribute sufficient funds to the United Nations Development Programme Trust Fund to cover these costs.

2. The United Nations Development Programme shall provide the Team with local transportation for the performance of its functions during the duration of the assignment.

3. The United Nations Development Programme shall make available to the Team specialized or support equipment required by the Team for the performance of its functions.

4. The United Nations Development Programme shall maintain such insurance as is necessary to cover the risks of liability arising from, or in connection with, activities under this Agreement, in particular liability arising from the authorized use of vehicles or equipment provided by the United Nations Development Programme. Payment for such insurance premium shall be charged against the resources of the United Nations Development Programme Trust Fund.

Article VI

CONSULTATION

The United Nations Development Programme and the Donor, together with UXO Lao, shall consult with each other in respect of any matter(s) that may from time to time arise in connection with this Agreement.

Article VII

SETTLEMENT OF DISPUTES

Any dispute, controversy or claim arising out of, or relating to, this Agreement which is not settled by negotiation or other mutually agreed mode of settlement shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairman. If within thirty days of the request for arbitration either Party has not appointed an arbitrator or if within fifteen days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of

the International Court of Justice to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the United Nations Commission on International Trade Law. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

Article VIII

AMENDMENT

This Agreement may be modified or amended on written consent of both Parties, in consultation with UXO Lao on behalf of the Government of the Lao People's Democratic Republic. Each party shall give full consideration to any proposal for an amendment made by the other Party.

IN WITNESS WHEREOF, the respective representatives of the Government of New Zealand and of the United Nations Development Programme have signed this Agreement.

DONE in New York on 18 December 1998, in two originals in the English language.

For the Government of New Zealand:
[*Signature*]
Michael J. POWLES
Permanent Representative of
New Zealand to the United Nations

For the United Nations
Development Programme:
[*Signature*]
James G. SPETH
Administrator, UNDP

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5. AGREEMENTS RELATING TO THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

(*a*) Exchange of letters constituting an agreement between the United Nations and the Federal Republic of Yugoslavia on the status of the Office of the United Nations High Commissioner for Human Rights in the Federal Republic of Yugoslavia. Geneva, 6 and 9 November 1998[26]

I

LETTER FROM THE PERMANENT REPRESENTATIVE OF THE FEDERAL REPUBLIC OF YUGOSLAVIA TO THE UNITED NATIONS OFFICE AT GENEVA

6 November 1998

Dear Madam High Commissioner,

I have the honour to refer to General Assembly resolution 48/141 of 20 December 1993, by which the Assembly decided to create the post of United Nations High Commissioner for Human Rights.

I further have the honour to refer to the letter dated 23 February 1996 from the Federal Minister for Foreign Affairs of the Federal Republic of Yugoslavia, Mr. M. Milutinović, addressed to the Special Rapporteur on the situation of human rights in the former Yugoslavia, Ms. E. Rehn, expressing my Government's decision to enable the establishment of an office in the Federal Republic of Yugoslavia with a

view to promoting cooperation with the Special Rapporteur for human rights and the United Nations Centre for Human Rights, and to offering full support and all-round assistance for this purpose.

I further wish to recall the invitation extended to Mr. J. Dienstbier, Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia, during a meeting on 6 April 1998, that an agreement be concluded between the Government of the Federal Republic of Yugoslavia (hereinafter referred to as "the Government") and the United Nations to regulate the status of the office of the United Nations High Commissioner for Human Rights in the Federal Republic of Yugoslavia.

Recalling further the importance of international cooperation in promoting, encouraging and protecting human rights and of observance of the principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other international human rights instruments to which the Federal Republic of Yugoslavia is a party, I propose the following:

1. For the purpose of this Agreement the following definitions shall apply:

(*a*) "OHCHR" means the Office of the United Nations High Commissioner for Human Rights;

(*b*) "Office" means the office of the United Nations High Commissioner for Human Rights in Belgrade, and any other sub-offices which may be established in the Federal Republic of Yugoslavia, with the consent of the Government;

(*c*) "officials of the Office" means the Head of the Office and all members of its staff, irrespective of nationality, employed under the Staff Regulations and Rules of the United Nations, with the exception of persons who are recruited locally and assigned to hourly rates as provided for in General Assembly resolution 76 (I) of 7 December 1946;

(*d*) "experts on missions" means individuals, other than officials of the Office, performing missions for the United Nations in the field of human rights;

(*e*) "office personnel" means officials of the Office, experts on missions and locally recruited personnel assigned to hourly rates; and

(*f*) "Convention" means the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to which the Federal Republic of Yugoslavia is a party as of 7 March 1950.

2. The Office shall be based in Belgrade. Should OHCHR wish to establish additional sub-offices in the Federal Republic of Yugoslavia, it shall seek the consent of the Government and shall consult the former about the location of such sub-offices.

3. The Office shall promote cooperation between the Government and the United Nations High Commissioner for Human Rights pursuant to General Assembly resolution 48/141 of 20 December 1993.

4. The Office shall be composed of an adequate number of officials and locally recruited personnel assigned to hourly rates.

5. The Office shall notify the Government of the names and categories of Office personnel, and of changes in the status thereof.

6. Office personnel shall be provided by the Government with special identification documents as proof of their status in accordance with this Agreement.

7. In implementation of its obligations under the relevant provisions of the Charter of the United Nations, the Government shall apply to the Office, as an integral part of the United Nations and to officials of the Office and experts on missions, the privileges and immunities provided for in the Convention.

8. The Office, its property, funds and assets, wherever located and by whomsoever held, shall be immune from every form of legal process, except insofar as in any particular case the United Nations has expressly waived its immunity; it being understood that this waiver shall not extend to any measure of execution.

9. The premises of the Office and its means of transport shall be inviolable and subject to exclusive control and authority of the Head of the Office, without prejudice to the provisions of paragraph 27 below. The property, funds and assets of the Office, including its means of transport, wherever located 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.

10. The archives of the Office, and in general all documents belonging to or held by it, shall be inviolable.

11. The funds, assets, income and other property of the Office shall be exempt from:

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

(*b*) All indirect taxes for large purchases of articles intended for official use of the Office. The Government shall make appropriate arrangements for the remission or reimbursement of such taxes paid;

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

(*d*) Customs duties and prohibitions and restrictions in respect of the import and export of United Nations publications.

12. The Office 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; and

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

13. The Office shall enjoy the most favourable legal rate of exchange.

14. The Office 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 international organizations in matters of priorities, tariffs and charges on mail, cablegrams, telephotos, telephone, telegraph, telex and other communications related to the press and radio information rates.

15. The Government shall secure the inviolability of the official communications and correspondence of the Office 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.

16. The Office shall have the right to use codes and to despatch 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.

17. The Office shall have the right to operate radio and other telecommunication equipment, including voice-fax satellite facilities, on the United Nations registered frequencies, and those frequencies, including VHF and HF allocated by the Government, between its offices, within and outside the Federal Republic of Yugoslavia, and in particular with OHCHR headquarters in Geneva, in accordance with the procedures agreed upon with the Government. The Office shall be exempt from licensing fees and from all other related fees and charges.

18. The Head of the Office and other senior officials, as may be agreed between OHCHR and the Government, shall enjoy, 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.

19. Officials of the Office 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 restrictions and alien registration;

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

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

(*g*) Freedom to hold or maintain within the Federal Republic of Yugoslavia foreign exchange, foreign currency accounts and movable property and the right upon termination of employment with the Office to take out of the Federal Republic of Yugoslavia their funds for the lawful possession of which they can show good cause;

(*h*) 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;

(*i*) The right to import for personal use, free of duty and other levies, prohibitions and restrictions on imports, their furniture and personal effects in one or more separate shipments at the time of first taking up their post and thereafter to import necessary additions to the same, including motor vehicles, according to the regula-

tions applicable in the Federal Republic of Yugoslavia to diplomatic representatives accredited in the Federal Republic of Yugoslavia; and reasonable quantities of certain articles for personal use or consumption and not for gift or sale.

20. Officials of the Office who are nationals of or permanent residents in the Federal Republic of Yugoslavia shall enjoy only those privileges and immunities provided for in the Convention.

21. Persons recruited locally and assigned to hourly rates to perform services for the Office shall enjoy immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. The terms and conditions of employment for these personnel shall be in accordance with the relevant United Nations resolutions, regulations and rules.

22. Experts on missions 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 acts done by them in the course of the performance of their missions. This immunity shall continue to be accorded notwithstanding that they are no longer performing their missions;

(*c*) Inviolability for all 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; and

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

23. In performing official functions, the Office and Office personnel shall enjoy the following additional facilities:

(*a*) Prompt clearance and issuance, free of charge, of visas, licences or permits, where required;

(*b*) Unimpeded freedom of entry and exit without delay or hindrance of Office personnel, property, supplies, equipment, means of transport and spare parts;

(*c*) Unimpeded freedom of movement throughout the Federal Republic of Yugoslavia of Office personnel, property, supplies, equipment, means of transport and spare parts, to the extent necessary for carrying out the mandate of the Office;

(*d*) Access to all documentary material of a public nature relevant for the effective operation of the Office;

(*e*) The right to have contacts with federal, republican, provincial and local authorities, including Government agencies and armed forces, in accordance with procedures agreed upon with the Federal Ministry of Foreign Affairs;

(*f*) The right to have direct contacts with non-governmental organizations, private institutions, associations and individuals;

(*g*) The right to collect documentary material and any useful information, including in locations outside Office premises;

(*h*) The right to have access to persons serving their prison sentences and to persons in detention, and the right to interview such persons in accordance with procedures agreed upon with the competent authorities of the Federal Republic of Yugoslavia;

(*i*) The right to make arrangements through United Nations facilities for the transfer of all information collected;

(*j*) The right to fly the United Nations flag and display the United Nations and OHCHR emblem on Office premises and means of transport; and

(*k*) The right to make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from officials of the Office and experts on missions. The Government shall be informed of the nature of these arrangements and shall not interfere with or apply censorship to such mail.

24. The Government shall ensure that no person who has had contact with the Office or its personnel is subjected to abuse, threats, reprisals or legal proceedings on those grounds alone.

25. It is understood that, upon the request of the Head of the Office, the Government shall take all the effective and adequate measures to ensure the appropriate security, safety and protection of Office premises, its property and of Office personnel.

26. It is understood that the Government shall assist the Office in finding such suitable premises as may be required for conducting the official and administrative activities of the Office throughout the territory of the Federal Republic of Yugoslavia. The Government shall also facilitate the location of suitable housing accommodation for Office personnel recruited internationally.

27. It is understood that without prejudice to the privileges, immunities, rights and facilities specified in this Agreement, all Office personnel shall respect the laws and regulations of the Federal Republic of Yugoslavia.

28. If the Government considers that there has been an abuse of the privileges and immunities conferred by this Agreement, consultations will be held between the competent authorities and the Head of the Office to determine whether any such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to the Government and to the United Nations, either Party may submit the question as to whether such an abuse has occurred for resolution in accordance with the provisions on settlement of disputes under paragraph 31 below.

29. Privileges and immunities are granted to Office personnel in the interests of the United Nations and not for the personal benefit of the individuals concerned. The Secretary-General of the United Nations shall have the right and duty to waive the immunity of any Office personnel in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations.

30. The United Nations shall make provisions for appropriate modes of settlement of:

(*a*) Disputes resulting from contracts and other disputes of a private law character to which the United Nations is a party;

(*b*) Disputes involving an official of the Office who, by reason of his/her official position, enjoys immunity, if such immunity has not been waived by the Secretary-General of the United Nations.

31. Any dispute between the United Nations and the Government arising out of or relating to this Agreement shall be settled amicably, by negotiation or other agreed mode of settlement, failing which such dispute shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairman. If within thirty days of the request for arbitration either Party has not appointed an arbitrator or if within fifteen days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. All decisions of the arbitrators shall be reached by a majority of votes. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

32. This Agreement may be amended by written agreement of both Parties. Each Party shall give full consideration to any proposal for an amendment made by the other Party.

33. This Agreement shall enter into force when the Government notifies the United Nations that the confirmation procedure of the Federal Republic of Yugoslavia, under its national legislation, has been completed. The provisions of this Agreement shall apply on a temporary basis from the date of its signing. This Agreement may be terminated in accordance with the provisions of paragraph 34 below.

34. This Agreement shall cease to be in force six months after either of the contracting Parties gives notice in writing to the other Party of its decision to terminate the Agreement, except as regards the normal cessation of the activities of the Office in the Federal Republic of Yugoslavia and the disposal of its property therein.

If the above provisions meet with your approval, I would propose that this letter and your reply thereto constitute an Agreement between the Federal Republic of Yugoslavia and the United Nations on the Status of the Office of the United Nations High Commissioner for Human Rights in the Federal Republic of Yugoslavia.

(*Signed*) Branko BRANKOVIĆ
Ambassador/Chargé d'affaires a.i.

II

LETTER FROM THE UNITED NATIONS

9 November 1998

Excellency,

I have received your letter dated 6 November 1998. By the present letter, I am pleased to inform you of the acceptance of the United Nations of the provisions set out in your letter, and to confirm that this exchange of letters constitutes an Agreement between the United Nations and the Federal Republic of Yugoslavia on the Status of the Office of the United Nations High Commissioner for Human Rights in the Federal Republic of Yugoslavia.

(*Signed*) Mary ROBINSON
High Commissioner for Human Rights

(*b*) Memorandum of Understanding on cooperation between the United Nations High Commissioner for Human Rights and the Commonwealth Secretariat. Signed at London on 1 December 1998[27]

1. *Background and purposes*

1.1. This Memorandum outlines the principles for cooperation between the Commonwealth Secretariat (hereinafter referred to as "the Secretariat") and the Office of the United Nations High Commissioner for Human Rights (referred to as "the Office"). It further sets out certain measures which may promote cooperation and coordination in areas of common interest.

1.2. The cooperation in areas which are of common interest to both the Secretariat and the Office will take place within the scope of their respective constitutional instruments, mandates and activities.

1.3. The Secretariat was established by Commonwealth Heads of Government as a visible symbol of cooperation between them, to promote consultation and exchange of opinions among member Governments and, in furtherance of the 1991 Harare Commonwealth Declaration and related instruments of the association, to provide policy advice and assistance in support of the Commonwealth's fundamental political values, sustainable development and the promotion of international consensus.

1.4. The Office of the United Nations High Commissioner for Human Rights is the principal arm of the United Nations Secretariat in promoting and protecting human rights and fundamental freedoms as envisaged in the Charter of the United Nations and in keeping with General Assembly resolution 48/141 of 20 December 1993.

2. *Areas of cooperation*

2.1. Cooperation between the Secretariat and the Office reflects their shared commitment to the promotion of human rights and fundamental freedoms, as set out in relevant international conventions on human rights, the declarations and related instruments of the Commonwealth.

2.2. Cooperation between the Parties may be at the international, regional and national levels, and should support their common aims and objectives and enhance the impact of their respective activities in the field of human rights.

2.3. Areas of cooperation between the Parties will fall into six broad categories, namely, mutual consultations and cooperation; exchange of information and documentation; reciprocal representation and liaison; assistance to member States with ratification and application of international human rights instruments; human rights education; and technical assistance and training.

3. *Mutual consultations and cooperation*

3.1. Mutual consultation to promote cooperation may take place, when and where appropriate, for such purposes as the coordination of activities in areas of common interest and the realization of shared objectives.

3.2. The Secretariat and the Office may, as and when appropriate, bring to each other's attention any situation in respect of which, in the normal course of their operations, assistance provided by the other could further their common purposes.

3.3. The Parties agree to cooperate, as appropriate, in the exchange of personnel and services. The financial implications for such exchanges to be agreed on a case-by-case basis.

3.4. In order to more effectively realize their shared objectives, the Parties will, in the context of their respective constitutional instruments and decisions of their governing bodies, undertake joint action wherever and to the fullest extent possible, to maximize their experience and resources.

3.5. The modalities of the cooperation agreed herein between the Parties may also consist of advisory inputs with a view, where desirable and appropriate, to providing assistance and to carrying out activities in fields of common interest, in accordance with their respective rules and regulations.

4. *Exchange of information and documentation*

4.1. Subject to their respective policies and rules regarding disclosure of information, the Secretariat and the Office shall endeavour to exchange information and documentation in matters of common interest as may be necessary for any activity to be carried out under this Memorandum. Where appropriate, information relating to specific projects may be exchanged between them.

5. *Reciprocal representation and liaison*

5.1. Subject to the decisions that may be taken by the governing bodies of the Secretariat and the Office on the participation of observers in their respective meetings, the Parties may invite each other to be represented as observer at meetings where questions of interest to them are to be discussed.

5.2. The Parties undertake to consult regularly or as appropriate on human rights–related issues of mutual interest to their member States.

5.3. The Parties may make such other arrangements as appear desirable in the light of experience to ensure effective liaison between them.

6. *Ratification and application of international conventions on human rights*

6.1. The Secretariat and the Office will, as appropriate, cooperate in encouraging wider ratification and application of international conventions on human rights, including the International Covenant on Civil and Political Rights and its protocols, and the International Covenant on Economic, Social and Cultural Rights.

6.2. The Parties, as and when appropriate, will cooperate in assisting member States in their efforts to apply the human rights instruments, and States parties to the instruments to meet their obligations under them.

6.3. The Parties will endeavour, as appropriate, to collaborate on specific projects relating to the promotion of children's rights, as set out in the Convention on the Rights of the Child.

6.4. The Parties will, as appropriate, cooperate with each other in activities for the elimination of racism and racial discrimination, including in the promotion of the ratification and application of the International Convention on the Elimination of All Forms of Racial Discrimination.

6.5. The Parties will, to the extent possible, cooperate as appropriate in promoting ratification of the Convention on the Elimination of All Forms of Discrimination against Women, and in activities to promote women's human rights.

6.6. The Secretariat and the Office agree to cooperate in promoting the right to development and relevant conventions relating thereto, and in efforts to strengthen the recognition of the interdependence of democracy, human rights and development.

6.7. The Parties will promote, as appropriate, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

7. *Human rights education*

7.1. The Secretariat and the Office will cooperate and collaborate, as and when possible, in developing and organizing activities in the context of the United Nations Decade on Human Rights Education and other Human Rights Decades.

7.2. The Parties will, as appropriate, collaborate with each other in the development, testing and use of human rights teaching materials.

8. *Technical assistance and training*

8.1. The Secretariat and the Office may agree, as appropriate, to consult and exchange information and materials on current programmes and projects and on project/programme development, and to exchange reports on the evaluation of projects and information on available expertise in human rights–related areas.

8.2. In order to more effectively attain their shared objectives, the Secretariat and the Office will consider, as appropriate, cooperating in the provision of technical assistance and advisory services to member countries.

8.3. Where appropriate, the Parties would consult with each other on human rights training programmes and in the preparation of training manuals and other materials.

9. *Periodic joint review*

The provisions of this Memorandum of Understanding may be amended any time by written agreement between the two Parties.

10. *Termination*

This Memorandum of Understanding may be terminated by either Party giving the other six months' notice in writing of the intention to terminate.

11. *Entry into force*

This Memorandum of Understanding shall take effect as of the date of its signature.

IN WITNESS WHEREOF, the Parties have signed four copies of this Memorandum in English in London on this first day of December, nineteen hundred and ninety-eight.

For the Office of the United Nations High Commissioner for Human Rights:

[*Signature*]

Mary ROBINSON

High Commissioner for Human Rights

For the Commonwealth Secretariat:

[*Signature*]

Emeka ANYAOKU

Secretary-General

6. AGREEMENTS RELATING TO THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

(*a*) Agreement between the United Nations (United Nations High Commissioner for Refugees) and the Government of Ukraine on the establishment of a United Nations High Commissioner for Refugees field office in Ukraine. Signed at Kiev on 23 September 1998[28]

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

Whereas the Parties to this Agreement strive to develop cooperation aimed at settling the problems of refugees as well as other categories of persons who fall within the scope of the mandate of the United Nations High Commissioner for Refugees,

Whereas the Statute of the Office of the United Nations High Commissioner for Refugees, adopted by the United Nations General Assembly in its 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 is an integral part of the United Nations whose 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,

Now therefore, the Office of the United Nations High Commissioner for Refugees and the Government of Ukraine, with a view to establishing the terms and conditions of cooperation in dealing with the problems of refugees and related fields, have agreed on the following.

Article 1

DEFINITIONS

For the purpose of this Agreement, the following definitions shall apply:

(*a*) "Government" means the Government of Ukraine or appropriate central executive authorities invested by the Government with proper powers;

(*b*) "UNHCR" means the Office of the United Nations High Commissioner for Refugees; "Parties" means the Government and UNHCR;

(*c*) "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;

(*d*) "host country" or "country" means Ukraine;

(*e*) "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;

(*f*) "UNHCR Representative" means the UNHCR official in charge of the UNHCR office in the country;

(*g*) "UNHCR officials" means all members of the staff of UNHCR employed under the Staff Regulations and Rules of the United Nations, with the exception of persons who are recruited locally and assigned hourly rates as provided in General Assembly resolution 76 (I);

(*h*) "experts on mission" means individuals, other than UNHCR officials or persons performing services on behalf of UNHCR, undertaking missions for UNHCR;

(*i*) "persons performing services on behalf of UNHCR" means natural and juridical persons and their employees, other than nationals of Ukraine, retained by UNHCR to execute or assist in the carrying out of its programmes;

(*j*) "UNHCR personnel" means UNHCR officials, experts on mission and persons performing services on behalf of UNHCR.

Article 2

PURPOSE OF THIS AGREEMENT

This Agreement embodies the basic conditions under which UNHCR shall, within its mandate, cooperate with the Government, open offices in the country and carry out its international protection and humanitarian assistance functions in favour of refugees and other persons of its concern in the host country.

Article 3

COOPERATION BETWEEN UNHCR AND THE GOVERNMENT

1. Cooperation between UNHCR and the Government in the field of international protection of and humanitarian assistance to refugees and other persons of concern to UNHCR shall be carried out on the basis of the Statute of UNHCR and of other relevant decisions and resolutions relating to UNHCR adopted by United Nations organs.

2. The UNHCR office shall maintain consultations and cooperation with Government with respect to the preparation and review of projects for refugees.

3. For any UNHCR-funded projects to be implemented by the Government, the terms and conditions including the commitment of the High Commissioner and the Government with respect to the furnishing of funds, supplies, equipment and services or other assistance for refugees shall be set forth in project agreements to be signed by the Government and UNHCR.

4. The Government shall grant UNHCR personnel unimpeded access to refugees and other persons of concern to UNHCR and to the sites of UNHCR projects in order to monitor all phases of their implementation.

Article 4

UNHCR OFFICE

1. The Government welcomes that UNHCR establish and maintain an office in the country in order to engage in the activities provided for in the Statute of UNHCR.

2. UNHCR may designate, with the consent of the Government, the UNHCR office in the country to serve as a regional/area office and the Government shall be notified in writing of the number and level of the officials assigned to it.

3. The UNHCR office will exercise functions as assigned by the High Commissioner, in relation to his mandate for refugees and other persons of his concern, including the establishment and maintenance of relations between UNHCR and governmental and non-governmental organizations functioning in the country.

Article 5

UNHCR PERSONNEL

1. UNHCR may assign to the office in the country such officials as UNHCR deems necessary for carrying out its international protection and humanitarian assistance functions.

2. The Government shall be informed by UNHCR of the category of the officials to be assigned to the UNHCR office in the country.

3. UNHCR may designate officials to visit the country for purposes of consulting and cooperating with the corresponding officials of the Government involved in refugee work in connection with:

(*a*) The review, preparation, monitoring and evaluation of international protection and humanitarian assistance programmes;

(*b*) The shipment, receipt, distribution or use of the supplies, equipment and services furnished by UNHCR;

(*c*) Seeking permanent solutions for the problem of refugees;

(*d*) Any other matters relating to the application of this Agreement.

Article 6

FACILITIES FOR IMPLEMENTATION OF UNHCR HUMANITARIAN PROGRAMMES

1. The Government, in agreement with UNHCR, shall take any measure which may be necessary to exempt UNHCR officials, experts on mission and persons performing services on behalf of UNHCR from regulations or other legal provisions which may interfere with operations and projects carried out under this Agreement, and shall grant them such other facilities as may be necessary for the speedy and efficient execution of UNHCR humanitarian programmes for refugees in the country. Such measures shall include exemption from aircraft landing fees and charges for cargo humanitarian aid flights, transportation of refugees and/or UNHCR personnel.

2. The Government, in agreement with UNHCR, shall assist UNHCR in finding appropriate office premises under the most favourable conditions.

3. The Government, in agreement with UNHCR, shall make arrangements and provide funds up to a mutually agreed amount, with a view to favouring the UNHCR activity in the country.

4. The Government shall ensure that the UNHCR office is supplied with the necessary public services, and that such services are supplied on the basis adopted for the public bodies of the country.

5. The Government shall provide the premises of UNHCR with guard security under conditions valid for diplomatic representatives in Ukraine. In case of necessity Government shall use emergency measures to provide the security for UNHCR personnel.

Article 7

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 acceded on 20 November 1953 . 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. Without prejudice to paragraph 1 of this article, the Government shall in particular extend to UNHCR the privileges, immunities, rights and facilities provided in articles 8 to 15 of this Agreement.

Article 8

UNHCR OFFICE, PROPERTY, FUNDS 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 insofar 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.

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;

(*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, 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 customs duties and import and export prohibitions and restrictions.

6. UNHCR shall not be subject to any financial controls or moratoria and may freely acquire from authorized commercial agencies, hold and use negotiable currencies, maintain foreign-currency accounts, acquire through authorized institu-

tions, hold and use funds, securities and gold, provided that the performance of the indicated functions shall not contradict the purposes stated in article 2 of this Agreement.

7. UNHCR shall apply the legal rate of exchange set by the country.

Article 9

COMMUNICATIONS FACILITIES

1. UNHCR shall enjoy, in respect of its official communications, treatment no less favourable than that accorded by the Government to any other Government including its diplomatic missions or to other intergovernmental and international organizations in matter of priorities, tariffs and charges on mail, cablegrams, telephone and telegraph and other communications, as well as rates for information to the press and radio. UNHCR as a diplomatic mission shall use all communications means in accordance with a procedure and at rates envisaged for international communications services.

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 pouches, which shall have the same privileges and immunities as diplomatic couriers and pouches.

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.

Article 10

UNHCR OFFICIALS

1. The UNHCR Representative, Deputy Representatives and other 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 under international law. For this purpose the Ministry of Foreign Affairs shall include their names in the Diplomatic List.

2. UNHCR officials 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;

(*d*) Exemption, with respect to themselves, their spouses, their relatives dependent on them from immigration restrictions 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 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 or resident members of international organizations;

(ii) Reasonable quantities of certain articles for personal use or consumption and not for gift or sale.

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.

Article 11

LOCALLY RECRUITED PERSONNEL

1. Persons recruited and assigned to hourly rates to perform services for UNHCR shall enjoy 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 personnel shall be in accordance with the relevant United Nations resolutions, regulations and rules.

Article 12

EXPERTS ON MISSION

Experts performing missions 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 acts done by them in the course of the performance of their mission;

(*c*) Inviolability for all papers and documents belonging thereto;

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

(*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 13

PERSONS PERFORMING SERVICES ON BEHALF OF UNHCR

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 14

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 changes in the status of such individuals.

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 15

WAIVER OF IMMUNITY

1. 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.

2. The Secretary-General of the United Nations may waive the immunity of any of UNHCR personnel in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations and UNHCR.

Article 16

SETTLEMENT OF DISPUTES

1. Any dispute between UNHCR and the Government arising out of or relating to this Agreement shall be settled amicably by negotiation or other agreed mode of settlement, failing which such dispute shall be submitted to arbitration at the request of either Party.

2. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairman. The period of arbitration shall be

limited by the time required for considering the dispute and passing an award. The award of the arbitration shall be final and binding upon both Parties.

3. If within thirty days of the request of either Party for settlement of the dispute by the arbitration, the Parties have failed to appoint the arbitrators, and within fifteen days of the appointment of two arbitrators the chairman of the arbitration has not been elected, either Party may apply to the court, specified by both Parties, to dispose of the dispute.

4. The award is to be passed by a majority of votes. The arbitration procedure shall be established by arbitrators. The expenses of the arbitration shall be borne by the Parties: the amount of expenses, procedure of payment and allocation of the costs and expenses of the arbitration between the Parties being stated in the award. The arbitration award shall state the reasons for its decisions, shall be based on the rules of international law and the legislation of the Party where the events occurred which resulted in the disputable situation.

Article 17

FINAL PROVISIONS

1. This Agreement shall be implemented on a temporary basis on the date of its signing by both Parties and shall enter into force on the date of notification of the United Nations High Commissioner for Refugees by the Government of Ukraine on the completion of all required constitutional procedures.

2. This Agreement shall be interpreted in the light of its primary purpose, which is to enable UNHCR to carry out its international mandate for refugees fully and efficiently and to attain its humanitarian objectives in the country.

3. Any relevant matter for which no provision is made in this Agreement shall be settled by the Parties in keeping with the relevant resolutions and decisions of the appropriate organs of the United Nations.

Each Party shall give full and sympathetic consideration to any proposal advanced by the other Party under this paragraph.

4. Consultations with a view to amending this Agreement may be held at the request of UNHCR or the Government. Amendments shall be made by joint written agreement.

5. This Agreement shall cease to be in force six months after either of the Contracting Parties gives notice in writing to the other of its decision to terminate the Agreement, except as regards the normal cessation of the activities of UNHCR in the country.

IN WITNESS WHEREOF the undersigned, being duly appointed representatives of the United Nations High Commissioner for Refugees and the Government of Ukraine, respectively, have on behalf of the Parties signed this Agreement in two copies, in the English and Ukrainian languages, both texts being authentic.

DONE in Kyiv this 23rd day of September 1998.

For the Office of the United Nations High Commissioner for Refugees:
[*Signature*]
Jozsef GYORKE
Head of Office,
United Nations High Commissioner for Refugees, Kyiv

For the Government of Ukraine:
[*Signature*]
Volodymyr YEVTUKH
Head of the State Committee of Ukraine for Nationalities and Migration

PROTOCOL ON AMENDMENTS TO ARTICLE 4, PARAGRAPH 2, OF THE AGREEMENT BETWEEN THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES AND THE GOVERNMENT OF UKRAINE

The United Nations High Commissioner for Refugees and the Cabinet of Ministers of Ukraine (Government of Ukraine) agreed to make amendments to the Agreement between the United Nations High Commissioner for Refugees and the Government of Ukraine.

The following sentence shall be added to article 4, paragraph 2:

"UNHCR, upon consent of the Government of Ukraine, may open UNHCR field offices in cities throughout Ukraine."

The Protocol shall be temporarily applicable from the date of signing by representatives of both Parties and shall come into force on the date when the Government of Ukraine notifies the United Nations High Commissioner for Refugees that the necessary internal procedures with regard to the coming into force of the Agreement between the United Nations High Commissioner for Refugees and the Government of Ukraine and the Protocol thereto have been completed.

DONE at Kyiv on 23 September 1998 in two copies, in English and Ukrainian, both texts equally being authentic.

For the Office of the United Nations High Commissioner for Refugees:
[*Signature*]
Jozsef GYORKE
UNHCR Representative in Ukraine

For the Cabinet of Ministers of Ukraine:
[*Signature*]
Mykola RUDKO
Head of the State Committee of Ukraine for Nationalities and Migration

(*b*) Cooperation Agreement between the United Nations (United Nations High Commissioner for Refugees) and the Government of the Republic of Moldova. Signed at Chisinau on 2 December 1998[29]

Whereas the Office of the United Nations High Commissioner for Refugees was established by the United Nations General Assembly in its 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 its 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 whose 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 Statute of the Office of the United Nations High Commissioner for Refugees provides in its article 16 that the High Commissioner shall consult the

Governments of the countries of residence of refugees as to the need for appointing representatives therein and that in any country recognizing such need, there may be appointed a representative approved by the Government of that country,

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

Now therefore, the Office of the United Nations High Commissioner for Refugees and the Government of the Republic of Moldova, in spirit of friendly cooperation, have entered into this Agreement.

Article I

DEFINITIONS

For the purpose of this Agreement the following definitions shall apply:

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

(*b*) "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*) "Government" means the Government of the Republic of Moldova;

(*d*) "host country" or "country" means the Republic of Moldova;

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

(*f*) "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*) "UNHCR office" means all the offices and premises, installations and facilities occupied or maintained in the country;

(*h*) "UNHCR Representative" means the UNHCR official in charge of the UNHCR office in the country;

(*i*) "UNHCR officials" means all members of the staff of UNHCR employed under the Staff Regulations and Rules of the United Nations, with the exception of persons who are recruited locally and assigned to hourly rates as provided in General Assembly resolution 76 (I);

(*j*) "experts on mission" means individuals, other than UNHCR officials or persons performing services on behalf of UNHCR, undertaking missions for UNHCR;

(*k*) "persons performing services on behalf of UNHCR" means natural and juridical persons and their employees, other than nationals of the host country, retained by UNHCR to execute or assist in the carrying out of its programmes;

(*l*) "UNHCR personnel" means UNHCR officials, experts on mission and persons performing services on behalf of UNHCR.

Article II

PURPOSE OF THIS AGREEMENT

This Agreement embodies the basic conditions under which UNHCR shall, within its mandate, cooperate with the Government, open offices in the country and

carry out its international protection and humanitarian assistance functions in favour of refugees and other persons of its concern in the host country.

Article III

COOPERATION BETWEEN THE GOVERNMENT AND UNHCR

1. Cooperation between the Government and UNHCR in the field of the international protection of and humanitarian assistance to refugees and other persons of concern to UNHCR shall be carried out on the basis of the Statute of UNHCR and of other relevant decisions and resolutions relating to UNHCR adopted by United Nations organs.

2. The UNHCR office shall maintain consultations and cooperation with the Government with respect to the preparation and review of projects for refugees and other persons of concern.

3. For any UNHCR-funded projects to be implemented by the Government, the terms and conditions including the commitment of the Government and the High Commissioner with respect to the furnishing of funds, supplies, equipment and services or other assistance for refugees shall be set forth in project agreements to be signed by the Government and UNHCR.

4. The Government shall at all times grant UNHCR personnel unimpeded access to refugees and other persons of concern to UNHCR and to the sites of UNHCR projects in order to monitor all phases of their implementation.

Article IV

UNHCR OFFICE

1. The Government welcomes that UNHCR establish and maintain an office or offices in the country for providing international protection and humanitarian assistance to refugees and other persons of concern to UNHCR.

2. UNHCR may designate, with the consent of the Government, the UNHCR office in the country to serve as a regional/area office and the Government shall be notified in writing of the number and level of the officials assigned to it.

3. The UNHCR office will exercise functions as assigned by the High Commissioner, in relation to his mandate for refugees and other persons of his concern, including the establishment and maintenance of relations between UNHCR and other governmental or non-governmental organizations functioning in the country.

Article V

UNHCR PERSONNEL

1. UNHCR may assign to the office in the country such officials or other personnel as UNHCR deems necessary for carrying out its international protection and humanitarian assistance functions.

2. The Government shall be informed of the category of the officials and other personnel to be assigned to the UNHCR office in the country.

3. UNHCR may designate officials to visit the country for purposes of consulting and cooperating with the corresponding officials of the Government or other parties involved in refugee work in connection with: (*a*) the review, preparation,

monitoring and evaluation of international protection and humanitarian assistance programmes; (*b*) the shipment, receipt, distribution or use of the supplies, equipment and other materials, furnished by UNHCR; (*c*) seeking permanent solutions for the problem of refugees; and (*d*) any other matters relating to the application of this Agreement.

Article VI

FACILITIES FOR IMPLEMENTATION OF UNHCR HUMANITARIAN PROGRAMMES

1. The Government, in agreement with UNHCR, shall take any measure which may be necessary to exempt UNHCR officials, experts on mission and persons performing services on behalf of UNHCR from regulations or other legal provisions which may interfere with operations and projects carried out under this Agreement, and shall grant them such other facilities as may be necessary for the speedy and efficient execution of UNHCR humanitarian programmes for refugees in the country. Such measures shall include the authorization to operate, free of licence fees, UNHCR radio and other telecommunications equipment; the granting of air traffic rights and the exemption from aircraft landing fees and royalties for emergency relief cargo flights, transportation of refugees and/or UNHCR personnel.

2. The Government will, as far as possible, in agreement with UNHCR, provide the following:

(*a*) Appropriate office premises for the UNHCR office in the country, free of charge;

(*b*) Facilities for the UNHCR office, such as equipment, movable property and maintenance of the office premises.

3. The Government shall ensure that the UNHCR office is at all times supplied with the necessary public services, and that such public services are supplied on equitable terms.

4. The Government shall take the necessary measures, when required, to ensure the security and protection of the premises of the UNHCR office and its personnel.

5. The Government shall facilitate the location of suitable housing accommodation for UNHCR personnel recruited internationally.

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 of 13 February 1946, to which the Government became a party on 12 April 1995.

2. 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.

3. Without prejudice to paragraph 1 of this article, the Government shall in particular extend to UNHCR the privileges, immunities, rights and facilities provided in articles VIII to XV of this Agreement.

Article VIII

UNHCR OFFICE, PROPERTY, FUNDS 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 insofar 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.

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. While UNHCR 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 (such as value-added tax), nevertheless when UNHCR is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, the Government will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

6. Any materials imported or exported 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.

7. 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.

8. UNHCR shall enjoy the most favourable rate of exchange.

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 Govern-

ment, including its diplomatic missions, or to other intergovernmental, international organizations in matter of priorities, tariffs and charges on mail, cablegrams, telephotos, telephone, telegraph, telex 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.

Article X

UNHCR OFFICIALS

1. The UNHCR Representative and 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 personal arrest and detention;

(*b*) Immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity, such immunity to continue even after termination of employment with UNHCR;

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

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

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

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

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

(*h*) 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;

(*i*) Freedom to hold or maintain within country, foreign exchange, foreign currency accounts and movable property and the right upon termination of employ-

ment with UNHCR to take out of the host country their funds for the lawful possession of which they can show good cause;

(*j*) 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;

(*k*) 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 and not for gift or sale.

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

Article XI

LOCALLY RECRUITED PERSONNEL

1. Persons recruited locally and assigned to hourly rates to perform services for UNHCR shall enjoy 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 personnel shall be in accordance with the relevant United Nations resolutions, regulations and rules.

Article XII

EXPERTS ON MISSION

Experts performing missions 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 acts done by them in the course of the performance of their mission. This immunity shall continue to be accorded notwithstanding that they are no longer employed on missions for UNHCR;

(*c*) Inviolability for all 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

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 changes in the status of such individuals.

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 of UNHCR personnel in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations and UNHCR.

Article XVI

SETTLEMENT OF DISPUTES

Any dispute between UNHCR and the Government arising out of or relating to this Agreement shall be settled amicably by negotiation or other agreed mode of settlement, failing which such dispute shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be a chairman. If within thirty days of the request for arbitration either Party has not appointed an arbitrator or if within fifteen days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. All decisions of the arbitrators shall require a vote of two of them. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

Article XVII

GENERAL PROVISIONS

1. This Agreement shall be implemented on a temporary basis on the date of its signing by both Parties and shall enter into force on the date of notification of the United Nations High Commissioner for Refugees by the Government of the Republic of Moldova of the completion of all required constitutional procedures.

2. This Agreement shall be interpreted in the light of its primary purpose, which is to enable UNHCR to carry out its international mandate for refugees fully and efficiently and to attain its humanitarian objectives in the country.

3. Any relevant matter for which no provision is made in this Agreement shall be settled by the Parties in keeping with relevant resolutions and decisions of the appropriate organs of the United Nations. Each Party shall give full and sympathetic consideration to any proposal advanced by the other Party under this paragraph.

4. Consultations with a view to amending this Agreement may be held at the request of the Government or UNHCR. Amendments shall be made by joint written agreement.

5. This Agreement shall cease to be in force six months after either of the Contracting Parties gives notice in writing to the other of its decision to terminate the Agreement, except as regards the normal cessation of the activities of UNHCR in the country and the disposal of its property in the country.

IN WITNESS WHEREOF the undersigned, being duly appointed representatives of the United Nations High Commissioner for Refugees and the Government of the Republic of Moldova respectively, have on behalf of the Parties signed this Agreement in two original copies, in the English and Moldovan languages. For the purposes of interpretation and in case of conflict, the English text shall prevail.

DONE at Chisinau, this 2nd day of December 1998.

For the Office of the United Nations High Commissioner for Refugees:	*For the Government of the Republic of Moldova*:
[*Signature*]	[*Signature*]
Oldrich ANDRYSEK	Iurie LEANCA
Head of Liaison Office	*Deputy Minister of Foreign Affairs*

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.[30] APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 21 NOVEMBER 1947

In 1998, 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 instrument of accession or notification*	*Specialized agencies*
Lithuania	10 February 1998	WHO
Slovenia	21 October 1998	ICAO and IMO
Ecuador	20 November 1998	IFAD

As of 31 December 1998, 106 States were parties to the Convention.[31]

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2. INTERNATIONAL LABOUR ORGANIZATION

Exchange of letters between the Director-General of the International Labour Office and the Minister for Foreign Affairs of the Republic of Turkey concerning the transformation of the International Labour Organization office in Ankara into a branch office.[32] Geneva, 12 February and 8 May 1998.

I

LETTER FROM THE INTERNATIONAL LABOUR ORGANIZATION

12 February 1998

On 12 February 1998, the Director-General of the International Labour Office addressed the following letter to the Minister for Foreign Affairs of Turkey:

Dear Sir,

I refer to the letter dated 27 January 1997 from the Minister of Labour and Social Security, Mr. Necati Çelik, whereby the proposal of ILO to transform the ILO office in Ankara into a branch office was accepted.

Without prejudice to the conclusion of a more detailed agreement and in order for ILO and its staff to be able to operate in Turkey within an appropriate legal framework corresponding to their status, I would like to seek confirmation that the privileges and immunities granted to ILO by virtue of the Agreement between the Government of the Republic of Turkey and the International Labour Organization, of 21 March 1952, will continue to apply with respect to the ILO branch office in Ankara and its staff, including officials called upon by ILO to perform official duties in Turkey in connection with the office or its work.

I look forward to receiving your Government's acceptance of the above proposal.

(*Signed*) Michel HANSENNE

II

NOTE VERBALE FROM THE PERMANENT MISSION OF TURKEY TO THE UNITED NATIONS OFFICE AT GENEVA

8 May 1998

The Permanent Mission of the Republic of Turkey to the Office of the United Nations at Geneva and other international organizations in Switzerland presents its

compliments to the International Labour Office and has the honour to transmit herewith the letter signed by His Excellency Mr. Ismail Cem, the Minister for Foreign Affairs of Turkey, addressed to His Excellency Mr. Hansenne, Director-General of the International Labour Organization, concerning the legal framework in which the ILO branch office in Ankara is to operate and its staff to perform official duties in Turkey. This Mission has the pleasure also to inform that the governmental decree which has recently been issued granted the required approval for the exchange of letters which will constitute an agreement on this matter between the Government of Turkey and the International Labour Organization.

The Permanent Mission of the Republic of Turkey avails itself of this opportunity to renew to the International Labour Office the assurances of its highest consideration.

Dear Sir,

I acknowledge receipt of your letter dated 12 February 1998 concerning the legal framework in which the new ILO Ankara office is to operate.

I would like to confirm that the privileges and immunities granted to ILO by virtue of the Agreement between the Government of the Republic of Turkey and the International Labour Organization, of 21 March 1952, will continue to apply with respect to the ILO branch office in Ankara and its staff, including officials called upon by the office to perform official duties in Turkey in connection with the office or its work.

Yours sincerely,

(*Signed*) Ismail CEM

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3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(*a*) Memorandum of cooperation between the United Nations Educational, Scientific and Cultural Organization and the Republic of Estonia. Done at Tallinn on 9 June 1998

The Republic of Estonia and the United Nations Educational, Scientific and Cultural Organization (UNESCO),

Bearing in mind their common commitment to the ideals of peace, and convinced of the importance of collaboration among nations through education, science, culture, communication and informatics in order to further universal respect for justice, the rule of law and human rights and fundamental freedoms,

Greatly appreciating the results achieved by Estonia in integrating European structures, and fully sharing the conviction that increased attention should be given to strengthening cooperation with intergovernmental organizations in Europe, such as the Organization for Security and Cooperation in Europe, the European Union, the Council of Europe and the Organisation for Economic Co-operation and Development,

Recognizing the assistance provided by UNESCO in reinforcing cooperation between the National Commissions for UNESCO in the Baltic Sea countries and in partnership with subregional organizations, such as the Council of the Baltic Sea

States and the Baltic Assembly, in view of the areas of complementarity that may be identified with a view to establishing joint frameworks for cooperation, and thereby increasing the impact of UNESCO action in the country,

Considering the growing role of civil society and the need to reinforce cooperation, in particular, with non-governmental organizations,

Noting the important coordinating role of the National Commission for UNESCO in formulating and stimulating inputs from the intellectual community of Estonia into the work of UNESCO, and recognizing its potential for implementing UNESCO activities and programmes,

Have agreed as follows:

1. UNESCO will provide support for Estonia's activities aiming at the implementation of the ideals of the culture of peace, including the continuation of the series of international experts' meetings on "The Art of Peace" and the establishment of the Baltic House of Peace.

2. With the support of UNESCO, Estonia will further the development of education, science, culture, communication and informatics and intensify its multilateral and bilateral contacts in these fields.

3. Estonia will continue to support fully the objectives, strategies and priorities set forth in UNESCO's Medium-Term Strategy (1996-2001) and their implementation under the Programme and Budget for 1998-1999 and will make every effort to contribute actively to the major initiatives of the Organization.

Education

1. The publication in the Estonian language of the report prepared by the International Commission on Education for the Twenty-first Century, "Learning: the Treasure Within", will help launch the national debate on its conclusions and recommendations with a view to expanding access to all forms and levels of education and to better adapting learning opportunities to the needs of society.

2. In order to promote an in-depth reform of its higher education system founded on the principles of equity, justice, solidarity and liberty, Estonia will seek to contribute further to the preparation of the World Conference on Higher Education to be held at UNESCO headquarters in October 1998, by delegating experts and specialists.

3. Estonia will enhance its collaboration with the UNESCO European Centre for Higher Education, the International Bureau of Education and the International Institute for Educational Planning and the UNESCO Institute for Education, in particular in the fields of lifelong education, training of teacher trainers, higher education policy and management of higher education institutions.

4. The relevant Estonian institutions will cooperate with UNESCO in developing the UNITWIN/UNESCO Chairs Programme. As a first step, a UNESCO Chair in Civics and Multicultural Education Studies will be established at the Jaan Tõnisson Institute in Tallinn.

5. Estonia will collaborate with UNESCO in promoting the use of modem information and communication technologies. UNESCO will assist the Ministry of Education in carrying out the nationwide Tiger Leap Programme, which aims at creating an open interactive learning environment and adapting the education

system of Estonia to the needs of the information society. At the same time, Estonia will be encouraged to share its experience and expertise with other member States through networks, such as those established in the context of "Learning Without Frontiers".

6. UNESCO will facilitate access by Estonian institutions and specialists to the most recent information on educational development and will support their participation in UNESCO's programmes and projects in such areas as preschool, secondary and adult education, technical and vocational education (the international project on technical and vocational education UNEVOC), environmental education and textbook research and production.

7. Estonia will strengthen its cooperation within the framework of the Associated Schools Project, in particular within the Baltic Sea Project, aiming to increase students' awareness of environmental problems and within the project "Young People's Participation in World Heritage Preservation and Promotion".

8. UNESCO will assist Estonia in its efforts to foster preventive education against drug abuse and AIDS in the context of comprehensive health education and public awareness-raising through the media.

Science

1. With the support of UNESCO, Estonia will strengthen its contribution to the work of the intergovernmental scientific programmes through its participation in the governing bodies and the activities of the national committees.

(*a*) With respect to the Man and Biosphere Programme and related activities in the ecological sciences, special attention will be given to the issue of ecological knowledge for local community development and biodiversity conservation. UNESCO will provide technical advice to help the Estonian authorities prepare new biosphere reserves nominations for inclusion in the World Network and provide assistance to the West Estonian Archipelago Biosphere Reserve.

(*b*) The Government will enhance its collaboration with the Intergovernmental Oceanographic Commission, the International Hydrological Programme, the International Geological Correlation Programme and the Management of Social Transformations Programme.

2. In the framework of the project on Environment and Development in Coastal Regions and in Small Islands, UNESCO will support pilot projects to strengthen cross-sectoral action for sustainable living. Cooperation will be sought with the relevant institutions and bodies in the region in the framework of the Baltic Floating University with a view to developing a transdisciplinary project on management of coastal zones in the Baltic Sea region.

3. Estonia will support UNESCO in its efforts to elaborate principles concerning global ethics and the moral responsibility of scientists, in particular, in respect of environmental ethics, info-ethics and human genome ethics. Conscious of the increasing importance of ethical reflection in the light of the cultural and social effects of the rapid development of scientific knowledge and technology, Estonia will participate in the work of the World Commission on the Ethics of Scientific Knowledge and Technology and will delegate specialists to its first session, which is to be held in Norway in November 1998.

4. Estonia will contribute to the preparation of the World Science Conference to be held in Budapest in 1999.

Culture

1. Estonia, in its efforts to enhance policy-making and action in the field of culture, will take into account the Draft Action Plan on Cultural Policies for Development as outlined at the International Conference on Cultural Policies for Development (Stockholm, 30 March–2 April 1998) with a view to integrating cultural policies in human development strategies, providing a new outlook on cultural policies and renewing cultural policy formulation.

2. UNESCO will assist Estonia in safeguarding and revitalizing its tangible and intangible heritage, particularly its historical and architectural monuments. Estonia will make every effort to strengthen the effective implementation of the Convention concerning the Protection of the World Natural and Cultural Heritage by systematic and continuous monitoring of the sites included in the World Heritage List. UNESCO will provide support, within the framework of the World Heritage Fund and by mobilizing extrabudgetary funds, for the conservation of the historic centre of Tallinn, which was placed on the World Heritage List in 1997. With technical support from UNESCO, Estonia will prepare further nominations for inclusion in the World Heritage List.

3. Increased efforts will be made to integrate the preservation of the cultural heritage into the economic and social life of the country. UNESCO will provide assistance to the Latin Quarter Project aiming at reintegrating the historic centre of Tallinn into the daily life of the city.

4. On the basis of existing environmental, cultural, social and infrastructural conditions, projects seeking to establish a combined tourism development and conservation strategy in Estonia will be developed.

5. UNESCO will support the establishment of a databank comprising information on cultural sites, customs and creative traditions in the Baltic region and in Eastern and Northern Europe, as well as their audio-visual recordings, to be known as the Heritage Bank, which will be made available on the Internet

6. Estonia will participate in the UNESCO-supported activities of the Baltic Centre for Writers and Translators in Visby within the framework of a network of cultural centres in the Baltic Sea area with a view to promoting mutual understanding through literary work between peoples in the region.

7. UNESCO will support the inclusion of Estonian works of major importance in its Collection of Representative Works, thus making them better known internationally.

8. The Parties will collaborate in the field of cultural management, particularly in respect of fund-raising and national legislation. To this end, a UNESCO Chair in Cultural Management will be established at Tartu University.

9. Under the Participation Programme, UNESCO will support the organization of an international conference “Culture and Health: Quality of Life in a Changing World” (scheduled for 1999), aiming at promoting a healthy lifestyle and improving the quality of life by strengthening cultural values and social support in society.

Communication, information, informatics

1. The Parties will cooperate in promoting the free flow of information and the development of independent and pluralistic media. In order to provide opportunities for training and professional exchanges, UNESCO will continue to support

the participation of Estonian TV programme-makers in Eastern European INPUT Workshops.

2. On the basis of the experience gained in implementing the information network BALTBONE, the Parties will cooperate in developing electronic networks for increased cooperation in science, education and culture, establishing virtual learning communities and promoting virtual laboratory applications.

3. Through access to UNESCO's General Information Programme, the Parties will cooperate with a view to facilitating access to information sources, promoting the development of library networks and archive services and ensuring the implementation of the Memory of the World Programme. UNESCO will provide assistance in the preservation of the Estonian Book Heritage.

4. UNESCO will support Estonia's involvement in activities related to youth and the media, in particular in the framework of the International Clearing House on Children and Violence on the Screen at the NORDICOM Documentation Centre at Göteburg University in Sweden.

The Secretariat of UNESCO will cooperate closely with the Estonian National Commission for UNESCO in the implementation of the above-mentioned activities and projects.

DONE in Tallinn on 9 June 1998, in two copies, in the English language.

For the Republic of Estonia:
[*Signature*]
Lennart MERI
President

For the United Nations Educational, Scientific and Cultural Organization:
[*Signature*]
Federico MAYOR
Director-General

(*b*) Agreement between the United Nations Educational, Scientific and Cultural Organization and the Government of Norway concerning the first session of the World Commission on the Ethics of Scientific Knowledge and Technology (Oslo, 11-13 November 1998)

. . .

III

PRIVILEGES AND IMMUNITIES

The Government of Norway shall apply, in all matters relating to this meeting, the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations as well as annex IV thereto, to which Norway has been a party as from 25 January 1950.

In particular, the Government shall not place any restriction on the entry into, sojourn in and departure from the territory of Norway 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 relevant rules and regulations.

IV

DAMAGE AND ACCIDENTS

As long as the premises reserved for the meeting are at the disposal of UNESCO, the Government of Norway shall bear the risk of damage to the premises, facilities and furniture and shall assume and bear all responsibility and liability for accidents

that may occur to persons present therein. The Norwegian authorities shall be entitled to adopt appropriate measures to ensure the protection of the participants, particularly against fire and other risks, of the above-mentioned premises, facilities and furniture. The Government of Norway may also claim from UNESCO compensation for any damage to persons and property caused by the fault of staff members or agents of the Organization.

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Agreements containing provisions similar to those referred to in the paragraph above were also concluded between UNESCO and the Governments of other States members of the organization.

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4. WORLD HEALTH ORGANIZATION

Basic Agreement between the World Health Organization and the Government of the Republic of Palau. Done in Palau on 13 April 1998[33]

The World Health Organization (hereinafter referred to as "the Organization") and

The Government of the Republic of Palau (hereinafter referred to as "the Government"),

Desiring to give effect to the resolutions and decisions of the United Nations and of the Organization relating to technical advisory cooperation, and to obtain mutual agreement concerning the purpose and scope of each project and the responsibilities which shall be assumed and the services which shall be provided by the Government and the Organization,

Declaring that their mutual responsibilities shall be fulfilled in a spirit of friendly cooperation,

Have agreed as follows:

Article I

ESTABLISHMENT OF TECHNICAL ADVISORY COOPERATION

1. The Organization shall establish technical advisory cooperation with the Government, subject to its budgetary limitation or the availability of the necessary funds. The Organization and the Government shall cooperate in arranging, on the basis of the requests received from the Government and approved by the Organization, mutually agreeable plans of operation for the carrying out of the technical advisory cooperation.

2. Such technical advisory cooperation shall be established in accordance with the relevant resolutions and decisions of the World Health Assembly, the Executive Board and other organs of the Organization.

3. Such technical advisory cooperation may consist of:

(*a*) Making available the services of advisers in order to render advice to and cooperate with the Government or with other parties;

(*b*) Organizing and conducting seminars, training programmes, demonstration projects, expert working groups and related activities in such places as may be mutually agreed upon;

(*c*) Awarding scholarships and fellowships or making other arrangements under which candidates nominated by the Government and approved by the Organization shall study or receive training outside the country;

(*d*) Preparing and executing pilot projects, tests, experiments or research in such places as may be mutually agreed upon;

(*e*) Carrying out any other forms of technical advisory cooperation which may be agreed upon by the Organization and the Government.

4. (*a*) Advisers who are to render advice to and cooperate with the Government or with other parties shall be selected by the Organization in consultation with the Government. They shall be responsible to the Organization;

(*b*) The advisers shall, in the performance of their duties, act in close consultation with the Government and with persons or bodies so authorized by the Government, and shall comply with instructions from the Government as may be appropriate to the nature of their duties and the cooperation in view and as may be actually agreed upon between the Organization and the Government;

(*c*) The advisers shall, in the course of their advisory work, make every effort to instruct any technical staff the Government may associate with them in their professional methods, techniques and practices, and in the principles on which these are based.

5. Any technical equipment or supplies which may be furnished by the Organization shall remain its property unless and until such time as title may be transferred in accordance with the policies determined by the World Health Assembly and existing at the date of transfer.

6. The Government shall be responsible for dealing with any claims which may be brought by third parties against the Organization and its advisers, agents and employees, and shall hold harmless the Organization and its advisers, agents and employees in case of any claims or liabilities resulting from operations under this Basic Agreement, except where it is agreed by the Organization and the Government that such claims or liabilities arise from the gross negligence or wilful misconduct of such advisers, agents or employees.

Article II

PARTICIPATION OF THE GOVERNMENT IN TECHNICAL ADVISORY COOPERATION

1. The Government shall do everything in its power to ensure the effective development of the technical advisory cooperation.

2. The Government and the Organization shall consult together regarding the publication, as appropriate, of any findings and reports of advisers that may prove of benefit to other countries and to the Organization.

3. The Government shall actively collaborate with the Organization in the furnishing and compilation of findings, data, statistics and such other information as will enable the Organization to analyse and evaluate the results of the programme of technical advisory cooperation.

Article III

ADMINISTRATIVE AND FINANCIAL OBLIGATIONS OF THE ORGANIZATION

1. The Organization shall defray, in full or in part, as may be mutually agreed upon, the costs necessary to the technical advisory cooperation which are payable outside the country, as follows:

(*a*) The salaries and subsistence allowances (including duty travel per diem) of the advisers;

(*b*) The costs of transportation of the advisers during their travel to and from the point of entry into the country;

(*c*) The costs of any other travel outside the country;

(*d*) Insurance of the advisers;

(*e*) Purchase and transport to and from the point of entry into the country of any equipment or supplies provided by the Organization;

(*f*) Any other expenses outside the country approved by the Organization.

2. The Organization shall defray such expenses in local currency as are not covered by the Government pursuant to article IV, paragraph 1, of this Agreement.

Article IV

ADMINISTRATIVE AND FINANCIAL OBLIGATIONS OF THE GOVERNMENT

1. The Government shall contribute to the costs of technical advisory cooperation by paying for, or directly furnishing, the following facilities and services:

(*a*) Local personnel services, technical and administrative, including the necessary local secretarial help, interpreter-translators and related assistance;

(*b*) The necessary office space and other premises;

(*c*) Equipment and supplies produced within the country;

(*d*) Transportation of personnel, supplies and equipment for official purposes within the country;

(*e*) Postage and telecommunications for official purposes;

(*f*) Facilities for receiving medical care and hospitalization by the international personnel.

2. The Government shall defray such portion of the expenses to be paid outside the country as are not covered by the Organization, and as may be mutually agreed upon.

3. In appropriate cases, the Government shall put at the disposal of the Organization such labour, equipment, supplies and other services or property as may be needed for the execution of its work and as may be mutually agreed upon.

Article V

FACILITIES, PRIVILEGES AND IMMUNITIES

1. The Government, insofar as it is not already bound to do so, shall apply to the Organization, its staff, funds, properties and assets the appropriate provisions of the Convention on the Privileges and Immunities of the Specialized Agencies.

2. Staff of the Organization, including advisers engaged by it as members of the staff assigned to carry out the purposes of this Basic Agreement, shall be deemed to be officials of the Organization within the meaning of the above Convention. The World Health Organization representative appointed to the Republic of Palau shall be afforded the treatment provided for under section 21 of the said Convention.

Article VI

1. This Basic Agreement shall enter into force upon signature by the duly authorized representatives of the Organization and of the Government.

2. This Basic Agreement may be modified by agreement between the Organization and the Government, each of which shall give full sympathetic consideration to any request by the other Party for such modification.

3. This Basic Agreement may be terminated by either Party upon written notice to the other Party and shall terminate 60 days after receipt of such notice.

IN WITNESS WHEREOF the undersigned, duly appointed representatives of the Organization and the Government respectively, have, on behalf of the Parties, signed the present Agreement in three copies.

DONE in the Republic of Palau this 13th day of April nineteen hundred and ninety-eight.

For the World Health Organization:	*For the Government of the Republic of Palau*:
[*Signature*]	[*Signature*]
S. T. HAN	Kuniwo NAKAMURA
Regional Director	*President, Republic of Palau*

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* *

A similar agreement was concluded between the World Health Organization and the Government of the Principality of Andorra. Signed at Andorra la Vella, on 11 September 1998, and at Copenhagen, on 11 September 1998

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5. WORLD INTELLECTUAL PROPERTY ORGANIZATION

Agreement between the World Intellectual Property Organization and the Government of Australia in relation to the functioning of the Australian Patent Office as an International Searching Authority and International Preliminary Examining Authority under the Patent Cooperation Treaty. Done at Geneva on 4 December 1998[34]

Preamble

The Government of Australia and the International Bureau of the World Intellectual Property Organization,

Considering that the Agreement of 11 November 1987, under articles 16(3)(*b*) and 32(3) of the Patent Cooperation Treaty in relation to the functioning of the Australian Patent Office as an International Searching Authority and International Preliminary Examining Authority under the Patent Cooperation Treaty was concluded for a period of 10 years from 1 January 1988 to 31 December 1997,

Desirous to continue the functioning of the Australian Patent Office as an International Searching Authority and International Preliminary Examining Authority under the Patent Cooperation Treaty,

Hereby agree as follows:

Article 1

TERMS AND EXPRESSIONS

1. For the purposes of this Agreement:

(*a*) "Treaty" means the Patent Cooperation Treaty;

(*b*) "Regulations" means the Regulations under the Treaty;

(*c*) "Administrative Instructions" means the Administrative Instructions under the Treaty;

(*d*) "article" (except where a specific reference is made to an article of this Agreement) means an article of the Treaty;

(*e*) "rule" means a rule of the Regulations;

(*f*) "Contracting State" means a State party to the Treaty;

(*g*) "the Authority" means the Australian Patent Office;

(*h*) "the International Bureau" means the International Bureau of the World Intellectual Property Organization.

2. All other terms and expressions used in this Agreement which are also used in the Treaty, the Regulations or the Administrative Instructions have, for the purposes of this Agreement, the same meaning as in the Treaty, the Regulations and the Administrative Instructions.

Article 2

BASIC OBLIGATIONS

1. The Authority shall carry out international search and international preliminary examination in accordance with, and perform such other functions of an International Searching Authority and International Preliminary Examining Authority as are provided under, the Treaty, the Regulations, the Administrative Instructions and this Agreement. In carrying out international search and international preliminary examination, the Authority shall apply and observe all the common rules of international search and of international preliminary examination and, in particular, shall be guided by the Patent Cooperation Treaty Search Guidelines and the Patent Cooperation Treaty Preliminary Examination Guidelines.

2. The Authority and the International Bureau shall, having regard to their respective functions under the Treaty, the Regulations, the Administrative Instructions and this Agreement, render, to the extent considered to be appropriate by both the Authority and the International Bureau, mutual assistance in the performance of their functions thereunder.

Article 3

COMPETENCE OF AUTHORITY

1. The Authority shall act as International Searching Authority for any international application filed with the receiving office of, or acting for, any Contracting State specified in annex A to this Agreement, provided that the receiving office specifies the Authority for that purpose, that such application, or a translation thereof furnished for the purposes of international search, is in the language or one of the languages specified in annex A to this Agreement and, where applicable, that the Authority has been chosen by the applicant.

2. The Authority shall act as International Preliminary Examining Authority for any international application filed with the receiving office of, or acting for, any Contracting State specified in annex A to this Agreement, provided that the receiving office specifies the Authority for that purpose, that such application, or a translation thereof furnished for the purposes of international preliminary examination, is in the language or one of the languages specified in annex A to this Agreement and, where applicable, that the Authority has been chosen by the applicant.

3. Where an international application is filed with the International Bureau as receiving office under rule 19.1(*a*)(iii), paragraphs 1 and 2 apply as if that application had been filed with a receiving office which would have been competent under rule 19.1(*a*)(i) or (ii), (*b*) or (*c*) or rule 19.2(i).

Article 4

SUBJECT MATTER NOT REQUIRED TO BE SEARCHED OR EXAMINED

The Authority shall not be obliged to search, by virtue of article 17(2)(*a*)(i), or examine, by virtue of article 34(4)(*a*)(i), any international application to the extent that it considers that such application relates to subject matter set forth in rule 39.1 or 67.1, as the case may be, with the exception of the subject matter specified in annex B to this Agreement.

Article 5

FEES AND CHARGES

1. A schedule of all fees of the Authority, and all other charges which the Authority is entitled to make, in relation to its functions as an International Searching Authority and International Preliminary Examining Authority, is set out in annex C to this Agreement.

2. The Authority shall, under the conditions and to the extent set out in annex C to this Agreement:

(i) Refund the whole or part of the search fee paid, or waive or reduce the search fee, where the international search report can be wholly or partly based on the results of an earlier search made by the Authority (rules 16.3 and 41.1);

(ii) Refund the search fee where the international application is withdrawn or considered withdrawn before the start of the international search.

3. The Authority shall, under the conditions and to the extent set out in annex C to this Agreement, refund the whole or part of the preliminary examination fee paid where the demand is considered as if it had not been submitted (rule 58.3) or where the demand or the international application is withdrawn by the applicant before the start of the international preliminary examination.

Article 6

CLASSIFICATION

For the purposes of rules 43.3(*a*) and 70.5(*b*), the Authority shall indicate solely the International Patent Classification.

Article 7

LANGUAGES OF CORRESPONDENCE USED BY THE AUTHORITY

For the purposes of correspondence, including forms, other than with the International Bureau, the Authority shall use the language or one of the languages indicated, having regard to the language or languages indicated in annex A and to the language or languages whose use is authorized by the Authority under rule 92.2(*b*), in annex D.

Article 8

INTERNATIONAL-TYPE SEARCH

The Authority shall carry out international-type searches to the extent decided by it.

Article 9

ENTRY INTO FORCE

This Agreement shall enter into force on 1 January 1998.

Article 10

DURATION AND RENEWABILITY

This Agreement shall remain in force until 31 December 2007. The parties to this Agreement shall, no later than January 2007, start negotiations for its renewal.

Article 11

AMENDMENT

1. Without prejudice to paragraphs 2 and 3, amendments may, subject to approval by the Assembly of the International Patent Cooperation Union, be made to this Agreement by agreement between the parties hereto; they shall take effect on the date agreed upon by them.

2. Without prejudice to paragraph 3, amendments may be made to the annexes to this Agreement by agreement between the Director General of the World Intellectual Property Organization and the Authority; they shall take effect on the date agreed upon by them.

3. The Authority may, by a notification to the Director General of the World Intellectual Property Organization:

(i) Add to the indications of States and languages contained in annex A to this Agreement;

(ii) Amend the schedule of fees and charges contained in annex C to this Agreement;

(iii) Amend the indications of languages of correspondence contained in annex D to this Agreement.

4. Any amendment notified under paragraph 3 shall take effect on the date specified in the notification, provided that, for any increase of fees or charges contained in annex C, that date is at least one month later than the date on which the notification is received by the International Bureau.

Article 12

TERMINATION

1. This Agreement shall terminate before 31 December 2007:

(i) If the Government of Australia gives the Director General of the World Intellectual Property Organization written notice to terminate this Agreement; or

(ii) If the Director General of the World Intellectual Property Organization gives the Government of Australia written notice to terminate this Agreement.

2. The termination of this Agreement under paragraph 1 shall take effect one year after receipt of the notice by the other party, unless a longer period is specified in such notice or unless both parties agree on a shorter period.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

DONE at Geneva, this fourth day of December 1997, in two originals in the English language.

For the Government of Australia:
[*Signature*]
Edwin Franklin DELOFSKI
Ambassador and Permanent Representative to the World Trade Organization

For the International Bureau:
[*Signature*]
Kamil IDRIS
Director General
World Intellectual Property Organization

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6. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

(*a*) Memorandum of Understanding between the United Nations Industrial Development Organization and the United Nations Conference on Trade and Development concerning a strategic alliance for investment promotion in developing countries. Signed at Geneva on 26 March 1998[35]

1. The Director-General of UNIDO and the Secretary-General of UNCTAD met at UNCTAD, Geneva, on 26 March 1998 and agreed to take immediate measures for more effective collaboration between the two organizations. They wish to build synergies and complementarities in order to enhance the effectiveness of their joint efforts to promote investment in developing countries.

2. The desire for closer cooperation between the two organizations is based on three considerations:

— Liberalization and expansion of international trade in goods and services and investment and increasing international mobility of enterprises and production processes provide both opportunities and challenges to developing countries. The dynamic relationships among trade, industry, investment and technology offer a new basis for more intense collaboration between the two organizations focused on investment promotion;

— The States members of both UNCTAD and UNIDO regard increased cooperation between the two organizations as an important element of their reform and revitalization;

— Such increased cooperation will contribute to the reform of the United Nations. The Secretary-General of UNCTAD and the Director-General of UNIDO will inform the Administrative Committee on Coordination on 27 March 1998 of this new development in their mutual support and cooperation.

3. The objectives of this innovative approach to collaboration are:

— Full utilization of the organizations' respective comparative advantages and capacities, so as to maximize the delivery of services and avoid duplication;

— Optimization of resources available through official development assistance flows and other channels;

— Development of new cooperative arrangements between both organizations and the private sector;

— Ensuring the positive impact of investment promotion activities at the country, subregional, regional and global levels.

4. On the basis of these considerations and in the light of the earlier understandings on the comparative advantages of both organizations, UNCTAD will emphasize "upstream" activities and UNIDO "downstream" activities as regards investment promotion.[a] To this end, the Director-General of UNIDO is inviting UNCTAD to utilize the substantive and operational capacities of UNIDO field offices and UNIDO Investment Promotion Service Offices and is directing such offices to respond to requests from the Secretary-General of UNCTAD to collaborate in the technical cooperation work of UNCTAD. These arrangements offer a new and cost-effective approach to joint cooperation in the area of investment, technology and enterprise development, bearing in mind the ultimate objective of promoting business at the country level in partnership with the private sector.

5. The strategic alliance of UNCTAD and UNIDO will encompass both joint and complementary work in selected areas related to investment promotion in specific countries (see paras. 6 and 7, and annex I) and at the global level (para. 8). Both organizations will seek to extend their collaboration to other relevant partners offering a variety of investment promotion services.[b]

6. Effective promotion of investment requires a comprehensive set of polices and measures ranging from the strengthening of an enabling environment conducive to investment on the one hand to provision of the many public and private services that support an investment programme on the other. Annex II contains a list of investment promotion–related activities for cooperation between the two organizations.

7. Complementary or joint programmes encompassing the areas set out in annex II will be developed by UNIDO and UNCTAD. In the first instance, the re-

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[a] In the context of this Memorandum of Understanding, "upstream" activities cover advice and assistance on policy issues affecting investment promotion, including the regulatory and institutional framework for investment. "Downstream" activities involve advice and assistance on industrial sector issues and investment promotion support services. Both "upstream" and "downstream" investment promotion encompass related enterprise development activities, including support for small and medium-sized enterprises.

[b] Such partners include other organizations of the United Nations system, regional groupings, and technical and financial mechanisms that promote investment.

sponsible directors/officials of both organizations (annex III), supported by UNIDO field offices, will agree on joint and complementary activities to be carried out in the countries listed in annex I, in consultation with the Government concerned, and report thereon by 13 May 1998. Recent joint undertakings in Uganda could serve as a model for future collaboration at the country level. Wherever appropriate, such joint exercises should be linked to ongoing United Nations system-wide programming of operational activities, including through the United Nations Development Assistance Framework process.

8. UNCTAD and UNIDO agree to strengthen their mutual support for the activities of the World Association of Investment Promotion Agencies (WAIPA), on the basis of the understandings reached at the Second Annual Conference of the Association in September 1997, and in this regard will give particular support to the regional chapter for Africa. Other joint global or regional activities in the area of investment promotion will be developed on a case-by-case basis.

9. Concrete forms of collaboration between UNIDO and UNCTAD are to be determined on the basis of specific global programmes and activities and/or country programme requirements and circumstances. They will include: meetings at the headquarters of both organizations, joint missions, joint co-sponsoring of meetings/seminars/workshops, operational activities, joint publications and exchange of staff, including Junior Professional Officers.

10. UNIDO and UNCTAD also intend to deepen their cooperation in the area of enterprise development, particularly small and medium-sized enterprise development. The scope of this cooperation will be the subject of further consultations to be reported on by 13 May 1998. In the meantime, each organization will make every effort to contribute to and participate in each other's meetings on enterprise development.

11. With the objective of implementing the provisions of this understanding and within existing rules and regulations, both organizations will reciprocally seek to offer office space, common premises and use of services at their respective headquarters in Geneva and Vienna and, in the case of UNIDO, its field offices. Such reciprocity will be based on the joint programmes established by this Memorandum in the area of investment promotion (viz. paras. 4 and 7), as well as for other mutually agreed activities.

12. UNCTAD and UNIDO will inform their respective governing bodies of the contents of this Memorandum. They will also make arrangements to inform the Economic and Social Council and the United Nations General Assembly, in the context of the programme for reform of the United Nations, of this innovative approach to inter-agency cooperation.

13. The focal point for overseeing the process of cooperation will be, for UNCTAD, Mr. John Burley, and for UNIDO, Mr. R. Carlos Sersale di Cerisano.

14. The Secretary-General of UNCTAD, Mr. Rubens Ricupero, and the Director-General of UNIDO, Mr. Carlos Magariños, will meet in six months' time in Vienna to review progress in the implementation of this Memorandum and to determine further steps in enhancing cooperation between the two organizations.

[*Signature*]
Rubens RICUPERO
Secretary-General of UNCTAD

[*Signature*]
Carlos MAGARIÑOS
Director-General of UNIDO

Geneva, 26 March 1998

ANNEX I

List of countries/subregions

UNCTAD and/or UNIDO are currently undertaking activities related to investment promotion in the following countries:

Bangladesh	Madagascar
Bolivia	Mali
Burkina Faso	Morocco
Cambodia	Mozambique
Congo	Namibia
Côte d'Ivoire	Nepal
Democratic People's Republic of Korea	Nicaragua
Ecuador	Niger
Egypt	Pakistan
Ethiopia	Peru
Gambia	Senegal
Guatemala	Togo
Guinea	Uganda
Guinea-Bissau	Uzbekistan
Indonesia	West African Economic and Monetary Union

* * *

UNCTAD and UNIDO will also develop proposals for cooperation with the Palestinian Authority as regards investment promotion.

* * *

Staff of UNCTAD and UNIDO will prepare, by 13 May 1998, specific investment promotion activities, which may be joint or complementary, in those above-listed countries or areas amenable to such an exercise.

This list will be reviewed by both organizations in order to revise and update the selection of target countries/subregions.

(*b*) Agreement between the United Nations Industrial Development Organization and the Republic of Austria regarding the headquarters of the United Nations Industrial Development Organization.[36]

. . .

Article III

INVIOLABILITY OF THE HEADQUARTERS SEAT

Section 15

(*a*) The Government recognizes the inviolability of the headquarters seat, which shall be under the control and authority of UNIDO as provided in this Agreement.

(*b*) Except as otherwise provided in this Agreement or in the General Convention and subject to any regulation enacted under section 16, the laws of the Republic of Austria shall apply within the headquarters seat.

(*c*) Except as otherwise provided in this Agreement or in the General Convention, the courts or other competent organs of the Republic of Austria shall have jurisdiction, as provided in applicable laws, over acts done and transactions taking place within the headquarters seat.

. . .

Section 16

(*a*) UNIDO shall have the power to make regulations, operative within the headquarters seat, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. No law of the Republic of Austria which is inconsistent with a regulation of UNIDO authorized by this section shall, to the extent of such inconsistency, be applicable within the headquarters seat. Any dispute between the Government and UNIDO as to whether a regulation of UNIDO is authorized by this section or as to whether a law of the Republic of Austria is inconsistent with any regulation of UNIDO authorized by this section shall be promptly settled by the procedure set out in section 46. Pending such settlement, the regulation of UNIDO shall apply and the law of the Republic of Austria shall be inapplicable in the headquarters seat to the extent that UNIDO claims it to be inconsistent with its regulation.

(*b*) UNIDO shall from time to time inform the Government, as may be appropriate, of regulations made by it in accordance with subsection (*a*).

(*c*) This section shall not prevent the reasonable application of fire protection or sanitary regulations of the competent Austrian authorities.

Section 17

(*a*) The headquarters seat shall be inviolable. No officer or official of the Republic of Austria, or other person exercising any public authority within the Republic of Austria, shall enter the headquarters seat to perform any duties therein except with the consent of, and under conditions approved by, the Director-General. The service of legal process, including the seizure of private property, shall not take place within the headquarters seat except with the express consent of, and under conditions approved by, the Director-General.

(*b*) Without prejudice to the provisions of the General Convention or of article X of this Agreement, UNIDO shall prevent the headquarters seat from being used as a refuge by persons who are avoiding arrest under any law of the Republic of Austria, who are required by the Government for extradition to another country or who are endeavouring to avoid service of legal process.

. . .

Article VII

FREEDOM FROM TAXATION

Section 24

(*a*) UNIDO, its assets, income and other property shall be exempt from all forms of taxation, provided, however, that such tax exemption shall not extend to the owner or lessor of any property rented by UNIDO.

(*b*) Insofar as the Government, for important administrative considerations, may be unable to grant to UNIDO exemption from indirect taxes which constitute part of the cost of goods purchased by or services rendered to UNIDO, including

rentals, the Government shall reimburse UNIDO for such taxes by the payment, from time to time, of lump sums to be agreed upon by UNIDO and the Government. It is, however, understood that UNIDO will not claim reimbursement with respect to minor purchases. With respect to such taxes, UNIDO shall at all times enjoy at least the same exemptions and facilities as are granted to Austrian governmental administrations or to chiefs of diplomatic missions accredited to the Republic of Austria, whichever are the more favourable. It is further understood that UNIDO shall not claim exemption from taxes which are in fact no more than charges for public utility services.

(*c*) All transactions to which UNIDO is a party, and all documents recording such transactions, shall be exempt from all taxes, recording fees and documentary taxes. This principle shall also apply to the supply of goods or services purchased by UNIDO for immediate export or use abroad.

(*d*) Articles imported or exported by UNIDO for official purposes shall be exempt from customs duties and other levies, and from prohibitions and restrictions on imports and exports.

(*e*) UNIDO shall be exempt from customs duties and other levies, prohibitions and restrictions on the importation of service automobiles and spare parts thereof, required for its official purposes.

(*f*) The Government shall, if requested, grant allotments of gasoline or other fuels and lubricating oils for each such automobile operated by UNIDO in such quantities as are required for its work and at such special rates as may be established for diplomatic missions in the Republic of Austria.

(*g*) Articles imported in accordance with subsections (*d*) and (*e*) or obtained from the Government in accordance with subsection (*f*) shall not be sold by UNIDO in the Republic of Austria within two years of their importation or acquisition, unless otherwise agreed upon by the Government.

(*h*) The articles mentioned in subsection (*g*) may be disposed of without charge only for the benefit of international organizations possessing comparable privileges or for the benefit of charitable institutions.

(*i*) UNIDO shall be exempt from the obligation to pay employer's contributions to the Family Burden Equalization Fund or an instrument with equivalent objectives.

Article VIII

FINANCIAL FACILITIES

Section 25

(*a*) Without being subject to any financial controls, regulations or moratoria of any kind, UNIDO may freely:

(i) Purchase any currencies through authorized channels and hold and dispose of them;

(ii) Operate accounts in any currency;

(iii) Purchase through authorized channels, hold and dispose of funds, securities and gold;

(iv) Transfer its funds, securities, gold and currencies to or from the Republic of Austria, to or from any other country, or within the Republic of Austria; and

(v) Raise funds through the exercise of its borrowing power or in any other manner which it deems desirable, except that with respect to the raising of funds within the Republic of Austria UNIDO shall obtain the concurrence of the Government.

(*b*) The Government shall assist UNIDO in obtaining the most favourable conditions as regards exchange rates, banking commissions in exchange transactions and the like.

(*c*) UNIDO shall, in exercising its rights under this section, pay due regard to any representations made by the Government insofar as effect can be given to such representations without prejudicing the interests of UNIDO.

Article IX

SOCIAL SECURITY AND PENSION FUND

Section 26

The Pension Fund shall enjoy legal capacity in the Republic of Austria and shall enjoy the same exemptions, privileges and immunities as UNIDO itself. Benefits received from the Pension Fund shall be exempt from taxation.

Section 27

UNIDO and its officials shall be exempt from the application of all laws of the Republic of Austria on social insurance, except as provided in a supplemental Agreement.

Section 28

The Republic of Austria and UNIDO shall through a supplemental agreement make such provisions as may be necessary to enable any official of UNIDO who is not afforded social security coverage by UNIDO to participate in any social security scheme of the Republic of Austria. UNIDO may in accordance with the provisions of such a supplemental agreement arrange for the participation in the Austrian Social Insurance Scheme of those locally recruited members of its staff who do not participate in the Pension Fund or to whom UNIDO does not grant social security protection at least equivalent to that offered under Austrian law.

Article X

TRANSIT AND RESIDENCE

Section 29

(*a*) In respect of the persons listed below, the Government shall take all necessary measures to facilitate their entry into and sojourn in the territory of the Republic of Austria, shall place no impediment in the way of their departure from the territory of the Republic of Austria, shall ensure that no impediment is placed in the way of their transit to or from the headquarters seat and shall afford them any necessary protection in transit:

(i) Members of permanent missions and other representatives of member States, their families and other members of their households, as well as clerical and other auxiliary personnel and the spouses and dependent children of such personnel;

(ii) Members of permanent observer missions of non-member States, members of permanent observer missions of intergovernmental organizations and members of other permanent observer missions, granted such status in accordance with the Constitution of UNIDO, their families and other members of their households, as well as clerical and other auxiliary personnel and the spouses and dependent children of such personnel;

(iii) Officials of UNIDO, their families and other members of their households;

(iv) Officials of the United Nations or one of the specialized agencies, or of the International Atomic Energy Agency, who are attached to UNIDO or who have official business with UNIDO in Vienna, and their spouses and dependent children;

(v) Representatives of other organizations with which UNIDO has established official relations, who have official business with UNIDO;

(vi) Persons, other than officials of UNIDO, performing missions authorized by UNIDO or serving on committees or other subsidiary organs of UNIDO, and their spouses;

(vii) Representatives of the press, radio, film, television or other information media who have been accredited to UNIDO after consultation between UNIDO and the Government;

(viii) Representatives of other organizations or other persons invited by UNIDO to the headquarters seat on official business. The Director-General shall communicate the names of such persons to the Government before their intended entry.

(*b*) This section shall not apply in the case of general interruptions of transportation, which shall be dealt with as provided in section 20 (*b*), and shall not impair the effectiveness of generally applicable laws relating to the operation of means of transportation.

(*c*) Visas where required for persons referred to in this section shall be granted without charge and as promptly as possible.

(*d*) No activity performed by any person referred to in subsection (*a*) in his or her official capacity with respect to UNIDO shall constitute a reason for preventing his or her entry into or his or her departure from the territory of the Republic of Austria or for requiring him or her to leave such territory.

(*e*) No person referred to in subsection (*a*) shall be required by the Government to leave the territory of the Republic of Austria save in the event of an abuse of the right of residence, in which case the following procedure shall apply:

(i) No proceeding shall be instituted to require any such person to leave the territory of the Republic of Austria except with the prior approval of the Federal Minister for Foreign Affairs of the Republic of Austria;

(ii) In the case of a representative of a State, such approval shall be given only after consultation with the Government of the State concerned;

(iii) In the case of any other person mentioned in subsection (*a*), such approval shall be given only after consultation with the Director-General and, if expulsion proceedings are taken against any such person, the Director-General shall have the right to appear or to be represented in

such proceedings on behalf of the person against whom such proceedings are instituted; and

(iv) Persons who are entitled to diplomatic privileges and immunities under section 38 shall not be required to leave the territory of the Republic of Austria otherwise than in accordance with the customary procedure applicable to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Republic of Austria.

(*f*) This section shall not prevent the requirement of reasonable evidence to establish that persons claiming the rights granted by this section come within the categories described in subsection (*a*), or the reasonable application of quarantine and health regulations.

Section 30

The competent Austrian authorities and the Director-General shall, at the request of either of them, consult as to methods of facilitating entrance into the territory of the Republic of Austria, and as to the use of available means of transportation, by persons coming from abroad who wish to visit the headquarters seat and who do not enjoy the privileges provided by section 29.

Article XI

REPRESENTATIVES TO UNIDO

Section 31

Permanent missions accredited to UNIDO in Vienna shall enjoy the same privileges and immunities as are accorded to diplomatic missions in the Republic of Austria.

Section 32

(*a*) Members of permanent missions to UNIDO of member States shall be entitled to the same privileges and immunities as the Government accords to members, having comparable rank, of diplomatic missions accredited to the Republic of Austria.

(*b*) Members of permanent observer missions to UNIDO of non-member States, and members of permanent observer missions to UNIDO of intergovernmental organizations shall be entitled to the same privileges and immunities as the Government accords to members, having comparable rank, of diplomatic missions accredited to the Republic of Austria.

(*c*) Without prejudice to any additional privileges and immunities the Government may grant unilaterally, members of other permanent observer missions, granted such status in accordance with the UNIDO Constitution, shall be granted such immunities as may be necessary for the independent exercise of their functions in connection with UNIDO.

Section 33

Representatives of States and of intergovernmental organizations to meetings of, or convened by, UNIDO and those who have official business with UNIDO shall, while exercising their functions and during their journey to and from Austria, enjoy the privileges and immunities provided in article IV of the General Convention.

Section 34

Having regard to article 38 (1) of the Vienna Convention on Diplomatic Relations (1961) and to the practice of the Republic of Austria, members of permanent missions and of permanent observer missions referred to in section 32, who are Austrian nationals or stateless persons resident in Austria, shall be accorded only immunity from legal process of every kind in respect of words spoken or written and all acts done by them in their capacity as members of such permanent missions and permanent observer missions.

Section 35

In conformity with article 42 of the Vienna Convention on Diplomatic Relations and the practice of the Republic of Austria, members of permanent missions and permanent observer missions referred to in section 32, who are enjoying the same privileges and immunities as are accorded to members having comparable rank of diplomatic missions accredited to the Republic of Austria, shall not practice for personal profit any professional or commercial activity within the Republic of Austria.

Section 36

UNIDO shall communicate to the Government a list of persons within the scope of this article and shall revise such list from time to time as may be necessary.

Article XII

OFFICIALS OF UNIDO

Section 37

Officials of UNIDO shall enjoy within and with respect to the Republic of Austria the following privileges and immunities:

(*a*) Immunity from legal process of any kind in respect of words spoken or written, and of acts performed by them, in their official capacity, such immunity to continue notwithstanding that the persons concerned may have ceased to be officials of UNIDO;

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

(*c*) Immunity from inspection of official baggage and, if the official comes within the scope of section 38, immunity from inspection of personal baggage;

(*d*) Exemption from taxation in respect of the salaries, emoluments, indemnities and pensions paid to them by UNIDO for services past or present or in connection with their service with UNIDO;

(*e*) Exemption from taxation in respect of benefits received from their participation in the Austrian Social Insurance Scheme;

(*f*) Exemption from taxation on all income and property of officials and members of their families forming part of their households, insofar as such income derives from sources, or insofar as such property is located, outside the Republic of Austria;

(*g*) Exemption from inheritance and gift taxes, except with respect to immovable property located in the Republic of Austria, insofar as the obligations to pay such taxes arises solely from the fact that the officials and members of their household reside or maintain their usual domicile in Austria;

(*h*) Exemption from vehicle tax and engine-related insurance tax;

(*i*) Exemption with respect to themselves, their spouses, their dependent relatives and other members of their households from immigration restrictions and alien registration. The same exemption from immigration restrictions shall also apply to retired officials of UNIDO under modalities established by the Government;

(*j*) Spouses and dependent relatives living in the same household shall have access to the labour market in accordance with Austrian law on a preferential basis. Insofar as they engage in gainful occupation, privileges and immunities shall not apply with respect to such occupation;

(*k*) Exemption from national service obligations, provided that, with respect to Austrian nationals, such exemption shall be confined to officials whose names have, by reason of their duties, been placed upon a list compiled by the Director-General and transmitted to the Government; provided further that should officials, other than those listed, who are Austrian nationals be called up for national service, the Government shall, upon request of the Director-General, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption of the essential work of UNIDO;

(*l*) Freedom to acquire or maintain within the Republic of Austria or elsewhere foreign securities, foreign currency accounts and other movable and, under the same conditions applicable to Austrian nationals, immovable property; and, at the termination of their assignment with UNIDO, the right to take out of the Republic of Austria through authorized channels without prohibition or restriction, their funds, in the same currency and up to the same amounts as they had brought into the Republic of Austria;

(*m*) Without prejudice to the provisions of section 18 (*e*) of the General Convention and subsection (*l*), freedom to make, over and above the facilities granted by this Agreement, transfers to other countries;

(*n*) The same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their households as are accorded in times of international crises to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Republic of Austria;

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

(i) Their furniture and effects in one or more separate shipments, and thereafter to import necessary additions to the same;

(ii) One automobile and one motorcycle every four years;

(iii) Limited quantities of certain articles for personal use or consumption and not for gift or sale. UNIDO may establish a commissary for the sale of such articles to its officials and members of delegations, the detailed rules for which are set out in the Agreements mentioned in section 59 (*g*);

(*p*) For themselves and members of their families, on the same terms as Austrian citizens, the right of access to universities and other institutions of higher education for the purpose of obtaining graduate and postgraduate degrees and related training leading to the attainment of the relevant educational and professional qualifications required in Austria.

Section 38

In addition to the privileges and immunities specified in section 37:

(*a*) The Director-General shall be accorded the privileges and immunities, exemptions and facilities accorded to ambassadors who are heads of missions;

(*b*) A senior official of UNIDO, when acting on behalf of the Director-General during the latter's absence from duty, shall be accorded the same privileges and immunities, exemptions and facilities as are accorded to the Director-General;

(*c*) Except as provided in section 39, other officials having the professional grade of P-5 and above, and such additional categories of officials as may be designated, in agreement with the Government, by the Director-General on the ground of the responsibilities of their positions in UNIDO, shall be accorded the same privileges and immunities, exemptions and facilities as the Government accords to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Republic of Austria;

(*d*) In conformity with article 42 of the Vienna Convention on Diplomatic Relations and the practice of the Republic of Austria, officials enjoying the same privileges and immunities as are accorded to members having comparable rank of diplomatic missions accredited to the Republic of Austria shall not practice for personal profit any professional or commercial activity within the Republic of Austria;

(*e*) The members of the family of an official referred to in this section forming part of his or her household shall, if they are not Austrian nationals or stateless persons resident in Austria, enjoy those privileges and immunities specified for that category of persons by the Vienna Convention on Diplomatic Relations.

Section 39

(*a*) Except as otherwise provided, officials of UNIDO who are Austrian nationals or stateless persons resident in Austria shall enjoy only those privileges and immunities provided for in the General Convention, it being understood, nevertheless, that such privileges and immunities include:

(i) Exemption from taxation on benefits paid to them by the Pension Fund;

(ii) Access to the commissary established in accordance with section 37 (*o*) (iii).

(*b*) Officials of UNIDO and the members of their families living in the same household to whom this Agreement applies shall not be entitled to payments out of the Family Burden Equalization Fund or an instrument with equivalent objectives, unless such persons are Austrian nationals or stateless persons resident in Austria.

Section 40

(*a*) The Director-General shall communicate to the Government a list of officials of UNIDO and shall revise such list from time to time as may be necessary.

(*b*) The Government shall furnish UNIDO for each official within the scope of this article with an identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to all Austrian authorities.

(*c*) The Government shall ensure that whenever an official of UNIDO is arrested or detained by any Austrian authority, the Director-General shall be promptly informed and allowed to send an official to visit the arrested or detained official, to

converse and to correspond with the official and to provide such legal and medical assistance as may be required.

Section 41

The provisions of this article shall also apply to officials of the United Nations, the specialized agencies and the International Atomic Energy Agency attached to UNIDO.

Article XIII

EXPERTS ON MISSION FOR UNIDO

Section 42

Experts (other than officials of UNIDO coming within the scope of article XII) performing missions authorized by, serving on committees or other subsidiary organs of, or consulting at its request in any way with, UNIDO shall enjoy, within and with respect to the Republic of Austria, the following privileges and immunities so far as may be necessary for the independent exercise of their functions:

(*a*) Immunity in respect of themselves, their spouses and their dependent children, from personal arrest or detention and from seizure of their personal and official baggage;

(*b*) Immunity from legal process of any kind with respect to words spoken or written, and all acts done by them, in the performance of their official functions, such immunity to continue notwithstanding that the persons concerned may no longer be employed on missions for, serving on committees of, or acting as consultants for UNIDO, or may no longer be present at the headquarters seat or attending meetings convened by UNIDO;

(*c*) Inviolability of all papers, documents and other official materials;

(*d*) The right, for the purpose of all communications with UNIDO, to use codes and to dispatch or receive papers, correspondence or other official material by courier or in sealed bags;

(*e*) Exemption with respect to themselves and their spouses from immigration restrictions, alien registration and national service obligations;

(*f*) The same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their households as are accorded in time of international crises to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Republic of Austria;

(*g*) The same privileges with respect to currency and exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(*h*) Without prejudice to the provision of section 22 (*e*) of the General Convention and subsection (*g*), freedom to make, over and above the facilities granted by this Agreement, transfers to other countries;

(*i*) The same immunities and facilities with respect to their personal and official baggage as the Government accords to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Republic of Austria.

Section 43

(*a*) Where the incidence of any form of taxation depends upon residence, periods during which the persons designated in section 42 may be present in the

Republic of Austria for the discharge of their duties shall not be considered as periods of residence. In particular, such persons shall be exempt from taxation on their salaries and emoluments received from UNIDO during such periods of duty and shall be exempt from all tourist taxes.

(*b*) Except as otherwise provided, persons designated in section 42 who are Austrian nationals or stateless persons resident in Austria shall enjoy only those privileges and immunities provided for in the General Convention, it being understood, nevertheless, that such privileges and immunities include exemption from taxation on pensions paid to them by the Pension Fund.

Section 44

(*a*) UNIDO shall communicate to the Government a list of persons within the scope of this article.

(*b*) The Government shall furnish UNIDO for each person within the scope of this article with an identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to all Austrian authorities.

Article XIV

SETTLEMENT OF DISPUTES

Section 45

UNIDO shall make provision for appropriate methods of settlement of:

(*a*) Disputes arising out of contracts and disputes of a private law character to which UNIDO is a party; and

(*b*) Disputes involving an official of or expert on mission for UNIDO who, by reason of his or her official position, enjoys immunity, if such immunity has not been waived.

Section 46

(*a*) Any dispute between the Government and UNIDO concerning the interpretation or application of this Agreement or of any supplementary agreement, or any question affecting the headquarters seat or the relationship between the Government and UNIDO, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators; one to be chosen by the Federal Minister for Foreign Affairs of the Republic of Austria, one to be chosen by the Director-General, and the third, who shall be chairman of the tribunal, to be chosen by the first two arbitrators. Should either Party not have chosen its arbitrator within six months following the appointment by the other Party of its arbitrator or should the first two arbitrators fail to agree upon the third within six months following the appointment of the first two arbitrators, such second or third arbitrator shall be chosen by the President of the International Court of Justice at the request of the Government or of UNIDO.

(*b*) The Government or the Director-General of UNIDO may ask the General Conference or the Industrial Development Board, as appropriate, to request of the International Court of Justice an advisory opinion on any legal question arising in the course of such proceedings. Pending the receipt of the opinion of the Court, any interim decision of the arbitral tribunal shall be observed by both Parties. Thereafter, the arbitral tribunal shall render a final decision, having regard to the opinion of the Court.

Article XV

GENERAL PROVISIONS

Section 47

The Republic of Austria shall not incur by reason of the location of the headquarters seat within its territory any international responsibility for acts or omissions of UNIDO or of its officials acting or abstaining from acting within the scope of their functions, other than the international responsibility which the Republic of Austria would incur as a member of UNIDO.

Section 48

Without prejudice to the privileges and immunities accorded by this Agreement, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the Republic of Austria, and not to interfere in the internal affairs of this State.

Section 49

(*a*) The Director-General shall take every precaution to ensure that no abuse of a privilege or immunity conferred by this Agreement shall occur, and for this purpose shall establish such rules and regulations as may be deemed necessary and expedient, for officials of UNIDO and for such other persons as may be appropriate.

(*b*) Should the Government consider that an abuse of a privilege or immunity conferred by this Agreement has occurred, the Director-General shall, upon request, consult with the competent Austrian authorities to determine whether any such abuse has occurred. If such consultations fail to achieve a result satisfactory to the Director-General and to the Government, the matter shall be determined in accordance with the procedure set out in section 46.

Section 50

This Agreement shall apply whether or not the Government maintains diplomatic relations with the State or organization concerned and irrespective of whether the State concerned grants the same privilege or immunity to diplomatic envoys or nationals of the Republic of Austria.

Section 51

Whenever this Agreement imposes obligations on the competent Austrian authorities, the ultimate responsibility for the fulfilment of such obligations shall rest with the Government.

Section 52

The provisions of this Agreement shall be complementary to the provisions of the General Convention. Insofar as any provision of this Agreement and any provision of the General Convention relate to the same subject matter, the two provisions shall, wherever possible, be treated as complementary, so that both provisions shall be applicable and neither shall narrow the effect of the other.

Section 53

(*a*) This Agreement shall be construed in the light of its primary purpose of enabling UNIDO at its headquarters seat in the Republic of Austria to fully and efficiently discharge its responsibilities and fulfil its purposes.

(*b*) Privileges and immunities are granted to officials and experts on mission, in the interests of UNIDO and not for the personal benefit of the individuals themselves.

(*c*) The Director-General shall have the right and the duty to waive the immunity of any official in any case where, in his or her opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of UNIDO.

Section 54

Consultations with respect to modification of this Agreement shall be entered into at the request of the Government or of UNIDO. Any such modification shall be by mutual consent expressed in an exchange of letters or an agreement concluded by the Government and UNIDO.

Section 55

(*a*) The Government and UNIDO may enter into such supplemental agreements as may be necessary.

(*b*) If and to the extent that the Government shall enter into any agreement with any intergovernmental organization containing terms or conditions more favourable to that organization than similar terms or conditions of this Agreement, the Government shall extend such more favourable terms or conditions to UNIDO, by means of a supplemental agreement.

Section 56

This Agreement shall apply, mutatis mutandis, to other offices of UNIDO established in Austria, with the consent of the Government.

Section 57

This Agreement shall cease to be in force:

(i) By mutual consent of the Government and UNIDO; or

(ii) If the headquarters seat of UNIDO is removed from the territory of the Republic of Austria, except for such provisions as may be applicable in connection with the orderly termination of the operations of UNIDO at its headquarters seat in the Republic of Austria and the disposal of its property therein.

Section 58

This Agreement and the annex thereto shall enter into force on the first day of the month following the date of exchange between the Government and UNIDO of the instrument of ratification by the Government and the notification of approval by UNIDO.

Section 59

Without prejudice to such other privileges and immunities as may have been granted by the laws of the Republic of Austria, this Agreement shall supersede the previous Headquarters Agreement of 1967 including all related instruments thereto, which were extended, for an interim period, in respect of UNIDO by exchanges of notes dated 20 December 1985, except for the following agreements, which shall continue to be applicable to UNIDO and to which UNIDO shall be considered a party:

(*a*) Agreement between the Republic of Austria and the United Nations in regard to the provision at the Vienna International Centre, for the United Nations and the International Atomic Energy Agency, of postal services, including an Exchange of Notes dated 28 June 1979;

(*b*) Agreement between the Federal Government of the Republic of Austria, the International Atomic Energy Agency and the United Nations regarding the common headquarters area, dated 28 September 1979;

(*c*) Agreement between the Republic of Austria, the United Nations and the International Atomic Energy Agency regarding the headquarters area common to the United Nations and the International Atomic Energy Agency at the Vienna International Centre, dated 19 January 1981;

(*d*) Agreement between the Republic of Austria, the United Nations and the International Atomic Energy Agency regarding the establishment and administration of a common fund for financing major repairs and replacements at their headquarters seats at the Vienna International Centre, dated 19 January 1981, and amended by an Exchange of Notes dated 20 December 1985, as well as the Exchange of Notes of the same date regarding dispute settlement under this Agreement;

(*e*) Protocol of 19 January 1981 regarding the Provisional List of Main Elements referred to in article 2, paragraph 2, of the Agreement between the Republic of Austria, the United Nations and the International Atomic Energy Agency regarding the Establishment and Administration of a Common Fund for Financing Major Repairs and Replacements at the Vienna International Centre.

. . .

(*c*) Memorandum of Understanding between the United Nations Industrial Development Organization and the Government of Lebanon on continued operation in 1998 of a UNIDO field office in Beirut covering Lebanon, the Syrian Arab Republic and Jordan. Signed on 25 June 1998

. . .

Article 2

The Government shall apply to the UNIDO field office in Beirut, its property, funds, assets, and to UNIDO officials, including UNIDO Country Director and his staff in the country, the privileges and immunities provided under the Basic Cooperation Agreement between UNIDO and the Government of Lebanon, signed on 14 March 1989.

Article 3

The level of privileges and immunities granted in accordance with the present Memorandum of Understanding shall be understood to be subject to such adjustment as may be required to take fully into account the general understanding concerning additional privileges and immunities to be reached between the appropriate Lebanese authorities and the specialized agencies of the United Nations having offices or projects in Lebanon. Any such adjustment shall be agreed to in a supplemental Agreement to the present Memorandum of Understanding.

. . .

7. INTERNATIONAL ATOMIC ENERGY AGENCY

Protocol additional to the Agreement between the International Atomic Energy Agency and the Hashemite Kingdom of Jordan for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons. Done at Vienna on 28 July 1998[37]

Whereas the Hashemite Kingdom of Jordan (hereinafter referred to as "Jordan") and the International Atomic Energy Agency (hereinafter referred to as "the Agency") are parties to an Agreement for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (hereinafter referred to as "the Safeguards Agreement"), which entered into force on 21 February 1978,

Aware of the desire of the international community to further enhance nuclear non-proliferation by strengthening the effectiveness and improving the efficiency of the Agency's safeguards system,

Recalling that the Agency must take into account in the implementation of safeguards the need to: avoid hampering the economic and technological development of Jordan or international cooperation in the field of peaceful nuclear activities; respect health, safety, physical protection and other security provisions in force and the rights of individuals; and take every precaution to protect commercial, technological and industrial secrets as well as other confidential information coming to its knowledge,

Whereas the frequency and intensity of activities described in this Protocol shall be kept to the minimum consistent with the objective of strengthening the effectiveness and improving the efficiency of Agency safeguards,

Now therefore Jordan and the Agency have agreed as follows:

RELATIONSHIP BETWEEN THE PROTOCOL AND THE SAFEGUARDS AGREEMENT

Article 1

The provisions of the Safeguards Agreement shall apply to this Protocol to the extent that they are relevant to and compatible with the provisions of this Protocol. In case of conflict between the provisions of the Safeguards Agreement and those of this Protocol, the provisions of this Protocol shall apply.

PROVISION OF INFORMATION

Article 2

(*a*) Jordan shall provide the Agency with a declaration containing:

(i) A general description of and information specifying the location of nuclear fuel cycle–related research and development activities not involving nuclear material carried out anywhere that are funded, specifically authorized or controlled by, or carried out on behalf of, Jordan;

(ii) Information identified by the Agency on the basis of expected gains in effectiveness or efficiency, and agreed to by Jordan, on operational activities of safeguards relevance at facilities and locations outside facilities where nuclear material is customarily used;

(iii) A general description of each building on each site, including its use and, if not apparent from that description, its contents. The description shall include a map of the site;

(iv) A description of the scale of operations for each location engaged in the activities specified in annex I to this Protocol;

(v) Information specifying the location, operational status and the estimated annual production capacity of uranium mines and concentration plants and thorium concentration plants, and the current annual production of such mines and concentration plants for Jordan as a whole. Jordan shall provide, upon request by the Agency, the current annual production of an individual mine or concentration plant. The provision of this information does not require detailed nuclear material accountancy;

(vi) Information regarding source material which has not reached the composition and purity suitable for fuel fabrication or for being isotopically enriched, as follows:

a. The quantities, the chemical composition, the use or intended use of such material, whether in nuclear or non-nuclear use, for each location in Jordan at which the material is present in quantities exceeding ten metric tons of uranium and/or twenty metric tons of thorium, and for other locations with quantities of more than one metric ton, the aggregate for Jordan as a whole if the aggregate exceeds ten metric tons of uranium or twenty metric tons of thorium. The provision of this information does not require detailed nuclear material accountancy;

b. The quantities, the chemical composition and the destination of each export out of Jordan, of such material for specifically non-nuclear purposes in quantities exceeding:

(1) Ten metric tons of uranium, or for successive exports of uranium from Jordan to the same State, each of less than ten metric tons, but exceeding a total of ten metric tons for the year;

(2) Twenty metric tons of thorium, or for successive exports of thorium from Jordan to the same State, each of less than twenty metric tons, but exceeding a total of twenty metric tons for the year;

c. The quantities, chemical composition, current location and use or intended use of each import into Jordan of such material for specifically non-nuclear purposes in quantities exceeding:

(1) Ten metric tons of uranium, or for successive imports of uranium into Jordan each of less than ten metric tons, but exceeding a total of ten metric tons for the year;

(2) Twenty metric tons of thorium, or for successive imports of thorium into Jordan each of less than twenty metric tons, but exceeding a total of twenty metric tons for the year;

it being understood that there is no requirement to provide information on such material intended for a non-nuclear use once it is in its non-nuclear end-use form;

(vii) *a*. Information regarding the quantities, uses and locations of nuclear material exempted from safeguards pursuant to article 36 of the Safeguards Agreement;

b. Information regarding the quantities (which may be in the form of estimates) and uses at each location, of nuclear material exempted from safeguards pursuant to article 35 (*b*) of the Safeguards Agreement but not yet in a non-nuclear end-use form, in quantities exceeding those set out in article 36 of the Safeguards Agreement. The provision of this information does not require detailed nuclear material accountancy;

(viii) Information regarding the location or further processing of intermediate or high-level waste containing plutonium, high enriched uranium or uranium-233 on which safeguards have been terminated pursuant to article 11 of the Safeguards Agreement. For the purpose of this paragraph, "further processing" does not include repackaging of the waste or its further conditioning not involving the separation of elements, for storage or disposal;

(ix) The following information regarding specified equipment and non-nuclear material listed in annex II:

a. For each export out of Jordan of such equipment and material: the identity, quantity, location of intended use in the receiving State and date or, as appropriate, expected date, of export;

b. Upon specific request by the Agency, confirmation by Jordan, as importing State, of information provided to the Agency in accordance with paragraph *a* above;

(x) General plans for the succeeding ten-year period relevant to the development of the nuclear fuel cycle (including planned nuclear fuel cycle-related research and development activities) when approved by the appropriate authorities in Jordan.

(*b*) Jordan shall make every reasonable effort to provide the Agency with the following information:

(i) A general description of and information specifying the location of nuclear fuel cycle–related research and development activities not involving nuclear material which are specifically related to enrichment, reprocessing of nuclear fuel or the processing of intermediate or high-level waste containing plutonium, high enriched uranium or uranium-233 that are carried out anywhere in Jordan but which are not funded, specifically authorized or controlled by, or carried out on behalf of, Jordan. For the purpose of this paragraph, "processing" of intermediate or high-level waste does not include repackaging of the waste or its conditioning not involving the separation of elements, for storage or disposal;

(ii) A general description of activities and the identity of the person or entity carrying out such activities, at locations identified by the Agency outside a site which the Agency considers might be functionally related to the activities of that site. The provision of this information is subject to a specific request by the Agency. It shall be provided in consultation with the Agency and in a timely fashion.

(*c*) Upon request by the Agency, Jordan shall provide amplifications or clarifications of any information it has provided under this article, insofar as relevant for the purpose of safeguards.

Article 3

(*a*) Jordan shall provide to the Agency the information identified in article 2(*a*)(i), (iii), (iv), (v), (vi)*a*, (vii) and (x) and article 2(*b*)(ii) within 180 days of the entry into force of this Protocol.

(*b*) Jordan shall provide to the Agency, by 15 May of each year, updates of the information referred to in paragraph (*a*) above for the period covering the previous calendar year. If there has been no change to the information previously provided, Jordan shall so indicate.

(*c*) Jordan shall provide to the Agency, by 15 May of each year, the information identified in article 2(*a*)(vi)*b* and *c* for the period covering the previous calendar year.

(*d*) Jordan shall provide to the Agency on a quarterly basis the information identified in article 2(*a*)(ix)*a*. This information shall be provided within sixty days of the end of each quarter.

(*e*) Jordan shall provide to the Agency the information identified in article 2(*a*)(viii) 180 days before further processing is carried out and, by 15 May of each year, information on changes in location for the period covering the previous calendar year.

(*f*) Jordan and the Agency shall agree on the timing and frequency of the provision of the information identified in article 2(*a*)(ii).

(*g*) Jordan shall provide to the Agency the information in article 2(*a*)(ix)*b* within sixty days of the Agency's request.

COMPLEMENTARY ACCESS

Article 4

The following shall apply in connection with the implementation of complementary access under article 5 of this Protocol:

(*a*) The Agency shall not mechanistically or systematically seek to verify the information referred to in article 2; however, the Agency shall have access to:

(i) Any location referred to in article 5(*a*)(i) or (ii) on a selective basis in order to assure the absence of undeclared nuclear material and activities;

(ii) Any location referred to in article 5(*b*) or (*c*) to resolve a question relating to the correctness and completeness of the information provided pursuant to article 2 or to resolve an inconsistency relating to that information;

(iii) Any location referred to in article 5(*a*)(iii) to the extent necessary for the Agency to confirm, for safeguards purposes, Jordan's declaration of the decommissioned status of a facility or location outside facilities where nuclear material was customarily used.

(*b*) (i) Except as provided in paragraph (ii) below, the Agency shall give Jordan advance notice of access of at least 24 hours;

(ii) For access to any place on a site that is sought in conjunction with design information verification visits or ad hoc or routine inspections on that site, the period of advance notice shall, if the Agency so requests, be at least two hours but, in exceptional circumstances, it may be less than two hours.

(*c*) Advance notice shall be in writing and shall specify the reasons for access and the activities to be carried out during such access.

(*d*) In the case of a question or inconsistency, the Agency shall provide Jordan with an opportunity to clarify and facilitate the resolution of the question or inconsistency. Such an opportunity will be provided before a request for access, unless the Agency considers that delay in access would prejudice the purpose for which the access is sought. In any event, the Agency shall not draw any conclusions about the question or inconsistency until Jordan has been provided with such an opportunity.

(*e*) Unless otherwise agreed to by Jordan, access shall only take place during regular working hours.

(*f*) Jordan shall have the right to have Agency inspectors accompanied during their access by representatives of Jordan, provided that the inspectors shall not thereby be delayed or otherwise impeded in the exercise of their functions.

Article 5

Jordan shall provide the Agency with access to:

(*a*) (i) Any place on a site;

(ii) Any location identified by Jordan under article 2(*a*)(v)-(viii);

(iii) Any decommissioned facility or decommissioned location outside facilities where nuclear material was customarily used;

(*b*) Any location identified by Jordan under article 2(*a*)(i), article 2(*a*)(iv), article 2(*a*)(ix)*b* or article 2(*b*), other than those referred to in paragraph (*a*)(i) above, provided that if Jordan is unable to provide such access, Jordan shall make every reasonable effort to satisfy Agency requirements, without delay, through other means;

(*c*) Any location specified by the Agency, other than locations referred to in paragraphs (*a*) and (*b*) above, to carry out location-specific environmental sampling, provided that if Jordan is unable to provide such access, Jordan shall make every reasonable effort to satisfy Agency requirements, without delay, at adjacent locations or through other means.

Article 6

When implementing article 5, the Agency may carry out the following activities:

(*a*) For access in accordance with article 5(*a*)(i) or (iii): visual observation; collection of environmental samples; utilization of radiation detection and measurement devices; application of seals and other identifying and tamper-indicating devices specified in subsidiary arrangements; and other objective measures which have been demonstrated to be technically feasible and the use of which has been agreed by the Board of Governors (hereinafter referred to as the "Board") and following consultations between the Agency and Jordan;

(*b*) For access in accordance with article 5(*a*)(ii): visual observation; item counting of nuclear material; non-destructive measurements and sampling; utilization of radiation detection and measurement devices; examination of records relevant to the quantities, origin and disposition of the material; collection of environmental samples; and other objective measures which have been demonstrated to be technically feasible and the use of which has been agreed by the Board and following consultations between the Agency and Jordan;

(*c*) For access in accordance with article 5(*b*): visual observation; collection of environmental samples; utilization of radiation detection and measurement devices; examination of safeguards-relevant production and shipping records; and other objective measures which have been demonstrated to be technically feasible and the use of which has been agreed by the Board and following consultations between the Agency and Jordan;

(*d*) For access in accordance with article 5(*c*): collection of environmental samples and, in the event the results do not resolve the question or inconsistency at the location specified by the Agency pursuant to article 5(*c*), utilization at that location of visual observation, radiation detection and measurement devices and, as agreed by Jordan and the Agency, other objective measures.

Article 7

(*a*) Upon request by Jordan, the Agency and Jordan shall make arrangements for managed access under this Protocol in order to prevent the dissemination of proliferation-sensitive information, to meet safety or physical protection requirements, or to protect proprietary or commercially sensitive information. Such arrangements shall not preclude the Agency from conducting activities necessary to provide credible assurance of the absence of undeclared nuclear material and activities at the location in question, including the resolution of a question relating to the correctness and completeness of the information referred to in article 2 or of an inconsistency relating to that information.

(*b*) Jordan may, when providing the information referred to in article 2, inform the Agency of the places at a site or location at which managed access may be applicable.

(*c*) Pending the entry into force of any necessary subsidiary arrangements, Jordan may have recourse to managed access consistent with the provisions of paragraph (*a*) above.

Article 8

Nothing in this Protocol shall preclude Jordan from offering the Agency access to locations in addition to those referred to in articles 5 and 9 or from requesting the Agency to conduct verification activities at a particular location. The Agency shall, without delay, make every reasonable effort to act upon such a request.

Article 9

Jordan shall provide the Agency with access to locations specified by the Agency to carry out wide-area environmental sampling, provided that if Jordan is unable to provide such access it shall make every reasonable effort to satisfy Agency requirements at alternative locations. The Agency shall not seek such access until the use of wide-area environmental sampling and the procedural arrangements

therefor have been approved by the Board and following consultations between the Agency and Jordan.

Article 10

The Agency shall inform Jordan of:

(*a*) The activities carried out under this Protocol, including those in respect of any questions or inconsistencies the Agency had brought to the attention of Jordan, within sixty days of the activities being carried out by the Agency;

(*b*) The results of activities in respect of any questions or inconsistencies the Agency had brought to the attention of Jordan, as soon as possible but in any case within thirty days of the results being established by the Agency;

(*c*) The conclusions it has drawn from its activities under this Protocol. The conclusions shall be provided annually.

DESIGNATION OF AGENCY INSPECTORS

Article 11

(*a*) (i) The Director General shall notify Jordan of the Board's approval of any Agency official as a safeguards inspector. Unless Jordan advises the Director General of its rejection of such an official as an inspector for Jordan within three months of receipt of notification of the Board's approval, the inspector so notified to Jordan shall be considered designated to Jordan.

(ii) The Director General, acting in response to a request by Jordan or on his own initiative, shall immediately inform Jordan of the withdrawal of the designation of any official as an inspector for Jordan.

(*b*) A notification referred to in paragraph (*a*) above shall be deemed to be received by Jordan seven days after the date of the transmission by registered mail of the notification by the Agency to Jordan.

VISAS

Article 12

Jordan shall, within one month of the receipt of a request therefor, provide the designated inspector specified in the request with appropriate multiple entry/exit and/or transit visas, where required, to enable the inspector to enter and remain on the territory of Jordan for the purpose of carrying out his/her functions. Any visas required shall be valid for at least one year and shall be renewed, as required, to cover the duration of the inspector's designation to Jordan.

SUBSIDIARY ARRANGEMENTS

Article 13

(*a*) Where Jordan or the Agency indicates that it is necessary to specify in subsidiary arrangements how measures laid down in this Protocol are to be applied, Jordan and the Agency shall agree on such subsidiary arrangements within ninety days of the entry into force of this Protocol or, where the indication of the need for such subsidiary arrangements is made after the entry into force of this Protocol, within ninety days of the date of such indication.

(*b*) Pending the entry into force of any necessary subsidiary arrangements, the Agency shall be entitled to apply the measures laid down in this Protocol.

COMMUNICATIONS SYSTEMS

Article 14

(*a*) Jordan shall permit and protect free communications by the Agency for official purposes between Agency inspectors in Jordan and Agency headquarters and/or regional offices, including attended and unattended transmission of information generated by Agency containment and/or surveillance or measurement devices. The Agency shall have, in consultation with Jordan, the right to make use of internationally established systems of direct communications, including satellite systems and other forms of telecommunication, not in use in Jordan. At the request of Jordan or the Agency, details of the implementation of this paragraph with respect to the attended or unattended transmission of information generated by Agency containment and/or surveillance or measurement devices shall be specified in the subsidiary arrangements.

(*b*) Communication and transmission of information as provided for in paragraph (*a*) above shall take due account of the need to protect proprietary or commercially sensitive information or design information which Jordan regards as being of particular sensitivity.

PROTECTION OF CONFIDENTIAL INFORMATION

Article 15

(*a*) The Agency shall maintain a stringent regime to ensure effective protection against disclosure of commercial, technological and industrial secrets and other confidential information coming to its knowledge, including such information coming to the Agency's knowledge in the implementation of this Protocol.

(*b*) The regime referred to in paragraph (*a*) above shall include, among others, provisions relating to:

(i) General principles and associated measures for the handling of confidential information;

(ii) Conditions of staff employment relating to the protection of confidential information;

(iii) Procedures in cases of breaches or alleged breaches of confidentiality.

(*c*) The regime referred to in paragraph (*a*) above shall be approved and periodically reviewed by the Board.

ANNEXES

Article 16

(*a*) The annexes to this Protocol shall be an integral part thereof. Except for the purposes of amendment of the annexes, the term "Protocol" as used in this instrument means the Protocol and the annexes together.

(*b*) The list of activities specified in annex I, and the list of equipment and material specified in annex II, may be amended by the Board upon the advice of an open-ended working group of experts established by the Board. Any such amendment shall take effect four months after its adoption by the Board.

ENTRY INTO FORCE

Article 17

(*a*) This Protocol shall enter into force upon signature by the representatives of Jordan and the Agency.

(*b*) Jordan may, at any date before this Protocol enters into force, declare that it will apply this Protocol provisionally.

(*c*) The Director General shall promptly inform all States members of the Agency of any declaration of provisional application of, and of the entry into force of, this Protocol.

DEFINITIONS

Article 18

For the purpose of this Protocol:

(*a*) Nuclear fuel cycle–related research and development activities means those activities which are specifically related to any process or system development aspect of any of the following:

—Conversion of nuclear material,

—Enrichment of nuclear material,

—Nuclear fuel fabrication,

—Reactors,

—Critical facilities,

—Reprocessing of nuclear fuel,

—Processing (not including repackaging or conditioning not involving the separation of elements, for storage or disposal) of intermediate- or high-level waste containing plutonium, high enriched uranium or uranium-233,

but do not include activities related to theoretical or basic scientific research or to research and development on industrial radioisotope applications, medical, hydrological and agricultural applications, health and environmental effects and improved maintenance;

(*b*) Site means that area delimited by Jordan in the relevant design information for a facility, including a closed-down facility, and in the relevant information on a location outside facilities where nuclear material is customarily used, including a closed-down location outside facilities where nuclear material was customarily used (this is limited to locations with hot cells or where activities related to conversion, enrichment, fuel fabrication or reprocessing were carried out). It shall also include all installations, co-located with the facility or location, for the provision or use of essential services, including: hot cells for processing irradiated materials not containing nuclear material; installations for the treatment, storage and disposal of waste; and buildings associated with specified items identified by Jordan under article 2(*a*)(iv) above;

(*c*) Decommissioned facility or decommissioned location outside facilities means an installation or location at which residual structures and equipment essential for its use have been removed or rendered inoperable so that it is not used to store and can no longer be used to handle, process or utilize nuclear material;

(*d*) Closed-down facility or closed-down location outside facilities means an installation or location where operations have been stopped and the nuclear material removed but which has not been decommissioned;

(*e*) High-enriched uranium means uranium containing 20 per cent or more of the isotope uranium-235;

(*f*) Location-specific environmental sampling means the collection of environmental samples (e.g., air, water, vegetation, soil, smears) at, and in the immediate vicinity of, a location specified by the Agency for the purpose of assisting the Agency in drawing conclusions about the absence of undeclared nuclear material or nuclear activities at the specified location;

(*g*) Wide-area environmental sampling means the collection of environmental samples (e.g., air, water, vegetation, soil, smears) at a set of locations specified by the Agency for the purpose of assisting the Agency in drawing conclusions about the absence of undeclared nuclear material or nuclear activities over a wide area;

(*h*) Nuclear material means any source or any special fissionable material as defined in article XX of the Statute. The term source material shall not be interpreted as applying to ore or ore residue. Any determination by the Board under article XX of the Statute of the Agency after the entry into force of this Protocol which adds to the materials considered to be source material or special fissionable material shall have effect under this Protocol only upon acceptance by Jordan;

(*i*) Facility means:

(i) A reactor, a critical facility, a conversion plant, a fabrication plant, a reprocessing plant, an isotope separation plant or a separate storage installation; or

(ii) Any location where nuclear material in amounts greater than one effective kilogram is customarily used;

(*j*) Location outside facilities means any installation or location, which is not a facility, where nuclear material is customarily used in amounts of one effective kilogram or less.

DONE at Vienna on the 28th day of July 1998 in duplicate in the English language.

For the Hashemite Kingdom of Jordan:	*For the International Atomic Energy Agency*:
[*Signature*]	[*Signature*]
Mazen ARMOUTI	Mohamed ELBARADEI
Permanent Representative	*Director General*

*
* *

Similar agreements were concluded between IAEA and Ghana, on 12 June 1998; New Zealand, on 24 September 1998; and the Holy See, on 24 September 1998.

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

[2] The Convention is in force with regard to each State which deposited an instrument of accession or succession 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 of the United Nations* (United Nations publication, Sales No. E.99.V.5).

[4] Came into force on 28 January 1998, in accordance with the provisions of the said letters.

[5] Came into force on 7 April 1998, in accordance with the provisions of the said letters.

[6] Came into force on 18 February 1998 by the exchange of the said letters.

[7] Came into force on 20 February 1998, in accordance with the provisions of the said letters.

[8] Came into force with retroactive effect from 1 January 1997, in accordance with article IV.

[9] Came into force on 23 February 1998 by signature.

[10] Came into force on 3 September 1999, in accordance with article XII.

[11] Came into force on 24 April 1998 by signature, in accordance with article 12.

[12] Came into force on 30 April 1998, in accordance with the provisions of the said letters.

[13] Came into force on 29 July 1998, in accordance with the provisions of the said letters.

[14] Came into force on 8 July 1999, in accordance with article 6.

[15] Came into force on 3 September 1998, in accordance with the provisions of the said letters.

[16] Came into force on 14 October 1998, in accordance with the provisions of the said letters.

[17] Came into force on 28 October 1998, in accordance with the provisions of the said letters.

[18] Came into force on 10 October 1998, in accordance with the provisions of the said letters.

[19] Came into force on 3 November 1998 by signature, in accordance with paragraph 64.

[20] Came into force on 14 November 1998, in accordance with article VIII.

[21] Came into force on 23 November 1998 by signature, in accordance with article 10.

[22] Came into force on 30 December 1998, in accordance with the provisions of the said letters.

[23] Came into force on 9 November 2000, in accordance with article XXIII.

[24] Came into force on 31 October 1998 by signature, in accordance with paragraph 6 of the annex.

[25] Came into force on 18 December 1998 by signature, in accordance with article 1.

[26] Came into force: provisionally on 9 November 1998, in accordance with the provisions of the said letters.

[27] Came into force on 1 December 1998 by signature, in accordance with section 11.

[28] Came into force: provisionally on 23 September 1998 by signature, in accordance with article 17.

[29] Came into force: provisionally on 2 December 1998 by signature, in accordance with article XVII.

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

[31] For the list of those States, see *Multilateral Treaties Deposited with the Secretary-General* (United Nations publication, Sales No. E.99.V.5).

[32] Official Bulletin of the ILO, vol. LXXXI, 1998, Series A, No. 1, pp. 44-45.

[33] Entry into force: 13 April 1998, in accordance with article VI.

[34] Entry into force: 1 January 1998, in accordance with article 9.

[35] Entry into force: 26 March 1998, by signature.

[36] Entry into force: 1 June 1998, in accordance with section 58.

[37] Entry into force: 28 July 1998, in accordance with article 17.

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[1]

(*a*) Nuclear disarmament issues

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

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

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

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

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

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

Consideration by the General Assembly

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

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

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

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

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

(*b*) The Chemical and Biological Conventions

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

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

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

Consideration by the General Assembly

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

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

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

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

Consideration by the General Assembly

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

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

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

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

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

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2. OTHER POLITICAL AND SECURITY QUESTIONS

(*a*) Membership in the United Nations

At the end of 1998, the number of Member States remained at 185.

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

The Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space held its thirty-seventh session at the United Nations Office at Vienna from 23 to 31 March 1998.[16]

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

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

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

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

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

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

— Commercial aspects of space activities;

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

— Legal aspects of space debris;

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

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

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

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

Consideration by the General Assembly

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

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

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

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

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

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

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

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

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

(*a*) Environmental questions

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

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

Consideration by the General Assembly

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

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

(*b*) Population and development

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

(*c*) Economic issues

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

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

(*d*) Crime prevention

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

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

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

Article 1

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

Article 3

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

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

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

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

Article 4

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

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

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

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

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

Article 5

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

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

Article 6

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

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

Article 8

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

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

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

Article 11

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

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

Article 12

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

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

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

New article 18

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

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

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

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

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

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

Articles 18-21

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

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

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

A. *General recommendation*

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

B. *Scope*

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

C. *Jurisdiction*

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

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

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

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

D. *Procedure*

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

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

E. *Communications*

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

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

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

Status of international instruments

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

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

Consideration by the General Assembly

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

(*f*) Human rights questions

(1) *Status and implementation of international instruments*

(i) *International Covenants on Human Rights*

In 1998, two more States became parties to the International Covenant on Economic, Social and Cultural Rights of 1966,[75] bringing the total number of States parties to 139, two more States became parties to the International Covenant on Civil and Political Rights of 1966,[76] bringing the total to 142; one more State became a party to the Optional Protocol to the International Covenant on Civil and Political Rights of 1966,[77] bringing the total to 94; and four more States became parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty, of 1989,[78] bringing the total to 35.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) *Other human rights issues*

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

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

The General Assembly,

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

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

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

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

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

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

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

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

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

Declares:

Article 1

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

Article 2

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

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

Article 3

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

Article 4

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

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

Article 5

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

(*a*) To meet or assemble peacefully;

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

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

Article 6

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

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

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

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

Article 7

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

Article 8

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

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

Article 9

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

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

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

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

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

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

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

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

Article 10

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

Article 11

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

Article 12

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

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

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

Article 13

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

Article 14

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

2. Such measures shall include, inter alia:

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

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

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

Article 15

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

Article 16

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

Article 17

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

Article 18

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

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

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

Article 19

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

Article 20

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

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

(*g*) Refugee issues

(1) *Status of international instruments*

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

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

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

(3) *Consideration by the General Assembly*

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

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

(*h*) Ad hoc International Criminal Tribunals

The General Assembly, at its fifty-third session, adopted without reference to a Main Committee decision 53/416 of 19 November 1998, in which it took note of the fifth annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991,[112] and decision 53/413 of 28 October 1998, in which it took note of the third annual report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994.[113]

(*i*) New international humanitarian order

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

(*j*) Safety of United Nations personnel

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

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4. LAW OF THE SEA

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

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

(*b*) Report of the Secretary-General

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

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

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

(*c*) Consideration by the General Assembly

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

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5. INTERNATIONAL COURT OF JUSTICE[121, 122]

CASES BEFORE THE COURT[123]

(*a*) Contentious cases

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Spain's final submissions are therefore as follows:

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

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

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

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

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

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

Background to the case (paras. 13-22)

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

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

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

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

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

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

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

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

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

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

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

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

The Agreed Minutes further provided as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Operative paragraph (para. 89):

"For these reasons,

THE COURT,

By twelve votes to five,

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

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

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

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

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

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

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

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

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

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

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

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

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

Paraguay requested the Court to adjudge and declare as follows:

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

and that, pursuant to the foregoing international legal obligations,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(*b*) Request for advisory opinion

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

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

"*The Economic and Social Council*,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 30 of the Convention provides as follows:

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

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

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

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

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

*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Operative paragraph (para. 67):

"For these reasons,

THE COURT

Is of the opinion:

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

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

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

AGAINST: *Judge* Koroma;

(*b*) By fourteen votes to one,

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

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

AGAINST: *Judge* Koroma;

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

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

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

AGAINST: *Judges* Oda, Koroma;

(*b*) By fourteen votes to one,

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

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

AGAINST: *Judge* Koroma;

(3) Unanimously,

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

(4) By thirteen votes to two,

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

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

AGAINST: *Judges* Oda, Koroma."

*

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

Consideration by the General Assembly

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

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6. INTERNATIONAL LAW COMMISSION[125]

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

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

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

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

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

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

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

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

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

(*b*) Consideration by the General Assembly

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

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

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

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

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

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

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

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

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

(*b*) Consideration by the General Assembly

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

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

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

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

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

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

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

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

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

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

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

(*e*) United Nations Decade of International Law

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

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

(*f*) Principles and guidelines for international negotiations

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

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

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

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

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

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

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

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

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

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

(*h*) Establishment of an international criminal court

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

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

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

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

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

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

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

(*k*) Measures to eliminate international terrorism

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

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

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

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

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

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

Consideration by the General Assembly

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

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

1. INTERNATIONAL LABOUR ORGANIZATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

(*a*) Activities connected with international meetings

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

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

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

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

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

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

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

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

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

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

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

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

(*b*) Legislative matters

(i) *Agrarian legislation*

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

(ii) *Water legislation*

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

(iii) *Animal health and production legislation*

Note: No entries under this category.

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

Belize, Gambia, Georgia.

(v) *Plant production and seed legislation*

Ecuador, Namibia, Suriname.

(vi) *Food legislation*

Armenia, Bolivia, Morocco.

(vii) *Fisheries legislation*

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

(viii) *Forestry and wildlife legislation*

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

(ix) *Environment legislation*

United Republic of Tanzania.

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3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(*a*) International regulations

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

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

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

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

(*b*) Human rights

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

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

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

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

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

(*c*) Copyright activities

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

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

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

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

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

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

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

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

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

4. WORLD BANK

(*a*) IBRD, IFC and IDA membership

During 1998, Chad became a member of IFC.

(*b*) World Bank inspection panel

Requests submitted to the Panel in 1998

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

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

(*c*) Multilateral Investment Guarantee Agency

Signatories and members

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

General capital increase

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

Guarantee operations

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

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

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

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

Specialized Investment Guarantee Trust Funds

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

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

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

Host country investment agreements between MIGA and its member States

As directed by article 23(*b*)(ii) of the Convention, the Agency concludes bilateral legal protection agreements with developing member countries to ensure that MIGA is afforded treatment no less favourable than that accorded by the member country concerned to any State or other public entity in an investment protection treaty or any other agreement relating to foreign investment with respect to the rights to which MIGA may succeed as subrogee of a compensated guarantee holder. In 1998, the Agency concluded agreements with Algeria, the Dominican Republic and Ukraine. As of 31 December 1998, 87 such agreements were in force.

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

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

Article 15 of the Convention requires that before issuing a guarantee MIGA must obtain the approval of the host member country in which the investment is contemplated. In order to expedite the process, MIGA negotiates arrangements with host country Governments that provide a degree of automaticity in the approval procedure. In 1997, the Agency concluded agreements with Barbados, Burundi, the Dominican Republic, Latvia and Malaysia. As of 31 December 1998, 95 such agreements were in force.

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

Signatures and ratifications

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

Disputes before the Centre

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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5. INTERNATIONAL MONETARY FUND

(*a*) Membership issues

1. *Accession to membership*

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

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

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

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

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

3. *Overdue financial obligations to the Fund*

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

4. *Suspension of voting rights and compulsory withdrawal*

a. Democratic Republic of the Congo

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

b. Sudan

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

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

1. *Afghanistan*

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

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

2. *Democratic Republic of the Congo*

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

3. *Somalia*

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

4. *Sudan*

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

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

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

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

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

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

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

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

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

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

(*g*) European Monetary Union

1. *Legal and operational aspects for the Fund*

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

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

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

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

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

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

4. *Observer status for the European Central Bank*

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

6. INTERNATIONAL CIVIL AVIATION ORGANIZATION

(*a*) Membership

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

(*b*) Conventions/Agreements

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

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

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

(*c*) Other major legal developments

(i) *Legal meetings*

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

(ii) *Work programme of the Legal Committee*

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

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

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

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

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

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

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

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

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

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

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

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7. UNIVERSAL POSTAL UNION

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

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

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

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

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

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

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

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

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

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8. INTERNATIONAL MARITIME ORGANIZATION

(*a*) Membership of the organization

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

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

(i) *Provision of financial security for vessels*

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

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

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

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

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

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

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

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

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

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

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

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

(iii) *Draft Convention on Wreck Removal*

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

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

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

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

(iv) *Technical cooperation subprogramme for maritime legislation*

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

(v) *Work methods and organization of work*

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

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

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

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

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

(viii) *CLC insurance certificates*

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

(ix) *Offshore units and structures*

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

(*c*) Treaties

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

(*d*) Amendments to treaties

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

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

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

Chapter IV: Radio communications;

Chapter VI: Carriage of cargoes;

Chapter VII: Carriage of dangerous goods.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) *Instruments*

During 1997, no IMO instruments entered into force.

(ii) *Amendments*

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

i. The amendments to chapter 11-2 were adopted by the Maritime Safety Committee on 23 May 1994 by resolution MSC.31(63). The conditions for the entry into force of the amendments, as set out in annex 2 to the resolution (protection of fuel lines, navigation bridge visibility), were met on 1 January 1998 and entered into force on 1 July 1998.

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

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

The amendments were adopted by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974, on 24 May 1994 by resolution 1 of the Conference. The conditions for the entry into force of the amendments, as set out in annex 2 to the resolution (new chapter IX—management for the safe operation of ships (ISM Code)), were met on 1 January 1998 and the amendments entered into force on 1 July 1998.

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

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

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

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

Chapter VI: Carriage of cargoes;

Chapter V: Special measures to enhance maritime safety.

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

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

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

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

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

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

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

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

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

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

V: Safety of navigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. WORLD INTELLECTUAL PROPERTY ORGANIZATION

Introduction

The year 1998 was marked by a vigorous level of WIPO activities in its three main fields of work: cooperation with developing countries in the strengthening of their intellectual property systems (cooperation for development); promotion of the adoption of new, or the revision of existing, norms for the protection of intellectual property at the national, regional and multilateral levels (norm-setting); and facilitating the acquisition of intellectual property protection through international registration systems (registration activities).

(*a*) Cooperation for development activities and the implementation of the TRIPS Agreement

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

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

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

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

(i) *WIPO Worldwide Academy*

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

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

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

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

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

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

(*b*) Norm-setting activities

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

Standing Committees

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

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

a. *Standing Committee on Trademarks*

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

b. *Standing Committee on Copyright and Related Rights*

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

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

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

c. *Standing Committee on Patents*

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

d. *Standing Committee on Information Technologies*

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

WIPOnet

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

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

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

(*c*) International registration activities

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

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

(i) *Patents*

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

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

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

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

—Developing an electronic filing software;

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

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

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

(ii) *Marks*

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

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

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

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

(iii) *Industrial designs*

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

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

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

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

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

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

(*d*) Electronic commerce; Internet domain names

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

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

Internet domain names

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

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

— The need for uniform dispute resolution procedures;

— Protection for famous and well-known marks;

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

Some key recommendations in the report are:

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

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

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

— A uniform administrative dispute resolution procedure which resolves domain name conflicts quickly and relatively cheaply, with an online option;

— Effective prohibition of abusive domain name practices to take care of the concerns of owners of famous and well-known marks;

— Possible controlled introduction of new generic top-level domains.

Given the widespread interest on the subject, the views of over 1,000 persons, including representatives of companies, associations, Governments and intergovernmental organizations from the public and private sectors, were taken into account in preparing the interim report. These representatives either attended the regional consultations or sent comments through the electronic forum set up by WIPO to receive views and suggestions. The special WIPO Internet site containing information on the domain name consultations had an average of about 82,000 hits per month after it was set up in July 1998.

The interim report will be finalized in mid-April 1999, after another round of international consultations. Thereafter, the final recommendations of WIPO in the April report will be presented to the member States and presented to the Internet Corporation for Assigned Names and Numbers.

(*e*) WIPO Arbitration and Mediation Centre

In 1998, the Centre continued to provide information to interested circles, making referrals for arbitrators and mediators, drafting rules and organizing training. About 90 paying participants attended the Centre's training programmes in 1998. An important patent mediation under the WIPO Rules took place in 1998, and nine other informal referrals were made. Another successful event was the adoption of the WIPO Mediation Rules by the European textile design industry as a standard feature of its new Stop Copy Designs scheme.

The Centre concentrated on developing an Internet-based online arbitration facility aimed at making dispute resolution faster and less costly and expected to be operational in 1999. In 1998, three Internet service providers adopted this online facility, while many other parties expressed their interest in using the facility in view of the growth of electronic commerce.

(*f*) Intellectual property and global issues

Rapid technological advance, economic globalization and the growing importance of intellectual property in this context require active study of the links between intellectual property and global issues such as traditional knowledge, biotechnology, biological diversity, folklore, environmental protection and human rights.

In 1998, WIPO undertook a number of missions and organized two international round-table discussions. The missions, to the South Pacific, South Asia, Africa and North America, investigated the needs and expectations of certain holders of traditional knowledge with respect to the intellectual property system.

(i) *WIPO studies the needs of indigenous peoples*

WIPO hosted in July a round-table discussion on intellectual property and indigenous peoples. Some 200 representatives of indigenous groups from Africa, the Americas, Asia, Europe and the South Pacific attended the two-day gathering. They shared experiences and aspirations concerning the protection of traditional knowledge, innovations and culture by means of intellectual property. Representatives of Governments and intergovernmental and non-governmental organizations also attended. Chief among the outcome was the participants' desire for WIPO to organize further discussions on the subject on a regular basis.

WIPO also began preparations for carrying out a pilot project to document traditional knowledge formations and studies on the ways information technology could protect and conserve traditional knowledge and cultural heritage. Significant progress was made towards completion of a feasibility study on a regional system of collective copyright management in the Caribbean region.

(ii) *Cooperation with the World Trade Organization*

The World Trade Organization (WTO) is one of the key institutional partners of WIPO. Since the two organizations concluded their Cooperation Agreement in 1995, they have worked closely in making available information on the intellectual property laws of their members, implementing article 6 ter of the Paris Convention for the TRIPS Agreement and offering legal-technical assistance and technical cooperation to their developing country members. During 1998, WIPO and WTO intensified their common efforts to assist developing countries in meeting their obligations under the TRIPS Agreement by the 1 January 2000 deadline. On 16 Sep-

tember, eminent specialists from government and industry joined senior WIPO and WTO officials in a joint symposium to review the implementation of the TRIPS Agreement.

(iii) *Working with the market sector*

The market sector and civil society together constitute one of the two major constituencies of WIPO, the other being the member States. In recognition of the growing importance of the market sector in the work and financial well-being of the organization, the Non-Governmental and Enterprise Affairs Division was created in 1998. The Division oversees relations and cooperation with NGOs and with industry. In 1998, the Division organized meetings between the secretariat and a number of NGOs to explore closer cooperation.

In 1998, there were 141 international non-governmental organizations with observer status at WIPO. They were invited to meetings of working groups, Standing Committees and the assemblies and other decision-making bodies of the States members of WIPO, depending on the subjects being discussed. As observers, they had the right to express their views at those meetings and to present papers and proposals. For certain meetings, national NGOs could be and were also invited, on a case-by-case basis.

For a number of years, certain NGOs have also been cooperating with WIPO in a third area: providing support in kind for the latter's cooperation for development programme, with benefits for all the partners concerned, i.e., the target developing countries, the NGOs themselves and WIPO. The support of national NGOs can be a determining factor in the organization's relations with a given member State, particularly regarding accession to the treaties providing global protection services.

(iv) *New members and new accessions*

The year witnessed a dramatic rise in the total number of accessions or ratifications to the WIPO treaties, rising to 83 in 1998 from 60 the year before. Membership of WIPO currently stands at 171 countries. The following figures reflect the additional countries having ratified or acceded to the treaties indicated, which are already in force, with the figure in parentheses representing the total number of States party to the corresponding treaty by the end of 1998.

— WIPO Convention: 6 (171)

— Paris Convention for the Protection of Industrial Property: 8 (151)

— Patent Cooperation Treaty: 6 (100)

— Madrid Agreement concerning the International Registration of Marks: 4 (51)

— Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks: 14 (36)

— Trademark Law Treaty: 11 (22)

— Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks: 6 (58)

— Locarno Agreement Establishing an International Classification for Industrial Designs: 5 (35)

— Strasbourg Agreement concerning the International Patent Classification: 4 (43)

— Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks: 2 (13)

— Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure: 4 (45)

— Nairobi Treaty on the Protection of the Olympic Symbol: 2 (39)

— Berne Convention for the Protection of Literary and Artistic Works: 6 (133)

— Rome International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations: 3 (58)

— Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms: 2 (57)

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10. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

(*a*) Agreements, memoranda of understanding and joint communiqués with States

Algeria

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Minister of Industry and Restructuring of the People's Democratic Republic of Algeria. Signed on 14 June 1998

Austria

Headquarters Agreement with Austria. On 26 May 1998, the exchange between the Government and UNIDO of the instrument of ratification by the Government and the notification of approval by UNIDO of the Agreement between the Republic of Austria and the United Nations Industrial Development Organization regarding the Headquarters of the United Nations Industrial Development Organization took place. In accordance with its article XV, section 58, the Agreement entered into force on 1 June 1998[185]

Ethiopia

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Minister of Trade and Industry of Ethiopia. Signed on 20 November 1998

Ghana

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Minister for Trade and Industry of Ghana. Signed on 20 November 1998

Guinea

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Minister of Promotion of the Private

Sector, Industry and Commerce of the Republic of Guinea. Signed on 20 November 1998

Lebanon

Memorandum of Understanding between the United Nations Industrial Development Organization and the Government of Lebanon on continued operation in 1998 of a UNIDO field office in Beirut covering Lebanon, the Syrian Arab Republic and Jordan. Signed on 25 June 1998[186]

Netherlands

Memorandum of Understanding for the promotion of clean and sustainable industrial production and energy conservation between the United Nations Industrial Development Organization and the Netherlands Management Cooperation Programme and the Directorate-General for Environmental Protection of the Ministry of Housing, Spatial Planning and the Environment. Signed on 20 March, and 14 and 23 April 1998

Sudan

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Minister of National Industry of the Republic of the Sudan. Signed on 20 November 1998

Syrian Arab Republic

Memorandum of Understanding between the United Nations Industrial Development Organization, the Government of the Syrian Arab Republic, the Centro de Investigaciones Textiles and the Instituto Nacional de Tecnología Industrial (Argentina). Signed on 27 August 1998

Uganda

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Second Deputy Prime Minister and Minister of Tourism, Trade and Industry of Uganda. Signed on 20 November 1998

United Kingdom of Great Britain and Northern Ireland

Memorandum of Understanding between the United Nations Industrial Development Organization and the Government of the United Kingdom of Great Britain and Northern Ireland on the provision of Associate Experts. Signed on 18 December 1998.

United Republic of Tanzania

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Deputy Minister of Industry and Commerce of the United Republic of Tanzania. Signed on 20 November 1998.

(*b*) Agreements with intergovernmental, governmental, non-governmental and other organizations and entities

(i) Memorandum of Understanding between the United Nations Industrial Development Organization and the Common Fund for Commodities. Signed on 13 February 1998

(ii) Memorandum of Understanding for the promotion of clean and sustainable industrial production and conservation of energy between the United Nations Industrial Development Organization and the Netherlands Management Cooperation Programme and the Directorate-General for Environmental Protection of the Ministry of Housing, Spatial Planning and the Environment. Signed on 20 March, and 14 and 23 April 1998

(iii) Cooperative arrangement between the United Nations Industrial Development Organization and the National Science and Technology Development Agency of Thailand. Signed on 5 June 1998

(iv) Cooperative arrangement between the United Nations Industrial Development Organization and the Government of the Moscow Oblast, Russian Federation. Signed on 1 October 1998

(v) Cooperative arrangement between the United Nations Industrial Development Organization and the International Congress of Industrialists and Entrepreneurs. Signed on 23 October 1998

(vi) Memorandum of Understanding between the United Nations Industrial Development Organization and the National Centre for Productivity and Quality (Chile). Signed on 13 November 1998

(vii) Memorandum of Understanding between the United Nations Industrial Development Organization and the Automotive Research Association of India. Signed on 18 November 1998

(viii) Cooperation Agreement between the United Nations Industrial Development Organization and Fiat S.p.A. Signed on 18 November 1998

(ix) Memorandum of Understanding between the United Nations Industrial Development Organization and the Institut Européen d'Administration des Affaires (INSEAD). Signed on 18 November 1998

(x) Cooperation Agreement between the United Nations Industrial Development Organization and The Prince of Wales Business Leaders Forum. Signed on 18 November 1998

(*c*) Agreements with the United Nations or its organs

(i) Basic Implementation Agreement between the United Nations Industrial Development Organization and the United Nations. Signed on 19 and 29 October 1998, respectively

(ii) Memorandum of Understanding between the United Nations Industrial Development Organization and the United Nations Conference on Trade and Development concerning a strategic alliance for investment promotion in developing countries. Signed on 26 March 1998[187]

(iii) Letter of Agreement between the United Nations Development Programme and the United Nations Industrial Development Organization concerning collaboration between the two organizations. Signed on 31 October 1998[188]

(iv) Memorandum of Understanding between the United Nations Industrial Development Organization and the United Nations Environment Programme. Signed on 11 November 1998

(v) Letter of Agreement between the United Nations Industrial Development Organization, the United Nations Office at Vienna and the Provisional Technical Secretariat of the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization on occupation of space. Signed on 16 June and 8 July 1998

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11. INTERNATIONAL ATOMIC ENERGY AGENCY

(*a*) Privileges and immunities

In 1998, Kazakhstan and Kuwait adhered to the Agreement on the Privileges and Immunities of the International Atomic Energy Agency.[189]

(*b*) Legal instruments

Convention on the Physical Protection of Nuclear Material[190]

In 1998, Bosnia and Herzegovina, Cyprus, the Republic of Moldova and Uzbekistan adhered to the Convention. By the end of the year, there were 63 parties.

Convention on Early Notification of a Nuclear Accident[191]

In 1998, Bosnia and Herzegovina and the Republic of Moldova adhered to the Convention. By the end of the year, there were 82 parties.

Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency[192]

In 1998, Bosnia and Herzegovina and the Republic of Moldova adhered to the Convention. By the end of the year, there were 77 parties.

Vienna Convention on Civil Liability for Nuclear Damage, 1963[193]

In 1998, Belarus, Bosnia and Herzegovina and the Republic of Moldova adhered to the Convention. By the end of the year, there were 31 parties.

Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention[194]

During 1998, the status of the Joint Protocol remained unchanged, with 20 parties.

Convention on Nuclear Safety[195]

In 1998, Armenia, Belarus, Denmark, Italy, Portugal, the Republic of Moldova and Ukraine adhered to the Convention. By the end of the year, there were 49 parties.

Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management[196]

In 1998, Australia, Austria, Bulgaria, Canada, Croatia, Denmark, Greece, Italy, Peru, the Philippines and Spain signed the Convention. Canada, Germany, Hungary,

Norway and Slovakia adhered to the Convention. By the end of the year, there were 5 Contracting States and 37 signatories.

Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage[197]

In 1998, Belarus, the Czech Republic, Italy, Peru and the Philippines signed the Protocol. Romania adhered to the Protocol. By the end of 1998, there was 1 Contracting State and 14 signatories.

Convention on Supplementary Compensation for Nuclear Damage[198]

In 1998, the Czech Republic, Italy, Peru and the Philippines signed the Convention. By the end of 1998, there were 13 signatories.

Extension of the African Regional Cooperative Agreement for Research, Development and Training related to Nuclear Energy (AFRA)[199]

In 1998, Senegal, Zambia and Zimbabwe adhered to the Extension of the Agreement. By the end of the year, there were 24 parties.

Second Agreement to Extend the 1987 Regional Cooperative Agreement for Research, Development and Training related to Nuclear Science and Technology, 1987 (RCA)[200]

In 1998, Indonesia, Myanmar, the Philippines and Thailand adhered to the Agreement. By the end of the year, there were 17 parties.

Revised Supplementary Agreement concerning the Provision of Technical Assistance by the International Atomic Energy Agency (RSA)[201]

In 1998, the Republic of Moldova concluded the Agreement. By the end of the year, there were 88 States that had concluded the RSA Agreement.

Cooperation Agreement for the Promotion of Nuclear Science and Technology in Latin America and the Caribbean (ARCAL)[202]

The Agreement was opened for signature on 25 September 1998 at the 42nd session of the General Conference of the International Atomic Energy Agency. The Agreement will remain open for signature until its entry into force. In 1998, Argentina, Bolivia, Chile, Colombia, Costa Rica, Cuba, Ecuador, Guatemala, Paraguay, Peru, Uruguay and Venezuela signed the Agreement. By the end of the year, there were 12 signatories.

Safeguards Agreements

During 1998, Safeguards Agreements pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons[203] entered into force with Namibia,[204] San Marino[205] and Ukraine[206]. Two Safeguards Agreements, pursuant to the Non-Proliferation Treaty, with Azerbaijan and Kyrgyzstan, were signed, and a Safeguards Agreement with Slovakia was approved by the IAEA Board of Governors. These Agreements have not yet entered into force.

An Agreement between the French Republic, the European Atomic Energy Community (Euratom) and IAEA pursuant to Additional Protocol I to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco),[207] was approved by the IAEA Board of Governors, but has not yet been signed.

A Protocol suspending the application of safeguards in Brazil pursuant to the Agreement of 26 February 1976 between IAEA, Brazil and Germany,[208] in the light of the Safeguards Agreement between Argentina, Brazil, the Brazilian-Argentine Agency for the Accounting and Control of Nuclear Materials and IAEA (INFCIRC/435), was signed but has not yet entered into force. Upon the entry into force of that Protocol, the application of safeguards in Brazil under the Agreement between IAEA, Brazil and Germany will be suspended so long as the Agreement set out in INFCIRC/435 is in force.

Protocols Additional to the Safeguards Agreements between IAEA and the Holy See,[209] Jordan,[210] New Zealand[211] and Uzbekistan[212] entered into force. A Protocol Additional to the Safeguards Agreement between IAEA and Ghana[213] was signed; pending its entry into force, the Protocol is to be applied provisionally. Protocols Additional to Safeguards Agreements were signed by Bulgaria, Canada, China, Croatia, France and EURATOM, Hungary, Japan, Lithuania, Slovenia, the United Kingdom and EURATOM, the United States and EURATOM, and the 13 non-nuclear-weapon States of the European Union, but have not entered into force. Protocols Additional to Safeguards Agreements between IAEA and Cyprus, Monaco and Slovakia were also approved by the IAEA Board of Governors.

By the end of 1998, there were 222 Safeguards Agreements in force with 138 States (and Taiwan, Province of China). Safeguards Agreements which satisfy the requirements of the Non-Proliferation Treaty were in force with 126 States. By the end of 1998, 38 States had concluded an Additional Protocol, five of which had entered into force.

IAEA legislative assistance activities

During 1998, legislative assistance to member States continued to be provided by the Agency. Three main types of activities for the provision of legislative assistance have been developed:

- Design and provision of training on nuclear law, through seminars and workshops and individual training of persons from member States involved in drafting nuclear legislation;
- Advice on specific nuclear national legislation;
- Development of reference material for the assessment of national nuclear regulatory regimes and for the drafting of nuclear legislation.

In this respect, during 1998, legislative assistance activities under technical cooperation projects of the Agency included two workshops for the Countries of Central and Eastern Europe and the newly independent States.

The first workshop, held in March 1998 at the Agency, gave an overview of the developments in nuclear law and regulations in the areas of nuclear safety, civil liability for nuclear damage, security of material and safeguards. Within the framework of the workshop, future programme activities were reviewed and updated with each participating country. Activities at the regional level were also discussed and agreed upon.

The second workshop was held at Tallinn and was organized together with the Organisation for Economic Cooperation and Development/Nuclear Energy Agency and the European Commission. The workshop addressed, in particular, how legal aspects related to safeguards, physical protection of nuclear material and import-export control rules contribute to the prevention of illicit trafficking of radioactive material and other radioactive sources.

In 1998, training of individuals on nuclear legislation continued to be provided through the Agency's technical cooperation programme.

During 1998, advice on specific national legislation was provided to various States upon their request.

The Agency initiated actions to institute legislative assistance support to the countries of the East Asia and the Pacific region.

NOTES

[1] For detailed information, see *The United Nations Disarmament Yearbook*, vol. 23: 1998 (United Nations publication, Sales No. 99.IX.7).

[2] For the text of the 1996 Comprehensive Nuclear-Test-Ban Treaty, see A/50/1027, annex.

[3] United Nations, *Treaty Series*, vol. 729, p. 159.

[4] INFCIRC/540 (corrected).

[5] By the end of the year, the Model Protocol was in force in five States: Australia, Holy See, Jordan, New Zealand and Uzbekistan.

[6] S/1998/1172.

[7] Treaty on Further Resolution and Limitation of Strategic Offensive Arms: *The United Nations Disarmament Yearbook*, vol. 18: 1993 (United Nations publication, Sales No. E.94. IX.1), appendix II.

[8] United Nations, *Treaty Series*, vol. 634, p. 281.

[9] Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction: United Nations, *Treaty Series*, vol. 1974, p. 45.

[10] Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction: General Assembly resolution 2826 (XXVI), annex.

[11] Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare: League of Nations, *Treaty Series*, vol. XCIV (1929).

[12] CD/1478.

[13] *The United Nations Disarmament Yearbook*, vol. 5: 1980 (United Nations publication, Sales No. E.81.IX.4), appendix VII.

[14] CCW/CONF.I/16 (Part I), annex A.

[15] Ibid., annex B.

[16] For the report of the Subcommittee, see A/AC.105/698.

[17] A/AC.105/697 and Corr.1, paras. 81 and 153.

[18] A/AC.105/635 and Add.1-5.

[19] The five instruments are: Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (General Assembly resolution 2222 (XXI), annex); Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (resolution 2345 (XXII), annex); Convention on International Liability for Damage Caused by Space Objects (resolution 2777 (XXVI), annex); Convention on Registration of Objects Launched into Outer Space (resolution 3235 (XXIX), annex); and Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (resolution 34/68, annex).

[20] A/AC.105/C.2/L.210.

[21] A/AC.105/C.2/L.211.

[22] A/AC. 105/674, paras. 39 and 43.

[23] General Assembly resolution 37/92, annex.

[24] General Assembly resolution 41/65, annex.

[25] General Assembly resolution 48/263, annex.

[26] United Nations, *Treaty Series*, vol. 1363, p. 3.

[27] For the report of the Committee, see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 20* (A/53/20).

[28] A/53/265.

[29] A/53/127.

[30] For the report of the session, see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 25* (A/53/25).

[31] UNEP/FAO/PIC/INC.5/3.

[32] *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: *Resolutions adopted by the Conference*, resolution 1, annex II.

[33] General Assembly resolution S-19/2, annex.

[34] United Nations, *Treaty Series* vol. 1771, p. 107.

[35] Ibid., vol. 1760, p. 79.

[36] Ibid., vol. 1954, p. 3.

[37] A/53/449.

[38] A/53/407.

[39] A/53/398.

[40] United Nations publication, Sales No. E.98.II.C.1.

[41] United Nations publication, Sales No. E.98.II.D.6.

[42] A/53/373.

[43] A/53/254.

[44] A/53/336.

[45] See E/1996/99.

[46] *International Legal Materials*, vol. 37, p. 1.

[47] See E/CN.15/1998/6/Add.1, chap. I.

[48] See E/CN.15/1998/6/Add.2, chap. I.

[49] *International Legal Materials*, vol. 37, p. 12.

[50] A/53/384.

[51] E/CN.15/1998/6.

[52] E/CN.15/1998/7, annex.

[53] General Assembly resolution 45/117, annex.

[54] A/53/38.

[55] A/53/409.

[56] *World Congress against Commercial Sexual Exploitation of Children, Stockholm, 27-31 August 1966*, *Final Report of the Congress*, two volumes (Stockholm, Government of Sweden, January 1997).

[57] *Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annex II.

[58] A/CONF.157/24 (part I), chap. III.

[59] United Nations, *Treaty Series*, vol. 520, p. 151.

[60] Ibid., vol. 1019, p. 175.

[61] Ibid., vol. 976, p. 3.

[62] Ibid., p. 105.

[63] See *Official Records of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 25 November–20 December 1988*, vol. I (United Nations publication, Sales No. E.94.XI.5).

[64] Resolution S-20/2, annex.

[65] Resolution S-20/3, annex.

[66] Resolution S-20/4, annex.

[67] Ibid., annex A.

[68] Ibid., annex B.

[69] Ibid., annex C.

[70] Ibid., annex D.

[71] Ibid., annex E.

[72] A/49/139-E/1994/57.

[73] See *Report of the International Conference on Drug Abuse and Illicit Trafficking, Vienna 17-26 June 1987* (United Nations publication, Sales No. E.87.I.18), chap. I, sect. A.

[74] See General Assembly resolution S-17/2, annex.

[75] United Nations, *Treaty Series*, vol. 993, p. 3.

[76] Ibid., vol. 999, p. 171.

[77] Ibid.

[78] General Assembly resolution 44/128, annex.

[79] United Nations, *Treaty Series*, vol. 660, p. 195.

[80] See CERD/SP/45, annex.

[81] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 18* (A/53/18).

[82] General Assembly resolution 49/146, annex.

[83] United Nations, *Treaty Series*, vol. 1015, p. 243.

[84] Ibid., vol. 1249, p. 13.

[85] CEDAW/SP/1995/2, annex.

[86] A/53/318.

[87] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 38* (A/53/38/Rev.1), part two, chap. I, sect. A.

[88] General Assembly resolution 217 A (III).

[89] CEDAW/C/1999/4.

[90] United Nations, *Treaty Series*, vol. 1465, p. 85.

[91] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44).

[92] United Nations, *Treaty Series*, vol. 1577, p. 3.

[93] See General Assembly resolution 50/155, para. 1.

[94] A/53/281.

[95] General Assembly resolution 45/158, annex.

[96] A/53/230.

[97] A/53/280.

[98] A/53/469.

[99] See A/C.3/53/SR.34.

[100] United Nations Educational, Scientific and Cultural Organization, *Records of the General Conference, Twenty-ninth Session,* vol. 1, *Resolutions*, resolution 16.

[101] A/53/268.

[102] United Nations, *Treaty Series*, vol. 189, p. 137.

[103] Ibid., vol. 606, p. 267.

[104] Ibid., vol. 360, p. 117.

[105] Ibid., vol. 989, p. 175.

[106] For detailed information, see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 12* (A/53/12), and ibid., *Supplement No. 12A* (A/53/12/Add.l).

[107] A/53/325.

[108] A/53/413.

[109] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 12* (A/53/12).

[110] Ibid., *Supplement No. 12A* (A/53/12/Add.1).

[111] A/53/328.

[112] See A/53/219-S/1998/737; see also *Official Records of the Security Council, Fifty-third Year, Supplement for July, August and September 1998*, document S/1998/737.

[113] A/53/429-S/1998/857, annex; see *Official Records of the Security Council, Fifty-third Year, Supplement for July, August and September 1998*, document S/1998/857.

[114] A/53/486.

[115] A/53/501.

[116] General Assembly resolution 49/59, annex.

[117] See *The Law of the Sea: Official Text of the United Nations Convention on the Law of the Sea of 10 December 1982 and of the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 with Index and Excerpts from the Final Act of the Third United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. E.97.V.10).

[118] A/53/456.

[119] For the text of the Order, see chap. VII of the present volume.

[120] A/53/473.

[121] For the composition of the Court, see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 4* (A/53/4).

[122] As of 31 December 1998, the number of States recognizing the jurisdiction of the Court as compulsory, in accordance with declarations filed under Article 36, paragraph 2, of the Statute of the International Court of Justice, increased by 2, bringing the total to 63.

[123] For detailed information, see *I.C.J. Yearbook 1997-1998*, No. 52, *I.C.J. Yearbook, 1998-1999*, No. 53.

[124] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 4* (A/53/4).

[125] For the membership of the International Law Commission, see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 10* (A/53/10), chap. I, sect. A.

[126] For detailed information, see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 10* (A/53/10).

[127] United Nations publication, Sales No. 98.V.5.

[128] United Nations publication, Sales No. 98.V.10.

[129] For the membership of the United Nations Commission on International Trade Law, see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 17* (A/53/17), chap. I, sect. B.

[130] For detailed information, see *Yearbook of the United Nations Commission on International Trade Law*, vol. XXIX: 1998 (United Nations publication, Sales No. 99.V.12).

[131] A/CN.9/446.

[132] A/CN.9/445 and A/CN.9/447.

[133] For the text of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, see United Nations, *Treaty Series*, vol. 330, p. 3.

[134] A/CN.9/SER.C/ABSTRACTS/13-17.

[135] United Nations, *Treaty Series*, vol. 1489, p. 3.

[136] *Yearbook of the United Nations Commission on International Trade Law*, vol. XVI: 1985 (United Nations publication, Sales No. 87.V.4), annex I.

[137] www.un.org.at/uncitral.

[138] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 17* (A/53/17).

[139] United Nations *Treaty Series*, vol. 330, p. 3.

[140] Protocols: United Nations, *Treaty Series*, vol. 1125, Nos. 17512 and 17513; Conventions: ibid., vol. 75, Nos. 970-973.

[141] A/INF/52/6 and Add.1 and A/53/276 and Corr.1.

[142] A/53/274 and Add.1.

[143] *Yearbook of the International Law Commission, 1991*, vol. II (part two), chap. II, para. 28, document A/46/10.

[144] A/C.6/53/10, annex.

[145] A/C.6/53/11, annex.

[146] A/C.6/52/3, annex.

[147] A/53/492.

[148] A/CONF.129/15; see also *Juridical Yearbook 1986*, p. 218.

[149] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 26* (A/53/26).

[150] A/CONF.183/9; for the text of the Rome Statute, see chap. IV.3 of the present volume.

[151] See A/CONF.183/10, annex I.

[152] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 33* (A/53/33).

[153] See A/53/312, sect. IV.

[154] Ibid.

[155] A/53/314 and Corr.2 and Add.1.

[156] For detailed information, see *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 14* (A/55/14). The report covers the period from 1 July 1998 to 30 June 2000.

[157] See *Official Records of the General Assembly, Fifty-third Session, Supplement No. 14* (A/53/14), paras. 23-26. For the results of the survey, see the UNITAR web site (www.unitar.org).

[158] ILC, 86th session, Geneva, 1998, *Record of Proceedings*, vol. I, Nos. 20, 20A, and 22, and vol. II, p. 20; *Official Bulletin* of the ILO, vol. LXXXI, 1998, Series A, No. 2 (information on the preparatory work for the adoption of the Declaration is given in order to facilitate reference work. See: GB. 264/6, GB. 265/LILS/7, GB. 265/8/2, GB. 267/LILS/5, GB. 267/9/2, GB. 268/LILS/6, GB. 268/8/2, GB. 268/9/2, GB. 270/3/1, GB. 270/3/1 (Add.), GB. 271/3/1); see also: *The ILO Standards Setting and Globalization*, report of the Director-General, ILC, 85th session, Geneva, 1997, and *Consideration of a possible Declaration of principles of the International Labour Organization concerning fundamental rights and its appropriate follow-up*, ILC, 86th session, Geneva, 1998, report VII; Arabic, Chinese, English, French, German, Russian, Spanish.

[159] *Official Bulletin* of the ILO, vol. LXXXI, 1998, Series A, No. 2, pp. 76-84. See also: ILC, 86th session, Geneva, 1998, *Record of Proceedings*, vol. II, p. 2, and vol. I, Nos. 13 and 13A. (Information on the preparatory work for the adoption of the instrument is given in order to facilitate reference work. This instrument has been adopted using the *double discussion* procedure. *First discussion: General conditions to stimulate job creation in small and medium-sized enterprises*, ILC, 85th session, Geneva, 1997, reports V (1) and (2); *Second discussion: General conditions to stimulate job creation in small and medium-sized enterprises*, ILC, 86th session, Geneva, 1998, report IV (1) and reports IV (2A and 2B).)

[160] ILC, 86th session, Geneva, 1998, *Record of Proceedings*, vol. II, p. 36, and vol. I, No. 12, p. 7 and pp. 19-20, and No. 17, p. 22.

[161] ILC, 86th session, Geneva, 1998, *Record of Proceedings*, vol. II, p. 35, and vol. I, No. 12, p. 7 and pp. 18-19, and No. 17, p. 22.

[162] This report has been published as report III (part 1) to the 87th session of the Conference (1999) and comprises two volumes: vol. 1A, General Report and Observations concerning Particular Countries (report III (part 1A), and vol. 1B, General Survey of the Migration

for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Migration for Employment Recommendation (Revised), 1949 (No. 86), and the Migrant Workers Recommendation, 1975 (No. 151) (report III (part 1B)).

[163] GB.271/18/1.

[164] GB.272/8/1.

[165] GB.272/8/2.

[166] GB.273/15/3.

[167] GB.273/15/4.

[168] GB.273/15/5.

[169] GB.273/15/6.

[170] *Official Bulletin* of the ILO, vol. LXXXI, 1998, Series B, Special Supplement.

[171] GB.273/15/2.

[172] *Official Bulletin*, vol. LXXXI, 1998, Series B, No. 1.

[173] Ibid., No. 2.

[174] Ibid., No. 3.

[175] GB.271/WP/SDL/1/1, GB.271/WP/SDL/1/2.

[176] GB.273/WP/SDL/1, GB.273/WP/SDL/1(Add.), GB.273/WP/SDL/2.

[177] GB.271/LILS/WP/PRS/1, GB.271/LILS/WP/PRS/2, GB.271/LILS/WP/PRS/4/1, GB.271/LILS/5, GB.271/11/2.

[178] GB.273/LILS/WP/PRS/1, GB.273/LILS/WP/PRS/2, GB.273/LILS/WP/PRS/3, GB.273/LILS/WP/PRS/4, GB.273/LILS/4, GB.273/8/2.

[179] As of 31 December 1998.

[180] *United Nations Juridical Yearbook, 1966*, p. 196.

[181] A "freely usable" currency is defined as "a member's currency that IMF determines (i) is, in fact, widely used to make payments for international transactions, and (ii) is widely traded in the principal exchange markets". The designation "freely usable" for a currency has implications for the procedures surrounding the exchange of currencies in connection with the financial operations and transactions of the Fund and its members.

[182] The report of the sessions of the Legal Committee held during 1998 is contained in documents LEG 77/11 and LEG 78/11.

[183] LEG/MISC/2.

[184] LEG/MISC/1.

[185] For the text of the Agreement, see chap. II.B, sect. 6 (*b*), of the present volume.

[186] See chap. II.B, sect. 6 (c), of the present volume.

[187] For the text of the Memorandum of Understanding, see chap. II.B, sect. 6 (*a*), of the present volume.

[188] For the text of the Agreement, see chap. II.A, sect. 4 (*a*), of the present volume.

[189] INFCIRC/9 Rev.2.

[190] INFCIRC/274/Rev.l.

[191] INFCIRC/335.

[192] INFCIRC/336.

[193] INFCIRC/500.

[194] INFCIRC/402.

[195] INFCIRC/449.

[196] INFCIRC/546.

[197] INFCIRC/566.

[198] INFCIRC/567.

[199] INFCIRC/377.

[200] INFCIRC/167/Add.18.

[201] INFCIRC/267.
[202] INFCIRC/582.
[203] United Nations, *Treaty Series*, vol. 721, p. 161.
[204] INFCIRC/551.
[205] INFCIRC/575.
[206] INFCIRC/550 and 550/Corr.1.
[207] United Nations, *Treaty Series*, vol. 634, p. 281.
[208] INFCIRC/237.
[209] INFCIRC/187/Add.1.
[210] INFCIRC/258/Add.1.
[211] INFCIRC/185/Add.1.
[212] INFCIRC/508/Add.1 and Add.2.
[213] INFCIRC/226/Add.1.

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

1. PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL SEABED AUTHORITY.[1] DONE AT KINGSTON, JAMAICA, ON 27 MARCH 1998[2]

The States Parties to this Protocol,

Considering that the United Nations Convention on the Law of the Sea establishes the International Seabed Authority,

Recalling that article 176 of the United Nations Convention on the Law of the Sea provides that the Authority shall have international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes,

Noting that article 177 of the United Nations Convention on the Law of the Sea provides that the Authority shall enjoy in the territory of each State Party to the Convention the privileges and immunities set forth in section 4, subsection G of Part XI of the Convention and that the privileges and immunities of the Enterprise shall be those set forth in annex IV, article 13,

Recognizing that certain additional privileges and immunities are necessary for the exercise of the functions of the International Seabed Authority,

Have agreed as follows:

Article 1

USE OF TERMS

For the purposes of this Protocol:

(*a*) "Authority" means the International Seabed Authority;

(*b*) "Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982;

(*c*) "Agreement" means the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. In accordance with the Agreement, its provisions and Part XI of the Convention are to be interpreted and applied together as a single instrument; this Protocol and references in this Protocol to the Convention are to be interpreted and applied accordingly;

(*d*) "Enterprise" means the organ of the Authority as provided for in the Convention;

(*e*) "member of the Authority" means:

(i) any State Party to the Convention; and

(ii) any State or entity which is a member of the Authority on a provisional basis pursuant to paragraph 12 (*a*) of section 1 of the annex to the Agreement;

(*f*) "representatives" means representatives, alternate representatives, advisers, technical experts and secretaries of the delegations;

(*g*) "Secretary-General" means the Secretary-General of the International Seabed Authority.

Article 2

GENERAL PROVISION

Without prejudice to the legal status, privileges and immunities accorded to the Authority and the Enterprise set forth in section 4, subsection G, of Part XI and Annex IV, article 13, of the Convention respectively, each State party to this Protocol shall accord to the Authority and its organs, the representatives of members of the Authority, officials of the Authority and experts on mission for the Authority such privileges and immunities as are specified in this Protocol.

Article 3

LEGAL PERSONALITY OF THE AUTHORITY

1. The Authority shall possess legal personality. It shall have the legal capacity:

(*a*) To contract;

(*b*) To acquire and dispose of immovable and movable property;

(*c*) To be a party in legal proceedings.

Article 4

INVIOLABILITY OF THE PREMISES OF THE AUTHORITY

The premises of the Authority shall be inviolable.

Article 5

FINANCIAL FACILITIES OF THE AUTHORITY

1. Without being restricted by financial controls, regulations or moratoriums of any kind, the Authority may freely:

(*a*) Purchase any currencies through authorized channels and hold and dispose of them;

(*b*) Hold funds, securities, gold, precious metals or currency of any kind and operate accounts in any currency;

(*c*) Transfer its funds, securities, gold or currency from one country to another or within any country and convert any currency held by it into any other currency.

2. The Authority shall, in exercising its rights under paragraph 1 of this article, pay due regard to any representations made by the Government of any member

of the Authority insofar as it is considered that effect can be given to such representations without detriment to the interests of the Authority.

Article 6

FLAG AND EMBLEM

The Authority shall be entitled to display its flag and emblem at its premises and on vehicles used for official purposes.

Article 7

REPRESENTATIVES OF MEMBERS OF THE AUTHORITY

1. Representatives of members of the Authority attending meetings convened by the Authority shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

(*a*) Immunity from legal process in respect of words spoken or written, and all acts performed by them in the exercise of their functions, except to the extent that the member which they represent expressly waives this immunity in a particular case;

(*b*) Immunity from personal arrest or detention and the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys;

(*c*) Inviolability for all papers and documents;

(*d*) The right to use codes and to receive papers or correspondence by courier or in sealed bags;

(*e*) Exemption in respect of themselves and their spouses from immigration restrictions, alien registration or national service obligations in the State they are visiting or through which they are passing in the exercise of their functions;

(*f*) The same facilities as regards exchange restrictions as are accorded to representatives of foreign Governments of comparable rank on temporary official missions.

2. In order to secure, for the representatives of members of the Authority, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of all acts done by them in discharging their functions shall continue to be accorded, notwithstanding that the persons concerned are no longer representatives of members of the Authority.

3. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of members of the Authority attending the meetings of the Authority are present in the territory of a member of the Authority for the discharge of their duties shall not be considered as periods of residence.

4. Privileges and immunities are accorded to the representatives of members of the Authority, not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Authority. Consequently, a member of the Authority has the right and the duty to waive the immunity of its representative in any case where in the opinion of the member of the Authority the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

5. Representatives of members of the Authority shall have insurance coverage against third-party risks in respect of vehicles owned or operated by them, as required by the laws and regulations of the State in which the vehicle is operated.

6. The provisions of paragraphs 1, 2 and 3 are not applicable as between a representative and the authorities of the member of the Authority of which he is a national or of which he or she is or has been a representative.

Article 8

OFFICIALS

1. The Secretary-General will specify the categories of officials to which the provisions of paragraph 2 of this article shall apply. The Secretary-General shall submit these categories to the Assembly. Thereafter these categories shall be communicated to the Governments of all members of the Authority. The names of the officials included in these categories shall from time to time be made known to the Governments of members of the Authority.

2. Officials of the Authority, regardless of nationality, shall:

(*a*) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

(*b*) Be immune from personal arrest or detention in relation to acts performed by them in their official capacity;

(*c*) Be exempt from tax in respect of salaries and emoluments paid or any other form of payment made by the Authority;

(*d*) Be immune from national service obligations provided that, in relation to States of which they are national, such immunity shall be confined to officials of the Authority whose names have, by reason of their duties, been placed upon a list compiled by the Secretary-General and approved by the State concerned; should other officials of the Authority be called up for national service, the State concerned shall, at the request of the Secretary-General, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption in the continuation of essential work;

(*e*) Be exempt, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;

(*f*) Be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Governments concerned;

(*g*) Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question;

(*h*) Be exempt from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the Party concerned; and inspection in such a case shall be conducted in the presence of the official concerned, and in the case of official baggage, in the presence of the Secretary-General or his or her authorized representative;

(*i*) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crises as are accorded to diplomatic agents.

3. In addition to the privileges and immunities specified in paragraph 2, the Secretary-General or any official acting on his behalf during his absence from duty

and the Director-General of the Enterprise shall be accorded in respect of themselves, their spouses and minor children the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

4. Privileges and immunities are accorded to officials, not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Authority. The Secretary-General has the right and the duty to waive the immunity of any official where, in the opinion of the Secretary-General, the immunity would impede the course of justice, and it can be waived without prejudice to the interests of the Authority. In the case of the Secretary-General, the Assembly shall have the right to waive immunity.

5. The Authority shall cooperate at all times with the appropriate authorities of members of the Authority to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities referred to in this article.

6. Pursuant to the laws and regulations of the State concerned, the officials of the Authority shall be required to have insurance coverage against third-party risks in respect of vehicles owned or operated by them.

Article 9

EXPERTS ON MISSION FOR THE AUTHORITY

1. Experts (other than officials coming within the scope of article 8) performing missions for the Authority shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular, they shall be accorded:

(*a*) Immunity from personal arrest or detention and from seizure of their personal baggage;

(*b*) In respect of words spoken or written and acts done by them in the exercise of their functions, immunity from legal process of every kind. This immunity shall continue notwithstanding that the persons concerned are no longer employed on missions for the Authority;

(*c*) Inviolability for all papers and documents;

(*d*) For the purposes of their communications with the Authority, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(*e*) Exemption from tax in respect of salaries and emoluments paid or any other form of payment made by the Authority. This provision is not applicable as between an expert and the member of the Authority of which he or she is a national;

(*f*) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions.

2. Privileges and immunities are accorded to experts, not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Authority. The Secretary-General shall have the right and the duty to waive the immunity of any expert where, in the opinion of the Secretary-General, the immunity would impede the course of justice, and it can be waived without prejudice to the interests of the Authority.

Article 10

RESPECT FOR LAWS AND REGULATIONS

Without prejudice to their privileges and immunities, it is the duty of all persons referred to in articles 7, 8 and 9 to respect the laws and regulations of the member of the Authority in whose territory they may be on the business of the Authority or through whose territory they may pass on such business. They also have a duty not to interfere in the internal affairs of that member.

Article 11

LAISSEZ-PASSER AND VISAS

1. Without prejudice to the possibility for the Authority to issue its own travel documents, the States Parties to this Protocol shall recognize and accept the United Nations laissez-passer issued to officials of the Authority.

2. Applications for visas (where required) from officials of the Authority shall be dealt with as speedily as possible. Applications for visas (where required) from officials of the Authority holding United Nations laissez-passer shall be accompanied by a document confirming that they are travelling on the official business of the Authority.

Article 12

RELATIONSHIP BETWEEN THE HEADQUARTERS AGREEMENT AND THE PROTOCOL

The provisions of this Protocol shall be complementary to the provisions of the Headquarters Agreement. Insofar as any provision of this Protocol relates to the same subject matter, the two provisions shall, wherever possible, be treated as complementary, so that both provisions shall be applicable and neither shall narrow the effect of the other; but in any case of conflict, the provisions of that Agreement shall prevail.

Article 13

SUPPLEMENTARY AGREEMENT

This Protocol shall in no way limit or prejudice the privileges and immunities which have been, or may hereafter be, accorded to the Authority by any member of the Authority by reason of the location in the territory of that member of the Authority's headquarters or regional centres or offices. This Protocol shall not be deemed to prevent the conclusion of supplementary agreements between the Authority and any member of the Authority.

Article 14

SETTLEMENT OF DISPUTES

1. In connection with the implementation of the privileges and immunities granted under this Protocol, the Authority shall make suitable provision for the proper settlement of:

(*a*) Disputes of a private-law character to which the Authority is a party;

(*b*) Disputes involving any official of the Authority or any expert on mission for the Authority who by reason of his or her official position enjoys immunity, if immunity has not been waived by the Secretary-General.

2. Any dispute between the Authority and a member of the Authority concerning the interpretation or application of this Protocol which is not settled by consultation, negotiation or other agreed mode of settlement within three months following a request by one of the parties to the dispute shall, at the request of either party, be referred for a final and binding decision to a panel of three arbitrators:

(*a*) One to be nominated by the Secretary-General, one to be nominated by the other party to the dispute and the third, who shall be Chairman of the panel, to be chosen by the first two arbitrators;

(*b*) If either party has failed to make its appointment of an arbitrator within two months of the appointment of an arbitrator by the other party, the President of the International Tribunal for the Law of the Sea shall proceed to make such appointment. Should the first two arbitrators fail to agree upon the appointment of the third arbitrator within three months following the appointment of the first two arbitrators, the third arbitrator shall be chosen by the President of the International Tribunal for the Law of the Sea upon the request of the Secretary-General or the other party to the dispute.

Article 15

SIGNATURE

This Protocol shall be open for signature by all members of the Authority at the headquarters of the International Seabed Authority in Kingston, Jamaica, from 17 August until 28 August 1998 and subsequently until 16 August 2000 at United Nations Headquarters in New York.

Article 16

RATIFICATION

This Protocol is subject to ratification, approval or acceptance. The instruments of ratification, approval or acceptance shall be deposited with the Secretary-General of the United Nations.

Article 17

ACCESSION

This Protocol shall remain open for accession by all members of the Authority. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 18

ENTRY INTO FORCE

1. The Protocol shall enter into force 30 days after the date of deposit of the tenth instrument of ratification, approval, acceptance or accession.

2. For each member of the Authority which ratifies, approves or accepts this Protocol or accedes thereto after the deposit of the tenth instrument of ratification, approval, acceptance or accession, this Protocol shall enter into force on the thirtieth day following the deposit of its instrument of ratification, approval, acceptance or accession.

Article 19

PROVISIONAL APPLICATION

A State which intends to ratify, approve, accept or accede to this Protocol may at any time notify the depositary that it will apply this Protocol provisionally for a period not exceeding two years.

Article 20

DENUNCIATION

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Protocol. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Protocol to which it would be subject under international law independently of this Protocol.

Article 21

DEPOSITARY

The Secretary-General of the United Nations shall be the depositary of this Protocol.

Article 22

AUTHENTIC TEXTS

The Arabic, Chinese, English, French, Russian and Spanish texts of this Protocol are equally authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto, have signed the Protocol.

OPENED FOR SIGNATURE at Kingston, from the seventeenth to the twenty-eighth day of August one thousand nine hundred and ninety-eight, in a single original, in the Arabic, Chinese, English, French, Russian and Spanish languages.

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2. TAMPERE CONVENTION ON THE PROVISION OF TELECOMMUNICATION RESOURCES FOR DISASTER MITIGATION AND RELIEF OPERATIONS. DONE AT AARHUS, DENMARK, ON 25 JUNE 1998[3]

The States Parties to this Convention,

Recognizing that the magnitude, complexity, frequency and impact of disasters are increasing at a dramatic rate, with particularly severe consequences in developing countries,

Recalling that humanitarian relief and assistance agencies require reliable, flexible telecommunication resources to perform their vital tasks,

Further recalling the essential role of telecommunication resources in facilitating the safety of humanitarian relief and assistance personnel,

Further recalling the vital role of broadcasting in disseminating accurate disaster information to at-risk populations,

Convinced that the effective, timely deployment of telecommunication resources and that rapid, efficient, accurate and truthful information flows are essential to reducing loss of life, human suffering and damage to property and the environment caused by disasters,

Concerned about the impact of disasters on communication facilities and information flows,

Aware of the special needs of the disaster-prone least developed countries for technical assistance to develop telecommunication resources for disaster mitigation and relief operations,

Reaffirming the absolute priority accorded emergency life-saving communications in more than fifty international regulatory instruments, including the Constitution of the International Telecommunication Union,

Noting the history of international cooperation and coordination in disaster mitigation and relief, including the demonstrated life-saving role played by the timely deployment and use of telecommunication resources,

Further noting the Proceedings of the International Conference on Disaster Communications (Geneva, 1990), addressing the power of telecommunication systems in disaster recovery and response,

Further noting the urgent call found in the Tampere Declaration on Disaster Communications (Tampere, 1991) for reliable telecommunication systems for disaster mitigation and disaster relief operations, and for an international Convention on Disaster Communications to facilitate such systems,

Further noting United Nations General Assembly resolution 44/236, designating 1990-2000 the International Decade for Natural Disaster Reduction, and resolution 46/182, calling for strengthened international coordination of humanitarian emergency assistance,

Further noting the prominent role given to communication resources in the Yokohama Strategy and Plan of Action for a Safer World, adopted by the World Conference on Natural Disaster Reduction (Yokohama, 1994),

Further noting resolution 7 of the World Telecommunication Development Conference (Buenos Aires, 1994), endorsed by resolution 36 of the Plenipotentiary Conference of the International Telecommunication Union (Kyoto, 1994), urging Governments to take all practical steps for facilitating the rapid deployment and the effective use of telecommunication equipment for disaster mitigation and relief operations by reducing and, where possible, removing regulatory barriers and strengthening cooperation among States,

Further noting resolution 644 of the World Radiocommunication Conference (Geneva, 1997), urging Governments to give their full support to the adoption of this Convention and to its national implementation,

Further noting resolution 19 of the World Telecommunication Development Conference (Valletta, 1998), urging Governments to continue their examination of this Convention with a view to considering giving their full support to its adoption,

Further noting United Nations General Assembly resolution 51/94, encouraging the development of a transparent and timely procedure for implementing effective disaster relief coordination arrangements, and of ReliefWeb as the global information system for the dissemination of reliable and timely information on emergencies and natural disasters,

With reference to the conclusions of the Working Group on Emergency Telecommunications regarding the critical role of telecommunications in disaster mitigation and relief,

Supported by the work of many States, United Nations entities, governmental, intergovernmental and non-governmental organizations, humanitarian agencies, telecommunication equipment and service providers, media, universities and communication- and disaster-related organizations to improve and facilitate disaster-related communications,

Desiring to ensure the reliable, rapid availability of telecommunication resources for disaster mitigation and relief operations, and

Further desiring to facilitate international cooperation to mitigate the impact of disasters,

Have agreed as follows:

Article 1

DEFINITIONS

Unless otherwise indicated by the context in which they are used, the terms set out below shall have the following meanings for the purposes of this Convention:

1. "State Party" means a State which has agreed to be bound by this Convention.

2. "Assisting State Party" means a State Party to this Convention providing telecommunication assistance pursuant hereto.

3. "Requesting State Party" means a State Party to this Convention requesting telecommunication assistance pursuant hereto.

4. "This Convention" means the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations.

5. "The depositary" means the depositary for this Convention, as set forth in article 15.

6. "Disaster" means a serious disruption of the functioning of society, posing a significant, widespread threat to human life, health, property or the environment, whether caused by accident, nature or human activity, and whether developing suddenly or as the result of complex, long-term processes.

7. "Disaster mitigation" means measures designed to prevent, predict, prepare for, respond to, monitor and/or mitigate the impact of disasters.

8. "Health hazard" means a sudden outbreak of infectious disease, such as an epidemic or pandemic, or other event posing a significant threat to human life or health, which has the potential for triggering a disaster.

9. "Natural hazard" means an event or process, such as an earthquake, fire, flood, wind, landslide, avalanche, cyclone, tsunami, insect infestation, drought or volcanic eruption, which has the potential for triggering a disaster.

10. "Non-governmental organization" means any organization, including private and corporate entities, other than a State or governmental or intergovernmental organization, concerned with disaster mitigation and relief and/or the provision of telecommunication resources for disaster mitigation and relief.

11. "Non-State entity" means any entity, other than a State, including non-governmental organizations and the Red Cross and Red Crescent Movement, concerned with disaster mitigation and relief and/or the provision of telecommunication resources for disaster mitigation and relief.

12. "Relief operations" means those activities designed to reduce loss of life, human suffering and damage to property and/or the environment caused by a disaster.

13. "Telecommunication assistance" means the provision of telecommunication resources or other resources or support intended to facilitate the use of telecommunication resources.

14. "Telecommunication resources" means personnel, equipment, materials, information, training, radio-frequency spectrum, network or transmission capacity or other resources necessary to telecommunications.

15. "Telecommunications" means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature, by wire, radio, optical fibre or other electromagnetic system.

Article 2

COORDINATION

1. The United Nations Emergency Relief Coordinator shall be the operational coordinator for this Convention and shall execute the responsibilities of the operational coordinator identified in articles 3, 4, 6, 7, 8 and 9.

2. The operational coordinator shall seek the cooperation of other appropriate United Nations agencies, particularly the International Telecommunication Union, to assist it in fulfilling the objectives of this Convention, and, in particular, those responsibilities identified in articles 8 and 9, and to provide necessary technical support, consistent with the purposes of those agencies.

3. The responsibilities of the operational coordinator under this Convention shall be limited to coordination activities of an international nature.

Article 3

GENERAL PROVISIONS

1. The States Parties shall cooperate among themselves and with non-State entities and intergovernmental organizations, in accordance with the provisions of this Convention, to facilitate the use of telecommunication resources for disaster mitigation and relief.

2. Such use may include, but is not limited to:

(*a*) The deployment of terrestrial and satellite telecommunication equipment to predict, monitor and provide information concerning natural hazards, health hazards and disasters;

(*b*) The sharing of information about natural hazards, health hazards and disasters among the States Parties and with other States, non-State entities and inter-

governmental organizations, and the dissemination of such information to the public, particularly to at-risk communities;

(*c*) The provision of prompt telecommunication assistance to mitigate the impact of a disaster;

(*d*) The installation and operation of reliable, flexible telecommunication resources to be used by humanitarian relief and assistance organizations.

3. To facilitate such use, the States Parties may conclude additional multinational or bilateral agreements or arrangements.

4. The States Parties request the operational coordinator, in consultation with the International Telecommunication Union, the depositary and other relevant United Nations entities and intergovernmental and non-governmental organizations, to use its best efforts, in accordance with the provisions of this Convention, to:

(*a*) Develop, in consultation with the States Parties, model agreements that may be used to provide a foundation for multinational or bilateral agreements facilitating the provision of telecommunication resources for disaster mitigation and relief;

(*b*) Make available model agreements, best practices and other relevant information to States Parties, other States, non-State entities and intergovernmental organizations concerning the provision of telecommunication resources for disaster mitigation and relief, by electronic means and other appropriate mechanisms;

(*c*) Develop, operate and maintain information collection and dissemination procedures and systems necessary for the implementation of the Convention;

(*d*) Inform States of the terms of this Convention, and to facilitate and support the cooperation among States Parties provided for herein.

5. The States Parties shall cooperate among themselves to improve the ability of governmental organizations, non-State entities and intergovernmental organizations to establish mechanisms for training in the handling and operation of equipment, and instruction courses in the development, design and construction of emergency telecommunication facilities for disaster prevention, monitoring and mitigation.

Article 4

PROVISION OF TELECOMMUNICATION ASSISTANCE

1. A State Party requiring telecommunication assistance for disaster mitigation and relief may request such assistance from any other State Party, either directly or through the operational coordinator. If the request is made through the operational coordinator, the operational coordinator shall immediately disseminate this information to all other appropriate States Parties. If the request is made directly to another State Party, the requesting State Party shall inform the operational coordinator as soon as possible.

2. A State Party requesting telecommunication assistance shall specify the scope and type of assistance required and those measures taken pursuant to articles 5 and 9 of this Convention, and, when practicable, provide the State Party to which the request is directed and/or the operational coordinator with any other information necessary to determine the extent to which such State Party is able to meet the request.

3. Each State Party to which a request for telecommunication assistance is directed, either directly or through the operational coordinator, shall promptly determine and notify the requesting State Party whether it will render the assistance requested, directly or otherwise, and the scope of, and terms, conditions, restrictions and cost, if any, applicable to such assistance.

4. Each State Party determining to provide telecommunication assistance shall so inform the operational coordinator as soon as possible.

5. No telecommunication assistance shall be provided pursuant to this Convention without the consent of the requesting State Party. The requesting State Party shall retain the authority to reject all or part of any telecommunication assistance offered pursuant to this Convention in accordance with the requesting State Party's existing national law and policy.

6. The States Parties recognize the right of requesting States Parties to request telecommunication assistance directly from non-State entities and intergovernmental organizations, and the right of non-State entities and intergovernmental organizations, pursuant to the laws to which they are subject, to provide telecommunication assistance to requesting States Parties pursuant to this article.

7. A non-State entity or intergovernmental organization may not be a "requesting State Party" and may not request telecommunication assistance under this Convention.

8. Nothing in this Convention shall interfere with the right of a State Party, under its national law, to direct, control, coordinate and supervise telecommunication assistance provided under this Convention within its territory.

Article 5

PRIVILEGES, IMMUNITIES AND FACILITIES

1. The requesting State Party shall, to the extent permitted by its national law, afford to persons, other than its nationals, and to organizations, other than those headquartered or domiciled within its territory, who act pursuant to this Convention to provide telecommunication assistance and who have been notified to, and accepted by, the requesting State Party, the necessary privileges, immunities and facilities for the performance of their proper functions, including, but not limited to:

(*a*) Immunity from arrest, detention and legal process, including criminal, civil and administrative jurisdiction of the requesting State Party, in respect of acts or omissions specifically and directly related to the provision of telecommunication assistance;

(*b*) Exemption from taxation, duties or other charges, except for those which are normally incorporated in the price of goods or services, in respect of the performance of their assistance functions or on the equipment, materials and other property brought into or purchased in the territory of the requesting State Party for the purpose of providing telecommunication assistance under this Convention;

(*c*) Immunity from seizure, attachment or requisition of such equipment, materials and property.

2. The requesting State Party shall provide, to the extent of its capabilities, local facilities and services for the proper and effective administration of the telecommunication assistance, including ensuring that telecommunication equipment brought into its territory pursuant to this Convention shall be expeditiously licensed

or shall be exempt from licensing in accordance with its domestic laws and regulations.

3. The requesting State Party shall ensure the protection of personnel, equipment and materials brought into its territory pursuant to this Convention.

4. Ownership of equipment and materials provided pursuant to this Convention shall be unaffected by their use under the terms of this Convention. The requesting State Party shall ensure the prompt return of such equipment, material and property to the proper assisting State Party.

5. The requesting State Party shall not direct the deployment or use of any telecommunication resources provided pursuant to this Convention for purposes not directly related to predicting, preparing for, responding to, monitoring, mitigating the impact of or providing relief during and following disasters.

6. Nothing in this article shall require any requesting State Party to provide its nationals or permanent residents, or organizations headquartered or domiciled within its territory, with privileges and immunities.

7. Without prejudice to their privileges and immunities in accordance with this article, all persons entering the territory of a State Party for the purpose of providing telecommunication assistance or otherwise facilitating the use of telecommunication resources pursuant to this Convention, and all organizations providing telecommunication assistance or otherwise facilitating the use of telecommunication resources pursuant to this Convention, have a duty to respect the laws and regulations of that State Party. Such persons and organizations also shall have a duty not to interfere in the domestic affairs of the State Party into whose territory they have entered.

8. Nothing in this article shall prejudice the rights and obligations with respect to privileges and immunities afforded to persons and organizations participating directly or indirectly in telecommunication assistance, pursuant to other international agreements (including the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, and the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly on 21 November 1947) or international law.

Article 6

Termination of assistance

1. The requesting State Party or the assisting State Party may, at any time, terminate telecommunication assistance received or provided under article 4 by providing notification in writing. Upon such notification, the States Parties involved shall consult with each other to provide for the proper and expeditious conclusion of the assistance, bearing in mind the impact of such termination on the risk to human life and ongoing disaster relief operations.

2. States Parties engaged in providing or receiving telecommunication assistance pursuant to this Convention shall remain subject to the terms of this Convention following the termination of such assistance.

3. Any State Party requesting termination of telecommunication assistance shall notify the operational coordinator of such request. The operational coordinator shall provide such assistance as is requested and necessary to facilitate the conclusion of the telecommunication assistance.

Article 7

PAYMENT OR REIMBURSEMENT OF COSTS OR FEES

1. The States Parties may condition the provision of telecommunication assistance for disaster mitigation and relief upon agreement to pay or reimburse specified costs or fees, always bearing in mind the contents of paragraph 9 of this article.

2. When such condition exists, the States Parties shall set forth in writing, prior to the provision of telecommunication assistance:

(*a*) The requirement for payment or reimbursement;

(*b*) The amount of such payment or reimbursement or terms under which it shall be calculated;

(*c*) Any other terms, conditions or restrictions applicable to such payment or reimbursement, including, but not limited to, the currency in which such payment or reimbursement shall be made.

3. The requirements of paragraphs 2 (*b*) and 2 (*c*) of this article may be satisfied by reference to published tariffs, rates or prices.

4. In order that the negotiation of payment and reimbursement agreements does not unduly delay the provision of telecommunication assistance, the operational coordinator shall develop, in consultation with the States Parties, a model payment and reimbursement agreement that may provide a foundation for the negotiation of payment and reimbursement obligations under this article.

5. No State Party shall be obligated to make payment or reimbursement of costs or fees under this Convention without having first expressed its consent to the terms provided by an assisting State Party pursuant to paragraph 2 of this article.

6. When the provision of telecommunication assistance is properly conditioned upon payment or reimbursement of costs or fees under this article, such payment or reimbursement shall be provided promptly after the assisting State Party has presented its request for payment or reimbursement.

7. Funds paid or reimbursed by a requesting State Party in association with the provision of telecommunication assistance shall be freely transferable out of the jurisdiction of the requesting State Party and shall not be delayed or withheld.

8. In determining whether to condition the provision of telecommunication assistance upon an agreement to pay or reimburse specified costs or fees, the amount of such costs or fees, and the terms, conditions and restrictions associated with their payment or reimbursement, the States Parties shall take into account, among other relevant factors:

(*a*) United Nations principles concerning humanitarian assistance;

(*b*) The nature of the disaster, natural hazard or health hazard;

(*c*) The impact, or potential impact, of the disaster;

(*d*) The place of origin of the disaster;

(*e*) The area affected, or potentially affected, by the disaster;

(*f*) The occurrence of previous disasters and the likelihood of future disasters in the affected area;

(*g*) The capacity of each State affected by the disaster, natural hazard or health hazard to prepare for, or respond to, such event;

(*h*) The needs of developing countries.

9. This article shall also apply to those situations in which telecommunication assistance is provided by a non-State entity or intergovernmental organization, provided that:

(*a*) The requesting State Party has consented to, and has not terminated, such provision of telecommunication assistance for disaster mitigation and relief;

(*b*) The non-State entity or intergovernmental organization providing such telecommunication assistance has notified to the requesting State Party its adherence to this article and articles 4 and 5;

(*c*) The application of this article is not inconsistent with any other agreement concerning the relations between the requesting State Party and the non-State entity or intergovernmental organization providing such telecommunication assistance.

Article 8

TELECOMMUNICATION ASSISTANCE INFORMATION INVENTORY

1. Each State Party shall notify the operational coordinator of its authority(ies):

(*a*) Responsible for matters arising under the terms of this Convention and authorized to request, offer, accept and terminate telecommunication assistance; and

(*b*) Competent to identify the governmental, intergovernmental and/or non-governmental resources which could be made available to facilitate the use of telecommunication resources for disaster mitigation and relief, including the provision of telecommunication assistance.

2. Each State Party shall endeavour to inform the operational coordinator promptly of any changes in the information provided pursuant to this article.

3. The operational coordinator may accept notification from a non-State entity or intergovernmental organization of its procedures for authorization to offer and terminate telecommunication assistance as provided in this article.

4. A State Party, non-State entity or intergovernmental organization may, at its discretion, include in the material it deposits with the operational coordinator information about specific telecommunication resources and about plans for the use of those resources to respond to a request for telecommunication assistance from a requesting State Party.

5. The operational coordinator shall maintain copies of all lists of authorities, and shall expeditiously disseminate such material to the States Parties, to other States, and to appropriate non-State entities and intergovernmental organizations, unless a State Party, non-State entity or intergovernmental organization has previously specified, in writing, that distribution of its material be restricted.

6. The operational coordinator shall treat material deposited by non-State entities and intergovernmental organizations in a similar manner to material deposited by States Parties.

Article 9

REGULATORY BARRIERS

1. The States Parties shall, when possible, and in conformity with their national law, reduce or remove regulatory barriers to the use of telecommunication resources for disaster mitigation and relief, including to the provision of telecommunication assistance.

2. Regulatory barriers may include, but are not limited to:

(*a*) Regulations restricting the import or export of telecommunication equipment;

(*b*) Regulations restricting the use of telecommunication equipment or of radio-frequency spectrum;

(*c*) Regulations restricting the movement of personnel who operate telecommunication equipment or who are essential to its effective use;

(*d*) Regulations restricting the transit of telecommunication resources into, out of and through the territory of a State Party;

(*e*) Delays in the administration of such regulations.

3. Reduction of regulatory barriers may take the form of, but shall not be limited to:

(*a*) Revising regulations;

(*b*) Exempting specified telecommunication resources from the application of those regulations during the use of such resources for disaster mitigation and relief;

(*c*) Pre-clearance of telecommunication resources for use in disaster mitigation and relief, in compliance with those regulations;

(*d*) Recognition of foreign type-approval of telecommunication equipment and/or operating licences;

(*e*) Expedited review of telecommunication resources for use in disaster mitigation and relief, in compliance with those regulations;

(*f*) Temporary waiver of those regulations for the use of telecommunication resources for disaster mitigation and relief.

4. Each State Party shall, at the request of any other State Party, and to the extent permitted by its national law, facilitate the transit into, out of and through its territory of personnel, equipment, materials and information involved in the use of telecommunication resources for disaster mitigation and relief.

5. Each State Party shall notify the operational coordinator and the other States Parties, directly or through the operational coordinator, of:

(*a*) Measures taken, pursuant to this Convention, for reducing or removing such regulatory barriers;

(*b*) Procedures available, pursuant to this Convention, to States Parties, other States, non-State entities and/or intergovernmental organizations for the exemption of specified telecommunication resources used for disaster mitigation and relief from the application of such regulations, pre-clearance or expedited review of such resources in compliance with applicable regulations, acceptance of foreign type-approval of such resources, or temporary waiver of regulations otherwise applicable to such resources;

(*c*) The terms, conditions and restrictions, if any, associated with the use of such procedures.

6. The operational coordinator shall regularly and expeditiously make available to the States Parties, to other States, to non-State entities and to intergovernmental organizations an up-to-date listing of such measures, their scope, and the terms, conditions and restrictions, if any, associated with their use.

7. Nothing in this article shall permit the violation or abrogation of obligations and responsibilities imposed by national law, international law, or multilateral or bilateral agreements, including obligations and responsibilities concerning customs and export controls.

Article 10

RELATIONSHIP TO OTHER INTERNATIONAL AGREEMENTS

This Convention shall not affect the rights and obligations of States Parties deriving from other international agreements or international law.

Article 11

DISPUTE SETTLEMENT

1. In the event of a dispute between States Parties concerning the interpretation or application of this Convention, the States Parties to the dispute shall consult each other for the purpose of settling the dispute. Such consultation shall begin promptly upon the written declaration, delivered by one State Party to another State Party, of the existence of a dispute under this Convention. The State Party making such a written declaration of the existence of a dispute shall promptly deliver a copy of such declaration to the depositary.

2. If a dispute between States Parties cannot be settled within six (6) months of the date of delivery of the written declaration to a State Party to the dispute, the States Parties to the dispute may request any other State Party, State, non-State entity or intergovernmental organization to use its good offices to facilitate settlement of the dispute.

3. If neither State Party seeks the good offices of another State Party, State, non-State entity or intergovernmental organization, or if the exercise of good offices fails to facilitate a settlement of the dispute within six (6) months of the request for such good offices being made, then either State Party to the dispute may:

(*a*) Request that the dispute be submitted to binding arbitration; or

(*b*) Submit the dispute to the International Court of Justice for decision, provided that both States Parties to the dispute have, at the time of signing, ratifying or acceding to this Convention, or at any time thereafter, accepted the jurisdiction of the International Court of Justice in respect of such disputes.

4. In the event that the respective States Parties to the dispute request that the dispute be submitted to binding arbitration and submit the dispute to the International Court of Justice for decision, the submission to the International Court of Justice shall have priority.

5. In the case of a dispute between a State Party requesting telecommunication assistance and a non-State-entity or intergovernmental organization headquartered or domiciled outside of the territory of that State Party concerning the provision of telecommunication assistance under article 4, the claim of the non-State entity or intergovernmental organization may be espoused directly by the State Party in which the non-State entity or intergovernmental organization is headquartered or domiciled as a State-to-State claim under this article, provided that such espousal is not inconsistent with any other agreement between the State Party and the non-State entity or intergovernmental organization involved in the dispute.

6. When signing, ratifying, accepting, approving or acceding to this Convention, a State may declare that it does not consider itself bound by either or both of the

dispute settlement procedures provided for in paragraph 3. The other States Parties shall not be bound by a dispute settlement procedure provided for in paragraph 3 with respect to a State Party for which such a declaration is in force.

Article 12

ENTRY INTO FORCE

1. This Convention shall be open for signature by all States which are members of the United Nations or of the International Telecommunication Union at the Intergovernmental Conference on Emergency Telecommunications in Tampere on 18 June 1998, and thereafter at the Headquarters of the United Nations, New York, from 22 June 1998 to 21 June 2003.

2. A State may express its consent to be bound by this Convention:

(*a*) By signature (definitive signature);

(*b*) By signature subject to ratification, acceptance or approval followed by deposit of an instrument of ratification, acceptance or approval; or

(*c*) By deposit of an instrument of accession.

3. The Convention shall enter into force thirty (30) days after the deposit of instruments of ratification, acceptance, approval or accession or definitive signature of thirty (30) States.

4. For each State which signs definitively or deposits an instrument of ratification, acceptance, approval or accession, after the requirement set out in paragraph 3 of this article has been fulfilled, this Convention shall enter into force thirty (30) days after the date of the definitive signature or consent to be bound.

Article 13

AMENDMENTS

1. A State Party may propose amendments to this Convention by submitting such amendments to the depositary, which shall circulate them to the other States Parties for approval.

2. The States Parties shall notify the depositary of their approval or disapproval of such proposed amendments within one hundred and eighty (180) days of their receipt.

3. Any amendment approved by two thirds of all States Parties shall be laid down in a Protocol which is open for signature at the depositary by all States Parties.

4. The Protocol shall enter into force in the same manner as this Convention. For each State which signs the Protocol definitively or deposits an instrument of ratification, acceptance, approval or accession, after the requirements for the entry into force of the Protocol have been fulfilled, the Protocol shall enter into force for such State thirty (30) days after the date of the definitive signature or consent to be bound.

Article 14

RESERVATIONS

1. When definitively signing, ratifying or acceding to this Convention or any amendment hereto, a State Party may make reservations.

2. A State Party may at any time withdraw its prior reservation by written notification to the depositary. Such withdrawal of a reservation becomes effective immediately upon notification to the depositary.

Article 15

DENUNCIATION

1. A State Party may denounce this Convention by written notification to the depositary.

2. Denunciation shall take effect ninety (90) days following the date of deposit of the written notification.

3. At the request of the denouncing State Party, all copies of the lists of authorities and of measures adopted and procedures available for reducing regulatory measures provided by any State Party denouncing this Convention shall be removed from use by the effective date of such denunciation.

Article 16

DEPOSITARY

The Secretary-General of the United Nations shall be the depositary of this Convention.

Article 17

AUTHENTIC TEXTS

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary. Only the English, French and Spanish authentic texts will be made available for signature at Tampere on 18 June 1998. The depositary shall prepare the authentic texts in Arabic, Chinese and Russian as soon as possible thereafter.

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3. ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT.[4] DONE AT ROME ON 17 JULY1998[5]

PREAMBLE

The States Parties to this Statute,

Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

Recognizing that such grave crimes threaten the peace, security and well-being of the world,

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must

be ensured by taking measures at the national level and by enhancing international cooperation,

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

Reaffirming the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations,

Emphasizing in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict in the internal affairs of any State,

Determined to these ends, and for the sake of present and future generations, to establish an independent permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole,

Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions,

Resolved to guarantee lasting respect for the enforcement of international justice,

Have agreed as follows:

PART 1. ESTABLISHMENT OF THE COURT

Article 1

THE COURT

An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

Article 2

RELATIONSHIP OF THE COURT WITH THE UNITED NATIONS

The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.

Article 3

SEAT OF THE COURT

1. The seat of the Court shall be established at The Hague in the Netherlands ("the host State").

2. The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf.

3. The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.

Article 4

LEGAL STATUS AND POWERS OF THE COURT

1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

PART 2. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

Article 5

CRIMES WITHIN THE JURISDICTION OF THE COURT

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

(*a*) The crime of genocide;

(*b*) Crimes against humanity;

(*c*) War crimes;

(*d*) The crime of aggression.

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

Article 6

GENOCIDE

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(*a*) Killing members of the group;

(*b*) Causing serious bodily or mental harm to members of the group;

(*c*) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(*d*) Imposing measures intended to prevent births within the group;

(*e*) Forcibly transferring children of the group to another group.

Article 7

CRIMES AGAINST HUMANITY

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(*a*) Murder;

(*b*) Extermination;

(*c*) Enslavement;

(*d*) Deportation or forcible transfer of population;

(*e*) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(*f*) Torture;

(*g*) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(*h*) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(*i*) Enforced disappearance of persons;

(*j*) The crime of apartheid;

(*k*) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(*a*) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(*b*) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(*c*) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(*d*) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(*e*) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(*f*) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(*g*) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(*h*) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized

regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(*i*) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

Article 8

WAR CRIMES

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as a part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

(*a*) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

(*b*) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(xvi) Pillaging a town or place, even when taken by assault;

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the inter-

national law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (*f*), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(*c*) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(*d*) Paragraph 2 (*c*) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(*e*) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (*f*), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(*f*) Paragraph 2 (*e*) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraphs 2 (*c*) and (*d*) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

Article 9

ELEMENTS OF CRIMES

1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

2. Amendments to the Elements of Crimes may be proposed by:

(*a*) Any State Party;

(*b*) The judges acting by an absolute majority;

(*c*) The Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

3. The Elements of Crimes and amendments thereto shall be consistent with this Statute.

Article 10

Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

Article 11

JURISDICTION RATIONE TEMPORIS

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.

2. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3.

Article 12

PRECONDITIONS TO THE EXERCISE OF JURISDICTION

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.

2. In the case of article 13, paragraph (*a*) or (*c*), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

(*a*) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;

(*b*) The State of which the person accused of the crime is a national.

3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

Article 13

EXERCISE OF JURISDICTION

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

(*a*) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;

(*b*) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or

(*c*) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

Article 14

REFERRAL OF A SITUATION BY A STATE PARTY

1. A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.

2. As far as possible, a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the State referring the situation.

Article 15

PROSECUTOR

1. The Prosecutor may initiate investigations proprio motu on the basis of information on crimes within the jurisdiction of the Court.

2. The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.

3. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence.

4. If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case.

5. The refusal of the Pre-Trial Chamber to authorize the investigation shall not preclude the presentation of a subsequent request by the Prosecutor based on new facts or evidence regarding the same situation.

6. If, after the preliminary examination referred to in paragraphs 1 and 2, the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, he or she shall inform those who provided the information. This shall not preclude the Prosecutor from considering further information

submitted to him or her regarding the same situation in the light of new facts or evidence.

Article 16

DEFERRAL OF INVESTIGATION OR PROSECUTION

No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

Article 17

ISSUES OF ADMISSIBILITY

1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:

(*a*) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;

(*b*) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;

(*c*) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;

(*d*) The case is not of sufficient gravity to justify further action by the Court.

2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

(*a*) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;

(*b*) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;

(*c*) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

Article 18

PRELIMINARY RULINGS REGARDING ADMISSIBILITY

1. When a situation has been referred to the Court pursuant to article 13 (*a*) and the Prosecutor has determined that there would be a reasonable basis to com-

mence an investigation, or the Prosecutor initiates an investigation pursuant to articles 13 (*c*) and 15, the Prosecutor shall notify all States Parties and those States which, taking into account the information available, would normally exercise jurisdiction over the crimes concerned. The Prosecutor may notify such States on a confidential basis and, where the Prosecutor believes it necessary to protect persons, prevent destruction of evidence or prevent the absconding of persons, may limit the scope of the information provided to States.

2. Within one month of receipt of that notice, a State may inform the Court that it is investigating or has investigated its nationals or others within its jurisdiction with respect to criminal acts which may constitute crimes referred to in article 5 and which relate to the information provided in the notification to States. At the request of that State, the Prosecutor shall defer to the State's investigation of those persons unless the Pre-Trial Chamber, on the application of the Prosecutor, decides to authorize the investigation.

3. The Prosecutor's deferral to a State's investigation shall be open to review by the Prosecutor six months after the date of deferral or at any time when there has been a significant change of circumstances based on the State's unwillingness or inability genuinely to carry out the investigation.

4. The State concerned or the Prosecutor may appeal to the Appeals Chamber against a ruling of the Pre-Trial Chamber, in accordance with article 82, paragraph 2. The appeal may be heard on an expedited basis.

5. When the Prosecutor has deferred an investigation in accordance with paragraph 2, the Prosecutor may request that the State concerned periodically inform the Prosecutor of the progress of its investigations and any subsequent prosecutions. States Parties shall respond to such requests without undue delay.

6. Pending a ruling by the Pre-Trial Chamber, or at any time when the Prosecutor has deferred an investigation under this article, the Prosecutor may, on an exceptional basis, seek authority from the Pre-Trial Chamber to pursue necessary investigative steps for the purpose of preserving evidence where there is a unique opportunity to obtain important evidence or there is a significant risk that such evidence may not be subsequently available.

7. A State which has challenged a ruling of the Pre-Trial Chamber under this article may challenge the admissibility of a case under article 19 on the grounds of additional significant facts or significant change of circumstances.

Article 19

Challenges to the jurisdiction of the Court or the admissibility of a case

1. The Court shall satisfy itself that it has jurisdiction in any case brought before it. The Court may, on its own motion, determine the admissibility of a case in accordance with article 17.

2. Challenges to the admissibility of a case on the grounds referred to in article 17 or challenges to the jurisdiction of the Court may be made by:

(*a*) An accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58;

(*b*) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or

(*c*) A State from which acceptance of jurisdiction is required under article 12.

3. The Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the Court.

4. The admissibility of a case or the jurisdiction of the Court may be challenged only once by any person or State referred to in paragraph 2. The challenge shall take place prior to or at the commencement of the trial. In exceptional circumstances, the Court may grant leave for a challenge to be brought more than once or at a time later than the commencement of the trial. Challenges to the admissibility of a case, at the commencement of a trial, or subsequently with the leave of the Court, may be based only on article 17, paragraph 1 (*c*).

5. A State referred to in paragraph 2 (*b*) and (*c*) shall make a challenge at the earliest opportunity.

6. Prior to the confirmation of the charges, challenges to the admissibility of a case or challenges to the jurisdiction of the Court shall be referred to the Pre-Trial Chamber. After confirmation of the charges, they shall be referred to the Trial Chamber. Decisions with respect to jurisdiction or admissibility may be appealed to the Appeals Chamber in accordance with article 82.

7. If a challenge is made by a State referred to in paragraph 2 (*b*) or (*c*), the Prosecutor shall suspend the investigation until such time as the Court makes a determination in accordance with article 17.

8. Pending a ruling by the Court, the Prosecutor may seek authority from the Court:

(*a*) To pursue necessary investigative steps of the kind referred to in article 18, paragraph 6;

(*b*) To take a statement or testimony from a witness or complete the collection and examination of evidence which had begun prior to the making of the challenge; and

(*c*) In cooperation with the relevant States, to prevent the absconding of persons in respect of whom the Prosecutor has already requested a warrant of arrest under article 58.

9. The making of challenge shall not affect the validity of any act performed by the Prosecutor or any order or warrant issued by the Court prior to the making of the challenge.

10. If the Court has decided that a case is inadmissible under article 17, the Prosecutor may submit a request for a review of the decision when he or she is fully satisfied that new facts have arisen which negate the basis on which the case had previously been found inadmissible under article 17.

11. If the Prosecutor, having regard to the matters referred to in article 17, defers an investigation, the Prosecutor may request that the relevant State make available to the Prosecutor information on the proceedings. That information shall, at the request of the State concerned, be confidential. If the Prosecutor thereafter decides to proceed with an investigation, he or she shall notify the State in respect of the proceedings of which deferral has taken place.

Article 20

NE BIS IN IDEM

1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.

2. No person shall be tried before another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court.

3. No person who has been tried by another court for conduct also proscribed under articles 6, 7 or 8 shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:

(*a*) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or

(*b*) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

Article 21

APPLICABLE LAW

1. The Court shall apply:

(*a*) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;

(*b*) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;

(*c*) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.

2. The Court may apply principles and rules of law as interpreted in its previous decisions.

3. The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender, as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

PART 3. GENERAL PRINCIPLES OF CRIMINAL LAW

Article 22

NULLUM CRIMEN SINE LEGE

1. A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.

2. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.

3. This article shall not affect the characterization of any conduct as criminal under international law independently of this Statute.

Article 23

NULLA POENA SINE LEGE

A person convicted by the Court may be punished only in accordance with this Statute.

Article 24

NON-RETROACTIVITY RATIONE PERSONAE

1. No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.

2. In the event of a change in the law applicable to a given case prior to a final judgement, the law more favourable to the person being investigated, prosecuted or convicted shall apply.

Article 25

INDIVIDUAL CRIMINAL RESPONSIBILITY

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.

2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

(*a*) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;

(*b*) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;

(*c*) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

(*d*) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

(ii) Be made in the knowledge of the intention of the group to commit the crime;

(*e*) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

(*f*) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

Article 26

EXCLUSION OF JURISDICTION OVER PERSONS UNDER EIGHTEEN

The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

Article 27

IRRELEVANCE OF OFFICIAL CAPACITY

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

Article 28

RESPONSIBILITY OF COMMANDERS AND OTHER SUPERIORS

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

1. A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

(*a*) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

(*b*) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

2. With respect to superior and subordinate relationships not described in paragraph 1, a superior shall be criminally responsible for crimes within the juris-

diction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(*a*) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

(*b*) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(*c*) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Article 29

NON-APPLICABILITY OF STATUTE OF LIMITATIONS

The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.

Article 30

MENTAL ELEMENT

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.

2. For the purposes of this article, a person has intent where:

(*a*) In relation to conduct, that person means to engage in the conduct;

(*b*) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

3. For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly.

Article 31

GROUNDS FOR EXCLUDING CRIMINAL RESPONSIBILITY

1. In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person's conduct:

(*a*) The person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law;

(*b*) The person is in a state of intoxication that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the Court;

(*c*) The person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility under this subparagraph;

(*d*) The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be:

(i) Made by other persons; or

(ii) Constituted by other circumstances beyond that person's control.

2. The Court shall determine the applicability of the grounds for excluding criminal responsibility provided for in this Statute to the case before it.

3. At trial, the Court may consider a ground for excluding criminal responsibility other than those referred to in paragraph 1 where such a ground is derived from applicable law as set forth in article 21. The procedures relating to the consideration of such a ground shall be provided for in the Rules of Procedure and Evidence.

Article 32

MISTAKE OF FACT OR MISTAKE OF LAW

1. A mistake of fact shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime.

2. A mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the Court shall not be a ground for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime, or as provided for in article 33.

Article 33

SUPERIOR ORDERS AND PRESCRIPTION OF LAW

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:

(*a*) The person was under a legal obligation to obey orders of the Government or the superior in question;

(*b*) The person did not know that the order was unlawful; and

(*c*) The order was not manifestly unlawful.

2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

PART 4. COMPOSITION AND ADMINISTRATION OF THE COURT

Article 34

ORGANS OF THE COURT

The Court shall be composed of the following organs:

(*a*) The Presidency;

(*b*) An Appeals Division, a Trial Division and a Pre-Trial Division;

(*c*) The Office of the Prosecutor;

(*d*) The Registry.

Article 35

SERVICE OF JUDGES

1. All judges shall be elected as full-time members of the Court and shall be available to serve on that basis from the commencement of their terms of office.

2. The judges composing the Presidency shall serve on a full-time basis as soon as they are elected.

3. The Presidency may, on the basis of the workload of the Court and in consultation with its members, decide from time to time to what extent the remaining judges shall be required to serve on a full-time basis. Any such arrangement shall be without prejudice to the provisions of article 40.

4. The financial arrangements for judges not required to serve on a full-time basis shall be made in accordance with article 49.

Article 36

QUALIFICATIONS, NOMINATION AND ELECTION OF JUDGES

1. Subject to the provisions of paragraph 2, there shall be 18 judges of the Court.

2. (*a*) The Presidency, acting on behalf of the Court, may propose an increase in the number of judges specified in paragraph 1, indicating the reasons why this is considered necessary and appropriate. The Registrar shall promptly circulate any such proposal to all States Parties.

(*b*) Any such proposal shall then be considered at a meeting of the Assembly of States Parties to be convened in accordance with article 112. The proposal shall be considered adopted if approved at the meeting by a vote of two thirds of the members of the Assembly of States Parties and shall enter into force at such time as decided by the Assembly of States Parties.

(*c*) (i) Once a proposal for an increase in the number of judges has been adopted under subparagraph (*b*), the election of the additional judges shall take place at the next session of the Assembly of States Parties in accordance with paragraphs 3 to 8 inclusive, and article 37, paragraph 2;

(ii) Once a proposal for an increase in the number of judges has been adopted and brought into effect under subparagraphs (*b*) and (*c*) (i), it shall be open to the Presidency at any time thereafter, if the workload of the Court justifies it, to propose a reduction in the number of judges, provided that the number of judges shall not be reduced below that specified in para-

graph 1. The proposal shall be dealt with in accordance with the procedure laid down in subparagraphs (*a*) and (*b*). In the event that the proposal is adopted, the number of judges shall be progressively decreased as the terms of office of serving judges expire, until the necessary number has been reached.

3. (*a*) The judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices.

(*b*) Every candidate for election to the Court shall:

(i) Have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings; or

(ii) Have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court;

(*c*) Every candidate for election to the Court shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. (*a*) Nominations of candidates for election to the Court may be made by any State Party to this Statute, and shall be made either:

(i) By the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question; or

(ii) By the procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court.

Nominations shall be accompanied by a statement in the necessary detail specifying how the candidate fulfils the requirements of paragraph 3.

(*b*) Each State Party may put forward one candidate for any given election who need not necessarily be a national of that State Party but shall in any case be a national of a State Party.

(*c*) The Assembly of States Parties may decide to establish, if appropriate, an Advisory Committee on nominations. In that event, the Committee's composition and mandate shall be established by the Assembly of States Parties.

5. For the purposes of the election, there shall be two lists of candidates:

— List A containing the names of candidates with the qualifications specified in paragraph 3 (*b*) (i); and

— List B containing the names of candidates with the qualifications specified in paragraph 3 (*b*) (ii).

A candidate with sufficient qualifications for both lists may choose on which list to appear. At the first election to the Court, at least nine judges shall be elected from list A and at least five judges from list B. Subsequent elections shall be so organized as to maintain the equivalent proportion on the Court of judges qualified on the two lists.

6. (*a*) The judges shall be elected by secret ballot at a meeting of the Assembly of States Parties convened for that purpose under article 112. Subject to paragraph 7, the persons elected to the Court shall be the 18 candidates who obtain the highest number of votes and a two-thirds majority of the States Parties present and voting.

(*b*) In the event that a sufficient number of judges is not elected on the first ballot, successive ballots shall be held in accordance with the procedures laid down in subparagraph (*a*) until the remaining places have been filled.

7. No two judges may be nationals of the same State. A person who, for the purposes of membership in the Court, could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.

8. (*a*) The States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for:

(i) The representation of the principal legal systems of the world;

(ii) Equitable geographical representation; and

(iii) A fair representation of female and male judges.

(b) States Parties shall also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children.

9. (*a*) Subject to subparagraph (*b*), judges shall hold office for a term of nine years and, subject to subparagraph (*c*) and to article 37, paragraph 2, shall not be eligible for re-election.

(*b*) At the first election, one third of the judges elected shall be selected by lot to serve for a term of three years; one third of the judges elected shall be selected by lot to serve for a term of six years; and the remainder shall serve for a term of nine years.

(*c*) A judge who is selected to serve for a term of three years under subparagraph (*b*) shall be eligible for re-election for a full term.

10. Notwithstanding paragraph 9, a judge assigned to a Trial or Appeals Chamber in accordance with article 39 shall continue in office to complete any trial or appeal the hearing of which has already commenced before that Chamber.

Article 37

JUDICIAL VACANCIES

1. In the event of a vacancy, an election shall be held in accordance with article 36 to fill the vacancy.

2. A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term and, if that period is three years or less, shall be eligible for re-election for a full term under article 36.

Article 38

THE PRESIDENCY

1. The President and the First and Second Vice-Presidents shall be elected by an absolute majority of the judges. They shall each serve for a term of three years or until the end of their respective terms of office as judges, whichever expires earlier. They shall be eligible for re-election once.

2. The First Vice-President shall act in place of the President in the event that the President is unavailable or disqualified. The Second Vice-President shall act in place of the President in the event that both the President and the First Vice-President are unavailable or disqualified.

3. The President, together with the First and Second Vice-Presidents, shall constitute the Presidency, which shall be responsible for:

(*a*) The proper administration of the Court, with the exception of the Office of the Prosecutor; and

(*b*) The other functions conferred upon it in accordance with this Statute.

4. In discharging its responsibility under paragraph 3 (*a*), the Presidency shall coordinate with and seek the concurrence of the Prosecutor on all matters of mutual concern.

Article 39

CHAMBERS

1. As soon as possible after the election of the judges, the Court shall organize itself into the divisions specified in article 34, paragraph (*b*). The Appeals Division shall be composed of the President and four other judges, the Trial Division of not less than six judges and the Pre-Trial Division of not less than six judges. The assignment of judges to divisions shall be based on the nature of the functions to be performed by each division and the qualifications and experience of the judges elected to the Court, in such a way that each division shall contain an appropriate combination of expertise in criminal law and procedure and in international law. The Trial and Pre-Trial Divisions shall be composed predominantly of judges with criminal trial experience.

2. (*a*) The judicial functions of the Court shall be carried out in each division by Chambers.

(*b*) (i) The Appeals Chamber shall be composed of all the judges of the Appeals Division;

(ii) The functions of the Trial Chamber shall be carried out by three judges of the Trial Division;

(iii) The functions of the Pre-Trial Chamber shall be carried out either by three judges of the Pre-Trial Division or by a single judge of that division in accordance with this Statute and the Rules of Procedure and Evidence;

(*c*) Nothing in this paragraph shall preclude the simultaneous constitution of more than one Trial Chamber or Pre-Trial Chamber when the efficient management of the Court's workload so requires.

3. (*a*) Judges assigned to the Trial and Pre-Trial Divisions shall serve in those divisions for a period of three years, and thereafter until the completion of any case the hearing of which has already commenced in the division concerned.

(*b*) Judges assigned to the Appeals Division shall serve in that division for their entire term of office.

4. Judges assigned to the Appeals Division shall serve only in that division. Nothing in this article shall, however, preclude the temporary attachment of judges from the Trial Division to the Pre-Trial Division or vice versa, if the Presidency considers that the efficient management of the Court's workload so requires, provided that under no circumstances shall a judge who has participated in the pre-trial phase of a case be eligible to sit on the Trial Chamber hearing that case.

Article 40

INDEPENDENCE OF THE JUDGES

1. The judges shall be independent in the performance of their functions.

2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.

3. Judges required to serve on a full-time basis at the seat of the Court shall not engage in any other occupation of a professional nature.

4. Any question regarding the application of paragraphs 2 and 3 shall be decided by an absolute majority of the judges. Where any such question concerns an individual judge, that judge shall not take part in the decision.

Article 41

EXCUSING AND DISQUALIFICATION OF JUDGES

1. The Presidency may, at the request of a judge, excuse that judge from the exercise of a function under this Statute, in accordance with the Rules of Procedure and Evidence.

2. (*a*) A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified from a case in accordance with this paragraph if, inter alia, that judge has previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted. A judge shall also be disqualified on such other grounds as may be provided for in the Rules of Procedure and Evidence.

(*b*) The Prosecutor or the person being investigated or prosecuted may request the disqualification of a judge under this paragraph.

(*c*) Any question as to the disqualification of a judge shall be decided by an absolute majority of the judges. The challenged judge shall be entitled to present his or her comments on the matter, but shall not take part in the decision.

Article 42

THE OFFICE OF THE PROSECUTOR

1. The Office of the Prosecutor shall act independently as a separate organ of the Court. It shall be responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court. A member of the Office shall not seek or act on instructions from any external source.

2. The Office shall be headed by the Prosecutor. The Prosecutor shall have full authority over the management and administration of the Office, including the staff, facilities and other resources thereof. The Prosecutor shall be assisted by one or more Deputy Prosecutors, who shall be entitled to carry out any of the acts required of the Prosecutor under this Statute. The Prosecutor and the Deputy Prosecutors shall be of different nationalities. They shall serve on a full-time basis.

3. The Prosecutor and the Deputy Prosecutors shall be persons of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases. They shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. The Prosecutor shall be elected by secret ballot by an absolute majority of the members of the Assembly of States Parties. The Deputy Prosecutors shall be elected in the same way from a list of candidates provided by the Prosecutor. The Prosecutor shall nominate three candidates for each position of Deputy Prosecutor to be filled. Unless a shorter term is decided upon at the time of their election, the Prosecutor and the Deputy Prosecutors shall hold office for a term of nine years and shall not be eligible for re-election.

5. Neither the Prosecutor nor a Deputy Prosecutor shall engage in any activity which is likely to interfere with his or her prosecutorial functions or to affect confidence in his or her independence. They shall not engage in any other occupation of a professional nature.

6. The Presidency may excuse the Prosecutor or a Deputy Prosecutor, at his or her request, from acting in a particular case.

7. Neither the Prosecutor nor a Deputy Prosecutor shall participate in any matter in which their impartiality might reasonably be doubted on any ground. They shall be disqualified from a case in accordance with this paragraph if, inter alia, they have previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted.

8. Any question as to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by the Appeals Chamber.

(*a*) The person being investigated or prosecuted may at any time request the disqualification of the Prosecutor or a Deputy Prosecutor on the grounds set out in this article;

(*b*) The Prosecutor or the Deputy Prosecutor, as appropriate, shall be entitled to present his or her comments on the matter.

9. The Prosecutor shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children.

Article 43

THE REGISTRY

1. The Registry shall be responsible for the non-judicial aspects of the administration and servicing of the Court, without prejudice to the functions and powers of the Prosecutor in accordance with article 42.

2. The Registry shall be headed by the Registrar, who shall be the principal administrative officer of the Court. The Registrar shall exercise his or her functions under the authority of the President of the Court.

3. The Registrar and the Deputy Registrar shall be persons of high moral character, be highly competent and have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. The judges shall elect the Registrar by an absolute majority by secret ballot, taking into account any recommendation by the Assembly of States Parties. If the need arises and upon the recommendation of the Registrar, the judges shall elect, in the same manner, a Deputy Registrar.

5. The Registrar shall hold office for a term of five years, shall be eligible for re-election once and shall serve on a full-time basis. The Deputy Registrar shall

hold office for a term of five years or such shorter term as may be decided upon by an absolute majority of the judges, and may be elected on the basis that the Deputy Registrar shall be called upon to serve as required.

6. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.

Article 44

STAFF

1. The Prosecutor and the Registrar shall appoint such qualified staff as may be required to their respective offices. In the case of the Prosecutor, this shall include the appointment of investigators.

2. In the employment of staff, the Prosecutor and the Registrar shall ensure the highest standards of efficiency, competency and integrity, and shall have regard, mutatis mutandis, to the criteria set forth in article 36, paragraph 8.

3. The Registrar, with the agreement of the Presidency and the Prosecutor, shall propose Staff Regulations which include the terms and conditions upon which the staff of the Court shall be appointed, remunerated and dismissed. The Staff Regulations shall be approved by the Assembly of States Parties.

4. The Court may, in exceptional circumstances, employ the expertise of gratis personnel offered by States Parties, intergovernmental organizations or non-governmental organizations to assist with the work of any of the organs of the Court. The Prosecutor may accept any such offer on behalf of the Office of the Prosecutor. Such gratis personnel shall be employed in accordance with guidelines to be established by the Assembly of States Parties.

Article 45

SOLEMN UNDERTAKING

Before taking up their respective duties under this Statute, the judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall each make a solemn undertaking in open court to exercise his or her respective functions impartially and conscientiously.

Article 46

REMOVAL FROM OFFICE

1. A judge, the Prosecutor, a Deputy Prosecutor, the Registrar or the Deputy Registrar shall be removed from office if a decision to this effect is made in accordance with paragraph 2, in cases where that person:

(*a*) Is found to have committed serious misconduct or a serious breach of his or her duties under this Statute, as provided for in the Rules of Procedure and Evidence; or

(*b*) Is unable to exercise the functions required by this Statute.

2. A decision as to the removal from office of a judge, the Prosecutor or a Deputy Prosecutor under paragraph 1 shall be made by the Assembly of States Parties, by secret ballot:

(*a*) In the case of a judge, by a two-thirds majority of the States Parties upon a recommendation adopted by a two-thirds majority of the other judges;

(*b*) In the case of the Prosecutor, by an absolute majority of the States Parties;

(*c*) In the case of a Deputy Prosecutor, by an absolute majority of the States Parties upon the recommendation of the Prosecutor.

3. A decision as to the removal from office of the Registrar or Deputy Registrar shall be made by an absolute majority of the judges.

4. A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar whose conduct or ability to exercise the functions of the office as required by this Statute is challenged under this article shall have full opportunity to present and receive evidence and to make submissions in accordance with the Rules of Procedure and Evidence. The person in question shall not otherwise participate in the consideration of the matter.

Article 47

DISCIPLINARY MEASURES

A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar who has committed misconduct of a less serious nature than that set out in article 46, paragraph 1, shall be subject to disciplinary measures, in accordance with the Rules of Procedure and Evidence.

Article 48

PRIVILEGES AND IMMUNITIES

1. The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes.

2. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall, when engaged on or with respect to the business of the Court, enjoy the same privileges and immunities as are accorded to heads of diplomatic missions and shall, after the expiry of their terms of office, continue to be accorded immunity from legal process of every kind in respect of words spoken or written and acts performed by them in their official capacity.

3. The Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry shall enjoy the privileges and immunities and facilities necessary for the performance of their functions, in accordance with the agreement on the privileges and immunities of the Court.

4. Counsel, experts, witnesses or any other person required to be present at the seat of the Court shall be accorded such treatment as is necessary for the proper functioning of the Court, in accordance with the agreement on the privileges and immunities of the Court.

5. The privileges and immunities of:

(*a*) A judge or the Prosecutor may be waived by an absolute majority of the judges;

(*b*) The Registrar may be waived by the Presidency;

(*c*) The Deputy Prosecutors and staff of the Office of the Prosecutor may be waived by the Prosecutor;

(*d*) The Deputy Registrar and staff of the Registry may be waived by the Registrar.

Article 49

SALARIES, ALLOWANCES AND EXPENSES

The judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall receive such salaries, allowances and expenses as may be decided upon by the Assembly of States Parties. These salaries and allowances shall not be reduced during their terms of office.

Article 50

OFFICIAL AND WORKING LANGUAGES

1. The official languages of the Court shall be Arabic, Chinese, English, French, Russian and Spanish. The judgements of the Court, as well as other decisions resolving fundamental issues before the Court, shall be published in the official languages. The Presidency shall, in accordance with the criteria established by the Rules of Procedure and Evidence, determine which decisions may be considered as resolving fundamental issues for the purposes of this paragraph.

2. The working languages of the Court shall be English and French. The Rules of Procedure and Evidence shall determine the cases in which other official languages may be used as working languages.

3. At the request of any party to a proceeding or a State allowed to intervene in a proceeding, the Court shall authorize a language other than English or French to be used by such a party or State, provided that the Court considers such authorization to be adequately justified.

Article 51

RULES OF PROCEDURE AND EVIDENCE

1. The Rules of Procedure and Evidence shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.

2. Amendments to the Rules of Procedure and Evidence may be proposed by:

(*a*) Any State Party;

(*b*) The judges acting by an absolute majority; or

(*c*) The Prosecutor.

Such amendments shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.

3. After the adoption of the Rules of Procedure and Evidence, in urgent cases where the Rules do not provide for a specific situation before the Court, the judges may, by a two-thirds majority, draw up provisional Rules to be applied until adopted, amended or rejected at the next ordinary or special session of the Assembly of States Parties.

4. The Rules of Procedure and Evidence, amendments thereto and any provisional Rule shall be consistent with this Statute. Amendments to the Rules of Procedure and Evidence as well as provisional Rules shall not be applied retroactively to the detriment of the person who is being investigated or prosecuted or who has been convicted.

5. In the event of conflict between the Statute and the Rules of Procedure and Evidence, the Statute shall prevail.

Article 52

REGULATIONS OF THE COURT

1. The judges shall, in accordance with this Statute and the Rules of Procedure and Evidence, adopt, by an absolute majority, the Regulations of the Court necessary for its routine functioning.

2. The Prosecutor and the Registrar shall be consulted in the elaboration of the Regulations and any amendments thereto.

3. The Regulations and any amendments thereto shall take effect upon adoption unless otherwise decided by the judges. Immediately upon adoption, they shall be circulated to States Parties for comments. If within six months there are no objections from a majority of States Parties, they shall remain in force.

PART 5. INVESTIGATION AND PROSECUTION

Article 53

INITIATION OF AN INVESTIGATION

1. The Prosecutor shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute. In deciding whether to initiate an investigation, the Prosecutor shall consider whether:

(*a*) The information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed;

(*b*) The case is or would be admissible under article 17; and

(*c*) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.

If the Prosecutor determines that there is no reasonable basis to proceed and his or her determination is based solely on subparagraph (*c*) above, he or she shall inform the Pre-Trial Chamber.

2. If, upon investigation, the Prosecutor concludes that there is not a sufficient basis for a prosecution because:

(*a*) There is not a sufficient legal or factual basis to seek a warrant or summons under article 58;

(*b*) The case is inadmissible under article 17; or

(*c*) A prosecution is not in the interests of justice, taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime,

the Prosecutor shall inform the Pre-Trial Chamber and the State making a referral under article 14 or the Security Council in a case under article 13, paragraph (*b*), of his or her conclusion and the reasons for the conclusion.

3. (*a*) At the request of the State making a referral under article 14 or the Security Council under article 13, paragraph (*b*), the Pre-Trial Chamber may review a decision of the Prosecutor under paragraph 1 or 2 not to proceed and may request the Prosecutor to reconsider that decision.

(*b*) In addition, the Pre-Trial Chamber may, on its own initiative, review a decision of the Prosecutor not to proceed if it is based solely on paragraph 1 (*c*) or 2 (*c*). In such a case, the decision of the Prosecutor shall be effective only if confirmed by the Pre-Trial Chamber.

4. The Prosecutor may, at any time, reconsider a decision whether to initiate an investigation or prosecution based on new facts or information.

Article 54

DUTIES AND POWERS OF THE PROSECUTOR WITH RESPECT TO INVESTIGATIONS

1. The Prosecutor shall:

(*a*) In order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally;

(*b*) Take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including age, gender as defined in article 7, paragraph 3, and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children; and

(*c*) Fully respect the rights of persons arising under this Statute.

2. The Prosecutor may conduct investigations on the territory of a State:

(*a*) In accordance with the provisions of Part 9; or

(*b*) As authorized by the Pre-Trial Chamber under article 57, paragraph 3 (*d*).

3. The Prosecutor may:

(*a*) Collect and examine evidence;

(*b*) Request the presence of and question persons being investigated, victims and witnesses;

(*c*) Seek the cooperation of any State or intergovernmental organization or arrangement in accordance with its respective competence and/or mandate;

(*d*) Enter into such arrangements or agreements, not inconsistent with this Statute, as may be necessary to facilitate the cooperation of a State, intergovernmental organization or person;

(*e*) Agree not to disclose, at any stage of the proceedings, documents or information that the Prosecutor obtains on the condition of confidentiality and solely for the purpose of generating new evidence, unless the provider of the information consents; and

(*f*) Take necessary measures, or request that necessary measures be taken, to ensure the confidentiality of information, the protection of any person or the preservation of evidence.

Article 55

RIGHTS OF PERSONS DURING AN INVESTIGATION

1. In respect of an investigation under this Statute, a person;

(*a*) Shall not be compelled to incriminate himself or herself or to confess guilt;

(*b*) Shall not be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment; and

(*c*) Shall, if questioned in a language other than a language the person fully understands and speaks, have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness;

(*d*) Shall not be subjected to arbitrary arrest or detention; and shall not be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established in the Statute.

2. Where there are grounds to believe that a person has committed a crime within the jurisdiction of the Court and that person is about to be questioned either by the Prosecutor, or by national authorities pursuant to a request made under Part 9 of this Statute, that person shall also have the following rights of which he or she shall be informed prior to being questioned:

(*a*) To be informed, prior to being questioned, that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Court;

(*b*) To remain silent, without such silence being a consideration in the determination of guilt or innocence;

(*c*) To have legal assistance of the person's choosing, or, if the person does not have legal assistance, to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by the person in any such case if the person does not have sufficient means to pay for it;

(*d*) To be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel.

Article 56

ROLE OF THE PRE-TRIAL CHAMBER IN RELATION TO A UNIQUE INVESTIGATIVE OPPORTUNITY

1. (*a*) Where the Prosecutor considers an investigation to present a unique opportunity to take testimony or a statement from a witness or to examine, collect or test evidence, which may not be available subsequently for the purposes of a trial, the Prosecutor shall so inform the Pre-Trial Chamber.

(*b*) In that case, the Pre-Trial Chamber may, upon request of the Prosecutor, take such measures as may be necessary to ensure the efficiency and integrity of the proceedings and, in particular, to protect the rights of the defence.

(*c*) Unless the Pre-Trial Chamber orders otherwise, the Prosecutor shall provide the relevant information to the person who has been arrested or appeared in

response to a summons in connection with the investigation referred to in subparagraph (*a*), in order that he or she may be heard on the matter.

2. The measures referred to in paragraph 1 (*b*) may include:

(*a*) Making recommendations or orders regarding procedures to be followed;

(*b*) Directing that a record be made of the proceedings;

(*c*) Appointing an expert to assist;

(*d*) Authorizing counsel for a person who has been arrested, or appeared before the Court in response to a summons, to participate, or where there has not yet been such an arrest or appearance or counsel has not been designated, appointing another counsel to attend and represent the interests of the defence;

(*e*) Naming one of its members or, if necessary, another available judge of the Pre-Trial or Trial Division to observe and make recommendations or orders regarding the collection and preservation of evidence and the questioning of persons;

(*f*) Taking such other action as may be necessary to collect or preserve evidence.

3. (*a*) Where the Prosecutor has not sought measures pursuant to this article but the Pre-Trial Chamber considers that such measures are required to preserve evidence that it deems would be essential for the defence at trial, it shall consult with the Prosecutor as to whether there is good reason for the Prosecutor's failure to request the measures. If upon consultation, the Pre-Trial Chamber concludes that the Prosecutor's failure to request such measures is unjustified, the Pre-Trial Chamber may take such measures on its own initiative.

(*b*) A decision of the Pre-Trial Chamber to act on its own initiative under this paragraph may be appealed by the Prosecutor. The appeal shall be heard on an expedited basis.

4. The admissibility of evidence preserved or collected for trial pursuant to this article, or the record thereof, shall be governed at trial by article 69, and given such weight as determined by the Trial Chamber.

Article 57

Functions and powers of the Pre-Trial Chamber

1. Unless otherwise provided for in this Statute, the Pre-Trial Chamber shall exercise its functions in accordance with the provisions of this article.

2. (*a*) Orders or rulings of the Pre-Trial Chamber issued under articles 15, 18, 19, 54, paragraph 2, 61, paragraph 7, and 72 must be concurred in by a majority of its judges.

(*b*) In all other cases, a single judge of the Pre-Trial Chamber may exercise the functions provided for in this Statute, unless otherwise provided for in the Rules of Procedure and Evidence or by a majority of the Pre-Trial Chamber.

3. In addition to its other functions under this Statute, the Pre-Trial Chamber may:

(*a*) At the request of the Prosecutor, issue such orders and warrants as may be required for the purposes of an investigation;

(*b*) Upon the request of a person who has been arrested or has appeared pursuant to a summons under article 58, issue such orders, including measures such as

those described in article 56, or seek such cooperation pursuant to Part 9 as may be necessary to assist the person in the preparation of his or her defence;

(*c*) Where necessary, provide for the protection and privacy of victims and witnesses, the preservation of evidence, the protection of persons who have been arrested or appeared in response to a summons, and the protection of national security information;

(*d*) Authorize the Prosecutor to take specific investigative steps within the territory of a State Party without having secured the cooperation of that State under Part 9 if, whenever possible having regard to the views of the State concerned, the Pre-Trial Chamber has determined in that case that the State is clearly unable to execute a request for cooperation due to the unavailability of any authority or any component of its judicial system competent to execute the request for cooperation under Part 9;

(*e*) Where a warrant of arrest or a summons has been issued under article 58, and having due regard to the strength of the evidence and the rights of the parties concerned, as provided for in this Statute and the Rules of Procedure and Evidence, seek the cooperation of States pursuant to article 93, paragraph 1 (*j*), to take protective measures for the purpose of forfeiture in particular for the ultimate benefit of victims.

Article 58

ISSUANCE BY THE PRE-TRIAL CHAMBER OF A WARRANT OF ARREST OR A SUMMONS TO APPEAR

1. At any time after the initiation of an investigation, the Pre-Trial Chamber shall, on the application of the Prosecutor, issue a warrant of arrest of a person if, having examined the application and the evidence or other information submitted by the Prosecutor, it is satisfied that:

(*a*) There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and

(*b*) The arrest of the person appears necessary:

(i) To ensure the person's appearance at trial,

(ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings, or

(iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.

2. The application of the Prosecutor shall contain:

(*a*) The name of the person and any other relevant identifying information;

(*b*) A specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed;

(*c*) A concise statement of the facts which are alleged to constitute those crimes;

(*d*) A summary of the evidence and any other information which establish reasonable grounds to believe that the person committed those crimes; and

(*e*) The reason why the Prosecutor believes that the arrest of the person is necessary.

3. The warrant of arrest shall contain:

(*a*) The name of the person and any other relevant identifying information;

(*b*) A specific reference to the crimes within the jurisdiction of the Court for which the person's arrest is sought; and

(*c*) A concise statement of the facts which are alleged to constitute those crimes.

4. The warrant of arrest shall remain in effect until otherwise ordered by the Court.

5. On the basis of the warrant of arrest, the Court may request the provisional arrest or the arrest and surrender of the person under Part 9.

6. The Prosecutor may request the Pre-Trial Chamber to amend the warrant of arrest by modifying or adding to the crimes specified therein. The Pre-Trial Chamber shall so amend the warrant if it is satisfied that there are reasonable grounds to believe that the person committed the modified or additional crimes.

7. As an alternative to seeking a warrant of arrest, the Prosecutor may submit an application requesting that the Pre-Trial Chamber issue a summons for the person to appear. If the Pre-Trial Chamber is satisfied that there are reasonable grounds to believe that the person committed the crime alleged and that a summons is sufficient to ensure the person's appearance, it shall issue the summons, with or without conditions restricting liberty (other than detention) if provided for by national law, for the person to appear. The summons shall contain:

(*a*) The name of the person and any other relevant identifying information;

(*b*) The specified date on which the person is to appear;

(*c*) A specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed; and

(*d*) A concise statement of the facts which are alleged to constitute the crime.

The summons shall be served on the person.

Article 59

ARREST PROCEEDINGS IN THE CUSTODIAL STATE

1. A State Party which has received a request for provisional arrest or for arrest and surrender shall immediately take steps to arrest the person in question in accordance with its laws and the provisions of Part 9.

2. A person arrested shall be brought promptly before the competent judicial authority in the custodial State which shall determine, in accordance with the law of that State, that:

(*a*) The warrant applies to that person;

(*b*) The person has been arrested in accordance with the proper process; and

(*c*) The person's rights have been respected.

3. The person arrested shall have the right to apply to the competent authority in the custodial State for interim release pending surrender.

4. In reaching a decision on any such application, the competent authority in the custodial State shall consider whether, given the gravity of the alleged crimes,

there are urgent and exceptional circumstances to justify interim release and whether necessary safeguards exist to ensure that the custodial State can fulfil its duty to surrender the person to the Court. It shall not be open to the competent authority of the custodial State to consider whether the warrant of arrest was properly issued in accordance with article 58, paragraph 1 (*a*) and (*b*).

5. The Pre-Trial Chamber shall be notified of any request for interim release and shall make recommendations to the competent authority in the custodial State. The competent authority in the custodial State shall give full consideration to such recommendations, including any recommendations on measures to prevent the escape of the person, before rendering its decision.

6. If the person is granted interim release, the Pre-Trial Chamber may request periodic reports on the status of the interim release.

7. Once ordered to be surrendered by the custodial State, the person shall be delivered to the Court as soon as possible.

Article 60

INITIAL PROCEEDINGS BEFORE THE COURT

1. Upon the surrender of the person to the Court, or the person's appearance before the Court voluntarily or pursuant to a summons, the Pre-Trial Chamber shall satisfy itself that the person has been informed of the crimes which he or she is alleged to have committed, and of his or her rights under this Statute, including the right to apply for interim release pending trial.

2. A person subject to a warrant of arrest may apply for interim release pending trial. If the Pre-Trial Chamber is satisfied that the conditions set forth in article 58, paragraph 1, are met, the person shall continue to be detained. If it is not so satisfied, the Pre-Trial Chamber shall release the person, with or without conditions.

3. The Pre-Trial Chamber shall periodically review its ruling on the release or detention of the person, and may do so at any time on the request of the Prosecutor or the person. Upon such review, it may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require.

4. The Pre-Trial Chamber shall ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor. If such delay occurs, the Court shall consider releasing the person, with or without conditions.

5. If necessary, the Pre-Trial Chamber may issue a warrant of arrest to secure the presence of a person who has been released.

Article 61

CONFIRMATION OF THE CHARGES BEFORE TRIAL

1. Subject to the provisions of paragraph 2, within a reasonable time after the person's surrender or voluntary appearance before the Court, the Pre-Trial Chamber shall hold a hearing to confirm the charges on which the Prosecutor intends to seek trial. The hearing shall be held in the presence of the Prosecutor and the person charged, as well as his or her counsel.

2. The Pre-Trial Chamber may, upon request of the Prosecutor or on its own motion, hold a hearing in the absence of the person charged to confirm the charges on which the Prosecutor intends to seek trial when the person has:

(*a*) Waived his or her right to be present; or

(*b*) Fled or cannot be found and all reasonable steps have been taken to secure his or her appearance before the Court and to inform the person of the charges and that a hearing to confirm those charges will be held.

In that case, the person shall be represented by counsel where the Pre-Trial Chamber determines that it is in the interests of justice.

3. Within a reasonable time before the hearing, the person shall:

(*a*) Be provided with a copy of the document containing the charges on which the Prosecutor intends to bring the person to trial; and

(*b*) Be informed of the evidence on which the Prosecutor intends to rely at the hearing.

The Pre-Trial Chamber may issue orders regarding the disclosure of information for the purposes of the hearing.

4. Before the hearing, the Prosecutor may continue the investigation and may amend or withdraw any charges. The person shall be given reasonable notice before the hearing of any amendment to or withdrawal of charges. In case of a withdrawal of charges, the Prosecutor shall notify the Pre-Trial Chamber of the reasons for the withdrawal.

5. At the hearing, the Prosecutor shall support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged. The Prosecutor may rely on documentary or summary evidence and need not call the witnesses expected to testify at the trial.

6. At the hearing, the person may:

(*a*) Object to the charges;

(*b*) Challenge the evidence presented by the Prosecutor; and

(*c*) Present evidence.

7. The Pre-Trial Chamber shall, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. Based on its determination, the Pre-Trial Chamber shall:

(*a*) Confirm those charges in relation to which it has determined that there is sufficient evidence; and commit the person to a Trial Chamber for trial on the charges as confirmed;

(*b*) Decline to confirm those charges in relation to which it has determined that there is insufficient evidence;

(*c*) Adjourn the hearing and request the Prosecutor to consider:

(i) Providing further evidence or conducting further investigation with respect to a particular charge; or

(ii) Amending a charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court.

8. Where the Pre-Trial Chamber declines to confirm a charge, the Prosecutor shall not be precluded from subsequently requesting its confirmation if the request is supported by additional evidence.

9. After the charges are confirmed and before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Chamber and after notice to the accused, amend the charges. If the Prosecutor seeks to add additional charges or to

substitute more serious charges, a hearing under this article to confirm those charges must be held. After commencement of the trial, the Prosecutor may, with the permission of the Trial Chamber, withdraw the charges.

10. Any warrant previously issued shall cease to have effect with respect to any charges which have not been confirmed by the Pre-Trial Chamber or which have been withdrawn by the Prosecutor.

11. Once the charges have been confirmed in accordance with this article, the Presidency shall constitute a Trial Chamber which, subject to paragraph 8 and to article 64, paragraph 4, shall be responsible for the conduct of subsequent proceedings and may exercise any function of the Pre-Trial Chamber that is relevant and capable of application in those proceedings.

PART 6. THE TRIAL

Article 62

PLACE OF TRIAL

Unless otherwise decided, the place of the trial shall be the seat of the Court.

Article 63

TRIAL IN THE PRESENCE OF THE ACCUSED

1. The accused shall be present during the trial.

2. If the accused, being present before the Court, continues to disrupt the trial, the Trial Chamber may remove the accused and shall make provision for him or her to observe the trial and instruct counsel from outside the courtroom, through the use of communications technology, if required. Such measures shall be taken only in exceptional circumstances after other reasonable alternatives have proved inadequate, and only for such duration as is strictly required.

Article 64

FUNCTIONS AND POWERS OF THE TRIAL CHAMBER

1. The functions and powers of the Trial Chamber set out in this article shall be exercised in accordance with this Statute and the Rules of Procedure and Evidence.

2. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

3. Upon assignment of a case for trial in accordance with this Statute, the Trial Chamber assigned to deal with the case shall:

(*a*) Confer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the proceedings;

(*b*) Determine the language or languages to be used at trial; and

(*c*) Subject to any other relevant provisions of this Statute, provide for disclosure of documents or information not previously disclosed, sufficiently in advance of the commencement of the trial to enable adequate preparation for trial.

4. The Trial Chamber may, if necessary for its effective and fair functioning, refer preliminary issues to the Pre-Trial Chamber or, if necessary, to another available judge of the Pre-Trial Division.

5. Upon notice to the parties, the Trial Chamber may, as appropriate, direct that there be joinder or severance in respect of charges against more than one accused.

6. In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary:

(*a*) Exercise any functions of the Pre-Trial Chamber referred to in article 61, paragraph 11;

(*b*) Require the attendance and testimony of witnesses and production of documents and other evidence by obtaining, if necessary, the assistance of States as provided in this Statute;

(*c*) Provide for the protection of confidential information;

(*d*) Order the production of evidence in addition to that already collected prior to the trial or presented during the trial by the parties;

(*e*) Provide for the protection of the accused, witnesses and victims; and

(*f*) Rule on any other relevant matters.

7. The trial shall be held in public. The Trial Chamber may, however, determine that special circumstances require that certain proceedings be in closed session for the purposes set forth in article 68, or to protect confidential or sensitive information to be given in evidence.

8. (*a*) At the commencement of the trial, the Trial Chamber shall have read to the accused the charges previously confirmed by the Pre-Trial Chamber. The Trial Chamber shall satisfy itself that the accused understands the nature of the charges. It shall afford him or her the opportunity to make an admission of guilt in accordance with article 65 or to plead not guilty.

(*b*) At the trial, the presiding judge may give directions for the conduct of proceedings, including to ensure that they are conducted in a fair and impartial manner. Subject to any directions of the presiding judge, the parties may submit evidence in accordance with the provisions of this Statute.

9. The Trial Chamber shall have, inter alia, the power on application of a party or on its own motion to:

(*a*) Rule on the admissibility or relevance of evidence; and

(*b*) Take all necessary steps to maintain order in the course of a hearing.

10. The Trial Chamber shall ensure that a complete record of the trial, which accurately reflects the proceedings, is made and that it is maintained and preserved by the Registrar.

Article 65

PROCEEDINGS ON AN ADMISSION OF GUILT

1. Where the accused makes an admission of guilt pursuant to article 64, paragraph 8 (*a*), the Trial Chamber shall determine whether:

(*a*) The accused understands the nature and consequences of the admission of guilt;

(*b*) The admission is voluntarily made by the accused after sufficient consultation with defence counsel; and

(*c*) The admission of guilt is supported by the facts of the case that are contained in:

(i) The charges brought by the Prosecutor and admitted by the accused;

(ii) Any materials presented by the Prosecutor which supplement the charges and which the accused accepts; and

(iii) Any other evidence, such as the testimony of witnesses, presented by the Prosecutor or the accused.

2. Where the Trial Chamber is satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt, together with any additional evidence presented, as establishing all the essential facts that are required to prove the crime to which the admission of guilt relates, and may convict the accused of that crime.

3. Where the Trial Chamber is not satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt as not having been made, in which case it shall order that the trial be continued under the ordinary trial procedures provided by this Statute and may remit the case to another Trial Chamber.

4. Where the Trial Chamber is of the opinion that a more complete presentation of the facts of the case is required in the interests of justice, in particular the interests of the victims, the Trial Chamber may:

(*a*) Request the Prosecutor to present additional evidence, including the testimony of witnesses; or

(*b*) Order that the trial be continued under the ordinary trial procedures provided by this Statute, in which case it shall consider the admission of guilt as not having been made and may remit the case to another Trial Chamber.

5. Any discussions between the Prosecutor and the defence regarding modification of the charges, the admission of guilt or the penalty to be imposed shall not be binding on the Court.

Article 66

PRESUMPTION OF INNOCENCE

1. Everyone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law.

2. The onus is on the Prosecutor to prove the guilt of the accused.

3. In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt.

Article 67

RIGHTS OF THE ACCUSED

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

(*a*) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;

(*b*) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;

(*c*) To be tried without undue delay;

(*d*) Subject to article 63, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it;

(*e*) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute;

(*f*) To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings of or documents presented to the Court are not in a language which the accused fully understands and speaks;

(*g*) Not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;

(*h*) To make an unsworn oral or written statement in his or her defence; and

(*i*) Not to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal.

2. In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defence evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence. In case of doubt as to the application of this paragraph, the Court shall decide.

Article 68

PROTECTION OF THE VICTIMS AND WITNESSES AND THEIR PARTICIPATION IN THE PROCEEDINGS

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 2, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

2. As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.

3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

4. The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in article 43, paragraph 6.

5. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

6. A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of confidential or sensitive information.

Article 69

EVIDENCE

1. Before testifying, each witness shall, in accordance with the Rules of Procedure and Evidence, give an undertaking as to the truthfulness of the evidence to be given by that witness.

2. The testimony of a witness at trial shall be given in person, except to the extent provided by the measures set forth in article 68 or in the Rules of Procedure and Evidence. The Court may also permit the giving of viva voce (oral) or recorded testimony of a witness by means of video or audio technology, as well as the introduction of documents or written transcripts, subject to this Statute and in accordance with the Rules of Procedure and Evidence. These measures shall not be prejudicial to or inconsistent with the rights of the accused.

3. The parties may submit evidence relevant to the case, in accordance with article 64. The Court shall have the authority to request the submission of all evidence that it considers necessary for the determination of the truth.

4. The Court may rule on the relevance or admissibility of any evidence, taking into account, inter alia, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.

5. The Court shall respect and observe privileges on confidentiality as provided for in the Rules of Procedure and Evidence.

6. The Court shall not require proof of facts of common knowledge but may take judicial notice of them.

7. Evidence obtained by means of a violation of this Statute or internationally recognized human rights shall not be admissible if:

(*a*) The violation casts substantial doubt on the reliability of the evidence; or

(*b*) The admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings.

8. When deciding on the relevance or admissibility of evidence collected by a State, the Court shall not rule on the application of the State's national law.

Article 70

OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE

1. The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally:

(*a*) Giving false testimony when under an obligation pursuant to article 69, paragraph 1, to tell the truth;

(*b*) Presenting evidence that the party knows is false or forged;

(*c*) Corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence;

(*d*) Impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties;

(*e*) Retaliating against an official of the Court on account of duties performed by that or another official;

(*f*) Soliciting or accepting a bribe as an official of the Court in conjunction with his or her official duties.

2. The principles and procedures governing the Court's exercise of jurisdiction over offences under this article shall be those provided for in the Rules of Procedure and Evidence. The conditions for providing international cooperation to the Court with respect to its proceedings under this article shall be governed by the domestic laws of the requested State.

3. In the event of conviction, the Court may impose a term of imprisonment not exceeding five years, or a fine in accordance with the Rules of Procedure and Evidence, or both.

4. (*a*) Each State Party shall extend its criminal laws penalizing offences against the integrity of its own investigative or judicial process to offences against the administration of justice referred to in this article, committed on its territory, or by one of its nationals;

(*b*) Upon request by the Court, whenever it deems it proper, the State Party shall submit the case to its competent authorities for the purpose of prosecution. Those authorities shall treat such cases with diligence and devote sufficient resources to enable them to be conducted effectively.

Article 71

SANCTIONS FOR MISCONDUCT BEFORE THE COURT

1. The Court may sanction persons present before it who commit misconduct, including disruption of its proceedings or deliberate refusal to comply with its directions, by administrative measures other than imprisonment, such as temporary or permanent removal from the courtroom, a fine or other similar measures provided for in the Rules of Procedure and Evidence.

2. The procedures governing the imposition of the measures set forth in paragraph 1 shall be those provided for in the Rules of Procedure and Evidence.

Article 72

PROTECTION OF NATIONAL SECURITY INFORMATION

1. This article applies in any case where the disclosure of the information or documents of a State would, in the opinion of that State, prejudice its national security interests. Such cases include those falling within the scope of article 56, paragraphs 2 and 3, article 61, paragraph 3, article 64, paragraph 3, article 67, paragraph 2, article 68, paragraph 6, article 87, paragraph 6 and article 93, as well as cases arising at any other stage of the proceedings where such disclosure may be at issue.

2. This article shall also apply when a person who has been requested to give information or evidence has refused to do so or has referred the matter to the State on the ground that disclosure would prejudice the national security interests of a State and the State concerned confirms that it is of the opinion that disclosure would prejudice its national security interests.

3. Nothing in this article shall prejudice the requirements of confidentiality applicable under article 54, paragraph 3 (*e*) and (*f*), or the application of article 73.

4. If a State learns that information or documents of the State are being, or are likely to be, disclosed at any stage of the proceedings, and it is of the opinion that disclosure would prejudice its national security interests, that State shall have the right to intervene in order to obtain resolution of the issue in accordance with this article.

5. If, in the opinion of a State, disclosure of information would prejudice its national security interests, all reasonable steps will be taken by the State, acting in conjunction with the Prosecutor, the Defence or the Pre-Trial Chamber or Trial Chamber, as the case may be, to seek to resolve the matter by cooperative means. Such steps may include:

(*a*) Modification or clarification of the request;

(*b*) A determination by the Court regarding the relevance of the information or evidence sought, or a determination as to whether the evidence, though relevant, could be or has been obtained from a source other than the requested State;

(*c*) Obtaining the information or evidence from a different source or in a different form; or

(*d*) Agreement on conditions under which the assistance could be provided including, among other things, providing summaries or redactions, limitations on disclosure, use of in camera or ex parte proceedings, or other protective measures permissible under the Statute and the Rules.

6. Once all reasonable steps have been taken to resolve the matter through cooperative means, and if the State considers that there are no means or conditions under which the information or documents could be provided or disclosed without prejudice to its national security interests, it shall so notify the Prosecutor or the Court of the specific reasons for its decision, unless a specific description of the reasons would itself necessarily result in such prejudice to the State's national security interests.

7. Thereafter, if the Court determines that the evidence is relevant and necessary for the establishment of the guilt or innocence of the accused, the Court may undertake the following actions:

(*a*) Where disclosure of the information or document is sought pursuant to a request for cooperation under Part 9 or the circumstances described in paragraph 2, and the State has invoked the ground for refusal referred to in article 93, paragraph 4:

(i) The Court may, before making any conclusion referred to in subparagraph 7 (*a*) (ii), request further consultations for the purpose of considering the State's representations, which may include, as appropriate, hearings in camera and ex parte;

(ii) If the Court concludes that, by invoking the ground for refusal under article 93, paragraph 4, in the circumstances of the case, the requested State is not acting in accordance with its obligations under the Statute, the Court may refer the matter in accordance with article 87, paragraph 7, specifying the reasons for its conclusion; and

(iii) The Court may make such inference in the trial of the accused as to the existence or non-existence of a fact, as may be appropriate in the circumstances; or

(*b*) In all other circumstances:

(i) Order disclosure; or

(ii) To the extent it does not order disclosure, make such inference in the trial of the accused as to the existence or non-existence of a fact, as may be appropriate in the circumstances.

Article 73

THIRD-PARTY INFORMATION OR DOCUMENTS

If a State Party is requested by the Court to provide a document or information in its custody, possession or control, which was disclosed to it in confidence by a State, intergovernmental organization or international organization, it shall seek the consent of the originator to disclose that document or information. If the originator is a State Party, it shall either consent to disclosure of the information or document or undertake to resolve the issue of disclosure with the Court, subject to the provisions of article 72. If the originator is not a State Party and refuses consent to disclosure, the requested State shall inform the Court that it is unable to provide the document or information because of a pre-existing obligation of confidentiality to the originator.

Article 74

REQUIREMENTS FOR THE DECISION

1. All the judges of the Trial Chamber shall be present at each stage of the trial and throughout their deliberations. The Presidency may, on a case-by-case basis, designate, as available, one or more alternate judges to be present at each stage of the trial and to replace a member of the Trial Chamber if that member is unable to continue attending.

2. The Trial Chamber's decision shall be based on its evaluation of the evidence and the entire proceedings. The decision shall not exceed the facts and circumstances described in the charges and any amendments to the charges. The Court may base its decision only on evidence submitted and discussed before it at the trial.

3. The judges shall attempt to achieve unanimity in their decision, failing which the decision shall be taken by a majority of the judges.

4. The deliberations of the Trial Chamber shall remain secret.

5. The decision shall be in writing and shall contain a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions. The Trial Chamber shall issue one decision. When there is no unanimity, the Trial Chamber's decision shall contain the views of the majority and the minority. The decision or a summary thereof shall be delivered in open court.

Article 75

REPARATIONS TO VICTIMS

1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.

3. Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.

4. In exercising its power under this article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under article 93, paragraph 1.

5. A State Party shall give effect to a decision under this article as if the provisions of article 109 were applicable to this article.

6. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.

Article 76

SENTENCING

1. In the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed and shall take into account the evidence presented and submissions made during the trial that are relevant to the sentence.

2. Except where article 65 applies and before the completion of the trial, the Trial Chamber may on its own motion and shall, at the request of the Prosecutor or the accused, hold a further hearing to hear any additional evidence or submissions relevant to the sentence, in accordance with the Rules of Procedure and Evidence.

3. Where paragraph 2 applies, any representations under article 75 shall be heard during the further hearing referred to in paragraph 2 and, if necessary, during any additional hearing.

4. The sentence shall be pronounced in public and, wherever possible, in the presence of the accused.

PART 7. PENALTIES

Article 77

APPLICABLE PENALTIES

1. Subject to article 110, the Court may impose one of the following penalties on a person convicted of a crime under article 5 of this Statute:

(*a*) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or

(*b*) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.

2. In addition to imprisonment, the Court may order:

(*a*) A fine under the criteria provided for in the Rules of Procedure and Evidence;

(*b*) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

Article 78

DETERMINATION OF THE SENTENCE

1. In determining the sentence, the Court shall, in accordance with the Rules of Procedure and Evidence, take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.

2. In imposing a sentence of imprisonment, the Court shall deduct the time, if any, previously spent in detention in accordance with an order of the Court. The Court may deduct any time otherwise spent in detention in connection with conduct underlying the crime.

3. When a person has been convicted of more than one crime, the Court shall pronounce a sentence for each crime and a joint sentence specifying the total period of imprisonment. This period shall be no less than the highest individual sentence pronounced and shall not exceed 30 years imprisonment or a sentence of life imprisonment in conformity with article 77, paragraph 1 (*b*).

Article 79

TRUST FUND

1. A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.

2. The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund.

3. The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties.

Article 80

NON-PREJUDICE TO NATIONAL APPLICATION OF PENALTIES AND NATIONAL LAWS

Nothing in this Part of the Statute affects the application by States of penalties prescribed by their national law, nor the law of States which do not provide for penalties prescribed in this Part.

PART 8. APPEAL AND REVISION

Article 81

APPEAL AGAINST DECISION OF ACQUITTAL OR CONVICTION OR AGAINST SENTENCE

1. A decision under article 74 may be appealed in accordance with the Rules of Procedure and Evidence as follows:

(*a*) The Prosecutor may make an appeal on any of the following grounds:

(i) Procedural error,

(ii) Error of fact, or

(iii) Error of law;

(*b*) The convicted person or the Prosecutor on that person's behalf may make an appeal on any of the following grounds:

(i) Procedural error,

(ii) Error of fact,

(iii) Error of law, or

(iv) Any other ground that affects the fairness or reliability of the proceedings or decision.

2. (*a*) A sentence may be appealed, in accordance with the Rules of Procedure and Evidence, by the Prosecutor or the convicted person on the ground of disproportion between the crime and the sentence;

(*b*) If on an appeal against sentence the Court considers that there are grounds on which the conviction might be set aside, wholly or in part, it may invite the Prosecutor and the convicted person to submit grounds under article 81, paragraph 1 (*a*) or (*b*), and may render a decision on conviction in accordance with article 83;

(*c*) The same procedure applies when the Court, on an appeal against conviction only, considers that there are grounds to reduce the sentence under paragraph 2 (*a*).

3. (*a*) Unless the Trial Chamber orders otherwise, a convicted person shall remain in custody pending an appeal;

(*b*) When a convicted person's time in custody exceeds the sentence of imprisonment imposed, that person shall be released, except that if the Prosecutor is also appealing, the release may be subject to the conditions under subparagraph (*c*) below;

(*c*) In case of an acquittal, the accused shall be released immediately, subject to the following:

(i) Under exceptional circumstances, and having regard, inter alia, to the concrete risk of flight, the seriousness of the offence charged and the probability of success on appeal, the Trial Chamber, at the request of the Prosecutor, may maintain the detention of the person pending appeal;

(ii) A decision by the Trial Chamber under subparagraph (*c*) (i) may be appealed in accordance with the Rules of Procedure and Evidence.

4. Subject to the provisions of paragraph 3 (*a*) and (*b*), execution of the decision or sentence shall be suspended during the period allowed for appeal and for the duration of the appeal proceedings.

Article 82

APPEAL AGAINST OTHER DECISIONS

1. Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence:

(*a*) A decision with respect to jurisdiction or admissibility;

(*b*) A decision granting or denying release of the person being investigated or prosecuted;

(*c*) A decision of the Pre-Trial Chamber to act on its own initiative under article 56, paragraph 3;

(*d*) A decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

2. A decision of the Pre-Trial Chamber under article 57, paragraph 3 (*d*), may be appealed against by the State concerned or by the Prosecutor, with the leave of the Pre-Trial Chamber. The appeal shall be heard on an expedited basis.

3. An appeal shall not of itself have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance with the Rules of Procedure and Evidence.

4. A legal representative of the victims, the convicted person or a bona fide owner of property adversely affected by an order under article 73 may appeal against the order for reparations, as provided in the Rules of Procedure and Evidence.

Article 83

PROCEEDINGS ON APPEAL

1. For the purposes of proceedings under article 81 and this article, the Appeals Chamber shall have all the powers of the Trial Chamber.

2. If the Appeals Chamber finds that the proceedings appealed from were unfair in a way that affected the reliability of the decision or sentence, or that the decision or sentence appealed from was materially affected by error of fact or law or procedural error, it may:

(*a*) Reverse or amend the decision or sentence; or

(*b*) Order a new trial before a different Trial Chamber.

For these purposes, the Appeals Chamber may remand a factual issue to the original Trial Chamber for it to determine the issue and to report back accordingly, or may itself call evidence to determine the issue. When the decision or sentence has been appealed only by the person convicted, or the Prosecutor on that person's behalf, it cannot be amended to his or her detriment.

3. If in an appeal against sentence the Appeals Chamber finds that the sentence is disproportionate to the crime, it may vary the sentence in accordance with Part 7.

4. The judgement of the Appeals Chamber shall be taken by a majority of the judges and shall be delivered in open court. The judgement shall state the reasons on which it is based. When there is no unanimity, the judgement of the Appeals Chamber shall contain the views of the majority and the minority, but a judge may deliver a separate or dissenting opinion on a question of law.

5. The Appeals Chamber may deliver its judgement in the absence of the person acquitted or convicted.

Article 84

REVISION OF CONVICTION OR SENTENCE

1. The convicted person or, after death, spouses, children, parents or one person alive at the time of the accused's death who has been given express written instructions from the accused to bring such a claim, or the Prosecutor on the person's behalf, may apply to the Appeals Chamber to revise the final judgement of conviction or sentence on the grounds that:

(*a*) New evidence has been discovered that:

(i) Was not available at the time of trial, and such unavailability was not wholly or partially attributable to the party making application; and

(ii) Is sufficiently important that had it been proved at trial it would have been likely to have resulted in a different verdict;

(*b*) It has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified;

(*c*) One or more of the judges who participated in conviction or confirmation of the charges has committed, in that case, an act of serious misconduct or serious breach of duty of sufficient gravity to justify the removal of that judge or those judges from office under article 46.

2. The Appeals Chamber shall reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it may, as appropriate:

(*a*) Reconvene the original Trial Chamber;

(*b*) Constitute a new Trial Chamber; or

(*c*) Retain jurisdiction over the matter,

with a view to, after hearing the parties in the manner set forth in the Rules of Procedure and Evidence, arriving at a determination on whether the judgement should be revised.

Article 85

COMPENSATION TO AN ARRESTED OR CONVICTED PERSON

1. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

2. When a person has by a final decision been convicted of a criminal offence, and when subsequently his or her conviction has been reversed 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 him or her.

3. In exceptional circumstances, where the Court finds conclusive facts showing that there has been a grave and manifest miscarriage of justice, it may in its discretion award compensation, according to the criteria provided in the Rules of Procedure and Evidence, to a person who has been released from detention following a final decision of acquittal or a termination of the proceedings for that reason.

PART 9. INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE

Article 86

GENERAL OBLIGATION TO COOPERATE

States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.

Article 87

REQUESTS FOR COOPERATION: GENERAL PROVISIONS

1. (*a*) The Court shall have the authority to make requests to States Parties for cooperation. The requests shall be transmitted through the diplomatic channel or any other appropriate channel as may be designated by each State Party upon ratification, acceptance, approval or accession.

Subsequent changes to the designation shall be made by each State Party in accordance with the Rules of Procedure and Evidence.

(*b*) When appropriate, without prejudice to the provisions of subparagraph (*a*), requests may also be transmitted through the International Criminal Police Organization or any appropriate regional organization.

2. Requests for cooperation and any documents supporting the request shall either be in or be accompanied by a translation into an official language of the requested State or in one of the working languages of the Court, in accordance with the choice made by that State upon ratification, acceptance, approval or accession.

Subsequent changes to this choice shall be made in accordance with the Rules of Procedure and Evidence.

3. The requested State shall keep confidential a request for cooperation and any documents supporting the request, except to the extent that the disclosure is necessary for execution of the request.

4. In relation to any request for assistance presented under Part 9, the Court may take such measures, including measures related to the protection of information, as may be necessary to ensure the safety or physical or psychological well-being of any victims, potential witnesses and their families. The Court may request that any information that is made available under Part 9 shall be provided and handled in a manner that protects the safety and physical or psychological well-being of any victims, potential witnesses and their families.

5. The Court may invite any State not party to this Statute to provide assistance under this Part on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis.

Where a State not party to this Statute, which has entered into an ad hoc arrangement or an agreement with the Court, fails to cooperate with requests pursuant to any such arrangement or agreement, the Court may so inform the Assembly of States Parties or, where the Security Council referred the matter to the Court, the Security Council.

6. The Court may ask any intergovernmental organization to provide information or documents. The Court may also ask for other forms of cooperation and

assistance which may be agreed upon with such an organization and which are in accordance with its competence or mandate.

7. Where a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under this Statute, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council.

Article 88

AVAILABILITY OF PROCEDURES UNDER NATIONAL LAW

States Parties shall ensure that there are procedures available under their national law for all of the forms of cooperation which are specified under this Part.

Article 89

SURRENDER OF PERSONS TO THE COURT

1. The Court may transmit a request for the arrest and surrender of a person, together with the material supporting the request outlined in article 91, to any State on the territory of which that person may be found and shall request the cooperation of that State in the arrest and surrender of such a person. States Parties shall, in accordance with the provisions of this Part and the procedure under their national law, comply with requests for arrest and surrender.

2. Where the person sought for surrender brings a challenge before a national court on the basis of the principle of ne bis in idem as provided in article 20, the requested State shall immediately consult with the Court to determine if there has been a relevant ruling on admissibility. If the case is admissible, the requested State shall proceed with the execution of the request. If an admissibility ruling is pending, the requested State may postpone the execution of the request for surrender of the person until the Court makes a determination on admissibility.

3. (*a*) A State Party shall authorize, in accordance with its national procedural law, transportation through its territory of a person being surrendered to the Court by another State, except where transit through that State would impede or delay the surrender.

(*b*) A request by the Court for transit shall be transmitted in accordance with article 87. The request for transit shall contain:

(i) A description of the person being transported;

(ii) A brief statement of the facts of the case and their legal characterization; and

(iii) The warrant for arrest and surrender.

(*c*) A person being transported shall be detained in custody during the period of transit.

(*d*) No authorization is required if the person is transported by air and no landing is scheduled on the territory of the transit State.

(*e*) If an unscheduled landing occurs on the territory of the transit State, that State may require a request for transit from the Court as provided for in subparagraph (*b*). The transit State shall detain the person being transported until the request for transit is received and the transit is effected; provided that detention for purposes

of this subparagraph may not be extended beyond 96 hours from the unscheduled landing unless the request is received within that time.

4. If the person sought is being proceeded against or is serving a sentence in the requested State for a crime different from that for which surrender to the Court is sought, the requested State, after making its decision to grant the request, shall consult with the Court.

Article 90

COMPETING REQUESTS

1. A State Party which receives a request from the Court for the surrender of a person under article 89 shall, if it also receives a request from any other State for the extradition of the same person for the same conduct which forms the basis of the crime for which the Court seeks the person's surrender, notify the Court and the requesting State of that fact.

2. Where the requesting State is a State Party, the requested State shall give priority to the request from the Court if:

(*a*) The Court has, pursuant to articles 18 and 19, made a determination that the case in respect of which surrender is sought is admissible and that determination takes into account the investigation or prosecution conducted by the requesting State in respect of its request for extradition; or

(*b*) The Court makes the determination described in subparagraph (*a*), pursuant to the requested State's notification under paragraph 1.

3. Where a determination under paragraph 2 (*a*) has not been made, the requested State may at its discretion, pending the determination of the Court under paragraph 2 (*b*), proceed to deal with the request for extradition from the requesting State but shall not extradite the person until the Court has determined that the case is inadmissible. The Court's determination shall be made on an expedited basis.

4. If the requesting State is a State not Party to this Statute the requested State, if it is not under an international obligation to extradite the person to the requesting State, shall give priority to the request for surrender from the Court, if the Court has determined that the case is admissible.

5. Where a case under paragraph 4 has not been determined to be admissible by the Court, the requested State may, at its discretion, proceed to deal with the request for extradition from the requesting State.

6. In cases where paragraph 4 applies except that the requested State is under an existing international obligation to extradite the person to the requesting State not Party to this Statute, the requested State shall determine whether to surrender the person to the Court or extradite the person to the requesting State. In making its decision, the requested State shall consider all the relevant factors, including but not limited to:

(*a*) The respective dates of the requests;

(*b*) The interests of the requesting State including, where relevant, whether the crime was committed in its territory and the nationality of the victims and of the person sought; and

(*c*) The possibility of subsequent surrender between the Court and the requesting State.

7. Where a State Party which receives a request from the Court for the surrender of a person also receives a request from any State for the extradition of the same person for conduct other than that which constitutes the crime for which the Court seeks the person's surrender:

(*a*) The requested State shall, if it is not under an existing international obligation to extradite the person to the requesting State, give priority to the request from the Court;

(*b*) The requested State shall, if it is under an existing international obligation to extradite the person to the requesting State, determine whether to surrender the person to the Court or extradite the person to the requesting State. In making its decision, the requested State shall consider all the relevant factors, including but not limited to those set out in paragraph 6, but shall give special consideration to the relative nature and gravity of the conduct in question.

8. Where pursuant to a notification under this article, the Court has determined a case to be inadmissible, and subsequently extradition to the requesting State is refused, the requested State shall notify the Court of this decision.

Article 91

CONTENTS OF REQUEST FOR ARREST AND SURRENDER

1. A request for arrest and surrender shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in article 87, paragraph 1 (*a*).

2. In the case of a request for the arrest and surrender of a person for whom a warrant of arrest has been issued by the Pre-Trial Chamber under article 58, the request shall contain or be supported by:

(*a*) Information describing the person sought, sufficient to identify the person, and information as to that person's probable location;

(*b*) A copy of the warrant of arrest; and

(*c*) Such documents, statements or information as may be necessary to meet the requirements for the surrender process in the requested State, except that those requirements should not be more burdensome than those applicable to requests for extradition pursuant to treaties or arrangements between the requested State and other States and should, if possible, be less burdensome, taking into account the distinct nature of the Court.

3. In the case of a request for the arrest and surrender of a person already convicted, the request shall contain or be supported by:

(*a*) A copy of any warrant of arrest for that person;

(*b*) A copy of the judgement of conviction;

(*c*) Information to demonstrate that the person sought is the one referred to in the judgement of conviction; and

(*d*) If the person sought has been sentenced, a copy of the sentence imposed and, in the case of a sentence for imprisonment, a statement of any time already served and the time remaining to be served.

4. Upon the request of the Court, a State Party shall consult with the Court, either generally or with respect to a specific matter, regarding any requirements under its national law that may apply under paragraph 2 (*c*). During the consultations,

the State Party shall advise the Court of the specific requirements of its national law.

Article 92

PROVISIONAL ARREST

1. In urgent cases, the Court may request the provisional arrest of the person sought, pending presentation of the request for surrender and the documents supporting the request as specified in article 91.

2. The request for provisional arrest shall be made by any medium capable of delivering a written record and shall contain:

(*a*) Information describing the person sought, sufficient to identify the person, and information as to that person's probable location;

(*b*) A concise statement of the crimes for which the person's arrest is sought and of the facts which are alleged to constitute those crimes, including, where possible, the date and location of the crime;

(*c*) A statement of the existence of a warrant of arrest or a judgement of conviction against the person sought; and

(*d*) A statement that a request for surrender of the person sought will follow.

3. A person who is provisionally arrested may be released from custody if the requested State has not received the request for surrender and the documents supporting the request as specified in article 91 within the time limits specified in the Rules of Procedure and Evidence. However, the person may consent to surrender before the expiration of this period if permitted by the law of the requested State. In such a case, the requested State shall proceed to surrender the person to the Court as soon as possible.

4. The fact that the person sought has been released from custody pursuant to paragraph 3 shall not prejudice the subsequent arrest and surrender of that person if the request for surrender and the documents supporting the request are delivered at a later date.

Article 93

OTHER FORMS OF COOPERATION

1. States Parties shall, in accordance with the provisions of this Part and under procedures of national law, comply with requests by the Court to provide the following assistance in relation to investigations or prosecutions:

(*a*) The identification and whereabouts of persons or the location of items;

(*b*) The taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the Court;

(*c*) The questioning of any person being investigated or prosecuted;

(*d*) The service of documents, including judicial documents;

(*e*) Facilitating the voluntary appearance of persons as witnesses or experts before the Court;

(*f*) The temporary transfer of persons as provided in paragraph 7;

(*g*) The examination of places or sites, including the exhumation and examination of grave sites;

(*h*) The execution of searches and seizures;

(*i*) The provision of records and documents, including official records and documents;

(*j*) The protection of victims and witnesses and the preservation of evidence;

(*k*) The identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties; and

(*l*) Any other type of assistance which is not prohibited by the law of the requested State, with a view to facilitating the investigation and prosecution of crimes within the jurisdiction of the Court.

2. The Court shall have the authority to provide an assurance to a witness or an expert appearing before the Court that he or she will not be prosecuted, detained or subjected to any restriction of personal freedom by the Court in respect of any act or omission that preceded the departure of that person from the requested State.

3. Where execution of a particular measure of assistance, detailed in a request presented under paragraph 1, is prohibited in the requested State on the basis of an existing fundamental legal principle of general application, the requested State shall promptly consult with the Court to try to resolve the matter. In the consultations, consideration should be given to whether the assistance can be rendered in another manner or subject to conditions. If after consultations the matter cannot be resolved, the Court shall modify the request as necessary.

4. In accordance with article 72, a State Party may deny a request for assistance, in whole or in part, only if the request concerns the production of any documents or disclosure of evidence which relates to its national security.

5. Before denying a request for assistance under paragraph 1 (1), the requested State shall consider whether the assistance can be provided subject to specified conditions, or whether the assistance can be provided at a later date or in an alternative manner, provided that if the Court or the Prosecutor accepts the assistance subject to conditions, the Court of the Prosecutor shall abide by them.

6. If a request for assistance is denied, the requested State Party shall promptly inform the Court or the Prosecutor of the reasons for such denial.

7. (*a*) The Court may request the temporary transfer of a person in custody for purposes of identification or for obtaining testimony or other assistance. The person may be transferred if the following conditions are fulfilled:

(i) The person freely gives his or her informed consent to the transfer; and

(ii) The requested State agrees to the transfer, subject to such conditions as that State and the Court may agree.

(*b*) The person being transferred shall remain in custody. When the purposes of the transfer have been fulfilled, the Court shall return the person without delay to the requested State.

8. (*a*) The Court shall ensure the confidentiality of documents and information, except as required for the investigation and proceedings described in the request.

(*b*) The requested State may, when necessary, transmit documents or information to the Prosecutor on a confidential basis. The Prosecutor may then use them solely for the purpose of generating new evidence.

(*c*) The requested State may, on its own motion or at the request of the Prosecutor, subsequently consent to the disclosure of such documents or information. They may then be used as evidence pursuant to the provisions of Parts 5 and 6 and in accordance with the Rules of Procedure and Evidence.

9. (*a*) (i) In the event that a State Party receives competing requests, other than for surrender or extradition, from the Court and from another State pursuant to an international obligation, the State Party shall endeavour, in consultation with the Court and the other State, to meet both requests, if necessary by postponing or attaching conditions to one or the other request.

(ii) Failing that, competing requests shall be resolved in accordance with the principles established in article 90.

(*b*) Where, however, the request from the Court concerns information, property or persons which are subject to the control of a third State or an international organization by virtue of an international agreement, the requested States shall so inform the Court and the Court shall direct its request to the third State or international organization.

10. (*a*) The Court may, upon request, cooperate with and provide assistance to a State Party conducting an investigation into or trial in respect of conduct which constitutes a crime within the jurisdiction of the Court or which constitutes a serious crime under the national law of the requesting State.

(*b*) (i) The assistance provided under subparagraph (*a*) shall include, inter alia:

a. The transmission of statements, documents or other types of evidence obtained in the course of an investigation or a trial conducted by the Court; and

b. The questioning of any person detained by order of the Court;

(ii) In the case of assistance under subparagraph (*b*) (i) *b*:

a. If the documents or other types of evidence have been obtained with the assistance of a State, such transmission shall require the consent of that State;

b. If the statements, documents or other types of evidence have been provided by a witness or expert, such transmission shall be subject to the provisions of article 68.

(*c*) The Court may, under the conditions set out in this paragraph, grant a request for assistance under this paragraph from a State which is not a Party to the Statute.

Article 94

POSTPONEMENT OF EXECUTION OF A REQUEST IN RESPECT OF ONGOING INVESTIGATION OR PROSECUTION

1. If the immediate execution of a request would interfere with an ongoing investigation or prosecution of a case different from that to which the request relates, the requested State may postpone the execution of the request for a period of time agreed upon with the Court. However, the postponement shall be no longer than is necessary to complete the relevant investigation or prosecution in the requested State. Before making a decision to postpone, the requested State should consider whether the assistance may be immediately provided subject to certain conditions.

2. If a decision to postpone is taken pursuant to paragraph 1, the Prosecutor may, however, seek measures to preserve evidence, pursuant to article 93, paragraph 1 (*j*).

Article 95

POSTPONEMENT OF EXECUTION OF A REQUEST IN RESPECT OF AN ADMISSIBILITY CHALLENGE

Without prejudice to article 53, paragraph 2, where there is an admissibility challenge under consideration by the Court pursuant to articles 18 or 19, the requested State may postpone the execution of a request under this Part pending a determination by the Court, unless the Court has specifically ordered that the Prosecutor may pursue the collection of such evidence pursuant to articles 18 or 19.

Article 96

CONTENTS OF REQUEST FOR OTHER FORMS OF ASSISTANCE UNDER ARTICLE 93

1. A request for other forms of assistance referred to in article 93 shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in article 87, paragraph 1 (*a*).

2. The request shall, as applicable, contain or be supported by the following:

(*a*) A concise statement of the purpose of the request and the assistance sought, including the legal basis and the grounds for the request;

(*b*) As much detailed information as possible about the location or identification of any person or place that must be found or identified in order for the assistance sought to be provided;

(*c*) A concise statement of the essential facts underlying the request;

(*d*) The reasons for and details of any procedure or requirement to be followed;

(*e*) Such information as may be required under the law of the requested State in order to execute the request; and

(*f*) Any other information relevant in order for the assistance sought to be provided.

3. Upon the request of the Court, a State Party shall consult with the Court, either generally or with respect to a specific matter, regarding any requirements under its national law that may apply under paragraph 2 (*e*). During the consultations, the State Party shall advise the Court of the specific requirements of its national law.

4. The provisions of this article shall, where applicable, also apply in respect of a request for assistance made to the Court.

Article 97

CONSULTATIONS

Where a State Party receives a request under this Part in relation to which it identifies problems which may impede or prevent the execution of the request, that

State shall consult with the Court without delay in order to resolve the matter. Such problems may include, inter alia:

(*a*) Insufficient information to execute the request;

(*b*) In the case of a request for surrender, the fact that despite best efforts, the person sought cannot be located or that the investigation conducted has determined that the person in the custodial State is clearly not the person named in the warrant; or

(*c*) The fact that execution of the request in its current form would require the requested State to breach a pre-existing treaty obligation undertaken with respect to another State.

Article 98

COOPERATION WITH RESPECT TO WAIVER OF IMMUNITY AND CONSENT TO SURRENDER

1. The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.

2. The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.

Article 99

EXECUTION OF REQUESTS UNDER ARTICLES 93 AND 96

1. Requests for assistance shall be executed in accordance with the relevant procedure under the law of the requested State and, unless prohibited by such law, in the manner specified in the request, including following any procedure outlined therein or permitting persons specified in the request to be present at and assist in the execution process.

2. In the case of an urgent request, the documents or evidence produced in response shall, at the request of the Court, be sent urgently.

3. Replies from the requested State shall be transmitted in their original language and form.

4. Without prejudice to other articles in this Part, where it is necessary for the successful execution of a request which can be executed without any compulsory measures, including specifically the interview of or taking evidence from a person on a voluntary basis, including doing so without the presence of the authorities of the requested State Party if it is essential for the request to be executed, and the examination without modification of a public site or other public place, the Prosecutor may execute such request directly on the territory of a State as follows:

(*a*) When the State Party requested is a State on the territory of which the crime is alleged to have been committed, and there has been a determination of admissibility pursuant to articles 18 or 19, the Prosecutor may directly execute such request following all possible consultations with the requested State Party;

(*b*) In other cases, the Prosecutor may execute such request following consultations with the requested State Party and subject to any reasonable conditions or concerns raised by that State Party. Where the requested State Party identifies problems with the execution of a request pursuant to this subparagraph it shall, without delay, consult with the Court to resolve the matter.

5. Provisions allowing a person heard or examined by the Court under article 72 to invoke restrictions designed to prevent disclosure of confidential information connected with national defence or security shall also apply to the execution of requests for assistance under this article.

Article 100

COSTS

1. The ordinary costs for execution of requests in the territory of the requested State shall be borne by that State, except for the following, which shall be borne by the Court:

(*a*) Costs associated with the travel and security of witnesses and experts or the transfer under article 93 of persons in custody;

(*b*) Costs of translation, interpretation and transcription;

(*c*) Travel and subsistence costs of the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar and staff of any organ of the Court;

(*d*) Costs of any expert opinion or report requested by the Court;

(*e*) Costs associated with the transport of a person being surrendered to the Court by a custodial State; and

(*f*) Following consultations, any extraordinary costs that may result from the execution of a request.

2. The provisions of paragraph 1 shall, as appropriate, apply to requests from States Parties to the Court. In that case, the Court shall bear the ordinary costs of execution.

Article 101

RULE OF SPECIALITY

1. A person surrendered to the Court under this Statute shall not be proceeded against, punished or detained for any conduct committed prior to surrender, other than the conduct or course of conduct which forms the basis of the crimes for which that person has been surrendered.

2. The Court may request a waiver of the requirements of paragraph 1 from the State which surrendered the person to the Court and, if necessary, the Court shall provide additional information in accordance with article 91. States Parties shall have the authority to provide a waiver to the Court and should endeavour to do so.

Article 102

USE OF TERMS

For the purposes of this Statute:

(*a*) "surrender" means the delivering up of a person by a State to the Court, pursuant to this Statute;

(*b*) "extradition" means the delivering up of a person by one State to another as provided by treaty, convention or national legislation.

PART 10. ENFORCEMENT

Article 103

ROLE OF STATES IN ENFORCEMENT OF SENTENCES OF IMPRISONMENT

1. (*a*) A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept sentenced persons.

(*b*) At the time of declaring its willingness to accept sentenced persons, a State may attach conditions to its acceptance as agreed by the Court and in accordance with this Part.

(*c*) A State designated in a particular case shall promptly inform the Court whether it accepts the Court's designation.

2. (*a*) The State of enforcement shall notify the Court of any circumstances, including the exercise of any conditions agreed under paragraph 1, which could materially affect the terms or extent of the imprisonment. The Court shall be given at least 45 days' notice of any such known or foreseeable circumstances. During this period, the State of enforcement shall take no action that might prejudice its obligations under article 110.

(*b*) Where the Court cannot agree to the circumstances referred to in subparagraph (*a*), it shall notify the State of enforcement and proceed in accordance with article 104, paragraph 1.

3. In exercising its discretion to make a designation under paragraph 1, the Court shall take into account the following:

(*a*) The principle that States Parties should share the responsibility for enforcing sentences of imprisonment, in accordance with principles of equitable distribution, as provided in the Rules of Procedure and Evidence;

(*b*) The application of widely accepted international treaty standards governing the treatment of prisoners;

(*c*) The views of the sentenced person; and

(*d*) The nationality of the sentenced person;

(*e*) Such other factors regarding the circumstances of the crime or the person sentenced, or the effective enforcement of the sentence, as may be appropriate in designating the State of enforcement.

4. If no State is designated under paragraph 1, the sentence of imprisonment shall be served in a prison facility made available by the host State, in accordance with the conditions set out in the headquarters agreement referred to in article 3, paragraph 2. In such a case, the costs arising out of the enforcement of a sentence of imprisonment shall be borne by the Court.

Article 104

CHANGE IN DESIGNATION OF STATE OF ENFORCEMENT

1. The Court may, at any time, decide to transfer a sentenced person to a prison of another State.

2. A sentenced person may, at any time, apply to the Court to be transferred from the State of enforcement.

Article 105

ENFORCEMENT OF THE SENTENCE

1. Subject to conditions which a State may have specified in accordance with article 103, paragraph 1 (*b*), the sentence of imprisonment shall be binding on the States Parties, which shall in no case modify it.

2. The Court alone shall have the right to decide any application for appeal and revision. The State of enforcement shall not impede the making of any such application by a sentenced person.

Article 106

SUPERVISION OF ENFORCEMENT OF SENTENCES AND CONDITIONS OF IMPRISONMENT

1. The enforcement of a sentence of imprisonment shall be subject to the supervision of the Court and shall be consistent with widely accepted international treaty standards governing treatment of prisoners.

2. The conditions of imprisonment shall be governed by the law of the State of enforcement and shall be consistent with widely accepted international treaty standards governing treatment of prisoners; in no case shall such conditions be more or less favourable than those available to prisoners convicted of similar offences in the State of enforcement.

3. Communications between a sentenced person and the Court shall be unimpeded and confidential.

Article 107

TRANSFER OF THE PERSON UPON COMPLETION OF SENTENCE

1. Following completion of the sentence, a person who is not a national of the State of enforcement may, in accordance with the law of the State of enforcement, be transferred to a State which is obliged to receive him or her, or to another State which agrees to receive him or her, taking into account any wishes of the person to be transferred to that State, unless the State of enforcement authorizes the person to remain in its territory.

2. If no State bears the costs arising out of transferring the person to another State pursuant to paragraph 1, such costs shall be borne by the Court.

3. Subject to the provisions of article 108, the State of enforcement may also, in accordance with its national law, extradite or otherwise surrender the person to the State which has requested the extradition or surrender of the person for purposes of trial or enforcement of a sentence.

Article 108

LIMITATION ON THE PROSECUTION OR PUNISHMENT OF OTHER OFFENCES

1. A sentenced person in the custody of the State of enforcement shall not be subject to prosecution or punishment or to extradition to a third State for any conduct engaged in prior to that person's delivery to the State of enforcement, unless

such prosecution, punishment or extradition has been approved by the Court at the request of the State of enforcement.

2. The Court shall decide the matter after having heard the views of the sentenced person.

3. Paragraph 1 shall cease to apply if the sentenced person remains voluntarily for more than 30 days in the territory of the State of enforcement after having served the full sentence imposed by the Court, or returns to the territory of that State after having left it.

Article 109

ENFORCEMENT OF FINES AND FORFEITURE MEASURES

1. States Parties shall give effect to fines or forfeitures ordered by the Court under Part 7, without prejudice to the rights of bona fide third parties, and in accordance with the procedure of their national law.

2. If a State Party is unable to give effect to an order for forfeiture, it shall take measures to recover the value of the proceeds, property or assets ordered by the Court to be forfeited, without prejudice to the rights of bona fide third parties.

3. Property, or the proceeds of the sale of real property or, where appropriate, the sale of other property, which is obtained by a State Party as a result of its enforcement of a judgement of the Court shall be transferred to the Court.

Article 110

REVIEW BY THE COURT CONCERNING REDUCTION OF SENTENCE

1. The State of enforcement shall not release the person before expiry of the sentence pronounced by the Court.

2. The Court alone shall have the right to decide any reduction of sentence, and shall rule on the matter after having heard the person.

3. When the person has served two thirds of the sentence, or 25 years in the case of life imprisonment, the Court shall review the sentence to determine whether it should be reduced. Such a review shall not be conducted before that time.

4. In its review under paragraph 3, the Court may reduce the sentence if it finds that one or more of the following factors are present:

(*a*) The early and continuing willingness of the person to cooperate with the Court in its investigations and prosecutions;

(*b*) The voluntary assistance of the person in enabling the enforcement of the judgements and orders of the Court in other cases, and in particular providing assistance in locating assets subject to orders of fine, forfeiture or reparation which may be used for the benefit of victims; or

(*c*) Other factors establishing a clear and significant change of circumstances sufficient to justify the reduction of sentence, as provided in the Rules of Procedure and Evidence.

5. If the Court determines in its initial review under paragraph 3 that it is not appropriate to reduce the sentence, it shall thereafter review the question of reduction of sentence at such intervals and applying such criteria as provided for in the Rules of Procedure and Evidence.

Article 111

ESCAPE

If a convicted person escapes from custody and flees the State of enforcement, that State may, after consultation with the Court, request the person's surrender from the State in which the person is located pursuant to existing bilateral or multilateral arrangements, or may request that the Court seek the person's surrender. It may direct that the person be delivered to the State in which he or she was serving the sentence or to another State designated by the Court.

PART 11. ASSEMBLY OF STATES PARTIES

Article 112

ASSEMBLY OF STATES PARTIES

1. An Assembly of States Parties to this Statute is hereby established. Each State Party shall have one representative in the Assembly who may be accompanied by alternates and advisers. Other States which have signed the Statute or the Final Act may be observers in the Assembly.

2. The Assembly shall:

(*a*) Consider and adopt, as appropriate, recommendations of the Preparatory Commission;

(*b*) Provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court;

(*c*) Consider the reports and activities of the Bureau established under paragraph 3 and take appropriate action in regard thereto;

(*d*) Consider and decide the budget for the Court;

(*e*) Decide whether to alter, in accordance with article 36, the number of judges;

(*f*) Consider pursuant to article 87, paragraphs 5 and 7, any question relating to non-cooperation;

(*g*) Perform any other function consistent with this Statute or the Rules of Procedure and Evidence.

3. (*a*) The Assembly shall have a Bureau consisting of a President, two Vice-Presidents and 18 members elected by the Assembly for three-year terms.

(*b*) The Bureau shall have a representative character, taking into account, in particular, equitable geographical distribution and the adequate representation of the principal legal systems of the world.

(*c*) The Bureau shall meet as often as necessary, but at least once a year. It shall assist the Assembly in the discharge of its responsibilities.

4. The Assembly may establish such subsidiary bodies as may be necessary, including an independent oversight mechanism for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy.

5. The President of the Court, the Prosecutor and the Registrar or their representatives may participate, as appropriate, in meetings of the Assembly and of the Bureau.

6. The Assembly shall meet at the seat of the Court or at the Headquarters of the United Nations once a year and, when circumstances so require, hold special sessions. Except as otherwise specified in this Statute, special sessions shall be convened by the Bureau on its own initiative or at the request of one third of the States Parties.

7. Each State Party shall have one vote. Every effort shall be made to reach decisions by consensus in the Assembly and in the Bureau. If consensus cannot be reached, except as otherwise provided in the Statute:

(*a*) Decisions on matters of substance must be approved by a two-thirds majority of those present and voting provided that an absolute majority of States Parties constitutes the quorum for voting;

(*b*) Decisions on matters of procedure shall be taken by a simple majority of States Parties present and voting.

8. A State Party which is in arrears in the payment of its financial contributions towards the costs of the Court shall have no vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Assembly may, nevertheless, permit such a State Party to vote in the Assembly and in the Bureau if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.

9. The Assembly shall adopt its own rules of procedure.

10. The official and working languages of the Assembly shall be those of the General Assembly of the United Nations.

PART 12. FINANCING

Article 113

FINANCIAL REGULATIONS

Except as otherwise specifically provided, all financial matters related to the Court and the meetings of the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be governed by this Statute and the Financial Regulations and Rules adopted by the Assembly of States Parties.

Article 114

PAYMENT OF EXPENSES

Expenses of the Court and the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be paid from the funds of the Court.

Article 115

FUNDS OF THE COURT AND OF THE ASSEMBLY OF STATES PARTIES

The expenses of the Court and the Assembly of States Parties, including its Bureau and subsidiary bodies, as provided for in the budget decided by the Assembly of States Parties, shall be provided by the following sources:

(*a*) Assessed contributions made by States Parties;

(*b*) Funds provided by the United Nations, subject to the approval of the General Assembly, in particular in relation to the expenses incurred due to referrals by the Security Council.

Article 116

VOLUNTARY CONTRIBUTIONS

Without prejudice to article 115, the Court may receive and utilize, as additional funds, voluntary contributions from Governments, international organizations, individuals, corporations and other entities, in accordance with relevant criteria adopted by the Assembly of States Parties.

Article 117

ASSESSMENT OF CONTRIBUTIONS

The contributions of States Parties shall be assessed in accordance with an agreed scale of assessment, based on the scale adopted by the United Nations for its regular budget and adjusted in accordance with the principles on which that scale is based.

Article 118

ANNUAL AUDIT

The records, books and accounts of the Court, including its annual financial statements, shall be audited annually by an independent auditor.

PART 13. FINAL CLAUSES

Article 119

SETTLEMENT OF DISPUTES

1. Any dispute concerning the judicial functions of the Court shall be settled by the decision of the Court.

2. Any other dispute between two or more States Parties relating to the interpretation or application of this Statute which is not settled through negotiations within three months of their commencement shall be referred to the Assembly of States Parties. The Assembly may itself seek to settle the dispute or make recommendations on further means of settlement of the dispute, including referral to the International Court of Justice in conformity with the Statute of that Court.

Article 120

RESERVATIONS

No reservations may be made to this Statute.

Article 121

AMENDMENTS

1. After the expiry of seven years from the entry into force of this Statute, any State Party may propose amendments thereto. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations, who shall promptly circulate it to all States Parties.

2. No sooner than three months from the date of notification, the next Assembly of States Parties shall, by a majority of those present and voting, decide

whether to take up the proposal. The Assembly may deal with the proposal directly or convene a Review Conference if the issue involved so warrants.

3. The adoption of an amendment at a meeting of the Assembly of States Parties or at a Review Conference on which consensus cannot be reached shall require a two-thirds majority of States Parties.

4. Except as provided in paragraph 5, an amendment shall enter into force for all States Parties one year after instruments of ratification or acceptance have been deposited with the Secretary-General of the United Nations by seven-eighths of them.

5. Any amendment to article 5 of this Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance. In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State Party's nationals or on its territory.

6. If an amendment has been accepted by seven-eighths of States Parties in accordance with paragraph 4, any State Party which has not accepted the amendment may withdraw from the Statute with immediate effect, notwithstanding paragraph 1 of article 127, but subject to paragraph 2 of article 127, by giving notice no later than one year after the entry into force of such amendment.

7. The Secretary-General of the United Nations shall circulate to all States Parties any amendment adopted at a meeting of the Assembly of States Parties or at a Review Conference.

Article 122

Amendments to provisions of an institutional nature

1. Amendments to provisions of the Statute which are of an exclusively institutional nature, namely, article 35, article 36, paragraphs 8 and 9, article 37, article 38, article 39, paragraphs 1 (first two sentences), 2 and 4, article 42, paragraphs 4 to 9, article 43, paragraphs 2 and 3, and articles 44, 46, 47 and 49, may be proposed at any time, notwithstanding article 121, paragraph 1, by any State Party. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations or such other person designated by the Assembly of States Parties who shall promptly circulate it to all States Parties and to others participating in the Assembly.

2. Amendments under this article on which consensus cannot be reached shall be adopted by the Assembly of States Parties or by a Review Conference, by a two-thirds majority of States Parties. Such amendments shall enter into force for all States Parties six months after their adoption by the Assembly or, as the case may be, by the Conference.

Article 123

Review of the Statute

1. Seven years after the entry into force of this Statute the Secretary-General of the United Nations shall convene a Review Conference to consider any amendments to this Statute. Such review may include, but is not limited to, the list of crimes contained in article 5. The Conference shall be open to those participating in the Assembly of States Parties and on the same conditions.

2. At any time thereafter, at the request of a State Party and for the purposes set out in paragraph 1, the Secretary-General of the United Nations shall, upon approval by a majority of States Parties, convene a Review Conference.

3. The provisions of article 121, paragraphs 3 to 7, shall apply to the adoption and entry into force of any amendment to the Statute considered at a Review Conference.

Article 124

TRANSITIONAL PROVISION

Notwithstanding article 12, paragraph 1, a State, on becoming a party to this Statute, may declare that, for a period of seven years after the entry into force of this Statute for the State concerned, it does not accept the jurisdiction of the Court with respect to the category of crimes referred to in article 8 when a crime is alleged to have been committed by its nationals or on its territory. A declaration under this article may be withdrawn at any time. The provisions of this article shall be reviewed at the Review Conference convened in accordance with article 123, paragraph 1.

Article 125

SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

1. This Statute shall be open for signature by all States in Rome, at the headquarters of the Food and Agriculture Organization of the United Nations, on 17 July 1998. Thereafter, it shall remain open for signature in Rome at the Ministry of Foreign Affairs of Italy until 17 October 1998. After that date, the Statute shall remain open for signature in New York, at United Nations Headquarters, until 31 December 2000.

2. This Statute is subject to ratification, acceptance or approval by signatory States. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Statute shall be open to accession by all States. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 126

ENTRY INTO FORCE

1. This Statute shall enter into force on the first day of the month after the 60th day following the date of the deposit of the 60th instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Statute after the deposit of the 60th instrument of ratification, acceptance, approval or accession, the Statute shall enter into force on the first day of the month after the 60th day following the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 127

WITHDRAWAL

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, withdraw from this Statute. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Statute while it was a Party to the Statute, including any financial obligations which may have accrued. Its withdrawal shall not affect any cooperation with the Court in connection with criminal investigations and proceedings in relation to which the withdrawing State had a duty to cooperate and which were commenced prior to the date on which the withdrawal became effective, nor shall it prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective.

Article 128

AUTHENTIC TEXTS

The original of this Statute, 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, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Statute.

DONE at Rome, this 17th day of July 1998.

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4. ROTTERDAM CONVENTION ON THE PRIOR INFORMED CONSENT PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES IN INTERNATIONAL TRADE.[6] DONE AT ROTTERDAM ON 20 SEPTEMBER 1998[7]

The Parties to this Convention,

Aware of the harmful impact on human health and the environment from certain hazardous chemicals and pesticides in international trade,

Recalling the pertinent provisions of the Rio Declaration on Environment and Development and chapter 19 of Agenda 21 on "Environmentally sound management of toxic chemicals, including prevention of illegal international traffic in toxic and dangerous products",

Mindful of the work undertaken by the United Nations Environment Programme (UNEP) and the Food and Agriculture Organization of the United Nations (FAO) in the operation of the voluntary Prior Informed Consent procedure, as set out in the UNEP Amended London Guidelines for the Exchange of Information on Chemicals in International Trade (hereinafter referred to as the "Amended London Guidelines") and the FAO International Code of Conduct on the Distribution and Use of Pesticides (hereinafter referred to as the "International Code of Conduct"),

Taking into account the circumstances and particular requirements of developing countries and countries with economies in transition, in particular the need to strengthen national capabilities and capacities for the management of chemicals, including transfer of technology, providing financial and technical assistance and promoting cooperation among the Parties,

Noting the specific needs of some countries for information on transit movements,

Recognizing that good management practices for chemicals should be promoted in all countries, taking into account, inter alia, the voluntary standards laid down in the International Code of Conduct and the UNEP Code of Ethics on the International Trade in Chemicals,

Desiring to ensure that hazardous chemicals that are exported from their territory are packaged and labelled in a manner that is adequately protective of human health and the environment, consistent with the principles of the Amended London Guidelines and the International Code of Conduct,

Recognizing that trade and environmental policies should be mutually supportive with a view to achieving sustainable development,

Emphasizing that nothing in this Convention shall be interpreted as implying in any way a change in the rights and obligations of a Party under any existing international agreement applying to chemicals in international trade or to environmental protection,

Understanding that the above recital is not intended to create a hierarchy between this Convention and other international agreements,

Determined to protect human health, including the health of consumers and workers, and the environment against potentially harmful impacts from certain hazardous chemicals and pesticides in international trade,

Have agreed as follows:

Article 1

OBJECTIVE

The objective of this Convention is to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use, by facilitating information exchange about their characteristics, by providing for a national decision-making process on their import and export and by disseminating these decisions to Parties.

Article 2

DEFINITIONS

For the purposes of this Convention:

(*a*) "chemical" means a substance whether by itself or in a mixture or preparation and whether manufactured or obtained from nature, but does not include any living organism. It consists of the following categories pesticide (including severely hazardous pesticide formulations) and industrial;

(*b*) "banned chemical" means a chemical all uses of which within one or more categories have been prohibited by final regulatory action, in order to protect human health or the environment. It includes a chemical that has been refused approval for first-time use or has been withdrawn by industry either from the domestic market or from further consideration in the domestic approval process and where there is clear evidence that such action has been taken in order to protect human health or the environment;

(*c*) "severely restricted chemical" means a chemical virtually all use of which within one or more categories has been prohibited by final regulatory action in order to protect human health or the environment, but for which certain specific uses remain allowed. It includes a chemical that has, for virtually all use, been refused for approval or been withdrawn by industry either from the domestic market or from further consideration in the domestic approval process, and where there is clear evidence that such action has been taken in order to protect human health or the environment;

(*d*) "severely hazardous pesticide formulation" means a chemical formulated for pesticidal use that produces severe health or environmental effects observable within a short period of time after single or multiple exposure, under conditions of use;

(*e*) "final regulatory action" means an action taken by a Party, that does not require subsequent regulatory action by that Party, the purpose of which is to ban or severely restrict a chemical;

(*f*) "export" and "import" mean, in their respective connotations, the movement of a chemical from one Party to another Party, but exclude mere transit operations;

(*g*) "Party" means a State or regional economic integration organization that has consented to be bound by this Convention and for which the Convention is in force;

(*h*) "regional economic integration organization" means an organization constituted by sovereign States of a given region to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Convention;

(*i*) "Chemical Review Committee" means the subsidiary body referred to in paragraph 6 of article 18.

Article 3

SCOPE OF THE CONVENTION

1. This Convention applies to:

(*a*) Banned or severely restricted chemicals;

(*b*) Severely hazardous pesticide formulations.

2. This Convention does not apply to:

(*a*) Narcotic drugs and psychotropic substances;

(*b*) Radioactive materials;

(*c*) Wastes;

(*d*) Chemical weapons;

(*e*) Pharmaceuticals, including human and veterinary drugs;

(*f*) Chemicals used as food additives;

(*g*) Food;

(*h*) Chemicals in quantities not likely to affect human health or the environment provided they are imported:

(i) For the purpose of research or analysis; or

(ii) By an individual for his or her own personal use in quantities reasonable for such use.

Article 4

DESIGNATED NATIONAL AUTHORITIES

1. Each Party shall designate one or more national authorities that shall be authorized to act on its behalf in the performance of the administrative functions required by this Convention.

2. Each Party shall seek to ensure that such authority or authorities have sufficient resources to perform their tasks effectively.

3. Each Party shall, no later than the date of the entry into force of this Convention for it, notify the name and address of such authority or authorities to the Secretariat. It shall forthwith notify the Secretariat of any changes in the name and address of such authority or authorities.

4. The Secretariat shall forthwith inform the Parties of the notifications it receives under paragraph 3.

Article 5

PROCEDURES FOR BANNED OR SEVERELY RESTRICTED CHEMICALS

1. Each Party that has adopted a final regulatory action shall notify the Secretariat in writing of such action. Such notification shall be made as soon as possible, and in any event no later than ninety days after the date on which the final regulatory action has taken effect, and shall contain the information required by annex I, where available.

2. Each Party shall, at the date of entry into force of this Convention for it, notify the Secretariat in writing of its final regulatory actions in effect at that time, except that each Party that has submitted notifications of final regulatory actions under the Amended London Guidelines or the International Code of Conduct need not resubmit those notifications.

3. The Secretariat shall, as soon as possible, and in any event no later than six months after receipt of a notification under paragraphs 1 and 2, verify whether the notification contains the information required by annex I. If the notification contains the information required, the Secretariat shall forthwith forward to all Parties a summary of the information received. If the notification does not contain the information required, it shall inform the notifying Party accordingly.

4. The Secretariat shall every six months communicate to the Parties a synopsis of the information received pursuant to paragraphs 1 and 2, including information regarding those notifications which do not contain all the information required by annex I.

5. When the Secretariat has received at least one notification from each of two Prior Informed Consent regions regarding a particular chemical that it has verified meets the requirements of annex I, it shall forward them to the Chemical Review Committee. The composition of the Prior Informed Consent regions shall be defined in a decision to be adopted by consensus at the first meeting of the Conference of the Parties.

6. The Chemical Review Committee shall review the information provided in such notifications and, in accordance with the criteria set out in annex II, recom-

mend to the Conference of the Parties whether the chemical in question should be made subject to the Prior Informed Consent procedure and, accordingly, be listed in annex III.

Article 6

PROCEDURES FOR SEVERELY HAZARDOUS PESTICIDE FORMULATIONS

1. Any Party that is a developing country or a country with an economy in transition and that is experiencing problems caused by a severely hazardous pesticide formulation under conditions of use in its territory may propose to the Secretariat the listing of the severely hazardous pesticide formulation in annex III. In developing a proposal, the Party may draw upon technical expertise from any relevant source. The proposal shall contain the information required by part 1 of annex IV.

2. The Secretariat shall, as soon as possible, and in any event no later than six months after receipt of a proposal under paragraph 1, verify whether the proposal contains the information required by part 1 of annex IV. If the proposal contains the information required, the Secretariat shall forthwith forward to all Parties a summary of the information received. If the proposal does not contain the information required, it shall inform the proposing Party accordingly.

3. The Secretariat shall collect the additional information set out in part 2 of annex IV regarding the proposal forwarded under paragraph 2.

4. When the requirements of paragraphs 2 and 3 above have been fulfilled with regard to a particular severely hazardous pesticide formulation, the Secretariat shall forward the proposal and the related information to the Chemical Review Committee.

5. The Chemical Review Committee shall review the information provided in the proposal and the additional information collected and, in accordance with the criteria set out in part 3 of annex IV, recommend to the Conference of the Parties whether the severely hazardous pesticide formulation in question should be made subject to the Prior Informed Consent procedure and, accordingly, be listed in annex III.

Article 7

LISTING OF CHEMICALS IN ANNEX III

1. For each chemical that the Chemical Review Committee has decided to recommend for listing in annex III, it shall prepare a draft decision guidance document. The decision guidance document should, at a minimum, be based on the information specified in annex I, or, as the case may be, annex IV, and include information on uses of the chemical in a category other than the category for which the final regulatory action applies.

2. The recommendation referred to in paragraph 1 together with the draft decision guidance document shall be forwarded to the Conference of the Parties. The Conference of the Parties shall decide whether the chemical should be made subject to the Prior Informed Consent procedure and, accordingly, list the chemical in annex III and approve the draft decision guidance document.

3. When a decision to list a chemical in annex III has been taken and the related decision guidance document has been approved by the Conference of the Parties, the Secretariat shall forthwith communicate this information to all Parties.

Article 8

CHEMICALS IN THE VOLUNTARY PRIOR INFORMED CONSENT PROCEDURE

For any chemical, other than a chemical listed in annex III, that has been included in the voluntary Prior Informed Consent procedure before the date of the first meeting of the Conference of the Parties, the Conference of the Parties shall decide at that meeting to list the chemical in annex III, provided that it is satisfied that all the requirements for listing in that annex have been fulfilled.

Article 9

REMOVAL OF CHEMICALS FROM ANNEX III

1. If a Party submits to the Secretariat information that was not available at the time of the decision to list a chemical in annex III and that information indicates that its listing may no longer be justified in accordance with the relevant criteria in annex II or, as the case may be, annex IV, the Secretariat shall forward the information to the Chemical Review Committee.

2. The Chemical Review Committee shall review the information it receives under paragraph 1. For each chemical that the Chemical Review Committee decides, in accordance with the relevant criteria in annex II or, as the case may be, annex IV, to recommend for removal from annex III, it shall prepare a revised draft decision guidance document.

3. A recommendation referred to in paragraph 2 shall be forwarded to the Conference of the Parties and be accompanied by a revised draft decision guidance document. The Conference of the Parties shall decide whether the chemical should be removed from annex III and whether to approve the revised draft decision guidance document.

4. When a decision to remove a chemical from annex III has been taken and the revised decision guidance document has been approved by the Conference of the Parties, the Secretariat shall forthwith communicate this information to all Parties.

Article 10

OBLIGATIONS IN RELATION TO IMPORTS OF CHEMICALS LISTED IN ANNEX III

1. Each Party shall implement appropriate legislative or administrative measures to ensure timely decisions with respect to the import of chemicals listed in annex III.

2. Each Party shall transmit to the Secretariat, as soon as possible, and in any event no later than nine months after the date of dispatch of the decision guidance document referred to in paragraph 3 of article 7, a response concerning the future import of the chemical concerned. If a Party modifies this response, it shall forthwith submit the revised response to the Secretariat.

3. The Secretariat shall, at the expiration of the time period in paragraph 2, forthwith address to a Party that has not provided such a response a written request to do so. Should the Party be unable to provide a response, the Secretariat shall, where appropriate, help it to provide a response within the time period specified in the last sentence of paragraph 2 of article 11.

4. A response under paragraph 2 shall consist of either:

(*a*) A final decision, pursuant to legislative or administrative measures:

(i) To consent to import;

(ii) Not to consent to import; or

(iii) To consent to import only subject to specified conditions; or

(*b*) An interim response, which may include:

(i) An interim decision consenting to import with or without specified conditions, or not consenting to import during the interim period;

(ii) A statement that a final decision is under active consideration;

(iii) A request to the Secretariat, or to the Party that notified the final regulatory action, for further information;

(iv) A request to the Secretariat for assistance in evaluating the chemical.

5. A response under subparagraphs (*a*) or (*b*) of paragraph 4 shall relate to the category or categories specified for the chemical in annex III.

6. A final decision should be accompanied by a description of any legislative or administrative measures upon which it is based.

7. Each Party shall, no later than the date of entry into force of this Convention for it, transmit to the Secretariat responses with respect to each chemical listed in annex III. A Party that has provided such responses under the Amended London Guidelines or the International Code of Conduct need not resubmit those responses.

8. Each Party shall make its responses under this article available to those concerned within its jurisdiction, in accordance with its legislative or administrative measures.

9. A Party that, pursuant to paragraphs 2 and 4 above and paragraph 2 of article 11, takes a decision not to consent to import of a chemical or to consent to its import only under specified conditions shall, if it has not already done so, simultaneously prohibit or make subject to the same conditions:

(*a*) Import of the chemical from any source; and

(*b*) Domestic production of the chemical for domestic use.

10. Every six months the Secretariat shall inform all Parties of the responses it has received. Such information shall include a description of the legislative or administrative measures on which the decisions have been based, where available. The Secretariat shall, in addition, inform the Parties of any cases of failure to transmit a response.

Article 11

OBLIGATIONS IN RELATION TO EXPORTS OF CHEMICALS LISTED IN ANNEX III

1. Each exporting Party shall:

(*a*) Implement appropriate legislative or administrative measures to communicate the responses forwarded by the Secretariat in accordance with paragraph 10 of article 10 to those concerned within its jurisdiction;

(*b*) Take appropriate, legislative or administrative measures to ensure that exporters within its jurisdiction comply with decisions in each response no later than

six months after the date on which the Secretariat first informs the Parties of such response in accordance with paragraph 10 of article 10;

(*c*) Advise and assist importing Parties, upon request and as appropriate:

(i) To obtain further information to help them to take action in accordance with paragraph 4 of article 10 and paragraph 2 (*c*) below; and

(ii) To strengthen their capacities and capabilities to manage chemicals safely during their life cycle.

2. Each Party shall ensure that a chemical listed in annex III is not exported from its territory to any importing Party that, in exceptional circumstances, has failed to transmit a response or has transmitted an interim response that does not contain an interim decision, unless:

(*a*) It is a chemical that, at the time of import, is registered as a chemical in the importing Party; or

(*b*) It is a chemical for which evidence exists that it has previously been used in, or imported into, the importing Party and in relation to which no regulatory action to prohibit its use has been taken; or

(*c*) Explicit consent to the import has been sought and received by the exporter through a designated national authority of the importing Party. The importing Party shall respond to such a request within sixty days and shall promptly notify the Secretariat of its decision.

The obligations of exporting Parties under this paragraph shall apply with effect from the expiration of a period of six months from the date on which the Secretariat first informs the Parties, in accordance with paragraph 10 of article 10, that a Party has failed to transmit a response or has transmitted an interim response that does not contain an interim decision, and shall apply for one year.

Article 12

EXPORT NOTIFICATION

1. Where a chemical that is banned or severely restricted by a Party is exported from its territory, that Party shall provide an export notification to the importing Party. The export notification shall include the information set out in annex V.

2. The export notification shall be provided for that chemical prior to the first export following adoption of the corresponding final regulatory action. Thereafter, the export notification shall be provided before the first export in any calendar year. The requirement to notify before export may be waived by the designated national authority of the importing Party.

3. An exporting Party shall provide an updated export notification after it has adopted a final regulatory action that results in a major change concerning the ban or severe restriction of that chemical.

4. The importing Party shall acknowledge receipt of the first export notification received after the adoption of the final regulatory action. If the exporting Party does not receive the acknowledgement within thirty days of the dispatch of the export notification, it shall submit a second notification. The exporting Party shall make reasonable efforts to ensure that the importing Party receives the second notification.

5. The obligations of a Party set out in paragraph 1 shall cease when:

(*a*) The chemical has been listed in annex III;

(*b*) The importing Party has provided a response for the chemical to the Secretariat in accordance with paragraph 2 of article 10; and

(*c*) The Secretariat has distributed the response to the Parties in accordance with paragraph 10 of article 10.

Article 13

INFORMATION TO ACCOMPANY EXPORTED CHEMICALS

1. The Conference of the Parties shall encourage the world Customs Organization to assign specific Harmonized System customs codes to the individual chemicals or groups of chemicals listed in annex III, as appropriate. Each Party shall require that, whenever a code has been assigned to such a chemical, the shipping document for that chemical bears the code when exported.

2. Without prejudice to any requirements of the importing Party, each Party shall require that both chemicals listed in annex III and chemicals banned or severely restricted in its territory are, when exported, subject to labelling requirements that ensure adequate availability of information with regard to risks and/or hazards to human health or the environment, taking into account relevant international standards.

3. Without prejudice to any requirements of the importing Party, each Party may require that chemicals subject to environmental or health labelling requirements in its territory are, when exported, subject to labelling requirements that ensure adequate availability of information with regard to risks and/or hazards to human health or the environment, taking into account relevant international standards.

4. With respect to the chemicals referred to in paragraph 2 that are to be used for occupational purposes, each exporting Party shall require that a safety data sheet that follows an internationally recognized format, setting out the most up-to-date information available, is sent to each importer.

5. The information on the label and on the safety data sheet should, as far as practicable, be given in one or more of the official languages of the importing Party.

Article 14

INFORMATION EXCHANGE

1. Each Party shall, as appropriate and in accordance with the objective of this Convention, facilitate:

(*a*) The exchange of scientific, technical, economic and legal information concerning the chemicals within the scope of this Convention, including toxicological, ecotoxicological and safety information;

(*b*) The provision of publicly available information on domestic regulatory actions relevant to the objectives of this Convention; and

(*c*) The provision of information to other Parties, directly or through the Secretariat, on domestic regulatory actions that substantially restrict one or more uses of the chemical, as appropriate.

2. Parties that exchange information pursuant to this Convention shall protect any confidential information as mutually agreed.

3. The following information shall not be regarded as confidential for the purposes of this Convention:

(*a*) The information referred to in annexes I and IV, submitted pursuant to articles 5 and 6 respectively;

(*b*) The information contained in the safety data sheet referred to in paragraph 4 of article 13;

(*c*) The expiry date of the chemical;

(*d*) Information on precautionary measures, including hazard classification, the nature of the risk and the relevant safety advice; and

(*e*) The summary results of the toxicological and ecotoxicological tests.

4. The production date of the chemical shall generally not be considered confidential for the purposes of this Convention.

5. Any Party requiring information on transit movements through its territory of chemicals listed in annex III may report its need to the Secretariat, which shall inform all Parties accordingly.

Article 15

Implementation of the Convention

1. Each Party shall take such measures as may be necessary to establish and strengthen its national infrastructures and institutions for the effective implementation of this Convention. These measures may include, as required, the adoption or amendment of national legislative or administrative measures and may also include:

(*a*) The establishment of national registers and databases including safety information for chemicals;

(*b*) The encouragement of initiatives by industry to promote chemical safety; and

(*c*) The promotion of voluntary agreements, taking into consideration the provisions of article 16.

2. Each Party shall ensure, to the extent practicable, that the public has appropriate access to information on chemical handling and accident management and on alternatives that are safer for human health or the environment than the chemicals listed in annex III.

3. The Parties agree to cooperate, directly or, where appropriate, through competent international organizations, in the implementation of this Convention at the subregional, regional and global levels.

4. Nothing in this Convention shall be interpreted as restricting the right of the Parties to take action that is more stringently protective of human health and the environment than that called for in this Convention, provided that such action is consistent with the provisions of this Convention and is in accordance with international law.

Article 16

Technical assistance

The Parties shall, taking into account in particular the needs of developing countries and countries with economies in transition, cooperate in promoting technical assistance for the development of the infrastructure and the capacity necessary to

manage chemicals to enable implementation of this Convention. Parties with more advanced programmes for regulating chemicals should provide technical assistance, including training, to other Parties in developing their infrastructure and capacity to manage chemicals throughout their life cycle.

Article 17

NON-COMPLIANCE

The Conference of the Parties shall, as soon as practicable, develop and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Convention and for treatment of Parties found to be in non-compliance.

Article 18

CONFERENCE OF THE PARTIES

1. A Conference of the Parties is hereby established.

2. The first meeting of the Conference of the Parties shall be convened by the Executive Director of UNEP and the Director-General of FAO, acting jointly, no later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference.

3. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party provided that it is supported by at least one third of the Parties.

4. The Conference of the Parties shall by consensus agree upon and adopt at its first meeting rules of procedure and financial rules for itself and any subsidiary bodies, as well as financial provisions governing the functioning of the Secretariat.

5. The Conference of the Parties shall keep under continuous review and evaluation the implementation of this Convention. It shall perform the functions assigned to it by the Convention and, to this end, shall:

(*a*) Establish, further to the requirements of paragraph 6 below, such subsidiary bodies as it considers necessary for the implementation of the Convention;

(*b*) Cooperate, where appropriate, with competent international organizations and intergovernmental and non-governmental bodies; and

(*c*) Consider and undertake any additional action that may be required for the achievement of the objectives of the Convention.

6. The Conference of the Parties shall, at its first meeting, establish a subsidiary body, to be called the Chemical Review Committee, for the purposes of performing the functions assigned to that Committee by this Convention. In this regard:

(*a*) The members of the Chemical Review Committee shall be appointed by the Conference of the Parties. Membership of the Committee shall consist of a limited number of government-designated experts in chemicals management. The members of the Committee shall be appointed on the basis of equitable geographical distribution, including ensuring a balance between developed and developing Parties;

(*b*) The Conference of the Parties shall decide on the terms of reference, organization and operation of the Committee;

(*c*) The Committee shall make every effort to make its recommendations by consensus. If all efforts at consensus have been exhausted, and no consensus reached, such recommendation shall as a last resort be adopted by a two-thirds majority vote of the members present and voting.

7. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not Party to this Convention, may be represented at meetings of the Conference of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, qualified in matters covered by the Convention, and which has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties as an observer may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

Article 19

SECRETARIAT

1. A Secretariat is hereby established.

2. The functions of the Secretariat shall be:

(*a*) To make arrangements for meetings of the Conference of the Parties and its subsidiary bodies and to provide them with services as required;

(*b*) To facilitate assistance to the Parties, particularly developing Parties and Parties with economies in transition, on request, in the implementation of this Convention;

(*c*) To ensure the necessary coordination with the secretariats of other relevant international bodies;

(*d*) To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and

(*e*) To perform the other secretariat functions specified in this Convention and such other functions as may be determined by the Conference of the Parties.

3. The secretariat functions for this Convention shall be performed jointly by the Executive Director of UNEP and the Director-General of FAO, subject to such arrangements as shall be agreed between them and approved by the Conference of the Parties.

4. The Conference of the Parties may decide, by a three-fourths majority of the Parties present and voting, to entrust the secretariat functions to one or more other competent international organizations, should it find that the Secretariat is not functioning as intended.

Article 20

SETTLEMENT OF DISPUTES

1. Parties shall settle any dispute between them concerning the interpretation or application of this Convention through negotiation or other peaceful means of their own choice.

2. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party that is not a regional economic integration organization may declare in a written instrument submitted to the depositary that, with respect to any dispute concerning the interpretation or application of the Convention, it recognizes one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

(*a*) Arbitration in accordance with procedures to be adopted by the Conference of the Parties in an annex as soon as practicable; and

(*b*) Submission of the dispute to the International Court of Justice.

3. A Party that is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedure referred to in paragraph 2 (*a*).

4. A declaration made pursuant to paragraph 2 shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the depositary.

5. The expiry of a declaration, a notice of revocation or a new declaration shall not in any way affect proceedings pending before an arbitral tribunal or the International Court of Justice unless the parties to the dispute otherwise agree.

6. If the parties to a dispute have not accepted the same or any procedure pursuant to paragraph 2, and if they have not been able to settle their dispute within twelve months following notification by one party to another that a dispute exists between them, the dispute shall be submitted to a conciliation commission at the request of any party to the dispute. The conciliation commission shall render a report with recommendations. Additional procedures relating to the conciliation commission shall be included in an annex to be adopted by the Conference of the Parties no later than the second meeting of the Conference.

Article 21

Amendments to the Convention

1. Amendments to this Convention may be proposed by any Party.

2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. The text of any proposed amendment shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate the proposed amendment to the signatories to this Convention and, for information, to the depositary.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.

4. The amendment shall be communicated by the depositary to all Parties for ratification, acceptance or approval.

5. Ratification, acceptance or approval of an amendment shall be notified to the depositary in writing. An amendment adopted in accordance with paragraph 3 shall enter into force for the Parties having accepted it on the ninetieth day after the date of deposit of instruments of ratification, acceptance or approval by at least three fourths of the Parties. Thereafter, the amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits its instrument of ratification, acceptance or approval of the amendment.

Article 22

ADOPTION AND AMENDMENT OF ANNEXES

1. Annexes to this Convention shall form an integral part thereof and, unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to any annexes thereto.

2. Annexes shall be restricted to procedural, scientific, technical or administrative matters.

3. The following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention:

(*a*) Additional annexes shall be proposed and adopted according to the procedure laid down in paragraphs 1, 2 and 3 of article 21;

(*b*) Any Party that is unable to accept an additional annex shall so notify the depositary, in writing, within one year from the date of communication of the adoption of the additional annex by the depositary. The depositary shall without delay notify all Parties of any such notification received. A Party may at any time withdraw a previous notification of non-acceptance in respect of an additional annex and the annex shall thereupon enter into force for that Party subject to subparagraph (*c*) below; and

(*c*) On the expiry of one year from the date of the communication by the depositary of the adoption of an additional annex, the annex shall enter into force for all Parties that have not submitted a notification in accordance with the provisions of subparagraph (*b*) above.

4. Except in the case of annex III, the proposal, adoption and entry into force of amendments to annexes to this Convention shall be subject to the same procedures as for the proposal, adoption and entry into force of additional annexes to the Convention.

5. The following procedure shall apply to the proposal, adoption and entry into force of amendments to annex III:

(*a*) Amendments to annex III shall be proposed and adopted according to the procedure laid down in articles 5 to 9 and paragraph 2 of article 21;

(*b*) The Conference of the Parties shall take its decisions on adoption by consensus;

(*c*) A decision to amend annex III shall forthwith be communicated to the Parties by the depositary. The amendment shall enter into force for all Parties on a date to be specified in the decision.

6. If an additional annex or an amendment to an annex is related to an amendment to this Convention, the additional annex or amendment shall not enter into force until such time as the amendment to the Convention enters into force.

Article 23

VOTING

1. Each Party to this Convention shall have one vote, except as provided for in paragraph 2 below.

2. A regional economic integration organization, on matters within its competence, shall exercise its right to vote with a number of votes equal to the number

of its member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa.

3. For the purposes of this Convention, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article 24

SIGNATURE

This Convention shall be open for signature at Rotterdam by all States and regional economic integration organizations on the 11th day of September 1998, and at United Nations Headquarters in New York from 12 September 1998 to 10 September 1999.

Article 25

RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

1. This Convention shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. It shall be open for accession by States and by regional economic integration organizations from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

2. Any regional economic integration organization that becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In its instrument of ratification, acceptance, approval or accession, a regional economic integration organization shall declare the extent of its competence in respect of the matters governed by this Convention. Any such organization shall also inform the depositary, who shall in turn inform the Parties, of any relevant modification in the extent of its competence.

Article 26

ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession.

2. For each State or regional economic integration organization that ratifies, accepts or approves this Convention or accedes thereto after the deposit of the fiftieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

3. For the purpose of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of that organization.

Article 27

RESERVATIONS

No reservations may be made to this Convention.

Article 28

WITHDRAWAL

1. At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the depositary.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

Article 29

DEPOSITARY

The Secretary-General of the United Nations shall be the depositary of this Convention.

Article 30

AUTHENTIC TEXTS

The original of this 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.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

DONE at Rotterdam on this tenth day of September, one thousand nine hundred and ninety-eight.

ANNEX I

Information requirements for notifications made to article 5

Notifications shall include:

1. Properties, identification and uses:

(*a*) Common name;

(*b*) Chemical name according to an internationally recognized nomenclature (for example, International Union of Pure and Applied Chemistry (IUPAC)), where such nomenclature exists;

(*c*) Trade names and names of preparations;

(*d*) Code numbers—Chemicals Abstract Service (CAS) number, Harmonized System customs code and other numbers;

(*e*) Information on hazard classification, where the chemical is subject to classification requirements;

(*f*) Use or uses of the chemical;

(*g*) Physico-chemical, toxicological and ecotoxicological properties.

2. Final regulatory action:

(*a*) Information specific to the final regulatory action:

(i) Summary of the final regulatory action;

(ii) Reference to the regulatory action;

(iii) Date of entry into force of the final regulatory action;

(iv) Indication of whether the final regulatory action was taken on the basis of a risk or hazard evaluation and, if so, information on such evaluation, covering a reference to the relevant documentation;

(v) Reasons for the final regulatory action relevant to human health, including the health of consumers and workers, or the environment;

(vi) Summary of the hazards and risks presented by the chemical to human health, including the health of consumers and workers, or the environment and the expected effect of the final regulatory action;

(*b*) Category or categories where the final regulatory action has been taken, and for each category:

(i) Use or uses prohibited by the final regulatory action;

(ii) Use or uses that remain allowed;

(iii) Estimation, where available, of quantities of the chemical produced, imported, exported and used;

(*c*) An indication, to the extent possible, of the likely relevance of regulatory action to other States and regions;

(*d*) Other relevant information that may cover:

(i) Assessment of socio-economic effects of the final regulatory action;

(ii) Information on alternatives and their relative risks, where available, such as:

— Integrated pest management strategies;

— Industrial practices and processes, including cleaner technology.

ANNEX II

Criteria for listing banned or severely restricted chemicals in annex III

In reviewing the notifications forwarded by the Secretariat pursuant to paragraph 5 of article 5, the Chemical Review Committee shall:

(*a*) Confirm that the final regulatory action has been taken in order to protect human health or the environment;

(*b*) Establish that the final regulatory action has been taken as a consequence of a risk evaluation. This evaluation shall be based on a review of scientific data in the context of the conditions prevailing in the Party in question. For this purpose, the documentation provided shall demonstrate that:

(i) Data have been generated according to scientifically recognized methods;

(ii) Data reviews have been performed and documented according to generally recognized scientific principles and procedures;

(iii) The final regulatory action was based on a risk evaluation involving prevailing conditions within the Party taking the action;

(*c*) Consider whether the final regulatory action provides a sufficiently broad basis to merit listing of the chemical in annex III, by taking into account:

(i) Whether the final regulatory action led, or would be expected to lead, to a significant decrease in the quantity of the chemical used or the number of its uses;

(ii) Whether the final regulatory action led to an actual reduction of risk or would be expected to result in a significant reduction of risk for human health or the environment of the Party that submitted the notification;

(iii) Whether the considerations that led to the final regulatory action being taken are applicable only in a limited geographical area or in other limited circumstances;

(iv) Whether there is evidence of ongoing international trade in the chemical;

(*d*) Take into account that intentional misuse is not in itself an adequate reason to list a chemical in annex III.

ANNEX III

Chemicals subject to the Prior Informed Consent procedure

Chemical	*Relevant CAS number(s)*	*Category*
2, 4, 5-T	93-76-5	Pesticide
Aldrin	309-00-2	Pesticide
Captafol	2425-06-1	Pesticide
Chlordane	57-74-9	Pesticide
Chlordimeform	6164-98-3	Pesticide
Chlorobenzilate	510-15-6	Pesticide
DDT	50-29-3	Pesticide
Dieldrin	60-57-1	Pesticide
Dinoseb and dinoseb salts	88-85-7	Pesticide
1, 2-dibromoethane (EDB)	106-93-4	Pesticide
Fluoroacetamide	640-19-7	Pesticide
HCH (mixed isomers)	608-73-1	Pesticide
Heptachlor	76-44-8	Pesticide
Hexachlorobenzene	118-74-1	Pesticide
Lindane	58-89-9	Pesticide
Mercury compounds, including inorganic mercury compounds, alkyl mercury compounds and alkyloxyalkyl and aryl mercury compounds		Pesticide
Pentachlorophenol	87-86-5	Pesticide
Monocrotophos (soluble liquid formulations of the substance that exceed 600 g active ingredient/1)	6923-22-4	Severely hazardous pesticide formulation
Methamidophos (soluble liquid formulations of the substance that exceed 600 g active ingredient/1)	10265-92-6	Severely hazardous pesticide formulation
Phosphamidon (soluble liquid formulations of the substance that exceed 1,000 g active ingredient/1)	13171-21-6 (mixture, (E) & (Z) isomers) 23783-98-4 ((Z) – isomer) 297-99-4 ((E) – isomer)	Severely hazardous pesticide formulation

Chemical	*Relevant CAS number(s)*	*Category*
Methyl-parathion (emulsifiable concentrates (EC) with 19.5%, 40%, 50%, 60% active ingredient and dusts containing 1.5%, 2% and 3% active ingredient)	298-00-0	Severely hazardous pesticide formulation
Parathion (all formulations—aerosols, dustable powder (DP), emulsifiable concentrate (EC), granules (GR) and wettable powders (WP)—of this substance are included, except capsule suspensions (CS)	56-38-2	Severely hazardous pesticide formulation
Crocidolite	12001-28-4	Industrial
Polybrominated biphenyls (PBB)	36355-01-8 (hexa-) 27858-07-7 (octa-) 13654-09-6 (deca-)	Industrial
Polychlorinated biphenyls (PCB)	1336-36-3	Industrial
Polychlorinated terphenyls (PCT)	61788-33-8	Industrial
Tris (2, 3-dibromopropyl) phosphate	126-72-7	Industrial

ANNEX IV

Information and criteria for listing severely hazardous pesticide formulations in annex II

PART 1. DOCUMENTATION REQUIRED FROM A PROPOSING PARTY

Proposals submitted pursuant to paragraph 1 of article 6 shall include adequate documentation containing the following information:

(*a*) Name of the hazardous pesticide formulation;

(*b*) Name of the active ingredient or ingredients in the formulation;

(*c*) Relative amount of each active ingredient in the formulation;

(*d*) Type of formulation;

(*e*) Trade names and names of the producers, if available;

(*f*) Common and recognized patterns of use of the formulation within the proposing Party;

(*g*) A clear description of incidents related to the problem, including the adverse effects and the way in which the formulation was used;

(*h*) Any regulatory, administrative or other measure taken, or intended to be taken, by the proposing Party in response to such incidents.

PART 2. INFORMATION TO BE COLLECTED BY THE SECRETARIAT

Pursuant to paragraph 3 of article 6, the Secretariat shall collect relevant information relating to the formulation, including:

(*a*) The physico-chemical, toxicological and ecotoxicological properties of the formulation;

(*b*) The existence of handling or applicator restrictions in other States;

(*c*) Information on incidents related to the formulation in other States;

(*d*) Information submitted by other Parties, international organizations, non-governmental organizations or other relevant sources, whether national or international;

(*e*) Risk and/or hazard evaluations, where available;

(*f*) Indications, if available, of the extent of use of the formulation, such as the number of registrations or production or sales quantity;

(*g*) Other formulations of the pesticide in question, and incidents, if any, relating to these formulations;

(*h*) Alternative pest-control practices;

(*i*) Other information which the Chemical Review Committee may identify as relevant.

PART 3. CRITERIA FOR LISTING SEVERELY HAZARDOUS PESTICIDE FORMULATIONS IN ANNEX III

In reviewing the proposals forwarded by the Secretariat pursuant to paragraph 5 of article 6, the Chemical Review Committee shall take into account:

(*a*) The reliability of the evidence indicating that use of the formulation, in accordance with common or recognized practices within the proposing Party, resulted in the reported incidents;

(*b*) The relevance of such incidents to other States with similar climate, conditions and patterns of use of the formulation;

(*c*) The existence of handling or applicator restrictions involving technology or techniques that may not be reasonably or widely applied in States lacking the necessary infrastructure;

(*d*) The significance of reported effects in relation to the quantity of the formulation used;

(*e*) That intentional misuse is not in itself an adequate reason to list a formulation in annex III.

ANNEX V

Information requirements for export notification

1. Export notifications shall contain the following information:

(*a*) Name and address of the relevant designated national authorities of the exporting Party and the importing Party;

(*b*) Expected date of export to the importing Party;

(*c*) Name of the banned or severely restricted chemical and a summary of the information specified in annex I that is to be provided to the Secretariat in accordance with article 5. Where more than one such chemical is included in a mixture or preparation, such information shall be provided for each chemical;

(*d*) A statement indicating, if known, the foreseen category of the chemical and its foreseen use within that category in the importing Party;

(*e*) Information on precautionary measures to reduce exposure to, and emission of, the chemical;

(*f*) In the case of a mixture or a preparation, the concentration of the banned or severely restricted chemical or chemicals in question;

(*g*) Name and address of the importer;

(*h*) Any additional information that is readily available to the relevant designated national authority of the exporting Party that would be of assistance to the designated national authority of the importing Party.

2. In addition to the information referred to in paragraph 1, the exporting Party shall provide such further information specified in annex I as may be requested by the importing Party.

[1] ISBA/4/A/8, annex.
[2] Not yet in force.
[3] Not yet in force.
[4] A/CONF.183/9.
[5] Not yet in force.
[6] UNEP/FAO/PIC/CONF/5, annex III.
[7] Not yet in force.

Chapter V[1]

DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Decisions of the United Nations Administrative Tribunal[2]

1. JUDGEMENT NO. 870 (31 JULY 1998): CHOUDHURY AND RAMCHANDANI v. THE SECRETARY-GENERAL OF THE UNITED NATIONS[3]

Non-promotion—Question of bias or discrimination—Committee taking administrative decisions should be properly constituted—Mere expectancy of promotion does not create a right to promotion

Both Applicants were employed by the United Nations Military Observer Group in India and Pakistan (UNMOGIP) in the New Delhi office. Applicant Choudhury had been promoted, on 1 April 1985, to Senior Typist/Clerk at the G-5 level, and the overall rating on all his performance evaluation reports since 1977 had been "a very good performance". Applicant Ramchandani was at level ND-5, effective 1 July 1994, as a result of the salary scale being converted to a seven-level structure. His overall rating on his performance evaluation report for the period from 12 July 1988 to 28 February 1993 was "an excellent performance".

By memoranda in 1992, the Chief, Field Personnel Section, Field Operations Division, transmitted to the Office of Human Resources Management, the Division's recommendations for promotion, based on the review and recommendation of the 1992 UNMOGIP Subsidiary Promotion Review Panel for locally recruited General Service staff. The Applicants were not among the eight staff members recommended for promotion, and they appealed.

However, the Joint Appeals Board, in its report of 23 January 1996, stated that the Panel had concluded that the two had failed to show convincingly that the decision not to include them in the 1992 promotion listed violated their rights.

In its consideration of the case, the Tribunal acknowledged that it would not substitute its own judgement for that of the Administration (Judgement No. 275, *Vassiliou* (1981)), but that it would ascertain whether there had been an abuse of discretion. In that regard, the Tribunal noted that the Applicants had alleged discrimination, claiming that (*a*) the Subsidiary Promotion Review Panel sat in Rawalpindi, Pakistan, (*b*) the Panel had representation only from the Rawalpindi office, and (*c*) the number of staff promoted at the New Delhi office was low in comparison with the number promoted from the Rawalpindi office. The Tribunal, on the other hand, was of the view that none of these factors, assuming them to be true, supported by themselves the conclusion that there was bias or discrimination against the Applicants in the decision not be promote them.

The Tribunal next addressed the issue of the composition of the UNMOGIP Subsidiary Promotion Review Panel that had carried out the review and made recommendations regarding the 1992 promotions. In its consideration, the Tribunal

noted that it was a general principle of international administrative law that a committee involved in the taking of administrative decisions should be properly constituted (cf. Judgement No. 28, *Wallach* (1953)), and, furthermore, that the principle required that, in the constitution of a committee, in keeping with the maxim that justice must not only be done, but must seem to be done, if there was representation on a committee, there must be properly distributed representation. And, as the Tribunal pointed out, the constitution of the Subsidiary Promotion Review Panel was defective in that regard, as there was no representation, direct or indirect, of the Local Staff Association in New Delhi or of the staff in Srinagar. The Tribunal had found the Respondent's explanation for the lack of representation that the travel restrictions between Pakistan and India prevented representation from staff in the New Delhi and Srinagar offices inadequate. In the opinion of the Tribunal, the disproportionate representation was a procedural irregularity which violated the rights of the Applicants, and it was not necessary for the Applicants to show that had there been proper representation they would have been promoted, nor was it significant that the Subsidiary Promotion Review Panel was an advisory body and not the authority taking the final decision on promotions. Here, there was sufficient injury to the Applicants for which compensation was due.

The Tribunal also considered the Applicants' subsidiary claim that they had an expectancy of being promoted. The fact that Applicant Ramchandani relied on the conduct of his supervisor in virtually assuring him that he would be promoted did not, in the opinion of the Tribunal, amount to the giving of a promise that the Applicant would be promoted, nor was there evidence of an agreement to promote the Applicant.

For the foregoing reasons, the Tribunal ordered the Respondent to pay each of the Applicants three months of the Applicants' net base salary, as well as ordered the Respondent to undertake a meaningful review of the constitution of the UNOGIP appointment and promotion bodies with a view to securing fair representation of all staff in the India and Pakistan offices.

2. Judgement No. 872 (31 July 1998): Hjelmqvist v. the Secretary-General of the United Nations[4]

Question of a grossly negligent medical evacuation—Compensation for service-incurred injury—Question of reimbursement for travel expenses—Appendix D to the United Nations Staff Rules—Compensation of an unreasonable delay—Entitlement to daily subsistence allowance while recuperating from an injury—Access to United Nations medical files—Award of compensation under special circumstances

The Applicant entered United Nations service on 8 September 1987, on a short-term appointment, and on 27 May 1991 he commenced service with the United Nations Guard Contingent in Iraq (UNGCI) and was assigned to Suleimaniyah in the Northern Territory, effective 15 June 1991.

On 17 August 1992, the Applicant and two colleagues were in a United Nations vehicle on patrol outside Suleimaniyah when they were fired upon. The Applicant was hit by a bullet, which grazed his right forearm and penetrated his lower abdomen. His left leg also was injured during the episode. According to the investigation report, some 30 minutes after the shooting incident, the Applicant was taken to a dispensary at Kolar, and then transferred by car to Suleimaniyah Hospital, a journey of about two hours. On the same day, the United Nations representative

in Suleimaniyah faxed a report on the "shooting incident" to the United Nations Designated Official for Security, describing the Applicant as "in stable condition and alert" and "in high spirits", but, because surgical intervention was necessary for his leg wound and facilities at Suleimaniyah were inadequate, the Senior Medical Officer, United Nations Special Commission (UNSCOM), Baghdad, recommended a medical evacuation. Still on the same day, the Senior Medical Officer, UNSCOM, asked the Deputy Medical Director of the United Nations Medical Service at Headquarters, by telephone, to authorize the medical evacuation of the Applicant. Authorization was given by the Deputy Medical Director for a medical evacuation to New York via Zurich. On 18 August 1992, a fax was prepared in New York to provide written confirmation of such authorization to the Senior Medical Officer, UNSCOM, in Baghdad. However, that fax, while marked "RUSH", was not transmitted until 19 August 1992.

According to the statement of facts agreed to by the parties, before the written authorization arrived in Baghdad, UNGCI arranged, in consultation with the Senior Medical Officer, UNSCOM, an immediate medical evacuation to Sweden, the Applicant's home country. Also according to that agreed statement of facts, as well as according to the 19 August 1992 report of the Senior Medical Officer, UNGCI, Baghdad, on 18 August 1992, the Applicant was driven from Suleimaniyah to Kirkuk by ambulance, flown from Kirkuk to Baghdad by helicopter, transported to Habaniya airport, some 80 kilometers away, by UNSCOM ambulance, flown to Kuwait on an UNSCOM flight, and thence to Sweden on a Swissair Ambulance. The Applicant underwent several operations at Lund University Hospital to remove such bullet fragments as were accessible and to transplant a vein from his right leg into his left to replace the ruptured femoral vein. Soon after his surgery, he developed a thrombosis in his left leg, and was put on anticoagulants. On 30 September 1992, the Applicant was discharged from Lund Hospital, and then moved to Värnamo, where his parents lived, and his medical treatment was continued at Värnamo Hospital.

On 17 January 1993, the Applicant submitted a claim for compensation under Appendix D to the United Nations Staff Rules to the Advisory Board on Compensation Claims for reimbursement of his medical expenses. Upon a request from the United Nations Deputy Medical Director in January 1993, the Lund surgeon reported in April 1993 that the Applicant would probably not be able to return to work as a Security Officer before September 1993. Furthermore, on 8 April 1993, the Applicant requested travel authorization to return to New York, and on the basis of the surgeon's Medical Statement, the Deputy Medical Director certified him as fit for travel. He further authorized the Applicant to travel in business class, based on the recommendation of the Applicant's surgeon. The Applicant returned to New York on 30 April 1993, and the Medical Service referred him to a vascular surgeon for an evaluation, who subsequently wrote on 25 May 1993 that the Applicant would require contrast venography to delineate the anatomy of his venous system, but felt that "the additional time of continued physiotherapy to build collateral is preferable at this time and intervention either diagnostically or therapeutically is premature". He noted that "it is my feeling that his present plan of returning to Sweden in the late summer, at which point anticoagulants will be decreased, is satisfactory."

The Applicant returned to Sweden, and in August 1993 he exhausted his entitlement to sick leave with full pay and sick leave with half pay combined with annual leave. On 1 September 1993, the Applicant was placed on special leave without pay under staff rule 105.2(*a*)(i) pending resolution of his status. On 20 October 1993, the Applicant was examined by his surgeon in Lund, who reported that another year

of anticoagulants was recommended, and that the Applicant had been referred to a plastic surgeon "for evaluation and probably correction". The surgeon concluded, "It is doubtful whether the patient ever will be completely recovered."

On 18 November 1993, the Advisory Board on Compensation Claims recommended that the injury be recognized as attributable to the performance of official duties and approved reimbursement of "all medical expenses, together with the round-trip travel expenses to Sweden, certified by the Medical Director as reasonable and directly related to the injury". The Secretary-General accepted this recommendation on 10 November 1993. On 12 December 1995, the Advisory Board recommended compensation under Appendix D in the amount of US$ 40,612.00, equivalent to a 55 per cent loss of function of the whole person under article 11.3 of Appendix D, as well as reimbursement of the round-trip travel between New York and Lund, and special sick leave credit under article 18(*a*) of Appendix D from 17 August 1992, until the first day of entitlement to a disability pension to be determined by the United Nations Joint Staff Pension Fund (UNJSPF). The recommendation was adopted by the Secretary-General on 16 December 1995. A cheque for $42,497.80, representing $40,612.00 in compensation, $389.80 in medical expenses certified as of that date, and $1,496.00 for a round-trip economy air ticket New York/Lund/New York, was issued on 30 January 1996.

On 23 February 1996, the Applicant was informed by the Secretary, UNJSPF, that the Pension Committee had determined him to be incapacitated for further service and consequently entitled to a disability benefit under article 33 of the Regulations of the Fund. On 29 March 1996, the Chief, Cluster IV, Office of Human Resources Management, recommended to the Assistant Secretary-General for Human Resources Management that the Applicant's fixed-term appointment be terminated for reasons of health under staff regulation 9.1(*a*), and on 2 April 1996 the Assistant Secretary-General informed the Applicant that the Secretary-General had decided to terminate his appointment with effect from the date of the notice.

At the Tribunal level, the Applicant had argued that his medical evacuation from Iraq to Lund, Sweden, was not in accordance with procedures articulated in personnel directive PD/1/1992 concerning medical evacuations, and the Tribunal agreed.

As the Tribunal noted, under paragraph 8 of PD/1/1992, the Head of Office has the authority to determine the place to which a staff member should be medically evacuated and then advise the Medical Director of the decision. In the present case, the Tribunal considered that a gunshot wound was an "extreme medical emergency" for which medical evacuation "shall be authorized, as a general rule, to the place nearest the duty station where adequate medical facilities are available" (PD/1/1992, para. 15). In the view of the Tribunal, one of the three regional medical facilities in the Middle East that were listed in PD/1/1992—Amman, Jerusalem and Cairo—should have been chosen by the Head of Office, bearing in mind that the injury was a gunshot wound to the lower abdomen with a bullet, or fragments thereof, "lodged near the lesser trochanter of the left femur". Furthermore, as the Tribunal noted, there was a specific medical evacuation plan for Iraq, which also would have allowed for evacuation to Kuwait.

The failure to choose one of the above-cited countries, in the view of the Tribunal, where there was likely to be found the expertise to treat gunshot wounds, and evacuating him to Sweden instead not only was in error but also resulted in the Applicant, inter alia, losing his livelihood and his capacity to enjoy physical activity.

The Tribunal also made the point that the error made was not mitigated by the fact that it could never be known if prompt treatment would have prevented what had occurred, but there was certainly a greater likelihood that the consequences would not have occurred.

In addition to the Applicant's basic claim of his grossly negligent evacuation, he raised several other claims.

In response to the Applicant's claim that the $40,612 awarded him was insufficient compensation for his service-incurred injury, which failed to take into account adequately his emotional, psychological and physical pain and suffering, the Tribunal drew attention to article 11.3(*a*) of Appendix D, which stated:

> "In the case of injury or illness resulting in permanent disfigurement or permanent loss of a member or function, there shall be paid to the staff member a lump sum, the amount of which shall be determined by the Secretary-General on the basis of the schedule set out in paragraph (*c*) below … and applying, where necessary, proportionate and corresponding amounts in those cases of permanent disfigurement or loss of member or function not specifically referred to in the schedule."

The schedule provided in subsection (*c*) of article 11.3 only listed objective physical loss and not emotional or psychological damages. Indeed, the maximum compensation allowed could not exceed twice the annual amount of the pensionable remuneration at the P-4, step V level, for the loss of both arms, hands, legs, feet or sight in both eyes.

To the Applicant's argument that the Tribunal had the discretion to assess additional damages for non-physical pain and suffering, the Tribunal noted that the United Nations had specifically addressed the issue of damages for injuries incurred during service with the Organization. Compensation was based on an objective assessment of loss of function derived from medical reports submitted by the claimant and in accordance with the *AMA Guidelines to the Evaluation of Permanent Impairment*. Accordingly, the limitations outlined in article 11.3 were binding and not susceptible to subjective valuations of pain and suffering. The recommendation of the Advisory Board on Compensation Claims, approved by the Secretary-General, of compensation for 55 per cent of loss of function of the whole person, was not unreasonable for the injuries suffered by the Applicant. The Respondent adhered to the procedures and compensation schedule established by Appendix D of the Staff Rules, and the Tribunal therefore would not disturb that decision. The Tribunal further noted that the Applicant had not availed himself of the procedure for reconsideration of the determination by the Secretary-General of the type and degree of disability pursuant to article 17 of Appendix D.

The Applicant also argued that he should have been fully reimbursed for round-trip tickets from Lund to New York at the business-class rate, instead of for economy class. However, as the Tribunal noted, the request of 10 August 1993 for reimbursement of round-trip tickets did not mention the need of a business-class seat, nor was any approval for business-class travel given at that time. Nor did the recommendation by the Advisory Board refer to reimbursement for business-class travel. Therefore, the Respondent was justified in only reimbursing the Applicant for the amount needed for economy-class air fare. Staff rule 107.10(*a*) reads: "For all official travel by air, staff members and their eligible family members shall be provided with economy class transportation …" The Applicant also had contended that he should have been reimbursed for the business-class round-trip airfare he

subsequently had to purchase from Sabena Airlines in Lund since his return route to New York on Delta Airlines had been discontinued. However, the Applicant had not been authorized to fly business class. In addition, staff rule 107.12(*a*) states that "unless the staff member concerned is specifically authorized to make other arrangements", the tickets for official travel "shall be purchased by the United Nations". There was no indication that the Applicant had been given the authority to make such alternative arrangements.

Furthermore, the Tribunal considered the issue of the delay in payment of the Applicant's salary. His salary was cut off in September 1993, and as early as November 1993 the Applicant's injury was recognized by the Secretary-General as attributable to service, yet he did not receive his salary until April 1996. As the Tribunal noted, article 11.1(*b*) of Appendix D to the United Nations Staff Rules stated:

> "the salary and allowances which the staff member was receiving at the date on which he last attended at duty … shall continue to be paid to the staff member until … (ii). If, by reason of his disability, he does not return to duty, then until the date of the termination of his appointment or the expiry of one calendar year from the first day of absence resulting from the injury or illness, whichever is the *later*." (emphasis added)

It therefore remained unclear to the Tribunal why the Applicant's salary had been cut off in September 1993. As the Tribunal further noted, in a memorandum to the Executive Officer, Department of Administration and Management, the Secretary of the Advisory Board on Compensation Claims had written:

> "Under article 18(*a*) of Appendix D, any authorized absences are charged to the sick leave of the staff member. Following the exhaustion of sick leave, the staff member shall be placed on special leave with full pay covering the period of article 11.1(*b*)—one calendar year from the date of accident—and on special leave without pay for any period of subsequent special leave."

But if the Applicant was receiving sick leave with pay after the accident under article 18(*a*), then, according to the Tribunal, under a proper reading of article 11.1(*b*), payment should have continued until the Applicant's termination, since that occurred later than the "expiring of one calendar year from the first day of absence". The Respondent was unable to provide a satisfactory explanation to the Tribunal on how Appendix D had been applied to the Applicant, and the Tribunal therefore considered that the Applicant's not receiving his salary until April 1996 represented an unreasonable delay that should be compensated.

The Applicant also had asserted that he should have been paid daily subsistence allowance (DSA) while he was recuperating in Sweden. The Tribunal noted that a staff member's entitlement to DSA was directly dependent on his or her entitlement to home leave. The Applicant, while in New York, had been recruited by the United Nations to work at Headquarters, and therefore, under staff rule 104.6, the Applicant was considered a locally recruited staff member, ineligible for home or family leave. However, as both the Applicant and the Respondent noted, locally recruited staff members were entitled to home and family leave when detailed on an international mission lasting longer than six months. The Applicant had contended that locally recruited staff members on international detail should be entitled to take home leave in the country where they were recruited. The Applicant argued that, at the time of his injury, not only was he a resident of New York, but his wife was as

well. But, as the Tribunal noted, staff rule 105.3(*d*), concerning home leave, states: "The country of home leave shall be the country of the staff member's nationality." According to staff rule 105.3(*d*)(iii), only the Secretary-General may authorize a "country other than the country of nationality as the home country, for the purposes of this rule". To be granted such an exception, the staff member must show "that [he or she] maintained normal residence in such other country, for a prolonged period preceding his or her appointment, that the staff member continued to have close family and personal ties in that country and that the staff member's taking home leave there would not be inconsistent with the purposes and intent of staff regulation 5.3". Although the Applicant's circumstances presented grounds for a possible exception to this rule, in the opinion of the Tribunal, the Applicant never sought such an exception from the Secretary-General. Therefore the Tribunal was in no position to grant such a dispensation. The country of the Applicant's nationality was his home country.

Furthermore, the Applicant had been medically evacuated to his home country. Under PD/1/1992, the availability of DSA was very limited for medical evacuations to the home country. "Actual expenses for a hotel room or other accommodations (meals included) incurred by the patient … may be reimbursed, on the basis of receipts" for staff members evacuated to their home country. Only expenses incurred during the first 45 days following evacuation may be reimbursed. Reimbursements are capped at 50 per cent of the subsistence allowance payable to staff members medically evacuated to countries other than the place of home leave. The Applicant made no effort to obtain reimbursements by submitting the necessary receipts.

Finally, the Applicant alleged that the Respondent had denied him access to his medical files. The Respondent had argued that the medical files were maintained by the Organization for its benefit and not for that of the staff member, but could be made available to the staff member's personal physician when necessary. The Tribunal had requested the Respondent to provide the Applicant's medical file to the Tribunal for a review in camera. In this case, the medical files did contain information crucial to the claims made by the Applicant. The Tribunal did not order transmittal of the medical files to the Applicant because all relevant medical information that was pertinent had already been provided to the Tribunal by the Respondent and then to the Applicant by the Tribunal. The Tribunal failed to understand the rationale for preventing staff from having access to their own medical files. It recommended that the policy be reconsidered and reversed.

The Tribunal concluded that the Applicant had been adequately compensated for his injury attributable to official duties and that DSA payments had been properly denied. However, the Respondent had unreasonably withheld the reimbursement of the Applicant's salary payments and he should be compensated for the delay, and, what was most important, he should be compensated for the injuries he had suffered as a result of his improper evacuation from Iraq to Sweden. The Tribunal therefore ordered the Respondent to pay the Applicant three years of his net base salary as compensation. In granting this compensation, which exceeded the two-year limit mandated by article 9 of its statute, the Tribunal had particularly taken into account the special circumstances of the case, namely, the Respondent's gross negligence in the handling of an extreme medical emergency arising in a situation known to be very dangerous to the Applicant, which had resulted in severe physical and psychological impairment for the Applicant.

3. JUDGEMENT NO. 874 (31 JULY 1998): ABBAS V. THE COMMISSIONER-GENERAL OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST[5]

Non-withdrawal of staff member's resignation—Area staff rule 109.6—Question of when resignation becomes effective—Question of prejudice or improper motivation in not granting re-employment—Separation on health grounds—Question of coerced resignation—Joint Appeals Board should avoid even the appearance of bias or partiality

The Applicant entered the service of United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) on 7 January 1985, on a temporary assistance contract, as a Trade Instructor (Electrician). On 18 September 1985, the Applicant was granted a temporary indefinite appointment, as an area staff member, in the post of Trade Instructor "B" (Electrician), at the grade 9, step 1, level, at the Damascus Training Centre, Syrian Arab Republic. On 1 October 1989, the Applicant was promoted to grade 10, step 5, level.

From the time he entered service through 1994, the ratings on the Applicant's periodic reports ranged from satisfactory to outstanding. In 1992, the Applicant received two letters from the Director, UNRWA Affairs, commending him on his work.

From October 1993 to January 1995, the Applicant was reprimanded several times for absenting himself from his place of duty and for smoking in the workshop in the presence of trainees. On 7 January 1995, the Principal, Damascus Training Centre, sent a letter to the Applicant that listed the Applicant's unauthorized absences and instances of lateness. It warned the Applicant that if there were any further complaints about his conduct, the Agency would be obliged to take appropriate action. On 9 January, 19 February and 13 March 1995, the Principal, Damascus Training Centre, again noted that the Applicant had been absent from duty without permission. On 20 March 1995, he was again reprimanded, and on 29 March 1995 he received a written censure for further repeated absences. On 6 and 13 April 1995, the Applicant again absented himself from duty, without permission or valid reason.

On 12 April 1995, the Applicant submitted his resignation, with effect from 20 April 1995, citing as reasons (*a*) severe pain in his spinal cord and (*b*) a bad psychological and nervous condition. By letter dated 13 April 1995, the Field Personnel Officer, Syrian Arab Republic, informed the Applicant that despite the Applicant's insufficient notice, the Agency accepted his resignation, with effect from the close of business on 19 April 1995. On 18 April 1995, the Applicant wrote to the Director, UNRWA Affairs, requesting the withdrawal of his resignation. In a reply dated 19 April 1995, the Field Administration Officer informed the Applicant that his request had not been approved, and the Applicant appealed.

The principal issue raised by the Applicant was whether, under the applicable rules, a resignation became effective only after it had been accepted by the Respondent. In considering the issue, the Tribunal drew attention to area staff rule 109.6:

"2. A staff member who resigns shall give to the Agency:

"(*a*) Such period of notice as is provided for … in his/her Letter of Appointment; or

"(*c*) Such other period of notice as the Commissioner-General may at his discretion accept.

"3. Every notice of resignation shall contain a written statement of the staff member's decision to resign, shall be signed by the staff member and shall

specify the date on which he/she proposes that his/her resignation should take effect."

In the view of the Tribunal, the Applicant's letter of 12 April 1995 complied with the essential requirements of the staff rule since it contained written notice of the decision to resign, was signed by the Applicant and specified the date on which he proposed that the resignation should take place.

Furthermore, the Tribunal considered that the language of area staff rule 109.6 suggested, on its face, that a staff member's compliance with the conditions of the rule constituted resignation: "A staff member resigns who gives to the Agency a written notice of resignation." In the view of the Tribunal, there was no indication that the validity of the resignation was conditioned on acceptance. In addition, if the rule were to require consent in order to make resignation effective, then a staff member who wished to leave would be at the mercy of the Agency which, for either arbitrary or malicious reasons, might wish to impede a staff member's departure. The Tribunal could not conceive that the rule was intended to confer on the Agency such authority over a staff member's decision to leave. However, as the Tribunal pointed out, paragraph 2(*c*) of staff rule 109.6 did allow the Commissioner-General the discretion to accept the period of notice for resignation designated by the staff member. In the present case, the Applicant had requested that his resignation be effective eight days after the date of his letter giving notice, and the Applicant's letter of appointment required him to give "not less than 30 days' written notice". The Tribunal, rejecting the Applicant's argument that his irregular designated period of notice rendered his resignation invalid unless accepted by the Commissioner-General, interpreted staff rule 109.6, paragraph 2(*c*), to give the Commissioner-General discretion regarding the date that staff member's resignation became effective, rather than regarding the validity of the resignation.

The Applicant also contended that the Respondent's decision not to accept his request to withdraw his resignation had been based on prejudice and constituted an abuse of discretion. Because the Tribunal had concluded that the Applicant's resignation was effective under area staff rule 109.6, the issue of the Applicant's request to withdraw his resignation was subject to rules regarding re-employment. Personnel directive A/4/Part VI/Rev.5, paragraph 3.2, provided that reappointment should be "carefully considered, and should not normally be approved unless there was a *clear element of Agency interest* in obtaining the former staff member's services again" (emphasis added). The burden was on the Applicant to present convincing evidence when alleging that the decision not to grant re-employment had been tainted by prejudice or improper motivation (cf. Judgement No. 553, *Abrah* (1992)). In that regard, the Tribunal noted that the Applicant had received numerous reprimands and a letter of censure for various absences from work over a period of 19 months prior to his resignation, and according to the record the Applicant had not appealed those actions. In addition, the Applicant had asserted both a medical and a psychological condition as reasons for his resignation. Personnel directive A/4/Part VI/Rev.5, paragraph 3.5, established a presumption that employees "separated on health grounds" were "incapacitated from further service" and "should not be re-employed in any capacity". It would have been reasonable for the Respondent to accept the Applicant's asserted reasons accompanying his resignation and to be reluctant to re-employ him without a substantial Agency interest in his re-employment.

In the Tribunal's view, the Applicant had fallen short of meeting his burden of producing convincing evidence of prejudice with respect to the Respondent's

decision, and the Respondent's decision not to accept the Applicant's request to withdraw his resignation was reasonable and did not constitute an abuse of his discretion.

The Applicant also asserted that the resignation itself was the product of "pressure and oppression". The crux of this claim seemed to be that the Respondent had attempted to coerce the Applicant's resignation through reprimands and censures. The Tribunal agreed with the Respondent that, in a claim that a resignation had been coerced, the burden of proving improper motive or coercion was on the Applicant (cf. Judgement No. 93, *Cooperman* (1965)). The Applicant argued that the fact that he had resigned was in itself evidence of coercion because his UNRWA employment was his only potential source of income in the area. He also argued that his periodic reports had been positive. In addition, the Applicant noted that his first reprimand had cited absences allegedly having taken place as much as two years earlier. Finally, the Applicant asserted that his alleged tardiness in reporting related to office-hour requirements to which he, as a member of the teaching staff, should not have been subject. The Tribunal found that the record before it did not sustain the Applicant's claim that his resignation had been coerced.

The Applicant asserted that the recommendation of the Joint Appeals Board (JAB) should be invalidated due to the appearance of a conflict of interest. The Joint Appeals Board that heard the Applicant's initial appeal included the Principal, Damascus Training Centre, who was the Applicant's supervisor and who had issued the reprimands dated 7 January and 20 March 1995 which constituted part of the Applicant's coercion claim. As the Tribunal noted, it was a clearly established principle that the Joint Appeals Board should make every effort to avoid even the appearance of bias or partiality. Paragraph 10 of area staff rule 111.2 gave the parties the right to request the removal of any Board member. The Applicant had failed to challenge the participation of the Principal of the Damascus Training Centre at the time of the hearing; however, the Chairman had the authority to "excuse any member from the consideration of a specific appeal" regardless of the parties' requests. The Tribunal found that while the Applicant had erred in not challenging the participation of the Principal, Damascus Training Centre, at the time of the hearing, the Chairman had also erred in permitting one whose interest was so inextricably bound in the issue before the Board so as to raise a question whether he could play an impartial role (cf. Judgement No. 624, *Muhtadi* (1993)). The Tribunal concluded that although the participation of the Principal, Damascus Training Centre, should have been questioned, the recommendation of the JAB likely would not have been different, nor would the decision of the Tribunal.

For the foregoing reasons, the Tribunal rejected the Applicant's pleas in their entirety.

4. Judgement No. 879 (31 July 1998): Karmel v. the Secretary-General of the United Nations[6]

Abolishment of post—Obligations of good-faith efforts by the Administration and creation of another post with the same defining functions—Compensation for anguish, humiliation and stress

The Applicant entered the service of the United Nations Children's Fund (UNICEF) on 12 December 1973, on a three-month fixed-term appointment as a Clerk/Typist at the G-2 level. After serving on a further three-month fixed-term appointment as a Bilingual Clerk/Typist at the G-3 level, the Applicant was granted

a probationary appointment, with effect from 1 April 1974. The appointment was converted to a permanent appointment on 1 December 1975. On 1 January 1977, the Applicant was promoted to the G-4 level. On 20 April 1980, she was transferred to the post of Secretary, Programme Division, Asia Section. On 16 March 1992, the Applicant was promoted to the G-5 level and her title changed to Principal Secretary.

On 26 January 1996, the Director, UNICEF Programme Division, informed the Applicant that the post she encumbered, as Principal Secretary, had been slated for abolition. If the recommendation to abolish the post was accepted, her appointment would be terminated on 31 July 1996, unless the Administration could place her in another position.

The Applicant appealed, alleging (*a*) that her post had not in fact been abolished, since nearly all of its defining functions had been passed on to a newly created post, to which someone else had been appointed without any advertisement or open competition; and (*b*) that the Administration had not made a good-faith effort to find the Applicant a new position equivalent to her abolished post.

In the Tribunal's view, since the Applicant's first claim was correct, it would not need to consider her second claim. The Tribunal concluded that it need not address the issue of whether or not the Administration had made a reasonable effort to secure for the Applicant a post equivalent to the one she had formerly encumbered, from among the numerous vacancies for which the Applicant applied. It was sufficient that the Tribunal had determined "that the post she originally encumbered was not in fact abolished, that she was deviously and unjustly removed from it". Moreover, as the Tribunal noted, although the Applicant had finally been placed against a post which seemed to be equivalent to the one she had originally encumbered, the post was of fixed duration, and that was not an adequate solution because she should have been placed in a permanent position. In the opinion of the Tribunal, the Applicant had obviously been the victim of a serious wrong committed by the Administration when her post had been abolished without any justification. In the present case, the Applicant's post had been abolished, and a practically equivalent post had been created, with a different name and a slightly different job description at one grade lower in the hierarchy. The Applicant could not apply for the newly created post because she was at the G-5 level. Without advertisement or open competition, another staff member who had been placed against the post had been appointed to that "new" post. A year later, the post had been upgraded to G-5. The Tribunal concluded that the Applicant's post had not been abolished, and that the above process constituted a subterfuge for removing the Applicant and replacing her with another staff member.

In that regard, the Tribunal pointed out that, unfortunately, the manipulations to which the Applicant had been subject were becoming a habit in the United Nations Administration. The Tribunal noted that by this simple device, some staff members were dismissed and others were placed in their stead. It seemed to be of no importance if, at the end of the process, the Organization had to pay compensation to the person unjustly removed. The Tribunal was not aware whether any action was taken against those responsible for such elementary exercise in deviousness. The Tribunal, more than once, had come across the situation like the one described above (cf. Judgements No. 679, *Fagan* (1994), and No. 890, *Ossolo* (1998)).

The Tribunal also drew attention to the fact that the Respondent had claimed that, in accordance with UNICEF procedures, staff on abolished posts were auto-

matically placed against posts at their own level for which the Organization considered them to have the requisite qualifications. However, as the Tribunal pointed out, it was only after the Joint Appeals Board had recommended that a suitable post be found for her and that three months' net base salary be paid as an indemnity to her that a new job had actually been found for the Applicant.

The Tribunal considered that the Applicant had been subjected to a rather long and frustrating process of applying for 34 different posts, without support from the Administration, and the Applicant should be compensated for the anguish of not knowing whether she was going to be separated from the Organization; the humiliation of not receiving any permanent post for which she had applied; and the stress to which she had been subjected by the conduct of the Administration.

Accordingly, the Tribunal ordered that the Applicant be placed in a permanent post equivalent to the one she had encumbered before the artificial abolition of her own post, within 12 months of the date of communication of the judgement, or if the Respondent should decide that, in the interest of the United Nations, the Applicant alternatively should be compensated, without further action being taken in her case, pursuant to article 9, paragraph 1, of the Tribunal's statute, the amount of compensation to be paid to the Applicant should be fixed at 15 months of her net base salary, and, additionally, that compensation be awarded to her in the amount of nine months of her net base salary.

5. Judgement No. 885 (4 August 1998): Handelsman v. the Secretary-General of the United Nations[7]

Non-renewal of appointment under 200 Series—United Nations staff rule 204.3—Question of countervailing circumstances in non-renewal of 200 Series staff—Question of an express promise regarding continuation of employment—General Assembly resolution 37/126—Compensation for disingenuous efforts of Administration in assisting Applicant in finding an alternative post

The Applicant entered the service of the United Nations on 5 December 1983, on a special service agreement (SSA) for a period of two weeks and four days, as a consultant with the Department of Technical Cooperation for Development. He served on three additional SSAs, and on 1 November 1984, he was granted a one-year intermediate-term appointment at the L-5 level under the 200 Series of the United Nations Staff Rules, as an Interregional Adviser in electronic data processing in mineral exploration and development in what was then the Department of International Economic and Social Affairs (later incorporated into the Department for Development Support and Management Services). Over the next nine and a half years, the Applicant remained in the service of the United Nations on a series of intermediate-term and long-term appointments. He separated from service on 30 April 1994.

During 1993, internal restructuring and decentralization efforts led to a discussion of the future prospects of staff under the 200 Series of the United Nations Staff Regulations and Rules. By a letter dated 28 December 1993 from the Under-Secretary-General, Department for Development Support and Management Services, the Applicant was informed that his appointment had been extended until 31 March 1994, with the explanation that the Department had been confronted with financial difficulties and changing programmatic requirements and that it was therefore not in a position to renew his contract beyond its current expiration date of 31 March 1994. In the meantime, on 5 January 1994, the Under-Secretary-General for Human

Resources Management distributed a written statement in which it was noted that "every effort will be made to place supernumerary staff". And on 26 January 1994, the chief of the Applicant's Department wrote to the Director of Personnel, Office of Human Resources Management, with a copy to the Applicant, stating: "It is my understanding that the central Administration is doing its utmost to ensure that the incumbents of the Interregional Adviser posts earmarked for decentralization are redeployed along with the posts. In this regard, I would like to recommend that [the Applicant] be redeployed to the Economic and Social Commission for Asia and the Pacific (ESCAP) . . ."

On 9 March 1994, the Director of the Division of Economic Policy and Social Development and the Director of the Division of Public Administration and Development Management proposed to the Under-Secretary-General for Development Support and Management Services that he extend the appointments of a number of advisers, including an extension of one month for the Applicant. The proposal was approved and the Applicant's appointment was extended through 30 April 1994, when the Applicant separated from service.

The Applicant appealed, requesting a suspension of action of the administrative decision not to renew his fixed-term appointments.

As the Tribunal noted, the Applicant held an appointment under the 200 Series of the United Nations Staff Rules and Regulations, the rules applicable to technical assistance project personnel. Under staff rule 204.3:

"Project personnel shall be granted temporary appointments as follows:

"(*a*) Temporary appointments shall be for a fixed term and shall expire without notice on the date specified in the respective letters of appointment. They may be for service in one or more mission areas, and may be for short, intermediate or long term, as defined in rule 200.2(*f*). . . .

"(*d*) A temporary appointment does not carry any expectancy of renewal."

The rules thus permit the Respondent to separate a staff member appointed under the 200 Series from a post, even without prior notice and without regard to either the quality of the services that the staff member rendered or the staff member's personal attributes. The Tribunal has consistently upheld the application of these rules (cf. Judgements No. 610, *Ortega* (1993) and No. 614, *Hunde* (1993)).

That being the case, the Tribunal further noted that, unless there existed countervailing circumstances, project personnel staff members might see their relationship with the Organization terminated when the last of their 200 Series appointments expired. Countervailing circumstances might include (*a*) an abuse of discretion in not extending the appointment, or (*b*) an express promise by the Administration giving a staff member an expectancy that his or her appointment would be extended. The Respondent's exercise of his discretionary power in not extending a 200 Series contract must not be tainted by forms of abuse of power such as violation of the principle of good faith in dealing with staff, prejudice or arbitrariness or other extraneous factors that might flaw his decision. The Tribunal found no evidence of any improper motive on the part of the Administration. Nor did the Tribunal find that the Administration became obliged to find the staff member a new and equivalent post to the one he had occupied because it had made an express promise to that effect.

The Applicant claimed that an express promise had been made during discussions of the Joint Advisory Committee on the future prospects of staff serving

under the 200 Series, in the light of the imminent restructuring of the economic and social sectors of the Secretariat. What the Applicant cited as the Administration's position at that meeting appeared to consist of nothing more than opinions expressed by some representatives of the Administration about what the policy of the Organization should be in relation to the staff serving under the 200 Series. Those statements could not be understood as express promises concerning the Applicant's employment. The Applicant also referred to correspondence between the Under-Secretary-General for Development Support and Management Services and the Under-Secretary-General for Administration and Management regarding redeployment of staff appointed under the 200 Series to regional offices. However, as the Tribunal observed, the Applicant failed to point out in those communications any express promise made to him concerning his continued employment. Nor could the memorandum dated 6 December 1993 from the Director of Personnel to all staff members of the Department for Development Support and Management Services, including the Applicant, seeking to identify all those who were interested in reassignment, be construed as an express promise to reassign the Applicant. Nor could the Applicant rely on General Assembly resolution 37/126 of 17 December 1982, section IV, paragraph 5, which required that "staff members on fixed-term appointments upon completion of five years of continuing good service … be given every reasonable consideration for a career appointment", since the resolution did not apply to staff members appointed under the 200 Series.

The Tribunal noted that the Administration had made slight efforts towards finding another post for the Applicant, but that while no express promise had been made to the Applicant concerning his future employment, it found that the Administration's conduct towards the Applicant might have caused the Applicant to believe that the Administration would soon find him a new post. The Respondent's plans concerning the reorganization of staff serving under 200 Series appointments, resulting in the non-extension of a large number of staff members' contracts and the retention of other staff, coupled with the statements made by the Administration described above, could, in the Tribunal's view, have allowed room for ambiguous interpretation so as to have misled the Applicant. Further, in a letter dated 15 July 1994, transmitting to the Applicant the Joint Appeals Board report concerning the Applicant's request for suspension of action and informing the Applicant of the Respondent's decision to take no further action in the case, the Under-Secretary-General for Administration and Management stated, in relevant part:

> "The Secretary-General has also taken note of the comments of the Board regarding your service and expertise and would like to assure you that you will receive full consideration for the post in question [i.e., the ESCAP vacancy] and for any other post for which you apply and are found to be qualified."

The letter also could have had the effect of misleading the Applicant, in the opinion of the Tribunal.

As in the *Noyen* case, the statements made by the Administration to the Applicant, "coupled with the Applicant's erroneous assumptions concerning his status, must be considered as having adversely affected his alternate plans for employment resulting in possible loss" (cf. Judgement 839, *Noyen* (1997)). Likewise, the Tribunal concluded that the Applicant in the present case was entitled to compensation.

Furthermore, as the Tribunal noted, the Applicant had pointed to an exchange of correspondence that might have had the effect of thwarting his placement, for which the Respondent had no explanation.

The Tribunal concluded that the Administration's efforts in assisting the Applicant were disingenuous, and ordered the Respondent to pay to the Applicant three months of his net base salary as compensation for the damage he had suffered due to the conduct of the Administration, and rejected all other pleas.

6. Judgement No. 897 (20 November 1998): Jhuthi v. the Secretary-General of the United Nations[8]

Dismissal for misconduct—Disciplinary measures involve an exercise of a quasi-judicial power—A finding of misconduct—Burden of proof in disciplinary cases—Application of obsolete procedure for suspension from duty—Right of counsel

The Applicant entered the service of the United Nations on a six-month fixed-term contract as a Security Officer, at the G-4 level, in the United Nations Common Services Safety Unit, United Nations Centre for Human Settlements (Habitat), in Nairobi. He served thereafter on a series of fixed-term contracts of varying duration. On 1 April 1990, his functional title was changed to Senior Security Officer. On 1 October 1990, he was promoted to the G-5 level. On 25 October 1993, the Applicant was separated from service, pursuant to staff regulation 10.2, paragraph 1, and staff rule 110.3(*a*)(vii), after an ad hoc Joint Disciplinary Committee had concluded, and the Secretary-General had agreed, that the Applicant had stolen a Panasonic Notebook computer from the UNICEF/WFP office in the United Nations Complex in Gigiri, Kenya. The Applicant appealed his dismissal.

As the Tribunal had held in Judgement No. 890, *Augustine* (1998), the taking of disciplinary measures involved the exercise of a discretion by the Administration, but it was also the exercise of a quasi-judicial power. In disciplinary cases, the Tribunal examined (*a*) whether the facts on which the disciplinary measures were based had been established; (*b*) whether they legally amounted to serious misconduct or misconduct; (*c*) whether there had been any substantive irregularity; (*d*) whether there had been any procedural irregularity; (*e*) whether there was an improper motive or abuse of discretion; (*f*) whether the sanction was legal; and (*g*) whether the sanction imposed was disproportionate to the offence.

As the Tribunal noted, with regard to the finding of misconduct, there were two matters that needed to be considered: first, whether the findings of fact and misconduct were justified on the evidence and, second, whether, as the Applicant alleged, the Joint Disciplinary Committee had considered, and had been influenced by, irrelevant facts when it had concluded that the Applicant was guilty of misconduct.

As the Tribunal further noted, the critical facts were that the Applicant had been on duty in the area when a computer was stolen from the UNICEF/WFP office. Later, the same computer was found to have been in his possession. In general, the burden of proof, where discretionary powers were exercised by the Administration, required both parties to provide the Tribunal with all the relevant evidence that they had to enable the Tribunal to establish the facts. In disciplinary cases, when the Administration produced evidence that raised a reasonable inference that the Applicant was guilty of the alleged misconduct, generally termed a prima facie case of misconduct, that conclusion would stand, the exception being that if the Tribunal chose not to accept the evidence, or the Applicant provided a credible explanation or other evidence, that made such a conclusion improbable, (see Judgement No. 484, *Omosola* (1990)). In the present case, in the opinion of the Tribunal, the evidence adduced by the Administration raised a strong prima facie case that the Applicant had

stolen the computer. In the face of this prima facie case, the Applicant had provided the explanation that, while he had indeed come into possession of the computer, which he had later given his brother to sell, in order to raise money for a trip to India, he had purchased it for Kenya shillings 20,000 from a man named Chris whom he had met through a Tanzanian trader. He further claimed that Chris was unavailable to testify because he had since died. The Applicant failed to produce any acceptable evidence insofar as the Joint Disciplinary Committee was concerned that Chris had ever existed, let alone that he had died. He also failed to produce a satisfactory affidavit from the Tanzanian trader, as had been requested by the Committee, producing instead an undated, unofficially translated statement that the Committee considered to be wholly unsatisfactory.

Further, the Applicant initially stated that he had purchased the computer "thinking it was contraband" and "acknowledge[d] that the purchase of contraband items is a practice in poor judgement". He later sought to correct that statement to read that he had purchased the computer "*not* thinking it was contraband" (emphasis in original). In the Tribunal's view, the Applicant's attempted correction of the statement was not compatible with the rest of that statement and, thus, far from rebutting the prima facie case against him, raised serious doubts as to his veracity.

The Applicant also alleged that his suspension, after the initial investigation, was improper because there were irregularities in its imposition. The Tribunal noted that the Respondent had applied an obsolete procedure for suspension that had been superseded six months earlier by the revised Chapter X of the United Nations Staff Rules, and the Executive Director who had imposed the suspension did not have a proper delegation of authority to do so. The Tribunal, therefore, found that there was an error in the application of the law which, while not being sufficiently substantial to nullify the decision to impose disciplinary measures, nevertheless violated the Applicant's rights. For this irregularity, the Tribunal ordered the Respondent to pay to the Applicant two months' net base salary.

The Applicant had also complained that he had been denied access to his counsel in New York, who was a member of the Panel of Counsel and who allegedly had not been informed of the Joint Disciplinary Committee proceedings until two months after that body had made its recommendations to the Secretary-General. The claim that this amounted to a denial of the right to representation was not correct. Staff rule 110.7(*d*) provided that a "Joint Disciplinary Committee shall permit a staff member to arrange to have his or her case presented before it by another staff member or retired staff member at the same duty station where the Committee is established". The Applicant's right to have local counsel, as provided in staff rule 110.7(*d*), was fully respected, and, in fact, a staff member represented him at the proceedings before the ad hoc Joint Disciplinary Committee. Although the Applicant now claimed that he was entitled to have his New York counsel represent him, he presented no evidence that he had sought to obtain her presence during the proceedings in Nairobi. The Tribunal concluded that the Applicant's right to the assistance of counsel pursuant to the Staff Regulations and Staff Rules had been fully honoured. The Tribunal concluded that there were no material procedural irregularities of which the Applicant could complain with respect to his right to counsel.

For the foregoing reasons, the Tribunal rejected the Applicant's pleas, except for the suspension irregularity.

7. JUDGEMENT NO. 903 (20 NOVEMBER 1998): KHALIL V. THE COMMISSIONER-GENERAL OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST[9]

Refusal to change Applicant's date of birth in relation to date of retirement—Question whether appeal to the Joint Appeals Board was lodged within the prescribed time limits—Personnel directive A/9—Policy against date of birth change

The Applicant entered the service of the Agency on 8 February 1956, as a Teacher, at the grade 4 level, at El Buss School, Tyre, Lebanon. He was successively promoted, eventually reaching the grade 17 level, in the post of Senior Education Officer. The Applicant separated from service upon retirement on 30 November 1996.

In the Agency's records are two employment application forms, one signed in April 1956 and another unsigned, both indicating the Applicant's date of birth as 11 November 1936. There also are an UNRWA Agreement-Beneficiary form, signed in April 1956 by the Applicant and an UNRWA representative and two witnesses, and two separate area staff dependency reports, signed in April 1963 and July 1967, respectively, by the Applicant, all indicating his date of birth again as 11 November 1936. However, on 8 September 1967, the Applicant was provided with a United Nations laissez-passer, on which the date of his birth was noted as "11 November 1937". On 15 March 1971, the Applicant signed a Designation, Change or Revocation of Beneficiary form giving "11 November 1937" as his date of birth.

On 27 August 1989, the Applicant informed the area Personnel Officer that he had received a document from the Agency that incorrectly noted his date of birth as 11 November 1936, instead of 11 November 1937, and asked the area Personnel Officer to take the necessary action to correct it. On 31 August 1989, the area Personnel Officer wrote to the Applicant, noting that 11 November 1936 had been given as his date of birth in his application for employment form and in other Agency documents. On 13 September 1989, the Applicant advised the area Personnel Officer that the date "1936" must have been a typographical error and that the handwriting on the application for employment form was not his own. He provided the area Personnel Officer with several documents showing his birth date as "1937", but on 8 November 1989, the Chief, Personnel Services Division, informed the Applicant that his date of birth could not be changed in the Agency's records.

On 16 October 1995, the area Personnel Officer informed the Applicant that, on 11 November 1996, the Applicant would reach the age of retirement and that the Agency would not defer his retirement beyond that date. On 20 July 1996, the Applicant wrote to the Commissioner-General requesting that his date of retirement be deferred to the end of November 1997, in the light of the mistake made in the Agency's records regarding his date of birth. In a reply dated 16 September 1996, the Director of Administration and Human Resources "confirm[ed] all previous correspondence on the subject" of the Applicant's date of birth, in accordance with the policy set forth in personnel directive A/9. He also rejected the Applicant's request for an extension of his service beyond retirement age, on the ground that such request had not been submitted to the Director of Administration and Human Resources one year before the retirement date, as required.

On 25 September 1996, the Applicant requested the Director of Administration and Human Resources to reconsider his decision, claiming that a grace period had

been given to staff to amend their date of birth in the Agency's records and that, because he was on secondment to UNESCO during that time, he had been unaware of such a grace period. On 2 October 1996, the Director of Administration and Human Resources confirmed his earlier advice.

On 5 November 1996, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 18 May 1997, which supported the Applicant's claim. However, the Commissioner-General had rejected the JAB recommendation because (*a*) the appeal to the JAB had not been lodged with the Board within the time limits prescribed under the area staff rules, and (*b*) the Applicant was not entitled to have his birth date changed, as such change was contrary to the area staff rules.

The Tribunal, noting that the JAB had received the application and addressed the merits of the appeal, decided also to receive the appeal before it and pass judgement, in accordance with article 2 of its statute. The Tribunal observed that the Applicant had tried on prior occasions to have his date of birth changed and continued to provide documents to the Agency that he believed supported his claim. Thus, the discussions between the Applicant and the Agency appeared to be ongoing and the appeal was properly considered to be timely.

In addition, the Tribunal considered it convenient to reassert the policy contained in the relevant personnel directive A/9, paragraph 6.1:

> "A staff member's age for retirement purposes shall be determined on the basis of evidence on UNRWA personnel records. Staff members will not be allowed to change a previous birth declaration."

This provision was amplified to include the following:

> "Once a certified date of birth has been accepted by the Agency, it becomes a part of the Agency's internal and official records. As such, it governs the application of all the relevant staff regulations and staff rules to the staff member's service with the Agency, including the date of retirement and, as an internal record of the Agency, it is beyond the jurisdiction of external parties. For a number of years, the staff member's date of birth has been on the pay slip. The Agency therefore is entitled to assume that staff members who have not already petitioned to change their dates of birth accept the Agency's records as being correct."

The Applicant objected to the application of this directive to his case because the directive only applied once a certified date of birth had been accepted by the Agency. In his case, he argued, there was no such certified date of birth.

In the Tribunal's view, the only critical document was the original birth certificate of the Applicant, which did not appear to be obtainable. This would be the sole document on which the Applicant's birth date was not based on his word. The birth dates recorded on all the other documents were either based on the Applicant's word or on a former document issued on the Applicant's word. In such circumstances, the authorities issuing such documents had to believe the Applicant or condemn him not to travel, not to marry, not to register his children, etc. The Tribunal, then, was not persuaded by the large number of documents brought in as evidence. Relying on the clear terms of personnel directive A/9, the Tribunal was bound to accept that the birth date on the Applicant's second application for employment form, which he had signed, could not have been certified other than by the Applicant's word.

The Applicant's signature was preceded by the words: "I certify that the statements made by me in answer to the foregoing questions are true, complete and correct in all respects." Under the heading "Personal history", the Applicant stated: "I was born in 1936, at Kabri Village." Furthermore, the date of birth of the Applicant given on three subsequent documents signed by him coincided with the date on the second signed employment application form, and the Tribunal had no reason to doubt the veracity and authenticity of these documents: they expressed the Applicant's good-faith statement of his date of birth on documents having a different purpose than just ascertaining his age. On 15 January 1990, the Applicant presented an identification document issued by the Higher Arab Committee for Palestine in Beirut on 23 April 1953. The Applicant maintained that the document "stands for my birth certificate", that it "was issued three years before I joined UNRWA", and that it "clearly states that my date of birth is 1937". However, since the Applicant himself had maintained that he did not possess his original birth certificate, the document must have been issued on his word, just as the others.

Moreover, in the view of the Tribunal, even if the Applicant had been mistaken or absent-minded when he had initially stated his date of birth as 1936, that circumstance was irrelevant. The Agency had adopted a policy, codified as personnel directive A/9, which gave total priority to the first date of birth declared by a staff member in the Agency's internal documents over all other declarations. As the Tribunal recalled, in matters of retirement age, the Agency required certainty since not only the rights of the retiring staff members were at stake, but also the interests of other staff members in pursuing their careers by filling the vacant posts of those who retired.

For the foregoing reasons, the application was rejected in its entirety.

8. Judgement No. 906 (20 November 1998): Ziadeh v. the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East [10]

Termination on medical grounds—Audi alteram partem—*Importance of Medical Board report being transparent and stating reasons for conclusions—Question of bias or prejudice—Reinstatement of Applicant not appropriate remedy*

The Applicant entered the service of the Agency on 1 October 1983, as Medical Officer "B" (Part Time) at grade 14, in Jarash Camp Health Centre. On 1 January 1986, the Applicant was granted a temporary indefinite appointment as an area staff member in the capacity of Medical Officer "B" (Relieving) at grade 14, in the Jordan Field. On 1 October 1986, he was transferred to the post of Medical Officer "B" in the Baqa'a Camp Clinic, Balqa Area. He was subsequently transferred to a number of other offices in the region. The Applicant separated from service on health grounds with effect from 5 March 1996.

On 22 July 1992, the Applicant underwent a kidney transplant operation. On 27 August 1992, a Medical Board convened to examine the Applicant and determine his fitness for continued service with the Agency. On 11 November 1992, the Board concluded that the Applicant was "fit for continued service with the Agency" and recommended "re-evaluation after three months". During the period between 4 February 1993 and 16 January 1995, five other Medical Boards re-evaluated the Applicant. Each Board concluded that the Applicant remained fit for continued service with the Agency; each recommended re-evaluation of the Applicant's condition after six months.

On 19 July 1995, the Applicant was examined by another Medical Board which concluded, on 19 September 1995, that the Applicant was fit to resume his duties with the Agency. The Board recommended re-evaluation after one year. It further noted in an attached confidential letter to the Chief, Field Health Programme, Jordan, that although the Applicant was found fit by the Board he was found to suffer from a vascular necrosis of the head of the femur, both sides, which rendered him more vulnerable to fracture, and therefore, to avoid the probability of in-service accidents that might result from mobility and travel, the Board recommended that the Applicant be stationed in a health centre and not travel within the area throughout the scholastic year. On 28 September 1995, the same Medical Board was reconvened and "reviewed the reports and investigations concerning [the Applicant]". On 1 October 1995, the Board submitted to the Chief, Field Health Programme, Jordan, its conclusions that "[the Applicant was] *unfit* to resume his duties with the Agency" and that "the provisions of paragraph 7 of staff rule 109.7 do not apply in his case". On 2 October 1995, the Field Health Officer concurred with those conclusions.

On 23 October 1995, the Applicant requested the Director of UNRWA Affairs and the Director of Health to review the decisions to declare him unfit for continued service and to terminate his appointment. The Applicant enclosed medical reports from specialists in support of his claim that he was fit for service.

In consideration of the case, the Tribunal noted:

1. That between 27 August 1992 and 19 September 1995, the Applicant's health had been examined and reviewed by no less than six Medical Boards, all of which had concluded that he was fit to work in the medical service of UNRWA.

2. That on all such occasions, his fitness for service had been determined by reference to his capacity to discharge his functions in an acceptable manner and that both the Applicant and the Respondent had considered that to be the primary consideration whereby his condition should be assessed.

3. That no new medical evidence had become available to the Medical Board between the report of the Medical Board dated 19 September 1995, when it reported the Applicant as being "fit to resume his duties", and the report dated 28 September 1995, when the same Board had reconvened to review the Applicant's case and found him "unfit to resume his duties". The same information it had previously considered had served as the basis for the new conclusion. The Applicant had experienced no substantial or relevant deterioration in his condition between those dates which would have entitled the Board to change its original conclusion from "fit to resume his duties" to "unfit to resume his duties".

4. That the reconvening of the same Medical Board and the reconsideration by it of the Applicant's fitness for service had been inspired by the Respondent. The Respondent had rejected the Board's first conclusion not on the grounds that there was new evidence that the Applicant was unfit to resume his duties; rather, the Respondent believed that the Applicant would be unable to discharge his duties because his medical condition made him susceptible to easily fracturing his femur, which was weakened by a vascular necrosis, and because the immunosuppressive medication that he needed to take made him vulnerable to developing an infection. Thus, the Respondent feared that the Applicant might suffer a service-incurred injury or other service-related illness, which would expose the Respondent to adverse financial burdens and would constitute "an unnecessary and undesirable outcome".

5. That none of the specialists whom the Applicant consulted, including two to whom the Applicant had been referred by the Agency, had concluded that he was unfit.

6. That between 19 September and 28 September 1995, the Applicant had never been apprised of the reasons why his case was being reconsidered, i.e., the Applicant's potential exposure to a service-incurred injury or illness or the potential financial consequences to the Respondent. The Respondent appeared to have changed the interpretation of "unfit for duty" without giving notice of such change in definition to the Applicant, so as to deny him an opportunity to challenge the application of such definition to his case and to deny him the opportunity of adducing evidence or making presentations that he was not "unfit" within the widened definition.

Based on the above findings, the Tribunal concluded that the Applicant had been denied the right to participate in any meaningful way in the Medical Board's reconsideration of his fitness for service. He had been denied his right to furnish evidence thereon or to challenge any evidence which might have been adverse to him. The Applicant had thus been denied the rights protected by the principle of *audi alteram partem*, being analogous to the right to confront one's accusers. In short, the Applicant had been denied due process.

The Tribunal was further concerned as to the inadequate content of the report of the Medical Board dated 28 September 1995, in that it repeated verbatim the earlier report of 19 September 1995, when it declared him "fit to resume his duties". The only difference in the 28 September report was that the word "unfit" had been substituted for the word "fit". It stated no ascertainable reasons for the change in its conclusion, and, since all the medical evidence from the specialists was to the effect that he was fit, the Tribunal could only assume that it had found him "unfit" because of the new and expanded definition. Likewise, the Respondent's reasons for accepting the later conclusion, rather than the original conclusion that he was fit for duty, made by the very same Board, were difficult, if not impossible, to ascertain. The Tribunal was satisfied that due process required that such a report be transparent and should state reasons so as to allow a dissatisfied staff member to challenge its contents.

The Tribunal was also concerned that the very persons who had orchestrated or inspired the reconvening of the Medical Board were those who had ultimately inspired the decision to separate the Applicant from service on the ground that he was unfit for service. That situation might bring about the perception that bias or prejudice had tainted the termination of the Applicant's appointment.

The Tribunal was satisfied that for the reasons stated, the Respondent had deprived the Applicant of both fairness and due process in the procedures that had eventually led to the Respondent's decision to separate the Applicant from service on the grounds of health. The Tribunal had considered the Applicant's request for reinstatement but considered that not to be an appropriate remedy. First, the Tribunal was not satisfied that had the procedures been correct and fairly conducted, the decision of the Medical Board and the Respondent's acceptance thereof would have been different. Second, the circumstances had obviously changed since the Applicant was separated. The Applicant had been in private medical practice since his separation, and substantial separation benefits had already been paid to the Applicant. The Tribunal therefore considered that the payment of compensation would be more appropriate remedy than reinstatement, and ordered the Respondent to pay to the Applicant compensation in the amount of two years' net base salary.

B. Decisions of the Administrative Tribunal of the International Labour Organization[11]

1. JUDGEMENT NO. 1689 (29 JANUARY 1998): MONTENEZ (NO. 2) V. EUROPEAN ORGANIZATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL AGENCY)[12]

Non-promotion—Limited review of promotion decisions—Roles of selection and promotion boards—Role of private firm in selection process—Article 2 (1) (a) *of rule No. 2—Article 2 (2) of rule No. 2—Article 6, paragraph 5, of rule No. 2—Importance of an organization following its procedure*

The complainant joined the staff of Eurocontrol at its headquarters in Brussels on 1 October 1985, as a translator at grade LA6. On 1 January 1992, he was promoted to grade LA5. From 16 March 1994 to 15 February 1995, he was acting head of the French Language Translation Unit of the Linguistic Division.

On 26 April 1995, Eurocontrol published a notice of competition, No. HQ-95-LA/097, for the post of head of Unit at grade LA4. It said that applicants had to be of French mother tongue or have received their education in French, and have "sound knowledge of English, German and at least one other of the languages used in the Agency". There was to be a preliminary selection, based on an assessment of the applicants' academic and other qualifications, and then a final selection from the shortlist to be made on the strength of further assessment and of interviews.

The complainant applied on 20 June 1995, as did another staff member, an interpreter at grade LA5. This staff member had been with the Agency since 5 October 1970 and in 1988 had been appointed deputy to the head of the Unit. She had been the acting head since 1 April 1995.

On 22 August 1995, the Selection Board decided that the complainant and the Acting Head were the only candidates to qualify and it ranked them on a par. An officer of the Human Resources Directorate requested the complainant and the acting head to report for what he called a "personal development exercise", which was to consist of an interview with a firm of recruitment consultants. On 17 November, an ad hoc promotion board, chaired by the Director General and made up of three members of the Administration and two staff representatives, recommended the acting head for the post. By a letter of 28 November, an official of the Human Resources Directorate told the complainant on the Director General's behalf that his application had been unsuccessful.

On 29 February 1996, the complainant submitted a "complaint" to the Director General under article 92(2) of the Staff Regulations against the rejection of his application and the appointment of the other staff member. The case was put before the Joint Committee for Disputes. In its report of 31 July 1996, the Committee said that the "complaint" was warranted because the appointed candidate had neither "a degree in German" nor "knowledge of the level usually required for the duties [of the post], particularly revising translations". In a letter of 23 September 1996 to the complainant, the Director General rejected the Committee's recommendation.

In consideration of the case, the Tribunal recalled that, according to a long line of precedent, the executive head of an organization had broad discretion in making appointments and his decision was subject only to limited review. The Tribunal

would interfere only if the decision was taken ultra vires or showed a formal or procedural flaw or mistake of fact or law, or if some material fact was overlooked, or if there was misuse of authority or an obviously wrong inference from the evidence. See, for example, Judgements 1436 (in re Sala No. 2) 1995, 1497 (in re Flores) 1995,1654 (in re van der Laan Nos. 1 and 2) 1996.

The complainant first argued that considering the two candidates at two stages—assessment of technical qualifications by a selection board, and then recommendations by a promotion board to the Director General—was against article 30 of the International Labour Organization Regulations, and in that regard the Tribunal noted that article 30(2) read:

> "For each competition, a selection board shall be appointed by the Director General. This Board shall draw up a list of suitable candidates, in order of merit and without distinction of nationality.
>
> "The appointing authority shall decide which of these candidates to appoint to the vacant posts.
>
> "In the event of a selection being made which is not in conformity with the list drawn up by the selection board, reasons for the appointment shall be given in consequence."

The Tribunal, concluding that the complainant had misread the precedents he had cited that dealt with article 30, was of the view that the job of a selection board was to draw up a list of qualified internal and external candidates so as to keep the procedure impartial and help the Director General. It need not make any recommendation. But appointment to a post at a higher grade was a promotion, and so article 45 applied. The promotion board too was supposed to help the appointing authority by making proposals for promotion on the strength of a comprehensive assessment. In Judgement 1477 (in re Nacer-Cherif) 1995, a case in which another organization was the defendant, the Tribunal had found that there were two stages of selection: first, a panel drew up a list of candidates according to their merits on paper; then the list went to a selection board. The Tribunal held that the selection board was bound by its terms of reference and not free to delegate any of its responsibility to a selection panel, even though there was no general rule against such division of authority.

The Tribunal agreed with Eurocontrol that the qualifications the Selection Board must assess according to article 30(2) were the candidates' merits on paper and, if need be, as revealed in tests of their technical skills, and then it was up to the promotion board and then to the Director General to assess temperamental fitness for management. So the promotion board had not in the present case encroached on the Selection Board's competence.

The complainant also argued that there had been a further breach of article 30 in the fact that the Selection Board had delegated the task of interviewing the candidates to a private firm of consultants. The Tribunal, recalling that Judgement 1477, for one, had affirmed that, unless so empowered by a written text, a body might not delegate authority or competence, and stated that in the present case the material rules did not actually require the Selection Board itself to interview candidates. So it was free to obtain expert help in framing questions of a sort that only candidates with particular qualifications could answer, even though it still had to assess their answers itself and make recommendations accordingly. Furthermore, the Tribunal, rejecting the complainant's argument that the Director General was not free to go

beyond the Selection Board's shortlist and to take into account further information obtained in tests or interviews, concluded that, since there was nothing wrong with splitting up the process of assessment, there was no objection either to following up the rating of candidates' technical skills with whatever psychological tests the organization's interests demanded.

The complainant further argued that the membership of the promotion board, which included the Director General, had offended against article 30 and the requirement of independence of the Administration. As the Tribunal stated, there had been no breach of article 30 in bringing the promotion board into the process of selection. It was not the same body as the Selection Board, and the same rules did not apply to both of them. Nor were the promotion board and the Director General one and the same: they might have different views even if the Director General himself was on the board. The board was supposed to contribute to the impartiality and openness of the promotion procedure, and it had done so, in the view of the Tribunal.

The complainant pleaded a procedural flaw, namely, breach of article 2(l)(*a*) of rule No. 2, in that the notice had failed to say what sort of competition was intended: was it one that assessed paper qualifications only or one that involved tests as well? That Tribunal noted that the provision did require that a notice should state what the competition was to be based on and set out the process of selection. That was necessary because the process must be explicit enough to be binding on the appointing authority, and because staff members needed the information to help in deciding whether to apply and to know what to anticipate. In that regard, the Tribunal noted that notice 25/94, of 8 December 1994, had stated that the process of selection would start with comparison of the candidates' paper qualifications and of experience, but that the "final selection" would depend on "assessments and interviews", which, among other things, set out two stages: first the Selection Board would look at the candidates' records and draw up a shortlist; then everyone on the list would:

> "be assessed by means of interviews, which may include tests, and/or other assessment procedures. A recommendation of the most suitable candidate(s) will be made by the service concerned to the appointing authority."

And as the Tribunal observed, Eurocontrol was obviously basing the competition on qualifications, and if the complainant was really unsure on that score he had only to ask the Administration. Since he had not done so, presumably he had not needed to, and for him to raise the issue at the current stage scarcely showed good faith.

The complainant also charged the Agency with breach of its duty under article 2(2) of rule No. 2 to inform him that he was to be assessed on the strength of "qualifications and tests". The Tribunal recalled that article 2(2) stated that "where the competition is on the basis of qualifications and tests, the candidates admitted to the competition shall be informed of the nature of the tests". But, in the opinion of the Tribunal, it did not apply in the present case: for the reasons given above, the competition was to be on the strength, not of "qualifications and tests", but just of "qualifications". Besides, the Agency had given the complainant due notice of the psychological tests he was to take and had offered him any information he needed.

The complainant cited the report of the Joint Committee for Disputes in support of his further plea that the Director General ought not to have taken the Selection Board's shortlist, because this was not the "reasoned report" which article 6, para-

graph 5, of rule No. 2 required the Board to submit along with its list. The Agency had replied that that provision must be "construed in, and adapted to, the context of each case": where candidates were found suitable and put on a par, no explanation was called for, though "a reasoned report would have made sense had the Board put the two candidates in order of preference". The Tribunal noted that the "reasoned report" required in article 6 of rule No. 2 served the two purposes of helping the Director General take a decision and of allowing review of it. And as to review, it also answered the requirement of article 30(2) of the Staff Regulations:

> "In the event of a selection being made which is not in conformity with the list drawn up by the selection board, reasons for the appointment shall be given in consequence."

So if the Director General endorsed the Board's recommendations, the reasoned report required of it became decisive; whereas if he did not, he must give reasons of his own. In any event the final ranking, whether by the Board or by the Director General, must be accounted for. If the Director General followed the Board's rating of the candidates' technical qualifications he need not say why; so the Board at least must say what its reasons were for the rating.

As the Tribunal further noted, what sort of reasons should be given would turn on the nature of the procedure and the stage it had reached. According to precedent, the form in which they were conveyed must not be such as to harm the prospects of unsuccessful candidates, especially internal ones: see Judgements 1223 (in re Kirstetter No. 2) and 1390 (in re More) 1994. Likewise, only where a prima facie case has been made for quashing an appointment should there be access to a candidate's personal records: see Judgement 1436 (in re Sala No. 2) 1999. Again, all that might be expected of the Selection Board was enough explanation for its choice to make sense, though a fuller one might have been in order when it put shortlisted candidates on a par or in an order of preference. Ranking two or more *ex aequo* posited a finding that they were on a par; but they might be either equal in all respects or else, despite different qualities in different areas, rated broadly equal: the Director General and the complainant needed to know which.

The Tribunal, however, concluded that in the present case the Selection Board had not complied with the requirement. Nor had Eurocontrol later removed the flaw. Although the reasons stated for the impugned decision were sufficient and though the complainant's other objections to it failed, it did show a fatal flaw. An organization that set up an advisory body and had a duty to consult it must abide by its own rules and keep to the prescribed procedure: see Judgements 1488 (in re Schorsack) 1995 and 1525 (in re Bardi Cevallos) 1996.

The Tribunal therefore decided that the Director General should reconsider the case in the light of the reasoned report which the Selection Board must submit to him. The Agency was to resume the process of selection at the point at which the flaw had occurred. The Selection Board should make the reasoned report required under article 6 of rule No. 2 and the process then should go ahead as prescribed. But according to the Tribunal, since the psychological tests were quite irrelevant to the Board's assessment of technical qualifications, they were not to be repeated.

The Tribunal also stated that, having succeeded in part, the complainant was entitled to costs, of 50,000 Belgian francs.

2. JUDGEMENT NO. 1696 (29 JANUARY 1998): FELKAI V. CUSTOMS COOPERATION COUNCIL[13]

Termination of appointment because of poor performance—Regulation 9—Review of probationer is very limited—Delegation of authority must have basis in the Rules—Compensation, not reinstatement, for lost earnings—Question of moral injury—Article VII (1) of Tribunal's statute—Question of abuse of discretion

The complainant joined the Council on 11 April 1994, as a publications officer at grade B4. Her contract was for three years, including six months' probation. A probation report that her then supervisor, the head of Financial Services, wrote on 29 August 1994, stated that though she had "undoubted abilities" her temperament was awkward. He recommended extending the period of probation which was done and confirmed in writing on 27 September, and she accepted. A new supervisor, who was head of Administrative Services, wrote a second probation report on 22 February 1995, which said much the same thing as the first and recommended that unless the complainant improved she should be terminated. On 23 February 1995, the Administration spoke to the Chairman of the Staff Committee, the vice-chairman too being present. The Chairman saw no need to consult the Committee as a whole and endorsed the recommendation for termination of the complainant's appointment.

The Chairman was to be absent for three weeks and the vice-chairman replaced him. By a memorandum he wrote later on 23 February, the vice-chairman asked the Head of Administrative Services to write a note on the case to be put to the full Committee; failing that, he explained, the Committee could not give the "preliminary opinion" required of it as an advisory body. In her reply of 24 February, the head of Administrative Services stated that the chairman had already been consulted and was in favour of termination. The same day, the vice-chairman wrote back maintaining that according to regulation 9 there still had to be a plenary meeting of the Committee. In a letter of 24 February, the Secretary-General gave the complainant notice of termination at 10 April, releasing her from duty to report for work after 10 March. His letter set out the reasons: though very good at preparing publications, she was tactless and clumsy in her dealings with others and poor at administrative work.

By a detailed memorandum dated 8 March 1995, the vice-chairman told the head of Administrative Services that at a meeting on 6 March the Staff Committee had taken the view that the Administration had a duty to consult it under regulation 9. He accordingly asked for further information and commented on the termination.

On 13 March, the Secretary-General rejected a request from the complainant for review of the decision not to confirm her appointment. She appealed to the Appeals Board. In a report dated 9 August 1996, it concluded that the Secretary-General's decision of 24 February 1995 to terminate her appointment showed neither formal nor substantive flaws and should stand. On 2 September 1996, the Secretary-General gave her notice of his final decision to end her appointment, and she appealed.

In consideration of the case, the Tribunal observed that regulation 9 read:

"(*a*) Officials shall be appointed for a fixed term or an indefinite term.

"(*b*) The first six months of service by an official shall be a probationary period. At the end of this period, the Secretary-General shall decide:

(i) To confirm the appointment; or

(ii) Exceptionally, with the consent of this official and after consultation with the appropriate advisory body, to prolong this probationary period for a further period of not more than six months; or

(iii) After consultation with an advisory body, to terminate the appointment upon giving one month's notice or upon payment of one month's emoluments."

And staff circular No. 136, which implemented regulation 9, provided:

"Any actions taken under the terms of this Regulation shall be notified to the official concerned in writing. The appropriate advisory body to be consulted under (*b*) (ii) and (iii) shall be the Administration Committee in the case of an official in category A and the Staff Committee in the case of all other categories."

The Tribunal further noted that according to precedent a decision to end an appointment was a discretionary one and could be set aside only if it were taken ultra vires or showed a formal or procedural flaw or mistake of fact or law, or if some material fact was overlooked, or if there were an obviously wrong inference from the evidence or misuse of authority. The Tribunal would apply those criteria with even greater caution in reviewing the case of a probationer; otherwise, probation failed to serve as a period of trial. An organization must be allowed the widest discretion in the matter and its decision would stand unless the defect was especially serious or glaring. Moreover, where the reason for non-confirmation was poor performance, the Tribunal would not replace the employer's assessment of the complainant with its own. See Judgments 1161 (in re Bouritsas) 1992; 1175 (in re Scotti) 1992; 1183 (in re Hernández Quintanilla) 1992; 1246 (in re Pavlova Nos. 1 and 2) 1993; 1352 (in re Offerman) 1994; 1386 (in re Bréban) 1995; and particularly 1418 (in re Morier) 1995.

As the Tribunal observed, both parties acknowledged that the wording of regulation 9(*b*)(3) was plain: the decision to terminate an appointment at the end of probation might be taken only "after consultation with an advisory body", the Staff Committee. The Council argued that it need only speak to the Chairman, such being its practice to date. The complainant demurred: the Committee should, she maintained, have met in plenary to take up the matter and make a recommendation. Although the Chairman supported the Council's contention, a meeting of the members chaired by the Vice-Chairman preferred that of the complainant.

The Council's argument postulated prior delegation of authority to the Committee's Chairman or officers. But to be valid, in the opinion of the Tribunal, such delegation must have some basis in the rules (so said Judgement 1477 (in re Nacer-Cherif) 1996). Failing that, any action would be ultra vires. The Council cited no rule that allowed the Committee to delegate authority and the practice on which it did rely could have no effect in law, as the conditions that made a practice an enforceable custom had not been met. The alleged rule was not widely recognized as binding; indeed opinion varied on what it actually was.

The Tribunal therefore concluded that there had been wrongful failure to consult the Staff Committee; the Secretary-General had been wrong to decide on the case before he had consulted it; and, in line with *patere legem*, the impugned decision and the others he had taken in breach of his duty to consult it must be set aside. As the Tribunal recalled, authority for that was to be found in Judgements 1488 (in re Schorsack) 1996 and 1525 (in re Bardi Cevallos) 1996.

In the present case, the complainant claimed not reinstatement, but compensation for any earnings she had lost in the now expired period of three years following 11 April 1994, the date of her appointment. Since she had one year's probation on full pay, the loss she alleged was in the last two years of that period. The Council was not free to end her appointment until it had consulted the Staff Committee and it had not consulted the Committee within the three-year period. The parties had not argued the amount of her losses or of her actual or potential earnings in the last two years of the period. The Tribunal therefore made her an award *ex aequo et bono*.

She also claimed moral damages on the grounds that "her workload was unduly heavy for almost a year, conditions were very distressing, she suffered nervous collapse and the termination harmed her professional and personal standing". On that point, the Tribunal recalled article VII(1) of its statute that stated that for a complaint to be receivable the internal remedies must be exhausted, and it would not entertain any claim to damages that had no direct connection with the impugned decision. That decision being about termination, the only material issue was whether termination had caused her actionable moral injury.

For want of consultation of the Staff Committee the decision was unlawful. But in the view of the Tribunal, it was unlikely that the Committee would have found in her favour, and if so, such a finding would probably not have swayed the Secretary-General. And her other pleas did not warrant moral damages: she had seen her file; the Council had respected her right to a hearing or had subsequently made good any omission to do so; she had received the probation report before probation had expired; and the mere extension of probation had been stark enough warning. Besides, she must have realized that while she was still on probation her position was precarious.

As the Tribunal had stated, the Secretary-General had wide discretion in the matters of confirmation of the complainant's appointment. Had he decided against it even after going through the proper procedure, he could hardly have been accused of abuse of discretion. His first duty was to safeguard the Council's interests. Having found that the complainant had got on badly with other staff, he was free to conclude that it was in the Council's interest to let her go even if she was not the only one at fault nor even mainly to blame.

Having said that, the Tribunal ordered the Council to pay her damages for both material and moral injury in the amount of one year's pay at the rate applicable to her last month on actual duty, plus interest to be reckoned at the rate of 8 per cent a year as from 28 November 1995, the date on which she had filed with the Appeals Board the brief in support of her internal appeal. She also was entitled to 100,000 Belgian francs in costs.

3. Judgement No. 1706 (29 January 1998): Broere-Moore (No. 5) v. United Nations Industrial Development Organization[14]

Gender discrimination—Question of being a staff member at time of selection process—Staff rule 103.12(a)*(ii)—Policy of giving preference to women—Question of agreed termination—Tribunal's jurisdiction regarding discrimination issues vis-à-vis a panel on discrimination*

On joining UNIDO on 19 May 1992, the complainant became chief of its Public Relations and Information Section. Her grade was P.5 and she held a fixed-term appointment for two years. The Organization prematurely terminated

it in the course of an exercise in staff reduction and by an "agreed termination", dated 30 November 1993, under staff regulation 10.3(*c*). She made that the subject of her first complaint, which the Tribunal dismissed in Judgement 1483 (in re Broere and Moore) 1996. One of the terms of termination was that she was to be put on special leave without pay from 1 January 1994 to 31 March 1995.

The reduction of staff affected women more than men in senior posts in the Professional category. Thus, none of the 74 men at grade P.5 were terminated, but five out of the eight women were, their departure increasing what the complainant called the "gender imbalance" at that grade.

When the complainant went on special leave, the Director-General appointed as officer-in-charge from 1 January 1994 a man who had been an unsuccessful applicant for the post of Chief of the Public Relations and Information Section, which had been encumbered instead by the complainant. On 22 February 1994, UNIDO advertised the vacant post of chief of the Public Information Section. It was not disputed that the post was identical to the one the complainant had held, the required qualifications and the functions being the same. The notice of vacancy stated that "interested female candidates" were "particularly encouraged to apply". The complainant applied before the closing date, which was 10 March 1994.

On 1 September 1994, UNIDO appointed a man who had been an external candidate, and by her letter of 23 September 1994 the complainant asked for review. By a letter dated 17 October 1994, UNIDO replied that her first complaint referred to "most of the issues contained in the above-mentioned letter" and that "it would not be appropriate to make any additional comments". In a letter of 17 August 1995, the complainant said that the organization's pleadings on that complaint had not dealt with the issue and she repeated her request of 23 September 1994. She received a similar reply dated 8 September 1995 from the Director of Personnel Services.

On appeal the Joint Appeals Board held that it lacked competence because her appeal did not relate to an administrative decision within the meaning of staff rule 112.01(*a*) and her objections to the appointment of a man were not based on non-observance of the terms of her appointment: she was alleging discrimination, and for that UNIDO had, like other United Nations agencies, established a specialized body known as the Panel on Discrimination and Other Grievances, which alone was competent.

In the present complaint, her fifth, the complainant requested that UNIDO be ordered to grant "redress and pay compensation for the inequity and gender discrimination in appointing an outside male candidate to [her] post".

She contended, first, that she had been an internal candidate and so had been entitled to the benefit of staff rule 103.12(*a*)(ii), which provided:

> "… the appointment and promotion bodies shall, in filling vacancies, normally give preference, where qualifications are equal, to staff members already in the service of the Organization …"

Her second contention was that the chief of Personnel Administration had acknowledged that:

> "In principle, the Organization supports the various resolutions adopted by the [United Nations] on the status of women. The Organization has also to implement its governing bodies' policies for increasing the participation of women at all levels."

Such policies were, she observed, also reflected in the vacancy notice, which encouraged women to apply; but UNIDO had failed to comply and instead had resorted to "gender discrimination".

Finally, she alleged that the successful candidate had been an employee of the Organization of Petroleum Exporting Countries (OPEC); that "under pressure of OPEC's Secretary-General, his compatriot, UNIDO's recruitment chief, felt obliged to put the name of this OPEC candidate on the UNIDO roster when UNIDO was downsizing"; and that that was why the notice had invited applicants from the roster. She contended that the successful candidate had not satisfactorily completed probation, which UNIDO had extended by a year, and it had reassigned him to its office in Geneva. In support of her plea of discrimination she added that on the expiry of his contract it had given him a six-month extension for the sole purpose of sending him on a peace-keeping mission. Yet in a similar situation in 1994, when the Office of Human Resources Management of the United Nations had selected her for a peace-keeping mission while she was on special leave without pay, the Director-General had refused to release her despite his earlier assurances that UNIDO would continue to help her to find employment elsewhere. The post of Chief of Public Information had then been filled, on 1 September 1995, by promoting another staff member, junior to the complainant, who had been promoted to P.5 only in early 1994.

UNIDO had not denied any of those allegations. It maintained that the recruitment had taken place at a time when the complainant had ceased to be a staff member. Although originally she had been put on special leave until 31 March 1995, it had changed the date because she wanted to withdraw her contributions from the United Nations Joint Staff Pension Fund: by a letter dated 13 September 1994, the Director of Personnel Services informed her that the Director-General had agreed to her request that the date of expiry of her special leave be changed to 31 July 1994. UNIDO argued that in consequence it could not have violated any of her rights by a decision taken on 1 September 1994. By then she was no longer a staff member and, even if she had still been on special leave at that date, yet "in the light of a lawful agreed termination, there [were] no rights of the Complainant … that could have been violated by appointing an outside male to her former post". In the organization's submission, the impugned appointment did not amount to any failure to observe the terms of her employment; she would have been estopped from making such a claim; and her complaint was therefore irreceivable.

On the merits, UNIDO pointed out that there had been 18 candidates, including four internal ones, and that the successful candidate had been "selected by a lawful discretionary decision as the candidate best suited for the post": there had been no "gender discrimination".

Addressing the issues, the Tribunal observed that the selection process had been completed by 1 September 1994, and as far as the selection committee was concerned the date of expiry of her special leave was, even on 1 September 1994, still 31 March 1995 and had not yet been advanced; so to all intents and purposes she had remained a staff member throughout the selection process. At the date on which the committee made the recommendation that formed the basis of the impugned decision, it had no right or power to deny the complainant preference under rule 103.12(*a*)(ii). To do so was thus in breach of her rights as a staff member, and the breach was not removed by the subsequent change, on 13 September 1994, in the date of expiry of her leave. Although the change was retroactive it could not affect the process of selection, which had by then been concluded, in the opinion of the Tribunal.

As the Tribunal noted, particularly in view of the drastic impact that the staff reduction exercise of 1993 had had on women holding senior posts in the Professional category, the organization's professed policy of increasing the number of women staff at all levels required at least that, other things being equal, it should give preference to applications from women; indeed encouraging women to apply was consistent only with their right to such preference. And the Tribunal assumed that the complainant's qualifications were at least equal to those of the selected candidate and held that she had not been given preference over him.

The Tribunal further held that the "agreed termination" had not in any way restricted her rights under the Staff Rules, while she remained a staff member, to preference over an outside male candidate in any future competition, where qualifications were equal.

As for the special panel set up to deal with allegations of discrimination, neither the Joint Appeals Board nor UNIDO had cited any provision of the Staff Rules which compelled recourse to that panel. The complainant's failure to put her grievance before it did not make her complaint irreceivable. Where a matter was otherwise within its jurisdiction, the Tribunal could and would entertain related allegations of discrimination.

The Tribunal therefore concluded that the denial of preference to the complainant was a violation of rule 103.12(*a*)(ii) and of her rights as a woman candidate and contrary to the declared policy of UNIDO and to the terms of the vacancy notice. Not only was the complaint receivable, but it succeeded on the merits. Since the post in question was then held by someone else, the Tribunal made her awards of damages which it set *ex aequo et bono* at US$ 45,000 material injury and $25,000 for moral injury. She also was awarded $1,000 in costs.

4. Judgement No. 1728 (29 January 1998): Swaroop v. World Health Organization[15]

Termination because of abolishment of post—Role of a Reduction-in-Force Committee—Manual paragraphs II.9.280 and 530—Question of half-time posts—Reasonable offer of reassignment

The complainant joined WHO as a clerk in 1966. On 1 June 1968, the organization appointed him as a trainee classifier at grade G.3. Having completed his training period and received several promotions, he was awarded on 1 July 1985 a "career service appointment" at grade G.6. At the time in question he was working in the Registry Unit of the Division of Conference and General Services as a classifier. His duties included sorting correspondence, identifying important correspondence for coding, filing, and retrieving information for programmes.

Because of financial constraints, WHO decided in 1995 to abolish a total of 167 posts at headquarters with effect from 1 January 1996. Ninety of them were in the Division of Conference and General Services and included 9 out of the 12 posts for classifiers: the three to be retained were of indefinite duration, one at grade G.7, one at G.6 and one at G.5. The decision to abolish the 167 posts was conveyed to the staff by the Director of the Division on 17 July 1995. The Administration issued two circulars in that month explaining the procedure to be followed for the reduction in force. By a memorandum of 29 September 1995, the Director of the Personnel Division informed the complainant that his post would be abolished.

Before implementing the reduction-in-force procedure, WHO made efforts in accordance with paragraph II.9.265 of the Manual to reduce the number of terminations of appointment. First, it encouraged voluntary separation. Secondly, it gave staff the opportunity of applying for vacant fixed-term posts on the basis that those whose posts were being abolished would have priority. The complainant applied, albeit unsuccessfully, for four such posts. Thirdly, the organization converted 24 vacant full-time posts in the Division of Conference and General Services into 48 half-time ones as from 1 January 1996 and offered a half-time post to staff members of the Division whose posts were being abolished, including the complainant. Twenty-six accepted, and the complainant declined. None of the 24 vacant posts would have been open for competition in a reduction-in-force exercise because they were either vacant posts funded from extrabudgetary sources or posts, other than those being abolished, which had become vacant as a result of voluntary separation. Only occupied posts would have been open for competition in a reduction-in-force procedure.

As a result of those efforts, there were by 15 November 1995 only 29 staff members in the General Service category who were to take part in the reduction-in-force competition. In that competition, Manual paragraph II.9.340.3 stated:

> "… suitability for retention is assessed essentially by reference to the staff members' respective performance, including suitability for the international civil service, as evidenced by their various appraisal reports and other records; only if this comparison is not decisive should the precise periods of service be taken into account."

The Reduction-in-Force Committee reviewed the candidacy of the complainant, who, along with four other colleagues in the Registry Unit, competed for two full-time posts within the same occupational group. But it did not find him more "suitable for retention" than the others, and he was therefore not offered a post.

Manual paragraph II.9.360.1 provided:

> "… if the candidate has received no offer of another post, he or she may request the committee to allow him or her to compete for posts in a different occupational group. Such a request is only accepted if, having regard to qualifications and experience, the candidate is obviously well-suited for work corresponding to that group. He or she will be presumed to be well-suited if he or she has held a post in the different occupational group at the same grade as that of the abolished post or at not more than one grade lower for at least one year during the preceding fifteen years."

That did not, however, preclude the Reduction-in-Force Committee from considering, case by case, whether candidates were suited for different occupational groups.

The complainant applied unsuccessfully for posts in four occupational groups: the library, accounting, health records and archives. The Reduction-in-Force Committee found that he was obviously not suited for work in any of them. Since he had been unsuccessful in the competition for retention, the complainant was informed by a letter dated 13 December 1995 and signed by the Director of Personnel that the Director-General had decided to terminate his appointment as at 31 March 1996. The organization later postponed the termination to 31 May 1996.

Of the full-time posts in the Division that had been converted into half-time ones and offered to staff of the Division, a few remained unfilled. The organization

issued notices of vacancy in December 1995 for six half-time posts, stating that staff whose posts were being abolished would have priority. Of the six posts, four were for assistants in Registry at grade G.6, and although the duties were identical, two notices were issued because two, covered by notice LR/95/30, were of limited duration while the other two, covered by notice LR/95/31, were not. The duties were also similar to those of classifiers. The complainant applied in response to both notices and on 2 February 1996 he was selected for one of the posts covered by LR/95/31, which he declined, but not for either of the posts covered by LR/95/30.

On appeal, the headquarters Board of Appeal recommended rejecting his request for reversal of the notice of termination, but it expressed dissatisfaction with the efforts made to find a suitable reassignment for him. The Board recommended that the Administration should continue its efforts to find alternative employment for the complainant and reimburse his "certifiable legal expenses" up to 2,000 Swiss francs. In a letter of 20 November 1996 to the complainant, the Director-General said that he accepted the first recommendation. In regard to the second, he told the complainant that, because of the particular situation of the Division, staff members would be allowed to hold two part-time posts. As for the third recommendation, he granted SwF 300 in costs.

At the Tribunal level, the complainant contended that the records of the Reduction-in-Force Committee had not been disclosed to him; that no valid reason or explanation had been given for the decision not to retain him within or outside his occupational group; and that he had been denied an opportunity of stating his case before termination. He claimed that a staff member threatened with termination through no fault of his own because of a reduction in force had fewer procedural safeguards than one who faced disciplinary proceedings on account of, for example, wilful misconduct.

However, as the Tribunal noted, the functions of a Reduction-in-Force Committee were similar to those of selection committees, which dealt with appointments, promotions and the like. While it was true that the records of selection committees must be made available to appellate bodies, yet insofar as they related to staff other than the appellants themselves, they were confidential, and there was no general requirement of disclosure to such appellants. The same rule must apply to a Reduction-in-Force Committee, and the circumstances of the present case warranted no exception. Likewise, the Staff Rules and the Manual imposed no duty on a Reduction-in-Force Committee or a selection committee to give the staff member a detailed explanation for its conclusions. As for the right to be heard before termination, it must of course be respected where there was a proposal to terminate an appointment for disciplinary reasons or for unsatisfactory performance. A Reduction-in-Force Committee did not, however, make findings of that kind, but performed very different functions. That was clear from Manual paragraph II.9.340.3, which required assessment "essentially" on the basis of appraisal reports and other written records of performance and service. The Tribunal held that there had been no denial of the complainant's rights to equal treatment and to a fair procedure.

The complainant also argued, citing Manual paragraph II.9.280, that the organization had failed to identify him as a candidate for retention, thereby prejudicing his chances for retention in the competition. Citing Manual paragraphs II.9.530 to 550, he further submitted that the notice conveying the Director-General's decision to terminate his appointment, signed by the Director of Personnel, was void because it was not initialled by the Director-General. However, the Tribunal held that

Manual paragraph II.9.280 did not require that the incumbent of a post that was to be abolished be specifically described or designated as a "candidate for retention", but only that he be told of his "rights and obligations". And Manual paragraph II.9.530 required that notification of termination be signed by someone "authorized to sign personnel actions [and] initialled by the supervisor who initiated the action". Since the notice of termination, duly signed by the Director of Personnel, conveyed the decision of the Director-General, it was unnecessary, in the view of the Tribunal, for the latter to authenticate it further with his own initials.

The complainant next submitted that the decision to convert 24 existing full-time posts in the Division of Conference and General Services, after abolition, into half-time ones was irregular and ultra vires and deprived him of his acquired right to secure one of the full-time posts through a reduction-in-force competition. In that regard, the Tribunal observed that Manual paragraph III.3.160 provided that a post in a unit might be abolished and the funds used to establish a new one in the same unit. Paragraph 11.18.30 stated that a part-time post might be created in the same way as a full-time one. The Tribunal therefore held that the decision to create half-time posts in order to reduce the hardship to staff members faced with termination was neither irregular nor ultra vires. Moreover, as stated above, none of the 24 full-time posts would have been available for a reduction-in-force competition.

The complainant contended that WHO had failed to take suitable steps to find him alternative employment and to make him a reasonable offer of reassignment before termination although such reassignment would have been "immediately possible". It had violated staff rule 1050.2.5, which read:

> "A staff member's appointment shall not be terminated before he has been made a reasonable offer of reassignment if such offer is immediately possible."

In response, WHO had referred to the efforts to reassign the complainant which it had made before, during and even after the reduction-in-force procedure. It pointed out that the complainant himself acknowledged that it had even interviewed him for a post for which he had not applied. However, as the Tribunal observed, WHO had neither denied nor explained the observations which the Board of Appeal had made about the availability of full- and half-time posts. It was quite clear that four half-time posts of Registry assistants remained unfilled in December 1995, and it was reasonable to infer that they were posts which had been created by converting two full-time ones for which the complainant must have been eligible. Further, he had been found suitable for the half-time posts covered by notice LR/95/31, and the organization had offered no explanation as to why he was not considered suitable for the identical, but time-limited, half-time posts covered by notice LR/95/30. It might well be, as WHO contended, that a staff member might not usually hold two half-time posts, but the impugned decision showed that the Director-General did have discretion to appoint a staff member to two such posts.

In the opinion of the Tribunal, the conclusion was that WHO had been in a position to offer the complainant either a full-time post or two half-time posts but had failed to do so, and that he was therefore entitled to an award of material damages for its failure to make him a reasonable offer of reassignment. In determining the amount of the award, the Tribunal noted that the complainant could without prejudice to his claim have mitigated his loss by accepting a half-time post. It set the amount at SwF 25,000. He also was awarded SwF 5,000 in costs.

5. Judgement No. 1733 (29 January 1998): Umar v. International Atomic Energy Agency[16]

Non-promotion—Question of governmental sponsorship—ILO Judgement No. 431 (in re Rosescu)—Paragraph 68 of the Administrative Manual and paragraph A.2 of staff notice SEC/NOT/1309

The complainant joined the Agency on 16 April 1974, as a safeguards technician at grade G.4. He was promoted to G.5 on 1 November 1974, to G.6 on 1 January 1978 and to G.7 on 1 January 1984. He held a post at step 12 in G.6, which was equivalent to step 12 in G.7 under the old system of numbering.

On 4 May 1995, he applied for a post at grade P.3 as a safeguards inspector. The notice of vacancy stated that appointment was "subject to government endorsement". On 18 January 1996, the complainant's first-level and second-level supervisors signed a report appraising his performance. The former stated that "Mr. Umar should not only be promoted to the Professional level but also be kept in our Section where he is a very valuable asset". The second-level supervisor stated his "full agreement with the comments made by the supervisor". However, by a memorandum dated 15 July to the Director General, the Director of Personnel reported that the Permanent Mission of Pakistan to the United Nations Office at Vienna had said that the Atomic Energy Commission of that country was "not in a position to sponsor" the complainant's application. Subsequently, the Director General stated in memoranda that his approval for the complainant's promotion was subject to the express condition of government sponsorship, and since there was no such sponsorship the complainant could not be appointed to the post. The complainant was informed on 31 July that on the basis of the completed evaluation, his application had not been successful. No reason was given. The complainant replied on 11 September that it appeared from the endorsement on the memorandum of 15 July that the sole reason for rejecting his application was the failure to secure government sponsorship. He submitted that sponsorship was contrary to the principles of the international civil service and to articles VII.D and F of the Agency's statute. In accordance with staff rule 12.01.1(D)(1), he asked for review of the decision in the letter of 31 July and, if the Director General was not willing to reverse it, for waiver under rule 12.02.1(B) of the Joint Appeals Board's jurisdiction and for leave to appeal directly to the Tribunal.

The Director General confirmed on 9 October 1996 that he had approved the complainant's inclusion in the reserve list of P.3 safeguards inspectors on the express condition of government sponsorship; that such sponsorship had not been given; and that he saw no reason to reverse his decision but agreed to waiver of the Joint Appeals Board's jurisdiction.

In consideration of the case, the Tribunal noted that article VII.D of the Agency's statute provided:

> "The paramount consideration in the recruitment and employment of the staff and in the determination of the conditions of service shall be to secure employees of the highest standards of efficiency, technical competence and integrity. Subject to this consideration, due regard shall be paid to the contributions of members to the Agency and to the importance of recruiting the staff on as wide a geographical basis as possible."
>
> Article VII.F read in part:
>
> "In the performance of their duties, the Director General and the staff shall not seek or receive instructions from any source external to the Agency …"

The Agency's position was that the requirement of government sponsorship had existed for nearly 40 years and had since the beginning applied to all posts that were subject to geographical distribution. In 1990, the Agency had had a particular need for qualified technical staff and its Board of Governors had called on member States to suggest competent candidates who would ensure the highest standards prescribed by article VII.D. The Agency explained that the requirement had developed throughout the years into a useful instrument for verifying a candidate's credentials. It was of paramount importance in view of the Agency's terms of reference. It also was, stated the Agency, of practical use in that many staff had come and still came from a national civil service or an institution in the "semi-public sector", such as a research or other institute, and they returned to their home country with the useful knowledge they had gained in their scientific fields while working for the Agency. Lastly, the Agency pointed out that according to article VII.D "due regard shall be paid to the contributions of members … and to the importance of recruiting the staff on as wide a geographical basis as possible". Since member States were entitled only to a limited number of staff, their interest in the employment of their nationals could not be ignored. "Some sort of consultation with member States on the appointment of Agency staff must therefore be held." In practice, once the process of selection was over, the Agency requested the resident representative of a member State whether it would sponsor the chosen candidate.

The Agency further stated that from time to time a member State would refuse sponsorship, but that in exceptional circumstances the Director General had waived the requirement when he deemed that necessary in the Agency's interests. That showed, the Agency argued, that the Director General did not seek instructions from a member State and that the process was rather one of consultation.

In that regard, the Tribunal recalled that in Judgement No. 431 (in re Rosescu) 1980, the Tribunal had held:

> "The executive head of an organization is bound at all times to safeguard its interests and, where necessary, give them priority over others. One area in which the rule applies is staff recruitment. If a Director-General intends to appoint to the staff someone who is a government official in a member State, he will normally consult the member State, which may wish to keep the official in its service. Similarly, if such a government official's appointment is to be extended, it is reasonable that the organization should again consult the member State, which may have good reason to re-employ him. This does not mean that a Director-General must bow unquestioningly to the wishes of the Government he consults. He will be right to accede where sound reasons for opposition are expressed or implied. But he may not forego taking a decision in the organization's interests for the sole purpose of satisfying a member State. The organization has an interest in being on good terms with all member States, but that is no valid ground for a Director-General to fall in with the wishes of every one of them."

However, in the present case, the complainant was not being recruited for the first time, but had been in the Agency's service for 22 years. Pakistan had been consulted not about an extension of his contract but about a promotion for which he was fully qualified and it had given no explanation at all for its refusal to "sponsor" him. It had not even stated it wished to re-employ him. If Pakistan had given a reason, the Director General would have had to consider whether it was sound or not and whether refusing him the appointment was in the Agency's best interests. Since

it offered none, he had no basis on which to exercise his discretion. The complainant was fully qualified for promotion; his abilities were well known to the Agency and appreciated. The paramount consideration mentioned in article VII.D had been heeded, namely, seeking staff of the highest standards of efficiency, technical competence and integrity. The reason stated by the Agency for refusing him the appointment which he would otherwise have been granted was therefore untenable and acting from that reason amounted to a mistake in law.

The complainant had asked the Tribunal to declare that paragraph 68 of section 3, part II, of the Manual and paragraph A.2 of staff notice SEC/NOT/1309 were void because they were contrary to articles VII.D and VII.F of the Agency's statute and to the general principles of the international civil service. Paragraph 68 was about appointments in the Professional and higher categories of staff, and it read:

> "68. Appointments to posts subject to geographical distribution require sponsorship by the competent authorities in the applicant's member State. This will be obtained by the [Director of the Division of Personnel] before an offer of appointment is made to the selected candidate. Such sponsorship is deemed to have been given if the member State concerned does not inform [that Director] to the contrary within a reasonable period of time after having been approached in writing by the Agency."

Paragraph A.2 of SEC/NOT/1309 stated:

> "In the case of posts subject to geographical distribution, due regard shall be paid to the importance of recruiting staff on as wide a geographical basis as possible. Accordingly, government sponsorship will be required."

In the opinion of the Tribunal, the requirement of government sponsorship in those two provisions were ultra vires. The provisions must comply with the requirements of articles VII.D and F of the statute. In the performance of their duties, the Director General and the staff might not seek or receive instructions from any source external to the Agency. For the Director General to allow a member State a veto on the appointment of a staff member was to "receive instructions" from an external source and an interference with the paramount consideration of securing staff of the right calibre. The Tribunal therefore declared that paragraph 68 of the Administrative Manual and the sentence "Accordingly government sponsorship will be required" in paragraph A.2 of SEC/NOT/1309 were null and void as being contrary to articles VII.D and F of the statute.

The Tribunal concluded that since the complainant would have been promoted if the Director General had not allowed the unreasoned veto by the member State, he was entitled to appointment to a grade P.3 post for a nuclear safeguards inspector under a fixed-term contract for three years as from 22 July 1996, the date of approval of the other appointments from the reserve list of P.3 safeguards inspectors. The complainant also was entitled to the sum of 35,000 Austrian schillings in costs.

6. Judgement No. 1742 (9 July 1998): Everts (No. 2) v. Food and Agriculture Organization of the United Nations[17]

Suspension from duty due to misconduct—Importance of disciplinary process safeguards

Other facts relevant to this case are set out in Judgement No. 1741 (9 July 1998): Everts (No. 1), on Mr. Everts's first complaint. On 15 June 1995, the

Executive Director of the Programme decided to relieve the complainant of his duties as Deputy Executive Director for Operations. On 16 October 1995, he lodged an internal appeal against the Director's refusal to reverse her decision. In its report of 21 June 1996, the Appeals Committee of FAO held that the challenged decision was an "affront to his dignity", but it found no evidence of material injury. It recommended granting him redress for "grave moral injury". By a letter of 15 November 1996, which the complainant impugned, the Director-General sent him a copy of the report and rejected his appeal.

The complainant submitted that in suspending him from duty for misconduct FAO had acted in breach of due process and thereby had made a mistake of law. The decision and its hasty execution were in breach of the organization's duty of respect for his dignity and good name and caused him unnecessary and undue injury. Besides material injury, he had sustained, as the Appeals Committee had held, grave moral injury: the offer of transfer to a less senior post in the United Nations was so "deeply humiliating" as to damage his career and good name. What was more, the decision was out of all proportion to anything he had done. He further charged that the decisions not to renew his contract and to suspend him from duty were linked to and were tantamount to a "dismissal", and that the persistent allusions to his conduct showed that he had suffered a hidden disciplinary sanction. He claimed the quashing of the impugned decision and an award of costs.

As the Tribunal recalled, the World Food Programme had recruited the complainant on 31 August 1993 under a fixed-term appointment for two years. In his first complaint (Judgement No. 1741), he had impugned a final decision of 15 November 1996 by the Director-General of FAO not to renew his contract. After taking the original decision, on 21 April 1995, the Executive Director of WFP sent the complainant a memorandum dated 15 June 1995, in which she cited statements he had made, in a memorandum of 25 May 1995 to her, indicating that he either could not or would not "stop the activity outside the Programme" aimed at making her change her mind about his contract. She charged him with breach of the standards of conduct for members of the international civil service and stated that since he must not go on rejecting her authority she would have him transferred to the United Nations Department of Humanitarian Affairs, with the consent of the Director of that Department, or, if he preferred, put him on special leave. The complainant had rejected her charges and said he saw no reason to choose between the options she had presented, objecting as he did to the very decision which had led her to offer him the choice. Subsequently, the Director-General rejected the Appeals Committee's recommendation of "prompt redress of some kind to make him whole". In the present complaint, his second, he submitted that that decision erred in law by denying him due disciplinary process.

In the opinion of the Tribunal, because of the complainant's high rank in the Programme the decision was tantamount to a disciplinary sanction imposed on him on the grounds of his behaviour. Since those grounds rested on his own supervisor's allegations and accusations, there ought to have been due disciplinary process affording him the opportunity of arguing his case and, if need be, questioning anyone who was levelling charges against him. By depriving him of the safeguards of due disciplinary process before taking what amounted to disciplinary action, the Director-General had erred in law. His decision therefore could not stand. The decision was an affront to the complainant's dignity. There being no material injury, he was entitled to an award of US$ 4,000 in moral damages and to the sum of 10,000 French francs in costs.

7. Judgement No. 1745 (9 July 1998): de Roos v. European Southern Observatory[18]

Abolishment of post—Question of outsourcing—Question of breach of promise by the Administration—Importance of giving true reason for outsourcing—Organization must do its best in reassigning displaced staff

The European Southern Observatory (ESO) had recruited the complainant in September 1986 as an "operation technician (computers)". In 1995, it decided to hire an outside contractor to take over some of its work in information technology—"outsourcing" was its term—and it therefore set about reforming its Data Management Division. It thus came to abolish three posts, including the complainant's, in the Computer Management and Operation Group of the Division. By a letter of 6 December 1995, the head of Personnel informed him that: his post was to be abolished; his last working day would be 31 December 1995; he would be given 10 months' notice, up to 5 October 1996, and in the intervening period would be on special paid leave; and that the Observatory had failed to find him a suitable post, but he might apply for a new job as "archive system design and engineer" which was shortly to be announced. The complainant appealed against the decision of 6 December 1995, and the case was put before the Joint Advisory Appeals Board.

In its report the Board was highly critical of the Observatory. It held that the abolition of posts that outsourcing had brought about was "a general question concerning the personnel" and warranted prior consultation of the Standing Advisory Committee in accordance with article R VII 1.02 of the Staff Regulations. It did not accept the argument that outsourcing saved money. Nor, in its view, had the Observatory done enough before letting him go to give him the training he had requested or to find him another post. The Board therefore recommended that he be reinstated. By a decision of 19 September 1996, however, the Director General upheld the earlier decision, though he "reiterated" the ESO offer to help the complainant to find a suitable new job.

The complainant brought six pleas to the Tribunal: the loss of posts which was the pernicious by-product of outsourcing required prior consultation of the Standing Advisory Committee; the dismissal was in breach of promises made to the staff; ESO had failed to reveal the true reason for the abolition of the post; it had been remiss in attempting to find another post for him; it had committed an abuse of authority; and it had caused him unnecessary, undue and, therefore, actionable moral injury.

In the view of the Tribunal, the complainant was mistaken in pleading a procedural flaw in the decisions to subcontract work and discard posts. Article R VII 1.02 of the Staff Regulations, which he cited, stated:

> "The Director General shall consult the [Standing Advisory] Committee and receive its recommendations on general questions concerning the personnel including the contents and application of the Combined Staff Rules and the present Regulations."

But he had misread that article. In the opinion of the Tribunal, the mere fact that a decision on organization or management might affect the staff was insufficient to make consultation compulsory. A policy of staff retrenchment did amount to a "general question concerning the personnel". What ESO had done was to subcontract work to a firm of specialists in information technology so as to keep pace with

change in that field. Such a decision did not in itself come within the ambit of article R VII 1.02, even if it did affect the redeployment of posts or even the chances of survival of some of them. And the abolition of the complainant's post and two others was not a "general question" calling for referral to the Committee.

The Tribunal also was of the view that the complainant's plea of breach of promise had failed as well. In support of his contention that ESO had broken its word, he stated that the acting head of the Data Management Division had promised staff on 29 March 1995 that outsourcing would not entail forfeiting any posts. The evidence included a verbatim record of one of the meetings of the Joint Advisory Appeals Board, showing that a statement to that effect had indeed been made at a time when the view still held that the firm that was awarded the contract would take over staff from the Data Management Division. However the firm that was awarded the contract would not agree to those terms. The statement of the Acting Head of the Division, which was indeed rash, had understandably aroused hopes, but it hardly amounted to a specific individual promise on which the complainant could rely.

Under his third plea that the reason ESO had given for abolishing his post was neither true nor sufficient, the complainant alleged that its real reason for bringing in the firm was to cut costs and limit the number of international staff. The Appeals Board examined those arguments at length and reached the conclusion that the subcontracting had probably resulted in no additional savings, that the calculations had been hurried and were unreliable, and that the desire for savings was not the true reason for abolishing the complainant's post. In the opinion of the Tribunal, however, what mattered was not whether the ESO figures were correct but whether it had given the complainant the true reason for the abolition of the post. The answer was starkly clear: In the exercise of management prerogatives the Observatory had chosen to farm out work so as to obtain the help of a firm of experts. The upshot was the sacrifice of several posts in the Computer Management and Operation Group; there would, but for that, have been overlap. The complainant knew that full well, and the true reason showed no mistake of fact.

Regarding his plea that ESO had failed to do its utmost to reassign him, the Tribunal noted article R II 6.11, which read:

> "A member of the personnel shall not be dismissed owing to the suppression of a post or a general reduction of complement, unless the Director General has ascertained that the member of the personnel cannot be transferred to another post within the Organization."

Quite apart from that written rule, the Tribunal had often declared—see Judgements 269 (in re Gracia de Muñiz) 1976, and 1231 (in re Richard) 1993, to give both early and recent examples—that:

> "an organization may not terminate the appointment of a staff member whose post has been abolished, at least if he holds an appointment of indeterminate duration, without first taking suitable steps to find him alternative employment."

Judgement 1553 (in re Moreno de Gómez) 1996 was apposite as well. The rule was not that an organization must actually find a job, but that it must at least do its best, and in good time, to place someone whose post is to disappear.

In that regard, the Tribunal noted that ESO had offered no evidence of having done so, barring the sentence in the letter dated 6 December 1995 from the head of Personnel stating that "after verification of other job opportunities within

the Organization which would correspond to your qualifications, we, unfortunately, cannot offer you another position" and the bald remark that a post for an "archive system design and engineer" would soon be created and that he might apply for it. That invitation had come after the decision had been taken to dismiss him. As the Tribunal noted, the Appeals Board had concluded—and the defendant did not challenge its findings on that score—that several heads of department had been asked orally whether they had any post for him. But the quest had not even begun until 27 June 1996, which was after the hearings before the Board, which had probably pointed out the Administration's breach of R II 6.11, and long after 6 December 1995, the date of the letter notifying the complainant of the abolition of his post.

ESO stated, quite rightly, that the verbatim record of the Board's hearings did not have the same authority in law as formal minutes. However, statements made by some witnesses, undoubtedly in good faith, were worth citing. Moreover, the hearings had borne out two contentions: one, that ESO had probably not done its utmost to convince the firm to hire the complainant; and the other, that the head of his unit, the Data Management Division, was unaware of the Observatory's duty under article R II 6.11. The conclusion from the foregoing was that ESO was in breach of its duty to give priority to placing the holder of an abolished post and that the impugned decision could not stand.

In considering how to redress the situation, the Tribunal noted that ESO was not certain it could find him a suitable post, and in the appeal proceedings he had stated that payment of damages would be acceptable to him in lieu of reinstatement. The Tribunal therefore exercised its discretion under article VIII of its statute and, as in Judgement 1586 (in re da Costa Campos) 1997, allowed the defendant to choose between two options: ESO should either reinstate the complainant as from the date of dismissal or pay him damages equivalent to 36 months' base salary, less the amounts it had paid him in terminal and repatriation benefits. The Tribunal also awarded the complainant 20,000 French francs.

8. Judgement No. 1747 (9 July 1998): Gilli and Noethe v. European Southern Observatory[19]

Failure of organization to reveal complete Advisory Appeals Board report on another staff member's appeal—Question of receivability—Articles R VI 1.10 and VI 1.11 of the Staff Regulations

The complainants, employees of the European Southern Observatory, requested the Tribunal to quash decisions of 13 January 1997, taken on the Director General's behalf, to allow the staff to see the full text of a report of the Joint Advisory Appeals Board concerning the appeal by a staff member whose post had been abolished by ESO. The Director General had agreed to allow the staff to see the Board's "findings" and "conclusions and recommendations", but not the first three sections of its report, which contained no recommendations as such. In the complainants' submission, that was in breach both of the second paragraph of article R VI 1.11 of the Staff Regulations and of the good faith that should govern relations between an organization and its employees.

The Observatory replied that the complaints were irreceivable on the ground that the complainants had shown no cause of action. It stated that the Board's "recommendations" and "findings" had been shown to the staff. The refusal to disclose the rest of the report had caused the complainants themselves no injury; they were

obviously acting for the Staff Association, and that was the sort of case the Tribunal might not entertain.

In the view of the Tribunal, the Observatory's plea failed. Though ESO had disclosed part of the report, the complainants' point was that it had failed to publish the full text. Though that had not caused them any particular injury, they did have a right to know in full the Board's findings and conclusions on a case of abolition of post due to outsourcing. Even though the impugned decisions affected the staff as a whole and the complainants appeared to be acting for many others, they were not representing a staff association in a class action against a general decision. They were making distinctly individual challenges to the rejection of their request for full disclosure. That did not entail any abuse of process.

The Tribunal concluded that, in addition to being receivable, the complaints succeeded on the merits. In that regard, the Tribunal noted article R VI 1.10 of the Staff Regulations, which read in part:

> "The Board shall submit its recommendations to the Director General in writing within 30 calendar days after the date of the last hearing to which the appellant and/or his representative have been summoned."

and article R VI 1.11:

> "The Director General shall notify the appellant of his decision in writing, within 60 calendar days after receipt of the Board's recommendations.
>
> "Unless the appellant objects, this decision and the recommendations of the Board shall be brought to the notice of the personnel."

ESO had argued that article R VI 1.11 required it to disclose no more than the Board's "recommendations" *strictu sensu*, viz. the findings and conclusions that afforded the Director General guidance in taking a decision. The complainants retorted that it was the full text as submitted to the Director General that must be made available, not just the Board's conclusions on what the outcome should be.

As the Tribunal observed, although the wording of the Regulations was unclear, the word "recommendations" might not bear a different meaning on each of the three occasions that it appeared in the above texts. By the Board's "recommendations", in the opinion of the Tribunal, was meant the entire outcome of its work as put to the Director General, even if it was divided into sections. For appeal proceedings to be properly adversarial, ESO must let the staff member have the full text of the Board's report. As a matter of fact, it had done so in the present case. As the Tribunal further observed, in sending the appellants the Board's "recommendations", the Director General had drawn no distinction between the various sections of the report but had duly turned over the full text submitted by the Board. And when he came to apply the second sentence of R VI 1.11, the Director General had no reason to put any narrower construction on the term. Actually ESO had conceded that what it had to disclose might be not just the section headed "Conclusions and recommendations", since it also let the staff see the section on "findings" on which the Board had based its recommendations. It drew a distinction, though the report was an indivisible whole, between what might and what might not be revealed. The distinction was spurious, in the view of the Tribunal, if articles R VI 1.10 and R VI 1.11 were read together. The Tribunal concluded that, there being no need to rule on the complainants' second plea, the impugned decisions must be set aside.

The Tribunal further concluded that, since they had succeeded, the complainants were entitled to costs, and the Tribunal awarded each of them 7,500 French francs.

9. Judgement No. 1750 (9 July 1998): Peroni v. International Training Centre of the International Labour Organization[20]

Non-renewal of appointment—For appeal to be received, staff member must exhaust all internal means of redress—Claims of staff member must be cast in language such that an organization would gather that a decision was expected of it—Limited review of non-renewal decisions of short-term or fixed-term appointments—Question of discriminatory treatment—Duty of organization to ease hardship of non-renewal decisions

The complainant joined the staff of the ILO International Training Centre on 2 April 1990. He was initially employed on a short-term appointment from that date to 4 May 1990 as a clerk at grade G.2 in accounts. He was granted an extension of appointment until 28 March 1991. After a break of 10 months, the Centre re-employed him as a G.2 clerk in the Budget and Control Section from 21 January to 20 March 1992. On 17 May 1993, he returned to serve once again for three months at grade G.1 in the Documentation Section. He then served almost without break from 23 August 1993 to 31 October 1996, usually as a clerk in the Budget and Control Section, later called the Budget Section, on a series of short-term contracts.

The Centre's finance and budget services underwent an internal and external audit. For the sake of efficiency the Budget and Control Section was merged with the Finance Service, while budget, accounting and finance remained distinct. It was also agreed that the workload had fallen in the new Budget Section. By a letter of 30 August 1996, the Centre told the complainant that it would not be extending his appointment beyond 31 October 1996, as the need for short-term staff had become moot. Because his work had been "satisfactory" and because his contract was subject to rule 3.5 of the "short-term rules", he would receive six weeks' pay in termination indemnity. He was placed in a half-time post in the Administration Service until the end of October 1996 and at his own request received another two-month posting, again at half-time, up to 31 December 1996, in the Training Department. The complainant had been on sick leave since 18 December.

The Centre offered to help him to look for another job. While he was working at the Centre he could have applied for 23 posts it had posted for external and internal competition and for three open to internal candidates, including short-term staff covered by rule 3.5. Shortly before and after termination it had told him of 13 other vacancies, but he had showed no interest: he had merely said that they were not suitable, without explaining why. In 1997, the Centre offered him a short-term appointment for five months but he turned it down, partly on the grounds that by then his case was pending.

On 30 January 1997, he had indeed filed a "complaint" with the Director of the Centre against the decision not to renew his appointment. He objected to the Centre's failure to respond to his request of 16 December 1996 for an explanation for the non-renewal of his contract, but acknowledged that it had "given the reasons orally". In his submission he claimed that rule 3.5 entitled him to an extension and that the Centre could have retained someone with his skills, that the impugned decision was discriminatory and that it was "distressing" not to have been granted an extension at least until the end of the few weeks of sick leave that remained to him.

On 6 May 1997, the Deputy Director informed him that the Director had rejected his "complaint". Despite rule 3.5, he said, short-term appointments did not become fixed-term ones. Even staff who held fixed-term appointments were not ipso facto entitled to renewal. The whole point of giving a short-term contract was to preclude a career. That was why short-term staff were not allowed to enter internal competitions. The complainant had learned the reasons for non-renewal from the letter of 30 August 1996. He had had opportunities of entering competitions but had let them go by. Though the Director knew that he had been on sick leave from 18 December 1996, the complainant had not requested an extension to cover the period of sick leave, so that for want of a decision his claim on that score could not but fail.

In consideration of the case, the Tribunal first noted that under article VII(1) of the Tribunal's statute a complaint would be receivable only if the complainant had exhausted the internal remedies. Any claim to an extension of his appointment to cover the period of his sick leave would fall outside the ambit of his claim to an ordinary extension; see Judgements Nos. 1425 (in re Schickel-Zuber, Nos. 2 and 3) 1995, and 1494 (in re Mossu) 1996. For the complaint to be receivable he would have had to include it in an internal appeal and exhaust all his internal means of redress.

The Tribunal considered that a claim must be cast in such language that the organization would gather that a decision was expected of it. Sometimes it might be inferred from circumstances, for example, where the claimant had little knowledge of law. But, as the Tribunal observed, as one who professed a degree in international law the complainant might, if he were putting a claim to the Centre, have been expected to make it tolerably clear. The Tribunal therefore concluded that the Centre was correct not to have treated his mere sending of a medical certificate in mid-December 1996 as a claim to an extension to cover the period of sick leave and, then, to maintain that no such claim had formed the subject of internal appeal or decision. Moreover, the claim was irreceivable because he had failed to exhaust his internal remedies.

Regarding the merits of the case, the Tribunal recalled that precedent left renewal of a short-term or fixed-term appointment to the discretion of the organization. The decision must stand unless it was taken ultra vires, showed a formal or procedural defect, erred in fact or in law, ignored some material fact, amounted to an abuse of authority or made a blatantly wrong deduction from the evidence.

In the present case, the Tribunal noted that the complainant, offering not always the same arguments, had accused the Centre of failing to explain, as it should have, the reasons for refusing him renewal, and a steady line of precedent did indeed have it that non-renewal and valid reasons therefore must be duly notified so that the staff member might act accordingly and in particular exercise the right of appeal; see, for example, Judgements Nos. 1544 (in re Gery-Pochon) 1996 and 1583 (in re Ricart Nouel) 1997. In his internal "complaint" the complainant had not denied that he had received an explanation for the non-renewal of his contract. What he had said was that he had been given no particular explanation in the text of the decision telling him that the two months' extension up to 31 December 1996 for half-time work would be the last one. However, in the view of the Tribunal, the case law did not require that the reasons be stated in the text that gave notice of non-renewal. Though the Centre had granted the complainant the last extension in his own interests, so as to soften the blow,

his departure had been held over only for a short while and he had been given only part-time employment. Therefore the reasons underlying the non-renewal remained sound. He had received an adequate explanation from the text of the decision granting him the last extension, taken together with the communications and discussions that had both preceded and followed it.

The complainant also pleaded discriminatory treatment. The Tribunal was of the view that the Centre's answer was plausible. It explained how it had disposed of the four holders of short-term appointments in the Finance and Budget Service. The complainant and another were both in the Budget Section and were treated alike: they both had to leave. The other two, who were in the Finance Section, were also to leave, but the Centre had kept them on for a time because they were needed either in the Finance Section or elsewhere. Thus those in the Budget Section had been put on a par, whereas the Finance Section had had a rather different need, having urgent work still in hand. Besides, when just a few of its staff must leave, an organization had to choose them at discretion and such a decision was subject, as stated above, only to limited review. The Centre's account again showed no evidence of abuse of that authority.

The complainant further contended that under rule 3.5 he was entitled to the same safeguards against non-renewal as the holder of a fixed-term appointment. The Centre challenged the contention, and it was right. Although according to precedent an organization had discretion in the matter of renewal, it must do its utmost to ease hardship; see for example Judgement No. 1450 (in re Kock and others) 1995. In the present case the Centre had done this. It had given the complainant due notice, a two-month extension on half-time employment in another job and payment, by way of indemnity for abolition of post, in an amount to which he was not objecting. It had offered to help him in finding a new job either by entering its own competitions or by addressing himself to some other organization. There was no reason to doubt the genuineness of its offer, though the complainant seemed to have shown no interest. In 1997, it had offered him an appointment of five months' duration, and he declined on the grounds that his case was pending. That was an unconvincing reason since it had never been stated that the offer hinged on his withdrawing suit.

The conclusion was that the Centre had fulfilled its obligations, and the Tribunal dismissed the complaint.

10. Judgement No. 1752 (9 july 1998): Qin (Nos. 1 and 2) v. International Labour Organization[21]

Claims made by widower and son of staff member who had committed suicide—Widower can only plead rights arising from wife's contract of employment—Question of suicide being attributable to official duties—Role of Compensation Committee—Limited review of Medical Board's conclusions—Article 8.3 of Staff Regulations—Article II (6) of Tribunal's statute

Mr. Qin lodged the two complaints in his own name and on his son's behalf, and the Tribunal joined them. They both concerned the consequences of the death of his wife, whom ILO had employed as an audio-typist in its Chinese pool. On 14 December 1993, she took her own life. In his first complaint, lodged on 10 September 1994, her widower sought the quashing of a decision he discerned in a letter of 13 June 1994 from the Director-General. The letter set out the findings of an inquiry into her "tragic" death and concluded that:

> "there was a hostile working environment [in the Chinese pool] and that a number of administrative errors had been made in the Office. However, there is no evidence that these factors were the cause of the suicide or that other factors outside the Office or of a medical nature did not play a role."

The Director-General took action regarding the administrative errors that were brought to light, but would not be dismissing any of those the complainant had seen as culprits. Besides the quashing of the "decision" of 13 June 1994, the complainant also claimed damages for the material and moral injury sustained by his wife and family and for harm to his good name, the "rejection" of a petition he regarded as a libel against her and a "fair and just" decision on the strength of the findings of the inquiry.

The complainant's second complaint, lodged on 8 August 1997, impugned a decision of 22 May 1997 to reject his claim to an award of compensation under annex II to the Staff Regulations. After completion of the procedure set out in the annex and referral to the Compensation Committee and to a medical board, the Director-General came to the view that his wife's suicide had not been attributable to the performance of duty and—since, for one thing, ILO had already offered 63,000 Swiss francs towards her son's material welfare—the complainant was not entitled to moral damages. He claimed the quashing of that decision; an avowal by ILO that his wife's death had been service-incurred; the payment of an annuity for himself and of a lump sum for his son; sums in damages for moral injury to his wife, his son and himself; and interest on all those amounts.

In the opinion of the Tribunal, the complainant's first plea was irreceivable. The Director-General's letter of 13 June 1994, which summed up the findings of the inquiry, had had no effect on his rights and so was not a challengeable decision. As the Tribunal noted, the ILO Legal Adviser had stated that the letter of 13 June 1994 was not an administrative decision that had had any effect on the complainant's rights and obligations (see Judgement No. 1203 (in re Horsman, Koper, McNeill and Petitfils) 1992 . The only passage that might have been read as final rejection of his claims was the one in which the Director-General said he would not be dismissing any of his wife's colleagues or supervisors. He might not, however, plead any rights but those arising from his wife's contract of employment with the organization.

Concerning the complainant's second plea that his son was entitled to payments under article 8.3 and annex II to the Staff Regulations, the Tribunal observed that:

> "In the event of illness or injury attributable to the performance of official duties, an official shall be entitled to compensation as prescribed in annex II. In the event of the official's death in consequence of such illness or injury, his dependants shall be entitled to compensation as prescribed in annex II."

In that regard, the Tribunal noted that from January until July 1995 the competent body, the Compensation Committee, had met six times to consider his claims. It declared that:

> "so far as it could tell from the evidence it could neither find that Mrs. Li's official duties had been the decisive or even likely cause of what she did and was therefore unable to recommend treating her death as attributable to the performance of duty."

The Director-General endorsed the Committee's findings. The complainant then applied for the setting up of a medical board under paragraph 25 of annex II:

"(*a*) In the event of a conflict of opinion on the medical aspects of the relationship between an illness or injury and the performance of official duties, the Director-General may refer the case for advice to a medical board composed of three duly qualified medical practitioners, one of whom shall be chosen by the Director-General, one by the official, and the third by the two practitioners so chosen …

"(*b*) A medical board composed as provided in subparagraph (*a*) shall also be consulted if the official concerned, or his surviving dependants, so request …"

The Director-General agreed, and the board met on 23 April 1997. It found: "Mrs. Li's suicide was the result of a serious emotional state akin to mental illness"; "factors connected with her official duties and factors external to her work … may have brought it about, on account of her exceedingly sensitive and vulnerable temperament"; but that "the extent of it attributable to work did not prove decisive". It was on the strength of the Compensation Committee's recommendations and the medical board's findings that the Director-General had taken the decision of 22 May 1997 impugned in the second complaint.

The complainant pleaded breach of due process by the Compensation Committee in that it had not allowed him to question the witnesses or procure the additional evidence necessary in order for the truth to be revealed. As the Tribunal pointed out, the Compensation Committee was just an advisory body, not a court of law; and it was in any event obvious on the evidence that it had done its work thoroughly. It had heard many witnesses, including the complainant, and complied with all its rules of procedure. As the Tribunal noted, there was no denying that conditions at work did cast his late wife into a state of distress that had grown worse as time went by; however, it saw no reason to quarrel with the medical board's findings. As it had held in Judgement No. 1284 (in re Fahmy No. 2) 1993 and many other cases, it might not replace qualified medical opinion with its own, though it might review the procedure and determine whether the doctors' findings showed any factual mistake or inconsistency, or overlooked an essential fact, or drew a plainly wrong conclusion from the evidence. In the present case, there was nothing to counter the findings that his late wife's state of deep despondency was traceable to several factors and that conditions at work were not the decisive factor. The complainant could not succeed in his contention that her wilfully taking her own life was the consequence of an illness "attributable to the performance of official duties" within the meaning of article 8.3 of the Staff Regulations. The conclusion by the Tribunal was that his claims to an annuity for himself and to a lump sum for his son must fail, and so must his claims to material and moral damages.

The organization submitted that he had access to the Tribunal under article II (6) of its statute only as the successor to any rights his wife might have had, since she alone was an official of ILO. He might claim damages only for moral injury he claimed she had suffered in its employ because of its failure to treat her with due care or for whatever other reason. Moreover, the Tribunal stated that her sad death had of course alerted ILO to things that had gone awry in the Chinese unit. But there was not a whit of evidence to suggest that, by act or omission, it had denied her the sort of considerate protection any organization owed its staff. Quite the contrary indeed: it had extended her appointment in the teeth of attempts to get rid of her and the pains it had taken to get to the bottom of the whole wretched business demonstrated the special attention it had devoted to her case.

For the above reasons, the Tribunal dismissed the complaints.

11. Judgement No. 1763 (9 July 1998): Gonzalez-Montes v. International Atomic Energy Agency[22]

Dismissal because of misconduct—Questions of general corruption among airline ticket suppliers, even if proven, did not relieve staff member of fraud—Chairman of Disciplinary Board must refrain from personal involvement in the investigation—Members of the Board appealed from may not give legal advice to the body which hears the appeal

The complainant joined the staff of IAEA in 1969. At the time in question he was employed as a Safeguards Inspector and head of unit in the Department of Safeguards at grade P.5.

The complainant impugned a decision of 16 December 1996 by the Director General of the Agency to accept the recommendation of the Joint Appeals Board to dismiss him. His case had originally been referred to the Joint Disciplinary Board after an investigation by the Agency, and he appealed to the Appeals Board against the Director General's decision of 5 August 1996 to accept the Disciplinary Board's recommendation of dismissal. From an investigation into his claims to reimbursement for duty travel, the Agency discovered that on four separate occasions the complainant had switched the business-class airline ticket provided to him by the Agency for an economy-class ticket and had kept the difference in value for personal use. On each of three occasions—duty travel to the United Kingdom from 28 June to 8 July 1993; to Brazil from 16 June to 4 July 1994; and to Brazil and Argentina from 3 to 20 July 1995—he had exchanged his original ticket for an economy-class ticket, but after travelling, had submitted the original, unused ticket stub as part of his claim to the reimbursement of duty travel expenses. The fourth occasion—duty travel to Brazil and Argentina from 16 to 28 May 1994—had prompted the most serious allegation against the complainant. The complainant had submitted in support of his travel claim a copy of the travel agent's flight coupon for his original, unused ticket. During the Agency's investigation in June 1995, he stated that he had not submitted the original ticket because he had misplaced it and, using his credit card, had purchased a replacement at the Vienna airport on the day of his outbound flight. He submitted his replacement ticket stubs, dated 13 May 1994, and, when requested for proof of payment, submitted a receipt from the airline, dated 28 August 1995, which referred to yet another, unexplained ticket number. Both the original ticket and the replacement ticket had cost 66,960 Austrian schillings, which was the amount that the receipt for the third ticket referred to.

In the complainant's submission to the Tribunal he alleged that "kickbacks", bribery and general corruption existed among the "suppliers of tickets". He stated that his actions had exposed the corruption and pressured the Administration to "find a scapegoat". In support of those allegations he relied heavily on an unexplained document that appeared to relate to the commission payable to the travel agency for tickets sold. Even if the allegations had some substance, which they did not on the evidence presented, they did not relieve him of fault for fraud committed against the Agency.

Regarding the issue of the Director of the Division of Personnel serving as both the chairman of the Disciplinary Board and the head of the department conducting the initial investigation, the Tribunal observed that the Director of the Division of Personnel should be chairman of the Board as required by paragraph 13 (*a*) of section 13, part II, of the Agency's Administrative Manual and that did not constitute a procedural flaw, but it did give rise to a situation in which there was a grave danger

of an actual breach of procedural fairness. That was what in fact had occurred. As the chairman of the Disciplinary Board, the Director had to refrain from personal involvement in the investigation. He must not be both judge and policeman, in the view of the Tribunal.

The Tribunal further noted that it was common ground that the Director of the Division of Personnel not only had been involved in the initial investigation, but actually had taken part in the questioning of certain witnesses, including the interview with the Iberian Airline representative, which, in the opinion of the Tribunal, was a key element in the Agency's case against the complainant since it was essential to the very serious allegation that he had attempted to tamper with the evidence. As chairman of the Joint Disciplinary Board, the Director of the Division of Personnel had a duty to be, and to appear to be, impartial, and he should have scrupulously refrained from collecting evidence from witnesses outside the complainant's presence; moreover, it did not matter if the evidence worked to the complainant's prejudice or not. The Tribunal, citing Judgement No. 999 (in re Sharma) 1990, concluded that that constituted a serious breach of due process.

The complainant also asserted a second serious procedural flaw: the Appeals Board had requested and received a legal opinion from the Director of the Legal Division during the appeal. That too was a violation of due process because that Director had been a member of the Disciplinary Board, whose recommendation was under appeal. The Agency admitted that the Director had signed a legal opinion that had been prepared at the request of the Appeals Board. That opinion should not have been given by the Director and should have been rejected by the Appeals Board; the Director simply should not have been involved, in substance or in form, with the Appeals Board's recommendation. A member of the body appealed from might not give legal advice to the body which heard the appeal.

The complainant also raised objections to the sum deducted from his final pay, which amounted to US$ 43,766.54. However, the Tribunal was of the view that that was not receivable because he had not attempted to resolve the matter internally. However, the Tribunal confirmed that the Agency must take into account insofar as possible, in determining the total sum due to it, the actual expenses incurred by the complainant to be reimbursed under the relevant travel rules.

The Tribunal concluded that the decision to dismiss the complainant should be set aside and the case sent back to IAEA for reconsideration. The complainant was awarded his costs in the amount of $5,000.

12. Judgement No. 1768 (9 July 1998): Bodar v. European Organization for the Safety of Air Navigation (Eurocontrol Agency)[23]

Non-appointment to post—Issues of receivability—Question of failure of Administration's referral to advisory body—Decision must be set aside regardless of consequences for appointed staff member—Tribunal could not entertain claims of appointed staff member in present case

The complainant was a staff member of Eurocontrol. Since 1 October 1990 he had been a second-class assistant at grade B3, and since July 1994 secretary to the Staff Committee, at the Eurocontrol headquarters in Brussels. In September 1995, a Mr. Boivin was placed in a post for an accountant at the Agency's Institute of Air Navigation Services in Luxembourg. He had been selected from a reserve list, on which he had been placed on the basis of an evaluation of his application for

another post. On 30 November, the complainant lodged an internal "complaint" against that appointment, and the appointment was subsequently cancelled as from 31 August 1996. Subsequently, on 1 March 1996, Eurocontrol put up for competition the post of head of the Accountancy and Personnel Office at grades A5/A6/A7 at the Institute. It was open to both inside and outside applicants.

The complainant applied, as did Mr. Boivin. Being unsure of his status, Mr. Boivin applied twice, once as an outside candidate and once as an internal one on the strength of his appointment of September 1995. Eurocontrol treated him as an outside applicant. On 15 May 1996, the Selection Board examined the 23 applications and drew up a shortlist of 5 candidates. The complainant was not on the list, and Mr. Boivin was eventually selected for the post. In a letter dated 31 May 1996, the Director of Human Resources notified the complainant on the Director General's behalf that he had been unsuccessful, other candidates having been found more suitable. The letter was sent to him by messenger service. On the photocopy that the complainant produced appear the initialled words "Received on 8/6/96". He was said to have received the letter on 3 June but to have changed the "3" to an "8".

The complainant lodged an internal "complaint" by a memorandum of 4 September 1996 "against the process of selection for post LX-96-AA/022 and the appointment of Mr. Boivin to it".

The Tribunal addressed the complaint lodged by Eurocontrol and Mr. Boivin that the complainant's appeal was irreceivable. They had claimed that instead of seeking the quashing of a process he ought to have sought the quashing of Mr. Boivin's appointment. Instead he had sought the quashing of the decision of 31 May 1996, a new claim that he had not put in his internal appeal and that was therefore irreceivable. However, the Tribunal was of the opinion that the organization must interpret a staff member's claims in good faith and read them as it might reasonably have been expected to do. Furthermore, there was no doubting the complainant's intent in his internal appeal and in this complaint. He wanted the Administration to take, and the Tribunal to order, action for the process of selection and appointment to the post to start all over again, in hopes of obtaining the post himself. The drift of both internal appeal and complaint was the same: see Judgements Nos. 1575 (in re Doyle) 1997 and 1595 (in re De Riemaeker (No. 3)) 1997. In his appeal he objected to his "rejection for the post" and challenged the appointment of Mr. Boivin, in which his own rejection was implicit: see Judgement No. 1223 (in re Kirstetter (No. 2)) 1993. And though his complaint did not expressly seek the quashing of the appointment of Mr. Boivin, consistent precedent held that allowing the unsuccessful candidate's case entailed quashing the appointment made: see Judgements Nos. 1049 (in re Dang and others) 1990; 1223 (in re Kirstetter (No. 2)) 1993; and 1359 (in re Cassaignau (No. 4)) 1994. Thus in the present case the claim was implied. Nor was the complainant's claim to the quashing of the decision to reject him a new one, since it had been at least implicit in his internal appeal.

According to the Tribunal, the material issue was whether, to meet the time limit in article 93(3) of the Staff Regulations, the complainant needed to challenge only the appointment of Mr. Boivin. Contrary to what he contended, the decision of 31 May 1996 was not ultra vires. But here the decision of rejection was notified to a candidate before the appointment was announced, and in considering whether the time limit for internal appeal ran from the date of notification of his own rejection or of the actual appointment, the Tribunal recalled that in Judgement No. 1223 (in re Kirstetter (No. 2)) 1993 it had stated:

"So the staff member has undeniably the right to file an internal appeal or a complaint with the Tribunal if he believes that the appointment to a vacancy he has applied for is improper. He may for that purpose challenge any relevant decision, whether it be the express rejection of his own application or the rejection implied in the appointment of someone else."

The Tribunal therefore reasoned that since the unsuccessful candidate might challenge the process of selection of the successful one, it was only reasonable that the time limit for internal appeal should run from the date at which he learned of the appointment. It was immaterial to the present case whether an exception might be allowed to that rule if the sole issue that the appeal raised related to the unsuccessful candidate: for example, whether he had applied too late, or had failed to qualify for the post. The Tribunal concluded that the internal appeal was not out of time, and it did not matter when the complainant had received the letter of 31 May 1996.

In his first brief, the complainant had merely challenged the offending decisions, and in his rejoinder he had added a claim to moral damages. Since according to article 6(1)(*a*) of the Tribunal's rules and the schedule thereto the "relief claimed" must be stated in the complaint, the new claim was irreceivable.

In both his original brief and his rejoinder the complainant had contended that the Director General had acted in breach of the annex to office notice 6/95 of 1 March 1995 by failing to refer to the Joint Committee for Disputes—which that notice had set up—his "complaint" against the decision to appoint Mr. Boivin. The Agency did not take the point in its reply, but in its surrejoinder explained that the reason why it had not put his case to the Joint Committee for Disputes was that the Committee had stopped working and was not taking cases at the time.

In that regard, the Tribunal noted that article 4 of the annex setting out the rules of the Joint Committee for Disputes stated:

"The appointing authority must seek the opinion of the Joint Committee for Disputes before taking a decision to reject even part of an appeal lodged under article 1. The Joint Committee shall give an opinion, stating the grounds on which it is based, no later than two months subsequent to receipt of the request for an opinion. This opinion shall be signed by the Chairman and forwarded by him to the appointing authority.

"If no opinion is received within this period, the appointing authority may proceed with its decision."

Like article VII(3) of the Tribunal's statute, article 93(3) of the Staff Regulations stated that failure to reply to a "complaint" within 60 days implied rejection. The duty of consulting the Joint Committee before rejecting a "complaint" must apply both to express and to implied rejection; otherwise it would be meaningless and the Administration might simply bypass it. The Committee must be consulted even in the event of partial rejection: that showed the intent that rejection of any kind should go to it. Since the present case had never been referred to the Committee, there had been a breach of the rule.

Furthermore, the Tribunal recalled that according to a long line of precedent, to take a decision without the required referral to an advisory body or without awaiting its report was a fatal breach of due process: see Judgements Nos. 1488 (in re Schorsack) 1996; 1525 (in re Bardi Cevallos) 1996; 1616 (in re Echeverría Echeverría and others) 1997; and 1696 (in re Felkai) 1998.

Moreover, in the view of the Tribunal, the Agency's response was immaterial to observance of the rule of law. It neither repealed nor formally suspended the

requirement of referral to the Committee, and as long as the requirement existed, it must comply.

The Tribunal concluded that the implied decision must be set aside, with whatever consequences that might have for the rejection of the complainant's candidature and the appointment of Mr. Boivin. The Agency must start the procedure again at the point at which the breach of due process had occurred and the Director General should make a new decision after referral to the Joint Committee for Disputes. The complainant was also entitled to costs, and the amount was set at 50,000 Belgian francs.

In the brief the Tribunal had invited from Mr. Boivin, he had requested the Tribunal to declare the Agency liable and to order it to "reinstate" him. Since he was not a party to the dispute, the Tribunal would not entertain the requests. Nor would it entertain his claims to damages from the complainant for and to the imposition of disciplinary penalties on Eurocontrol employees.

13. Judgement No. 1769 (9 July 1998): Chvojka v. International Atomic Energy Agency[24]

Responsibility for loss of vested pension rights under Austrian Pension Insurance Scheme—Tribunal's jurisdiction limited to granting relief for breach of the terms of employment of international civil servants—Question of an acquired right—Staff rule 8.01.3(A)(2)—Question of compensating staff member to make him whole—Dissent argued that Agency had not altered rights of staff member but rather the Austrian Government had done so

The complainant joined the staff of the Agency in October 1980. At that time he was a member of the Austrian Pension Insurance Scheme (APIS), also known by its German abbreviation ASVG. Under the rules of APIS then in effect, a person's entitlement to a pension on retirement depended on the length of coverage or participation in the scheme, with a minimum qualifying period of 180 months (15 years). Coverage included both "contributory" coverage, i.e., periods during which contributions to the scheme were made by both employer and employee, and "substitute" coverage, corresponding to periods of secondary or university education during which no contributions were made. By the time the complainant joined the staff of the Agency, he had accumulated a total of 123 months of coverage under APIS, made up of 71 months of "substitute" coverage and 52 months of "contributory" coverage.

At the time the complainant joined the Agency, staff rule 8.01.3(A)(2) provided that persons in his position could participate in APIS if they had "accumulated less than 15 insurance years (contributory plus substitutional periods) in that Scheme; they shall participate in the United Nations Joint Staff Pension Fund after having accumulated 15 years in the Austrian Pension Insurance Scheme". Rule 8.01.3(A)(2), which was repealed in 1983, was consistent with the general provisions of the Headquarters Agreement entered into between the Agency and the Government of Austria and a more specific agreement concerning social security which had come into effect on 1 July 1974. Article 2(1) of the latter agreement provided that "officials who, on taking up their appointment with IAEA, do not participate in the Pension Fund shall participate in the … pension insurance provided for in ASVG". Article 1(7) of the same agreement defined the abbreviation ASVG by reference to the applicable Austrian legislation "as amended from time to time".

The combined effect of the agreement and rule 8.01.3(A)(2) was to allow the complainant to choose to remain in APIS until he had accumulated the minimum requirements for the vesting of pension rights under that scheme, at which time he would be obliged to join the Pension Fund and to cease contributing to APIS. The repeal of staff rule 8.01.3(A)(2) in 1983 was accompanied by the adoption of transitional provisions allowing the complainant to continue his contributions to APIS as before until he met the minimum qualifications. He did so in July 1985, at which time he was obliged to switch from APIS to the Pension Fund. As of the latter date he had a clear vested right to receive a pension from APIS upon his eventual retirement but would not, at least for so long as he remained a member of the Agency's staff, be in a position to make any further contributions to APIS. All future pension contributions in respect of the complainant, both the employer's and the employee's, were to go to the Pension Fund and upon retirement from the Agency he would of course be entitled to a pension from that source as well.

Eleven years later, in July 1996, the provisions of APIS were substantially changed. The scheme appeared to have been so severely underfunded as to require retroactive amendment by what was referred to as a "savings" package. By the amending legislation APIS was changed so that education (i.e., "substitute" coverage) would no longer be taken into account in calculating the minimum qualification periods, even where those periods had already been long since acquired. Although the 1996 amendment adversely affected all Austrians who had been relying in part on their education periods to qualify for an APIS pension, the vast majority of them would still receive a pension, albeit a reduced one, on retirement because they had continued or would continue to work in Austria and to contribute to the scheme. The removal of "substitute" coverage would not have a drastic impact on anyone who already had the necessary 15 years of contributory coverage or who, being still a contributor, would in due course acquire them. Transitional provisions in the legislation stated that those who, as a result of the amendments, would no longer qualify for a full pension could either "buy back" their education years or continue to work until they did qualify. A special clause provided for those who had retired or who could no longer work and contribute to the scheme; there was, however, no provision for those who were working and who for reasons other than retirement were unable to continue to contribute to APIS.

The Austrian savings package therefore left the complainant (and some other Agency staff members) with a very limited and unattractive set of choices. Because he no longer met the minimum requirements for APIS, he no longer qualified for any APIS pension. Because he was a staff member of the Agency, he was obliged to contribute to the Pension Fund and could not resume contributions to APIS. His contributions to APIS and those of his employer were effectively lost. The "buy-back" option offered by the 1996 Austrian legislation was most unattractive since it would have required the complainant to make a payment into APIS equal to approximately six months' salary.

The complainant protested to the Agency seeking its intervention with the Austrian Government. He requested the Agency, if it was unwilling or unable to obtain relief from the Government, to provide relief to him in the form of return of his contributions to APIS. By a letter of 27 January 1997, the Director General refused all the relief sought and also indicated that he had no objection to waiving the jurisdiction of the Joint Appeals Board so that the complainant could have recourse directly to the Tribunal, which he did.

In any consideration of his complaint, the Tribunal pointed out that the limits of its jurisdiction must be kept clearly in mind. The Tribunal had no jurisdiction over the Austrian Government. The 1996 legislation, which of course was valid in Austrian law, would not be the subject of any comment by the Tribunal as to its validity in international law. In that regard, the Tribunal might neither order an international organization to negotiate with a member State nor set the objectives of any such negotiation: see Judgement 1456 (in re Belser and others) 1995. The Tribunal's jurisdiction was limited to granting relief for breach of the terms of employment of international civil servants as such terms might be determined from the contract of employment, the applicable staff regulations and rules and other relevant documents.

On the other hand, as the Tribunal observed, there was no doubt that the complainant had lost a vested right to receive a pension from APIS. That loss amounted to breach of an acquired right within the meaning that had been assigned to that term by the case law: see in particular Judgements Nos. 832 (in re Ayoub and others) 1987 and 986 (in re Ayoub (No. 2) and others) 1989. The test established by those and other judgements required an appreciation of the balance between the nature and importance of the terms of employment which had been altered, the reasons for the change and the consequences of allowing a claim to an acquired right. On any reading, the entire loss of the complainant's right to obtain a pension from APIS upon retirement in respect of his first five years with the Agency constituted a very important breach. As matters stood, he had lost not only the benefit of participation in a pension plan during the first five years of his employment (a fundamental term of employment of any international civil servant), but also the entire contribution made on his behalf to APIS.

However, as the Tribunal recalled, former staff rule 8.01.3(A)(2), as in force at the time the complainant became a member of the Agency staff, constituted one of the terms of his employment. There could be no question that, when the staff rule was read in context, the purpose and intent of that term of employment was to provide him with a pension from APIS, and that purpose and intent had been frustrated: the term had been altered. The staff rule, however, obliged the complainant to cease contributing to APIS and to become a member of the Pension Fund when he had completed 15 years of membership in that scheme. He did so in July 1985. From that time forward the Agency's obligation to give the complainant access to a pension plan has been fulfilled through the Pension Fund.

In the opinion of the Tribunal, while the Austrian legislation of 1996 might have provided the occasion for the complainant to lose his vested right to a pension from APIS, the actual cause of that loss, and thus of the alteration of the term of the complainant's employment, was the way in which the former staff rule itself had been applied through the agreement between the Agency and the Austrian Government. The staff rule obliged the complainant to withdraw in 1985 after attaining what was then the necessary minimum qualification. The agreement did nothing, however, to ensure that such minimum would not be changed and that vested rights would be protected. If the complainant had remained in APIS, he could have continued to contribute to APIS and would in fact by 1996 have achieved substantially more than the minimum 15 years of contributions he required to qualify for a pension. As it was, however, he was bound to cease contributing, but the Agency did not protect the contributions made on his behalf.

By former staff rule 8.01.3(A)(2), in the view of the Tribunal, the Agency had recognized its obligation to provide a pension for the complainant. As one of

the possible sources of such pension, it had made APIS available but had limited the complainant's participation therein to the 15-year minimum qualifying period then in effect. However, through its agreement with the Austrian Government, the Agency had acknowledged that the scope of APIS would be "as amended from time to time" without its even being consulted. It thus chose an inherently defective vehicle to fulfil its pension obligation to the complainant, since the pension itself was subject to factors (other than ordinary economic constraints such as inflation, currency variations and the like) that were entirely outside the Agency's control. In fact, as events turned out, the 1996 amendments to APIS had resulted in the application of the former staff rule in a way that effectively deprived the complainant of any right at all to an APIS pension. To put the matter another way, the reason for the alteration of the term of his employment was the Agency's reliance upon factors in which it had no say for the fulfilment of its obligation to make a pension available to him.

The Tribunal therefore concluded that the application of former staff rule 8.01.3(A)(2) to the complainant had resulted in the loss to him of an acquired right. While the rule had subsequently been repealed, and the Tribunal could not in any event set it aside, it declared the rule to be inapplicable to his case.

Furthermore, since the source of the complainant's loss was the defective application of the staff rule, the Tribunal held that he was entitled to succeed and to recover damages. The measure of those damages should be what was required to place him in the position in which he would have been if the Agency had not both allowed him to participate temporarily in APIS and then obliged him to withdraw therefrom. On the information made available by the parties, the only means of approximating that result (a means which the Tribunal recognized as imperfect) was to oblige the Agency to pay to APIS on the complainant's behalf a sum sufficient to "buy back" his substitute coverage in that scheme. The Tribunal noted, however, that, notwithstanding the rejection of the complainant's request to that effect by the impugned decision, the Agency in its reply indicated that it was engaged in continuing exchanges with the appropriate Austrian authorities. If those exchanges "resulted" or "were to result" in an agreement that would allow the complainant to qualify for an APIS pension in respect of his period of contributory coverage in APIS, such an agreement would more accurately compensate for the true measure of his loss. Accordingly the Tribunal, while ordering the Agency to pay the amount necessary to buy back his period of substitute coverage in APIS, would allow the Agency a further period of six months from the date of the present judgement to reach a satisfactory alternative arrangement with the Austrian Government if it so chose. The complainant also was entitled to costs in the amount of 45,000 schillings.

The Vice-President of the Tribunal, Mella Carroll, produced a dissent to the above decision:

She noted that an acquired right was a right which a staff member might expect to survive any amendment of the rules: Judgement No. 832 (in re Ayoub and others) 1987. Put another way, where there had been an amendment, there would be a breach of an acquired right that warranted setting the decision aside if the altered term of appointment was "fundamental and essential": Judgement No. 986 (in re Ayoub (No. 2) and others) 1989.

By virtue of staff rule 8.01.3(A)(2), the complainant had the options at the time of his appointment of completing the minimum 15 years' membership required under APIS or becoming an immediate contributor to the Pension Fund. By that

time he had accumulated 5 years and 11 months' non-contributory membership and 4 years and 4 months' contributory membership; he therefore lacked 4 years and 9 months' further contributory membership. He was asked to choose once and for all, which he did on 25 August 1981 by opting to complete his APIS membership. When the rule was repealed in 1983, every new staff member was required as from 1 January 1983 to become a member of the Fund immediately. The right of the complainant to complete his 15 years' APIS membership was left untouched by virtue of transitional arrangements. In the Vice-President's view, this was an example of the Agency's respecting his "acquired right" to complete the minimum period. On 1 August 1985, having completed this period, he became a member of the Fund.

The change to the APIS rules in 1996 was made by the Austrian Government. There was no change made by the Agency to its rules or to the terms of the complainant's appointment. The choice offered to him in 1981 was made in good faith so that he would not lose the benefit of his contributory and non-contributory years of membership of APIS. In the Vice-President's opinion, good faith works in two directions. Since the option was offered in good faith, there was a corresponding requirement of good faith on the part of the complainant, which meant not trying to place the blame on the Agency. In his own pleadings the complainant stated that he was aware that the pension coverage under APIS was subject to Austrian law and could be amended and that he could rely on the political process in the normal course to prevent any serious impairment of his right. He was disappointed in his expectations. But that did not entitle him to expect the Agency to recompense him. He made his choice and, in the opinion of the Vice-President, must bear the consequences. The Agency played no part in altering his rights under APIS and should not be obliged to pay damages.

That was not to say that the Agency was free to abandon him entirely, and it had not done so. It was currently taking steps to compile information to be put to the competent Austrian authorities with an appropriate request for relief for the staff concerned. The degree to which the Agency was obliged to extend itself in its assistance did not need to be determined in the present case.

To construe staff rule 8.01.3(A)(2) as conferring on the complainant the right to a *pension* from APIS as distinct from conferring a right to *contribute* to a pension until the 15 years' minimum was accumulated was, in her opinion, unjustified. The Agency had fulfilled its obligations as an employer by making membership of the Fund immediately available. The APIS concession was exactly that: a concession. The Agency had not chosen to fulfil its pension obligations through an "inherently defective vehicle". It was the complainant who had chosen to contribute for a limited period towards the state pension in preference to one from the Fund. The Vice-President could not agree that the application of staff rule 8.01.3(A)(2) to the complainant had resulted in the loss of an acquired right. Instead it had actually given him an acquired right to complete his 15 years' membership, a right that could not be taken from him when the rule was repealed. To declare the rule inapplicable to the complainant's case, as stated in the judgement, was to say that he should have started contributing immediately to the Fund, in which case his loss was limited to the difference between the United Nations pension he would receive and the pension he could have had if he had joined the Fund in 1981.

In Judgement No. 986 the Tribunal had held that it could not set the amounts of the complainants' entitlements but that their rights to redress should be determined when each of them left the service of the organization. It appeared to the Vice-

President that similar considerations applied in the present case. There was no way in which the complainant could at the current stage quantify the loss of four years and nine months of contributions to the Fund. There was also the possibility that he might not remain with the Agency until retirement age, so that he might yet be able to complete 15 years' contributory membership of APIS. A further possibility was that the Austrian authorities might grant relief to the staff affected by the changes to APIS after the present judgement had been executed. If staff rule 8.01.3(A)(2) was not to applied to the complainant, there was no justification for requiring the Agency to buy back the years for which no contribution had been made (which was not even claimed as relief) so that the complainant might enjoy the benefits of a state pension based on 15 years' contributions. That would discriminate against all those staff members who had joined the Agency when the rule was in force and started to contribute immediately to the Fund. If the complainant was entitled to succeed on the merits—which was contrary to her view—the most he was entitled to was a declaration that when his pension from the Fund was calculated on retirement he would be entitled to compensation for the difference between that pension (plus any APIS pension which might ultimately turn out to be payable) and a pension calculated to include the "lost" four years and nine months at the commencement of his service.

14. Judgement No. 1770 (9 July 1998): Ballester Rodés v. European Patent Organization[25]

Backdating effective date of promotion—Article 49(7) and (10) of the EPO Service Regulations—To exclude any possible injustice in non-promotion decision, case sent back to Promotion Board

The complainant joined the staff of the European Patent Office, the secretariat of the European Patent Organization (EPO), on 1 October 1991 as a lawyer. On the strength of his reckonable experience of six years and eight months, EPO placed him at grade A2. It confirmed his appointment as a permanent employee at the end of one year's probation. On 22 February 1996, he requested the President of the Office to promote him to grade A3 as from 1 October 1993, and the decision to refuse that claim was what he was impugning in his complaint. However he did receive a promotion to grade A3 as from 1 February 1996, so that his only claims remaining were for the backdating of the promotion to 1 October 1993 and for an award of moral damages.

In consideration of the case, the Tribunal noted that article 49(7) of the EPO Service Regulations read:

> "Promotion to a post in the next higher grade in the same category shall be by selection from among permanent employees who have the necessary qualifications, after consideration of their ability and of reports on them".

Article 49(10) read:

> "The President of the Office shall forward to the Promotion Board the names of all permanent employees who possess the necessary qualifications referred to in paragraphs 7 and 9".
>
> "The Board shall examine the personal file of all permanent employees satisfying the relevant requirements and may, if it so decides, interview any permanent employee under consideration.
>
> "The Board shall draw up and forward to the President of the Office for his decision a list, presented in order of merit, of permanent employees who

are eligible for promotion, based on a comparison of their merits, together with a reasoned report."

In a note to the chairman of the Promotion Board, the President set out the guidelines for listing candidates for promotion in 1993. The note appeared in the EPO *Gazette* of 26 July 1993. Identical guidelines had since been set for promotion in 1994, 1995 and 1996. According to the guidelines, staff members at grade A2 who had a "good record of performance" qualified for promotion to grade A3 provided they had at least eight years' reckonable experience, and such "record" normally meant "performance during a period of time much longer than the period covered by the last report".

As the Tribunal noted, the complainant could not have been considered for promotion by the Promotion Board in 1993 and 1994 because his staff report for the period from 1 October 1992 to 30 September 1993 had declared his performance to be "less than good". However, he had contested that assessment and, after conciliation, his supervisors had given him on 21 July 1995 two new staff reports, one covering that period and the other for the period from 1 October 1993 to 31 March 1994. Both had assessed his performance as "good".

On 11 July 1995, he had filed a complaint with the Tribunal with regard to promotion. He explained that on 21 July, during the conciliation procedure, the Vice-President in charge of Directorate-General 5 had made a promise on the President's behalf that the President "would promote the complainant to grade A3, retroactively with effect from 1 October 1993, if his name appeared in the recommendation list of the Report of the Promotion Board", which was to meet in December 1995, provided he withdrew his complaint. He promptly did so. The Promotion Board met in December 1995. The majority did not recommend the complainant for promotion. The staff representatives, who were in the minority, were in favour of promoting him in 1995 and observed that the majority were in error both in refusing to draw up a full list of employees eligible for promotion in order of merit and in making "any kind of 'recommendation' whatsoever". Since there was no positive recommendation from the Promotion Board, the President decided not to promote the complainant. He appealed.

In its report of 5 February 1997, the Appeals Committee observed that the complainant's only claim was to promotion retroactive to 1 October 1993 and it held that his "claim cannot succeed since his probationary period expired only on 30 September 1992 and one year's service following the probationary period was an insufficient basis to establish the record of performance for promotion purposes". Having recommended the rejection of the appeal insofar as it related to promotion in 1993, the Committee went on to consider whether a claim to promotion in 1994 or 1995 might succeed. It concluded that the Promotion Board had no power to exclude from its list candidates who were eligible for promotion and that, since the Board had had no report on the complainant's performance in the period from 1 April 1994 to 30 June 1995, its failure to call for one amounted to "omission of an essential fact". The Committee doubted whether the Board should have referred to the change in the assessment of the complainant's performance after conciliation. It doubted, too, whether the criterion of "fair contribution", which was applicable to patent examiners, ought to have been applied to him, particularly since he had not been told what a "fair contribution" meant in the work he was doing and the criterion was not mentioned in the President's note to the Board. The Committee therefore recommended allowing the appeal in part and sending the case back to the

Promotion Board for reconsideration in the light of its opinion. By a letter dated 10 March 1997, the President informed the complainant that he had decided to follow the opinion of the Committee and reject his request for promotion in 1993 but, "in order to exclude any possible injustice", was sending his case back to the Promotion Board for "review as to whether [he] should have been promoted in 1995".

As the Tribunal pointed out, the complainant was adamant that his claim was not to promotion under article 49, i.e., at the President's discretion, but only to the enforcement of the promise made to him on 21 July 1995. He argued that the condition to which that promise was subject had been fulfilled because the Promotion Board had no power to exclude from the list candidates who, like him, qualified for promotion. EPO pleaded that it need not comment on the existence of such a promise because, even if one had been made, it was subject to the condition that the complainant's name "appeared in the recommendation list of the report of the Promotion Board", and that condition had not been satisfied. As observed by the Tribunal, the complainant's position that a promise had been made to him on 21 July 1995 was supported, in the proceedings before the Committee, by the statement of another staff member who was present during the conciliation proceedings. EPO had not submitted any evidence to the contrary. The Tribunal held that such a promise had been made.

In considering whether the condition to which that promise was subject had been fulfilled, the Tribunal observed that article 49(10) of the Service Regulations required the President to forward to the Promotion Board the names of "all permanent employees who possess the necessary qualifications". The complainant contended that the list which the Promotion Board was required to draw up and send to the President had to contain all the names, though put in order of merit. He argued that the Board was free neither to exclude from the list any employee who met the minimum requirements nor to make "negative recommendations" of any kind about those who were on the list; and since EPO did not deny that he met the minimum requirements he had an "acquired right" to appear in the recommendation list and thus the condition was fulfilled. In the view of the Tribunal, even if the complainant were right in his contention that the Promotion Board was not free to exclude his name from the list which it had prepared in accordance with article 49(10), that would mean only that his name should have appeared on *that* list. But the promise referred to a different list, "the *recommendation* list of the report of the Promotion Board". Article 49 makes no mention of a "recommendation list". To determine what was meant by that expression it was necessary to turn to the President's note to the Board. Under "General remarks" the President invited the Board to:

> "present [its] recommendations in lists, established in order of merit within each grade, of those the Board considers to have the merit for promotion. The lists must be accompanied with a reasoned report."

As the Tribunal pointed out, that cast a duty on the Board to identify and list only those employees whom it considered fit for promotion. The Board was not bound, as a matter of course, to include the complainant's name in that list of recommendations. The Tribunal therefore concluded that the relevant condition was not satisfied, and his claim failed.

In the opinion of the Tribunal, that did not conclude the matter, however. The President decided to send the case back to the Promotion Board for review because the Appeals Committee had found that its proceedings were flawed. The doubts which the Committee had expressed over the issue of promotion in 1994

and 1995 were equally applicable to the Board's refusal to recommend promoting the complainant in 1993. Further, the ground on which the Committee had relied for recommending rejection of his claim to promotion in 1993—that one year's service after probation was not sufficient to constitute a "record" of performance—was not one which the Board had taken into consideration in the light of the particular circumstances.

The Tribunal further concluded that, in accordance with the President's clear wish to "exclude any possible injustice", the case must be sent back to EPO so that the Promotion Board might reconsider the question of promoting him in 1993, 1994 or 1995. But his claim to an award of damages for the moral injury he said he had sustained must fail.

The Tribunal therefore quashed the President's decision of 10 March 1997 refusing the complainant promotion in 1993 and sent the case back to the organization so that the Promotion Board might reconsider the question of promoting him in 1993, 1994 or 1995.

15. Judgement No. 1772 (9 July 1998): Tueni v. United Nations Industrial Development Organization[26]

Abolishment of post—UNIDO staff regulation 10.3(a) *and staff rule 10.02* (a)—*Importance of Advisory Group observing its own procedural rules*

On 1 January 1973, the complainant joined the staff of UNIDO, which was then a subsidiary organ of the General Assembly of the United Nations, as a secretary. On 1 January 1974, the organization granted her a permanent appointment. On 1 August 1987, it assigned her to the Fellowship Training Unit as a clerk, and in January 1989 changed her title to senior fellowship clerk. Her appointment was terminated on 28 June 1996.

The organization had had to make a drastic reduction in its budget for the biennium 1996-1997 as a result of a substantial drop in financial support from the United States of America, the main contributor. It accordingly carried out a staff reduction exercise in two stages: first, a scheme of "voluntary separation", for which staff might apply by 8 January 1996, and then non-voluntary measures. The complainant did not apply by the deadline for voluntary termination. By a letter of 22 February 1996 the Managing Director of the Division of Administration informed her that her post was to be abolished and that an Advisory Group on Human Resource Planning which had been set up in August 1995 would, after review, recommend to the Director-General either keeping her on or ending her appointment.

In consideration of the case, the Tribunal noted that UNIDO staff regulation 10.3(*a*) read:

> "The Director-General may terminate the appointment of a staff member who holds a permanent appointment if the necessities of the service require abolition of the post or reduction of the staff, if the services of the individual concerned prove unsatisfactory, or if the staff member is, for reasons of health, incapacitated for further service."

Staff rule 110.02(*a*) provided:

> "If the necessities of the service require abolition of a post or reduction of staff, and subject to the availability of suitable posts in which their services

can be effectively utilized, staff members with permanent appointments shall be retained in preference to those on fixed-term appointments, provided that due regard shall be paid in all cases to relative competence, to integrity and to length of service".

And according to a bulletin, DGB(M).5, issued by the Director-General on 16 January 1996, the Advisory Group was to apply the following principles:

"In accordance with staff regulation 10.3 and staff rule 110.02, staff members whose posts are abolished will be measured against available suitable posts to ascertain whether their services can be effectively utilized in those posts. In all such cases due regard shall be paid to the following criteria:

— Relative competence;

— Integrity;

— Efficiency and effectiveness;

— Qualifications and skills related to key priority themes, programmes and essential functions;

— Length of service;

— Geographical and gender balance.

"… The term 'available suitable posts' in which the staff member's services can be effectively utilized means posts occupied by other staff members or available vacant posts in areas with similar qualification requirements."

In submissions it put to the Joint Appeals Board on 23 December 1996, the organization explained as follows what the Advisory Group had done:

(*a*) Starting in March 1996 it had "obtained information on, and reviewed the qualification requirements of", vacant posts "available for possible staff redeployment". It had analysed "the background, expertise, experience and service record" of staff whose posts had been abolished and "established which staff members would match the requirements of one or several vacant posts". It had then invited a further evaluation of each candidate from the "manager"—i.e., the head of the unit—who was supposed to give "an objective assessment of the candidate's suitability".

(*b*) Next, the Group had "reconsidered the situation of all staff members with permanent appointments who had not been found suitable for a vacant post" to see whether they would be suitable for any post held by an official on a fixed-term appointment. It identified posts "with similar qualification requirements", and again it asked the manager to assess each candidate who met them.

(*c*) If no suitable post had by then revealed itself, the Group had made an "initial conclusion" recommending termination. At that point it had allowed an "informal recourse procedure" whereby a staff member might point out to it any "new elements" warranting reconsideration.

(*d*) If the Group still found no suitable post even after further review, it recommended termination.

In sum, the Group had, in the defendant's words, "measured" each holder of a permanent appointment "against several posts in order to identify the most promising and serious placement possibilities". "All of them", said UNIDO, "were the subject of discussions within the Advisory Group and with managers and supervisors".

As the Tribunal observed, in the first three weeks of April 1996, the complainant had been called for interviews for three posts, but nothing had resulted from them.

At its 10th meeting, the Advisory Group deemed it undesirable to place General Service staff on jobs at any grade lower than their current ones. Nevertheless, the complainant's first interview was for G.4 posts, though she had been at grade G.5 or its equivalent since 1974. The complainant then discovered that on 22 April 1996 her own supervisor had interviewed two staff members for a G.5 post for a senior fellowship clerk in her unit; it was identical to her own and had not been abolished, and it was held at the time by a junior colleague, S, who was currently only on a fixed-term appointment. By a memorandum dated 23 April the complainant requested, presumably in accordance with staff rule 110.02, to be considered for that post. Her supervisor had sent a memorandum on 22 April to the officer-in-charge of the Project Personnel Service stating that her work was fully satisfactory; that she was "the only clerk in possession of the very specialized qualifications needed to perform the duties of a fellowship clerk"; that the supervisor had been supervising S "for many years"; and that if anyone should be given preference over S on the grounds of contractual status it was she. The Advisory Group nevertheless decided that, since her memorandum of 23 April had "pre-empted the informal recourse procedure", she would not be evaluated for S's post; that the review of her candidature against that of S would be made in the context of that procedure; and that "when she was informed of the initial proposal … that she be separated from service", she would be told of the decision on her memorandum of 23 April. She received no reply to the memorandum.

The Advisory Group sent her its "initial proposal" dated 20 May 1996 for terminating her appointment. It told her, not that her claim to the post, but that her memorandum of 23 April 1996 would be "considered … during the course of the informal recourse procedure". The Acting Director of Operational Support Services in the Division of Administration and the officer-in-charge of the Project Personnel Service interviewed her on 17 June 1996. Among the reasons they gave for preferring to keep S on the disputed post were the following:

(*a*) The "fact sheets" showed that S's performance had been rated more highly in the most recent period: although she had "fully achieved" the results expected for eight of her tasks she had "exceeded" them for the others, whereas the complainant had "fully achieved" expectations—the lower rating—for all of them;

(*b*) The complainant worked only in English;

(*c*) According to the new structure the post would, if that was required, include the additional functions of appointment clerk and of secretary. The complainant had acknowledged that "her past experience had not made her thoroughly familiar with appointment and administration of staff and experts", though she had professed willingness to be trained provided she could keep her current duties;

(*d*) S had much better computer skills;

(*e*) The complainant had "limited flexibility and interest in undertaking different functions" while S was more versatile;

(*f*) The complainant had said that she would not consider working part-time or at a lower grade.

At its 32nd meeting, the Advisory Group agreed with the views and recommendation of the Acting Director of Operational Support Services. It observed, however, that since the complainant was able to work in French it was wrong of the Acting Director to say that she worked only in English. Indeed according to her performance reports she had worked in both languages and her knowledge of German too

was "highly useful". On 19 June 1996, the Director of Personnel Services presented the complainant with a notice of termination of her permanent appointment as at 28 June 1996. The complainant asked the Director-General to review the decision, he refused and she appealed to the Joint Appeals Board on the grounds that:

(*a*) The termination was unlawful because her post had not been abolished;

(*b*) Her rights under rule 110.02 (*a*) had been disregarded;

(*c*) She had been improperly denied the opportunity of voluntary termination because her supervisor had encouraged her not to apply for it.

In its report of 11 April 1997, the Board recommended rejecting her appeal and in a letter to her of 13 May 1997 the Director-General stated that he accepted that recommendation. She thereupon duly filed the present complaint.

In considering the complainant's plea of breach of her rights under rule 110.02 (*a*), the Tribunal observed that in its report, the Board stated that it had:

> "noted the thoroughness with which the [Advisory Group] had dealt with the [complainant's] case. It had reviewed her background and experience, had reviewed her against the [relevant] criteria … A further review took place with a view to her suitability for vacant posts as well as for posts occupied by fixed-term staff members … The Board studied the interview reports prepared by the staff members who had interviewed [her] … and heard three of them. The Board noted that [she] apparently showed a strong preference to continue to perform the same functions she had performed in the past. However, she showed willingness to accept different functions and to undergo training to fulfil them …
>
> "From the interview reports the Board also found that [she] would not have met the requirements of posts she was interviewed for, which actually required different duties and responsibilities than the ones [she] had held in her previous position …
>
> "The Board was of the opinion that [she] was fairly treated, that every effort had been made … to find possibilities for her redeployment and that she had been given a fair chance by the interviewers. However, … flexibility and effective teamwork were what was most needed and these were qualities [she] did not seem to exhibit."

The Tribunal noted that UNIDO had produced S's fact sheet and her last three performance reports, which covered 1991 to 1995. Although her performance in 1995 had been rated slightly higher than the complainant's in 1994-1995, only for four out of 15 assignments did her last three appraisals state that she had "exceeded expected results". The complainant's last three performance appraisals, which covered 1990 to 1995, said she had "exceeded expected results" in performing seven out of a total of 20 tasks. Further, her appraisal for 1992-1993 recorded that because of her excellent performance for many years she had been chosen to act as training assistant on her supervisor's retirement in March 1993 and had since, despite "difficult conditions", "exceeded the expectations" in fulfilling her new duties. It also said that since 1 April 1993 she had been supervising two others; and since S's fact sheet showed that previously Mrs. Schurz had—jointly with Mr. Hanselmann—been supervising S's work, it was probable that from April 1993 the complainant had supervised S's work, as Mr. Hanselmann himself had stated in his memorandum of 22 April 1996.

Those appraisals also showed that S had joined UNIDO in 1982, nine years after the complainant; although S had become a fellowship clerk in 1982 and the complainant in 1987, the complainant had been appointed senior fellowship clerk in 1989, one year before S; and when Mrs. Schurz had retired in 1993 it was the complainant who had been picked, in preference to S, to perform her duties. Her performance report showed that she did perform those duties, even though she was not actually appointed to the post. The appraisals thus afforded material evidence in support of several of the complainant's assertions: that the length and quality of her service were by no means inferior to S's; that her career had progressed more rapidly; that she had supervised S's work; and that she was no less versatile than S and no less keen or able to take on different duties. In coming to conclusions unfavourable to the complainant without considering those appraisals the Advisory Group and the Joint Appeals Board had disregarded material facts.

Moreover, the Tribunal noted that, at its 15th meeting, the Advisory Group had affirmed its commitment to obtaining a broad consensus on each case that took into account the views of managing directors and supervisors. In the present case it had taken into account the views of the Acting Director of Operational Support Services and the officer-in-charge of the Project Personnel Service, who had encumbered their posts only since January 1996. As S had been working as the Acting Director's secretary as from January 1996, neither he nor the officer-in-charge had direct knowledge of S's work as a fellowship clerk. The complainant stated, and UNIDO did not deny, that neither of them had had any contact with her regarding her work. Their ability to make a comparative assessment was thus severely limited, in the view of the Tribunal. Although Mr. Hanselmann had been the direct supervisor of both S and the complainant for over six years, the two interviewers and the Advisory Group had made no effort to obtain his views, nor had they considered what he had said in his memorandum of 22 April 1996. The Advisory Group had thus failed to observe its own procedural rules. Further, the Joint Appeals Board, in the complainant's absence, had heard the two interviewers and Mr. Hanselmann on another aspect of the case, but even then had not sought Mr. Hanselmann's views on the relative merit of the two staff members.

Under rule 110.02 (*a*), staff members with permanent appointments were entitled to preference for "suitable posts in which their services can be effectively utilized". It was obvious from the outset that the complainant's services could have been used in the identical post then held by S; the Advisory Group was therefore bound to consider whether she would be more suitable than S. Yet it had refused to do so, even when she had claimed her rights, on the wholly untenable grounds that that "pre-empted the informal recourse procedure". It was unfortunate that one of the officers who had later interviewed her on 17 June 1996 had already omitted her name from the chart of the new structure of the Project Personnel Service. Instead of considering her for the post most suitable for her, the Advisory Group had sent her for interviews for four posts, three of which either were at a lower grade or required qualifications not similar to hers. The Joint Appeals Board had been wholly mistaken in concluding that the Advisory Group had dealt with the case with thoroughness and fairness: on the contrary, it had failed to observe its own procedural rules and infringed her rights under rule 110.02(*a*).

The decision to terminate the complainant's appointment was therefore flawed and must be quashed, there being no need to entertain any of her other pleas. Since further staff reduction had taken place in January 1998, the Tribunal would order her reinstatement as from 29 June 1996 up to February 1998, the month in which

she qualified for early retirement, and payment of full arrears of salary, allowances and other benefits less any amounts she was paid on termination. If she had any occupational earnings during the period from the date of termination up to February 1998, she should also give credit for the net figure. UNIDO should pay its share of contributions for her to Van Breda, the health insurance brokers, and to the United Nations Joint Staff Pension Fund, up to the same date. She should be deemed for all purposes to have left on early retirement in February 1998 and be entitled to all benefits due upon such retirement. On account of the moral injury she had suffered, the Tribunal awarded her the sum of US$ 30,000 in moral damages, and she also was entitled to $2,000 in costs.

16. Judgement No. 1779 (9 July 1998): Feistauer v. International Labour Organization[27]

Abolishment of post and transfer to Bangkok—Limited review of restructuring and redeployment of staff—Question of abuse of authority—Question of an improper procedure regarding abolition of post and transfer

The complainant joined the staff of ILO in 1987 under a fixed-term appointment as a senior subcontracting officer at grade P.3 in the Technical Cooperation Equipment and Subcontracting Branch (EQUIPRO) of the Department of Technical Cooperation. ILO upgraded his post to P.4 as at 1 October 1993 and at the same time promoted him to that grade. His post was abolished as of 31 March 1996, at which time he was transferred to the post of senior specialist in employment development, at grade P.5, on the East Asia Multidisciplinary Advisory Team in Bangkok.

Following lengthy correspondence with the Organization, by a letter dated 11 March 1996, the complainant formally appealed the decision of his transfer to Bangkok to the Director-General under article 13.2 of the staff regulations. The Director of the Personnel Department dismissed the appeal on the Director-General's behalf by a letter to the complainant dated 23 August 1996. The complainant appealed against that decision to the Tribunal.

The complainant submitted that the EQUIPRO management structure was "top-heavy" and that, if the organization was sincerely interested in cutting costs, there were several more reasonable alternatives to the abolition of his post, including the abolition of one supervisory position, or the merger of EQUIPRO and the Equipment and Office Supplies Section, or both. The complainant invited the Tribunal to consider the cost-effectiveness and justification of the organization's decision to keep two supervisory posts in EQUIPRO for one Professional staff member and five General Service staff and, in so doing, to determine whether the abolition of his post, and not some other cost-saving measure, was in the organization's best interests. However, on such questions of policy the Tribunal considered that it would not substitute its opinion for that of the Administration. As it had often said, an international organization must have the ability to adapt to changing circumstances. The Tribunal would interfere with such a decision on matters as restructuring and redeployment of staff only if it had been taken without authority or in breach of a formal or procedural rule, or had been based on a mistake of fact or of law, or neglected some essential fact, or constituted an abuse of authority, or had drawn mistaken conclusions from the factual evidence: see, for example, Judgement No. 1131 (in re Louis) 1991.

According to the complainant, there had been abuse of authority because the person who decided to abolish his post was directly threatened by the cuts to

EQUIPRO and therefore had decided to abolish the complainant's post rather than his own. That submission, however, was not supported by the facts, in the view of the Tribunal.

As the Tribunal observed, the Director had stated, in her minute of 15 March 1996 to the Treasurer and Financial Comptroller of ILO, that it was the chief of EQUIPRO who had decided in 1995 that two posts had to be abolished. She had then stated that it was the chief of the Internal Administration Bureau (INTER) who had discovered, through the Personnel Planning and Career Development Branch (P/PLAN), that the vacant post in Bangkok might be suitable for the complainant. She concluded that the proposal to abolish the complainant's post and transfer him to Bangkok was the result of a "joint process among EQUIPRO, INTER and P/PLAN." Under the reorganization, the head of Operations in EQUIPRO had assumed the complainant's responsibilities over and above his own. It was therefore apparent that the head of Operations had made little or no input into the decision to abolish the complainant's post, or indeed into the decision to transfer him to Bangkok. However, even if he had participated in the decision to abolish the complainant's post, that would not in itself have constituted abuse of authority. There was not a jot of evidence to support the complainant's allegation that the choice was between abolishing the post of head of Operations or that of the complainant.

The complainant requested the Tribunal to comment on whether the restructuring of EQUIPRO was in line with established ILO procedures and with norms applicable to international organizations. According to the complainant, a normal procedure for restructuring would be (*a*) a neutral description of new posts; (*b*) a call for candidacies; (*c*) unbiased selection; and (*d*) assignment. However, the Tribunal would review the process insofar as it might involve personal prejudice, abuse of authority or similar defects. But it was not for the Tribunal to decide what a "normal procedure" for restructuring might be.

In the present case, the organization had determined that two posts needed to be abolished within EQUIPRO. It had then found a potential position for the complainant in Bangkok, and determined that responsibilities within EQUIPRO could be shifted to merge two posts into one. The complainant had at all times been kept informed of the process, particularly of decisions affecting him directly, and he had been given the opportunity to object, which he did. As for the abolition of his post, there was nothing to suggest that an improper or unfair procedure had been followed.

With respect to the complainant's transfer to Bangkok, in the opinion of the Tribunal, the organization had every right to transfer him and to decide to abolish his current post as a result. However, because it was established practice to consult an employee on a proposed redeployment, the organization had a duty to consider the complainant's objections to redeployment before deciding to abolish his post on that basis.

As the Tribunal noted, the evidence established that the organization had first approached the complainant on 7 December 1995 about the proposed transfer. His contract had been renewed for a further three months at the end of December 1995 and, on 16 February 1996, the Selection Board had made the final recommendation to transfer him. In the meantime, although it became increasingly clear that the Organization was going to abolish his post and transfer him, he had been given ample opportunity to express his objections. There could be no doubt that, by the time the final decision was made, everyone involved was fully aware of his per-

sonal and professional objections. The conclusion must be that the organization had considered his objections but had made its decision in spite of them, which it was entitled to do.

For the above reasons, the complaint was dismissed.

C. Decisions of the World Bank Administrative Tribunal[28]

1. Decision No. 185 (15 May 1998): Ezatklah v. International Bank for Reconstruction and Development[29]

Redundant post—Limited review of redundancy decisions—Staff rule 7.01—Question of retaliation—Material difference between new post and abolished post—Obligation on organization to make an effort to find alternative post

The Applicant joined the World Bank's London Office Division of the European Office Department in October 1981, as a secretary, level B. In 1984, she was promoted to level C and, in 1986, her position was re-graded to level 16. The title of her position was changed to Staff Assistant in 1988, and to Specialized Staff Assistant in 1992. At the time she was declared redundant in May 1995, she held the title of Senior Specialized Staff Assistant. The London Office was restructured and the Applicant's post was abolished effective 1 June 1995. She appealed that decision.

In considering the matter, the Tribunal noted that redundancy decisions were within the discretion of the Bank, and that the Tribunal would review them only to determine whether they constituted an abuse of discretion, as being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure (Saberi, Decision No. 5 (1982)).

In that regard, the Tribunal could find nothing to substantiate the Applicant's allegation that there had not been a true redundancy. The reorganization of the London Office had been motivated by a desire to enhance the efficiency of the new role of the Office. In that context, it was not unreasonable for the Applicant's supervisor to have recommended that the Applicant's colleague, and not her, occupy the newly created position of Program Assistant since she was already familiar with the new functions.

The Applicant contended secondly that the reorganization of the London Office had not been carried out in the interests of efficient administration, as required by staff rule 7.01, paragraph 8.02, because there had been budgetary increases in staff instead of decreases. As the Tribunal noted, it appeared indeed that there had been budgetary increases with regard to staff. The Respondent itself admitted that the budget of the London Office had increased after the Applicant had been declared redundant. The Tribunal noted, however, that the factors determining whether a reorganization was efficient included not only the staff budget, but also the redefined work strategies and the priorities resulting from the new structure. Even if a staff budget was increased, staff reductions could be made based on a different business rationale. In the present case, the increase in the budget had occurred in the areas of communications and public relations, both of

which were new or additional work priorities in the restructured London Office. The Tribunal found that it was within the Respondent's discretion, according to its new business plan, to abolish a position part of whose tasks had been phased out and to use the funds from the abolition, and any additional necessary funds, to support the new structure of the Office.

The Applicant also claimed that the redundancy of her position was the product of retaliation against her because of her complaints against her former supervisor. The Applicant claimed that because of these strained relations and her mistreatment by her former supervisor she had been put at a disadvantage at the time of the reorganization. The Applicant had in that respect alleged that if her earlier Performance Review Records, containing her former supervisor's evaluations of her performance, had been corrected, they would have presented a different picture of her to her new supervisor and she would have been in a much stronger position both when the decision on the redundancies was being made and during the time she was searching for alternative employment.

On that point, the Tribunal first noted that, even during the many years that the Applicant was under the supervision of her former supervisor, she had received merit increases and promotions based on some good performance reviews. The Tribunal further noted that the Applicant had failed to challenge, by requesting timely administrative remedies, the Performance Review Records about which she was currently complaining. The record showed that the Applicant had complained formally only to the Ethics Officer and that that complaint, made in December 1993, was about discrimination by her former supervisor. Following an investigation, the Ethics Officer had informed the Applicant in May 1994 that there were no grounds for her complaints. The Applicant did not take any other formal action after the completion of the investigation. That complaint could not now be properly reviewed by the Tribunal.

The question thus arose as to whether the new Program Assistant position that had been created was materially different from or essentially the same as the Senior Specialized Staff Assistant position previously encumbered by the Applicant. The Tribunal found that the two positions differed materially. In Brannigan (Decision No. 165 (1997)), the Tribunal had held:

> "To demonstrate the abolition of a position it is not enough that there may be some differences between the old and new positions; the differences must be ones of substance. The Tribunal has emphasized in this respect the need for the Bank to show a clear material difference between the new position and the position that was made redundant."

As noted by the Tribunal, the record showed that the new position required its occupant to perform a number of tasks commensurate with the new role of the London Office as an external affairs unit, while the earlier position occupied by the Applicant required her to perform mainly administrative tasks. The Tribunal further noted that, in spite of some tasks common to both the Applicant's former position and the new position (i.e., performance of some administrative tasks), there were material differences between them. In addition, the tasks assigned to the former positions held by the Applicant and her colleague were different.

Nonetheless, a careful examination by the Tribunal of the record did indicate that the Respondent had abused its discretion with respect to its obligations under staff rule 7.01, paragraph 8.05, and staff rule 5.06. Staff rule 7.01, paragraph 8.05, as it then provided, stated:

"The Director, Personnel Management Department, or a designated official, *shall seek to place the staff member in another position among existing or known prospective vacancies in his type of appointment within the Bank Group, the duties of which are commensurate with his qualifications*, or for which he can be retrained in a reasonable period of time, as provided in paragraph 8.06. *Placement may also be offered in a vacant lower-level job for which the staff member is qualified and which he is willing to accept under rule 5.06*, 'Assignments to lower-level positions.' " (emphasis added)

The Applicant had argued that she was qualified for, and that she should have been offered, pursuant to staff rule 7.01, paragraph 8.05, and staff rule 5.06, any of the three new positions in the London Office or, at least, the lower-graded position of Junior Staff Assistant. The Tribunal had already addressed the Applicant's claim that she should have been selected for the Program Assistant position. With respect to the other two positions, of Communications Consultant and Junior Staff Assistant, the Tribunal found that the decision not to reassign the Applicant to either of them was within the discretion of her new supervisor. It found, however, that his discretion had not been exercised reasonably in not offering the Applicant the Junior Staff Assistant position.

Although neither staff rule 5.06 nor staff rule 7.01, paragraph 8.05, imposed an obligation on the Respondent to place a staff member in another position and, particularly, in a vacant lower-level position, they did impose an obligation on the Respondent to make an effort to place the staff member in existing or known prospective vacant positions for which he or she was qualified. This implied an obligation at the least to notify the staff member of the existence of such a vacancy and to permit her to apply for it. Although the Respondent had assisted the Applicant generally in her attempts to secure alternative positions, it had failed to offer her the immediate vacant position of Junior Staff Assistant in her unit. That, in the view of the Tribunal, was the only way in which the Respondent could have demonstrated that it had genuinely tried to find the Applicant an alternative position for which she was qualified, and to ensure that it had fulfilled its duty to make an effort to place her in such a position or at least to give her an opportunity of being considered for one. Whether the Applicant was finally selected or would have accepted an offer to occupy an alternative position was not material.

In the present case, as the Tribunal pointed out, the Applicant had neither been notified of the existence of, nor offered, any of the other positions created in the London Office and, in particular, that of Junior Staff Assistant. The Communications Consultant position required professional experience in media and public relations, skills which the Applicant apparently did not have. Thus, the Respondent had been justified in not offering it to her. The Junior Staff Assistant position, however, was an entry-level position and its duties consisted of "reception and telephone (*general plus PIC*); word-processing and graphics workstation support, especially for communications consultant; routine office clerical and accounting functions; assistance with arrangements for meetings and events; assist visiting Bank staff (emphasis added). In the opinion of the Tribunal, those were some of the duties which the Applicant had performed in the past fully satisfactorily and which she was more than qualified to perform at the time of the redundancy of her employment.

For the above reasons, the Tribunal decided that the Respondent should pay the Applicant compensation in the amount of US$ 40,000 net of taxes and $3,000 in costs and expenses.

2. Decision No. 188 (15 May 1998): Singh v. International Bank for Reconstruction and Development[30]

Termination based on unsatisfactory performance—Evaluation of staff performance is a discretionary decision—Protections under staff rule 7.01—Interpersonal relations cannot be ignored in performance evaluation—Abuse of discretion regarding performance evaluation—Difference between unsatisfactory performance based on professional incompetence and unsatisfactory performance based on questions of personal relations—Question of remedies

The Applicant joined the Bank in 1973 as a Research Assistant and made a successful career while working mostly in the Africa Region. She was promoted to levels 21 and 22 and during the 1990-1991 evaluation she was cleared for promotion to level 23. In 1993, she was invited to join the Africa-Western Africa Department, Country Operations Division (AF4CO), also within the Africa Region, where she was assigned the responsibility of task-managing various Sierra Leone missions in 1993-1994, in particular, a Judicial and Legal Reform Project ("Sierra Leone Project") and an Agriculture Sector Support Project. Until she joined AF4CO, she had received fully satisfactory merit awards, although remarks were made in her 1992-1993 Performance Review Record (PRR) and earlier exchanges about difficulties she had had with team membership and with her need to enhance her interpersonal skills.

In AF4CO, the Applicant continued to have problems with interpersonal relationships and the PRR for 1993-1994 was critical of the Applicant's interpersonal skills, an aspect that was identified as affecting her performance, and as a result of that evaluation she was placed, on 14 June 1994, in a performance effectiveness plan. Subsequently, both the Senior Country Officer for Ghana and the new Division Chief both requested her removal from the Department, invoking problematic interpersonal skills and unsatisfactory performance related thereto. The notice of termination was issued on 17 August 1995, and the Applicant appealed, claiming she had been terminated on grounds of redundancy, with the Respondent arguing that her termination had been based on poor performance.

In that regard, the Tribunal noted that the notice of termination had been issued on the ground that "there were no good prospects for satisfactory performance within the African Region", or elsewhere in the Bank Group.

The Tribunal had recognized in many cases that the evaluation of staff performance was a discretionary decision within the powers of the Respondent's management (Lopez, Decision No. 147 (1996); Romain (No. 2), Decision No. 164 (1997)), as it also had recognized that such evaluation "may refer not only to the technical competence of the employee but also to his or her character, personality and conduct generally, insofar as they bore on ability to work harmoniously and to good effect with supervisors and other staff members" (Matta, Decision No. 12 (1983)).

In the view of the Tribunal, there were many valid reasons for the Respondent to have evaluated the Applicant as a poor performer given her interpersonal difficulties and the manner in which that affected the work of the Division. The Tribunal also was satisfied that there had been no improper motives underlying such negative assessments. The allegation of the Applicant that they were in retaliation for her views and complaints on the projects undertaken did not find support in the facts of the case, particularly as her problems had surfaced much earlier than the projects mentioned.

However, the Tribunal also noted that the Respondent had mismanaged the handling of this matter in several important respects.

The first serious flaw related to the application of staff rule 7.01, paragraph 11.02, which provided that the Bank terminate the appointment of a staff member for unsatisfactory performance. The Applicant had argued, and the Respondent had admitted, that she had never been placed under the rule. In fact, as the Tribunal observed, the performance effectiveness plan issued for her on 24 June 1994 had not invoked any rule in particular. Moreover, the Management Review Record of 8 July 1994 had expressly provided that if the Applicant did not improve her performance under the effectiveness plan, only then "would [she] be placed on a formal monitored performance plan in accordance with staff rule 7.01, section 11, Unsatisfactory Performance". Such a formal monitored performance plan had never been prepared and therefore some of the guarantees established under the rule had not been observed. While it was true, as the Respondent argued, that adequate warning about the Applicant's performance had been amply and timely given and that the necessary feedback had been provided to her, pointing out repeatedly the problem of interpersonal skills and how to improve them, the fact remained that she had never been formally placed on a monitored performance plan and that no warning of termination had been issued to her in that connection.

The Respondent had argued that, despite the absence of a final warning, "the procedures followed were nonetheless adequate and reasonable, and satisfied the requirement of due process". However, as the Tribunal noted, if a staff member was not formally placed under staff rule 7.01, paragraph 11.02, there could be no basis on which the staff member could know clearly where the process was leading. In the present case, the possibility of termination had not been mentioned either in writing or in any other way. The Respondent argued that the application of staff rule 7.01, paragraph 11.02, would in any event have been useless because the Applicant's performance continued to be problematic under the performance effectiveness plan. That argument was not tenable and, even if factually correct, could not be substituted for the application of a staff rule. Although staff rule 7.01, section 11, had been invoked subsequently, at the time when the process of removing the Applicant from the Division began to unfold, that could not ensure the adequate handling of the process as a whole.

With respect to the 1994 PRR, while the Applicant had emphasized that that evaluation had been biased and that the information favourable to her performance had been suppressed by the Division Chief and other officials, the fact remained that, although there were on occasion positive references to her performance, the issue of interpersonal difficulties was again present at all times. In the view of the Tribunal, just because the Applicant's performance on the technical level might have been considered adequate in some evaluations did not necessarily mean that bad interpersonal relations should be ignored. It was for that reason that when the Ghana Parliamentary Project had been discontinued, the Division Chief had come to the conclusion that there was no work programme matching the Applicant's skills, a situation which, contrary to what the Applicant argued, was not related to redundancy. It also was on that basis that the Applicant had first been informed that she would not be given a satisfactory performance evaluation and why, in the 1994 PRR, she had been considered "ineffective in all aspects of working with others".

In the opinion of the Tribunal, even though the Respondent's evaluation of the Applicant's interpersonal skills was correct, there nonetheless had been mismanage-

ment with respect to some of the procedures that were followed. No supplementary evaluation from the former Division Chief who had worked with the Applicant during most of the six-month period of the performance effectiveness plan had been requested by the Respondent. Such a supplementary evaluation could have provided broader input for the process leading up to the 1994 PRR. A complaint made by the Applicant regarding misconduct of her former Division Chief in connection with the 1993-1994 PRR had apparently been dismissed by the Ethics Officer on the basis that there were insufficient grounds to pursue an investigation, but that dismissal had not been documented and the Applicant was not so informed until after she had been terminated. The Tribunal also noted that the Management Review Record of 8 July 1994 had specifically decided that it was for the Management Review Committee to judge the Applicant's performance in January 1995, a decision that was not complied with, thus leaving the normal PRR as the sole basis for evaluation. As the Tribunal pointed out, because the matter was serious and affected a competent staff member who had worked for the Bank for many years, it was evidently recognized that it was desirable that decisions be kept at a high managerial level, an objective that had not been achieved.

The Tribunal further noted that the timetable followed in the preparation of the 1994 PRR was open to question. As the Applicant had argued, that PRR had not been finalized until after her removal had been decided and the notice of termination issued. While some delays might be explained by requests made by the Applicant herself, it was not right to reach the decision of termination without the complete PRR. The Management Review had followed the completion of the PRR. Moreover, in the present case, the fact that both the Department Director and the Division Chief had been part of the Management Review Group could be seen as adversely affecting the necessary transparency and impartiality of the process, since both officials had requested the Applicant's removal before the PRR had come to be considered by the Management Review Group.

The Tribunal had held in a previous case:

> "Two basic guarantees are essential to the observance of due process in this connection. First, the staff member must be given adequate warning about criticism of his performance or any deficiencies in his work that might result in an adverse decision being ultimately reached. Second, the staff member must be given adequate opportunities to defend himself." (Samuel-Thambiah, Decision No. 133 (1993)).

As the Tribunal observed, the paradox of the present case was that the Applicant had had more than adequate warning on most issues, except termination, and many opportunities to defend herself—the voluminous correspondence and documentation of the record speaking for themselves—but the mismanagement of the procedures followed had resulted in a disregard for due process. Staff rules were not written for the sake of formality but precisely to secure an orderly process that would be fair and ensure that the staff member affected could feel that his or her case had been properly considered. Even if the Respondent was in substance right about the decision that it had taken with respect to the Applicant, its departure from the relevant rules amounted to an abuse of its discretion.

In the Tribunal's view, a third problem area concerned the payments and benefits associated with the Applicant's separation from the Bank. In spite of the fact that the Applicant had completed 22 years of service with the Bank and that she had reached the age of 49, the Respondent decided at first that her termination would

be made without any severance payments. As the Tribunal recalled, while it was true that staff rule 7.01, paragraph 11.04, provided that a staff member separated for reasons of unsatisfactory performance was not entitled to severance payments, it also was true that the same rule allowed for exceptions taking into account the circumstances of the case. On that point, it was appropriate to make a distinction between unsatisfactory performance based on professional incompetence and unsatisfactory performance based on questions of personal relations. The two situations were different in nature. Given the circumstances of the case, it would not have been unreasonable for the Bank to have had recourse to the exception at the outset. Such recourse would in any event have been limited to 50 per cent of the amount that would have been payable to the Applicant had her employment been terminated on grounds of redundancy. But the fact that the Respondent had not applied the exception did not appear to have been related to improper motive, retaliation or vindictiveness, as the Applicant believed, but simply to a rather mechanical application of the rule. As the Tribunal observed, the situation had been partly corrected in the administrative review concluded on 4 December 1995.

The Applicant had pursued her claims before the Appeals Committee. That body had concluded on 11 December 1996 that the Applicant should have been declared redundant and had recommended, among other things, separation on those grounds with all associated benefits, including special leave and career search assistance. The Vice-President for Human Resources, by a letter to the Applicant of 3 February 1997, accepted the recommendations of the Appeals Committee "to the extent that it provided you the severance payments that you would have received had you actually separated on grounds of redundancy". As the Tribunal observed, that did not mean that the ground for separation had been changed, but only that the Applicant's severance payments would be made equivalent to those under redundancy as the standard of measurement. The Applicant was thereby entitled to receive the 22.5 months' net salary as a severance payment, from which the 11.25 months' payment already received would be deducted. An additional lump sum was authorized on that basis. The total of both severance payments was US$ 119,268.74.

The Tribunal turned to the question of remedies. The Respondent had argued in that connection that in granting the additional severance payment recommended by the Appeals Committee there had been adequate compensation to the Applicant for some of the procedural flaws discussed above, notably the fact that she had not been dealt with under staff rule 7.01, section 11. However, in the view of the Tribunal, the disregard for due process and abuse of discretion resulting from the mismanagement of the case went wider than the fact that the Applicant had not been dealt with under staff rule 7.01, section 11. Since it was most unlikely that the final outcome would have been different if the appropriate procedures had been followed, the quashing of the decision to terminate the Applicant's employment, as requested by the Applicant, was not a realistic option. Moreover, the possibility that the Respondent could reinstate the Applicant must be ruled out in the light of the circumstances of the case. The Tribunal concluded that the appropriate remedy in the present case was an award of compensation to the Applicant for the intangible damage which she had suffered as a result of such mismanagement, to be paid in addition to the severance payments already received.

For the above reasons, the Tribunal decided that the Respondent should pay the Applicant compensation in an amount equivalent to three months' net salary in addition to the severance payments made, and $6,418 in costs and expenses.

3. Decision No. 197 (19 October 1998): Rendall-Speranza v. International Finance Corporation[31]

Complaint of sexual harassment—Request for anonymity—Definition of sexual harassment—Staff rule 8.01—Nature of investigation phase was administrative and not adjudicatory—Question of irregularities during investigation phase—Credibility of victim—Question of actions amounting to sexual harassment—Other improper behaviour giving rise to compensation for the victim—Staff rule 4.02 on probation and staff rule 7.01 on ending employment—Question of a hostile working environment

On 26 September 1992, the Applicant accepted an appointment as a level 23 Investment Officer with Division I of the International Finance Corporation, and pursuant to the World Bank Staff Rules, her appointment was subject to a probationary period.

Upon joining the Corporate Finance Services Department, the Applicant was assigned to work on an advisory mandate in Slovenia, which included work on the Tomos project. The Applicant began to complain in late 1992 that she was not being given interesting assignments, that her competence was not being recognized and that the work she was being asked to perform was beneath her level. The Applicant thereafter discussed reassignment opportunities with the Director, Personnel and Administration for IFC, at which time, according to the Director and others, the Applicant expressed a preference for her transfer to the Europe Department in IFC.

In an initial interim evaluation of the Applicant's performance dated 26 May 1993, the Applicant's supervisor in Corporate Finance Services (the Manager of Division I) indicated that the Applicant's assignment on the Tomos project "did not go smoothly". The Applicant's supervisor was critical of the Applicant's interpersonal, analytical and computer skills. The Applicant challenged the initial interim evaluation of her performance, asserting that it was "totally biased and unfair". Following a meeting with the Applicant, the Manager of Division I submitted, on 11 June 1993, a revised interim evaluation of the Applicant's performance. While that evaluation was less critical of specific aspects of the Applicant's performance, the Manager stated in the revised evaluation that "management felt that she needed more clarification on her responsibilities than I had considered necessary for someone of her age and experience".

The Applicant was subsequently transferred to Division I of the Europe Department, effective 28 July 1993, and her probationary period extended to 30 June 1994. During January 1994, the Division Manager's interim evaluation of the Applicant was critical of the Applicant's performance and of her interpersonal relations, and in a note dated 13 May 1994, to the Director of the Europe Department, the Division Manager complained about the Applicant's delay in completing an assignment and suggested that she be told by the end of May that she would not be confirmed.

In a letter dated 9 June 1994, to the Executive Vice-President of IFC, the Applicant requested an appointment "at the suggestion of the Ombudsman" to "describe a sequence of unprofessional behaviours" which, she claimed, had jeopardized her "professional and personal objectives in IFC".

By a memorandum dated 20 June 1994, to the Director of the Europe Department, the Division Manager of Europe Division I provided a detailed and highly critical final appraisal of the Applicant's performance. His evaluation con-

sisted of a critique of the Applicant's assignments in the Department and a negative assessment of the Applicant's professional and interpersonal skills. It was again his recommendation that the Applicant not be confirmed.

On 24 June 1994, pursuant to the Applicant's request of 9 June 1994, the Executive Vice-President of IFC met with the Applicant to discuss her allegations of unprofessional behaviour. At the time, the Applicant described purported instances of sexual harassment on the part of the Director of the Europe Department.

On 27 July 1994, the Applicant submitted to the Ethics Officer a formal complaint of sexual harassment, "including physical assault and battery", against the Director of the Europe Department. In her complaint, the Applicant presented a detailed chronology of events from early 1992 to May 1994, in which she included allegations of inappropriate behaviour and comments and instances of alleged sexual harassment all on the part of the Director of the Europe Department, beginning with the recruitment process. An underlying theme of her complaint was that the decision not to confirm her was a product of the Director's adverse reaction to her denial of his advances. Among other things, the Applicant asserted that the Director of the Europe Department had arranged for her to be transferred to his Department. She further described many lunch, dinner and other social outings with the Director, during which time he had allegedly prompted personal discussions, pursued her and made unwanted and forcible sexual advances. In explaining why she had continued to accede to requests of the Director to accompany him on such outings, the Applicant stated that he had generally presented a business excuse and that, because he was her Department Director, the refusal of such "overtures" might have affected her career. Throughout her complaint, she listed dates, places and times to corroborate her allegations and indicated that there were a number of different witnesses to the social outings, the phone calls and to the Director's pursuit of her. In that respect, she provided a suggested list of 12 witnesses and a list of questions to put to the witnesses.

In September 1994, an independent investigation was initiated by a Senior Vice-President, and she had concluded that sexual harassment had not taken place.

On 26 January 1995, a management review meeting took place to discuss the Applicant's confirmation. The management review group consisted of the Vice-President for Operations of IFC, the Europe I Division Manager and the Director of Personnel and Administration. A staff member of Corporate Finance Services also attended to comment on certain aspects of the Applicant's response. The substance of the review was included in a memorandum to the Applicant, dated 13 March 1995. According to the memorandum, the review members had undertaken a detailed discussion of the Applicant's performance and experience and had concluded, without dissent, that the Applicant's confirmation should be denied.

The Applicant filed an appeal with the Appeals Committee, which concluded in its report dated 28 June 1996 that while there had been no abuse of discretion with respect to the decision not to confirm the Applicant, the conduct of the Director of the Europe Department could "only be characterized as one unbecoming a manager" and was at odds with Bank Group policy embodied in the document *Preventing and Stopping Sexual Harassment in the Workplace*. In the light of its conclusions, the Committee recommended that the sexual harassment investigation be reopened in order to hear testimony relevant to the Applicant's credibility and that all other requests made by the Applicant be denied.

On 25 July 1996, the Vice-President for Human Resources accepted the Committee's recommendations and requested the independent investigator to re-

open the investigation into the Applicant's complaint of sexual harassment against the Director of the Europe Department. The Vice-President for Human Resources requested the independent investigator to interview the 16 witnesses identified by the Applicant's attorney. She further provided the independent investigator with the earlier terms of reference and with the pertinent positions of the Applicant's attorney's letter of 6 January 1995.

Notwithstanding objections raised by the Applicant regarding the proposed procedure, the independent investigator conducted a subsequent investigation in which she interviewed 14 witnesses. In a supplemental report submitted on 23 December 1996, she concluded: (*a*) "certain credibility issues were not affected by the additional witnesses"; (*b*) "no new witness rehabilitated" the Applicant's credibility on events and the evidence cited in the first report demonstrated "an intent to fabricate on her part"; (*c*) the initial report had "accurately recounted witness testimony"; and (*d*) the additional witnesses "undercut" rather than corroborated the Applicant's testimony. The Applicant was provided with a copy of the report, and informed by the Vice-President for Human Resources that the evidence presented did not warrant a finding of misconduct on the part of the Director of the Europe Department.

The Applicant submitted her application to the Tribunal on 2 September 1997, requesting anonymity; however, the Tribunal denied that request on the ground that it was not satisfied that the publication of her name was highly likely to result in grave personal hardship to her.

The Tribunal considered that the central issue in the case was the Applicant's complaint that she had been subjected to sexual harassment by her Director, and that the Respondent had failed to discharge its obligation to protect her from such harassment. That alleged failure was principally, according to the Applicant, through the Bank's acceptance of the findings and recommendations of an outside investigator, who had interviewed witnesses and produced two reports that concluded that sexual harassment had not taken place, and through the Bank's resulting decision not to impose disciplinary measures against the Director.

As the Tribunal observed, the Bank had made the prevention and eradication of sexual harassment of its staff members an important part of its personnel policy. In a Bank document issued in September 1994, entitled *Preventing and Stopping Sexual Harassment in the Workplace*, sexual harassment was defined as: "any unwelcome sexual advance, request for sexual favour or other verbal, non-verbal or physical conduct of a sexual nature which unreasonably interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive environment." Although that definition had been promulgated after the incidents under consideration in the present case, the definition was consistent with similar definitions adopted in both international jurisprudence (see, e.g., *Belas-Gianou v. Secretary-General of the United Nations*, Judgement No. 707 (28 July 1995), referring to "Procedures for dealing with sexual harassment", United Nations document ST/AI/379 dated 29 October 1992; and *In re Abreu de Oliveira Souza*, ILOAT Judgement No. 1609 (30 January 1997), referring to "Sexual harassment policy and procedures", ILO Circular No. 543, dated 2 November 1995) and domestic jurisprudence and all parties had presented their case on the assumption that the definition was appropriate. The Tribunal found that the definition provided a reasonable criterion for the purpose of deciding the present case.

Since the Bank clearly acknowledged that it had an obligation to protect its staff members from harassment, that protection became a part of the staff members'

conditions of employment and terms of appointment, which was thus enforceable by the Tribunal. The Bank had, within its discretion, concluded that the appropriate way in which to implement its obligations was to afford certain procedures to its staff members who complained about the harassing behaviour of other staff members. The mechanism provided by the Bank was the mechanism that was provided more generally in the staff rules relating to disciplinary measures. Those rules provided for the filing of a formal complaint on the basis of which an investigation was to be undertaken into the alleged misconduct.

The Applicant had complained that the Bank had failed to respond in a timely fashion to her sexual harassment claim. The Tribunal, however, observed that the record did not support her claim, and that, noting that because staff rule 8.01, paragraph 5.02, required the provision of "supporting evidence of the alleged behaviour" before initiating a formal investigation, the Ethics Officer had requested the Applicant to provide him with the details relating to her complaint of sexual harassment. But once the Bank had obtained the required evidence, an independent investigator had been selected and had begun her investigation—less than two months after the Applicant had filed a formal and particularized complaint with the Ethics Officer.

The Applicant also complained of procedural irregularities during the investigatory phase. In that regard, the Tribunal noted that in order to assess whether the investigation had been carried out fairly, it was necessary to appreciate the nature of the investigation and its role within the context of disciplinary proceedings. After a complaint of misconduct was filed, an investigation was to be undertaken in order to develop a factual record on which the Bank might choose to implement disciplinary measures. As the Tribunal pointed out, the investigation was of an administrative, and not an adjudicatory nature. It was part of the grievance system internal to the Bank. The purpose was to gather information, and to establish and find facts, so that the Bank could decide whether to impose disciplinary measures or to take any other action pursuant to the Staff Rules. The concerns for due process in such a context related to the development of a fair and full record of facts, and to the conduct of the investigation in a fair and impartial manner. They did not necessarily require conformity to all the technicalities of judicial proceedings.

The Tribunal noted that the Bank had set down the investigator's terms of reference in detail; on her part, the investigator had sent a letter to the parties so informing them, and informing them as well of the general procedures by which the investigation was to be conducted. The record showed that the investigator had given both sides, the Applicant and her Director, ample opportunity to be heard, and an equally ample opportunity to try to corroborate their respective versions of the events by proposing large numbers of witnesses who they believed would support and lend credibility to their conflicting interpretations of the facts.

The Applicant and her Director had had access to each other's transcript, but the Applicant complained of lack of comparable access to the transcripts of the other interviewed witnesses. Staff rule 8.01 ("Disciplinary measures"), however, as pointed out by the Tribunal, did not obligate the Bank to provide staff members with such transcripts. It was partly on that basis, and in order to maintain the confidentiality of the testimonies provided by the Bank, that the Tribunal, on 15 May 1998, denied the Applicant's request for the transcripts of the witnesses.

The Applicant criticized the Bank's hasty decision of 10 January 1995 to accept the investigator's first report, only four days—including a weekend—after re-

ceiving a 42-page rebuttal of the report by the Applicant's then attorney. It may be recalled that the Appeals Committee had concluded that the Respondent's action "was unreasonable, arbitrary and constituted an abuse of discretion" and that, rather than accept the report at face value, further inquiry should have been undertaken by the Bank. The Vice-President for Human Resources had indeed agreed to "give effect to the Committee's recommendation as expeditiously as possible", and the investigator thereupon had undertaken an extended set of additional interviews and prepared a second report. The Tribunal shared the view of the Appeals Committee that the Bank's initial endorsement of the first report was indeed hasty. The Bank purported to place very high priority upon the elimination of sexual harassment and protection of its staff members from such harassment. Because the criticisms directed by the Applicant's attorney against the first report were extensive and detailed, it was incumbent upon the Respondent to give such criticisms its most serious consideration. The Tribunal concluded, however, that that shortcoming had been remedied by the Bank's acceptance of the Appeals Committee recommendation that the investigation should be reopened "in order to hear testimony relevant to establishing Appellant's credibility".

The fact that the investigation had been reopened and supplemented only upon the recommendation of the Appeals Committee did not, in the opinion of the Tribunal, however, alter the inconsistency noted between the policy forbidding sexual harassment and the actual implementation of that policy in the present case, which, among other things, had caused unnecessary delay to the Applicant in the resolution of the matter.

As the Tribunal noted, it was undisputed that the Applicant's Director had engaged in a number of social behaviours of a questionable character towards the Applicant, including dinner invitations, discussions of his personal and marital problems, visits to her home and to the countryside, and personal touching (which the Director characterized as minor and innocent); those attentions towards her had begun as early as the time of her recruitment and continued over a period of several months. The principal conflict, in the view of the Tribunal, in the Applicant's and the Director's versions of the events related to such matters as the frequency of the meetings, the intensity of the personal discussions, the frequency and nature of the physical contacts, her resistance to his advances and the like. It was the conclusion of the Tribunal that there was clearly sufficient evidence to substantiate the findings of the investigator, so that it was not an abuse of discretion for the Bank to endorse those findings.

The conclusions of the investigator had been set forth in two reports in a manner that was detailed and thorough. As the Tribunal observed, to some extent they had been based upon a general sense on the part of the investigator that the Applicant was not a credible person and that she was given to exaggeration and even to fabrication. But her resolution of those conflicts of credibility had been based on much more particularized circumstances and inferences. They included: internal inconsistencies within the Applicant's own testimony, the failure of third-party witnesses (typically named by the Applicant as presumably favourable to her) to corroborate her version of important events, contrary and factually precise testimony by the Director, the testimony of fellow staff members that they had encouraged the Applicant to distance herself from the Director and his advances but that she had belittled their advice and stated her disinclination to do so, and on the fact that the Applicant had insisted on continuing to work in the Director's Department even when she was given an opportunity to transfer elsewhere.

As observed by the Tribunal, the investigator, in doubting the Applicant's claim of sexual harassment, placed weight on the fact that the Applicant had failed to protest to the Bank about any such harassment for nearly two years after it had allegedly begun and then only after the Applicant had first learned of the imminent negative performance evaluations and of the recommendation that her appointment not be confirmed. That obviously suggested to the investigator that the harassment charges were pretextual. Supporting that inference, in the view of the investigator, was the Applicant's initial proposal for discussions of a financial settlement. The Tribunal appreciated that delay in reporting instances of harassment might be explainable for reasons other than that the victim had welcomed the sexual advances. As the Tribunal pointed out, there might be strong pressures not to make even a well-based complaint, such as fear that one would be branded as a troublemaker, a fear that one's image for ethical probity might become tarnished, uncertainty about the definitions in the employer's policy or the commitment to its implementation, a wishful belief that the victim could handle the matter herself without creating undue inconvenience or embarrassment to others, and ultimately perhaps by a fear of retaliation by the harassing party. The fact that the investigator treated the Applicant's delay in calling the matter to her superior's attention as a relevant matter did not, however, vitiate her overall conclusion. It was not unreasonable for her to treat it as a part of a large picture pointing towards doubt about the Applicant's credibility.

In the view of the Tribunal, even apart from any conflict in the testimonies, which had been resolved by the investigator adversely to the Applicant, if the testimony of the Applicant were accepted as fully credible it still failed to show that she had unequivocally rejected the advances of her Director. Even according to the Applicant's own version of the facts, she had not given an unmistakable signal that those advances were unwelcome. The record in fact showed that:

(*a*) The Applicant had continued to call upon her Director and to receive his calls on several occasions followed by accepting his invitations to go outside the Bank for drinks, lunches, dinners and other meetings of a social nature, totally unrelated to her work with IFC;

(*b*) Her expressions of rejection and unwelcomeness had been limited to those advances that were of a clear physical and sexual nature. That behaviour could create an impression that the Applicant was receptive to advances of lesser degree. Typical of that ambivalent expression of non-acceptance was her reaction to an incident that had taken place, according to her, on 28 June 1993, when her Director allegedly kissed her forcibly while outside her house waiting for a taxi to take him to his home. When he called her the next day to thank her for the dinner, he invited her to lunch—and she accepted. Again in July 1993, that is, less than a month after the 28 June incident, she claimed that he had kissed her forcibly while they were in her car, and that her only response was to say that she was "really not in a frame of mind for this";

(*c*) The Tribunal concluded that such ambivalent reactions, coupled with continued acceptance of an intimate social relationship unrelated to their work, did not support the claim that the Director's advances had been completely unwelcome and that a clear message of rejection had been conveyed to the alleged harasser. Moreover, according to the record, the Applicant had either asked to be transferred, or had not raised an objection to being transferred, to the Europe Department where her new Director was none other than her alleged harasser. In the view of the Tribunal, that cast doubt on the seriousness of the Applicant's efforts to put an end to the intimate social relationship between her and her Director.

The Tribunal, recalling the Bank's definition of "sexual harassment"—"any unwelcome sexual advance, request for sexual favour or other verbal, non-verbal or physical conduct of a sexual nature which unreasonably interferes with work, is made a condition of employment, or creates an intimidating, hostile or offensive environment"—noted that the independent investigator had concluded that whatever the nature of the advances on the part of her Director, the Applicant had not made it clear that they were unwelcome and that the Director had not committed sexual harassment. Furthermore, the Bank endorsed those conclusions and the Tribunal concluded that the evidence justified the Bank's decision.

The Tribunal also concluded, however, that the determination by the Bank that no sexual harassment had been committed should not have been regarded by the Bank as putting an end to the matter. There were forms of improper behaviour, even though falling short of sexual harassment, that should engage the attention of the Bank and require action on the part of its management. The Tribunal was troubled by the inappropriate conduct acknowledged by the Director and the failure of the Bank to react to such behaviour described by the Appeals Committee as "unbecoming a manager". In the publication entitled *Preventing and Stopping Sexual Harassment in the Workplace*, the Bank emphasized that managers had a primary responsibility in "establishing the tone for a healthy working environment". Among the steps outlined by the Bank to achieve that goal was included: "setting a good example—avoiding even the appearance of improper conduct".

As the Tribunal pointed out, the record indicated that the Director not only had failed to avoid "the appearance of improper conduct" but indeed had actively engaged in conduct falling short of what was expected and required from a manager responsible for the implementation of the Bank's policies. Examples of such behaviour included frequently meeting with the Applicant outside the office, engaging in—many times at his own initiative—an intimate social relationship and raising sensitive personal issues with the Applicant. Also of concern to the Tribunal was the extent to which such improper relationship was known to other staff members.

It was not by any means the intention of the Tribunal to inhibit healthy personal and professional relationships among staff members and the promotion of a congenial atmosphere in the workplace. The Tribunal was of the view, however, that the conduct of the Applicant's Director had crossed the line separating friendly congenial relationships from improper behaviour, thereby subjecting the Applicant to stress, confusion and other intangible injury. The Tribunal found that the Bank's failure to recognize the impropriety of such behaviour and the need to protect the Applicant entitled her to compensation. The assessment of such compensation must, however, take into account the fact that the Applicant herself had contributed to the continuation of the Director's conduct of which she was complaining.

As to the Applicant's contention that the Bank's decision not to confirm her in her position was an abuse of discretion, the Tribunal, in assessing the Bank's decision, referred to staff rule 4.02, dealing with "Probation". Paragraph 3.01 of that rule, as it was then in effect, stipulated that "if a staff member is considered not suitable for continued employment with the Bank Group, the manager responsible for the position shall recommend to the management review group that the staff member's appointment not be confirmed and that his employment be ended. The management review group shall, after reviewing the manager's recommendations, submit its recommendation to the staff member's department director or vice-president".

The same rule was confirmed by staff rule 7.01 on "Ending employment", which provided in paragraph 6.02 that "the Bank Group may terminate the appointment of a staff member which has not been confirmed, during or at the end of probation as provided in rule 4.02, 'Probation'". The Tribunal adhered to its previous ruling to the effect that the determination of whether a staff member's performance was satisfactory was a matter for the Respondent to decide, and that the Tribunal would not substitute its own judgement in that respect for that of the Respondent, but would examine only whether there had been arbitrary, unreasonable or discriminatory actions. (Saberi, Decision, No. 5 (1981); Suntharalingam, Decision, No. 6 (1981)).

It was evident to the Tribunal from the above series of evaluations of the Applicant's performance that several weaknesses had been consistently identified and brought to her attention, both before and after she had filed her complaint of sexual harassment in June 1994. It might be true, as the Applicant contended, that the kind of work assigned to her in Corporate Finance Services had not been a good choice for her, taking into consideration the nature of her previous experience in the private sector and the fact that there had not been enough work for her to do in Corporate Finance Services. The fact remained, however, as pointed out by the Tribunal, that she had been given more than one opportunity to improve her performance and to prove her ability to produce satisfactory work in two other departments. Against such a record of unsatisfactory performance, it could hardly be alleged that the decision of the Respondent to deny the Applicant's confirmation in her employment constituted an abuse of discretion. The Tribunal concluded that the allegation was unsubstantiated by the record, and the Respondent's decision not to confirm the Applicant in her position should therefore stand.

Regarding the claim of a hostile work environment (note the Bank's definition of sexual harassment mentioned above), the Tribunal found, in the light of the consistently unsatisfactory performance of the Applicant, that there was no support for the contention that had it not been for the unhealthy working atmosphere resulting from the improper behaviour of her Director, she could have produced satisfactory work. Her performance shortcomings as shown by the evaluations derived essentially from her lacking certain basic skills and experience. The Tribunal therefore rejected the Applicant's contention.

For the above reasons, the Tribunal decided that (*a*) the request to rescind the decision of the Vice-President for Human Resources concerning misconduct under staff rule 8.01 in respect of sexual harassment should be denied; (*b*) the Respondent should pay to the Applicant US$ 50,000 net of taxes; and (*c*) the Respondent should pay to the Applicant legal costs in the amount of $10,000.

D. Decisions of the Administrative Tribunal of the International Monetary Fund[32]

JUDGEMENT NO. 1998-1 (18 DECEMBER 1998): MS. "Y" V. INTERNATIONAL MONETARY FUND[33]

Receivability of claim—Statutory requirement of exhaustion of administrative remedies—Importance of producing a detailed factual record for consideration by Administrative Tribunal

The Applicant had been employed with the Fund since 1971 and was promoted to a professional position in 1983. In 1987, after she appealed her job grade, she was promoted to grade All, which grade she still held in 1995, when the position was abolished. Following the merger of two departments, the position of which she was incumbent was abolished effective 1 May 1995. The Applicant was advised of the options available to her under the Fund's policy governing abolition of posts. In accordance with that policy, efforts were made over a six-month period to find her an alternative position. In addition, on an exceptional basis, arrangements were made for her to be assigned to a Temporary Assignment Position in Department No. II for an initial period of 10 months, from 2 January 1996 to 31 October 1996. This was later extended for an additional four-month period through the end of February 1997. The position was later extended for an additional four-month period through the end of June 1997. The Applicant's selection for the Temporary Assignment Position effectively suspended the 120-day notice period and separation leave provided under the separation policy, and served as a bridge to the time when the Applicant would be eligible for an early retirement pension and provided her with continuous access to the Fund's health insurance.

On 28 August 1996, the Director of Administration had issued a memorandum to the staff announcing guidelines for the review of individual cases under an ad hoc discrimination review procedure, inviting persons who felt that their careers might have been affected by discrimination to request a review of their individual case. In response to that memorandum, on 30 September 1996, the Applicant requested a review, on the grounds that her Fund career had been adversely affected by discrimination based on profession, gender and age, which she contended had affected the grading of her position and culminated in the abolition of her post.

On 23 December 1996, the Fund informed the Applicant that she was not eligible to participate in the review process, as she would shortly be separating from the Fund on early retirement and any remedial action would be of a forward-looking nature. On 23 June 1997, the Applicant filed a formal grievance with the Grievance Committee in which she contested the decision that she was ineligible to participate in the ad hoc discrimination review process. Shortly thereafter, on 27 June 1997, the Director of Administration advised the Applicant that upon review of the matter she had concluded that the Fund should carry out a review of the Applicant's discrimination claim. Thus, the decision which the Applicant was challenging before the Grievance Committee was reversed, rendering her grievance moot.

The review was conducted by an ad hoc review team appointed by the Fund, consisting of an outside consultant and a senior official of the Administration Department. The team met with the Applicant on several occasions and concluded that there was no evidence to support the allegation that the grading of the Applicant's position or the abolition of her post had been influenced by factors of discrimination. The Applicant was informed of that conclusion and, by letter of 27 January 1998, requested the Director of Administration to conduct an administrative review of the decision.

The Director of Administration replied on 10 February 1998, explaining the basis for the conclusion that no relief was warranted and offering the Applicant an opportunity to meet once again with the review team so that it might further explain the process, and so that the Applicant might raise any new facts or arguments that she might wish to make. She did not take up the offer, but wrote again to the Director of Administration, challenging the nature of the process and repeating her request

for administrative review. On 8 May 1998, the Director wrote to the Applicant's counsel, advising that she had carefully reviewed the investigation carried out by the review team and that she fully concurred with its recommendation. On 7 August 1998, the Applicant filed a complaint with the Tribunal.

In response to the Application, the Fund filed a Motion for Summary Dismissal under rule XII of the Tribunal's Rules of Procedure, on the ground that the applicant had failed to comply with the statutory requirement that an Application might be filed with the Tribunal only after the Applicant had exhausted all available channels of administrative review. The Fund claimed that the application was irreceivable because the Applicant had failed to pursue her challenge to an administrative decision before the Grievance Committee in accordance with the established procedures.

The Applicant contended that the 8 May 1998 letter from the Director of Administration had come at the end of a series of meetings and exchanges of correspondence between the Applicant and the Fund and should at that point be considered as a final decision appealable to the Tribunal. She maintained that the correspondence culminating in the letter "should be considered a final individual decision, and the effective end of the administrative process that Applicant has been pursuing for a period far in excess of one year and which has neither provided Applicant with any of the relief she has requested nor provided verifiable evidence that the procedure was carried out".

In consideration of the case, the Tribunal, citing articles V and VI on admissibility of claims of its statute, observed that the issue before it was whether the ad hoc discrimination review committee constituted an alternative channel of review and hence one not involving the Grievance Committee. In that regard, the Tribunal recalled that Administrative Tribunals of international organizations had emphasized the importance of exhaustion of administrative remedies before recourse to them (see World Bank Administrative Tribunal Decision No. 132 (Rae (No. 2), 1993).

In the view of the Tribunal, the memoranda establishing the ad hoc discrimination review procedure and explaining that it was not meant to be in lieu of, and not meant to obviate recourse to, the Grievance Committee, could have been more explicit. The lack of clarity on the point, in the opinion of the Tribunal—and this was the distinguishing factor in the case—understandably might have led the Applicant to conclude that exhaustion of Grievance Committee channels was not required in her case. However, it was the view of the Tribunal that exhaustion of the remedies provided by the Grievance Committee, where they existed, was statutorily required and that the memoranda in question did not exclude that requirement. Moreover, recourse to the Grievance Committee would have the advantage of producing a detailed factual and legal record which was of great assistance to consideration of a case by the Administrative Tribunal.

The Tribunal accordingly held that the Applicant had not exhausted the channels of administrative review as required by article V of the statute and therefore that the Fund's Motion of Summary Dismissal was granted. Given the singular circumstances of the case, the Tribunal further held, in the event that the Grievance Committee, if seized, should decide that it did not have jurisdiction over the Applicant's claim, that the Administrative Tribunal would reconsider the admissibility of that claim on the basis of the application currently before it.

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[1] In view of the large number of judgements which were rendered in 1998 by administrative tribunals of the United Nations and related intergovernmental organizations, only those judgements which are of general interest and/or set out a significant point of United Nations administrative law have been summarized in the present edition of the *Yearbook*. For the integral text of the complete series of judgements rendered by the four Tribunals, namely, Judgements Nos. 868 to 912 of the United Nations Administrative Tribunal, Judgements Nos. 1673 to 1783 of the Administrative Tribunal of the International Labour Organization, decisions Nos. 185 to 204 of the World Bank Administrative Tribunal and Judgement No. 1998-1 of the Administrative Tribunal of the International Monetary Fund, see, respectively: documents AT/DEC/868 to AT/DEC/912; *Judgements of the Administrative Tribunal of the International Labour Organization, 84th and 85th Ordinary Sessions*; *World Bank Administrative Tribunal Reports, 1998*; and *International Monetary Fund Administrative Tribunal Reports, vol. I, 1994-1999*.

[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 to any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who could 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: International Civil Aviation Organization and 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, including such applications from staff members of the International Tribunal for the Law of the Sea.

[3] Deborah Taylor Ashford, Vice-President, presiding; and Chittaranjan Felix Amerasinghe and Victor Yenyi Olungu, Members.

[4] Mayer Gabay, First Vice-President, presiding; Deborah Taylor Ashford, Second Vice-President; and Chittaranjan Felix Amerasinghe, Member.

[5] Hubert Thierry, President; Deborah Taylor Ashford, Vice-President; and Kevin Haugh, Member.

[6] Deborah Taylor Ashford, Vice-President, presiding; and Julio Barboza and Chittaranjan Felix Amerasinghe, Members.

[7] Mayer Gabay, Vice-President, presiding; and Julio Barboza and Kevin Haugh, Members.

[8] Mayer Gabay, Vice-President, presiding; and Chittaranjan Felix Amerasinghe and Kevin Haugh, Members.

[9] Hubert Thierry, President; and Julio Barboza and Victor Yenyi, Members.

[10] Hubert Thierry, President; Julio Barboza and Kevin Haugh, Members.

[11] The Administrative Tribunal of the International Labour Organization 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 Organization and of the other international organizations that have recognized the competence of the Tribunal, namely, as at 31 December 1998, 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 World Trade Organization, the International Atomic Energy Agency, the World Intellectual Property Organization, the European Organization 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 Organization for International Carriage by Rail, the International Centre for the Registration of Serials, the International Office of Epizootics, the United Nations Industrial Development Organization, the International Criminal Police Organization (Interpol), the International Fund for Agricultural Development, the International Union for the Protection of New Varieties of Plants, the Customs Cooperation Council, the Court of Justice of the European Free Trade Association, the Surveillance Authority of the European Free Trade Association, the International Service for National Agricultural Research, the Energy Charter Secretariat and the International Hydrographic Bureau. The Tribunal also is competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Organization and disputes relating to the application of the regulations of the former Staff Pension Fund of the International Labour Organization.

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.

[12] Michel Gentot, President; Julio Barberi and Jean-Francois Egli, Judges.

[13] Ibid.

[14] Mella Carrol, Mark Fernando and James Hugessen, Judges.

[15] Ibid.

[16] Ibid.

[17] Ibid.

[18] Michel Gentot, President; and Julio Barberis and Jean-Francois Egli, Judges.

[19] Michel Gentot, President; Mella Carroll, Vice-President; and James K. Hugessen, Judge.

[20] Michel Gentot, President; and Julio Barberis and Jean-Francois Egli, Judges.

[21] Michel Gentot, President; and Julio Barberis and James K. Hugessen, Judges.

[22] Michel Gentot, President; and Seydou Ba and James K. Hugessen, Judges.

[23] Michel Gentot, President; and Julio Barberis and Jean-Francois Egli, Judges.

[24] Michel Gentot, President; Mella Carroll, Vice-President; and James K. Hugessen, Judge.

[25] Mella Carroll, Vice-President; and Mark Fernando and James K. Hugessen, Judges.

[26] Ibid.

[27] Ibid.

[28] 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.

[29] Elihu Lauterpacht, President; Francisco Orrego Vicuna and Bola A. Ajibola, Judges.

[30] Ibid.

[31] Robert A. Gorman, President; Francisco Orregu Vicuna and Thio Sumien, Vice-Presidents; and Prosper Weil, A. Kamal Abul-Magd, Bola A. Ajibola and Elizabeth Evatt, Judges.

[32] The Administrative Tribunal of the International Monetary Fund became operational on 1 January 1994. The Tribunal is empowered to review any employment-related decision taken by the Fund on or after 15 October 1992.

[33] Stephen M. Schwebel, President; and Nisuke Ando and Michel Gentot, Associate 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)

COMMERCIAL ISSUES

1. USE OF UNITED NATIONS NAME AND EMBLEM BY NATIONAL UNITED NATIONS ASSOCIATIONS AND THEIR LOCAL AFFILIATES — GENERAL ASSEMBLY RESOLUTION 92 (I) OF 7 DECEMBER 1946

Memorandum to the Senior Legal Officer, Legal Liaison Office in Geneva

1. This is in response to your 14 July 1997 memorandum on the above-referenced subject to the Legal Counsel, which was referred to me for response. You seek advice in connection with a communication from the World Federation of United Nations Associations (WFUNA), requesting clarification as to the use of the United Nations emblem by local United Nations Associations.

The United Nations emblem

2. The use of the United Nations name and emblem is reserved for official purposes of the Organization in accordance with General Assembly resolution 92 (I) of 7 December 1946. Furthermore, that resolution expressly prohibits any use of the United Nations name and emblem in any other way without the authorization of the Secretary-General and recommends that Member States take the necessary measures to prevent the use thereof without the authorization of the Secretary-General. The United Nations name is also protected by the national laws of some States and by article 6 ter, section (1) (*b*), of the Paris Convention for the Protection of Industrial Property, revised in Stockholm on 14 July 1967.

Guidelines for the use of the United Nations emblem by United Nations Associations

3. Based on the limitations placed by General Assembly resolution 92 (I) and the practices and policies of the Organization, the Organization developed guidelines for considering cases involving use of the United Nations emblem by outside bodies. As far as United Nations Associations are concerned, the guidelines made a distinction between United Nations Associations with national and local coverage. The relevant section of guidelines reads as follows:

"I. *United Nations Associations*

"(*a*) United Nations Associations with national coverage *may be permitted* to use the United Nations emblem, side by side with the national insignia of the country concerned, on stationery and publications.

"(*b*) United Nations Associations with local coverage (cities, towns, boroughs, counties, universities, etc.) *may be permitted* to use the emblem. However, in these cases, the emblem should not be placed side by side with the insignia of the local body. The emblem should appear quite separately, and some distance away from the insignia of the local body, with the words 'Our hope for mankind' placed below the emblem." (emphasis added)

Current use of the United Nations name and emblem by the World Federation of United Nations Associations

4. As was correctly stated in the WFUNA letter to you, WFUNA was authorized by the United Nations to use the United Nations emblem with the acronym "FMANU/WFUNA" around the globe, keeping the olive branches on the sides (hereinafter "WFUNA emblem"). However, it was also stated that WFUNA "affiliates" have been using the WFUNA emblem, "with their acronyms", since WFUNA received the authorization. It is not clear what is specifically meant by "affiliates" in this context. If those "affiliates" are merely local officers of WFUNA in particular countries, i.e., they are part of WFUNA, then there would be no legal objections against their using the WFUNA emblem.

5. If, however, by "affiliates" WFUNA means local United Nations Associations, then their use of the emblem, without the express authorization of the United Nations, is inappropriate. It must be unequivocally clear that the authorization granted to WFUNA to use the WFUNA emblem should in no way be interpreted as a delegation of the authority which, according to General Assembly resolution 92 (I), resides in the Secretary-General to authorize the use of the United Nations name and emblem by entities outside the United Nations system. Therefore, mere association of United Nations Associations (national or local) with WFUNA does not imply that the authorization granted to WFUNA to use the United Nations emblem is automatically extended to all its members. United Nations Associations, like any other organization, should request authorization to use the United Nations emblem from the Organization.

6. Additionally, WFUNA informed you that the organization's Constitution does not allow it to recognize more than one United Nations Association "from any state or territory" and that problems had arisen due to local laws protecting the freedom of association. He informed you that local groups can possibly form "United Nations Associations depending on the local law regarding registration of Associations". While local laws which protect the freedom of association in every country would allow organizations to pursue the same goals as those of the United Nations Associations (i.e., support the activities of the United Nations), local laws cannot authorize the use of the United Nations name or emblem by those newly created bodies, which use must be authorized by prior authorization of the Organization. Moreover, as indicated in paragraph 2 above, General Assembly resolution 92 (I) requested Member States to enact legislation to prevent the unauthorized use of the name, emblem or initials of the United Nations. Therefore, any organization using the name, emblem or initials of the United Nations without authorization from the Secretary-General is doing so in violation of international and, possibly, national laws.

7. WFUNA asked specific questions as to whether a United Nations Association "legally established in a country" can use the United Nations emblem even if WFUNA cannot admit it as a member since it recognizes only one United Nations Association from any State or territory. In response to that question, it should be emphasized that such local United Nations Associations must request and receive authorization from the United Nations to use the United Nations name in their titles. Similarly, such entities would need a separate and prior authorization from the United Nations to use the United Nations emblem. If any of these local "United Nations Associations" have obtained authorization to use the United Nations name and/or emblem, it does not matter that such local United Nations Association cannot be admitted as a member of WFUNA.

8. As to the second question posed by WFUNA (whether a United Nations Association which is no longer affiliated with WFUNA can continue to use the United Nations emblem), the response is in the affirmative, provided that this United Nations Association received a proper authorization from the United Nations to use the emblem. As stated in paragraph 4 above, the authority to grant authorization to use the United Nations emblem resides in the Secretary-General. Therefore, a United Nations Association that has been duly authorized by the Secretary-General to use the United Nations emblem does not automatically lose its authorization to use the emblem simply because it is no longer associated with WFUNA.

9. Given the importance that the Organization attaches to the use of its name and emblem, we would appreciate any information that WFUNA may have on the use of the name and emblem by United Nations Associations inconsistent with the advice provided above.

13 January 1998

PERSONNEL

2. Reimbursement of income taxes for staff members of dual nationality—Permanent United States residents—Visa status of staff members—Staff regulation 3.3 (*f*)

Memorandum to the Deputy Chief, Income Tax Unit/Office of Programme Planning, Budget and Accounts

1. Please refer to your memorandum dated 4 November 1997 requesting our advice regarding two issues: First, you seek clarification regarding the eligibility for reimbursement of income taxes for staff members of dual nationality where one nationality is United States but another nationality has been recognized by the Organization under the Staff Regulations and Rules and, more specifically, staff rule 104.8(*a*), which provides that "in the application of the Staff Regulations and Staff Rules, the United Nations shall not recognize more than one nationality for each staff member". Secondly, you seek clarification as to whether the Organization must take specific action to encourage permanent residents of the United States to sign the "waiver" or relinquish their permanent resident status and obtain a G-4 visa.

A. *First issue*

2. Regarding the eligibility for reimbursement of income taxes of staff members with dual nationality where one nationality is United States but the other na-

tionality has been recognized by the Organization for administrative purposes, you will note that staff regulation 3.3(*f*) provides as follows:

> "(*f*) Where a staff member is subject both to staff assessment under this plan and to national income taxation in respect of the salaries and emoluments paid to him or her by the United Nations, the Secretary-General is authorized to refund to him or her the amount of staff assessment collected from him or her provided that:
>
> (i) The amount of such refund shall in no case exceed the amount of his or her income taxes paid and payable in respect of his or her United Nations income;
>
> (ii) If the amount of such income taxes exceeds the amount of staff assessment, the Secretary-General may also pay to the staff member the amount of such excess;
>
> (iii) Payments made in accordance with the provisions of the present regulation shall be charged to the Tax Equalization Fund;
>
> (iv) A payment under the conditions prescribed in the three preceding subparagraphs is authorized in respect of dependency benefits and post adjustments, which are not subject to staff assessment but may be subject to national income taxation."

3. Staff regulation 3.3(*f*) implements the general principle of equality of treatment among all staff members with regard to tax reimbursement. It answers the question you raise.

B. *Second issue*

4. The policy regarding the visa status of staff members was established by the General Assembly in 1953 and is still valid. It is presently governed by administrative instruction ST/AI/294 of 16 August 1982, entitled "Visa status of non-United States staff members serving in the United States". The General Assembly then established the policy that "persons in permanent resident status should in future be ineligible for appointment as internationally recruited staff members unless they are prepared to change to a G-4 visa status". That policy (concerning staff members recruited for posts in the Professional and higher categories) was adopted because it was considered that "a decision to remain in permanent resident status in no way represents an interest of the United Nations. On the contrary, to the extent (if any) that it may weaken existing ties with the country of nationality, it is an undesirable decision" (ST/AI/294, para. 19).

5. In other words, internationally recruited staff members who have permanent resident visa status in the United States are generally required to renounce such status and to change to G-4 visa status upon appointment: internationally recruited staff members who seek to change to permanent resident status shall generally not be granted permission by the Secretary-General to sign the waiver of rights, privileges and immunities required by the United States Government for the acquisition or retention of permanent resident status (ibid.).

6. The only exceptions to this established policy are listed in paragraph 20 of ST/AI/294, which provides:

> "Exceptions to the policy that internationally recruited staff members must apply for G-4 visa status and give up their permanent resident or other visa status in the United States on appointment may be made in cases of:

(*a*) Stateless persons;

(*b*) Newly appointed staff members who have applied for citizenship by naturalization, when such citizenship will be granted imminently;

(*c*) General Service staff members previously authorized to retain permanent resident status, on promotion to the Professional category; and

(*d*) Staff members in the General Service, Manual Workers and Security Service categories"…

7. The procedures regarding the staff members in the General Service, Manual Workers and Security Service categories wishing to retain their permanent resident visa status are described in paragraphs 21 and 22 of the same administrative instruction.

27 January 1998

3. Conditions of service of locally recruited staff—Nationally recruited project professional personnel

Memorandum to the Chief, Legal Section, Office of Human Resources, United Nations Development Programme

1. This refers to your memorandum of 17 September 1997, responding to our memorandum of 12 September 1997, seeking further advice concerning the conditions of service of locally recruited staff in [a member State].

2. You have indicated that in addition to locally recruited staff appointed under the 100, 200 or 300 Series of the Staff Rules, UNDP has

> "other categories of locally recruited staff who do not fall into any of those above-mentioned categories. The French text of the note verbale refers to "*recrutements à niveau local*"/"*agents locaux*". Due to their contractual nature, these local agents are considered local staff without falling into any one of the four categories mentioned in your legal opinion of 12 September 1997. Enclosed, please find a copy of the model contract applied by UNDP for this category of agents."

From the documents attached to your memorandum, we understand that you refer to nationally recruited project professional personnel (NPPP). You seek our advice on whether NPPP staff are subject to the requirements under the [State's] legislation, which is set out in the note verbale of 3 June 1997 from the Ministry of Foreign Affairs of [the State].*

3. As you are aware, the NPPP category was developed by UNDP for use essentially by Executing Agencies, and NPPP staff are experts and consultants who

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* As set out in my 12 September 1997 memorandum, the note verbale dated 3 June 1997 from the Ministry of Foreign Affairs of [State] advises that [State] legislation establishes the following requirements for locally recruited staff:

(*a*) Such staff must be engaged through a contract which complies with the labour law;

(*b*) Priority must be given to nationals over other nationals;

(*c*) The organization must pay the employer contribution to the national social security system for locally recruited staff;

(*d*) At the end of each year, a list of locally recruited staff must be provided to the Ministry of Foreign Affairs, indicating their nationality, the date of their recruitment and their social security number.

are nationals of the host country and who are recruited locally to work for a specific UNDP-funded project in their own country. NPPP staff are not issued with a Letter of Appointment and do not, therefore, have the status of staff members of the United Nations and they are thus not covered by the United Nations Staff Regulations and Rules. Pursuant to the UNDP Programme and Projects Manual ("the Manual"), the rights, duties and benefits of NPPP staff are governed by the terms and conditions of contractual arrangements used to engage their services, which are either a reimbursable loan agreement with a releasing organization or a service contract directly with individual NPPP staff (see Manual, sect. 30400(1.2)(3) and (5.1)(1)). The Manual also provides that the clearance of the host Government should be obtained for the appointment of all NPPP staff (see Manual, sect. 30400(5.2)(*d*)(l)).

4. Under a reimbursable loan agreement, which is the preferred contractual arrangement, an executing agency enters into a contract with a releasing organization which makes available the services of an NPPP staff for the purpose of carrying out functions in a UNDP-financed post, and the releasing organization is reimbursed by the executing agent for the cost of the services provided by the NPPP staff (see Manual, sect. 30400(5.3)(*a*)). There is thus no direct contractual relationship between the NPPP staff; the executing agency under this arrangement and the NPPP staff do not receive any payment directly from the executing agency or UNDP and their conditions of service are established by the releasing organization (see Manual, sect. 30400(5.3)(3) and (1.2)(3)). The model reimbursable loan agreement attached to the Manual expressly provides that the releasing organization assumes all legal and financial obligations for NPPP staff (see article VI of the model reimbursable loan agreement). Accordingly, the releasing organization has the responsibility to meet any requirements under local laws in respect of NPPP staff engaged under a reimbursable loan agreement.

5. NPPP staff engaged under a service contract arrangement have a direct contractual relationship with the executing agency. However, they are not staff members of the United Nations, but independent contractors, and they, like individuals engaged under the Special Services Agreements, must comply with local law on independent contractors and pay appropriate taxes and social security contributions (see para. 12 of my 12 September 1997 memorandum). In that regard, the model service contract attached to the Manual provides that NPPP staff engaged under a service contract are responsible for their health insurance and pension plans (see article III of the model service contract). It should be noted, however, that pursuant to the Manual, participation in health insurance and pension plans is taken into account in determining the amount of total remuneration to NPPP staff under a service contract (see Manual, sect. 30400(6.2)(*c*)(3)). In addition, the Manual provides that the levels of remuneration for all NPPP staff are established by taking into account prevailing compensation for comparable functions in the host country and the host Government is consulted on the levels of compensation offered to NPPP staff (see Manual, sect. 30400(6.2)).

6. Pursuant to the Manual, all compensation payments should be made directly to individual NPPP staff concerned and not on their behalf to other entities, but exceptions to this may occur "when, in accordance with local labour laws, payments for social security must be made directly by the employer" (Manual, sect. 30400(6.2)(*c*)(3)). Therefore, if the [State] legislation described in the note verbale of 3 June 1997 would require the Organization to make employer contributions *directly* to the national social security system in respect of NPPP staff engaged under a service contract, it would appear that the Organization would have to consider

establishing this arrangement subject to the fact that the amount of such direct payment would be deducted from the amount of remuneration to the NPPP staff. Your Office may therefore wish to seek clarification in this regard from the Ministry of Foreign Affairs.

20 February 1998

4. Status of United Nations Volunteers—Article 105, paragraph 1, of the Charter of the United Nations

Memorandum to the Chief, Legal Section, Office of Human Resources, Bureau of Planning and Resources Management, United Nations Development Programme

1. This is with reference to your memorandum of 10 March 1998 enclosing a letter dated 26 February 1998 from the United Nations Development Programme Resident Representative a.i. addressed to you, with attachments. The Resident Representative brings to our attention a number of the problems experienced by United Nations volunteers and the UNDP mission in a Member State, and seeks advice there. We have the following comments.

2. According to the Resident Representative, the Member State's authorities have: (*a*) required that a work permit be obtained by United Nations volunteers for a fee of approximately US$ 100.00, prior to their arrival in the country; (*b*) required that volunteers pass an examination to obtain the appropriate medical licence; (*c*) required that volunteers apply for a special visa which would also be issued for a fee. United Nations volunteers who do not comply with these conditions are considered to be working illegally in the country, and they might be subject to deportation.

3. From the inception of the concept of volunteers, these individuals have been considered by the Organization, and generally recognized by the Member States, as *international civil servants*. As early as 1961, the Economic and Social Council, by its resolution 849 (XXXII), of 4 August 1961, approved principles governing the use and assignment of volunteer technical personnel. These principles, inter alia, stated that "the acceptance of a volunteer will confer upon him [her] the legal status of an international civil servant and both offering and receiving countries shall undertake to respect this status".

4. This status is characterized by the impartiality and independence of United Nations volunteers. The assignment of United Nations volunteers is governed solely by the United Nations system and the scope of their activity is confined to projects assisted by the United Nations system. In view of their special international status, the activities of United Nations volunteers are not subject to the control and authority of recipient Governments. Conditions of service of United Nations volunteers are governed by policies, rules, regulations and decisions of competent United Nations bodies. They are not subject to local laws and regulations. The requirements outlined in paragraph 2 above are not consistent with the foregoing principles.

5. The entitlement of the Organization to a special status and treatment is based on Article 105, paragraph 1, of the Charter of the United Nations, which provides as follows:

> "The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes."

While the Member State has not yet acceded to the 1946 Convention on the Privileges and Immunities of the United Nations ("the Convention"), by virtue of the Standard Basic Assistance Agreement concluded between UNDP and that State on 3 October 1994 (the SBAA), it has agreed to apply the Convention to the United Nations in the context of UNDP projects of assistance (article IX (1)). The SBAA also makes explicit reference to assistance that may be provided by United Nations Volunteers (UNV) (article II (1) (*c*)). Thus, the project "UNV Support to the Health Sector Programme in Rural Areas" is a UNDP-assisted project fully covered by the provisions of the SBAA.

6. Under article IX (6) of the SBAA, United Nations volunteers fall under the category of "persons performing services". In accordance with article IX (4) of the SBAA, unless the Parties otherwise agree in a Project Document, United Nations volunteers are to be accorded the same privileges and immunities as enjoyed by United Nations officials under section 18 of the Convention (however, pursuant to the latter provisions, that regime cannot be extended to nationals of the Member State). Thus, United Nations volunteers, unless they are locally recruited nationals of the Member State, are to be granted, inter alia, immunity from immigration restrictions and alien registration in accordance with section 18(*d*) of the Convention.

7. Work permit and local licence requirements for United Nations volunteers are inconsistent with the United Nations policy and practice in this respect and with the provisions of article X (1) of the SBAA. By the latter, the Government accepted to take such measures as might be necessary to exempt, among others, persons performing services, i.e., United Nations volunteers, "from regulations or other legal provisions which may interfere with operations under this Agreement". Furthermore, the Government agreed to "grant them such other facilities as may be necessary for the speedy and efficient execution of the UNDP assistance". It is obvious that these requirements have an adverse effect on the efficient implementation of the UNV project.

8. The requirement of the issuance of an appropriate visa to United Nations volunteers is in itself unobjectionable. However, a condition that such visas be issued for a fee is unacceptable. Such fees are in the nature of a tax to be reimbursed by the Organization. Since the Organization is immune from taxation, under section 7(*a*) of the Convention, the Government should be requested to reconsider its position in the light of these provisions.

9. The Resident Representative also brings to our attention the question of taxation of UNDP staff and United Nations volunteers who do not hold a United Nations laissez-passer. In accordance with the Convention and applicable guidelines, United Nations laissez-passer are issued to United Nations officials only.* In the past there were, however, exceptions to this policy, dictated mainly by operational needs and concerns for the safety and security of persons in question. The entitlement to exemption from taxation for United Nations volunteers derives from section 18(*b*) of the Convention, which is applicable to them by virtue of article IX (4) of the SBAA. As to UNDP staff members, it should be noted that, in accordance with General Assembly resolution 76 (I) of 7 December 1946, all members of the staff

* We note from section 501(1.8) of Conditions of Service of UN Specialists that they "shall travel under their national passports and shall be responsible for obtaining all the necessary visas".

of the United Nations, with the sole exception of those who are recruited locally and are assigned to hourly rates, are entitled to the privileges and immunities under the Convention, including immunity from taxation. Thus, irrespective whether the individuals in question possess a United Nations laissez-passer or not, the Government is under an obligation to grant them exemption from taxation unless they are recruited locally and assigned to hourly rates or, in the case of United Nations volunteers, unless they are nationals of the Member State.

3 April 1998

5. CONTRACTUAL RELATIONSHIP BETWEEN THE UNITED NATIONS AND INDIVIDUALS WHOSE SERVICES ARE DIRECTLY REMUNERATED BY THEIR GOVERNMENT OR OTHER DONOR ENTITY—COOPERATION SERVICE AGREEMENTS

Memorandum to the Chief, Personnel Management and Support Service/Field Administration and Logistics Division/Department of Peacekeeping Operations

1. This refers to your memorandum of 15 April 1998 requesting our advice on "the proper instrument to be used in cases where personnel are provided for United Nations peacekeeping operations or civilian police programmes on a voluntary basis—and in excess of the authorized strength—by a Government, [which] assumes responsibility to directly and fully remunerate their national for his or her services". Your request relates specifically to the engagement of civilian police observers as that issue was raised in connection with the proposed deployment of an Inspector of the Royal Canadian Mounted Police to United Nations Human Rights Verification Mission in Guatemala (MINUGUA), on which we had advised by our memorandum of 4 March 1998. You indicated that you had consulted the Department of Political Affairs on the matter and attached as an example a copy of an agreement used by the Department in similar cases which, you indicated, has been cleared by the Office of Legal Affairs. As we understand it, such an agreement is concluded between the United Nations and the Government providing the personnel in question and it attaches a United Nations Special Service Agreement (SSA). You seek our advice on whether the same agreement can be used by your Service to engage the services of civilian police observers, like that of the Inspector, for peacekeeping operations or civilian police programmes.

2. You also seek our advice on whether the same agreement, "modified to be concluded between the individual concerned and the Organization", can be used, together with an SSA, in respect of individuals appointed to serve on the International Commission of Inquiry in Rwanda, which was established pursuant to Security Council resolution 1013 (1995) or in other similar instances. Each of these two questions will be addressed in turn below.

I. *Provision of personnel to peacekeeping operations or civilian police programmes: agreement with contributing Government*

3. We have reviewed the agreement that is being used by the Department of Political Affairs ("the Agreement") and note that it is a Cooperation Service Agreement, which was devised by this Office for the purpose of accepting the services of individuals provided by Governments or NGOs on a non-reimbursable basis for a short period of time. Under such an agreement, the individuals are provided at no or minimal cost to the Organization in accordance with United Nations financial regu-

lation 7.2, which provides that voluntary contributions, in cash or in kind, should not involve additional financial liability for the Organization, unless the consent of the appropriate authority is obtained. Since the United Nations is to incur only minimal liability under these arrangements, Cooperation Service Agreements provide that the Government (or NGO) is responsible for ensuring that appropriate arrangements exist (e.g., insurance coverage) to provide for compensation in the event of illness, disability or death of the personnel during their assignment with the United Nations (see Agreement, article I, para. 3). The United Nations will only accept claims for such illness, disability or death which arise from the gross negligence of the officials or staff of the United Nations (ibid., article II, para. 9). Cooperation Service Agreements provide that the Government is responsible for any third-party claims or damages, injury or death as a result of any act or omission by the personnel provided by the Government (ibid., article I, para. 5). Cooperation Service Agreements also provide that Governments will ensure that personnel provided under the agreement and who sign the undertaking will comply with the provisions set forth in the undertaking.

4. With respect to the obligations of the United Nations under these arrangements, Cooperation Service Agreements indicate that the United Nations will provide the personnel with support staff, equipment and other resources necessary to carry out their functions, as well as additional security to the personnel as may be required (see Agreement, article II, paras. 6 and 8). In addition, the United Nations may provide a daily subsistence allowance (DSA) to these personnel (ibid., article II, para. 7).

5. The personnel provided by Governments (or NGOs) under Cooperation Service Agreements are given the status of experts on mission within the meaning of article VI of the Convention on the Privileges and Immunities of the United Nations (see Agreement, article IV). Such personnel are required to sign an undertaking which sets out their duties and obligations during their service with the United Nations, e.g., that they shall perform their functions "under the authority, and in full compliance with the instructions of the Secretary-General or the person acting on his behalf"; that they shall not seek or accept instructions regarding their functions from any Government or from any authority other than the Secretary-General or the person acting on his behalf; and they shall "refrain from any conduct which would adversely reflect on the United Nations and shall not engage in any activity that is incompatible with the aims and objectives of the United Nations or the exercise of [their] functions" (ibid., annex I). The undertaking recognizes that Governments will seek to ensure compliance. We consider that the provisions in the undertaking clearly establish the accountability of the personnel provided to the Secretary-General in respect of their functions under the Agreement.

6. We also consider that the Cooperation Service Agreement is by itself entirely sufficient to govern the terms and conditions of the provision by the Government of these personnel and, in view of the fact that the undertaking discussed above is attached to the Agreement, we consider that there is no need to also attach an SSA to the Agreement. In this respect, we do not believe that an SSA establishes any greater accountability on the part of such personnel than an undertaking. The Agreement used by the Department of Political Affairs is thus suitable for use for the purpose you indicated, subject to the relevant changes made to the text (e.g., deletion of the reference to the provision of equipment). In this connection, we also suggest, but do not insist upon, a change to the title of the Agreement from "Arrangement" to "Agreement".

II. *Provision of personnel to the International Commission of Inquiry in Rwanda and to other similar instances*

7. You have also sought our concurrence to using the Cooperation Service Agreement, together with an SSA, "in respect of personnel appointed to serve on the International Commission of Inquiry in Rwanda or other similar instances where specific Governments are requested to make available officials (specific expertise) for a limited period of time."

8. You have indicated that the individuals serving on the Commission are customarily engaged through an SSA, following the approach taken by the United Nations Special Commission (UNSCOM), and you have emphasized the need that the arrangements for their services would "adequately address such questions as their legal status, accountability, liability, standards of conduct and financial implications and, consequently, facilitate the development of uniform policies within the Organization in this regard."

9. As indicated in paragraphs 3 to 5 above, Cooperation Service Agreements and the undertaking adequately address the issues you raised, such as the legal status, accountability, liability, standards of conduct and financial and administrative matters. In addition, as indicated in paragraph 6 above, the undertaking which is attached to the Agreement obviates the need for also attaching an SSA thereto. Lastly, the conclusion of a Cooperation Service Agreement in all those instances would ensure that the Organization's policies in respect of such personnel and the terms and conditions of their services are uniformly and consistently applied. We are therefore of the view that Cooperation Service Agreements would also be appropriate in the case of the members of the Commission and in other similar instances.

10 August 1998

6. FINANCIAL CONFLICT OF INTEREST—UNITED NATIONS POLICY—CONFLICT OF INTEREST OF STAFF MEMBERS—GENERAL ASSEMBLY RESOLUTION 52/252 OF 8 SEPTEMBER 1998

Letter to the Legal Counsel of the World Health Organization

This is in response to your electronic mail of 16 December 1998, requesting information from several United Nations agencies, funds and programmes concerning their policy on financial conflict of interest of their staff members.

I wish to inform you that in respect of United Nations staff members, new provisions on conflict of interest, as contained in the revised article I of the Staff Regulations, which were adopted by the General Assembly in its resolution 52/252 of 8 September 1998, and the revised chapter I of the 100 series of the Staff Rules, taken note of by the Assembly in the same resolution, will come into effect as from 1 January 1999. The provisions on conflict of interest are set out in new staff regulations 1.2 (*m*) and 1.2 (*n*) and new staff rules 101.2 (*n*) and 101.2 (*o*).

Staff regulation 1.2 (*m*) provides that staff members cannot be actively associated with a profit-making business or other concern if either the concern or the staff member is to profit by the association with the Organization. This regulation essentially reproduces and clarifies the scope of former staff rule 101.6(*b*), which provided that "no staff member may be actively associated with the management of, or hold a financial interest in, any business concern if it were possible for the staff

member to benefit from such association or financial interest by reason of his or her official position with the United Nations."

Staff regulation 1.2 (*n*) establishes a new requirement for financial disclosure in respect of staff members at the Assistant Secretary-General level and above. The procedures for implementing the financial disclosure requirement, including the scope of such disclosure, are under development pursuant to staff rule 101.2 (*o*). The original text of the regulation, as proposed by the Secretary-General to the General Assembly, included language which would enable the Secretary-General to require other categories of staff, e.g., finance and procurement officers, to file financial disclosure statements. However, that language was deleted by the Fifth Committee of the Assembly during its deliberations on this provision. It is envisaged that the financial disclosure requirement for other categories of staff will be proposed again in the context of the preparation of additional rules for those staff, which was requested by the Assembly in resolution 52/252.

The issue raised in your correspondence is addressed specifically in new staff rule 101.2 (*n*). Under this rule, a staff member who is dealing with any matter involving a profit-making business or other concern in which he or she has a financial interest, direct or indirect, must disclose that interest to the Secretary-General and, unless otherwise authorized, he or she must dispose of that interest or formally excuse himself or herself from participating in that matter which gives rise to the conflict-of-interest situation.

Please note that rule 101.2 (*n*) is intended to deal with, inter alia, cases of conflict of interest in which the spouse of a staff member would benefit from a transaction. Indeed, such conflict of interest was found to exist in a case involving a staff member in the United Nations Centre for Human Settlements (Habitat). There, the "conflict-of-interest" transactions between 1991 and 1993 involved a staff member who was in a unit that proposed contracts the main beneficiary of which was her husband, although this was not then officially known by Habitat. The staff member also certified payments to her husband. In late 1993, the Habitat management prohibited further contracts from the staff member's unit with the contractor, which provided the services of, inter alia, the staff member's husband. However, it was not until 1997 that all contracts with the contractor were prohibited following a memorandum issued by the Chief of Administration of Habitat.

The United Nations Office of Internal Oversight Services, which investigated this case in 1997, found that the facts of the case presented a "common-sense" conflict of interest and that the series of contracts and certifications were clearly improper and, moreover, were prohibited by the United Nations General Conditions of Contract, which prohibited indirect benefit to staff from United Nations contracts, and were contrary to modern procurement standards. However, the Office of Internal Oversight Services concluded that there had been no breach of staff rule 101.6 (*b*) (quoted above) because the staff member was not *actively* associated with the business of the contractor and she herself did not hold a financial interest in the firm. The Office of Internal Oversight Services found that rule 101.6(*b*) did not satisfactorily protect the interest of the Organization in the circumstances presented in this case and therefore recommend that the rule be amended. The report of the Office of Internal Oversight Services on this case (A/52/339, annex) was forwarded to the General Assembly by the Secretary-General on 10 September 1997. The case is also discussed in the third annual report of the Secretary-General on the activities of the Office of Internal Oversight Services (A/52/426), dated 2 October 1997.

New staff rule 101.2(*n*) responds to the recommendation of the Office of Internal Oversight Services. In that respect, we believe that the use of the phrase "directly or indirectly" is sufficiently broad to encompass the interest a staff member would have in a contract whereby the United Nations would be employing his or her spouse.

Pursuant to the request of the General Assembly in its resolution 52/252, the revised text of article I of the Staff Regulations and chapter I of the 100 Series of the Staff Rules together with the commentary thereto will be issued as a publication to each staff member. It is expected that this publication will be issued early next year. Please note that the commentary will not constitute part of the "rules", but is intended to assist staff members in understanding their status, basic rights and duties as set out in those provisions. Please also note that while the 100 Series of the Staff Rules apply only to staff appointed under the 100 Series of the Rules, corresponding changes will be made to the 200 and 300 Series of the Staff Rules, so that the provisions similar to staff rules 101.2(*n*) and 101.2(*o*) will be included in the 200 and 300 Series of the Rules.

28 December 1998

PRIVILEGES AND IMMUNITIES

7. Payment of social security contributions by locally recruited employees—Exemption of the United Nations from national security schemes—Article II, section 7 (*a*), and article V, section 18, of the 1946 Convention on the Privileges and Immunities of the United Nations

Note verbale to the Permanent Mission of a Member State to the United Nations

The Legal Counsel of the United Nations presents his compliments to the Permanent Mission of [name of Member State] to the United Nations and has the honour to refer to the position taken by the competent [State] authorities with respect to the payment of social security contributions by United Nations Development Programme for locally recruited employees, be they staff members on fixed-term contracts or consultants engaged on Special Service Agreements.

It has been consistent United Nations practice and policy, pursued by the Organization for more than five decades, that mandatory contributions for social security schemes under national legislation are considered a form of direct taxation on the United Nations and therefore contrary to the Agreement between the Government of [Member State] and the United Nations Development Programme, Standard Basic Assistance Agreement (SBAA), and the Convention on the Privileges and Immunities of the United Nations, to which [the State] became a party in October 1949 without reservation.

Pursuant to paragraph 1, article IX of the SBAA, "the Government shall apply to the United Nations and its organs, including UNDP and United Nations subsidiary organs acting as UNDP executing agencies, their property, funds and assets, and to their officials, including the resident representative and other members of the UNDP mission in the country, the provisions of the Convention on the Privileges and Immunities of the United Nations" (the 1946 Convention).

Pursuant to the provisions of article II, section 7(*a*), of the 1946 Convention, the United Nations, its assets, income and other property shall be exempt from all direct taxes. Furthermore, pursuant to article V, section 18, subparagraph (*b*) of the 1946 Convention, "officials of the United Nations shall be exempt from taxation on the salaries and emoluments paid to them by the United Nations". It should be noted in this regard that the General Assembly, by its resolution 76 (I) of 7 December 1946, approved "the granting of the privileges and immunities referred to in article V … 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". Thus, locally recruited staff who are not assigned to hourly rates are entitled, irrespective of their nationality or residence status, to exemption from such taxation. The latter applies to staff on permanent as well as fixed-term contracts.

As a party to the 1946 Convention, [the State] is not entitled to make use of United Nations emoluments for any tax purposes. The principal rationale of the immunity from taxation of salaries paid by the United Nations is to achieve equality of treatment for all officials of the Organization, regardless of nationality. These principles were clearly enunciated by the General Assembly in its resolution 78 (I) of 7 December 1946 as follows:

> "In order to achieve full application of the principles of equality among Members and equality among personnel of the United Nations, Members which have not yet completely exempted from taxation, salaries and allowances paid out of the budget of the Organization are requested to take early action in that matter."

The Organization's exemption from national social security schemes is further evidenced by the fact that the United Nations has its own comprehensive social security scheme for United Nations staff members. The establishment of such a scheme is required under regulation 7.2 of the United Nations Staff Regulations, which are established by the General Assembly pursuant to Article 101.1, paragraph 1, of the Charter of the United Nations.

Consultants engaged on Special Service Agreements are deemed to be experts on mission within the meaning of article VI of the 1946 Convention and do not enjoy immunity from taxation on the salaries and emoluments paid to them by the United Nations. Thus, these persons are to comply with any tax obligations imposed by the competent [State] authorities. However, in accordance with the provisions of section 7(*a*) of the 1946 Convention, the United Nations must not be requested to make any contributions, as their employer, for the social security schemes of [the State]. Accordingly, the Organization will not withhold taxes due from such consultants, nor pay any taxes on their behalf.

Any interpretation of the provisions of the 1946 Convention must be carried out within the spirit of the underlying principles of the Charter of the United Nations, and in particular Article 105 thereof, which provides that the Organization shall enjoy such privileges and immunities as are necessary for the fulfilment of its purposes. Measures which might, inter alia , increase the financial or other burdens of the Organization have to be viewed as being inconsistent with this provision as well as with the above-cited provisions of the 1946 Convention.

The Legal Counsel trusts that it is not the intention of [the State] authorities to violate the privileges and immunities of the United Nations or its officials. The Legal Counsel therefore requests that, in the light of the foregoing, the necessary measures will be taken by the competent authorities to resolve this matter expedi-

tiously in a manner consistent with the obligations of the Government of [the State] under the SBAA, the 1946 Convention and the Charter of the United Nations.

12 January 1998

8. Question of whether contractors' personnel could be considered as "experts on mission"—Article VI, section 22, of the 1946 Convention on the Privileges and Immunities of the United Nations

Memorandum to the Director, Field Administration and Logistics Division/ Department of Peacekeeping

1. This memorandum deals with the question which was raised in a meeting on 18 February 1998 between the General Legal Division and the Supply Section of Field Administration and Logistics Division, as to whether in the context of the United Nations Observer Mission in Angola (MONUA), contractors' personnel could be considered as "experts on mission" and whether they would then be exempt from taxes to the local Government.

2. Article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations ("the Convention") deals with the status of "experts on mission". It reads as follows:

> "Experts (other than officials coming within the scope of article V [of the Convention]) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions …"

Article VI, section 22, of the Convention does not provide any further definition of the term "experts on mission".

3. The consistent practice of the Organization has been to consider as "experts on mission" persons who are charged with performing specific and important tasks for the United Nations, as long as those persons are neither representatives of Member States nor staff members (i.e., officials) of the Organization (see "Applicability of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations", written statement submitted by the Legal Counsel on behalf of the Secretary-General to the International Court of Justice, para. 59). In its advisory opinion of 15 December 1989, on the applicability of article VI, section 22, of the Convention, the International Court of Justice, inter alia, indicated: "[experts on mission] … have been entrusted with mediation, with preparing studies, investigations or finding and establishing facts". The Court's description conforms in a general sense to the United Nations and State practice.

4. In a memorandum dated 23 June 1995 from the Legal Counsel to the then Assistant Secretary-General for Peacekeeping Operations, the Legal Counsel stated that the functions performed by contractors in the context of United Nations peacekeeping operations are commercial in nature and that, as such, the functions and tasks performed by contractors do not fall within the scope of the understanding of the expression "experts on mission" which has evolved within the Organization and among its Member States. Therefore, the position of this Office has been that contractors do not qualify for the status of "expert on mission".

5. As a general rule, under the Convention, "*[e]xperts on mission enjoy no tax exemption on their official emoluments* … The limited rights they are granted are strictly designed to protect the interests of the Organization in the privacy of its

papers and communications and in preventing any coercion or threat thereof in respect of the performance of the experts' missions." (See "Applicability of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations", written statement submitted by the Legal Counsel on behalf of the Secretary-General to the International Court of Justice, para. 63). Thus, under the Convention, "experts on mission" are not exempt from taxation.

6. Even if contractors' personnel were considered "experts on mission", they would still *not* be entitled to exemption from taxation.

7. In certain cases, the receiving Governments have granted additional privileges and immunities to "experts on mission". However, this is done on a country-by-country basis in accordance with the applicable agreement with the Government concerned.

8. The Agreement between the United Nations and Angola on the Status of the United Nations Peacekeeping Operation in Angola dated 3 May 1995, as amended by the Agreement of 1 July 1997, ("the status-of-forces agreement for MONUA") provides an exemption from taxation only for "members of UNAVEM III" (United Nations Angola Verification Mission). Contractors' personnel, however, do *not* qualify as "members of UNAVEM III", as they are not part of the civilian, military or police components.

9. To summarize, under the status-of-forces agreement for MONUA, contractors' personnel do not qualify as "experts on mission". Even if they were treated by the United Nations as "experts on mission", they would still not be entitled to any tax exemption on their remuneration.

23 March 1998

9. Military service obligation of locally recruited staff—Appendix C to the United Nations Staff Rules

Memorandum to the Senior Legal Adviser, Department for Human Resources and Management, Office of the United Nations High Commissioner for Refugees

1. This is with reference to your memorandum of 26 June 1998 seeking advice in connection with call-up notices issued by the Government of [a Member State] requiring that five UNHCR locally recruited staff members report for military service. The UNHCR Director of Operations for the region has expressed his concern that refusing to agree to waive the immunity of the staff concerned and thus to permit them to serve could jeopardize the entire mission of UNHCR in the country, with the possible result of "keeping 140,000 … refugees out there in exile".

2. As noted in our 3 June 1998 memorandum concerning the request by the Government of another Member State that UNHCR local staff in that State report for military service, it is vital for the United Nations to insist that States which have ratified the Convention on the Privileges and Immunities of the United Nations abide by its terms, including section 18 (*c*), which exempts staff from military service, since any precedent to agree to permit a State to violate its obligations to exempt officials from national service obligations would be a very unfortunate precedent. Although the Member State in question has not yet acceded to the Convention, it signed a 1993 Agreement relating to the Establishment of a United Nations Integrated Office, and article VII of that Agreement provides that officials of the United Nations shall "be immune from national service obligations".

3. On the other hand, paragraph 1 of Appendix C to the United Nations Staff Rules provides that the Secretary-General may agree to permit staff to serve "in case of a staff member who, with the *advance* approval of the Secretary-General, volunteers for military service or requests a waiver of immunity under section 18(*c*) of the Convention on the Privileges and Immunities of the United Nations" (emphasis added). UNHCR might wish to draw this provision to the attention of the State's authorities and indicate that the same measure would be applied to the corresponding obligation under article VII(*c*) of the Agreement. This would enable State nationals who wished to volunteer to obtain special leave from UNHCR to perform national service.

4. In the present case, the five officials have already been drafted and UNHCR has not, we understand, given "advance" approval to such service. Although the privileges and immunities in the Convention are given to the Organization, and thus the Secretary-General can decide to waive them in the interests of the Organization (and the continued operation of UNHCR in the country is clearly in the interest of the Organization), the Secretary-General is bound by the Staff Rules until they are changed. Appendix C requires advance approval of a request of a staff member as a condition prior to the waiver of immunity. A *retroactive* decision of any nature, except with the consent of the staff or a decision that benefits staff, such as a salary increase, has consistently been held null and void by the United Nations Administrative Tribunal. A decision to waive immunity from national service *without the consent of the staff members concerned* violates Appendix C to the Staff Rules and exposes the Organization to claims for damages, including punitive damages, especially if the staff member is killed or injured. However, if the staff concerned are prepared to volunteer and if UNHCR made a submission explaining in detail why a waiver would be in the interest of the United Nations, the Secretary-General could validly decide to retroactively waive immunity and decide to apply the provisions of Appendix C that deal with staff who have volunteered in advance.

5. We note that Appendix C, as currently drafted, leaves the decision as to whether a staff member wants to volunteer for national service *wholly* in the hands of the staff member, whereas a decision on waiver of immunity is for the decision of the Secretary-General, in the interests of the Organization.

9 July 1998

PROCEDURAL AND INSTITUTIONAL ISSUES

10. Procedures for obtaining observer status with the General Assembly of the United Nations

Facsimile to the Legal Counsel of the South Pacific Regional Environment Programme

Your facsimile of 26 November 1997 to the United Nations Protocol Office concerning the procedures for obtaining observer status with the United Nations was referred to the Office of Legal Affairs. Our comments are as follows:

1. The arrangements for consultative status with the Economic and Social Council are set out in Council resolution 1996/31 of 25 July 1996.

2. With respect to observer status in the General Assembly, neither the Charter of the United Nations nor the rules of procedure of the General Assembly address the question of observers. In practice, however, the General Assembly has adopted

resolutions according observer status to various intergovernmental organizations. The first step is for a Member State or States to request the inclusion of an appropriate agenda item on the relevant rules; the request must be accompanied by an explanatory memorandum and, if possible, by basic documents or a draft resolution.

3. The General Committee of the General Assembly then reviews the request and recommends to the General Assembly whether or not to include the item in the agenda. Assuming the item is inscribed on the agenda, the next step is for the Member State or States to sponsor a draft resolution by which the General Assembly would decide that the intergovernmental organization concerned is invited to participate in the sessions and the work of the General Assembly in the capacity of observer. It is then a matter for the States Members of the United Nations to take a decision on the proposed resolution, if necessary by a majority vote of the Members present and voting.

5 January 1998

11. Circulation of communications from the Organization of the Islamic Conference—Article 54 of the Charter of the United Nations

Memorandum to the Under-Secretary-General for Political Affairs

1. This responds to your memorandum of 9 February 1998 concerning the circulation of communications from the Organization of the Islamic Conference (OIC) under Article 54 of the Charter of the United Nations. My comments on the questions raised in your memorandum are as follows:

2. In the first instance, you inquire whether the Secretariat should circulate as a Security Council document a communication from OIC claiming itself to be a regional organization under Article 54. In our view, the Secretariat should not automatically circulate any communication. The Secretariat has a duty to establish that the communication falls within the ambit of Article 54.

3. Article 54 provides that "[t]he Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under *regional arrangements or by regional agencies* for the maintenance of international peace and security" (emphasis added). Accordingly, only regional arrangements and regional agencies are encompassed by Article 54. The OIC Charter and the explanatory memorandum accompanying the draft resolution granting observer status to the Organization of the Islamic Conference at the United Nations (adopted as General Assembly resolution 3369 (XXX) of 10 October 1975) refer to the maintenance of international peace and security but do not characterize OIC as a regional organization, arrangement or agency. To the contrary, the OIC Charter and explanatory memorandum repeatedly refer to Muslim nations, without regional limitation. In fact, the Islamabad Declaration of the Extraordinary Session of the Islamic Summit (A/51/915-S/1997/433) specifically refers to "the 1.2 billion Muslims, across five continents". The foregoing indicates the international, rather than regional, character of OIC. General Assembly resolutions on cooperation with OIC and the Memorandum of Cooperation between the United Nations and OIC of 14 October 1982 further confirm the international character of OIC. Based on the foregoing, it would therefore be difficult for the Secretariat to conclude that OIC is a regional arrangement or a regional agency within the meaning of Article 54 of the Charter of the United Nations.

4. As to your second question concerning the correct procedure to be followed for transmittal to the United Nations of correspondence addressed to the United Nations by OIC member States via the Permanent Observer, the current procedure is the correct procedure. Any OIC member(s) which (are) a State(s) Member(s) of the United Nations may circulate an OIC communication as an annex to its or their own communication (see in particular *Article 35 of the Charter of the United Nations*).

5. If the communication relates to the maintenance of international peace and security, an OIC communication *might* also be circulated as an annex to a communication submitted by a regional arrangement or agency within the meaning of Article 54 of the Charter, such as the League of Arab States or the Organization for African Unity. Finally, pursuant to rule 39 of its provisional rules of procedure, the Security Council itself may request OIC to supply it with information or to give other assistance examining matters within its competence.

6. Your third question, as to who determines what constitutes a regional organization or arrangement under Article 54, raises policy as well as political considerations. As a legal matter, however, reference should be made to the basic legal texts of OIC and any instruments concluded by OIC members or between OIC and the United Nations. The documents mentioned in paragraph 3 above, however, do not characterize OIC as a regional arrangement or agency within the meaning of Article 54 of the Charter. If OIC nonetheless insists that it should be deemed a regional organization, its member States may seek recognition as such from the General Assembly or the Security Council.

18 February 1998

12. Executing agency status with the United Nations Development Programme of the Centre for International Crime Prevention—Designation of United Nations organizational units as executing agencies

Memorandum to the Chief of Operational Activities Section, Centre for International Crime Prevention

1. This refers to your letter of 18 June 1998 to … of this Office requesting our advice in connection with the request by the Centre for International Crime Prevention for executing agency status with United Nations Development Programme. We regret the delay in responding.

Background of request for executing agency status

2. We understand that, at its seventh session, from 21 to 30 April 1998, the Commission on Crime Prevention and Criminal Justice recommended a draft resolution for adoption by the Economic and Social Council requesting the Executive Director of the Office for Drug Control and Crime Prevention to enter into discussions with the Administrator of UNDP with a view to having the Centre for International Crime Prevention recognized as an executing agency.[1] We have been informed that the Economic and Social Council adopted that draft resolution on 28 July 1998 (resolution 1998/24). In addition, the Office of Internal Oversight Services, during its in-depth evaluation of the United Nations Crime Prevention and Criminal Justice Programme, recommended that the Centre should seek executing agency

status with UNDP, and the Secretary-General concurred with the recommendation (see E/AC.51/1998/3, para. 67). The Committee for Programme and Coordination endorsed the recommendation,[2] and the General Assembly is to consider that report at its current session.

Status of the Centre

3. Under the programme for reform set out in the Secretary-General's report entitled "Renewing the United Nations: a programme for reform" (see A/51/950, chap. V), the Secretary-General reconstituted the Division for Crime Prevention and Criminal Justice into the Centre for International Crime Prevention and established the Office for Drug Control and Crime Prevention, consisting of the Centre and the United Nations International Drug Control Programme, headed by an Executive Director accountable to the Secretary-General. We understand that a Secretary-General's bulletin on the organization of the Office is being finalized. The Centre thus appears to be an organizational unit of the United Nations Secretariat.

Designation of United Nations organizational units as executing agencies

4. The United Nations has been designated by the General Assembly as an executing agency of UNDP-funded projects, from the beginning of UNDP and its predecessor programmes.* When consulted on whether individual units of the United Nations Secretariat could act as an executing agency of UNDP-funded projects, this Office has consistently advised that they could not be separately designated as executing agency, but that they could provide, in coordination with the department in the Secretariat in charge of the United Nations executing agency function, such services within their field of competence as were required for the execution of UNDP projects.

5. Our advice was also based on considerations related to legal capacity, and accountability, of executing agencies. Executing agencies are required to sign agreements setting out their rights and obligations in executing UNDP-funded projects. Those agreements consist, typically, of the UNDP Standard Basic Executing Agency Agreement (SBEAA) and the project documents signed by the executing agencies, UNDP and the recipient Governments. The SBEAA specifically provides that the executing agency shall be accountable to UNDP for its execution of UNDP projects (see article VII of the 1989 model SBEAA), consistent with paragraph 43 of General Assembly resolution 2688 (XXV) of 11 December 1970, which provides that "every executing agent will be accountable to the Administrator [of UNDP] for the

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* UNDP was established by the General Assembly in its resolution 2029 (XX) of 22 November 1965 by merging the Expanded Programme of Technical Assistance (EPTA) and the Special Fund (SP), the two predecessor programmes of UNDP. Before the establishment of UNDP, the execution of technical assistance was carried out by participating organizations of EPTA and the United Nations was one of such participating organizations, pursuant to Economic and Social Council resolution 222 (II) of 15 August 1949. The United Nations was also specifically designated as one of the organizations carrying out the execution of UNDP projects in paragraph 39 of General Assembly resolution 1240 (XII) of 14 October 1958, by which the Assembly established the Special Fund. After the consolidation of EPTA and the Special Fund into UNDP in accordance with Assembly resolution 2029 (XX), the United Nations continued to be one of the executing agencies of UNDP projects, pursuant to paragraph 2 of the resolution, which reaffirmed the principles, procedures and provisions governing the two earlier programmes.

implementation of programme assistance to projects". Thus, an executing agency should have the legal capacity to enter into legally binding commitments and to be held legally responsible for its own acts, and should have the financial resources to meet those legal responsibilities. Only then would the agency be in a position to be accountable. Individual organizational units of the United Nations do not have such legal capacity, which vests in the Organization as a whole, and thus cannot bind the Organization by entering separately into commitments relating to the execution of UNDP-funded projects, unless they have been specifically authorized to do so in the name of the Organization.*

6. The departments in the Secretariat responsible for the United Nations executing agency function have changed over time, with the successive reorganizations of the Secretariat. In application of General Assembly resolution 32/197 of 20 December 1977, the Secretary-General on 23 March 1978 established the Department of Technical Cooperation for Development and entrusted it with the responsibility to, inter alia, "implement UNDP projects and projects financed from extrabudgetary resources for which the United Nations is the executing agency" (ST/SGB/162, para. 2(*b*)).

7. Subsequently, as part of the reorganization of the United Nations Secretariat in 1992-1993, the Secretary-General established the Department for Development Support and Management Services to, inter alia, "act as an executing agency ... for programmes/projects relating … to institutional development and human resources development" and "be the focal point at United Nations Headquarters for … implementation functions for technical cooperation" (A/C.5/47/88, para. 40, General Assembly resolution 47/212 B, sect. III, para. 2).

8. Under the reform of the United Nations Secretariat in 1997, the Secretary-General consolidated three Secretariat departments in the economic and social field into a new Department of Economic and Social Affairs (see A/51/950, paras. 69 and 139). Within that Department, the Assistant Secretary-General for Policy Coordination and Inter-Agency Affairs has been entrusted with the function of "providing policy advice to the Under-Secretary-General on all issues related to technical cooperation and advisory services and ensuring the coordinated management of related activities" (ST/SGB/1997/9, sect. 6.2(*d*)). It is unclear to us whether these responsibilities of the Department of Economic and Social Affairs encompass the function assumed earlier by the former Department of Technical Cooperation for Development and the Department for Development Support and Management Services, to coordinate the participation of United Nations Secretariat units in the execution of UNDP projects. We note, however, the following statement in the second paragraph of the 2 June 1998 letter from the Executive Director of the Office for Drug Control and Crime Prevention to the Administrator of UNDP: "Although the Centre has been implementing UNDP projects through

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* Concerning United Nations subsidiary organs, this Office has advised that, even when they have their own intergovernmental body, administrative machinery and financial resources, and have been expressly entrusted by the General Assembly with contracting capacity, they cannot, unless so authorized by their constitutive documents or an express decision of a competent governing body, act as executing agency for UNDP. Such an express authorization was, for instance, provided to UNCTAD and to regional commissions, by the General Assembly in its resolution 2401 (XXIII) of 13 December 1968 in respect of UNCTAD, and by the Economic and Social Council in its resolutions 1896 (LVII) of 1 August 1974 and 1952 (LIX) of 23 July 1975 in respect of the regional commissions.

the Office for Project Services* and the Department for Economic and Social Affairs, I am convinced that a direct relationship with UNDP would be more efficacious". It seems, therefore, that the involvement of the Centre for International Crime Prevention in the execution of UNDP-funded projects has been, until now, in line with the established practice and the advice given in the past by this Office, although the Centre is now seeking a more direct relationship with UNDP.

Conclusion and recommendation

9. Having regard to the foregoing, it is our opinion that the Centre for International Crime Prevention, as an organizational unit of the United Nations Secretariat, cannot be separately designated as an executing agency of UNDP in its own name. However, the General Assembly could request the Secretary-General to authorize the Centre to exercise United Nations executing agency functions with respect to UNDP projects within its field of competence and make direct arrangements with UNDP for this purpose. The Centre would thus be able to establish the "direct relationship with UNDP" which we understand it is seeking.

21 September 1998

13. Rules of procedure applicable with respect to the participation of non-governmental organizations in the Commission on the Status of Women—General Assembly resolution 52/100 of 12 December 1997

Letter to the Chairman of the Third Committee of the General Assembly

I have the honour to refer to your letter of today's date raising two questions put forth by the Third Committee of the General Assembly during its informal consultation on the "Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform of Action" under agenda item 104, entitled "Implementation of the outcome of the Fourth World Conference on Women". Our comments on the two questions are as follows:

> "1. What rules of procedure apply with respect to the participation of non-governmental organizations in the Commission on the Status of Women, acting as preparatory committee for the special session in the year 2000, taking into account the provisions of paragraph 46 of resolution 52/100?"

In paragraph 46 of its resolution 52/100 of 12 December 1997, the General Assembly decided "that the Commission on the Status of Women shall serve as the preparatory committee for the high-level review, and as such will be open to the participation of all States Members of the United Nations, members of the specialized agencies and observers, in accordance with the established practice of the General Assembly, and invites the Commission to take appropriate action towards that end, including giving attention to appropriate arrangements for the involvement and participation of non-governmental organizations in the review".

It is clear from the foregoing that observers will participate in the Commission on the Status of Women serving as preparatory committee for the special session of

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* The functions of the United Nations Office for Projects Services include undertaking "implementation activities for UNDP" (see DP/1994/62, para. 2 (*c*), and *Official Records of the Economic and Social Council, 1994, Supplement No. 15* (E/1994/35/Rev.1), part four, Executive Board decision 94/32, para. 1).

the General Assembly "in accordance with the established practice of the General Assembly".

As there are no provisions in the rules of procedure of the General Assembly relating to observer status in the General Assembly, the status and rights of participation of observers rest solely on the practice of the General Assembly. The General Assembly has adopted resolutions inviting specific intergovernmental organizations as well as entities, including Palestine, the International Committee of the Red Cross, the Sovereign Military Order of Malta and the International Federation of Red Cross and Red Crescent Societies, to participate, in the capacity of observer, in its sessions and work. The specialized agencies, the International Atomic Energy Agency and the World Trade Organization are also represented in the General Assembly pursuant to provisions contained in relationship agreements concluded between each agency and the United Nations, and approved by the General Assembly.

As the General Assembly does not have an established practice on the participation of non-governmental organizations and as it is the intent of the Assembly that non-governmental organizations also be involved and participate in the preparatory committee, the participation of non-governmental organizations in the Commission on the Status of Women, serving as preparatory committee for the special session, would, unless otherwise decided, be governed by rules 75 and 76 of the rules of procedure of the functional commissions of the Economic and Social Council.

> "2. Bearing in mind the reply to the above question, is paragraph 29 of the draft resolution properly formulated?"

At the outset, it must be stated that, subject only to the Charter of the United Nations, it is entirely within the discretion of Member States to formulate their resolutions. As the Committee has, however, formally requested the views of the Office of Legal Affairs on the propriety of this specific formulation, the Office would make the following observations:

In the first part of paragraph 29 of the draft resolution, the General Assembly recalls a resolution of the Economic and Social Council, putting forward interim measures for the participation of non-governmental organizations, applicable to the forty-second session of the Commission on the Status of Women, with a view to their application to the forty-third and forty-fourth sessions of that Commission. Although the Commission on the Status of Women has been designated as the preparatory committee for the special session of the General Assembly, it is our understanding that the Commission will only serve as preparatory committee for part of its forty-third and forty-fourth sessions. As the Commission is one of the functional commissions of the Economic and Social Council, it would be for the Council to decide on the applicability of the interim measures to the entirety of those sessions. It would therefore be more appropriate if in the first part of operative paragraph 29 the Assembly invited the Council to recall the interim measures put forward in its resolution 1997/298 with a view to their applicability to the forty-third and forty-fourth sessions of the Commission. In the alternative, the first part of operative paragraph 29 could refer the applicability of the interim measures to the forty-third and forty-fourth sessions of the Commission on the Status of Women when serving as the preparatory committee for the special session of the General Assembly.

In the second part of operative paragraph 29 of the draft resolution, the Commission will be invited or urged "to decide on" appropriate arrangements for the involvement and participation of non-governmental organizations in the special

session. We note that in paragraph 46 of its resolution 52/100, the General Assembly invited the Commission to take appropriate action, including giving attention to appropriate arrangements for the involvement and participation of non-governmental organizations. As any decisions adopted by the Commission in this respect would constitute recommendations for the special session of the General Assembly, it would be more appropriate in the second part of operative paragraph 29 for the Assembly to invite or urge the Commission to "take appropriate action on" or "recommend" such arrangements.

30 October 1998

14. Status of the United Nations International Drug Control Programme—Memorandum of Understanding on a Joint and Co-sponsored United Nations programme on HIV/AIDS

Letter to the Legal Counsel, World Health Organization

This is in response to a letter dated 2 October 1998, in which two questions were raised in connection with the submission by the Executive Director of the United Nations International Drug Control Programme (UNDCP) of the Programme's candidature as an additional co-sponsor of the Joint and Co-sponsored United Nations Programme on HIV/AIDS (UNAIDS). These questions are the following:

(*a*) Whether UNDCP can be said to have a status comparable to that of UNDP, UNICEF and UNFPA for purposes of co-sponsoring of UNAIDS;

(*b*) Whether the prior approval of the governing bodies of the existing co-sponsors is required before their executive heads can take a valid decision to admit UNDCP as an additional co-sponsor.

As noted in the letter, following the endorsement of the establishment of UNAIDS by the governing organs of UNICEF, UNDP, UNFPA, UNESCO, WHO and the World Bank as well as by the Economic and Social Council, the executive heads of the aforementioned programmes, funds and specialized agencies signed in 1995 the Memorandum of Understanding on a Joint and Co-sponsored United Nations Programme on HIV/AIDS, which defines the structure and operation of the Joint Programme. Pursuant to the last preambular paragraph of the Memorandum of Understanding, the original parties to it are collectively referred to in the Memorandum as the "Co-sponsoring Organizations".

Paragraph 12.2 of section XII of the Memorandum of Understanding provides that after the first anniversary of the entry into force of the Memorandum and with the unanimous agreement of the Co-sponsoring Organizations, "other United Nations system organizations may become Co-sponsoring Organizations by signature of the Memorandum of Understanding". In the letter it is suggested that the encompassing term "Organizations" appears to stress the organizational status that co-sponsors should enjoy to be able to fully discharge their responsibilities in the Joint Programme. In this regard the letter refers to the fact that the present United Nations programmes and funds which are the co-sponsors of UNAIDS have been established by the General Assembly as semi-autonomous bodies within the United Nations and are governed by separate executive boards responsible for the formulation of their policies, and are administratively autonomous from the United Nations.

We do not share the view that the organizational status is the factor that should be decisive in determining whether a United Nations entity can be a co-sponsoring organization of the Memorandum. It is our understanding that any United Nations

entity which has the authority under its respective mandate to enter into arrangements similar to that of the Memorandum of Understanding and which can make a substantial contribution to the implementation of the objectives of UNAIDS, defined in section II of the Memorandum, is entitled to apply to become an additional co-sponsor of UNAIDS.

Since in the case of the original Co-sponsoring Organizations, the establishment of UNAIDS was first endorsed by the governing organs of those entities before the Memorandum of Understanding was signed by their executive heads, it may be assumed that, although the Memorandum is silent on this matter, if a United Nations entity which is qualified to become an additional co-sponsor of UNAIDS wishes to submit its candidature, its governing organ should first endorse that co-sponsorship.

As to the question of whether UNDCP is qualified to become an additional co-sponsor of UNAIDS, it is our view that UNDCP, which is not an entity that is completely analogous to other United Nations programmes and funds, nevertheless, has the authority to enter, within the framework of the responsibilities delegated to it by the General Assembly, into appropriate arrangements for the exercise of its functions. This conclusion is based on the following considerations:

A decision to establish UNDCP was taken in 1990 by the General Assembly at its forty-fifth session. The Assembly in its resolution 45/179 of 21 December 1990 instructed the Secretary-General "to create a single drug control programme" to be headed by "a senior official at the level of Under-Secretary-General" appointed by the Secretary-General. The Assembly determined the future structure of the Programme and decided that the Programme should become operational as of 1 January 1991. The Assembly subsequently endorsed paragraph 1 (*c*) of Economic and Social Council resolution 1991/38 of 21 June 1991, in which the Council called upon the Commission on Narcotic Drugs to give policy guidance to UNDCP and to monitor its activities. While recognizing that the Programme remains a part of the United Nations Secretariat, the Assembly emphasized the need for the Executive Director of UNDCP to have the necessary degree of managerial flexibility to discharge effectively and expeditiously the functions of the Programme.

In its report to the General Assembly at its forty-sixth session (A/C.5/46/23), the Secretary-General stated that, given the magnitude of the extrabudgetary resources of UNDCP and the distinctive features of the proposed fund of UNDCP, he considered that the new fund called for special treatment by way of separate financial rules and, where necessary, exceptions to the Financial Regulations of the United Nations. The Secretary-General proposed that, in the interest of efficient operation, the Executive-Director of the Programme should be granted a maximum degree of decentralized authority as regards both financial and personnel matters.

At its forty-sixth session, the General Assembly, in part XVI of its resolution 46/185 of 20 December 1991, decided to establish, as of 1 January 1992, under the direct responsibility of the Executive Director of UNDCP, the Fund of the United Nations International Drug Control Programme to finance operational activities of UNDCP and endorsed the aforementioned proposals of the Secretary-General. The Assembly authorized the Commission on Narcotic Drugs, as the principal United Nations policy-making body on drug control issues, to approve, on the basis of the proposals of the Executive Director of the Programme, both the budget of the Programme of the Fund and the administrative and programme support costs budget, other than expenditures borne by the regular budget of the United Nations. Notwithstanding regulations 11.1 and 11.4 of the Financial Regulations of the United Nations, requiring the accounts to be maintained by the Secretary-General, the As-

sembly decided that the Executive Director of the Programme should maintain the accounts of the Fund of UNDCP and should be responsible for submitting the said accounts and related financial statements to the Board of Auditors and for submitting financial reports to the Commission on Narcotic Drugs and the General Assembly.

Under its establishing resolutions, approved by the General Assembly at its forty-fifth and forty-sixth sessions and reaffirmed by the Assembly in subsequent resolutions concerning activities of the Programme (resolutions 47/101; 48/112, part V; 49/168, part V; 50/148, part VI; 51/64, part VI, and 52/92, part VI), UNDCP is entrusted with a wide variety of functions which are defined in section 5 of the recently promulgated Secretary-General's bulletin on the organization of the Office for Drug Control and Crime Prevention[3]. The bulletin states that, while UNDCP is currently administratively incorporated in the Office for Drug Control and Crime Prevention, as a programme established by the General Assembly in its resolution 45/179, it is a single body responsible for coordinated international action in the field of drug abuse control. According to the bulletin, the functions of UNDCP include initiation and participation in joint projects, promotion of coordination and cooperation on drug control activities with regional and international organizations.

It is worthy of note that, following its establishment, UNDCP has concluded Memoranda of Understanding for cooperation with FAO (1993), ILO (1994) and UNESCO (1994) and a working arrangement with UNDP. Almost 99 per cent of the budget of UNDCP currently comes from voluntary contributions.

For the reasons stated above, we believe that UNDCP, subject to a prior endorsement by the Commission on Narcotic Drugs, has the authority to submit its candidature as an additional co-sponsor of UNAIDS and, if accepted, to sign the Memorandum of Understanding. It is, of course, for the original Co-sponsoring Organizations to decide, in accordance with paragraph 12.2 or section XII of the Memorandum of Understanding, whether the co-sponsorship of UNDCP will assist in meeting the objectives of UNAIDS.

With reference to your second question, we are of the view that admission of an additional co-sponsor does not require any decision by the governing organs of the original Co-sponsoring Organizations, as the establishment of the Joint Programme has already been endorsed by those organs.

9 November 1998

B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations

[No legal opinions of the secretariats of intergovernmental organizations related to the United Nations were reported for 1998.]

Notes

[1] *Official Records of the Economic and Social Council, 1998, Supplement No. 30* (E/1998/30), chap. I.B, draft resolution IX.

[2] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 16* (A/53/16), part one, chap. II.E.3, para. 240.

[3] ST/SGB/1998/17.

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 decisions or advisory opinion from international tribunals on questions relating to the United Nations and related intergovernmental organizations to be reported for 1998.]

*See chapter III.A of the present volume for information on the International Court of Justice, the two ad hoc international criminal tribunals and the International Tribunal for the Law of the Sea.

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

[No decisions from national tribunals on questions relating to the United Nations and intergovernmental organizations to be reported for 1998.]

Part Four

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A. INTERNATIONAL ORGANIZATIONS AND INTERNATIONAL LAW IN GENERAL

1. General
2. Particular questions

B. UNITED NATIONS

1. General
2. Particular organs
3. Particular questions or activities

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