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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-eighth of the series—contain legislative texts and treaty provisions relating to the legal status of the United Nations and related intergovernmental organizations. With a few exceptions, the legislative texts and treaty provisions which are included in these two chapters entered into force in 2000.

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.

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 2000.

All documents published in the *Juridical Yearbook* were supplied by the organizations concerned, with the exception of the legislative texts and judicial decisions in chapter I, 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
ESCWA	Economic and Social Commission for Western Asia
FAO	Food and Agriculture Organization of the United Nations
GATT	General Agreement on Tariffs and Trade
Habitat	United Nations Centre for Human Settlements
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 Corporation
ILO	International Labour Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
ITU	International Telecommunication Union
JAB	Joint Appeals Board
MIGA	Multilateral Investment Guarantee Agency
OIOS	Office of Internal Oversight Services
UNCHS	United Nations Centre for Human Settlements (Habitat)
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDCP	United Nations International Drug Control Programme
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
UNIFIL	United Nations Interim Force in Lebanon
UNITAR	United Nations Institute for Training and Research
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UPU	Universal Postal Union
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological 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

Spain

INTERNATIONAL CRIMINAL COURT. PRESENTATION OF GROUNDS FOR AUTHORIZING RATIFICATION OF THE STATUTE BY SPAIN[1]

I

On 17 July 1998, the United Nations Diplomatic Conference of Plenipotentiaries, convened for the purpose by the United Nations and meeting in Rome, adopted the Rome Statute of the International Criminal Court. The Statute was signed by Spain, and by a number of other countries, at the end of the Conference, on 18 July.

The Rome Statute represents the culmination of a series of endeavours and negotiations which date back virtually to the birth of the United Nations, and which have followed, one after the other, over the past half-century, with varying degrees of intensity.

Thus, following the precedents of the Nuremberg and Tokyo international military tribunals, set up in 1945 and 1946 to judge the main German and Japanese leaders accused of "committing crimes against peace, war crimes and crimes against humanity", the United Nations General Assembly adopted, in 1948, the Convention on the Prevention and Punishment of the Crime of Genocide and set up a special Committee to draft the statute of a permanent international criminal jurisdiction, which eventually prepared a draft, between 1951 and 1953.

Under the terms of a 1971 decision, the International Court of Justice at The Hague considered that the 1948 Convention against genocide was part of customary international law. Later, the General Assembly of the United Nations, in its resolution 3074 (XXVIII) of 3 December 1973, declared that crimes against humanity would be prosecuted and could not remain unpunished. This combination of efforts in the area of legislation, doctrine and jurisprudence established the foundations for the effective protection of human rights within the international arena, breaking with old theories of criminal law, such as the principle of territoriality in criminal law, based on the notion of national sovereignty, which yields to a new principle of universal jurisdiction.

After the end of the cold war, the United Nations returned to the theme, appointing the International Law Commission to draft the Rome Statute of the International Criminal Court and the Draft Code of Crimes against the Peace and Security of Mankind. These draft laws were presented by the Commission in 1994 and 1996, respectively, and, after they had been revised, expanded and completed by a Committee composed of government representatives, provided the working foundation for the work of the United Nations Diplomatic Conference of Plenipotentiaries held in Rome.

In parallel with this process, a number of other initiatives have emerged over recent years. They are less ambitious, but of great significance as precedents for the International Criminal Court. There are, for example, the International Tribunals created in 1993 and 1994 by the United Nations Security Council for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia and in Rwanda, respectively.

As a result of all these endeavours, the Rome Conference, after wide-ranging and intense negotiations, was able to complete the drafting of the Statute, whose text was approved, with 120 votes in favour (including all countries in the European Union, and the majority of Western countries), 7 against and 21 abstentions.

The purpose of the Rome Statute is to create the International Criminal Court, as a judicial body that is independent, but related to the United Nations, with permanent status and potentially universal scope, and with the authority to prosecute crimes of major significance to the international community as a whole.

Because the four international criminal courts that have been created thus far have represented a response to concrete but temporary situations, the constitution of an international criminal jurisdiction with a universal and permanent vocation constitutes a decisive step in the evolution of the international order.

The constituent elements of the Rome Statute of the International Criminal Court allow us to state that it provides the foundations for a new kind of international law: more humanizing, in that it seeks to provide greater protection of the human being with respect to the most serious attacks against basic human dignity; more inclusive, in that it successfully combines the wills of a large number of countries that have legal and political systems that are very different from one another; and more effective, in that the international community has equipped itself with a new instrument, which is able to guarantee effective respect for its most basic rules.

II

Overcoming the difficulty posed by the diversity of the political and legal systems of the States participating in the Rome Conference, the Statute arising out of their deliberations is a complex text, regulating all elements required for the launching and the effective functioning of the International Criminal Court: its foundation, composition and organization; the applicable law and the general principles of criminal law that must underlie its procedures; the definition of its powers, from a material point of view, as well as from a spatial and temporal point of view; the categorization of crimes and the penalties to be imposed, as well as the rules governing their application; the procedural and operational standards for legal institutions; and the mechanisms for collaboration with States and with other international agencies, with a view to achieving more effective fulfilment of the desired objectives.

The Statute also provides that its constituent regulations be further developed through various regulatory instruments, in particular the Elements of Crimes, the Rules of Procedure and Evidence, the Rules of the Court, the Agreement on the relationship with the United Nations, the Agreement on the Privileges and Immunities of the Court, the Financial Regulations and the Staff Regulations etc., all of which will contribute towards the proper and effective functioning of the Court.

III

Structurally, the Statute consists of a preamble and 128 articles, grouped systematically in three parts. Within this wide-ranging whole, a number of more significant aspects should be given special mention.

The Court begins its work as an institution that is independent, yet linked to the United Nations system, endowed with an international personality, and with the legal capacity necessary for the fulfilment of its functions. It shall be established at The Hague.

In keeping with the principle of complementarity, the Court does not replace national criminal jurisdictions. The jurisdiction of the Court shall be exercised solely on a subsidiary basis, whenever the competent State is not willing to prosecute certain crimes, or is unable to do so effectively.

It is important to note that the Court is not competent to prosecute States, but individuals. Nor does the Court have the competence to prosecute isolated crimes, but rather grave violations of international humanitarian law, committed on an extensive or continuous basis, in a given situation.

With respect to the material competence of the Court, the Statute limits the said competence to the most serious crimes of concern to the international community as a whole, such as genocide, crimes against humanity, war crimes and aggression. The first three categories of crime are set out in the Statute itself, in keeping with the most recent trends in international criminal law. Provision is made for the drafting, at a later date, of an instrument called the Elements of Crimes, which will specify the above criminal categories in greater detail, with the aim of helping the Court to interpret and apply those precepts. With regard to the crime of aggression, the competence of the Court shall be deferred until, after the expiry of at least seven years from the entry into force of the Statute, a Review Conference shall adopt a provision defining the said crime, by a specially defined majority, and shall regulate the modalities by which the Court may exercise its competence with regard to the same.

The jurisdiction of the Court shall be mandatory for States parties, which automatically accept the Court's jurisdiction with the very act of ratifying or acceding to the Statute. The jurisdiction of the Court may also extend to other States not party to the Statute, when such States have accepted the Court's competence in cases where a crime is committed on their territory or is committed by nationals of the said States, or when the Security Council rules to that effect under the powers accorded to it within the terms of Chapter VII of the Charter of the United Nations. With regard to the temporal parameters of the Court's competence, the Statute expressly states that it shall not have retroactive powers.

Only the Prosecutor may initiate criminal action, once the mechanism for activating the Court has been set in motion. It may do so in one of three ways: at the initiative of a State party; at the initiative of the Security Council; or at the initiative of the Prosecutor, provided that authority has been granted by the Pre-Trial Chamber. However, in order to ensure that the Court shall act solely in those cases in which internal jurisdictional bodies cannot or do not wish to act, the Statute recognizes that the State having jurisdiction over the crime has broad powers to recommend disqualification of the Prosecutor and to challenge the competence of the Court or the admissibility of the action, with the sole exception of those actions in which the case has been sent to the Court by the Security Council. In such cases, it is understood that

the prevailing interests are those of the international community, on behalf of which the Council acts, with justice being sought through the Council, as a way to restore international peace and security in a certain situation. For the same reason, the Statute recognizes the Security Council's extraordinary power to recommend suspension of the Court's actions with regard to a specific situation if the Security Council considers such action necessary in the interests of international peace and security.

As a complement to the rules governing competence and procedures, the Statute includes a series of general principles of criminal law, which are intended to guide the actions of the Court: *nullum crimen sine lege*; *nulla poena sine lege*; non-retroactivity *rationae personae*; individual criminal responsibility; exclusion of jurisdiction over persons under 18; irrelevance of official capacity; responsibility of commanders and other superiors; non-applicability of statute of limitations; mental element; grounds for excluding criminal responsibility; mistake of fact or mistake of law; and superior orders and prescription of law.

Organically speaking, the divisions of the Court, whose official languages are the same as those of the United Nations (Arabic, Chinese, French, English and Russian), are as follows: Presidency, Sections, Prosecutor's Office and Secretariat.

Also, as well as the judicial bodies and the Secretariat, the Statute accords significant powers to an Assembly of States Parties. The Assembly's tasks shall include the adoption of instruments for the development of the Statute and for any reforms that may need to be made to the Statute, for the election of judges and prosecutors, for the approval of the Court's budget and for the rules governing implementation of the budget, for the supervision of administrative and financial management, as well as for the management of the Court's relationship with the United Nations and other international bodies, and for ensuring that States cooperate effectively with the Court when the latter requests their collaboration.

With regard to the structure and development of trials, the Court will utilize a combination of procedures from Anglo-Saxon law and continental law. It will also make use of the experiences of the existing ad hoc International Tribunals. The Statute provides for a system of dual authority, once the preliminary phase is concluded.

As far as penalties are concerned, the Statute provides that the Court may impose on a person convicted of a crime a sentence of imprisonment for a specified number of years, which may not exceed a maximum of 30 years, or, in exceptional cases, a term of life imprisonment, when justified by the extreme gravity of the crime and the individual circumstances of the convicted person. The Court may also order fines, as well as the forfeiture of proceeds and assets deriving from the crime, without prejudice to the rights of bona fide third parties. Prison sentences will be served in a State designated by the Court, in each case, based on a list of States having declared their willingness to accept convicted individuals in their penal institutions (a willingness that may be subject to certain conditions).

Lastly, the Statute regulates the obligation of States parties to provide international cooperation and legal assistance to the Court, therein contemplating three main forms of cooperation: surrender of persons to the Court; international legal assistance regarding the provision of documents, the taking of evidence etc.; and the application of the Court's judgements, in their various aspects. In the event that States parties shall fail to cooperate, the Court may bring the matter to the attention of the Assembly of States Parties, or to that of the Security Council, if the case was referred by the latter.

IV

Unlike the International Tribunals for the former Yugoslavia and Rwanda, which were both created under a resolution of the United Nations Security Council, under Chapter VIII of the Charter of the United Nations, the International Criminal Court is based on a convention—namely, the multilateral treaty known as the Rome Statute, signed under the auspices of the United Nations.

As provided for in the Statute itself, under the terms of its final clauses, the treaty is open for signature by all States and is subject to ratification, acceptance or approval by signatory States, as well as to the accession of any other State. For the Statute to enter into force, 60 instruments of ratification, acceptance, approval or accession must be deposited. The requirement for this number of States to act together reflects a manifest desire to endow the new Court with sufficient support and legitimacy for it to act effectively on behalf of the international community.

In Spain, Parliament has on a number of occasions demonstrated its clear support for the process of drafting the Statute. One notable action in this context was Parliament's approval of a broad motion in the Foreign Affairs Committee of the Congress of Deputies, dated 24 June 1998, in which specific guidelines were determined for negotiations by the Spanish delegation. Our country ultimately signed the Rome Statute on 18 July 1998.

V

To sum up, the contents of the Rome Statute embrace all the organic, functional and procedural aspects of the International Criminal Court, such as the scope of its jurisdiction. The Statute thus represents a new, independent instrument, which is of unprecedented significance for the international legal order. The effect of the present Organic Law is to authorize the State to give its consent to ratification of the Statute, in accordance with the provisions of article 93 of the Constitution. This authorization is expressed in the sole article included in the Law, which is accompanied by a statement expressing Spain's willingness to accept persons convicted by the Court in our country's penal institutions, provided that the duration of the prison sentence imposed does not exceed the maximum allowed under our legislation. This declaration is expressly permitted under article 103 of the Statute, and is also required under the terms of article 25.2 of the Constitution, which requires that punishments entailing imprisonment and security measures shall be aimed at rehabilitation and social reintegration of the convicted individual.

Finally, by ratifying the Statute, which is authorized by this Organic Law, Spain takes its place among those countries that, by participating in the process of setting up the new Court and drafting the mandatory instruments of development, will make an initial contribution to the establishment of a more just international order, based on the defence of basic human rights. Active participation in the creation of the International Criminal Court thus offers a historic opportunity to reiterate the firm conviction that the dignity of the individual person and the inalienable rights inherent in that dignity constitute the only possible basis upon which people may live together in any political, state or international structure.

Sole article

Ratification of the Rome Statute of the International Criminal Court, signed by Spain on 18 July 1998, is hereby authorized.

Sole additional provision

In accordance with the provisions of article 103, paragraph 1 (*b*), of the Statute, permission is given for formulation of the following statement:

> "Spain declares that it is willing, in due course, to receive persons convicted by the International Criminal Court, provided that the duration of the penalty imposed shall not exceed the highest maximum provided in the case of any crime under Spanish law."

Sole final provision

The present Organic Law shall enter into force on the day following its publication in the Official State Journal.

I therefore decree that all Spanish citizens—individuals and authorities—shall observe and enforce this Organic Law.

Madrid, 4 October 2000

KING JUAN CARLOS

President of the Government
José María AZNAR LÓPEZ

NOTES

[1] Text transmitted by the Permanent Mission of Spain to the United Nations in a note dated 15 May 2001.

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

As at 31 December 2000, there were 142 States parties to the Convention.[2]

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2. AGREEMENTS RELATING TO INSTALLATIONS AND MEETINGS

(*a*) Cooperation Agreement between the United Nations and the Government of the Kingdom of Thailand concerning the International Institute for Trade and Development. Signed at Bangkok on 17 February 2000[3]

The United Nations, represented by the United Nations Conference on Trade and Development ("UNCTAD"), and the Government of the Kingdom of Thailand ("the Government"), hereinafter referred to as "the Parties",

Noting the views expressed by Member States, international organizations and civil society at the tenth session of the United Nations Conference on Trade and Development, held in Bangkok from 12 to 19 February 2000, on the challenges and risks of globalization and liberalization for the world's economic growth and development, and on the development strategies that would enable countries to integrate effectively into the global economic system,

Recognizing the continuing growth in demand from developing countries for training and capacity-building assistance to cope with the rise in the complexity of regional and international economic arrangements due to the globalization and liberalization process in the world economy,

Recalling General Assembly resolutions 1995 (XIX), as amended, 47/183 of 22 December 1992, 51/167 of 16 December 1996 and 53/192 of 15 December 1998,

Concurring that a research and training facility at the regional level would strengthen developing countries' capacities to deal with a broad range of regional and international trade and development issues,

Desiring to cooperate in supporting such research and training facilities,

Have agreed as follows:

Article I

Establishment and status of the International Institute for Trade and Development

1. The International Institute for Trade and Development ("the Institute") shall be established by the Government as a Thai legal entity under Thai law at Chulalongkorn University.

2. The Institute shall be a non-profit organization and operate as a regional research and training centre with assistance from UNCTAD, other international agencies and donor countries.

3. UNCTAD shall assist the Government in the establishment and operation of the Institute in accordance with the provisions of this Agreement. All assistance provided by UNCTAD under this Agreement shall be subject to the availability of extrabudgetary resources and in accordance with UNCTAD regulations, rules, procedures and directives.

4. Detailed arrangements between the Parties concerning the implementation of this Cooperation Agreement shall be agreed upon subsequently.

Article II

Objectives of the Institute

The objectives of the Institute shall be:

1. To provide knowledge to participants from countries in the Asian region and beyond through training and research programmes in the area of international trade, finance, investment and development and in other relevant areas to enable them to adjust effectively to the globalization and liberalization process;

2. To assist developing countries in the region in building their capacities to meet the challenges and risks of globalization and in formulating appropriate economic policies and legislative adjustments in accordance with their development objectives;

3. To promote and strengthen regional economic cooperation and integration through sharing and exchanging of experiences and knowledge;

4. To serve as a focal point and provide a forum for training and capacity-building activities by UNCTAD and other interested organizations.

Article III

Scope of activities

To fulfil its objectives as set out in article II, the Institute shall carry out the following functions, inter alia:

1. Provide training and research activities in the following areas:

(*a*) *Commercial diplomacy*: to enable developing countries to maximize their potential benefits from the international trading system by engaging effectively in negotiations and defending their rights in the implementation of international and regional trade and investment agreements;

(*b*) *Globalization and liberalization*: to help increase the capacity of developing countries in managing and meeting the challenges and risks of globalization and liberalization and to assist them in formulating appropriate policies and legislative adjustments to the globalization and liberalization process in accordance with their development objectives;

(*c*) *International trade and investment facilitation*: to assist countries in improving systems and procedures for trade expansion in such areas as trade efficiency, customs, maritime transport and financial management;

2. Conduct and/or commission research and analysis activities on the potential and risks of globalization and liberalization for economic growth and development, in particular on issues related to trade, finance, investment and development, to provide inputs and information for the Institute's training, workshop and seminar programmes;

3. Establish academic networks and promote linkages with national, regional and international organizations in providing training and research in the areas of trade, finance, investment and development;

4. Conduct other activities to promote better understanding of the potential, challenges and risks of globalization and liberalization and their impact on economic growth and development.

Article IV

EXECUTIVE BOARD OF THE INSTITUTE

1. An Executive Board of the Institute shall be established to oversee the operation of the Institute. The composition of the Executive Board shall be decided by the Government. UNCTAD shall provide advisory services to the Executive Board.

2. The Executive Board shall, inter alia, have the following functions:

(*a*) Formulate policies for the activities to be carried out by the Institute;

(*b*) Consider and approve the budget, project proposals, budget allocation, annual work programmes and other activities of the Institute;

(*c*) Appoint the Executive Director of the Institute;

(*d*) Review and evaluate the operation of the Institute, including the implementation of ongoing projects and activities based on the recommendations and assessment of the Executive Director;

(*e*) Advise on and approve fund-generating projects and activities to raise financial support for the Institute;

(*f*) Approve an annual report to the Parties on the activities of the Institute;

(*g*) Advise on other matters to ensure the effective operation of the Institute.

3. A Programme Advisory Group and a Financial Advisory Group may be established by the Executive Board to assist the Executive Board in preparing the work programme of the Institute and in mobilizing resources for the implementation of the work programme. The Programme Advisory Group may comprise experts from the academic arena. The Financial Advisory Group may comprise representatives from the donor countries and organizations concerned with the operation of the Institute.

Article V

ORGANIZATION AND MANAGEMENT OF THE INSTITUTE

1. The Institute shall be headed by a full-time Executive Director appointed by the Executive Board.

2. The Executive Director shall, under the overall policy guidance of the Executive Board, be responsible for the management of the operation and activities of the Institute, including instructor and staff selection and liaison with other institutions, and shall oversee the expenditure of the Institute's funds. In addition, the Executive Director shall submit each year to the Executive Board for its consideration the work programme, budget and a report on the activities of the previous year.

3. The Executive Director shall be assisted by the Programme Director provided by UNCTAD.

Article VI

FINANCIAL ARRANGEMENTS

1. The Institute shall establish a trust fund to receive contributions from donor countries, intergovernmental organizations, non-governmental organizations and other sources to finance the work programmes, operation and administrative costs and other related costs of the Institute, inter alia:

(*a*) The costs of the operation, maintenance and repair of the Institute's premises, equipment and facilities;

(*b*) Salaries and other emoluments of the Executive Director and the local staff;

(*c*) Utilities, transportation and telecommunication expenses related to the Institute's operation;

(*d*) All other costs and liabilities arising from the establishment and operation of the Institute.

2. To ensure effective and smooth operation of the Institute, UNCTAD and the Government, in cooperation with other United Nations agencies, non-governmental organizations, other international organizations, civil society and donor countries, shall use their best efforts to mobilize necessary resources for the Institute's trust fund.

3. The trust fund account shall be audited on an annual basis by an independent certified public accounting firm proposed by the Executive Board. The Executive Director shall supply to both Parties and the Executive Board each year information regarding the use of funds or assets provided or financed by either Party within the framework of this Agreement.

Article VII

CONTRIBUTIONS BY THE GOVERNMENT

1. The Government shall provide space for the Institute at Chulalongkorn University.

2. The Government shall facilitate, on a rental basis, accommodation for instructors and participants in the training programme seminars and workshops and the work programme of the Institute.

3. The Government shall contribute 10 million baht to cover the expenses for the establishment of the Institute and its initial stage of operation.

Article VIII

CONTRIBUTIONS BY UNCTAD

1. Subject to the availability of extrabudgetary resources and in accordance with its regulations, rules, procedures and directives, UNCTAD shall:

(*a*) Cover the cost of the Programme Director;

(*b*) Make available UNCTAD staff and technical experts to assist in carrying out work programmes offered by the Institute. Such support shall include helping design and carry out training programmes. UNCTAD shall cover the cost of travel, per diem and related expenses of such UNCTAD staff and experts;

(*c*) Provide, on a regular basis, its documents, online library services and training materials in the areas of trade, finance and other development issues;

(*d*) Endeavour to organize its own training and capacity-building activities in the region through the Institute;

(*e*) Take any other appropriate measures to assist the Institute.

Article IX

CONSULTATION

Any differences between the Parties concerning the interpretation and implementation of this Agreement shall be settled amicably through consultation.

Article X

ENTRY INTO FORCE, AMENDMENT AND TERMINATION

1. This Agreement shall enter into force upon signature and shall remain in force until terminated by either Party giving six months' prior notice in writing.

2. The provisions of this Agreement may be amended by an agreement of the Parties in writing.

3. The termination of this Agreement shall not affect programmes which have commenced before the date of termination. In the event of termination of this Agreement, the Executive Director shall submit to the Parties a comprehensive report on the resources of the Institute and the uses to which they were put.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective authorities, have signed this Agreement.

DONE at Bangkok on the 17th day of February 2000 in duplicate in English.

For the United Nations:
(*Signed*)
Rubens RICUPERO
Secretary-General of UNCTAD

For the Government
of the Kingdom of Thailand:
(*Signed*)
Surin PITSUWAN
Minister for Foreign Affairs
for the Kingdom of Thailand

(*b*) Exchange of letters constituting an agreement between the United Nations and the Government of the Netherlands concerning arrangements regarding the Meeting of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, to be held at The Hague from 23 to 25 March 2000. Signed at Geneva on 9 and 18 February 2000[4]

I

LETTER FROM THE UNITED NATIONS

9 February 2000

Sir,

I have the honour to give you below the text of arrangements between the United Nations and the Government of the Netherlands (hereinafter referred to as "the Government") in connection with the Meeting of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, to be held, at the invitation of the Government, at The Hague, from 23 to 25 March 2000.

Arrangements between the United Nations and the Government of the Netherlands regarding the Meeting of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, to be held at The Hague from 23 to 25 March 2000

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 all United Nations staff members who are to be brought to The Hague, air tickets, economy-class, Geneva–The Hague–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;

(*c*) To pay to all staff, on their arrival in the Netherlands, 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 (*a*) injury to person or damage to property in conference or office premises provided for the Meeting; (*b*) the transportation provided by the Government; and (*c*) the employment for the Meeting of personnel provided or arranged for by the Government; and the Government shall

hold the United Nations and its personnel harmless in respect of any such action, claim or other demand, except in cases of gross negligence or wilful misconduct of personnel of the United Nations.

5. The Convention of 13 February 1946 on the Privileges and Immunities of the United Nations, to which the Netherlands 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.

(*b*) 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.

6. 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.

7. 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.

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

9. 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.

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

11. 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 the Netherlands 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

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF THE NETHERLANDS TO THE UNITED NATIONS OFFICE AT GENEVA

18 February 2000

Excellency,

With reference to your letter of 9 February 2000 concerning the arrangements between the United Nations and the Government of the Netherlands, regarding the Meeting of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, to be held at The Hague from 23 to 25 March 2000, I have the pleasure to inform you that the arrangements as enclosed in your letter are acceptable to my Government.

This affirmative letter to you and your letter will therefore constitute an arrangement between the United Nations and the Government of the Netherlands which shall enter into force on the date of this 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*) Hans J. HEINEMANN
Ambassador
Permanent Representative
of the Kingdom of The Netherlands

(*c*) Exchange of letters constituting an agreement between the United Nations and the Government of Sweden on the Tenth United Nations International Training Course on Remote Sensing Education for Educators, organized in cooperation with the Government of Sweden. Signed at Vienna on 23 February 2000 and 4 April 2000[5]

I

LETTER FROM THE UNITED NATIONS

23 February 2000

Dear Sir,

Tenth United Nations International Training Course on Remote Sensing Education for Educators organized in cooperation with the Government of Sweden, 2 May–9 June 2000

I have the honour to refer to resolution 54/67 adopted by the General Assembly on 6 December 1999, and in particular to its paragraph 21, by which the General Assembly endorsed the United Nations Programme on Space Applications for 2000,

which included the organization of a training course on remote sensing education for educators in its programme of work.

The United Nations has received with appreciation the offer from Your Excellency's Government to host, as it has in the past, the Tenth United Nations International Training Course on Remote Sensing Education for Educators, which will be organized in cooperation with the Swedish International Development Cooperation Agency and Stockholm University for the benefit of developing countries. As Your Excellency is aware, this course will be hosted by Stockholm University, Stockholm and SSC Satellitbild in Kiruna from 2 May to 9 June 2000. Educators from the educational communities in developing countries will participate in the training course.

With the present letter, I seek your Government's agreement to the following:

1. The Government of Sweden and the United Nations will finance the international travel of thirteen (13) and twelve (12) participants respectively.

2. The Government of Sweden will provide room, board, medical care in case of acute illness or accidents, local transportation and an allowance for incidental expenses in Sweden for all twenty-five (25) participants.

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

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

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

4. All participants and all persons performing functions in connection with the Training Course shall have the right of unimpeded entry into and exit from Sweden. 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. It is further understood that your Government will be responsible for dealing with any claim against the United Nations arising out of:

(*a*) Injury to persons or damage to property in conference or office premises provided for the Training Course;

(*b*) The transportation provided by the Government;

(*c*) The employment for the Training Course of personnel provided or arranged by the Government,

and the Government shall hold the United Nations and its personnel harmless in respect of any such claim, resulting from the performance of the services under this Agreement, except where it is agreed by the Secretary-General of the United Nations and the Government that such claims arise from gross negligence or wilful misconduct of such persons.

6. 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 these proposed terms, the present letter and the letter in reply from your Government shall constitute an agreement between the Government of Sweden and the United Nations concerning the arrangements for the Training Course.

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

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF SWEDEN TO THE UNITED NATIONS OFFICE AT VIENNA

4 April 2000

Dear Sir,

In reply to your letter of 23 February 2000, I have the honour to inform you that the Government of Sweden has decided to conclude an agreement, in accordance with the proposal of the United Nations attached to your letter, concerning the arrangements for the Tenth United Nations International Training Course on Remote Sensing Education for Educators, to be held in Sweden.

It is therefore hereby agreed that your letter of 23 February 2000, together with the present letter, constitutes an agreement between the Government of Sweden and the United Nations concerning the arrangement for the Training Course mentioned above.

(*Signed*)
Björn SKALD
Ambassador
Permanent Representative of Sweden
to the United Nations Office at Vienna

(*d*) Memorandum of agreement between the United Nations and the Government of Sweden for the contribution of personnel to the International Tribunal for the Former Yugoslavia. Signed at The Hague on 28 April 2000.[6]

Whereas the United Nations Security Council, in its resolution 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) of 25 May 1993 the United Nations 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 the United Nations Security Council, in its resolution 1244 (1999) of 10 June 1999, decided on the deployment in Kosovo, under United Nations auspices, of an international civil and security presence,

Whereas the United Nations Security Council, in its resolution 1244 (1999) of 10 June 1999, demanded full cooperation by all concerned, including the international security presence, with the International Tribunal,

Whereas the Secretary-General may accept type II gratis personnel on an exceptional basis in accordance with the conditions established by the General Assembly in its resolution 51/243 of 15 September 1997 and guidelines approved by the General Assembly in its resolution 52/234 of 26 June 1998,

Whereas under General Assembly resolution 51/243, on 27 January 2000 the Secretary-General proceeded to approve a request of the Prosecutor of the International Tribunal to accept experts to provide temporary and urgent assistance for the specialized functions as identified by the Prosecutor, for the year 2000,

Whereas the Government of Sweden (hereinafter "the Government") offered to make available to the United Nations the services of qualified personnel to assist, in accordance with the terms of this Memorandum of Agreement,

Now therefore the United Nations and the Government (hereinafter "the Parties") have reached the following understanding:

Article I

OBLIGATIONS OF THE GOVERNMENT

1. The Government agrees to make available to the International Tribunal for the duration and purposes of this Agreement the services of expert personnel (hereinafter "Swedish Personnel") listed in annex I hereto. Changes and modifications to the annex may be made with the agreement of the Parties.[7]

2. The Government undertakes to pay all expenses in connection with the services of the Swedish Personnel, including salaries, travel costs to and from the location where the Swedish Personnel are based, and allowances and other benefits to which they are entitled, except as hereinafter provided. In this regard, annual leave may be taken by Swedish Personnel in accordance with their terms of service with the Government but may not exceed leave entitlements of staff members.

Accordingly, Swedish Personnel accepted for a period of six months or less may be granted leave up to a maximum of one and one half days for each full month of continuous service. Swedish Personnel accepted for a period of more than six months, and Swedish Personnel whose services are extended beyond six months may be granted leave up to a maximum of two and one half days for each full month of continuous service. Leave plans must be approved in advance by, or on behalf of, the head of the United Nations department or office concerned.

3. The Government undertakes to ensure that during the entire period of service under this Agreement, the Swedish Personnel are covered by adequate medical and life insurance, as well as insurance coverage for service-incurred illness, disability or death, with extended war risk coverage.

Article II

OBLIGATIONS OF THE UNITED NATIONS

1. The United Nations shall, as appropriate, provide the Swedish Personnel with office space, support staff and other resources necessary to carry out the tasks assigned to them.

2. Costs incurred by Swedish Personnel undertaking official travel in the discharge of their functions, insofar as not provided by the international civil and security presences deployed under United Nations auspices in Kosovo, shall be paid by the United Nations on the same basis as costs incurred by staff members, including payment of daily or mission subsistence allowance, as applicable.

3. The United Nations does not accept any liability for claims for compensation in respect of illness, injury or death of the Swedish Personnel, 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. Any amounts payable by the United Nations shall be reduced by amounts of any coverage under the insurance referred to in article I, section 3, of this Agreement.

Article III

OBLIGATIONS OF THE SWEDISH PERSONNEL

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

(*a*) The Swedish Personnel shall perform their functions under the authority, and in full compliance with the instructions of the Prosecutor of the International Tribunal, and any person acting on his or her behalf;

(*b*) The Swedish Personnel shall undertake to respect the impartiality and independence of the International Tribunal as a part of the United Nations 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 Swedish Personnel 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;

(*d*) The Swedish Personnel shall comply with all rules, regulations, instructions, procedures or directives issued by the United Nations and the International Tribunal, including those relating to communications with the information media and the possession of firearms or other weapons;

(*e*) The Swedish 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 Prosecutor of the International Tribunal, to the media or to any institution, person, Government or other authority external to the United Nations, any information that has not been made public, and which has become known to them by reason of their association with the United Nations. They shall not use any such information without the written authorization of the Prosecutor of the International Tribunal, 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 Swedish Personnel shall sign an undertaking in the form attached to this Agreement in annex II.[8]

Article IV

LEGAL STATUS OF THE SWEDISH PERSONNEL

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

2. While performing functions for the United Nations, the Swedish Personnel shall be considered as "experts on mission" within the meaning of article VI, sections 22 and 23, of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.

Article V

ACCOUNTABILITY

1. Unsatisfactory performance, or failure to conform to the standards of conduct set out above may lead to termination of service, for cause, at the initiative of the United Nations. One month's notice shall be given in such cases.

2. Any serious breach of the duties and obligations which, in the view of the Secretary-General, would justify separation before the end of the notice period will be immediately reported to the Government, with a view to obtaining agreement on an immediate cessation of service. The Secretary-General may decide to limit or bar access to United Nations premises of the individual involved when the circumstances so warrant.

3. The Government will reimburse the United Nations for financial loss or for damage to United Nations–owned equipment or property caused by Swedish Personnel provided by the Government if such loss or damage (*a*) occurred outside the performance of services with the United Nations, or (*b*) arose or resulted from gross negligence or wilful misconduct or violation or reckless disregard of applicable rules and policies by such Swedish Personnel.

Article VI

THIRD-PARTY CLAIMS

The United Nations shall be responsible for dealing with claims by third parties where the loss of or damage to their property, or death or personal injury, was caused by the actions or omissions of the Swedish Personnel in the performance of services to the United Nations under the agreement with the Government. However, if the loss, damage, death or injury arose from gross negligence or wilful misconduct of the Swedish Personnel provided by the donor, the Government shall be liable to the United Nations for all amounts paid by the United Nations to the claimants and all costs incurred by the United Nations in settling such claims.

Article VII

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 VIII

SETTLEMENT OF DISPUTES

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

Article IX

ENTRY INTO FORCE; DURATION AND TERMINATION

The Agreement shall enter into force on 28 April 2000, and shall remain in force for six months 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 X

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 Government of Sweden have signed this Agreement.

DONE at The Hague, this twenty-eighth day of April in the year 2000, in two originals in the English language.

For the United Nations:
(*Signed*)
Dorothee DE SAMPAYO GARRIDO-NIJGH
Registrar

For the Government of Sweden:
(*Signed*)
Per Vilheim ANDERMAN
Chargé d'Affaires, Embassy of Sweden
The Hague

(*e*) Agreement between the United Nations and the Democratic Republic of the Congo on the status of the United Nations Organization Mission in the Democratic Republic of the Congo. Signed at Kinshasa on 4 May 2000[9]

I. Definitions

1. For the purpose of this Agreement the following definitions shall apply:

(*a*) "MONUC" means the United Nations Organization Mission in the Democratic Republic of the Congo established in accordance with Security Council resolution 1291 (2000) with the mandate described in the above-mentioned resolution on the basis of the recommendations made by the Secretary-General in his report dated 17 January 2000 (S/2000/30).

MONUC shall consist of:

(i) The "Special Representative" appointed by the Secretary-General of the United Nations with the consent of the Security Council. Any reference to the Special Representative in this Agreement shall, except in paragraph 26, include any member of MONUC to whom he delegates a specified function or authority;

(ii) A "civilian component" consisting of United Nations officials and of other persons assigned by the Secretary-General to assist the Special Representative or made available by participating States to serve as part of MONUC;

(iii) A "military component" consisting of military and civilian personnel made available to MONUC by participating States at the request of the Secretary-General;

(*b*) A "member of MONUC" means the Special Representative of the Secretary-General and any member of the civilian or military components;

(*c*) "The Government" means the Government of the Democratic Republic of the Congo;

(*d*) "The territory" means the territory of the Democratic Republic of the Congo;

(*e*) A "participating State" means a State providing personnel, services, equipment, provisions, supplies, material and other goods to any of the above-mentioned components of MONUC;

(*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 persons, other than members of MONUC, engaged by the United Nations, including juridical as well as natural persons and their employees and subcontractors, to perform services and/or supply equipment, provisions, supplies, materials and other goods in support of MONUC activities. Such contractors shall not be considered third-party beneficiaries to this Agreement;

(*h*) "Vehicles" means civilian and military vehicles in use by the United Nations and operated by members of MONUC and contractors in support of MONUC activities;

(*i*) "Vessels" means civilian and military vessels in use by the United Nations and operated by members of MONUC, participating States and contractors, in support of MONUC activities;

(*j*) "Aircraft" means civilian and military aircraft in use by the United Nations and operated by members of MONUC, participating States and contractors, in support of MONUC activities.

II. Application of the present Agreement

2. Unless specifically provided otherwise, the provisions of this Agreement and any obligation undertaken by the Government or any privilege, immunity, facility or concession granted to MONUC or any member thereof or to contractors apply in the Democratic Republic of the Congo only.

III. Application of the Convention

3. MONUC, its property, funds and assets, and its members, including the Special Representative, shall enjoy the privileges and immunities specified in this Agreement as well as those provided for in the Convention, to which the Democratic Republic of the Congo is a party.

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

IV. Status of MONUC

5. MONUC and its members shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the spirit of those arrangements. MONUC 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. Without prejudice to the mandate of MONUC and its international status:

(*a*) The United Nations shall ensure that MONUC shall conduct its operation in the Democratic Republic of the Congo with full respect for the principles and rules of the international conventions applicable to the conduct of military personnel. These international conventions include the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977 and the United Nations Educational, Scientific and Cultural Organization Convention of 14 May 1954 on the Protection of Cultural Property in the Event of Armed Conflict;

(*b*) The Government undertakes to treat at all times the military personnel of MONUC with full respect for the principles and rules of the international conventions applicable to the treatment of military personnel. These international conventions include the four Geneva Conventions of 12 April 1949 and their Additional Protocols of 8 June 1977.

MONUC and the Government shall therefore ensure that members of their respective military personnel are fully acquainted with the principles and rules of the above-mentioned international instruments.

7. The Government undertakes to respect the exclusively international nature of MONUC, just as MONUC undertakes to respect the sovereignty and territorial integrity of the Democratic Republic of the Congo.

United Nations flag, markings and identification

8. The Government recognizes the right of MONUC to display within the Democratic Republic of the Congo the United Nations flag on its headquarters, camps or other premises, vehicles, vessels and otherwise as decided by the Special Representative. Other flags or pennants may be displayed only in exceptional cases. In these cases, MONUC shall give sympathetic consideration to observations or requests of the Government.

9. Vehicles, vessels and aircraft of MONUC shall carry a distinctive United Nations identification, which shall be notified to the Government.

Communications

10. MONUC shall enjoy the facilities in 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 this Agreement shall be dealt with pursuant to the relevant provisions of the Convention.

11. Subject to the provisions of paragraph 10:

(*a*) MONUC shall have the right to install, in consultation with the Government, and operate United Nations radio stations to disseminate information relating to its mandate. MONUC shall also have the right to install and operate radio sending and receiving stations as well as satellite systems to connect appropriate points within the territory of the Democratic Republic of the Congo with each other and with United Nations offices in other countries, and to exchange telephone, voice, facsimile and other electronic data with the United Nations global telecommunications network. The United Nations radio stations and telecommunication services shall be operated in accordance with the International Telecommunication Convention and Regulations and the relevant frequencies on which any such station may be operated shall be decided upon in cooperation with the Government;

(*b*) MONUC shall enjoy, within the territory of the Democratic Republic of the Congo, the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, electronic mail, facsimile or any other means, and of establishing the necessary facilities for maintaining such communications within and between premises of MONUC, including the laying of cables and land lines 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 telephone, facsimile and other electronic data 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 telephone, facsimile and other electronic data will be charged at the most favourable rate;

(*c*) MONUC may make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of MONUC. The Government shall be informed of the nature of such arrangements

and shall not interfere with or apply censorship to the mail of MONUC or its members. In the event that postal arrangements applying to private mail of members of MONUC are extended to transfer 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

12. MONUC and its members as well as contractors shall enjoy, together with vehicles, including vehicles of contractors used exclusively in the performance of their services for MONUC, vessels, aircraft and equipment, freedom of movement without delay throughout the Democratic Republic of the Congo. 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 Democratic Republic of the Congo, be coordinated with the Government. The Government undertakes to supply MONUC, where necessary, with maps and other information, including locations of minefields and other dangers and impediments, which may be useful in facilitating its movements.

13. Vehicles shall not be subject to registration or licensing by the Government, provided that all such vehicles shall carry the third-party insurance required by relevant legislation.

14. MONUC and its members and contractors, together with their vehicles, including vehicles of contractors used exclusively in the performance of their services for MONUC, vessels and aircraft may use roads, bridges, canals and other waters, port facilities, airfields and airspace without the payment of dues, tolls or charges, including wharfage charges. However, MONUC will not claim exemption from charges which are in fact charges for services rendered, it being understood that such charges for services rendered will be charged at the most favourable rates.

Privileges and immunities of MONUC

15. MONUC, 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 MONUC shall also apply to the property, funds and assets of participating States used in the Democratic Republic of the Congo in connection with the national contingents serving in MONUC, as provided for in paragraph 4 of this Agreement. The Government recognizes the right of MONUC in particular:

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

(*b*) To establish, maintain and operate commissaries at its headquarters, camps and posts for the benefit of the members of MONUC, but not of locally recruited personnel. 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 MONUC, 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, fuel and other goods which are for the exclusive and official use of MONUC 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, fuel 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 of the Democratic Republic of the Congo or to an entity nominated by them.

To the end that such importation, clearances, transfer or exportation may be effected with the least possible delay, a mutually satisfactory procedure, including documentation, shall be agreed between MONUC and the Government at the earliest possible date.

V. FACILITIES FOR MONUC AND ITS CONTRACTORS

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

16. The Government of the Democratic Republic of the Congo shall provide without cost to MONUC and in agreement with the Special Representative such areas for headquarters, camps or other premises as may be necessary for the conduct of the operational and administrative activities of MONUC. Without prejudice to the fact that all such premises remain Democratic Republic of the Congo territory, they shall be inviolable and subject to the exclusive control and authority of the United Nations. The Government shall guarantee unimpeded access to such United Nations premises. Where United Nations troops are co-located with military personnel of the host country, a permanent, direct and immediate access by MONUC to those premises shall be guaranteed.

17. The Government undertakes to assist MONUC 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 MONUC as to essential government services. Where such utilities or facilities are not provided free of charge, payment shall be made by MONUC on terms to be agreed with the competent authority. MONUC shall be responsible for the maintenance and upkeep of facilities so provided.

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

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

Provisions, supplies and services, and sanitary arrangements

20. The Government agrees to grant expeditiously all necessary authorizations, permits and licences required for the importation and exportation of equipment, provisions, supplies, materials and other goods exclusively used in support of MONUC, including in respect of importation and exportation by contractors, free of any restrictions and without the payment of duties, charges or taxes including value-added tax.

21. The Government undertakes to assist MONUC as far as possible in obtaining equipment, provisions, supplies, fuel, materials and other goods and services required for its subsistence and operations from local sources. In respect of equipment, provisions, supplies, materials and other goods purchased locally by MONUC or by contractors for the official and exclusive use of MONUC, the Government shall make appropriate administrative arrangements for the remission or return of any excise or tax payable as part of the price. The Government shall exempt MONUC and contractors from general sales taxes in respect of all official local purchases. In making purchases on the local market, MONUC shall, on the basis of observations made and information provided by the Government in that respect, avoid any adverse effect on the local economy.

22. For the proper performance of the services provided by contractors, other than Democratic Republic of the Congo nationals, in support of MONUC, the Government agrees to provide contractors with facilities concerning their entry into and departure from the Democratic Republic of the Congo as well as their repatriation in time of crisis. For this purpose, the Government shall promptly issue to contractors, free of charge and without any restrictions, all necessary visas, licences or permits. Contractors other than Democratic Republic of the Congo nationals shall be accorded exemption from taxes in the Democratic Republic of the Congo on the services provided to MONUC, including corporate, income, social security and other similar taxes arising directly from the provision of such services.

23. MONUC 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

24. MONUC 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 MONUC and to accelerate the process of such recruitment.

Currency

25. The Government undertakes to make available to MONUC, against reimbursement in mutually acceptable currency, Democratic Republic of the Congo currency required for the use of MONUC, including the pay of its members, at the rate of exchange most favourable to MONUC.

VI. Status of the members of MONUC

Privileges and immunities

26. The Special Representative, the Commander of the military component of MONUC 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 referred to therein shall be those accorded to diplomatic envoys by international law.

27. Officials of the United Nations assigned to the civilian component to serve with MONUC, as well as United Nations Volunteers who shall be assimilated

thereto, shall remain officials of the United Nations entitled to the privileges and immunities listed in articles V and VII of the Convention.

28. Military observers 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 article VI of the Convention.

29. Military personnel of national contingents assigned to the military component of MONUC shall enjoy the privileges and immunities specifically provided for in this Agreement.

30. Unless otherwise specified in this Agreement, locally recruited personnel of MONUC 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.

31. Members of MONUC 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 Democratic Republic of the Congo. They shall also be exempt from all other direct taxes, except municipal rates for services enjoyed, and from all registration fees and charges.

32. Members of MONUC shall have the right to import free of duty their personal effects in connection with their arrival in the Democratic Republic of the Congo. They shall be subject to the laws and regulations governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in the Democratic Republic of the Congo with MONUC. Special facilities will be granted by the Government for the speedy processing of entry and exit formalities for all members of MONUC, including the military component, upon prior written notification. On departure from the Democratic Republic of the Congo, members of MONUC 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 MONUC.

33. 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 the Democratic Republic of the Congo by the members of MONUC, in accordance with this Agreement.

Entry, residence and departure

34. The Special Representative and members of MONUC shall, whenever so required by the Special Representative, have the right to enter into, reside in and depart from the Democratic Republic of the Congo.

35. The Government undertakes to facilitate the entry into and departure from the Democratic Republic of the Congo of the Special Representative and members of MONUC and shall be kept informed of such movement. For that purpose, the Special Representative and members of MONUC shall be exempt from passport and visa regulations and immigration inspection and restrictions as well as payment of any fees or charges on entering into or departing from the territory of the Democratic Republic of the Congo. They shall also be exempt from any regulations

governing the residence of aliens in the Democratic Republic of the Congo, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in the Democratic Republic of the Congo.

36. For the purpose of such entry or departure, members of MONUC 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 37 of this Agreement, except in the case of first entry, when the United Nations laissez-passer, national passport or personal identity card issued by the United Nations or appropriate authorities of a participating State may be accepted in lieu of said identity card.

Identification

37. The Special Representative shall issue to each member of MONUC before or as soon as possible after such member's first entry into the Democratic Republic of the Congo, as well as to all locally recruited personnel and contractors, a numbered identity card, showing the bearer's name and photograph. Except as provided for in paragraph 36 of this Agreement, such identity card shall be the only document required of a member of MONUC.

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

Uniforms and arms

39. Military members and other categories of MONUC personnel shall wear, while performing official duties, the national 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 members of MONUC may be authorized by the Special Representative at other times. Military members and other civilian personnel of MONUC and United Nations Security Officers designated by the Special Representative may possess and carry arms while on duty in accordance with their orders.

Permits and licences

40. 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 MONUC, including locally recruited personnel, of any MONUC vehicles and for the practice of any profession or occupation in connection with the functioning of MONUC, provided that no permit 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.

41. The Government agrees to accept as valid, and where necessary to validate, free of charge and without any restrictions, licences and certificates already issued by appropriate authorities in other States in respect of aircraft and vessels, including those operated by contractors exclusively for MONUC. Without prejudice to the foregoing, the Government further agrees to grant expeditiously, free of charge and without any restrictions, necessary authorizations, licences and certificates, where required, for the acquisition, use, operation and maintenance of aircraft and vessels.

42. Without prejudice to the provisions of paragraph 39, 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 MONUC for the carrying or use of firearms or ammunition in connection with the functioning of MONUC.

Military police, arrest and transfer of custody, and mutual assistance

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

44. The military police of MONUC shall have the power of arrest over the military members of MONUC. 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 43 above may take into custody any other person on the premises of MONUC. Such other person shall be delivered immediately to the nearest appropriate official of the Government for the purpose of dealing with any offence or disturbance on such premises.

45. Subject to the provisions of paragraphs 26 and 28, officials of the Government may take into custody any member of MONUC:

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

(*b*) When such a member of MONUC 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 MONUC, whereafter the provisions of paragraph 51 shall apply mutatis mutandis.

46. When a person is taken into custody under paragraph 44 or paragraph 45 (*b*), MONUC 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.

47. MONUC 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 the terms 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 44 to 46.

48. The Government shall take all appropriate measures to ensure the safety and security of MONUC and its members. Upon the request of the Special Representative of the Secretary-General, the Government shall provide such security as is necessary to protect MONUC, its property and members during the exercise of their functions.

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

Jurisdiction

50. All members of MONUC, 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 MONUC and after the expiration of the other provisions of this Agreement.

51. Should the Government consider that any member of MONUC 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 26:

(*a*) If the accused person is a member of the civilian 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 instituted. Failing such agreement the question shall be resolved as provided in paragraph 57 of this Agreement;

(*b*) Military members of the military component of MONUC 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 Democratic Republic of the Congo.

52. If any civil proceeding is instituted against a member of MONUC before any court of the Democratic Republic of the Congo, 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 55 of this 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 MONUC 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 no more than 90 days. Property of a member of MONUC 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. The personal liberty of a member of MONUC shall not be restricted in a civil proceeding, whether to enforce a judgement, to compel an oath or for any other reason.

Deceased members

53. The Special Representative shall have the right to take charge of and dispose of the body of a member of MONUC who dies in the Democratic Republic of the Congo, as well as that member's personal property located within the Democratic Republic of the Congo, in accordance with United Nations procedures.

VII. Limitation of liability of the United Nations

54. Claims for property loss or damage and for personal injury, illness or death arising from or directly attributed to MONUC, except for those arising from operational necessity, and which cannot be settled through the internal procedures of the United Nations, shall be settled by the United Nations in the manner provided for in article 55 of this Agreement, provided that the claim is submitted within six months following the occurrence of the loss, damage or injury, or, if the claimant did not know or could not have reasonably known of such loss or injury, within six months from the time he/she discovered the loss or injury, but in any event not later than one year after the termination of the mandate of the operation. Upon determination of liability as provided in this Agreement, the United Nations shall pay compensation within such financial limitations as are approved by the General Assembly in its resolution 52/247 of 26 June 1998.

VIII. Settlement of disputes

55. Except as provided in paragraph 57, any dispute or claim of a private law character, not resulting from the operational necessity of MONUC, to which MONUC or any member thereof is a party and over which the courts of the Democratic Republic of the Congo do not have jurisdiction because of any provision of this Agreement shall be settled by a standing claims commission to be established for that purpose. One member of the commission shall be appointed by the Secretary-General of the United Nations, one member by the Government and a chairman jointly by the Secretary-General and the Government. If no agreement as to the chairman is reached within 30 days of the appointment of the first member of the commission, the President of the International Court of Justice may, at the request of either the Secretary-General of the United Nations or the Government, 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. The awards of the commission shall be notified to the parties and, if against a member of MONUC, the Special Representative or the Secretary-General of the United Nations shall use his best endeavours to ensure compliance.

56. 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.

57. All other disputes between MONUC and the Government concerning the interpretation or application of this 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.

58. All differences between the United Nations and the Government of the Democratic Republic of the Congo 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

59. The Special Representative and the Government may conclude arrangements supplemental to this Agreement.

X. Liaison

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

XI. Miscellaneous provisions

61. Wherever this Agreement refers to privileges, immunities and rights of MONUC and to the facilities that the Democratic Republic of the Congo undertakes to provide to MONUC, the Government shall have the ultimate responsibility for the implementation and fulfilment of such privileges, immunities, rights and facilities by the appropriate local authorities.

62. This Agreement shall enter into force upon signature by or for the Secretary-General of the United Nations and the Government.

63. This Agreement shall remain in force until the departure of the final element of MONUC from the Democratic Republic of the Congo, except that:

(*a*) The provisions of paragraphs 50, 57 and 58 shall remain in force;

(*b*) The provisions of paragraphs 54 and 55 shall remain in force until all claims made in accordance with the provisions of paragraph 54 have been settled.

Done at Kinshasa on 4 May 2000, in duplicate, in the French language.

For the United Nations:
(*Signed*)
Kamel Morjane
Special Representative
of the Secretary-General

For the Government
of the Democratic Republic of the Congo:
(*Signed*)
Yerodia Abdoulaye Ndombashi
Minister of Foreign Affairs
and International Cooperation
Minister of State
of the Democratic Republic of the Congo

(*f*) Agreement to regulate the relationship between the United Nations and the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization. Signed at New York on 26 May 2000[10]

The United Nations and the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization,

Bearing in mind the relevant provisions of the Charter of the United Nations (hereinafter the "Charter") and of the Comprehensive Nuclear-Test-Ban Treaty (hereinafter the "Treaty"),

Bearing also in mind resolution CTBT/MSS/Res/1 of 19 November 1996 of the Meeting of States Signatories to the Treaty (hereinafter the "Resolution") establishing the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty (hereinafter the "Commission"),

Recalling that in accordance with the Charter, the United Nations is the principal organization dealing with matters relating to the maintenance of international peace and security and acts as a centre for harmonizing the actions of nations in the attainment of goals set out in the Charter,

Recalling further the relevant provisions of the Treaty which provide for cooperation between the United Nations and the Comprehensive Nuclear-Test-Ban Treaty Organization,

Noting that, pursuant to the Resolution, the Commission was established for the purpose of carrying out the necessary preparations for the effective implementation of the Treaty,

Acknowledging that the activities of the Commission performed pursuant to the Treaty and the Resolution will contribute to the realization of the purposes and principles of the Charter,

Desiring to make provision for a mutually beneficial relationship whereby the discharge of their respective responsibilities may be facilitated,

Noting that General Assembly resolution 54/65 of 6 December 1999 and the decision of the Commission of 29 April 1999, contained in CTBT/PC-8/1/Annex IX, call for the conclusion of an agreement to regulate the relationship between the United Nations and the Commission,

Have agreed as follows:

Article I

GENERAL

1. The United Nations recognizes the Commission as an entity in working relationship with the United Nations as defined by this Agreement, which by virtue of the Resolution has standing as an international organization, authority to negotiate and enter into agreements, and such other legal capacity as necessary for the exercise of its functions and the fulfilment of its purposes.

2. The Commission recognizes the responsibilities of the United Nations under the Charter, in particular, in the fields of international peace and security and economic and social, cultural and humanitarian development, protection and preservation of the environment and peaceful settlement of disputes.

3. The Commission undertakes to conduct its activities in accordance with the purposes and principles of the Charter and with due regard to the policies of the United Nations furthering those purposes and principles.

Article II

COOPERATION AND COORDINATION

1. The United Nations and the Commission, recognizing the need to work jointly to achieve their common objectives, and with a view to facilitating the effective exercise of their responsibilities, agree to cooperate closely and to consult and to maintain a close working relationship on matters of mutual interest and concern. To that end, the United Nations and the Commission shall cooperate with each other in accordance with the provisions of their respective constituent instruments.

2. In view of the responsibilities of the Commission under the Resolution, the United Nations and the Commission shall, in particular, cooperate in the implementation of the following provisions of the Treaty:

(*a*) Paragraph 13 of article II of the Treaty related to the convening by the Secretary-General of the United Nations as the depositary of the Treaty of the initial session of the Conference of the States Parties to the Treaty;

(*b*) Article XIV of the Treaty related to the convening by the depositary, upon the request of a majority of States that have already deposited their instruments of ratification, of Conferences convened to consider and decide by consensus what measures consistent with international law may be undertaken to accelerate the ratification process in order to facilitate the early entry into force of the Treaty.

3. The Commission, within its competence and in accordance with the provisions of the Treaty, shall cooperate with the United Nations by providing to it at its request such information and assistance as may be required in the exercise of its responsibilities under the Charter. In case confidential information is provided, the United Nations shall preserve the confidential character of that information.

4. The United Nations and the Commission recognize the necessity of achieving, where applicable, effective coordination of the activities and services of the United Nations and the Commission with a view to avoiding unnecessary duplication of such activities and services, particularly with respect to common services at the Vienna International Centre.

5. The Secretariat of the United Nations and the Provisional Technical Secretariat of the Commission shall maintain a close working relationship on issues of mutual concern in accordance with such arrangements as may be agreed from time to time.

6. The Secretary-General of the United Nations and the Executive Secretary of the Commission shall consult from time to time regarding their respective responsibilities and, in particular, regarding such administrative arrangements as may be necessary to enable the United Nations and the Commission effectively to carry out their functions and to ensure effective cooperation and liaison between the Secretariat of the United Nations and the Provisional Technical Secretariat of the Commission.

Article III

Reciprocal representation

1. The Secretary-General of the United Nations, or his representative, shall be entitled to attend and participate without vote in sessions of the Commission and, subject to the rules of procedure and practice of the bodies concerned, in meetings of such other bodies as may be convened by the Commission, whenever matters of interest to the United Nations are under consideration.

2. The Executive Secretary of the Commission shall be entitled to attend plenary meetings of the General Assembly for the purposes of consultation. The Executive Secretary of the Commission shall be entitled to attend and participate without vote in meetings of the Committees of the General Assembly and, subject to the rules of procedure and practice of the bodies concerned, in meetings of subsidiary bodies of the General Assembly and the Committees concerning matters of interest to the Commission. Whenever other principal organs of the United Nations consider matters which are of relevance to the activities of the Commission, at the invitation of that organ, the Executive Secretary may attend its meetings to supply it with information or give it other assistance with regard to matters within the competence of the Commission. The Executive Secretary may, for the purposes of this paragraph, designate any person as his representative.

3. Written statements presented by the United Nations to the Commission for distribution shall be distributed by the Provisional Technical Secretariat of the Commission to all members of the appropriate organ or organs of the Commission. Written statements presented by the Commission to the United Nations for distribution shall be distributed by the Secretariat of the United Nations to all members of the appropriate organ or organs of the United Nations.

Article IV

REPORTING

1. The Commission, within its competence and in accordance with the provisions of the Treaty, shall keep the United Nations informed of its activities, and may submit through the Secretary-General of the United Nations reports on them on a regular or ad hoc basis to the principal organs of the United Nations concerned.

2. Should the Secretary-General of the United Nations report to the United Nations on the common activities of the United Nations and the Commission or on the development of relations between them, any such report shall be promptly transmitted by the Secretary-General of the United Nations to the Commission.

3. Should the Executive Secretary of the Commission report to the Commission on the common activities of the Commission and the United Nations or on the development of relations between them, any such report shall be promptly transmitted by the Executive Secretary of the Commission to the United Nations.

Article V

RESOLUTIONS OF THE UNITED NATIONS

The Secretary-General of the United Nations shall transmit to the Executive Secretary of the Commission resolutions adopted by the principal organs of the United Nations pertaining to issues relevant to the Treaty and the Resolution. Upon receipt thereof, the Executive Secretary of the Commission shall bring the resolutions concerned to the attention of the Commission and report back to the United Nations on any action taken by the Commission as appropriate.

Article VI

AGENDA ITEMS

1. The United Nations may propose agenda items for consideration by the Commission. In such cases, the United Nations shall notify the Executive Secretary of the Commission of the agenda item or items concerned, and the Executive Secretary of the Commission, in accordance with his authority and the relevant rules of procedure, shall bring any such agenda item or items to the attention of the Commission.

2. The Commission may propose agenda items for consideration by the United Nations. In such cases, the Commission shall notify the Secretary-General of the United Nations of the agenda item or items concerned, and the Secretary-General of the United Nations shall, in accordance with his authority and the relevant rules of procedure, bring any such item or items to the attention of the principal organs of the United Nations concerned.

Article VII

EXCHANGE OF INFORMATION AND DOCUMENTS

1. The United Nations and the Commission shall arrange for the exchange of information, publications and documents of mutual interest.

2. In fulfilment of the responsibilities entrusted to him under article XVI of the Treaty and in the light of the responsibilities of the Commission under paragraph 18 of the Resolution, the Secretary-General of the United Nations shall transmit to the Commission copies of communications received by the Secretary-General of the United Nations in the capacity of depositary of the Treaty.

3. The Commission, to the extent practicable, shall furnish special studies or information requested by the United Nations. The submission of such studies and information shall be subject to conditions set forth in article XII of the present Agreement.

4. The United Nations, to the extent practicable, shall likewise furnish the Commission, upon its request, with special studies or information relating to matters within the competence of the Commission. The submission of such studies and information shall be subject to conditions set forth in article XII of the present Agreement.

5. The United Nations and the Commission shall make every effort to achieve maximum cooperation with a view to avoiding undesirable duplication in the collection, analysis, publication and dissemination of information related to matters of mutual interest. They will strive to combine, where appropriate, their efforts to secure the greatest possible usefulness and utilization of such information and to minimize the burdens placed on Governments and other international organizations from which such information may be collected.

Article VIII

INTERNATIONAL COURT OF JUSTICE

The Commission agrees, subject to such arrangements as it may make for the safeguarding of confidential information, to furnish any information which may be requested by the International Court of Justice in accordance with the Statute of that Court.

Article IX

UNITED NATIONS LAISSEZ-PASSER

The United Nations recognizes that due to the special nature and universality of the work of the Commission, as defined in the Resolution, officials of the Commission shall be entitled, in accordance with such special arrangements as may be concluded between the Secretary-General of the United Nations and the Executive Secretary of the Commission, to use the laissez-passer of the United Nations as a valid travel document where such use is recognized by States in the instruments or arrangements defining the privileges and immunities of the Commission.

Article X

PERSONNEL ARRANGEMENTS

1. The United Nations and the Commission agree to consult whenever necessary concerning matters of common interest relating to the terms and conditions of employment of staff.

2. The United Nations and the Commission agree to cooperate regarding the exchange of personnel, bearing in mind the nationality of States signatories to the Treaty, and to determine conditions of such cooperation in supplementary arrangements to be concluded for that purpose in accordance with article XV of the Agreement.

Article XI

BUDGETARY AND FINANCIAL MATTERS

1. The Commission recognizes the desirability of establishing budgetary and financial cooperation with the United Nations in order that the Commission may benefit from the experience of the United Nations in this field and in order to ensure, as far as may be practicable, the consistency of the administrative operation of the two organizations in the field.

2. Subject to the provision of article XII of this Agreement, the United Nations may arrange for studies to be undertaken concerning budgetary and financial matters of interest to the Commission with a view to, as far as may be practicable, achieving coordination and securing of consistency in such matters.

3. The Commission agrees to follow, as far as may be practicable and appropriate, the standard budgetary and financial practices and forms used by the United Nations.

Article XII

COSTS AND EXPENSES

The costs and expenses resulting from any cooperation or the provision of services pursuant to this Agreement shall be subject to separate arrangements between the United Nations and the Commission.

Article XIII

PROTECTION OF CONFIDENTIALITY

Subject to the provisions of paragraphs 1 and 3 of article II, nothing in this Agreement shall be so construed as to require either the United Nations or the Commission to furnish any material, data and information the furnishing of which could, in its judgement, require it to violate its policy regarding the confidentiality of such information.

Article XIV

REGISTRATION

Either the United Nations or the Commission may register this Agreement with the United Nations.

Article XV

IMPLEMENTATION OF THE AGREEMENT

The Secretary-General of the United Nations and the Executive Secretary of the Commission may enter into such supplementary arrangements for the implementation of this Agreement as may be found desirable.

Article XVI

AMENDMENTS

This Agreement may be amended by mutual consent between the United Nations and the Commission. Any amendment, once agreed upon, shall enter into force on its approval by the General Assembly of the United Nations and the Commission.

Article XVII

ENTRY INTO FORCE

This Agreement shall enter into force on its approval by the General Assembly of the United Nations and the Commission.

IN WITNESS WHEREOF the undersigned, being duly authorized representatives of the United Nations and the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization, have signed the present Agreement.

SIGNED this 10th day of May in the year two thousand at New York in two originals in the English language.

For the United Nations:
(*Signed*)
Kofi A. ANNAN
Secretary-General

For the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization:
(*Signed*)
Wolfgang HOFFMANN
Executive Secretary

(*g*) Protocol of technical cooperation between the United Nations (United Nations Transitional Administration in East Timor, founded in Brazil—United Nations Cooperation Agreement) and the Government of the Federative Republic of Brazil. Signed at Dili on 22 July 2000[11]

The Government of the Federative Republic of Brazil and the United Nations Transitional Administration in East Timor (hereinafter referred to as the "Contracting Parties"),

Considering the desire to establish a cooperation relationship between the Contracting Parties within the scope of the Basic Agreement on Technical Assistance between the Government of the Federative Republic of Brazil and the United Nations, its Specialized Agencies and the International Atomic Energy Agency, signed on 29 December 1964 and promulgated by Decree No. 59,308 of 23 September 1966,

Considering the spirit of United Nations Security Council resolution 1272 (1999) of 25 October 1999, which established the United Nations Transitional Administration in East Timor,

Recognizing the need to support the efforts for East Timor's reconstruction,

Considering the need to develop actions of immediate social impact,

Convinced of the need to create a durable basis so that a new democratic society flourishes in East Timor,

Desirous of supporting capacity-building for an autonomous government,

Recognizing the need for the establishment of conditions for sustainable development,

Hereby agree as follows:

Article I

The present Protocol of Technical Cooperation, hereinafter referred to as "Protocol", founded in the Basic Agreement on Technical Assistance between the Government of the Federative Republic of Brazil and the United Nations, its Specialized Agencies and the International Atomic Energy Agency of 1964, as foreseen in article I, paragraph third, article III, paragraph first, and article IV, paragraph fourth, has the purpose to promote technical cooperation in priority areas defined by the Contracting Parties, in principle, in the field of education, health, agriculture, professional technical formation and support to small and medium-size enterprises.

Article II

1. For the implementation of the purposes of the present Protocol, project documents and technical cooperation activities will be developed.

2. The project documents and the technical cooperation activities will be defined by the executing institutions, in narrow coordination with the Contracting Parties.

3. Institutions from the public and private sectors shall take part in the projects and activities to be developed within the scope of the present Protocol, as well as non-governmental organizations.

4. The Contracting Parties can jointly or separately request the necessary financing for the execution of the projects and activities approved by their own funds from international organizations, funds, regional and international programmes and other donors.

Article III

1. The projects identified and prepared jointly with the executing institutions will be submitted to the Contracting Parties for their approval.

2. The Contracting Parties will make, in common agreement, periodic evaluation of the projects and activities.

Article IV

1. The present Protocol shall enter into force on the date of its signature and shall remain in force for the same period as United Nations Security Council resolution 1272 (1999), which established the United Nations Transitional Administration in East Timor. In case there is an extension of the resolution, on 31 January 2001, this Protocol shall also remain in force for the same period.

2. The Contracting Parties may, by mutual consent, modify or amend the present Protocol by notification. The modifications or amendments shall enter into force on the date they are formalized.

3. In case of termination of the present Protocol, the programmes, projects and activities in execution shall not be affected, except when the Contracting Parties expressly agree in writing.

DONE in Dili, on 22 July 2000, in three originals, in the Portuguese and English languages, both texts being equally authentic.

For the Government of the Federative Republic of Brazil:	For the United Nations Transitional Administration in East Timor:
(*Signed*)	(*Signed*)
Kywal DE OLIVEIRA	Sérgio Vieira DE MELLO
Chefe do Escritório de Represetação no Timor Leste	*Representante Especial do Secretário-Geral das Nações Unidas*

In the presence of the National Council of Timorese Resistance

(*h*) Agreement between the United Nations and the Kingdom of Swaziland on the enforcement of sentences of the International Tribunal for Rwanda. Signed at Mbabane on 30 August 2000[12]

The Kingdom of Swaziland, hereinafter called the "requested State", and the United Nations, acting through the International Tribunal for Rwanda, hereinafter called "the Tribunal",

Recalling article 26 of the Statute of the Tribunal, adopted by the Security Council in its resolution 955 (1994) of 8 November 1994, according to which imprisonment of persons sentenced by the Tribunal shall be served in Rwanda or in any of the States on 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 Tribunal,

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, 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 and the Basic Principles for the Treatment of Prisoners adopted by the General Assembly in its resolution 45/111 of 14 December 1990,

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

Have agreed as follows:

Article 1

PURPOSE AND SCOPE OF THE AGREEMENT

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

Article 2

PROCEDURE

1. A request to the requested State to enforce a sentence shall be made by the Assistant Secretary-General appointed in terms of article 16 of the Statute of the International Tribunal for Rwanda (hereinafter referred to as "the Registrar"), with the approval of the President of the Tribunal.

2. The Registrar shall provide the following documents and items 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/her further treatment in the requested State and any other factor relevant to the enforcement of the sentence;

(*d*) Certified copies of identification papers of the convicted person in the Tribunal's possession.

3. All communications to the requested State relating to matters provided for in this Agreement shall be made to the Minister, responsible for Correctional Services through the Minister, responsible for Foreign Affairs.

4. The requested State shall promptly decide upon the request of the Registrar, in accordance with national law or practice, and inform the Registrar of its decision whether or not to agree to receive the convicted person(s).

Article 3

ENFORCEMENT

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

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

3. 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

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

2. If, after transfer of the convicted person to the requested State, the Tribunal, in accordance with its Rules of Procedure and Evidence, orders that the convicted

person appear as a witness in a trial before it, the convicted person shall be transferred temporarily to the Tribunal for that purpose, conditional on his/her return to the requested State within the period decided by the Tribunal.

3. The Registrar shall transmit the order for the temporary transfer of the convicted person to the national authorities of the requested State. The Registrar shall ensure the proper transfer of the convicted person from the requested State to the Tribunal and back to the requested State for continued imprisonment after the expiration of the period of temporary transfer decided by the Tribunal. The convicted person shall receive credit for the period he/she may have spent in the custody of the Tribunal.

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 Tribunal for which he/she has already been tried by the 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 convicted person(s) at any time and on a periodic basis by the International Committee of the Red Cross (ICRC) or such other person or body as the Tribunal may designate for that purpose. The frequency of such visits shall be determined by the ICRC or the designated person or body. The ICRC or the designated person or body shall submit a confidential report based on the findings of these inspections to the requested State and to the President of the Tribunal.

2. Representatives of the requested State and the President of the Tribunal shall consult each other on the findings of the report referred to in paragraph 1. The President of the Tribunal may thereafter request the requested State to inform him/her of any changes made in the conditions of detention as suggested by the ICRC or the designated person or body.

Article 7

INFORMATION

1. The requested State shall immediately notify the Registrar of the following:

(*a*) The completion of the sentence by the convicted person, two months prior to such completion;

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

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

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

Article 8

COMMUTATION OF SENTENCE, PARDON AND EARLY RELEASE

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

2. The President of the Tribunal shall determine, in consultation with the judges of the Tribunal, whether commutation of sentence, pardon or any form of early release is appropriate. The Registrar shall communicate the President's determination to the requested State, which shall act accordingly.

Article 9

TERMINATION OF ENFORCEMENT

1. The enforcement shall cease:

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

(*b*) Upon pardon of the convicted person or upon completion of the sentence as commuted in accordance article 8 of this Agreement;

(*c*) Following a decision of the Tribunal, as provided for in paragraph 2 of this article;

(*d*) Upon the demise of the convicted person.

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

3. The competent authorities of the requested State shall terminate the enforcement of the sentence as soon as the requested State 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 a sentence, further enforcement has, for any legal or practical reason, become impossible, the requested State shall promptly so 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 at least sixty days following the notification of the Registrar before taking other measures on the matter.

Article 11

COSTS

1. Unless the parties agree otherwise:

(*a*) The Tribunal shall bear the expenses related to: (*a*) the transfer of the convicted person to and from the requested State; (*b*) the repatriation of the convicted person upon completion of his/her sentence; (*c*) in the case of death, repatriation of the body of the convicted person;

(*b*) The requested State shall pay all other expenses incurred in the enforcement of the sentence.

2. The Tribunal undertakes to approach donor countries and donor agencies with a view to securing financial assistance for any projects aimed at upgrading to international standards imprisonment conditions under which convicted persons are to serve their sentences pursuant to this Agreement.

3. To that end, the requested State may, where necessary, submit to the Registrar a request relating to such projects as are referred to in the preceding paragraph for the purpose of arriving, through consultation, at a mutually agreed understanding on any necessary action.

4. The Tribunal, in approaching the donor countries or donor agencies referred to in paragraph 2 above, shall bring to their attention any special circumstances which may entail extraordinary costs in respect of a convicted person who is to serve a sentence in the requested State pursuant to this Agreement.

Article 12

SUBSTITUTION CLAUSE

In the event that the Tribunal is to be wound up, the Registrar will inform the Security Council of any sentences whose enforcement remains to be completed pursuant to this Agreement.

Article 13

ENTRY INTO FORCE

This Agreement shall enter into force provisionally upon the signature of both parties, and definitively upon the date of notification by the requested State of ratification or approval of the Agreement by its competent authorities.

Article 14

DURATION OF THE AGREEMENT

1. Either of the parties may, after consulting the other party, terminate this Agreement by giving at least sixty days' prior notice in writing to the other party of its intention that the Agreement be terminated.

2. This Agreement shall, however, continue to apply for a period not exceeding six months with regard to any convicted person in respect of whom the requested State is, at the time of the termination of this Agreement, enforcing a sentence pronounced by the Tribunal.

Article 15

AMENDMENT

This Agreement may be amended by mutual consent of the parties.

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

DONE at Mbabane, this 30th day of August 2000, in duplicate, in English and French, both texts/being equally authentic.

For the Kingdom of Swaziland:
(*Signed*)
Albert H. N. SHABANGU
Minister of Foreign Affairs and Trade

For the United Nations:
(*Signed*)
Agwu Ukiwe OKALI
Assistant Secretary-General
Registrar of the International
Tribunal for Rwanda

3. AGREEMENTS RELATING TO THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Cooperation agreement between the United Nations (Office of the United Nations High Commissioner for Refugees) and the Government of the Czech Republic. Done at Prague on 8 February 2000[13]

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, non-governmental organizations to facilitate the voluntary repatriation of such refugees, or their integration 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 Government of the Czech Republic and the Office of the United Nations High Commissioner for Refugees wish to establish the terms and conditions under which the Office, within its mandate, shall be represented in the country,

Now therefore, the Government of the Czech Republic and the Office of the United Nations High Commissioner for Refugees, in a spirit of friendly cooperation, have entered into this Agreement.

Article I

DEFINITIONS

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

(*a*) "Government" means the Government of the Czech Republic;

(*b*) "Host country" means the Czech Republic;

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

(*d*) "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;

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

(*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 host country;

(*h*) "UNHCR representative" means the UNHCR official in charge of the UNHCR office in the host country;

(*i*) "UNHCR personnel" means UNHCR officials, experts on mission and persons performing services on behalf of UNHCR;

(*j*) "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) of 7 December 1946;

(*k*) "Experts on mission" means individuals, other than UNHCR officials or persons performing services on behalf of UNHCR, undertaking missions for UNHCR;

(*l*) "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 carrying out its programmes.

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 host 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 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, of other relevant decisions and resolutions relating to UNHCR adopted by United Nations organs and of article 35 of the Convention relating to the Status of Refugees of 1951 and article 2 of the Protocol relating to the Status of Refugees of 1967.

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 to UNHCR.

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 or other assistance, 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 IV

UNHCR OFFICE

1. The Government agrees to the establishment and maintenance of a UNHCR office or offices in the host 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 host 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 host country.

Article V

UNHCR PERSONNEL

1. UNHCR may assign to the office in the host country such UNHCR 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 host country.

3. UNHCR may designate officials to visit the host country for purposes of consulting and cooperating with the corresponding officials of the Government or other entities 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 appropriate measures which may be necessary to exempt UNHCR personnel 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 host country. Such facilities shall include but are not limited to 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, in agreement with UNHCR, shall assist UNHCR officials in finding appropriate office premises for the UNHCR office.

3. The Government, in agreement with UNHCR, shall arrange and provide financial assistance in the form of a voluntary contribution for the expenditures on local services and facilities for the UNHCR office, such as establishment, equipment, maintenance and rent, if any, of the office.

4. The Government shall ensure that the UNHCR office is at all times equipped with utilities.

5. 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.

6. The Government shall facilitate, when necessary, the location of suitable accommodation for UNHCR personnel recruited internationally.

Article VII

PRIVILEGES AND IMMUNITIES

The Government shall apply to UNHCR, its property, funds, 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 Czech Republic became a party by succession on 1 January 1993.

Article VIII

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 issued by UNHCR certifying their status under this Agreement.

Article IX

WAIVER OF IMMUNITY

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

Article X

SETTLEMENT OF DISPUTES

Any dispute between the Government and UNHCR 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 30 days of the request for arbitration either Party has not appointed an arbitrator or

if within 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. 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 XI

GENERAL PROVISIONS

1. This Agreement shall enter into force on the date of its signature by both Parties and shall continue in force until terminated under paragraph 5 of this article.

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 host 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 the Government or UNHCR. Amendments shall be made by joint written agreement.

5. Either Party may terminate this Agreement by notifying the other Party in writing. This Agreement shall cease to be in force six months after the day of such notification, except as regards the cessation of the activities of UNHCR in the Czech Republic, in which case the Agreement will cease to be in force upon removal of UNHCR, except for such provisions as may be applicable in connection with the orderly termination of the operations of UNHCR in the Czech Republic and the disposal of its property therein.

IN WITNESS WHEREOF the undersigned, being duly appointed representatives of the Government and UNHCR, respectively, have on behalf of the Parties signed this Agreement, in the Czech and English languages. In case of dispute relating to the interpretation of the present Agreement, the English version shall prevail.

DONE at Prague on 8 February 2000 in two originals, each in the Czech and English languages, both texts being equally authentic.

For the Government
of the Czech Republic:
(*Signed*)
Jan KAVAN

For the Office of the United Nations
High Commissioner for Refugees:
(*Signed*)
Sadako OGATA

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.[14] APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 21 NOVEMBER 1947

In 2000, 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*
Bulgaria	24 January 2000	IBRD IFC IMF WIPO UNIDO
France	2 August 2000	ILO FAO (Second revised text of Annex II) UNESCO ICAO WHO (Third revised text of Annex VII) IBRD IDA IFC IMF UPU ITU WMO IMO (Revised text of Annex XII) WIPO IFAD
Norway	22 November 2000	IDA WIPO IFAD UNIDO

As of 31 December 2000, 106 States were parties to the Convention.[15]

2. INTERNATIONAL LABOUR ORGANIZATION

Exchange of letters between the Director-General of the International Labour Office and the Minister for Foreign Affairs of Viet Nam concerning the conclusion of a provisional arrangement with a view to the establishment of an ILO office in Hanoi.[16] Signed at Geneva on 15 August 2000[17]

15 August 2000

Dear Mr. Minister,

I have the honour to refer to discussions between officials of the Government of the Socialist Republic of Viet Nam and of the International Labour Office concerning the conclusion of a provisional arrangement which would enable ILO to continue its cooperation with the Government and to take the first steps for the establishment of an ILO office in Hanoi. I understand that the following has been agreed between your Government and our organization:

> In order to enable ILO to continue its cooperation and to take the first steps for the establishment of such an office, pending the successful outcome of negotiations now taking place and the entry into force of the resulting agreement, the Government undertakes to grant to ILO and its internationally recruited officials performing functions in Viet Nam, as well as to its property, funds and assets, the privileges and immunities provided for in the Convention on the Privileges and Immunities of the Specialized Agencies adopted by the General Assembly of the United Nations on 21 November 1947.
>
> Locally recruited officials shall enjoy such immunities, privileges and exemptions as are enjoyed by locally recruited officials of the United Nations in accordance with the Convention on the Privileges and Immunities of the United Nations.
>
> All relevant provisions of the aforementioned Convention of 1947 shall apply to the granting of such privileges and immunities, including the organization's duty to waive immunity in the circumstances defined in section 22 and to cooperate with the government authorities for the proper administration of justice in accordance with section 23.

I look forward to receiving your Government's confirmation that the above provisional arrangement faithfully reflects the agreement that has been reached between us, and propose that this arrangement enter into effect immediately.

(*Signed*) Juan SOMAVIA

By a letter dated 1 September 2000, the Minister for Foreign Affairs of the Socialist Republic of Viet Nam confirmed to the Director-General of the International Labour Office that the terms of the provisional arrangement set forth in his letter faithfully reflected the agreement reached between the Socialist Republic of Viet Nam and the International Labour Office and that the arrangement would enter into effect immediately.

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3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Agreements relating to conferences, seminars and other meetings

For the purpose of holding international conferences on the territory of member States, UNESCO concluded various agreements which contained the following provisions concerning the legal status of the organization:

"Privileges and Immunities

"The Government of [name of the State] shall apply, in all matters relating to this meeting, the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies as well as annex IV thereto [if applicable: to which it has been a party from . . .].

"In particular, the Government shall not place any restriction on the entry into, sojourn in and departure from the territory of [name of the State] 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.

"Damage and accidents

"As long as the premises reserved for the meeting are at the disposal of UNESCO, the Government of [name of State] 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 [name of State] 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 [name of State] 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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4. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

(*a*) Agreement between the United Nations Industrial Development Organization and the Government of Colombia regarding the establishment of a UNIDO regional office in Colombia. Signed on 22 May 2000

. . .

Article III

1. The Government shall apply to UNIDO, including its property, funds, assets and its international officials, the provisions of the Convention on the Privileges and Immunities of the United Nations.

2. The UNIDO Field Representative and Regional Director and other international officials of the office, shall be granted such privileges and immunities as the Government accords to diplomatic envoys of similar rank.

(*b*) Agreement between the United Nations Industrial Development Organization and the Government of the Lebanese Republic regarding the establishment of a UNIDO regional office in Beirut, for Arab countries. Signed on 3 June 2000

…

Article III

The Government shall apply to the UNIDO regional office in Beirut, its property, funds, assets and its officials and experts on mission, the provisions of the Basic Cooperation Agreement concluded on 14 March 1989 between UNIDO and the Government.

Article IV

The level of privileges and immunities granted in accordance with the present Agreement 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 the Lebanese Republic. Any such adjustment shall be agreed to in a supplemental agreement to the present Agreement regarding the establishment of a UNIDO regional office in Beirut.

NOTES

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

[2] For the list of those States, see *Multilateral Treaties Deposited with the Secretary-General of the United Nations* (United Nations publication, Sales No. E.01.V.5).

[3] Came into force on 17 February 2000 by signature.

[4] Came into force on 18 February 2000, in accordance with the provisions of the said letters.

[5] Came into force on 4 April 2000, in accordance with the provisions of the said letters.

[6] Came into force on 28 April 2000 by signature.

[7] Annex I is not included.

[8] Annex II is not included.

[9] Came into force on 4 May 2000 by signature.

[10] Came into force on 26 May 2000 by signature.

[11] Came into force on 22 July 2000 by signature.

[12] Came into force provisionally on 30 August 2000 by signature.

[13] Came into force by signature on 8 February 2000.

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

[15] For the list of those States, see *Multilateral Treaties Deposited with the Secretary-General* (United Nations publication, Sales No. E.01.V.5).

[16] ILO, *Official Bulletin*, vol. LXXXIII, 2000, Series A, No. 2, p. 60.

[17] Came into force on 1 September 2000.

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*) 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

The 1968 Treaty on the Non-Proliferation of Nuclear Weapons[2] has been the cornerstone of the global nuclear non-proliferation regime. The number of States parties has steadily risen to 187, which has also rendered the Treaty the most widely adhered to multilateral disarmament agreement.

In accordance with article VIII of the Treaty, Review Conferences of the States parties have been held at five-year intervals since 1975. The 2000 Review Conference was convened from 24 April to 19 May in New York, with a total of 158 out of the 187 States parties participating. Cuba and Palestine attended as observers, as well as a number of United Nations specialized agencies and international and regional intergovernmental organizations.

The Conference marked the first time in 15 years that the parties had been able to achieve an agreed Final Document, which reaffirmed the central role of the Non-Proliferation Treaty in ongoing global efforts to strengthen nuclear non-proliferation and disarmament. The most critical and delicate achievement was the incorporation in the document of a set of practical steps for the systematic and progressive efforts to implement article VI. Those steps will provide benchmarks by which future progress by the States parties, especially by the nuclear-weapon States, can be measured. The most significant among the practical steps is the nuclear-weapon States' agreement, for the first time, to undertake unequivocally to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament.

Consideration by the General Assembly

During its fifty-fifth session, on 20 November 2000, the General Assembly, on the recommendation of the First Committee, adopted resolution 55/33 D, the draft of which had been introduced by Algeria in the First Committee. By the resolution, the Assembly welcomed the adoption by consensus on 19 May 2000 of the Final Document of the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, including in particular the documents entitled "Review of the operation of the Treaty, taking into account the decisions and the resolution adopted by the 1995 Review and Extension Conference" and "Improving the effectiveness of the strengthened review process for the Treaty".[3]

(*b*) Other nuclear disarmament and non-proliferation issues

Despite the ratification by the Russian Federation in 2000 of the 1996 Comprehensive Nuclear-Test-Ban Treaty[4] and the 1993 START II Treaty,[5] as well as the adoption by the 2000 Non-Proliferation Treaty Review Conference of a substantive Final Document, the Conference on Disarmament was unable to agree on a programme of work and therefore did not conduct any substantive work on nuclear disarmament in 2000.

Regarding the Comprehensive Nuclear-Test-Ban Treaty, the Agreement to Regulate the Relationship between the United Nations and the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization[6] was signed on 26 May 2000—the first such relationship agreement that the United Nations had concluded with a preparatory commission for the establishment of another international organization, and its first such agreement with an autonomous international organization responsible for verification activities since the conclusion of the Relationship Agreement with the International Atomic Energy Agency, in 1957.

International Atomic Energy Agency

Within the framework of the IAEA safety programme for the year 2000, the International Conference on the Safety of Radioactive Waste Management was held in Spain in March 2000.[7] In its conclusions, the Conference emphasized that effective national strategies for waste disposal would require the clear definition of a detailed, transparent approach that would enable all parties, including the general public, to participate in the decision-making process. During the forty-fourth regular session of the IAEA General Conference, the Scientific Forum on Radioactive Waste Management was convened to build on the conclusions of the Cordoba Conference, and in its report to the General Conference, the Forum urged the IAEA to facilitate the international exchange of experience on technical and social issues, collaboration on creating opportunities for research and development, and continuing peer reviews of programmes and activities in member States.

Export controls

The Nuclear Suppliers Group held its plenary meeting in Paris on 22 and 23 June 2000, during which the Group agreed that its activities continued to fulfil the aim of preventing the proliferation of nuclear-weapons through export controls on nuclear and nuclear-related material, equipment, software and technology. The Group would also continue to promote greater transparency and openness in its activities, particularly towards non-members. The Group encouraged all States that had not yet done so to conclude the IAEA Model Additional Protocol as soon as possible and to bring such protocols into force.

The Missile Technology Control Regime held its 15th plenary meeting in Helsinki from 10 to 13 October 2000, during which the members discussed responses to the challenges posed by indigenous missile programmes and missile exports, noting that export controls continued to play an important role in facing those challenges and that the Control Regime must continue to adapt itself to technological developments. The members also renewed their commitment to implement strictly their export controls and to strengthen them as necessary. Moreover, they continued their deliberations, begun in 1999, on a set of principles, commitments, confidence-building measures and incentives that could constitute a code of conduct against missile proliferation and thus decided to engage non-members in a broader common effort to reach agreement on a multilateral instrument open to all States.

Consideration by the General Assembly

During 2000, the General Assembly, at its fifty-fifth session, on the recommendation of the First Committee, took action on 12 draft resolutions concerning nuclear disarmament and non-proliferation, including resolution 55/33 C entitled "Towards a nuclear-weapon-free world: the need for a new agenda", introduced by Sweden; and resolution 55/33 N entitled "Reducing nuclear danger", introduced by India. The United States of America had ascribed its negative vote on the latter resolution in the First Committee to its view that the draft failed to acknowledge the real progress made on unilateral, bilateral and multilateral fronts to reduce nuclear dangers, and in particular the successful outcome of the Non-Proliferation Treaty Review Conference. It felt that an international conference on nuclear issues was inopportune; however, if it was necessary to consider such a conference, the United States would support a fourth special session of the General Assembly devoted to disarmament with balanced agenda objectives.

The draft of resolution 55/34 G, entitled "Convention on the prohibition of the use of nuclear weapons" had also been introduced by India. The United States, which had voted against the draft, and Japan, which had abstained, expressed similar views, namely, that the only way to achieve nuclear disarmament and non-proliferation was through a step-by-step process, which the draft did not reflect. The United States further stated that it was convinced that such a practical approach would be achieved through bilateral, unilateral and multilateral measures.

The draft of resolution 55/31, entitled "Conclusion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons", had been introduced by Pakistan. India had voted in favour, holding that, pending the elimination of nuclear weapons, States possessing them had an obligation to provide internationally binding, credible, universal and non-discriminatory negative security assurances, and reiterated its willingness to enter into arrangements on "no first use".

The draft of resolution 55/41, entitled "Comprehensive Nuclear-Test-Ban Treaty", had been introduced by Australia. In the First Committee, the Syrian Arab Republic had abstained on the vote because of loopholes in the Treaty itself. In its view, the Treaty disregarded the legitimate concerns of the non-nuclear-weapon States: guarantees of negative security assurances and the right to acquire advanced technology. Moreover, the Treaty set no time frame for the nuclear-weapon States to phase out their nuclear arsenals; made no explicit statement on the illegal use or threat to use nuclear weapons; and recognized no need to achieve the universality of the Non-Proliferation Treaty. It also rejected the inclusion of Israel in the region of the Middle East and South Asia. Israel had voted in favour of the draft, reiterating its willingness to continue its active role in non-proliferation efforts, including the Comprehensive Nuclear-Test-Ban Treaty. Pakistan, voting in favour of the draft, reaffirmed its unilateral moratorium on further testing until the Treaty's entry into force and stated that it would sign it once the sanctions against it were removed.

The revised draft of resolution 55/33 B, entitled "Preservation of and compliance with the Treaty on the Limitation of Anti-Ballistic Missile Systems", was introduced by the Russian Federation. The United States did not support the revised draft because it objected to the General Assembly's taking sides and making judgements on substantive issues in ongoing discussions between itself and the Russian Federation, and to the premise that amendments to the Treaty were incompatible with preserving and strengthening it. Explaining their reasons for abstaining on

the vote, Argentina, Brazil, Chile, Germany on behalf of a number of Western and Eastern European countries, Ghana, Nigeria, the Philippines and Sweden underlined the need for consensus on the resolution. They believed that dialogue and cooperation between the two parties was critical for achieving disarmament agreements, and that the First Committee's treatment of the draft did not set the tone for such a constructive dialogue. On the other hand, a large number of States voting in favour of the draft reaffirmed the integrity and continued importance of the Treaty as the foundation of global strategic stability, while expressing some reservations.

(*c*) Biological and chemical weapons

Biological Weapons Convention

The year 2000 marked the twenty-fifth anniversary of the 1971 Biological Weapons Convention.[8] During the year, the Ad Hoc Group held four sessions, pursuing its objective of concluding a protocol on verification. As a large amount of unagreed text remained at the end of the year, the Ad Hoc Group would have to exert considerable effort and demonstrate flexibility in order to conclude negotiations before the Fifth Review Conference, to be held in 2001.

Parallel to their efforts to elaborate a verification mechanism, States parties continued their information exchange in the framework of politically binding confidence-building measures. The issues on which information was exchanged include: relevant research centres and laboratories; national biological defence research and development programmes; outbreaks of infectious diseases and similar occurrences caused by toxins; relevant legislation, regulations and other measures; past activities in offensive and/or defensive biological research and development programmes; and vaccine production facilities.

Chemical Weapons Convention

Significant progress was made by the Organisation for the Prohibition of Chemical Weapons (OPCW) in implementing the provisions of the 1992 Chemical Weapons Convention,[9] as evidenced by the continuing destruction or conversion of chemical-weapons production plants and the destruction of chemical agents and chemical munitions. By the end of the year, inventories for all declared chemical weapons had been established and all declared chemical-weapons production facilities were inactivated and subject to the Chemical Weapons Convention verification regime.

The signing of the Relationship Agreement between the United Nations and OPCW[10] marked an important step in coordinating and harmonizing the activities and efforts of both organizations and in facilitating the implementation of the Convention.

United Nations Monitoring, Verification and Inspection Commission (UNMOVIC)

UNMOVIC, the successor to the United Nations Special Commission (UNSCOM), commenced its work as requested by the Security Council in its resolution 1284 of 17 December 1999 in order to prepare itself for full operation. In doing so, it focused on the recruitment and training of staff and potential future inspectors; began a systematic and thorough review of existing databases; reassessed and evaluated the archives taken over from UNSCOM; and examined inspection procedures

with a view to defining appropriate operational procedures to be applied under the reinforced system of ongoing monitoring and verification.

Consideration by the General Assembly

During 2000, the General Assembly, pursuant to the recommendations of the First Committee, took action on three draft resolutions in the area, including resolution 55/33 J of 20 November, concerning measures to uphold the principles and objectives of the 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare.[11]

(*d*) Conventional weapons

The preparatory process for the 2001 United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects got under way during the year, reflecting the growing awareness and understanding of the need to address the excessive and destabilizing accumulation and transfer of small arms and light weapons.

The two United Nations instruments, the Register of Conventional Arms and the standardized instrument for international reporting of military expenditures, contributed to building transparency in military matters. However, in spite of the fact that for the first time in a number of years the General Assembly adopted only one resolution on transparency in armaments and there was a substantial increase in the number of reporting States, it was clear from the deliberations in the First Committee and the Conference on Disarmament that differences among Member States regarding the further development of the Register persisted. Consequently, the Group of Governmental Experts on the Register could not agree on an expansion of the scope of the Register, although it made a number of recommendations concerning its implementation.

Further positive developments concerning the two legal instruments dealing with anti-personnel mines were the holding of the Second Annual Conference of the States Parties to the 1996 Amended Protocol II on prohibitions or restrictions on the use of mines, booby traps and other devices[12] and the Second Meeting of the States Parties to the 1997 Mine-Ban Convention,[13] at which the States parties reaffirmed their commitments to the objectives of, and reviewed the implementation of their respective instruments. Furthermore, States parties initiated the preparatory process for the Second Review Conference of the 1980 Convention on Certain Conventional Weapons.[14]

Consideration by the General Assembly

The General Assembly, pursuant to recommendations of the First Committee, took action on six draft resolutions and one draft decision dealing with conventional weapons, including resolution 55/33 F of 20 November 2000, entitled "Assistance to States for curbing the illicit traffic in small arms and collecting them", introduced by Mali, and resolution 55/33 U of the same date, entitled "Transparency in armaments", introduced by the Netherlands. Regarding the latter, several States explained their abstentions. For example, States Members of the United Nations that were members of the League of Arab States and others wanted to see the United Nations

Register of Conventional Arms include data on advanced conventional weapons, weapons of mass destruction and up-to-date technology with military applications. China stated that it could not support the draft resolution because the United States' registration of its arms sales to "Taiwan" had politicized the Register.

Norway introduced the draft of resolution 55/33 V, also of 20 November, entitled "Implementation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction [Mine-Ban Convention]" in the First Committee. Nine States had explained their abstentions on the basis of their security concerns, but supported the humanitarian goal of the Convention and had taken and were taking such steps as implementation of moratoriums on exports of anti-personnel mines to alleviate the suffering caused by those weapons. Cuba, Egypt, the Islamic Republic of Iran, Israel, Pakistan and the Republic of Korea explained their individual security situations that necessitated the use of mines in self-defence.

(*e*) Regional disarmament

The General Assembly took action, on 20 November 2000, on the recommendation of the First Committee, on 14 draft resolutions concerning regional disarmament.

With regard to nuclear-weapon-free zones, Uzbekistan had introduced in the First Committee the revised draft of resolution 55/33 W, entitled "Establishment of a nuclear-weapon-free zone in Central Asia". India had stated that it was prepared to support the early realization of such a zone. Egypt had introduced the draft of resolution 55/30, entitled "Establishment of a nuclear-weapon-free zone in the region of the Middle East", and Israel had joined the consensus in the First Committee because it supported the eventual establishment of a mutually verifiable nuclear-weapon-free zone in the region. Brazil had introduced the draft of resolution 55/33 I, entitled "Nuclear-weapon-free southern hemisphere and adjacent areas". Regarding the latter, the United Kingdom of Great Britain and Northern Ireland, also speaking on behalf of France and the United States, explained that it could not vote for the draft resolution, since the sponsors had refused to include the applicable passages of the 1982 Convention on the Law of the Sea[15] as well as reassurance that the fundamental freedom of the seas would not be affected.

Concerning the issue of conventional disarmament at regional levels, Burundi introduced in the First Committee the draft of resolution 55/34 B, entitled "Regional confidence-building measures: activities of the United Nations Standing Advisory Committee on Security Questions in Central Africa", and the former Yugoslav Republic of Macedonia introduced the draft of resolution 55/27, entitled "Maintenance of international security—good-neighbourliness, stability and development of South-Eastern Europe".

(*f*) Other issues

The General Assembly took action on a number of other issues within the disarmament field, including resolution 55/33 K also of 20 November 2000, entitled "Observance of environmental norms in the drafting and implementation of agreements on disarmament and arms control", which had been introduced by South

Africa, on behalf of the Member States that were members of the Movement of Non-Aligned Countries. During the consideration of the draft in the First Committee, the United States, which later abstained in the vote, doubted the draft's relevance to the work of the First Committee and maintained that States parties to bilateral, regional and/or multilateral arms control and disarmament agreements should take relevant environmental concerns into account when carrying them out.

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2. OTHER POLITICAL AND SECURITY ISSUES

(*a*) Membership in the United Nations

During 2000, two States joined the United Nations, bringing the total number of Member States to 189. The new Member States are Tuvalu and Yugoslavia.

State	*Resolution*
Tuvalu	55/1
Yugoslavia	55/12

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

The Legal Subcommittee held its thirty-ninth session at the United Nations Office at Vienna from 27 March to 6 April 2000,[16] holding a total of 17 meetings.

Following the 623rd meeting of the Legal Subcommittee, a symposium entitled "Legal Aspects of Commercialization of Space Activities", sponsored by the International Institute of Space Law in cooperation with the European Centre for Space Law, was held.

The Subcommittee noted with satisfaction the creation by the United Nations Office for Outer Space Affairs of a preliminary database of publicly available national legislation relating to outer space and agreed that the United Nations Secretariat should continue its efforts to maintain and further develop the database.

Regarding the new agenda item entitled "Information on the activities of international organizations relating to space law", the Legal Subcommittee noted that various international organizations had been invited by the Secretariat to report to the Subcommittee on their activities relating to space law, and the Subcommittee had before it two conference room papers, containing compilations of written reports received.[17]

The Legal Subcommittee re-established its Working Group on the agenda item entitled "Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union". For its consideration of the item, the Working Group had a number of documents before it, and on the basis of comments made during the discussion and following informal consultations among delegations the Working Group amended and adopted a

revised version of a conference room paper (A/AC.105/C.2/2000/CRP.7) originally submitted by France and other sponsors, entitled "Some aspects concerning the use of the geostationary orbit".[18]

Concerning the item entitled "Review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space", the Subcommittee had before it, for information, copies of a notification made in accordance with principle 4 of the Principles by the Government of the United States,[19] providing information regarding the availability of the Cassini spacecraft safety assessment results.

In considering the item entitled "Review of the status of the five international legal instruments governing outer space",[20] the Subcommittee had a number of documents before it. The Legal Subcommittee endorsed the recommendations of its Working Group that, in order to achieve the fullest adherence to the five international instruments governing outer space:

(*a*) States that had not yet become parties to the five international treaties governing outer space should be invited to consider ratifying or acceding to those treaties in order to achieve the widest applicability of the principles and to enhance the effectiveness of international space law;

(*b*) States should be invited to consider making a declaration in accordance with paragraph 3 of General Assembly resolution 2777 (XXVI) of 29 November 1971, thereby binding themselves on a reciprocal basis to the decisions of the Claims Commission established in the event of a dispute in terms of the provisions of the Liability Convention;

(*c*) The issue of the strict compliance by States with the provisions of the international legal instruments governing outer space to which they were currently parties should be examined further with a view to identifying measures to encourage full compliance, taking into account the interrelated nature of the principles and rules governing outer space.

The Legal Subcommittee established a Working Group on the agenda item entitled "Review of the concept of the 'launching State'" and the Chairman stated that the Group should consider two questions over the course of the three-year work plan: (*a*) whether the definition of the "launching State" in the Liability Convention and the Registration Convention still covered all existing activities; and (*b*) what steps could be taken to improve application of the concept in the context of new developments in space transportation. During the session, a number of presentations by various delegations were made to the Working Group.[21]

Concerning the new agenda item entitled "Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its fortieth session", during the course of discussions, the following additional proposals were made for new single issues/items for discussion to be included in the provisional agenda of the fortieth session of the Legal Subcommittee:

(*a*) Matters relating to the low level of ratification of the Moon Agreement,[22] proposed by the delegation of Australia;

(*b*) Consideration of the preliminary draft of the Unidroit convention on international interests in mobile equipment and the preliminary draft protocol thereto on matters specific to space property, proposed by the delegation of Italy;

(*c*) Issues relating to protection of intellectual property rights in connection with outer space activities, proposed by the delegation of South Africa;

(*d*) Commercial aspects of space activities, proposed by the delegation of Argentina.

The Committee on the Peaceful Uses of Outer Space, at its forty-third session held at the United Nations Office at Vienna from 7 to 16 June 2000, took note of the report of the Legal Subcommittee on its thirty-ninth session. The Committee, on the basis of the proposals submitted by the Legal Subcommittee and the discussions conducted, agreed upon a draft provisional agenda for the fortieth session of the Subcommittee, including the new item entitled "Consideration of the draft convention of the International Institute for the Unification of Private Law (Unidroit) on international interests in mobile equipment and the preliminary draft protocol thereto on matters specific to space property".

Consideration by the General Assembly

The General Assembly, on 8 December 2000, on the recommendation of the Special Political and Decolonization Committee (Fourth Committee) adopted without a vote resolution 55/122 entitled "International cooperation in the peaceful uses of outer space". In the resolution, the Assembly noted the agreement reached by the Legal Subcommittee on the question of the character and utilization of the geostationary orbit and the subsequent endorsement of the agreement by the Committee.[23] The Assembly further noted that the Legal Subcommittee, at its fortieth session, would submit its proposals to the Committee for new items to be considered by the Subcommittee at its forty-first session, in 2002.

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

The General Assembly, on 8 December 2000, on the recommendation of the Special Political and Decolonization Committee (Fourth Committee), adopted, without a vote, resolution 55/135 on the subject. In the resolution the Assembly took note of the report of the Secretary-General on the work of the Organization,[24] the report of the Panel on United Nations Peace Operations[25] and the report of the Secretary-General on the implementation of the report of the Panel.[26] The Assembly further welcomed the report of the Special Committee on Peacekeeping Operations,[27] and endorsed the proposals, recommendations and conclusions of the Special Committee, contained in its report.

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

(*a*) Sixth special session of the Governing Council of the United Nations Environment Programme[28]

The first Global Ministerial Environment Forum/the sixth special session of the Governing Council of UNEP was held in Malmö, Sweden, from 29 to 31 May 2000. Decisions adopted by the Governing Council included the Malmö Ministerial

Declaration, in which it was concluded, inter alia, that poverty could be decreased by half by 2015 without degrading the environment; environmental security could be ensured through early warning; environmental considerations could be better integrated into economic policy; and there could be better coordination of legal instruments.[29]

Consideration by the General Assembly

At its fifty-fifth session, the General Assembly, on the recommendation of the Second Committee, adopted on 20 December 2000 a number of resolutions and decisions concerning the environment. Among them was resolution 55/198, adopted without a vote, in which the Assembly took note of the report of the Secretary-General on international institutional arrangements related to environment and sustainable development.[30] In the same resolution, the Assembly encouraged the conferences of the parties to, and the secretariats of, the 1992 United Nations Framework Convention on Climate Change,[31] the 1992 Convention on Biological Diversity[32] and the 1994 United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa,[33] and other international instruments related to environment and sustainable development, as well as relevant organizations, especially UNEP, to continue their work for enhancing complementarities among them with full respect for the status of the secretariats of the conventions and the autonomous decision-making prerogatives of the conferences of the parties to the conventions concerned, and to strengthen cooperation with a view to facilitating progress in the implementation of those conventions at the international, regional and national levels and to report thereon to their respective conferences of the parties.

By its resolution 55/199, adopted without a vote, the General Assembly, recalling that Agenda 21[34] and the Rio Declaration on Environment and Development, adopted at the 1992 United Nations Conference on Environment and Development,[35] should constitute the framework within which the other results of the Conference were reviewed, and from within which new challenges and opportunities that had emerged since the 1992 Rio Conference were addressed, and taking note of the report of the Secretary-General on ensuring effective preparations for the 10-year review of progress achieved in the implementation of Agenda 21 and the Programme for the Further Implementation of Agenda 21,[36] decided to organize the 10-year review of progress achieved in the implementation of the outcome of the United Nations Conference on Environment and Development in 2002 at the summit level to reinvigorate the global commitment to sustainable development; the summit would be held in South Africa, and would be called the World Summit on Sustainable Development.

The General Assembly, by its resolution 55/196, adopted without a vote, proclaimed the year 2003 as the International Year of Freshwater, and invited the Subcommittee on Water Resources of the Administrative Committee on Coordination to serve as the coordinating entity for the Year. In its resolution 55/205, adopted without a vote, the Assembly took note of the report of the Secretary-General on the promotion of new and renewable sources of energy, including the implementation of the World Solar Programme, 1996-2005,[37] and invited the international community to support, as appropriate, including by providing financial resources, the efforts of developing countries to move towards sustainable patterns of energy production and consumption.

And by its decision 55/443, the General Assembly expressed its regret that negotiations could not be completed at the sixth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, held at The Hague in November 2000, and called upon all parties to intensify consultations to reach a successful conclusion at a resumed session.

(*b*) Economic issues

A number of resolutions and decisions in the economic area were adopted by the General Assembly at its fifty-fifth session, on the recommendations of the Second Committee, on 20 December 2000, including: resolution 55/182, entitled "International trade and development"; resolution 55/183, entitled "Commodities"; resolution 55/184, entitled "Enhancing international cooperation towards a durable solution to the external debt problem of developing countries"; resolution 55/186, entitled "Towards a strengthened and stable international financial architecture responsive to the priorities of growth and development, especially in developing countries, and to the promotion of economic and social equity"; resolution 55/187, entitled "Industrial development cooperation"; resolution 55/190, entitled "Implementation of the commitments and policies agreed upon in the Declaration on International Economic Cooperation, in particular the Revitalization of Economic Growth and Development of the Developing Countries, and implementation of the International Development Strategy for the Fourth United Nations Development Decade"; resolution 55/191, entitled "Integration of the economies in transition into the world economy"; resolution 55/193, entitled "High-level dialogue on strengthening international economic cooperation for development through partnership"; and decision 55/437, entitled "Macroeconomic policy questions".

(*c*) Review of the problem of human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) in all its aspects

The General Assembly, on 3 November 2000, without reference to a Main Committee, adopted without a vote resolution 55/13, in which it decided to convene, as a matter of urgency, a special session of the General Assembly, from 25 to 27 June 2001, to review and address the problem of HIV/AIDS in all its aspects, as well as to secure a global commitment to enhancing coordination and the intensification of national, regional and international efforts to combat it in a comprehensive manner.

(*d*) Crime prevention

The General Assembly, on 15 November 2000, without reference to a Main Committee, adopted without a vote resolution 55/25 in which it adopted the United Nations Convention against Transnational Organized Crime; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. The texts of the three instruments were annexed to the resolution.[38]

Furthermore, on the recommendation of the Second Committee, the General Assembly, on 20 December 2000, adopted without a vote resolution 55/188, in which, taking note of the report of the Secretary-General on the prevention of corrupt practices and illegal transfer of funds,[39] it called for further international and national measures to combat corrupt practices and bribery in international transactions and for international cooperation in support of those measures.

The General Assembly, on the recommendation of the Third Committee, adopted a number of other resolutions in this area on 4 December 2000. In resolution 55/59, adopted without a vote, it endorsed the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, which reads as follows:

Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century

We the States Members of the United Nations,

Concerned about the impact on our societies of the commission of serious crimes of a global nature, and convinced of the need for bilateral, regional and international cooperation in crime prevention and criminal justice,

Concerned in particular about transnational organized crime and the relationships between its various forms,

Convinced that adequate prevention and rehabilitation programmes are fundamental to an effective crime control strategy and that such programmes should take into account social and economic factors that may make people more vulnerable to and likely to engage in criminal behaviour,

Stressing that a fair, responsible, ethical and efficient criminal justice system is an important factor in the promotion of economic and social development and of human security,

Aware of the promise of restorative approaches to justice that aim to reduce crime and promote the healing of victims, offenders and communities,

Having assembled at the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Vienna from 10 to 17 April 2000 to decide to take more effective concerted action, in a spirit of cooperation, to combat the world crime problem,

Declare as follows:

1. We note with appreciation the results of the regional preparatory meetings for the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

2. We reaffirm the goals of the United Nations in the field of crime prevention and criminal justice, specifically the reduction of criminality, more efficient and effective law enforcement and administration of justice, respect for human rights and fundamental freedoms, and promotion of the highest standards of fairness, humanity and professional conduct.

3. We emphasize the responsibility of each State to establish and maintain a fair, responsible, ethical and efficient criminal justice system.

4. We recognize the necessity of closer coordination and cooperation among States in combating the world crime problem, bearing in mind that action against it is a common and shared responsibility. In this regard, we acknowledge the need to develop and promote technical cooperation activities to assist States in their efforts to strengthen their domestic criminal justice systems and their capacity for international cooperation.

5. We shall accord high priority to the completion of the negotiation of the United Nations Convention against Transnational Organized Crime and the protocols thereto, taking into account the concerns of all States.

6. We support efforts to assist States in capacity-building, including in obtaining training and technical assistance and in developing legislation, regulations and expertise, with a view to facilitating the implementation of the Convention and the protocols thereto.

7. Consistent with the goals of the Convention and the protocols thereto, we shall endeavour:

(*a*) To incorporate a crime prevention component into national and international development strategies;

(*b*) To intensify bilateral and multilateral cooperation, including technical cooperation, in the areas to be covered by the Convention and the protocols thereto;

(*c*) To enhance donor cooperation in areas with crime prevention aspects;

(*d*) To strengthen the capability of the United Nations Centre for International Crime Prevention, as well as the United Nations Crime Prevention and Criminal Justice Programme network, to assist States, at their request, in building capacity in areas to be covered by the Convention and the protocols thereto.

8. We welcome the efforts being made by the United Nations Centre for International Crime Prevention to develop, in cooperation with the United Nations Interregional Crime and Justice Research Institute, a comprehensive global overview of organized crime as a reference tool and to assist Governments in policy and programme development.

9. We reaffirm our continued support for and commitment to the United Nations and to the United Nations Crime Prevention and Criminal Justice Programme, especially the Commission on Crime Prevention and Criminal Justice and the United Nations Centre for International Crime Prevention, the United Nations Interregional Crime and Justice Research Institute and the institutes of the Programme network, and resolve to strengthen the Programme further through sustained funding, as appropriate.

10. We undertake to strengthen international cooperation in order to create a conducive environment for the fight against organized crime, promoting growth and sustainable development and eradicating poverty and unemployment.

11. We commit ourselves to taking into account and addressing, within the United Nations Crime Prevention and Criminal Justice Programme, as well as within national crime prevention and criminal justice strategies, any disparate impact of programmes and policies on women and men.

12. We also commit ourselves to the development of action-oriented policy recommendations based on the special needs of women as criminal justice practitioners, victims, prisoners and offenders.

13. We emphasize that effective action for crime prevention and criminal justice requires the involvement, as partners and actors, of Governments, national, regional, interregional and international institutions, intergovernmental and non-governmental organizations and various segments of civil society, including the mass media and the private sector, as well as the recognition of their respective roles and contributions.

14. We commit ourselves to the development of more effective ways of collaborating with one another with a view to eradicating the scourge of trafficking in persons, especially women and children, and the smuggling of migrants. We shall also consider supporting the global programme against trafficking in persons developed by the United Nations Centre for International Crime Prevention and the United Nations Interregional Crime and Justice Research Institute, which is subject to close consultation with States and review by the Commission on Crime Prevention and Criminal Justice, and we establish 2005 as the target year for achieving a significant decrease in the incidence of those crimes worldwide and, where that is not attained, for assessing the actual implementation of the measures advocated.

15. We also commit ourselves to the enhancement of international cooperation and mutual legal assistance to curb illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and we establish 2005 as the target year for achieving a significant decrease in their incidence worldwide.

16. We further commit ourselves to taking enhanced international action against corruption, building on the United Nations Declaration against Corruption and Bribery in International Commercial Transactions, the International Code of Conduct for Public Officials, relevant regional conventions and regional and global forums. We stress the urgent need to develop an

effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime, and we invite the Commission on Crime Prevention and Criminal Justice to request the Secretary-General to submit to it at its tenth session, in consultation with States, a thorough review and analysis of all relevant international instruments and recommendations as part of the preparatory work for the development of such an instrument. We shall consider supporting the global programme against corruption developed by the United Nations Centre for International Crime Prevention and the United Nations Interregional Crime and Justice Research Institute, which is subject to close consultation with States and review by the Commission on Crime Prevention and Criminal Justice.

17. We reaffirm that combating money-laundering and the criminal economy constitutes a major element of the strategies against organized crime, established as a principle in the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, adopted by the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to 23 November 1994. We are convinced that the success of this action rests upon setting up broad regimes and coordinating appropriate mechanisms to combat the laundering of the proceeds of crime, including the provision of support to initiatives focusing on States and territories offering offshore financial services that allow the laundering of the proceeds of crime.

18. We decide to develop action-oriented policy recommendations on the prevention and control of computer-related crime, and we invite the Commission on Crime Prevention and Criminal Justice to undertake work in this regard, taking into account the ongoing work in other forums. We also commit ourselves to working towards enhancing our ability to prevent, investigate and prosecute high-technology and computer-related crime.

19. We note that acts of violence and terrorism continue to be of grave concern. In conformity with the Charter of the United Nations and taking into account all the relevant General Assembly resolutions, we shall together, in conjunction with our other efforts to prevent and to combat terrorism, take effective, resolute and speedy measures with respect to preventing and combating criminal activities carried out for the purpose of furthering terrorism in all its forms and manifestations. With this in view, we undertake to do our utmost to foster universal adherence to the international instruments concerned with the fight against terrorism.

20. We also note that racial discrimination, xenophobia and related forms of intolerance continue, and we recognize the importance of taking steps to incorporate into international crime prevention strategies and norms measures to prevent and combat crime associated with racism, racial discrimination, xenophobia and related forms of intolerance.

21. We affirm our determination to combat violence stemming from intolerance on the basis of ethnicity, and we resolve to make a strong contribution, in the area of crime prevention and criminal justice, to the planned World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

22. We recognize that the United Nations standards and norms in crime prevention and criminal justice contribute to efforts to deal with crime effectively. We also recognize the importance of prison reform, the independence of the judiciary and the prosecution authorities, and the International Code of Conduct for Public Officials. We shall endeavour, as appropriate, to use and apply the United Nations standards and norms in crime prevention and criminal justice in national law and practice. We undertake to review relevant legislation and administrative procedures, as appropriate, with a view to providing the necessary education and training to the officials concerned and ensuring the necessary strengthening of institutions entrusted with the administration of criminal justice.

23. We also recognize the value of the model treaties on international cooperation in criminal matters as important tools for the development of international cooperation, and we invite the Commission on Crime Prevention and Criminal Justice to call upon the United Nations Centre for International Crime Prevention to update the *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice* in order to provide the most up-to-date versions of the model treaties to States seeking to utilize them.

24. We further recognize with great concern that juveniles in difficult circumstances are often at risk of becoming delinquent or easy candidates for recruitment by criminal groups, including groups involved in transnational organized crime, and we commit ourselves to undertaking countermeasures to prevent this growing phenomenon and to including, where necessary, provisions for juvenile justice in national development plans and international development strategies and to including the administration of juvenile justice in our funding policies for development cooperation.

25. We recognize that comprehensive crime prevention strategies at the international, national, regional and local levels must address the root causes and risk factors related to crime and victimization through social, economic, health, educational and justice policies. We urge the development of such strategies, aware of the proven success of prevention initiatives in numerous States and confident that crime can be reduced by applying and sharing our collective expertise.

26. We commit ourselves to according priority to containing the growth and overcrowding of pre-trial and detention prison populations, as appropriate, by promoting safe and effective alternatives to incarceration.

27. We decide to introduce, where appropriate, national, regional and international action plans in support of victims of crime, such as mechanisms for mediation and restorative justice, and we establish 2002 as a target date for States to review their relevant practices, to develop further victim support services and awareness campaigns on the rights of victims and to consider the establishment of funds for victims, in addition to developing and implementing witness protection policies.

28. We encourage the development of restorative justice policies, procedures and programmes that are respectful of the rights, needs and interests of victims, offenders, communities and all other parties.

29. We invite the Commission on Crime Prevention and Criminal Justice to design specific measures for the implementation of and follow-up to the commitments that we have undertaken in the present Declaration.

In its resolution 55/60, also adopted without a vote, the General Assembly urged Governments, in their efforts to prevent and combat crime, especially transnational crime, and to maintain well-functioning criminal justice systems, to be guided by the results of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.[40] And in its resolution 55/61, likewise adopted without a vote, the Assembly recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime (see resolution 55/25 above), was desirable, and decided to begin the elaboration of such an instrument in Vienna at the headquarters of the United Nations Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention. By the same resolution, the Assembly requested the Secretary-General to prepare a report analysing all relevant international legal instruments, other documents and recommendations addressing corruption (see the indicative list of such legal instruments, documents and recommendations, below), considering, inter alia, obligations as regards criminalization of all forms of corruption and international cooperation, regulatory aspects of corruption and the relationship between corruption and money-laundering, and to submit it to the Commission on Crime Prevention and Criminal Justice at an inter-sessional meeting, in order to allow Member States to provide comments to the Commission prior to its tenth session; and requested the Commission, at its tenth session, to review and assess the report of the Secretary-General and, on that basis, to provide recommendations and guidance as to future work on the development of a legal instrument against corruption. The indicative list of international legal instruments, documents and recommendations against corruption reads as follows:

Indicative list of international legal instruments, documents and recommendations against corruption

(*a*) International Code of Conduct for Public Officials;

(*b*) United Nations Declaration against Corruption and Bribery in International Commercial Transactions;

(*c*) General Assembly resolution 54/128, in which the Assembly subscribed to the conclusions and recommendations of the Expert Group Meeting on Corruption and its Financial Channels, held in Paris from 30 March to 1 April 1999;

(*d*) Report of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

(*e*) Inter-American Convention against Corruption adopted by the Organization of American States on 29 March 1996;

(*f*) Recommendation 32 of the Senior Experts Group on Transnational Organized Crime endorsed by the Political Group of Eight in Lyon, France, on 29 June 1996;

(*g*) The Twenty Guiding Principles for the Fight against Corruption adopted by the Committee of Ministers of the Council of Europe on 6 November 1997;

(*h*) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted by the Organisation for Economic Cooperation and Development on 21 November 1997;

(*i*) Agreement Establishing the Group of States against Corruption adopted by the Committee of Ministers of the Council of Europe on 1 May 1999, and the Criminal Law Convention on Corruption adopted by the Committee of Ministers of the Council of Europe on 4 November 1998;

(*j*) Joint Action on corruption in the private sector adopted by the Council of the European Union on 22 December 1998;

(*k*) Declarations made by the first Global Forum on Fighting Corruption, held in Washington, D.C., from 24 to 26 February 1999, and the second Global Forum, to be held in The Hague in 2001;

(*l*) Civil Law Convention on Corruption adopted by the Committee of Ministers of the Council of Europe on 9 September 1999;

(*m*) Model Code of Conduct for Public Officials adopted by the Committee of Ministers of the Council of Europe on 11 May 2000;

(*n*) Principles to Combat Corruption in African Countries of the Global Coalition for Africa;

(*o*) Conventions and related protocols of the European Union on corruption;

(*p*) Best practices such as those compiled by the Basel Committee on Banking Supervision, the Financial Action Task Force on Money-Laundering and the International Organization of Securities Commissions.

Other resolutions adopted by the General Assembly at its fifty-fifth session in the area of crime prevention on 4 December 2000 include: resolution 55/62, entitled "United Nations African Institute for the Prevention of Crime and the Treatment of Offenders"; resolution 55/63, entitled "Combating the criminal misuse of information technologies"; resolution 55/64, entitled "Strengthening of the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity"; resolution 55/66, entitled "Working towards the elimination of crimes against women committed in the name of honour"; resolution 55/67, entitled "Traffic in women and girls"; and resolution 55/68, entitled "Elimination of all forms of violence against women, including crimes identified in the outcome document of the twenty-third special session of the General Assembly, entitled 'Women 2000: gender equality, development and peace for the twenty-first century'".

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

Status of international instruments

During the course of 2000, one more State became a party to the 1961 Single Convention on Narcotic Drugs,[41] bringing the total number of parties to 144; six more States became parties to the 1971 Convention on Psychotropic Substances,[42] bringing the total to 167; one more State became a party to the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961,[43] bringing the total to 111; four 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,[44] bringing the total number of parties to 161; and four more States became parties to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,[45] bringing the total to 158.

Consideration by the General Assembly

The General Assembly, at its fifty-fifth session, on the recommendation of the Third Committee, adopted without a vote resolution 55/65 of 4 December 2000, in which it welcomed the renewed commitment made in the United Nations Millennium Declaration[46] to counter the world drug problem. The Assembly also 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 countering 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,[47] the Action Plan[48] for the Implementation of the Declaration on the Guiding Principles of Drug Demand Reduction[49] and the measures to enhance international cooperation to counter the world drug problem,[50] including the Action Plan against Illicit Manufacture, Trafficking and Abuse of Amphetamine-type Stimulants and Their Precursors,[51] 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,[52] the measures to promote judicial cooperation,[53] the measures to counter money-laundering[54] and the Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development.[55] By the same resolution, the Assembly 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,[56] the Global Programme of Action,[57] and the outcome of the special session of the General Assembly devoted to countering the world drug problem and relevant consensus documents.

(*f*) Human rights questions

Status and implementation of international instruments

International Covenants on Human Rights

In 2000, one more State became a party to the 1966 International Covenant on Economic, Social and Cultural Rights,[58] bringing the total number of States parties to 143; three more States became parties to the 1966 International Covenant on Civil and Political Rights,[59] bringing the total to 147; four more States became parties

to the 1966 Optional Protocol to the International Covenant on Civil and Political Rights,[60] bringing the total to 99; and three more States became parties to the 1989 Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty,[61] bringing the total to 44.

The General Assembly, at its fifty-fifth session, in its decision 55/422 of 4 December 2000, adopted on the recommendation of the Third Committee, took note of the report of the Third Committee,[62] concerning the report of the United Nations High Commissioner for Human Rights.[63]

International Convention on the Elimination of All Forms of Racial Discrimination of 1966[64]

In 2000, two more States became parties to the Convention, bringing the total number of States parties to 157. Five States became parties to the 1992 Amendment to article 8 of the Convention,[65] bringing the total to 30.

At its fifty-fifth session, the General Assembly, on the recommendation of the Third Committee, adopted without a vote resolution 55/81 of 4 December 2000, in which it took note of the report of the Secretary-General[66] on the status of the Convention. Other resolutions adopted in this area by the Assembly on the same date include: resolution 55/82, entitled "Measures to be taken against political platforms and activities based on doctrines of superiority which are based on racial discrimination or ethnic exclusiveness and xenophobia, including, in particular, neo-Nazism"; resolution 55/83, entitled "Measures to combat contemporary forms of racism and racial discrimination, xenophobia and related intolerance"; and resolution 55/84, entitled "Third Decade to Combat Racism and Racial Discrimination and the convening of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance".

Convention on the Elimination of All Forms of Discrimination against Women of 1979[67]

In 2000, one more State became a party to the Convention, bringing the total number of States parties to 166. Moreover, one more State became a party to the 1995 Amendment to article 20, paragraph 1, of the Convention,[68] bringing the total number to 24. Fourteen States became parties to the 1999 Optional Protocol to the Convention.[69]

The General Assembly, on the recommendation of the Third Committee, adopted without a vote resolution 55/70 of 4 December 2000, in which it welcomed the report of the Secretary-General on the status of the Convention.[70] The Assembly also adopted without a vote resolution 55/71 of the same date, entitled "Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly".

Convention against the Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984[71]

In 2000, five more States became parties to the Convention, bringing the total number of States to 123. The number of States parties to the 1992 Amendments to articles 17(7) and 18(5) of the Convention[72] remained at 23.

The General Assembly, on the recommendation of the Third Committee, adopted without a vote resolution 55/89 of 4 December 2000, in which it welcomed the work of the Committee against Torture, and took note of the report of the Committee,[73] submitted in accordance with article 24 of the Convention. The Assembly also took note with appreciation of the interim report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment.[74]

Convention on the Rights of the Child of 1989[75]

In 2000, the number of States parties to the Convention remained at 191. Twenty-five States became parties to the 1995 Amendment to article 43(2) of the Convention,[76] bringing the number to 96; three States became parties to the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;[77] and one State became a party to the 2000 Optional Protocol to the Convention on the sale of children, child prostitution and child pornography.[78]

The General Assembly, on the recommendation of the Third Committee, adopted decision 55/418 of 4 December 2000, wherein it took note of the report of the Secretary-General on the status of the Convention.[79] The Assembly also adopted without reference to a Main Committee resolution 55/26 of 20 November 2000, concerning the special session of the General Assembly on children, to be held in 2001, as well as resolution 55/47 of 29 November 2000, concerning the International Decade for a Culture of Peace and Non-Violence for the Children of the World, 2001-2010.

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

In 2000, three additional States became parties to the Convention, bringing the total number to 15.

The General Assembly, on the recommendation of the Third Committee, adopted without a vote resolution 55/88 of 4 December 2000, wherein it took note of the report of the Secretary-General on the status of the Convention.[81]

Other human rights issues

The General Assembly, on the recommendation of the Third Committee, adopted a number of other human rights–related resolutions and decisions during its fifty-fifth session, including resolution 55/90 of 4 December 2000, entitled "Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights", adopted without a vote, in which the Assembly welcomed the submission of the reports of the persons chairing the human rights treaty bodies on their eleventh[82] and twelfth[83] meetings, held at Geneva from 31 May to 4 June 1999 and 5 to 8 June 2000, respectively, and took note of their conclusions and recommendations. The Assembly also welcomed the comments by Governments, United Nations bodies and specialized agencies, non-governmental organizations and interested persons on the final report of the independent expert on enhancing the long-term effectiveness of the United Nations human rights treaty system[84] and the report of the Secretary-General thereon.[85]

By its resolution 55/99, entitled "Strengthening of the rule of law", adopted without a vote on 4 December 2000, the General Assembly welcomed the report of the Secretary-General,[86] and affirmed that the Office of the United Nations High Commissioner for Human Rights remained the focal point for coordinating system-wide attention for human rights, democracy and the rule of law. In its resolution 55/111, entitled "Extrajudicial summary or arbitrary executions", adopted without a vote on 4 December 2000, the Assembly strongly condemned once again all such practices, and noted that impunity continued to be a major cause of the perpetuation of such violations of human rights. The Assembly furthermore acknowledged the historic significance of the adoption of the Rome Statute of the International Criminal Court,[87] and took note of the interim report of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions.[88]

(*g*) Refugee issues

Status of international instruments

During 2000, three more States became parties to the 1951 Convention Relating to the Status of Refugees,[89] bringing the total number of States parties to 137; two more States became parties to the 1967 Protocol Relating to the Status of Refugees,[90] bringing the total number of States parties to 136; four more States became parties to the 1954 Convention Relating to the Status of Stateless Persons,[91] bringing the total number of States parties to 53; and two additional States became parties to the 1961 Convention on the Reduction of Statelessness,[92] bringing the total number of States parties to 23.

Office of the United Nations High Commissioner for Refugees[93]

The Executive Committee of the Programme of the United Nations High Commissioner for Refugees held its fifty-first session in Geneva from 2 to 6 October 2000, during which it adopted a number of decisions and conclusions concerning international protection, the Conference of Independent States Conference follow-up, the safety of UNHCR staff, the fiftieth anniversary of UNHCR and World Refugee Day.

Consideration by the General Assembly

At its fifty-fifth session, the General Assembly adopted on the recommendation of the Third Committee, adopted on 4 December 2000 several resolutions and a decision concerning the Office of the United Nations High Commissioner for Refugees. These included resolution 55/72, entitled "Enlargement of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees"; resolution 55/74, entitled "Office of the United Nations High Commissioner for Refugees"; resolution 55/75, entitled "Ad hoc Committee of the General Assembly for the announcement of voluntary contributions to the Programme of the United Nations High Commissioner for Refugees"; resolution 55/76, entitled "Fiftieth anniversary of the Office of the United Nations High Commissioner for Refugees and World Refugee Day"; and decision 55/417, entitled "Documents relating to the report of the United Nations High Commissioner for Refugees, questions relating to refugees, returnees and displaced persons and humanitarian questions".

(*h*) Ad Hoc Tribunals for Rwanda and the Former Yugoslavia

The General Assembly adopted on 20 November 2000, without reference to a Main Committee, decisions 55/412 and 55/413, in which it took note respectively of the fifth 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,[94] and the seventh annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991,[95] respectively.

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4. LAW OF THE SEA

Status of the 1982 United Nations Convention on the Law of the Sea[96]

In 2000, three more States (Luxembourg, Maldives and Nicaragua) became parties to the Convention, bringing the total to 135.

Report of the Secretary-General[97]

As related in the report of the Secretary-General, the International Tribunal for the Law of the Sea[98] has considered five cases since its first session in October 1996: *M/V Saiga (No. 1)*; *M/V Saiga (No. 2)*; *Southern Bluefin Tuna (Nos. 3 and 4)*; and the *Camouco* case. Regarding the latter, it also was reported that on 17 January 2000 the Tribunal had received an application from the Government of Panama against the Government of France for the prompt release of a vessel. The dispute concerned the arrest in September 1999 of the fishing vessel *Camouco* by a French frigate allegedly for unlawful fishing in the exclusive economic zone of Crozet (French Southern and Antarctic Territories). The vessel had been flying the Panamanian flag and had been detained together with its master by French authorities on the island of Reunion. The Tribunal deliberated on the case and delivered its judgment on 7 February 2000.

The report also contains information on dispute settlement mechanisms and crimes at sea (piracy and armed robbery; illicit traffic in narcotic drugs and psychotropic substances; illegal traffic in hazardous wastes and other wastes; smuggling of migrants; and stowaways).

Consideration by the General Assembly

During the fifty-fifth session, the General Assembly, without reference to a Main Committee, adopted resolution 55/7 of 30 October 2000, entitled "Oceans and the law of the sea", by a recorded vote of 143 to 2, with 4 abstentions. In the resolution, the Assembly reaffirmed the unified character of the Convention, and called upon States to harmonize, as a matter of priority, their national legislation with the provisions of the Convention, to ensure the consistent application of those provisions and to ensure also that any declarations or statements that they had made

or would make when signing, ratifying or acceding to the Convention were in conformity therewith and, otherwise, to withdraw any of their declarations or statements that were not in conformity. The Assembly also requested the Secretary-General to convene the eleventh Meeting of States Parties to the Convention in New York from 14 to 18 May 2001.

By the same resolution, the General Assembly noted the continued contribution of the International Tribunal for the Law of the Sea to the peaceful settlement of disputes in accordance with Part XV of the Convention, underlined its important role and authority concerning the interpretation or application of the Convention and the Agreement relating to the implementation of Part XI of the Convention,[99] encouraged States parties to the Convention to consider making a written declaration choosing from the means set out in article 287 for the settlement of disputes concerning the interpretation or application of the Convention and the Agreement, and invited States to note the provisions of annexes V, VI, VII and VIII to the Convention concerning, respectively, conciliation, the Tribunal, arbitration and special arbitration. The Assembly furthermore requested the Secretary-General to establish a voluntary trust fund to assist the States in the settlement of disputes through the Tribunal, and to report annually to the Meeting of States Parties to the Convention on the status of the fund;[100] invited States, intergovernmental organizations, national institutions, non-governmental organizations, as well as natural and juridical persons, to make voluntary financial contributions to the fund; and encouraged States that had not yet done so to nominate conciliators and arbitrators in accordance with annexes V and VII to the Convention, and requested the Secretary-General to continue to update and circulate lists of the conciliators and arbitrators on a regular basis. The Assembly moreover appealed to all States parties to the Convention to pay their assessed contributions to the International Seabed Authority and the Tribunal in full and on time, and appealed also to all former provisional members of the Authority to pay any outstanding contributions; and called upon States that had not done so to consider ratifying or acceding to the Agreement on the Privileges and Immunities of the Tribunal[101] and to the Protocol on the Privileges and Immunities of the Authority.[102]

General Assembly resolution 55/8 of 30 October 2000, 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", was adopted by a recorded vote of 103 to none, with 44 abstentions. In the resolution, the Assembly took note of the report of the Secretary-General,[103] and reaffirmed the importance it attached to the long-term conservation, management and sustainable use of the marine living resources of the world's oceans and seas and the obligations of States to cooperate to that end, in accordance with international law, as reflected in the relevant provisions of the United Nations Convention on the Law of the Sea, in particular the provisions on cooperation set out in part V and part VII, section 2, of the Convention regarding straddling stocks, highly migratory species, marine mammals, anadromous stocks and marine living resources of the high seas. The Assembly furthermore urged States, relevant international organizations and regional and subregional fisheries management organizations and arrangements that had not done so to take action to reduce by-catch, fish discards and post-harvest losses, consistent with international law and relevant international instruments, including the Code of Conduct for Responsible Fisheries; and called upon States and other entities referred to in article 1, paragraph 2(*b*), of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of

the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks[104] that had not done so to ratify or accede to the Agreement and to consider applying it provisionally. The Assembly also urged States to continue the development of an international plan of action on illegal, unreported and unregulated fishing for the Food and Agriculture Organization of the United Nations, as a matter of priority, so that its Committee on Fisheries could be in a position to adopt elements for inclusion in a comprehensive and effective plan of action at its twenty-fourth session.

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5. INTERNATIONAL COURT OF JUSTICE[105]

Cases before the Court[106]

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

After filing their Replies within the extended time limit, Qatar and Bahrain submitted, with the approval of the Court, certain additional expert reports and historical documents.

Public sittings to hear the oral arguments of the Parties were held from 29 May to 29 June 2000.

At the conclusion of those hearings Qatar requested the Court, rejecting all contrary claims and submissions,

"I. To adjudge and declare in accordance with international law:

A. (1) That the State of Qatar has sovereignty over the Hawar Islands;

(2) That Dibal and Qit'at Jaradah shoals are low-tide elevations which are under Qatar's sovereignty;

B. (1) That the State of Bahrain has no sovereignty over the island of Janan;

(2) That the State of Bahrain has no sovereignty over Zubarah;

(3) That any claim by Bahrain concerning archipelagic baselines and areas for fishing for pearls and swimming fish would be irrelevant for the purpose of maritime delimitation in the present case;

"II. To draw a single maritime boundary between the maritime areas of seabed, subsoil and superjacent waters appertaining respectively to the State of Qatar and the State of Bahrain on the basis that Zubarah, the Hawar Islands and the island of Janan appertain to the State of Qatar and not to the State of Bahrain, that boundary starting from point 2 of the delimitation agreement concluded between Bahrain and Iran in 1971 (51°05'54"E and 27°02'47"N), thence proceeding in a southerly direction up to BLV (50°57'30"E and 26°33'35"N), then following the line of the British decision of 23 December 1947 and up to NSLB (50°49'48"E and 26°21'24"N) and up to point L (50°43'00"E and

25°47'27"N), thence proceeding to point S1 of the delimitation agreement concluded by Bahrain and Saudi Arabia in 1958 (50°31'45"E and 25°35'38"N)."

The final submissions of Bahrain read as follows:

"*May it please the Court*, rejecting all contrary claims and submissions, to adjudge and declare that:

"1. Bahrain is sovereign over Zubarah.

"2. Bahrain is sovereign over the Hawar Islands, including Janan and Hadd Janan.

"3. In view of Bahrain's sovereignty over all the insular and other features, including Fasht and Dibal and Qit'at Jaradah, comprising the Bahraini archipelago, the maritime boundary between Bahrain and Qatar is as described in Part Two of Bahrain's Memorial."

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

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

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

Geographical setting (para. 35)

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

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

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

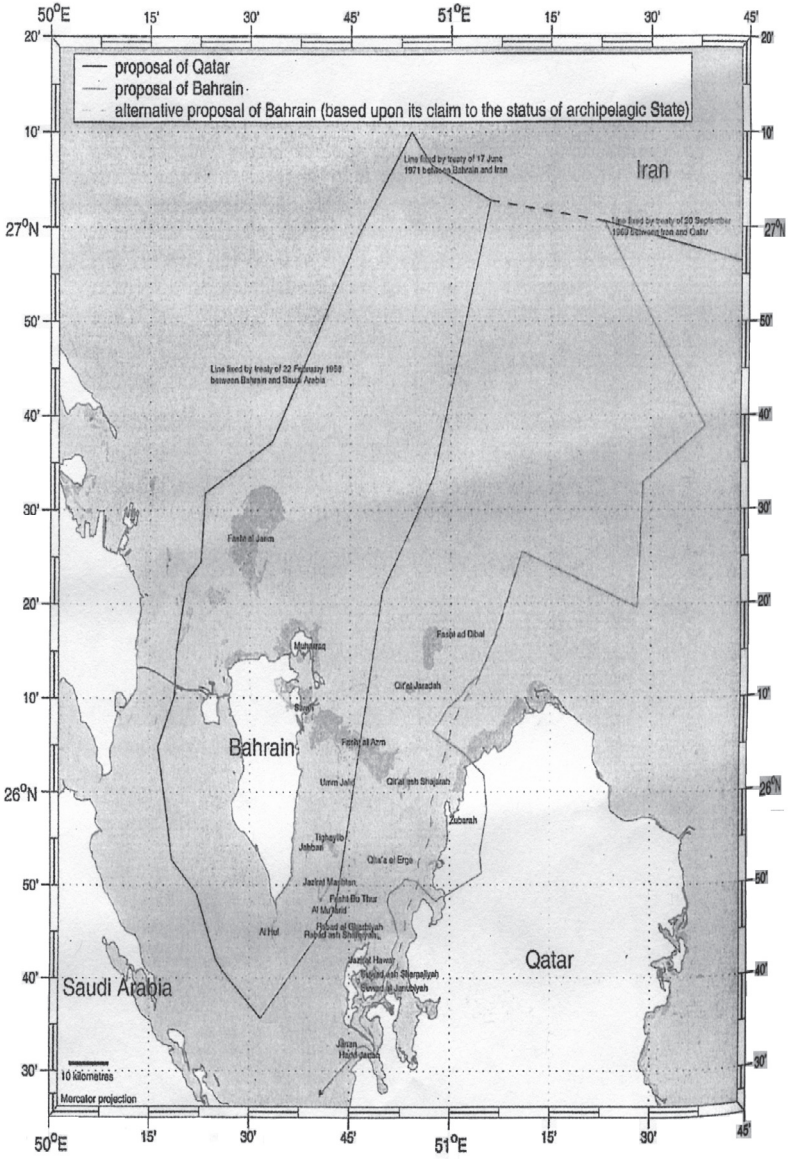
Zubarah is located on the north-west coast of the Qatar peninsula, opposite the main island of Bahrain.

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

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

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

Sketch-map No. 2
Lines proposed by Qatar and Bahrain



This sketch-map, on which maritime features are shown in simplified form, has been prepared for illustrative purposes only.
It is without prejudice to the nature of certain of these features.
Sources: submissions of the Parties; Memorial of Qatar, Vol. 17, Map 24; Memorial of Bahrain, Vol. 7, Maps 10, 11, 13 and 15.

Historical context (paras. 36-69)

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

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

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

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

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

While Great Britain had become the dominant maritime Power in the Gulf by this time, the Ottoman Empire, for its part, had re-established its authority over

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

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

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

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

In May 1946, the Bahrain Petroleum Company Ltd. sought permission to drill in certain areas of the continental shelf, some of which the British considered might belong to Qatar. The British Government decided that this permission could not be

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

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

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

Sovereignty over Zubarah (paras. 70-97)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sovereignty over Janan Island (paras. 149-165)

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

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

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

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

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

Maritime delimitation (paras. 166-250)

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

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

A single maritime boundary (paras. 168-173)

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

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

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

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

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

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

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

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

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

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

The equidistance line (paras. 177-216)

The Court begins by noting that the equidistance line is the line every point of which is equidistant from the nearest points on the baselines from which the breadth

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

The relevant coasts (paras. 178-216)

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

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

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

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

by the unilateral action of either of the Parties, and in particular, by any decision of Bahrain to declare itself an archipelagic State.

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

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

Fasht al Azm (paras. 188-190)

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

Qit'at Jaradah (paras. 191-198)

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

Fasht ad Dibal (paras. 199-209)

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

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

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

Method of straight baselines (paras. 210-216)

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

Special circumstances (paras. 217-223)

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

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

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

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

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

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

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

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

the delimitation of the territorial sea, and the equitable principles/relevant circumstances rule, as it has been developed since 1958 in case law and State practice with regard to the delimitation of the continental shelf and the exclusive economic zone, are closely interrelated.

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

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

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

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

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

*

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

(World Geodetic System, 1984)

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

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

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

*

Operative paragraph (para. 251):

"For these reasons,

THE COURT,

(1) Unanimously,

Finds that the State of Qatar has sovereignty over Zubarah;

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

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

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

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

(*b*) Unanimously,

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

(3) By thirteen votes to four,

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

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

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

(4) By twelve votes to five,

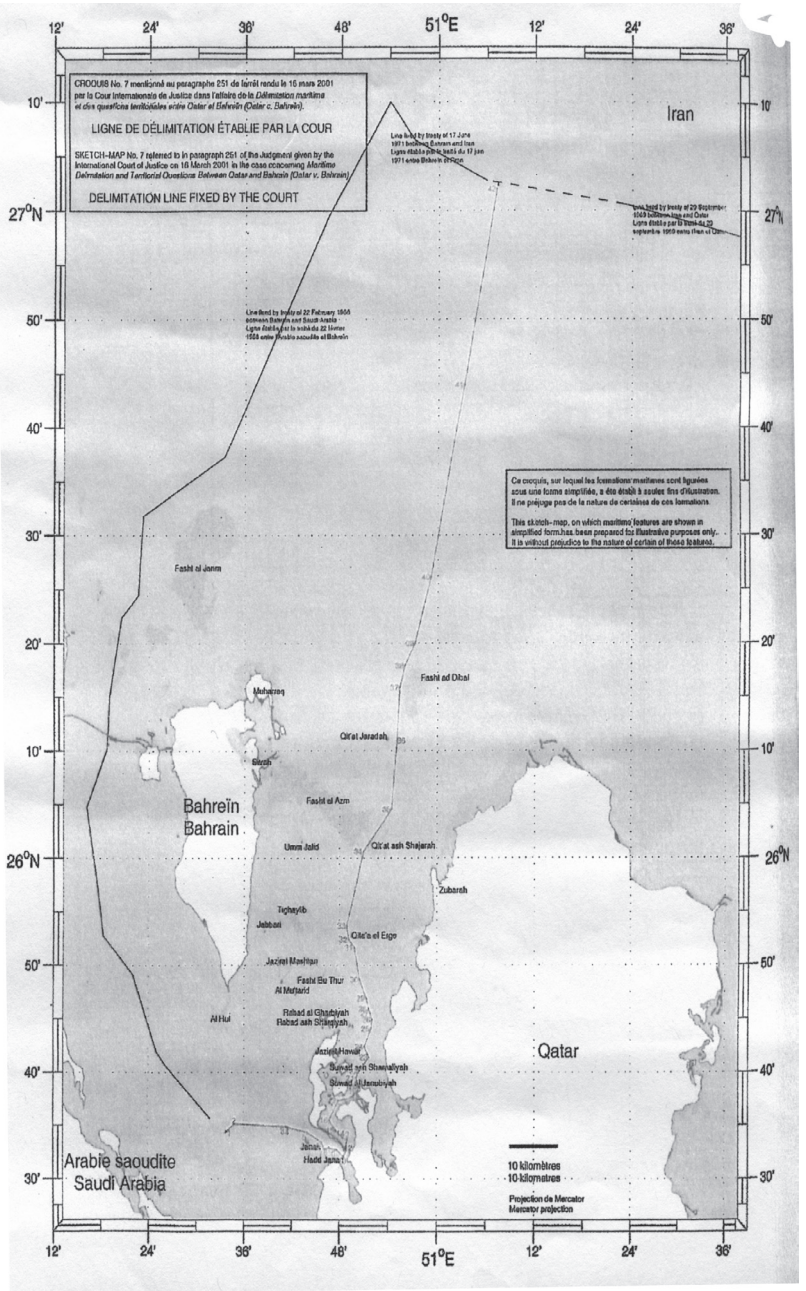
Finds that the State of Bahrain has sovereignty over the island of Qit'at Jaradah;

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

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

(5) Unanimously,

Sketch-map No. 7



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

(6) By thirteen votes to four,

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

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

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

*

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

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

By Orders of 29 June 1999 (*I.C.J. Reports 1999*, pp. 975 and 979), the Court, taking account of the agreement of the Parties and the special circumstances of the case, authorized the submission of a Reply by Libya and a Rejoinder by the United Kingdom and the United States of America, respectively, fixing 29 June 2000 as the time limit for the filing of Libya's Reply. The Court fixed no date for the filing of the Rejoinders; the representatives of the respondent States had expressed the desire that no such date be fixed at this stage of the proceedings, "in view of the new circumstances consequent upon the transfer of the two accused to the Netherlands for trial by a Scottish court". Libya's Reply was filed within the prescribed time limit.

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

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

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

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

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

In an Order of 30 June 1999 (*I.C.J. Reports 1999*, p. 983) the Court found that Nigeria's counter-claims were admissible as such and formed part of the proceedings; it further decided that Cameroon should submit a Reply and Nigeria a Rejoinder, relating to the claims of both Parties, and fixed the time limits for those pleadings at 4 April 2000 and 4 January 2001, respectively. Cameroon's Reply and Nigeria's Rejoinder were filed within the prescribed time limits.

On 30 June 1999 the Republic of Equatorial Guinea filed an Application for permission to intervene in the case.

In its Application, Equatorial Guinea stated that the purpose of its intervention would be "to protect [its] legal rights in the Gulf of Guinea by all legal means" and "to inform the Court of Equatorial Guinea's legal rights and interests so that these may remain unaffected as the Court proceeds to address the question of the maritime boundary between Cameroon and Nigeria". Equatorial Guinea made it clear that it did not seek to intervene in those aspects of the proceedings that relate to the land boundary between Cameroon and Nigeria, nor to become a party to the case. It further stated that, although it would be open to the three countries to request the Court not only to determine the Cameroon-Nigeria maritime boundary but also to determine Equatorial Guinea's maritime boundary with these two States, Equatorial Guinea had made no such request and wished to continue to seek to determine its maritime boundary with its neighbours by negotiation.

The Court fixed 16 August 1999 as the time limit for the filing of written observations on Equatorial Guinea's Application by Cameroon and Nigeria. Those written observations were filed within the prescribed time limits.

By an Order of 21 October 1999 (*I.C.J. Reports 1999*, p. 1029), the Court permitted Equatorial Guinea to intervene in the case, pursuant to Article 62 of the Statute, to the extent, in the manner and for the purposes set out in its Application for permission to intervene, and fixed 4 April 2001 as the time limit for the filing of the written statement of the Republic of Equatorial Guinea and 4 July 2001 for the written observations of the Republic of Cameroon and of the Federal Republic of Nigeria. Equatorial Guinea's written statement was filed within the prescribed time limit.

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

By an Order of 11 May 2000 (*I.C.J. Reports 2000*, p. 9), the President of the Court, again at a request jointly made by the Parties, extended the time limit for the filing of the Counter-Memorials another time, to 2 August 2000. The Counter-Memorials were filed within the time limit thus extended.

By an Order of 19 October 2000 (*I.C.J. Reports 2000*, p. 173), the President of the Court, having regard to the Special Agreement and taking account of the agreement between the Parties, fixed 2 March 2001 as the time limit for the filing of a Reply by each of the Parties. Those Replies were duly filed within the prescribed time limit.

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

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

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

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

By an Order of 5 March 1999 (*I.C.J. Reports 1999,* p. 28), the Court, taking into account the views of the Parties, fixed 16 September 1999 and 27 March 2000 as the time limits for the filing of the Memorial of Germany and the Counter-Memorial of the United States, respectively. The Memorial and Counter-Memorial were filed within the prescribed time limits.

Public sittings to hear the oral arguments of the Parties were held from 13 to 17 November 2000.

At the conclusion of the oral proceedings Germany requested the Court to adjudge and declare:

> "(1) That the United States, by not informing Karl and Walter LaGrand without delay following their arrest of their rights under article 36, subparagraph 1 (*b*), of the Vienna Convention on Consular Relations, and by depriving Germany of the possibility of rendering consular assistance, which ultimately resulted in the execution of Karl and Walter LaGrand, violated its international legal obligations to Germany, in its own right and in its right of diplomatic protection of its nationals, under articles 5 and 36, paragraph 1, of the said Convention;
>
> "(2) That the United States, by applying rules of its domestic law, in particular the doctrine of procedural default, which barred Karl and Walter LaGrand from raising their claims under the Vienna Convention on Consular Relations, and by ultimately executing them, violated its international legal obligation to Germany under article 36, paragraph 2, of the Vienna Convention to give full effect to the purposes for which the rights accorded under article 36 of the said Convention are intended;
>
> "(3) That the United States, by failing to take all measures at its disposal to ensure that Walter LaGrand was not executed pending the final decision of the International Court of Justice on the matter, violated its international legal

obligations to comply with the Order on Provisional Measures issued by the Court on 3 March 1999, and to refrain from any action which might interfere with the subject-matter of a dispute while judicial proceedings are pending;

and, pursuant to the foregoing international legal obligations,

"(4) That the United States shall provide Germany an assurance that it will not repeat its unlawful acts and that, in any future cases of detention of or criminal proceedings against German nationals, the United States will ensure in law and practice the effective exercise of the rights under article 36 of the Vienna Convention on Consular Relations. In particular in cases involving the death penalty, this requires the United States to provide effective review of and remedies for criminal convictions impaired by a violation of the rights under article 36."

The United States asked the Court to adjudge and declare that:

"(1) There was a breach of the United States obligation to Germany under article 36 (1) (*b*) of the Vienna Convention on Consular Relations, in that the competent authorities of the United States did not promptly give to Karl and Walter LaGrand the notification required by that article, and that the United States has apologized to Germany for this breach, and is taking substantial measures aimed at preventing any recurrence; and

"(2) All other claims and submissions of the Federal Republic of Germany are dismissed."

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

By Orders of 30 June 1999 (*I.C.J. Reports 1999*, pp. 988, 991, 994, 997, 1000, 1003, 1006, 1009), the Court, having ascertained the views of the Parties, fixed the time limits for the filing of the written pleadings in each of the eight cases maintained on the List: 5 January 2000 for the Memorial of Yugoslavia and 5 July 2000 for the Counter-Memorial of the respondent State concerned. The Memorial of Yugoslavia in each of the eight cases was filed within the prescribed time limit.

On 5 July 2000, within the time limit for the filing of its Counter-Memorial, each of the respondent States in the eight cases maintained on the Court's List (Belgium, Canada, France, Germany, Italy, Netherlands, Portugal and United Kingdom) raised certain preliminary objections of lack of jurisdiction and inadmissibility.

By virtue of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits are suspended when preliminary objections are filed; proceedings have then to be organized for the consideration of those preliminary objections in accordance with the provisions of that Article.

By Orders of 8 September 2000 (*I.C.J. Reports 2000*, pp. 149, 152, 155, 158, 161, 164, 167 and 170), the Vice-President of the Court, Acting President, taking account of the views of the Parties and the special circumstances of the cases, fixed 5 April 2001 as the time limit for the filing, in each of the cases, of a written state-

ment by Yugoslavia on the preliminary objections raised by the Respondent State concerned.

(i) *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Burundi) (Democratic Republic of the Congo* v. *Uganda) (Democratic Republic of the Congo* v. *Rwanda)*

In each of the two cases concerning *Armed Activities on the Territory of the Congo* (*Democratic Republic of the Congo* v. *Burundi) (Democratic Republic of the Congo* v. *Rwanda)*, the Court, by an Order of 21 October 1999 (*I.C.J. Reports 1999*, pp. 1018, 1025), taking into account the agreement of the Parties as expressed at a meeting between the President and the Agents of the Parties held on 19 October 1999, decided that the written proceedings should first address the questions of the jurisdiction of the Court to entertain the Application and of its admissibility and fixed 21 April 2000 as the time limit for the filing of a Memorial on those questions by Burundi and Rwanda, respectively, and 23 October 2000 for the filing of a Counter-Memorial by the Congo. The Memorials of Burundi and Rwanda were filed within the prescribed time limit.

In those two cases, the Democratic Republic of the Congo chose Mr. Joe Verhoeven to sit as judge ad hoc. Burundi chose Mr. Jean J. A. Salmon and Rwanda Mr. John Dugard to sit as judges ad hoc.

By an Order of 19 October 2000 (*I.C.J. Reports 2000,* pp. 176, 179) in each of those cases the President of the Court, at the request of the Congo and taking account of the agreement of the Parties, extended to 23 January 2001 the time limit for the filing of the Counter-Memorial of the Congo.

By letters dated 15 January 2001 the Democratic Republic of the Congo notified the Court in each of the two cases that it wished to discontinue the proceedings and stated that it "reserve[d] the right to invoke subsequently new grounds of jurisdiction of the Court".

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

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

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

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

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

> "(1) The Government of the Republic of Uganda must order its army to withdraw immediately and completely from Kisangani;
>
> "(2) The Government of the Republic of Uganda must order its army to cease forthwith all fighting or military activity on the territory of the Democratic Republic of the Congo and to withdraw immediately and completely from that territory, and must forthwith desist from providing any direct or indirect support to any State, group, organization, movement or individual engaged or planning to engage in military activities on the territory of the Democratic Republic of the Congo;
>
> "(3) The Government of the Republic of Uganda must take all measures in its power to ensure that any units, forces or agents are or could be under its authority, or which enjoy, or could enjoy its support, together with organizations or persons which could be under its control, authority or influence, desist forthwith from committing or inciting the commission of war crimes or any other oppressive or unlawful act against all persons on the territory of the Democratic Republic of the Congo;
>
> "(4) The Government of the Republic of Uganda must forthwith discontinue any act having the aim or effect of disrupting, interfering with or hampering actions intended to give the population of the occupied zones the benefit of their fundamental human rights, and in particular their rights to health and education;
>
> "(5) The Government of the Republic of Uganda must cease forthwith all illegal exploitation of the natural resources of the Democratic Republic of the Congo and any illegal transfer of assets, equipment or persons to its territory;
>
> "(6) The Government of the Republic of Uganda must henceforth respect in full the right of the Democratic Republic of the Congo to sovereignty, political independence and territorial integrity, and the fundamental rights and freedoms of all persons on the territory of the Democratic Republic of the Congo."

By letters of the same date, 19 June 2000, the President of the Court, Judge Gilbert Guillaume, acting in conformity with Article 74, paragraph 4, of the Rules of Court, drew "the attention of both Parties to the need to act in such a way as to enable any Order the Court will make on the request for provisional measures to have its appropriate effects".

Public sittings to hear the oral observations of the Parties on the request for the indication of provisional measures were held on 26 and 28 June 2000.

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

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

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

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

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

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

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

(k) *Aerial Incident of 10 August 1999 (Pakistan* v. *India)*

By an Order of 19 November 1999 (*I.C.J. Reports 1999*, p. 1038), the Court, taking into account the agreement reached between the Parties, decided that the written pleadings should first be addressed to the question of the jurisdiction of the Court to entertain the Application and fixed 10 January 2000 and 28 February 2000, respectively, as the time limits for the filing of a Memorial by Pakistan and a Counter-Memorial by India on that question. The Memorial and the Counter-Memorial were filed within the prescribed time limits.

Pakistan chose Mr. Syed Sharif Uddin Pirzada and India Mr. B. P. Jeevan Reddy to sit as judges ad hoc.

Public sittings to hear the arguments of the Parties on the question of the Court's jurisdiction were held from 3 to 6 April 2000.

At a public sitting of 21 June 2000, the Court delivered its judgment on jurisdiction (*I.C.J. Reports 2000*, p. 12), a summary of which is given below, followed by the text of the operative paragraph:

History of the proceedings and submissions of the Parties (paras. 1-11)

On 21 September 1999, Pakistan filed in the Registry of the Court an Application instituting proceedings against India in respect of a dispute relating to the destruction, on 10 August 1999, of a Pakistani aircraft. In its Application, Pakistan founded the jurisdiction of the Court on Article 36, paragraphs 1 and 2, of the Statute and the declarations whereby the two Parties recognized the compulsory jurisdiction of the Court.

By letter of 2 November 1999, the Agent of India notified the Court that his Government "wish[ed] to indicate its preliminary objections to the assumption of jurisdiction by the . . . Court . . . on the basis of Pakistan's Application". Those objections, set out in a note appended to the letter, were as follows:

"(i) That Pakistan's Application did not refer to any treaty or convention in force between India and Pakistan which confers jurisdiction upon the Court under Article 36 (1).

(ii) That Pakistan's Application fails to take into consideration the reservations to the Declaration of India dated 15 September, 1974 filed under Article 36 (2) of its Statute. In particular, Pakistan, being a Commonwealth country, is not entitled to invoke the jurisdiction of the Court as subparagraph 2 of paragraph 1 of that Declaration excludes all disputes involving India from the jurisdiction of this Court in respect of any State which 'is or has been a Member of the Commonwealth of Nations'.

(iii) The Government of India also submits that subparagraph 7 of paragraph 1 of its Declaration of 15 September, 1974 bars Pakistan from invoking the jurisdiction of this Court against India concerning any dispute arising from the interpretation or application of a multilateral treaty, unless at the same time all the parties to such a treaty are also joined as parties to the case before the Court. The reference to the Charter of the United Nations, which is a multilateral treaty, in the Application of Pakistan as a basis for its claim would clearly fall within the ambit of this reservation. India further asserts that it has not provided any consent or concluded any special agreement with Pakistan which waives this requirement."

After a meeting held on 10 November 1999 by the President of the Court with the Parties, the latter agreed to request the Court to determine separately the question of its jurisdiction in this case before any proceedings on the merits, on the understanding that Pakistan would first present a Memorial dealing exclusively with this question, to which India would have the opportunity of replying in a Counter-Memorial confined to the same question.

By Order of 19 November 1999, the Court, taking into account the agreement reached between the Parties, decided accordingly and fixed time limits for the filing of a Memorial by Pakistan and a Counter-Memorial by India on that question. Hearings were held from 3 to 6 April 2000.

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In the Application Pakistan requested the Court to judge and declare as follows:

"(*a*) That the acts of India (as stated above) constitute breaches of the various obligations under the Charter of the United Nations, customary international law and treaties specified in the body of this Application for which the Republic of India bears exclusive legal responsibility;

(*b*) That India is under an obligation to make reparations to the Islamic Republic of Pakistan for the loss of the aircraft and as compensation to the heirs of those killed as a result of the breaches of the obligations committed by it under the Charter of the United Nations and relevant rules of customary international law and treaty provisions."

In the note attached to its letter of 2 November 1999, India requested the Court:

"(i) To adjudge and declare that Pakistan's Application is without any merit to invoke the jurisdiction of the Court against India in view of its status as a member of the Commonwealth of Nations; and

(ii) To adjudge and declare that Pakistan cannot invoke the jurisdiction of the Court in respect of any claims concerning various provisions of the Charter of the United Nations, particularly Article 2 (4), as it is evident that all the States parties to the Charter have not been joined in the Application and that, under the circumstances, the reservation made by India in subparagraph 7 of paragraph 1 of its declaration would bar the jurisdiction of this Court."

At the close of the hearings Pakistan requested the Court:

"(i) To dismiss the preliminary objections raised by India;

(ii) To adjudge and declare that it has jurisdiction to decide on the Application filed by Pakistan on 21 September 1999; and

(iii) To fix time limits for the further proceedings in the case."

India submitted "that the Court adjudge and declare that it has no jurisdiction to consider the Application of the Government of Pakistan."

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The Court begins by recalling that, to found the jurisdiction of the Court in this case, Pakistan relied in its Memorial on:

(1) Article 17 of the General Act for Pacific Settlement of International Disputes, signed at Geneva on 26 September 1928 (hereinafter called "the General Act of 1928");

(2) The declarations made by the Parties pursuant to Article 36, paragraph 2, of the Statute of the Court;

(3) Paragraph 1 of Article 36 of the said Statute,

and that India disputes each one of these bases of jurisdiction. The Court examines in turn each of these bases of jurisdiction relied on by Pakistan.

Article 17 of the General Act of 1928 (paras. 13-28)

Pakistan begins by citing article 17 of the General Act of 1928, which provides:

> "All disputes with regard to which the parties are in conflict as to their respective rights shall, subject to any reservations which may be made under article 39, be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal.
>
> "It is understood that the disputes referred to above include in particular those mentioned in Article 36 of the Statute of the Permanent Court of International Justice."

Pakistan goes on to point out that, under Article 37 of the Statute of the International Court of Justice:

> "Whenever a treaty or convention in force provides for reference of a matter to . . . the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice."

Finally, Pakistan recalls that, on 21 May 1931, British India had acceded to the General Act of 1928. It considers that India and Pakistan subsequently became parties to the General Act. It followed that the Court had jurisdiction to entertain Pakistan's Application on the basis of article 17 of the General Act read with Article 37 of the Statute.

In reply, India contends, in the first place, that "the General Act of 1928 is no longer in force and that, even if it were, it could not be effectively invoked as a basis for the Court's jurisdiction". It argues that numerous provisions of the General Act, and in particular articles 6, 7, 9 and 43 to 47 thereof, refer to organs of the League of Nations or to the Permanent Court of International Justice; that, in consequence of the demise of those institutions, the General Act has "lost its original efficacy"; that the United Nations General Assembly so found when in 1949 it adopted a new General Act; that "those parties to the old General Act which have not ratified the new act" cannot rely upon the old Act except "in so far as it might still be operative", that is, insofar . . . as the amended provisions are not involved; that article 17 is among those amended in 1949 and that, as a result, Pakistan cannot invoke it today.

Secondly, the Parties disagree on the conditions under which they succeeded in 1947 to the rights and obligations of British India, assuming, as Pakistan contends, that the General Act was then still in force and binding on British India. In this regard, India argues that the General Act was an agreement of a political character which, by its nature, was not transmissible. It adds that, in any event, it made no notification of succession. Furthermore, India points out that it clearly stated in its communication of 18 September 1974 to the Secretary-General of the United Nations that:

> "[t]he Government of India never regarded themselves as bound by the General Act of 1928 since her Independence in 1947, whether by succession or otherwise. Accordingly, India has never been and is not a party to the General Act of 1928 ever since her Independence."

Pakistan, recalling that up to 1947 British India was party to the General Act of 1928, argues on the contrary that, having become independent, India remained party to the Act, for in its case "there was no succession. There was continuity", and that consequently the "views on non-transmission of the so-called political treaties [were] not relevant here". Thus the communication of 18 September 1974 was a subjective statement, which had no objective validity. Pakistan, for its part, is said

to have acceded to the General Act in 1947 by automatic succession by virtue of international customary law. Further, according to Pakistan, the question was expressly settled in relation to both States by article 4 of the Schedule to the Indian Independence (International Arrangements) Order issued by the Governor-General of India on 14 August 1947. That article provided for the devolvement upon the Dominion of India and upon the Dominion of Pakistan of the rights and obligations under all international agreements to which British India was a party.

India disputes this interpretation of the Indian Independence (International Arrangements) Order of 14 August 1947 and of the agreement in the schedule thereto. In support of this argument India relies on a judgement rendered by the Supreme Court of Pakistan on 6 June 1961, and on the report of Expert Committee No. IX on Foreign Relations, which in 1947 had been instructed, in connection with the preparation of the above-mentioned Order, "to examine and make recommendations on the effect of partition". Pakistan could not have, and did not, become party to the General Act of 1928.

Each of the Parties further relies in support of its position on the practice since 1947.

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On this point, the Court observes in the first place that the question whether the General Act of 1928 is to be regarded as a convention in force for the purposes of Article 37 of the Statute of the Court has already been raised, but not settled, in previous proceedings before the Court. In the present case, as recalled above, the Parties have made lengthy submissions on this question, as well as on the question whether British India was bound in 1947 by the General Act and, if so, whether India and Pakistan became parties to the Act on their accession to independence. Further, relying on its communication to the Secretary-General of the United Nations of 18 September 1974 and on the British India reservations of 1931, India denies that the General Act can afford a basis of jurisdiction enabling the Court to entertain a dispute between the two Parties. Clearly, if the Court were to uphold India's position on any one of these grounds, it would no longer be necessary for it to rule on the others.

As the Court pointed out in the case concerning *Certain Norwegian Loans*, when its jurisdiction is challenged on diverse grounds, "the Court is free to base its decision on the ground which in its judgement is more direct and conclusive". Thus, in the *Aegean Sea Continental Shelf* case, the Court ruled on the effect of a reservation by Greece to the General Act of 1928 without deciding the issue whether that convention was still in force.

In the communication addressed by India to the Secretary-General of the United Nations on 18 September 1974, the Minister for External Affairs of India declared that India considered that it had never been party to the General Act of 1928 as an independent State. The Court considers that India could not therefore have been expected formally to denounce the Act. Even if, *arguendo*, the General Act was binding on India, the communication of 18 September 1974 was to be considered in the circumstances of the present case as having served the same legal ends as the notification of denunciation provided for in article 45 of the Act. It followed that India, in any event, would have ceased to be bound by the General Act of 1928 at the latest on 16 August 1979, the date on which a denunciation of the General Act under article 45 thereof would have taken effect. India could not be regarded

as party to the said Act at the date when the Application in the present case was filed by Pakistan. It followed that the Court had no jurisdiction to entertain the Application on the basis of the provisions of article 17 of the General Act of 1928 and of Article 37 of the Statute.

Declarations of acceptance of the Court's jurisdiction by the Parties (paras. 29-46)

Pakistan seeks, secondly, to found the jurisdiction of the Court on the declarations made by the Parties under Article 36, paragraph 2, of the Statute. Pakistan's current declaration was filed with the Secretary-General of the United Nations on 13 September 1960; India's current declaration was filed on 18 September 1974. India disputes that the Court has jurisdiction in this case on the basis of these declarations. It invokes, in support of its position, the reservations contained in subparagraphs (2) and (7) of the first paragraph of its declaration, with respect to "(2) disputes with the Government of any State which is or has been a member of the Commonwealth of Nations;" and "(7) disputes concerning the interpretation or application of a multilateral treaty unless all the parties to the treaty are also parties to the case before the Court or Government of India specially agree to jurisdiction".

The "Commonwealth reservation" (paras. 30, 31 and 34-46)

With respect to the first of these reservations, relating to States which are or have been members of the Commonwealth (hereinafter called the "Commonwealth reservation"), Pakistan contended in its written pleadings that it "ha[d] no legal effect", on the grounds that: it was in conflict with the "principle of sovereign equality" and the "universality of rights and obligations of members of the United Nations"; it was in breach of "good faith"; and that it was in breach of various provisions of the Charter of the United Nations and of the Statute of the Court. In its Memorial, Pakistan claimed in particular that the reservation in question "[was] in excess of the conditions permitted under Article 36 (3) of the Statute", under which, according to Pakistan, "the permissible conditions [to which a declaration may be made subject] have been exhaustively set out . . . as (i) on condition of reciprocity on the part of several or certain states or (ii) for a certain time". In its oral pleadings, Pakistan developed its argument based on Article 36, paragraph 3, of the Statute, contending that reservations which, like the Commonwealth reservation, did not fall within the categories authorized by that provision, should be considered "extra-statutory". On this point it argued that: "an extra-statutory reservation made by a defendant State may be applied by the Court against a plaintiff State only if there is something in the case which allows the Court to conclude . . . that the plaintiff has accepted the reservation". Pakistan further claimed at the hearings that the reservation was "in any event inapplicable, not because it [was] extra-statutory and unopposable to Pakistan but because it [was] obsolete". Finally, Pakistan claimed that India's Commonwealth reservation, having thus lost its raison d'être, could today only be directed at Pakistan.

India rejects Pakistan's line of reasoning. In its pleadings, it stressed the particular importance to be attached, in its view, to ascertaining the intention of the declarant State. It contended that "there is no evidence whatsoever that the reservation [in question] is *ultra vires* Article 36, paragraph 3" of the Statute and referred to "[t]he fact . . . that it has for long been recognized that within the system of the optional clause a State can select its partners". India also queried the correctness

of the theory of "extra-statutory" reservations put forward by Pakistan, pointing out that "[any] State against which the reservation [were] invoked, [could] escape from it by merely stating that it [was] extra-statutory in character". India also rejects Pakistan's alternative arguments based on estoppel in relation to the Simla Accord and on obsolescence.

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The Court first addresses Pakistan's contention that the Commonwealth reservation is an extra-statutory reservation going beyond the conditions allowed for under Article 36, paragraph 3, of the Statute. According to Pakistan, the reservation is neither applicable nor opposable to it in this case, in the absence of acceptance. The Court observes that paragraph 3 of Article 36 of its Statute has never been regarded as laying down in an exhaustive manner the conditions under which declarations might be made. Already in 1928, the Assembly of the League of Nations had indicated that "reservations conceivably may relate, either generally to certain aspects of any kind of dispute, or specifically to certain classes or lists of disputes, and . . . these different kinds of reservation can be legitimately combined" (resolution adopted on 26 September 1928). Moreover, when the Statute of the present Court was being drafted, the right of a State to attach reservations to its declaration was confirmed, and this right has been recognized in the practice of States. The Court thus cannot accept Pakistan's argument that a reservation such as India's Commonwealth reservation might be regarded as "extra-statutory" because it contravened Article 36, paragraph 3, of the Statute. It considers that it need not therefore pursue further the matter of extra-statutory reservations.

Nor does the Court accept Pakistan's argument that India's reservation was a discriminatory act constituting an abuse of right because the only purpose of the reservation was to prevent Pakistan from bringing an action against India before the Court. It notes in the first place that the reservation refers generally to States which are or have been members of the Commonwealth. It adds that States are in any event free to limit the scope *ratione personae* which they wish to give to their acceptance of the compulsory jurisdiction of the Court.

The Court addresses, secondly, Pakistan's contention that the Commonwealth reservation was obsolete, because members of the Commonwealth of Nations were no longer united by a common allegiance to the Crown, and the modes of dispute settlement originally contemplated had never come into being. The Court recalls that it "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" (*I.C.J. Reports 1998,* p. 454, para. 49). While the historical reasons for the initial appearance of the Commonwealth reservation in the declarations of certain States under the optional clause might have changed or disappeared, such considerations could not, however, prevail over the intention of a declarant State, as expressed in the actual text of its declaration. India had, in the four declarations whereby, since its independence in 1947, it had accepted the compulsory jurisdiction of the Court, made clear that it wished to limit in this manner the scope *ratione personae* of its acceptance of the Court's jurisdiction. Whatever might have been the reasons for this limitation, the Court was bound to apply it.

The Court further regards article 1 of the Simla Accord, paragraph (ii) of which provides, inter alia, that "the two countries are resolved to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutu-

ally agreed upon between them . . .” as an obligation, generally, on the two States to settle their differences by peaceful means, to be mutually agreed by them. The said provision in no way modifies the specific rules governing recourse to any such means, including judicial settlement. The Court cannot therefore accept Pakistan’s argument in the present case based on estoppel.

In the Court’s view, it follows from the foregoing that the Commonwealth reservation contained in subparagraph (2) of the first paragraph of India’s declaration of 18 September 1974 may validly be invoked in the present case. Since Pakistan “is . . . a member of the Commonwealth of Nations”, the Court finds that it has no jurisdiction to entertain the Application under Article 36, paragraph 2, of the Statute. Hence the Court considers it unnecessary to examine India’s objection based on the reservation concerning multilateral treaties contained in subparagraph (7) of the first paragraph of its declaration.

Article 36, paragraph 1, of the Statute (paras. 47-50)

Finally, Pakistan has sought to found the jurisdiction of the Court on paragraph 1 of Article 36 of the Statute. The Court observes that the Charter of the United Nations contains no specific provision of itself conferring compulsory jurisdiction on the Court. In particular, there is no such provision in Articles 1, paragraph 1; 2, paragraphs 3 and 4; 33; 36, paragraph 3; and 92 of the Charter, relied on by Pakistan. The Court also observes that paragraph (i) of article 1 of the Simla Accord represents an obligation entered into by the two States to respect the principles and purposes of the Charter in their mutual relations. It does not as such entail any obligation on India and Pakistan to submit their disputes to the Court. It follows that the Court has no jurisdiction to entertain the Application on the basis of Article 36, paragraph 1, of the Statute.

Obligation to settle disputes by peaceful means (paras. 51-55)

Finally, the Court recalls that its lack of jurisdiction does not relieve States of their obligation to settle their disputes by peaceful means. The choice of those means admittedly rests with the parties under Article 33 of the Charter of the United Nations. They are nonetheless under an obligation to seek such a settlement, and to do so in good faith in accordance with Article 2, paragraph 2, of the Charter. As regards India and Pakistan, that obligation was restated more particularly in the Simla Accord of 2 July 1972. Moreover, the Lahore Declaration of 21 February 1999 reiterated “the determination of both countries to implementing the Simla Agreement”. Accordingly, the Court reminds the Parties of their obligation to settle their disputes by peaceful means, and in particular the dispute arising out of the aerial incident of 10 August 1999, in conformity with the obligations which they have undertaken.

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Operative paragraph (para. 56)

“For these reasons,

THE COURT,

By fourteen votes to two,

Finds that it has no jurisdiction to entertain the Application filed by the Islamic Republic of Pakistan on 21 September 1999.

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

AGAINST: *Judge* Al-Khasawneh; *Judge ad hoc* Pirzada."

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Judges Oda, Koroma and Judge ad hoc Reddy appended separate opinions to the judgment of the Court. Judge Al-Khasawneh and Judge ad hoc Pirzada appended dissenting opinions.

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

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

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

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

On 17 October 2000, the Democratic Republic of the Congo (the Congo) filed in the Registry of the Court an Application instituting proceedings against Belgium concerning an international arrest warrant issued on 11 April 2000 by a Belgian examining judge against the Congo's acting Minister for Foreign Affairs, Yerodia Abdoulaye Ndombasi, seeking his detention and subsequent extradition to Belgium for alleged crimes constituting "grave violations of international humanitarian law". The international arrest warrant was transmitted to all States, including the Congo, which received it on 12 July 2000.

In its Application, the Democratic Republic of the Congo notes that the arrest warrant, issued by Mr. Vandermeersch, examining judge at the Brussels Tribunal de première instance, characterizes the alleged facts as "crimes of international law committed by action or omission against persons or property protected by the Geneva Conventions of 12 August 1949 and the Additional Protocols I and II to those Conventions, crimes against humanity" and cites in support of this proposition provisions of the allegedly applicable Belgian Law of 16 June 1993 as amended by the Law of 10 February 1999 pertaining to the punishment of grave violations of international humanitarian law. The Democratic Republic of the Congo states that, according to the terms of the warrant, the examining judge affirms his competence to deal with facts allegedly committed on the territory of the Congo by a national of that State, without it being alleged that the victims are of Belgian nationality, or that the facts constitute violations of the security or dignity of the Kingdom of Belgium. It further observes that article 5 of the above-mentioned Belgian Law prescribes that "the immunity conferred by a person's official capacity does not prevent application of this Law" and that article 7 of the same Law establishes the universal applicabil-

ity of the Law and the universal jurisdiction of Belgian courts in relation to "grave violations of international humanitarian law", which jurisdiction is not subject to the presence of the accused on Belgian territory.

The Congo maintains that article 7 of the Belgian Law and the arrest warrant issued on the basis of that article constitute "a violation of the principle whereby a State may not exercise its authority on the territory of another State and the principle of sovereign equality among all Members of the United Nations", as declared in Article 2, paragraph 1, of the Charter of the United Nations. It also maintains that article 5 and the arrest warrant contravene international law, insofar as they claim to derogate from the diplomatic immunity of the Minister for Foreign Affairs of a sovereign State, "deriving from article 41, paragraph 2, of the Vienna Convention of 18 April 1961 on Diplomatic Relations".

Accordingly, the Congo asks the Court to declare that Belgium must annul the international arrest warrant issued against Abdoulaye Yerodia Ndombasi.

As a basis for the Court's jurisdiction, the Congo invokes the fact that "Belgium has accepted the Court's jurisdiction and [that], to the extent necessary, the present Application signifies acceptance of that jurisdiction by the Democratic Republic of the Congo".

The Democratic Republic of the Congo also filed a request for the indication of a provisional measure seeking "to have the arrest warrant withdrawn forthwith". In its request, the Congo maintains that "the two conditions that are essential for the indication of a provisional measure under the jurisprudence of the Court—urgency and the existence of irreparable damage—are manifestly present in this case". It stresses, inter alia, that "the disputed international arrest warrant in effect prevents the Minister [of the Democratic Republic of the Congo] from departing that State for any other State where his duties may call him and, accordingly, from accomplishing his duties".

Hearings on the request for the indication of provisional measures filed by the Congo were held from 20 to 23 November 2000.

During those hearings, the Democratic Republic of the Congo, inter alia, stated the following:

> "the Democratic Republic of the Congo requests the Court to order Belgium to comply with international law; to cease and desist from any conduct which might exacerbate the dispute with the Democratic Republic of the Congo; specifically, to discharge the international arrest warrant issued against Minister Yerodia".

Belgium, for its part, made the following submissions:

> "The Kingdom of Belgium asks that it may please the Court to refuse the request for the indication of provisional measures submitted by the Democratic Republic of the Congo in the case concerning the *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo* v. *Belgium)* and not indicate the provisional measures which are the subject of the request by the Democratic Republic of the Congo.
>
> "The Kingdom of Belgium asks that it may please the Court to remove from its List the case concerning the *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo* v. *Belgium)* brought by the Democratic Republic of the Congo against Belgium by Application dated 17 October 2000."

At a public sitting, held on 8 December 2000, the Court rendered its Order (*I.C.J. Reports 2000*, p. 182) on the request for the indication of provisional measures, a summary of which is given below, followed by the text of the final paragraph:

The Court begins by recalling that, in the course of the hearings, it was informed by Belgium that, on 20 November 2000, a Cabinet reshuffle had taken place in the Congo, as a result of which Yerodia Ndombasi had ceased to exercise the functions of Minister for Foreign Affairs and had been charged with those of Minister of Education; and that this information was confirmed by the Congo.

Belgium had maintained that, as a result of the Cabinet reshuffle, the Congo's Application on the merits had been deprived of its object and should therefore be removed from the List. In this regard, the Court observes that, "to date", the arrest warrant issued against Yerodia Ndombasi "has not been withdrawn and still relates to the same individual, notwithstanding the new ministerial duties that he is performing" and that "at the hearings the Congo maintained its claim on the merits". It accordingly concludes that "the Congo's Application has not at the present time been deprived of its object" and that "it cannot therefore accede to Belgium's request for the case to be removed from the List".

As regards the request for the indication of provisional measures, the Court finds that it too still has an object, despite the Cabinet reshuffle, since, inter alia, the arrest warrant continues to be in the name of Yerodia Ndombasi and the Congo contends that Yerodia Ndombasi continues to enjoy immunities which render the arrest warrant unlawful.

The Court then turns to the issue of its jurisdiction. In the course of the hearings Belgium had contended that the Court could not at this stage of the proceedings take account of the declarations of acceptance of its compulsory jurisdiction made by the Parties because the Congo had not invoked those declarations until a late stage. The Court observes that the said declarations are within the knowledge both of itself and of the Parties to the present case and that Belgium could readily expect that they would be taken into consideration as a basis for the jurisdiction of the Court in the present case. Belgium had also pointed out that its declaration excluded the compulsory jurisdiction of the Court concerning situations or facts "in regard to which the parties have agreed or may agree to have recourse to another method of pacific settlement", and that negotiations at the highest level regarding the arrest warrant were in fact in progress when the Congo seized the Court. The Court states that Belgium has not provided the Court with any further details of those negotiations, or of the consequences which it considered they would have in regard to the Court's jurisdiction, in particular its jurisdiction to indicate provisional measures. The Court concludes that the declarations made by the Parties constitute prima facie a basis on which its jurisdiction could be founded in the present case.

After having recalled that the power of the Court to indicate provisional measures "has as its object to preserve the respective rights of the parties pending the decision of the Court", that it "presupposes that irreparable prejudice should not be caused to rights which are the subject of dispute" and that "such measures are justified solely if there is urgency", the Court notes that, following the Cabinet reshuffle of 20 November 2000, Yerodia Ndombasi ceased to exercise the functions of Minister for Foreign Affairs and was charged with those of Minister of Education, involving less frequent foreign travel. It concludes that "it has accordingly not been established that irreparable prejudice might be caused in the immediate future to the

Congo's rights nor that the degree of urgency is such that those rights need to be protected by the indication of provisional measures".

The Court adds that, "while the Parties appear to be willing to consider seeking a friendly settlement of their dispute, their positions as set out before [it] regarding their respective rights are still a long way apart". It points out that, "while any bilateral negotiations with a view to achieving a direct and friendly settlement will continue to be welcomed, the outcome of such negotiations cannot be foreseen"; "it is desirable that the issues before the Court should be determined as soon as possible" and "it is therefore appropriate to ensure that a decision on the Congo's Application be reached with all expedition". The Court further states that the Order made in the present proceedings in no way prejudges the question of the jurisdiction of the Court to deal with the merits of the case, or with any questions relating to the admissibility of the Application or to the merits themselves.

Final paragraph (para. 78):

"For these reasons,

THE COURT,

(1) Unanimously,

Rejects the request of the Kingdom of Belgium that the case be removed from the List;

(2) By fifteen votes to two,

Finds that the circumstances, as they now present themselves to the Court, are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures.

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

AGAINST: *Judge* Rezek; *Judge ad hoc* Bula-Bula."

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Judges Oda and Ranjeva appended declarations to the Order of the Court; Judges Koroma and Parra-Aranguren separate opinions; Judge Rezek and Judge ad hoc Bula-Bula dissenting opinions; and Judge ad hoc Van den Wyngaert a declaration.

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

Consideration by the General Assembly

The General Assembly, by its decision 55/407 of 26 October 2000, adopted without reference to a Main Committee, took note of the report of the International Court of Justice.[107]

6. INTERNATIONAL LAW COMMISSION[108]

Fifty-second session of the Commission[109]

The International Law Commission held the first part of its fifty-second session from 1 May to 9 June 2000 and the second part from 10 July to 18 August 2000 at its seat at the United Nations Office at Geneva.

Regarding the topic of State responsibility, the Commission had before it comments and observations received from Governments on the draft articles provisionally adopted on first reading and the third report of the Special Rapporteur. The Commission continued with its task, and on 17 August, took note of the report of the Drafting Committee on the entire set of draft articles, which were provisionally adopted by the Drafting Committee.

Concerning the topic of diplomatic protection, the Commission had before it the Special Rapporteur's first report, and at its 2624th meeting, it established open-ended informal consultations, chaired by the Special Rapporteur, on articles 1, 3 and 6. Subsequently, the Commission considered the report of the informal consultations and decided to refer draft articles 1, 3 and 5 to 8 to the Drafting Committee together with the report of the informal consultations.

The Commission had before it the Special Rapporteur's third report on unilateral acts of States, as well as the report of the Secretary-General containing the text of the replies to the questionnaire. The Special Rapporteur's report was considered by the members at the current session.

For the topic of reservations to treaties, the Commission had before it the Special Rapporteur's fifth report relating to alternatives to reservations and interpretative declarations and to the formulation, modification and withdrawal of reservations and interpretative declarations. The Commission considered the first part of the fifth report and, on 14 July 2000, adopted on first reading a number of draft guidelines. Due to lack of time, the Commission decided to defer consideration of the second part of the fifth report of the Special Rapporteur, which dealt with procedural matters on the topic.

In connection with the topic of international liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities), the Commission established a Working Group. The Commission had before it the report of the Secretary-General containing the comments and observations received from Governments on the topic, as well as the third report by the Special Rapporteur, which the Commission considered at the current session.

The annual report of the Commission to the General Assembly also contained a list of topics recommended for inclusion in its long-term programme of work: responsibility of international organizations; the effect of armed conflict on treaties; expulsion of aliens; and risks ensuing from fragmentation of international law.

Consideration by the General Assembly

On the recommendation of the Sixth Committee, the General Assembly adopted, without a vote, resolution 55/150 of 12 December 2000, it took note with appreciation of the report of the Working Group on Jurisdictional Immunities of States and Their Property of the Commission, [110] and decided to establish an Ad Hoc

Committee on the topic, to further the work done, consolidate areas of agreement and resolve outstanding issues with a view to elaborating a generally acceptable instrument based on the draft articles on jurisdictional immunities of States and their property adopted by the Commission at its forty-third session and on the discussions of the open-ended working group of the Sixth Committee and their results. And by its resolution 55/152, also of 12 December 2000, adopted without a vote, the Assembly took note of the report of the International Law Commission.

On the same date, the General Assembly also adopted without a vote resolution 55/153, in which it took note of the articles on nationality of natural persons in relation to the succession of States, presented by the Commission in the form of a declaration, the text of which reads as follows:

Nationality of natural persons in relation to the succession of States

PREAMBLE

Considering that problems of nationality arising from succession of States concern the international community,

Emphasizing that nationality is essentially governed by internal law within the limits set by international law,

Recognizing that in matters concerning nationality, due account should be taken both of the legitimate interests of States and those of individuals,

Recalling that the Universal Declaration of Human Rights of 1948 proclaimed the right of every person to a nationality,

Recalling also that the International Covenant on Civil and Political Rights of 1966 and the Convention on the Rights of the Child of 1989 recognize the right of every child to acquire a nationality,

Emphasizing that the human rights and fundamental freedoms of persons whose nationality may be affected by a succession of States must be fully respected,

Bearing in mind the provisions of the Convention on the reduction of statelessness of 1961, the Vienna Convention on Succession of States in Respect of Treaties of 1978 and the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts of 1983,

Convinced of the need for the codification and progressive development of the rules of international law concerning nationality in relation to the succession of States as a means for ensuring greater juridical security for States and for individuals,

PART I. GENERAL PROVISIONS

Article 1

Right to a nationality

Every individual who, on the date of the succession of States, had the nationality of the predecessor State, irrespective of the mode of acquisition of that nationality, has the right to the nationality of at least one of the States concerned, in accordance with the present articles.

Article 2

Use of terms

For the purposes of the present articles:

(*a*) "Succession of States" means the replacement of one State by another in the responsibility for the international relations of territory;

(*b*) "Predecessor State" means the State which has been replaced by another State on the occurrence of a succession of States;

(*c*) "Successor State" means the State which has replaced another State on the occurrence of a succession of States;

(*d*) "State concerned" means the predecessor State or the successor State, as the case may be;

(*e*) "Third State" means any State other than the predecessor State or the successor State;

(*f*) "Person concerned" means every individual who, on the date of the succession of States, had the nationality of the predecessor State and whose nationality may be affected by such succession;

(*g*) "Date of the succession of States" means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates.

Article 3

Cases of succession of States covered by the present articles

The present articles apply only to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations.

Article 4

Prevention of statelessness

States concerned shall take all appropriate measures to prevent persons who, on the date of the succession of States, had the nationality of the predecessor State from becoming stateless as a result of such succession.

Article 5

Presumption of nationality

Subject to the provisions of the present articles, persons concerned having their habitual residence in the territory affected by the succession of States are presumed to acquire the nationality of the successor State on the date of such succession.

Article 6

Legislation on nationality and other connected issues

Each State concerned should, without undue delay, enact legislation on nationality and other connected issues arising in relation to the succession of States consistent with the provisions of the present articles. It should take all appropriate measures to ensure that persons concerned will be apprised, within a reasonable time period, of the effect of its legislation on their nationality, of any choices they may have thereunder, as well as of the consequences that the exercise of such choices will have on their status.

Article 7

Effective date

The attribution of nationality in relation to the succession of States, as well as the acquisition of nationality following the exercise of an option, shall take effect on the date of such succession, if persons concerned would otherwise be stateless during the period between the date of the succession of States and such attribution or acquisition of nationality.

Article 8

Persons concerned having their habitual residence in another State

1. A successor State does not have the obligation to attribute its nationality to persons concerned who have their habitual residence in another State and also have the nationality of that or any other State.

2. A successor State shall not attribute its nationality to persons concerned who have their habitual residence in another State against the will of the persons concerned unless they would otherwise become stateless.

Article 9

Renunciation of the nationality of another State as a condition for attribution of nationality

When a person concerned who is qualified to acquire the nationality of a successor State has the nationality of another State concerned, the former State may make the attribution of its nationality dependent on the renunciation by such person of the nationality of the latter State. However, such requirement shall not be applied in a manner which would result in rendering the person concerned stateless, even if only temporarily.

Article 10

Loss of nationality upon the voluntary acquisition of the nationality of another State

1. A predecessor State may provide that persons concerned who, in relation to the succession of States, voluntarily acquire the nationality of a successor State shall lose its nationality.

2. A successor State may provide that persons concerned who, in relation to the succession of States, voluntarily acquire the nationality of another successor State or, as the case may be, retain the nationality of the predecessor State shall lose its nationality acquired in relation to such succession.

Article 11

Respect for the will of persons concerned

1. States concerned shall give consideration to the will of persons concerned whenever those persons are qualified to acquire the nationality of two or more States concerned.

2. Each State concerned shall grant a right to opt for its nationality to persons concerned who have appropriate connection with that State if those persons would otherwise become stateless as a result of the succession of States.

3. When persons entitled to the right of option have exercised such right, the State whose nationality they have opted for shall attribute its nationality to such persons.

4. When persons entitled to the right of option have exercised such right, the State whose nationality they have renounced shall withdraw its nationality from such persons, unless they would thereby become stateless.

5. States concerned should provide a reasonable time limit for the exercise of the right of option.

Article 12

Unity of a family

Where the acquisition or loss of nationality in relation to the succession of States would impair the unity of a family, States concerned shall take all appropriate measures to allow that family to remain together or to be reunited.

Article 13

Child born after the succession of States

A child of a person concerned, born after the date of the succession of States, who has not acquired any nationality, has the right to the nationality of the State concerned on whose territory that child was born.

Article 14

Status of habitual residents

1. The status of persons concerned as habitual residents shall not be affected by the succession of States.

2. A State concerned shall take all necessary measures to allow persons concerned who, because of events connected with the succession of States, were forced to leave their habitual residence on its territory to return thereto.

Article 15

Non-discrimination

States concerned shall not deny persons concerned the right to retain or acquire a nationality or the right of option upon the succession of States by discriminating on any ground.

Article 16

Prohibition of arbitrary decisions concerning nationality issues

Persons concerned shall not be arbitrarily deprived of the nationality of the predecessor State, or arbitrarily denied the right to acquire the nationality of the successor State or any right of option, to which they are entitled in relation to the succession of States.

Article 17

Procedures relating to nationality issues

Applications relating to the acquisition, retention or renunciation of nationality or to the exercise of the right of option, in relation to the succession of States, shall be processed without undue delay. Relevant decisions shall be issued in writing and shall be open to effective administrative or judicial review.

Article 18

Exchange of information, consultation and negotiation

1. States concerned shall exchange information and consult in order to identify any detrimental effects on persons concerned with respect to their nationality and other connected issues regarding their status as a result of the succession of States.

2. States concerned shall, when necessary, seek a solution to eliminate or mitigate such detrimental effects by negotiation and, as appropriate, through agreement.

Article 19

Other States

1. Nothing in the present articles requires States to treat persons concerned having no effective link with a State concerned as nationals of that State, unless this would result in treating those persons as if they were stateless.

2. Nothing in the present articles precludes States from treating persons concerned, who have become stateless as a result of the succession of States, as nationals of the State concerned whose nationality they would be entitled to acquire or retain, if such treatment is beneficial to those persons.

PART II. PROVISIONS RELATING TO SPECIFIC CATEGORIES OF SUCCESSION OF STATES

SECTION 1. TRANSFER OF PART OF THE TERRITORY

Article 20

Attribution of the nationality of the successor State and withdrawal of the nationality of the predecessor State

When part of the territory of a State is transferred by that State to another State, the successor State shall attribute its nationality to the persons concerned who have their habitual residence in the transferred territory and the predecessor State shall withdraw its nationality from such persons, unless otherwise indicated by the exercise of the right of option which such persons shall be granted. The predecessor State shall not, however, withdraw its nationality before such persons acquire the nationality of the successor State.

SECTION 2. UNIFICATION OF STATES

Article 21

Attribution of the nationality of the successor State

Subject to the provisions of article 8, when two or more States unite and so form one successor State, irrespective of whether the successor State is a new State or whether its personality is identical to that of one of the States which have united, the successor State shall attribute its nationality to all persons who, on the date of the succession of States, had the nationality of a predecessor State.

SECTION 3. DISSOLUTION OF A STATE

Article 22

Attribution of the nationality of the successor States

When a State dissolves and ceases to exist and the various parts of the territory of the predecessor State form two or more successor States, each successor State shall, unless otherwise indicated by the exercise of a right of option, attribute its nationality to:

(*a*) Persons concerned having their habitual residence in its territory; and

(*b*) Subject to the provisions of article 8:

(i) Persons concerned not covered by subparagraph (*a*) having an appropriate legal connection with a constituent unit of the predecessor State that has become part of that successor State;

(ii) Persons concerned not entitled to a nationality of any State concerned under subparagraphs (*a*) and (*b*) (i) having their habitual residence in a third State, who were born in or, before leaving the predecessor State, had their last habitual residence in what has become the territory of that successor State or having any other appropriate connection with that successor State.

Article 23

Granting of the right of option by the successor States

1. Successor States shall grant a right of option to persons concerned covered by the provisions of article 22 who are qualified to acquire the nationality of two or more successor States.

2. Each successor State shall grant a right to opt for its nationality to persons concerned who are not covered by the provisions of article 22.

Section 4. Separation of part or parts of the territory

Article 24

Attribution of the nationality of the successor State

When part or parts of the territory of a State separate from that State and form one or more successor States while the predecessor State continues to exist, a successor State shall, unless otherwise indicated by the exercise of a right of option, attribute its nationality to:

(*a*) Persons concerned having their habitual residence in its territory; and

(*b*) Subject to the provisions of article 8:

(i) Persons concerned not covered by subparagraph (*a*) having an appropriate legal connection with a constituent unit of the predecessor State that has become part of that successor State;

(ii) Persons concerned not entitled to a nationality of any State concerned under subparagraphs (*a*) and (*b*) (i) having their habitual residence in a third State, who were born in or, before leaving the predecessor State, had their last habitual residence in what has become the territory of that successor State or having any other appropriate connection with that successor State.

Article 25

Withdrawal of the nationality of the predecessor State

1. The predecessor State shall withdraw its nationality from persons concerned qualified to acquire the nationality of the successor State in accordance with article 24. It shall not, however, withdraw its nationality before such persons acquire the nationality of the successor State.

2. Unless otherwise indicated by the exercise of a right of option, the predecessor State shall not, however, withdraw its nationality from persons referred to in paragraph 1 who:

(*a*) Have their habitual residence in its territory;

(*b*) Are not covered by subparagraph (*a*) and have an appropriate legal connection with a constituent unit of the predecessor State that has remained part of the predecessor State;

(*c*) Have their habitual residence in a third State, and were born in or, before leaving the predecessor State, had their last habitual residence in what has remained part of the territory of the predecessor State or have any other appropriate connection with that State.

Article 26

Granting of the right of option by the predecessor and the successor States

Predecessor and successor States shall grant a right of option to all persons concerned covered by the provisions of article 24 and paragraph 2 of article 25 who are qualified to have the nationality of both the predecessor and successor States or of two or more successor States.

7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW[111]

The United Nations Commission on International Trade Law (UNCITRAL) held its thirty-third session in New York from 12 June to 7 July 2000.

At the session, the Commission adopted the report of the drafting group on the draft Convention on assignment of receivables, and requested the United Nations Secretariat to prepare and distribute a revised version of the commentary on the Convention after the working group had completed its work on the draft Convention.

At its 703rd meeting, the Commission adopted the Legislative Guide on privately financed infrastructure projects, and requested the United Nations Secretariat to transmit the text of the Guide to Governments and other interested bodies.

With regard to the topic of electronic commerce, the Commission adopted the text of articles 1 and 3 to 12 of the uniform rules. The Commission also agreed to undertake studies in three areas for possible future work: electronic contracting; dispute settlement; and dematerialization of documents of title, in particular in the transport industry.

Concerning the settlement of commercial disputes, the Commission had entrusted the subject to the Working Group on Arbitration and had decided that the priority items should be conciliation, requirement of written form for the arbitration agreement, enforceability of interim measures of protection and possible enforceability of an award that had been set aside in the State of origin. At the current session, the Commission considered the report of the Working Group[112] and called for coordination between the Working Group and the ECE Advisory Group on the 1961 European Convention on International Commercial Arbitration.

Regarding the Australian proposal on insolvency law, the Commission accepted the Working Group's recommendation that the Group prepare a comprehensive statement of key objectives and core features for a strong insolvency, debtor-creditor regime, including consideration of out-of-court restructuring, and a legislative guide containing flexible approaches to the implementation of such objectives and features, including a discussion of the alternative approaches possible and the perceived benefits and detriments of such approaches. It was agreed that in carrying out its task the Working Group should be mindful of the work under way or already completed by other organizations, including IMF, the World Bank, the Asian Development Bank, INSOL International (International Federation of Insolvency Professionals) and the International Bar Association.

Concerning the case law on UNCITRAL texts (CLOUT),[113] the Commission expressed appreciation to the national correspondents for their valuable work in the collection of relevant decisions and arbitral awards and their preparation of case abstracts. It was noted that, whereas 62 jurisdictions had appointed national correspondents, there were another 26 jurisdictions that had not yet done so.

In the area of transport law, the Commission had before it a report of the Secretary-General on possible future work in transport law,[114] which described the progress of the work carried out by the International Maritime Committee in cooperation with the secretariat of the Commission.

The report of UNCITRAL of 6 June 2000[115] also provided information on the status of international trade law texts as follows:

(*a*) 1974 Convention on the Limitation Period in the International Sale of Goods, as amended by the 1980 Protocol—17 States parties;

(*b*) [Unamended] 1974 Convention on the Limitation Period in the International Sale of Goods—24 States parties;

(*c*) 1978 United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules)—26 States parties;

(*d*) 1980 United Nations Convention on Contracts for the International Sale of Goods—56 States parties;

(*e*) 1988 United Nations Convention on International Bills of Exchange and International Promissory Notes—not yet in force;

(*f*) 1991 United Nations Convention on the Liability of Operators of Transport Terminals in International Trade—not yet in force;

(*g*) 1995 United Nations Convention on Independent Guarantees and Stand-by Letters of Credit—5 States parties;

(*h*) 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards—121 States parties;

(*i*) 1985 UNCITRAL Model Law on International Commercial Arbitration—Macau Special Administrative Region of China is new jurisdiction that has enacted legislation based on the Model Law;

(*j*) 1992 UNCITRAL Model Law on International Credit Transfers;

(*k*) 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services;

(*l*) 1996 UNCITRAL Model Law on Electronic Commerce—new jurisdictions that have enacted legislation based on Model Law are: Austria, Bermuda, France and Hong Kong Special Administrative Region of China. Uniform legislation influenced by the Model Law and the principles on which it is based has been prepared in Canada and in the United States of America;

(*m*) 1997 UNCITRAL Model Law on Cross-Border Insolvency—new jurisdictions that have enacted legislation based on the Model Law are Eritrea and Mexico.

In connection with the issue of security interests, the Commission recalled that it was the core legal body of the United Nations system in the field of the unification and harmonization of international trade law, and reaffirmed its mandate to monitor work carried out in other organizations in the field of international trade law, issuing recommendations when necessary, and to take any other action to carry out its mandate. With regard to the concern expressed as to the risk that any work by UNCITRAL in the field of secured credit law might duplicate work carried out in other organizations, the Commission agreed that such duplication could be avoided with a cautious, measured approach that would focus on particular types of assets. After discussion, the Commission requested the United Nations Secretariat to prepare a study that would discuss in detail the relevant problems in the field of secured credit law and the possible solutions for consideration by the Commission at its thirty-fourth session in 2001.

Consideration by the General Assembly

On 12 December 2000, the General Assembly, on the recommendation of the Sixth Committee, adopted without a vote resolution 55/151, wherein it took note of the report of the Secretary-General on the thirty-third session of UNCITRAL. The Assembly also appealed to Governments that had not yet done so to reply to the questionnaire circulated by the Secretariat concerning the legal regime governing the recognition and enforcement of foreign arbitral awards and, in particular, the legislative implementation of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).[116] The Assembly further invited States to nominate persons to work with the private foundation established to encourage assistance to the Commission from the private sector.

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

In addition to the resolutions regarding the International Law Commission and international trade law matters, dealt with separately in the above sections, the Sixth Committee considered additional items and submitted its recommendations thereon to the General Assembly at its fifty-fifth session, which on 12 December 2000 adopted the resolutions and one decision, without a vote, except for the resolution on international terrorism, which was adopted by a recorded vote of 151 to none, with 2 abstentions.

Status of the Protocols Additional[117] *to the Geneva Conventions of 1949*[118] *and relating to the protection of victims of armed conflicts*

The General Assembly, by its resolution 55/148, appreciated the virtually universal acceptance of the Geneva Conventions of 1949 and noted the trend towards similarly wide acceptance of the two additional Protocols of 1977; and called upon all States that were already parties to Protocol I, or those States not parties, on becoming parties to Protocol I, to make the declaration provided for under article 90 of that Protocol. The Assembly also called upon all States that had not yet done so to consider becoming parties to the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict[119] and the two Protocols thereto, and to other relevant treaties on international humanitarian law relating to the protection of victims of armed conflict; and further noted with appreciation the Plan of Action adopted by the Twenty-seventh International Conference of the Red Cross and Red Crescent, in particular the reiteration of the importance of universal adherence to treaties on humanitarian law and their effective implementation at the national level.

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

In its resolution 55/149, the General Assembly took note of the reports of the Secretary-General;[120] and called upon States that had not yet done so to consider

becoming parties to the instruments relevant to the protection, security and safety of diplomatic and consular missions and representatives.[121]

Report of the Committee on Relations with the Host Country

The General Assembly, by its resolution 55/154, endorsed the recommendations and conclusions of the Committee on Relations with the Host Country contained in paragraph 62 of its report;[122] and noted that the Committee had taken note of the opinion of the Legal Counsel of 1 September 2000 concerning the issuance of visas to participants in United Nations–related meetings[123] and that, in that connection, the Committee had recommended that the host country take that opinion into consideration in the future. The Assembly further expressed appreciation for the efforts made by the host country, and hoped that the issues raised at the meetings of the Committee would continue to be resolved in a spirit of cooperation and in accordance with international law.

Establishment of the International Criminal Court

In its resolution 55/155, the General Assembly reiterated the historic significance of the adoption of the Rome Statute of the International Criminal Court;[124] and welcomed the important work accomplished by the Preparatory Commission for the International Criminal Court in the completion of the part of its mandate relating to the draft texts of the rules of procedure and evidence and the elements of crimes, as required under resolution F adopted by the Rome Conference,[125] and noted in that respect the importance of the growing participation in the work of the working group on the crime of aggression.

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 55/156, took note of the report of the Special Committee on the Charter.[126] The Assembly also requested the Special Committee, at its session in 2001, to continue its consideration of all proposals concerning the question of the maintenance of international peace and security; to continue to consider on a priority basis the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter; to continue its work on the question of the peaceful settlement of disputes between States; to continue to consider proposals concerning the Trusteeship Council in the light of the report of the Secretary-General submitted in accordance with Assembly resolution 50/55 of 11 December 1995,[127] the report of the Secretary-General entitled "Renewing the United Nations: a programme for reform"[128] and the views expressed by States on the subject at previous sessions of the Assembly; and to continue to consider, on a priority basis, ways and means of improving its working methods and enhancing its efficiency. The Assembly furthermore took note of subparagraphs (*a*) to (*h*) of paragraph 33 of the report of the Secretary-General,[129] commended the Secretary-General for his continued efforts to reduce the backlog in the publication of the *Repertory of Practice of United Nations Organs*, and endorsed the efforts of the Secretary-General to eliminate the backlog in the publication of the *Repertoire of the Practice of the Security Council*.

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, in its resolution 55/157, renewed its invitation to the Security Council to consider the establishment of further mechanisms or procedures, as appropriate, for consultations as early as possible under Article 50 of the Charter of the United Nations with third States which were or might be confronted with special economic problems arising from the carrying out of prevention or enforcement measures imposed by the Council under Chapter VII of the Charter. The Assembly also welcomed the measures taken by the Security Council since the adoption of General Assembly resolution 50/51 of 11 December 1995, most recently the note by the President of the Security Council of 17 April 2000,[130] in which the members of the Council had decided to establish an informal working group to develop general recommendations on how to improve the effectiveness of United Nations sanctions.

Measures to eliminate international terrorism

In its resolution 55/158, the General Assembly, having examined the report of the Secretary-General,[131] the report of the Ad Hoc Committee established by General Assembly resolution 51/216 of 17 December 1996[132] and the report of the Working Group of the Sixth Committee established pursuant to resolution 54/110 of 9 December 1999,[133] urged all States that had not yet done so to consider becoming parties to relevant conventions and protocols as referred to in paragraph 6 of resolution 51/210, as well as the 1997 International Convention for the Suppression of Terrorist Bombings,[134] and the 1999 International Convention for the Suppression of the Financing of Terrorism,[135] and called upon all States to enact, as appropriate, domestic legislation necessary to implement the provisions of those conventions and protocols. The Assembly also reaffirmed the 1994 Declaration on Measures to Eliminate International Terrorism[136] and the Declaration to Supplement the 1994 Declaration,[137] and called upon all States to implement them.

Review of the Statute of the United Nations Administrative Tribunal

By its resolution 55/159, the General Assembly decided to amend the Statute of the Tribunal, effective 1 January 2001, which would then read as follows:

Statute of the Administrative Tribunal of the United Nations

Article 1

A Tribunal is established by the present Statute to be known as the United Nations Administrative Tribunal.

Article 2

1. The Tribunal shall be 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 words "contracts" and "terms of appointment" include all pertinent regulations and rules in force at the time of alleged non-observance, including the staff pension regulations.

2. The Tribunal shall be open:

(*a*) To any staff member of the Secretariat of the United Nations even after his or her employment has ceased, and to any person who has succeeded to the staff member's rights on his or her death;

(*b*) To any other person who can show that he or she 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.

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

4. The Tribunal shall not be competent, however, to deal with any applications where the cause of complaint arose prior to 1 January 1950.

Article 3

1. The Tribunal shall be composed of seven members, no two of whom may be nationals of the same State. Members shall possess the requisite qualifications and experience, including, as appropriate, legal qualifications and experience. Only three members shall sit in any particular case.

2. The members shall be appointed by the General Assembly for four years and may be reappointed once. A member appointed to replace a member whose term of office has not expired shall hold office for the remainder of his or her predecessor's term, and may be reappointed once.

3. The Tribunal shall elect its President and its two Vice-Presidents from among its members.

4. The Secretary-General shall provide the Tribunal with an Executive Secretary and such other staff as may be considered necessary.

5. No member of the Tribunal can be dismissed by the General Assembly unless the other members are of the unanimous opinion that he or she is unsuited for further service.

6. In case of a resignation of a member of the Tribunal, the resignation shall be addressed to the President of the Tribunal for transmission to the Secretary-General. This last notification makes the place vacant.

Article 4

The Tribunal shall hold ordinary sessions at dates to be fixed by its rules, subject to there being cases on its list which, in the opinion of the President, justify holding the session. Extraordinary sessions may be convoked by the President when required by the cases on the list.

Article 5

1. The Secretary-General of the United Nations shall make the administrative arrangements necessary for the functioning of the Tribunal.

2. The expenses of the Tribunal shall be borne by the United Nations.

Article 6

1. Subject to the provisions of the present Statute, the Tribunal shall establish its rules.

2. The rules shall include provisions concerning:

(*a*) Election of the President and Vice-Presidents;

(*b*) Composition of the Tribunal for its sessions;

(*c*) Presentation of applications and the procedure to be followed in respect to them;

(*d*) Intervention by persons to whom the Tribunal is open under paragraph 2 of article 2, whose rights may be affected by the judgement;

(*e*) Hearing, for purposes of information, of persons to whom the Tribunal is open under paragraph 2 of article 2, even though they are not parties to the case; and generally,

(*f*) Other matters relating to the functioning of the Tribunal.

Article 7

1. An application shall not be receivable unless the person concerned has previously submitted the dispute to the joint appeals body provided for in the Staff Regulations and the latter has communicated its opinion to the Secretary-General, except where the Secretary-General and the applicant have agreed to submit the application directly to the Administrative Tribunal.

2. In the event of the joint body's recommendations being favourable to the application submitted to it, and insofar as this is the case, an application to the Tribunal shall be receivable if the Secretary-General has:

(*a*) Rejected the recommendations;

(*b*) Failed to take any action within thirty days following the communication of the opinion;

(*c*) Failed to carry out the recommendations within thirty days following the communication of the opinion.

3. In the event that the recommendations made by the joint body and accepted by the Secretary-General are unfavourable to the applicant, and insofar as this is the case, the application shall be receivable, unless the joint body unanimously considers that it is frivolous.

4. An application shall not be receivable unless it is filed within ninety days reckoned from the respective dates and periods referred to in paragraph 2 above, or within ninety days reckoned from the date of the communication of the joint body's opinion containing recommendations unfavourable to the applicant. If the circumstance rendering the application receivable by the Tribunal, pursuant to paragraphs 2 and 3 above, is anterior to the date of announcement of the first session of the Tribunal, the time limit of ninety days shall begin to run from that date. Nevertheless, the said time limit on his or her behalf shall be extended to one year if the heirs of a deceased staff member or the trustee of a staff member who is not in a position to manage his or her own affairs files the application in the name of the said staff member.

5. In any particular case, the Tribunal may decide to suspend the provisions regarding time limits.

6. The filing of an application shall not have the effect of suspending the execution of the decision contested.

7. Applications may be filed in any of the six official languages of the United Nations.

Article 8

Where the three members of the Tribunal sitting in any particular case consider that the case raises a significant question of law, they may, at any time before they render judgement, refer the case for consideration by the whole Tribunal. The quorum for a hearing by the whole Tribunal shall be five members.

Article 9

The oral proceedings of the Tribunal shall be held in public unless the Tribunal decides that exceptional circumstances require that they be held in private.

Article 10

1. If the Tribunal finds that the application is well founded, it shall order the rescinding of the decision contested or the specific performance of the obligation invoked. At the same time, the Tribunal shall fix the amount of compensation to be paid to the applicant for the injury sustained should the Secretary-General, within thirty days of the notification of the judgement, decide, in the interest of the United Nations, that the applicant shall be compensated without further action being taken in his or her case, provided that such compensation shall not exceed the equivalent of two years' net base salary of the applicant. The Tribunal may, however, in exceptional cases, when it considers it justified, order the payment of a higher indemnity. A statement of the reasons for the Tribunal's decision shall accompany each such order.

2. Should the Tribunal find that the procedure prescribed in the Staff Regulations or Staff Rules has not been observed, it may, at the request of the Secretary-General and prior to the determination of the merits of the case, order the case remanded for institution or correction of the required procedure. Where a case is remanded, the Tribunal may order the payment of compensation, which is not to exceed the equivalent of three months' net base salary, to the applicant for such loss as may have been caused by the procedural delay.

3. In all applicable cases, compensation shall be fixed by the Tribunal and paid by the United Nations or, as appropriate, by the specialized agency participating under article 14.

Article 11

1. The Tribunal shall take all decisions by a majority vote.

2. Subject to the provisions of article 12, the judgements of the Tribunal shall be final and without appeal.

3. The judgements shall state the reasons on which they are based.

4. The judgements shall be drawn up, in any of the six official languages of the United Nations, in two originals, which shall be deposited in the archives of the Secretariat of the United Nations.

5. A copy of the judgement shall be communicated to each of the parties in the case. Copies shall also be made available on request to interested persons.

Article 12

The Secretary-General or the applicant may apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement. Clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties.

Article 13

The present Statute may be amended by decision of the General Assembly.

Article 14

1. The competence of the Tribunal shall be extended to the staff of the Registry of the International Court of Justice upon the exchange of letters between the President of the Court and the Secretary-General of the United Nations establishing the relevant conditions.

2. The Tribunal shall be competent to hear and pass judgement upon applications alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund arising out of the decision of the United Nations Joint Staff Pension Board submitted to the Tribunal by:

(*a*) Any staff member of a member organization of the Pension Fund which has accepted the jurisdiction of the Tribunal in Pension Fund cases who is eligible under article 21 of the regulations of the Fund as a participant in the Fund, even if his or her employment has ceased, and any person who has acceded to such staff member's rights upon 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 such member organization.

3. 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 upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. Each such special agreement shall provide that the agency concerned shall be bound by the judgements of the Tribunal and be responsible for the payment of any compensation awarded by the Tribunal in respect of a staff

member of that agency and shall include, inter alia, provisions concerning the agency's participation in the administrative arrangements for the functioning of the Tribunal and concerning its sharing the expenses of the Tribunal.

4. The competence of the Tribunal may also be extended, with the approval of the General Assembly, to any other international organization or entity established by a treaty and participating in the common system of conditions of service, upon the terms set out in a special agreement between the organization or entity concerned and the Secretary-General of the United Nations. Each such special agreement shall provide that the organization or entity concerned shall be bound by the judgements of the Tribunal and be responsible for the payment of any compensation awarded by the Tribunal in respect of a staff member of that organization or entity and shall include, inter alia, provisions concerning its participation in the administrative arrangements for the functioning of the Tribunal and concerning its sharing the expenses of the Tribunal.

Observer status in the General Assembly

The General Assembly, by its resolutions 55/160 and 55/161, decided to invite the Inter-American Development Bank and the Economic Community of Central African States, respectively, to participate in the sessions and the work of the General Assembly in the capacity of observer.

Progressive development of the principles and norms of international law relating to the new international economic order

The General Assembly, by its decision 55/428, decided to resume its consideration of the legal aspects of international economic relations at its fifty-eighth session.

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9. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH[138]

During the reporting period, UNITAR continued with its extensive training programmes, including in multilateral diplomacy and international affairs management, and capacity-building programmes in the field of economic and social development. UNITAR also designed and conducted training programmes for permanent missions in New York, and from July 2000 to June 2002, the New York Office conducted 66 training events.

Examples of individual training activities held in 2000 included: UNITAR WTO Workshop (held in Tajikistan); UNITAR/UNOPS Environmental Law Briefing—Part I (held in New York); UNITAR Workshop for African Diplomats on the Legal Aspects of External Debt Management and Negotiation (held in New York); UNITAR/Carl Duisberg Gesellschaft Workshop for the Lao People's Democratic Republic on Implementation of Multilateral Agreements (held in the Lao People's Democratic Republic); Workshop on Negotiation of International Legal Instruments: Methods and Techniques (held in New York); and WIPO/UNITAR Series on Intellectual Property—Challenges and Opportunities in the 21st Century (held in New York).

Consideration by the General Assembly

The General Assembly, on 20 December 2000, on the recommendation of the Second Committee, adopted without a vote resolution 55/208, in which it reaffirmed the importance of a coordinated, United Nations system-wide approach to research

and training based on an effective coherent strategy and an effective division of labour among the relevant institutions and bodies, and stressed the need for the Institute to strengthen further its cooperation with other United Nations institutes and relevant national, regional and international institutes. The Assembly also requested the Board of Trustees of UNITAR to intensify its efforts to attract experts from developing countries and countries with economies in transition for the preparation of relevant training materials for the programmes and activities of the Institute, and stressed that the courses of the Institute should focus primarily on development issues.

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

1. INTERNATIONAL LABOUR ORGANIZATION

(*a*) Membership

1. By a communication dated 29 December 1999, the original of which was received on 3 February 2000, the Government of the Kiribati, a Member of the United Nations, communicated to the Director-General its formal acceptance of the obligations under the Constitution of the International Labour Organization. In accordance with article 1, paragraph 3, of the ILO Constitution, Kiribati became a member of the International Labour Organization on 3 February 2000.

2. By a letter dated 22 November 2000, received on 24 November, the Government of the Federal Republic of Yugoslavia, a Member of the United Nations, communicated to the Director-General its formal acceptance of the obligations under the Constitution of ILO. In accordance with article 1, paragraph 3, of the ILO Constitution, the Federal Republic of Yugoslavia became a member of ILO on 24 November 2000. Further to the position adopted by the Governing Body of ILO in 1993,[139] it was agreed that, as long as the Federal Republic of Yugoslavia was not recognized as a successor of the former Socialist Federal Republic of Yugoslavia or did not become a new member of ILO, the former Socialist Federal Republic of Yugoslavia would remain on the list of ILO member States. It was deleted from this list on 24 November 2000, the date on which the Federal Republic of Yugoslavia became a member of ILO.

(*b*) International Labour Standards

3. The International Labour Conference (ILC), which held its 88th session in Geneva from 30 May to 15 June 2000, adopted the Maternity Protection Convention and Recommendation.[140]

4. At the same session, the ILC decided to withdraw the Hours of Work (Coal Mines) Convention, 1931, the Hours of Work (Coal Mines) Convention (Revised), 1935, the Reduction of Hours of Work (Public Works) Convention, 1936, the Reduction of Hours of Work (Textiles) Convention, 1937, and the Migration for Employment Convention, 1939.[141]

(*c*) Resolutions

5. The International Labour Conference, on 14 June 2000, adopted a resolution entitled “Resolution concerning the measures recommended by the Governing

Body under article 33 of the ILO Constitution on the subject of Myanmar", [142] which reads as follows:

"*The General Conference of the International Labour Organization*,

"*Meeting* at its 88th session in Geneva from 30 May to 15 June 2000,

"*Considering* the proposals by the Governing Body which are before it, under the eighth item of its agenda (Provisional Record No. 4), with a view to the adoption, under article 33 of the ILO Constitution, of action to secure compliance with the recommendations of the Commission of Inquiry established to examine the observance by Myanmar of its obligations in respect of the Forced Labour Convention, 1930 (No. 29),

"*Having taken note* of the additional information contained in the report of the ILO technical cooperation mission sent to Yangon from 23 to 27 May 2000 (Provisional Record No. 8) and, in particular, of the letter dated 27 May 2000 from the Minister of Labour to the Director-General, which resulted from the mission,

"Considering that, while this letter contains aspects which seem to reflect a welcome intention on the part of the Myanmar authorities to take measures to give effect to the recommendations of the Commission of Inquiry, the factual situation on which the recommendations of the Governing Body were based has nevertheless remained unchanged to date,

"*Believing* that the Conference cannot, without failing in its responsibilities to the workers subjected to various forms of forced or compulsory labour, abstain from the immediate application of the measures recommended by the Governing Body unless the Myanmar authorities promptly take concrete action to adopt the necessary framework for implementing the Commission of Inquiry's recommendations, thereby ensuring that the situation of the said workers will be remedied more expeditiously and under more satisfactory conditions for all concerned,

"1. *Approves* in principle, subject to the conditions stated in paragraph 2 below, the actions recommended by the Governing Body, namely:

(*a*) To decide that the question of the implementation of the Commission of Inquiry's recommendations and of the application of Convention No. 29 by Myanmar should be discussed at future sessions of the International Labour Conference, at a sitting of the Committee on the Application of Standards specially set aside for the purpose, so long as this member has not been shown to have fulfilled its obligations;

(*b*) To recommend to the organization's constituents as a whole—Governments, employers and workers—that they:

(i) Review, in the light of the conclusions of the Commission of Inquiry, the relations that they may have with the member State concerned and take appropriate measures to ensure that the said member cannot take advantage of such relations to perpetuate or extend the system of forced or compulsory labour referred to by the Commission of Inquiry, and to contribute as far as possible to the implementation of its recommendations; and

(ii) Report back in due course and at appropriate intervals to the Governing Body;

(*c*) As regards international organizations, to invite the Director-General:

(i) To inform the international organizations referred to in article 12, paragraph 1, of the Constitution of the member's failure to comply;

(ii) To call upon the relevant bodies of these organizations to reconsider, within their terms of reference and in the light of the conclusions of the Commission of Inquiry, any cooperation they may be engaged in with the member concerned and, if appropriate, to cease as soon as possible any activity that could have the effect of directly or indirectly abetting the practice of forced or compulsory labour;

(*d*) Regarding the United Nations specifically, to invite the Director-General to request the Economic and Social Council to place an item on the agenda of its July 2001 session concerning the failure of Myanmar to implement the recommendations contained in the report of the Commission of Inquiry and seeking the adoption of recommendations directed by the Council or by the General Assembly, or by both, to Governments and to other specialized agencies and including requests similar to those proposed in subparagraphs (*b*) and (*c*) above;

(*e*) To invite the Director-General to submit to the Governing Body, in the appropriate manner and at suitable intervals, a periodic report on the outcome of the measures set out in subparagraphs (*c*) and (*d*) above, and to inform the international organizations concerned of any developments in the implementation by Myanmar of the recommendations of the Commission of Inquiry;

"2. *Decides* that those measures will take effect on 30 November 2000 unless, before that date, the Governing Body is satisfied that the intentions expressed by the Minister of Labour of Myanmar in his letter dated 27 May 2000 have been translated into a framework of legislative, executive and administrative measures that are sufficiently concrete and detailed to demonstrate that the recommendations of the Commission of Inquiry have been fulfilled and therefore render the implementation of one or more of these measures inappropriate;

"3. *Authorizes* the Director-General to respond positively to all requests by Myanmar that are made with the sole purpose of establishing, before the above deadline, the framework mentioned in the conclusions of the ILO technical cooperation mission (points (i), (ii) and (iii), page 8/11 of Provisional Record No. 8), supported by a sustained ILO presence on the spot if the Governing Body confirms that the conditions are met for such presence to be truly useful and effective."

6. The International Labour Conference also adopted, on 12 June 2000, a "Resolution concerning the deposit of an act of formal confirmation by ILO of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations",[143] which authorizes the Director-General to deposit the act on behalf of ILO.

(*d*) Miscellaneous

7. The Committee of Experts on the Application of Conventions and Recommendations met in Geneva from 23 November to 8 December 2000 to adopt its report[144] to the International Labour Conference (2001) at its 89th session.

8. At its 279th session (November 2000), the Governing Body of the International Labour Office, which met in Geneva, adopted several amendments to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.[145]

9. Representations lodged under Article 24 of the Constitution of the International Labour Organization alleging non-observance by Colombia of the Indigenous and Tribal Peoples Convention, 1989 (No. 169);[146] by the Czech Republic of the Protection of Wages Convention, 1949 (No. 95);[147] by Denmark of the Indigenous and Tribal Peoples Convention, 1989 (No. 169);[148] by Ecuador of the Indigenous and Tribal Peoples Convention, 1989 (No. 169);[149] and by Turkey of the Termination of Employment Convention, 1982 (No. 158)[150] were examined by the Governing Body.

10. The Governing Body of the ILO considered and adopted the following reports of its Committee on Freedom of Association: the 320th report (277th session, March 2000);[151] the 321st and 322nd reports (278th session, June 2000);[152] the 323rd report (279th session, November 2000).[153]

11. The Working Party on the Social Dimensions of the Liberalization of International Trade, established by the Governing Body, held two meetings in 2000 during the 277th (March 2000)[154] and 279th (November 2000)[155] sessions of the Governing Body.

12. 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 several meetings in 2000 during the 277th (March 2000)[156] and 279th (November 2000)[157] sessions of the Governing Body.

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2. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(*a*) International regulations

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

During the period under review, no multilateral conventions or agreements adopted under the auspices of UNESCO entered into force.

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

During 2000, 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. Proposals for the adoption of these two new instruments are included on the provisional agenda of the 31st session of the General Conference (October-November 2001).

(*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 Convention and Recommendations met in private session at UNESCO headquarters from 9 to 11 May and from 3 to 5 October 2000 to examine communications which had been transmitted to it in accordance with decision 104 EX/3.3 of the Executive Board.

At its May 2000 session, the Committee examined 25 communications, of which 4 were examined with a view to determining their admissibility or otherwise, 5 were examined as to their substance and 16 were examined for the first time. One communication was declared inadmissible and 5 were struck from the list because they were considered as having been settled or did not, upon examination of their merits, appear to warrant further action. Examination of 23 was suspended. The Committee presented its report to the Executive Board at its 159th session.

At its October session, the Committee examined 22 communications, of which 14 were examined with a view to determining their admissibility or otherwise, 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 160th session.

(*c*) Copyright activities

(i) UNESCO, providing the secretariat of the Intergovernmental Committee of the Universal Copyright Convention, organized its twelfth ordinary session at UNESCO headquarters from 18 to 22 June 2000. Inter alia, the Committee had extensive discussions of the following legal problems:

—The role of service and access providers in digital transmission and their responsibilities regarding copyright;[158]

—International experience in regard to procedures for settling conflicts relating to copyright in the digital environment;[159]

—Practical aspects of the exercise of the *droit de suite*, including in the digital environment, and its effects on developments in the international art market and on the improvement of the protection of visual artists.[160]

The Committee's discussions and the conclusions formulated at the end of the discussion of each issue will be published in the *UNESCO Copyright Bulletin.*[161]

(ii) UNESCO elaborated model provisions for the protection of traditional and popular culture (folklore) for the intention of the States of the Pacific region.

(iii) UNESCO published, in English and French, the Guide to the Collective Administration of Author's Rights. The purpose of the Guide is to assist the creators of intellectual works in establishing the societies for the collective administration of their rights where such organizations do not exist or to improve the functioning of such societies where they do exist but are not sufficiently efficient.

3. WORLD HEALTH ORGANIZATION

(*a*) Constitutional and legal developments

The Federal Republic of Yugoslavia joined the World Health Organization on 28 November. At the end of 2000, there were 191 States members and two associate members of WHO.

The amendments to articles 24 and 25 of the Constitution, adopted in 1998 by the fifty-first World Health Assembly to increase the membership of the Executive Board from 32 to 34, had been accepted by 67 member States as at 31 December 2000. The amendment to article 7 of the Constitution, adopted in 1965 by the eighteenth World Health Assembly to allow the Assembly to suspend certain rights of member States practising racial discrimination, had been accepted by 72 member States as at 31 December 2000. The amendment to article 74 of the Constitution, adopted in 1978 by the thirty-first World Health Assembly to establish Arabic as one of the authentic languages of the Constitution, had been accepted by 61 member States as at 31 December 2000. Acceptance by two thirds of member States is required for the amendments to enter into force.

The fifty-third World Health Assembly, by its resolution WHA53.9 of 20 May 2000, authorized the Director-General to deposit with the Secretary-General of the United Nations an instrument of formal confirmation of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. The deposit of the instrument of formal confirmation was effected on 22 June 2000.

The fifty-third World Health Assembly, on the same date, also adopted resolution WHA53.13, entitled "Aligning the participation of Palestine in the World Health Organization with its participation in the United Nations". By that resolution, the Assembly decided to confer upon Palestine in the World Health Assembly and other meetings of the World Health Organization, in its capacity as an observer, the rights and privileges described in United Nations General Assembly resolution 52/250 of 7 July 1998.

An agreement based on the standard Basic Agreement for the Establishment of Technical Advisory Cooperation was concluded in 2000 with the Government of South Africa.

(*b*) Health legislation

By its resolution WHA52.18 of 24 May 1999, the fifty-second World Health Assembly established a Working Group and an Intergovernmental Negotiating Body to draft and negotiate a Framework Convention on Tobacco Control and possible related protocols. Following its 1st meeting in 1999, the Working Group submitted a report on the progress achieved in developing the proposed draft elements of the Convention to the WHO Executive Board at its 105th session, held from 15 to 23 January 2001. The second and final meeting of the Working Group took place from 27 to 29 March 2000. The meeting was attended by representatives of 153 member States and the European Community as well as observers from the Holy See, Palestine, organizations of the United Nations system, other intergovernmental and non-governmental organizations. The output of the Working Group formed the proposed draft elements for a WHO Framework Convention on Tobacco Control. The Working Group completed its work and submitted a report to the fifty-third World Health Assembly, held from 15 to 20 May 2000.

The fifty-third World Health Assembly considered the report of the Working Group and, by its resolution WHA53.16 of 20 May 2000, formally launched negotiation of the Convention by the Intergovernmental Negotiating Body. It commended the work done by the Working Group, recognizing that the proposed draft elements for a WHO Framework Convention for Tobacco Control established a sound basis for initiating negotiations by the Intergovernmental Negotiating Body. The Negotiating Body was called upon to commence negotiations with an initial focus on the draft Convention, without prejudice to future discussions on possible related protocols. It was urged to report on the process of negotiations to the fifty-fourth World Health Assembly.

Formal negotiations of the Convention commenced with the first session of the Intergovernmental Negotiating Body from 16 to 21 October 2000. Representatives of 148 member States, as well as observers from the European Community, six organizations of the United Nations system, three representatives of other intergovernmental organizations and 25 non-governmental organizations participated in the session. The proposed draft elements prepared by the Working Group were accepted as a sound basis for the negotiations. To advance negotiations by developing texts and compromise solutions and to reduce the number of options, three working groups were established. Each working group was assigned a number of functionally related provisions, which together would constitute most of the text of the Framework Convention. The main output of the first session was the agreement that the Chairman of the Negotiating Body would prepare a Chair's text of the Convention. This would be based on proposed draft elements of the Convention and proposals made during the first session of the Intergovernmental Negotiating Body. The text would be ready for discussion at the second session of the Intergovernmental Negotiating Body.

WHO organized or supported a number of technical meetings related to the negotiation of the Framework Convention on Tobacco Control. For example, the regional office for South-East Asia organized and co-hosted in Jakarta, in January 2000, a conference entitled "International Conference on Tobacco Control Law: Towards a WHO Framework Convention on Tobacco Control".

By December 2000, 162 WHO member States (85 per cent of a total of 191 member States) had reported to WHO on action taken to give effect to the principles and aim of the International Code of Marketing of Breast-Milk Substitutes, adopted by the World Health Assembly in 1981. This included adoption of new—or revision and strengthening of existing—legislation, regulations, national codes, guidelines for health workers and distributors, agreements with manufacturers, and monitoring and reporting mechanisms. In 2000, Angola, Ghana, Greece, Kazakhstan, South Africa and the United Republic of Tanzania provided information on new or revised action, while WHO responded to requests for related technical support from Australia, Cambodia, New Zealand and Oman.

WHO also participated throughout the preparations of the revised Maternity Protection Convention and related recommendation that were adopted by the International Labour Conference at its 88th session in June 2000. WHO was instrumental in presenting evidence on protecting maternal health and promoting breastfeeding which contributed to a significant strengthening of the 1952 Convention through the inclusion of a new provision on protection from hazardous agents, an increase in the minimum length of maternity leave from 12 to 14 weeks, reinforcement of the entitlement to paid breastfeeding breaks and the Convention's application to women in atypical forms of work.

During 2000, the headquarters and regional offices of WHO provided technical cooperation to a number of member States in connection with the development, assessment or review of various areas of health legislation. For example, the Department of Health Financing and Stewardship at headquarters organized a study programme on health legislation for senior officials of the Ministry of Health of Morocco in February 2000, and a seminar on regional health legislation development and a review of legislation on euthanasia in the Russian Federation in March 2000. The regional office for the Western Pacific organized a regional seminar on health legislation in Pacific Island countries in Tonga in October 2000, and advised the Government of Mongolia in the drafting of a national drug policy and of amendments to the Mongolian Drug Law as regards pharmacy and therapeutic goods.

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4. WORLD BANK

(*a*) IBRD, IFC and IDA membership

On 21 September 2000, San Marino became a member of the International Bank for Reconstruction and Development. There were no new members joining the International Finance Corporation or the International Development Association during 2000.

(*b*) Multilateral Investment Guarantee Agency (MIGA)

During 2000, the following States joined MIGA:

Lao People's Democratic Republic (5 April 2000)

Central African Republic (8 September 2000)

Thailand (20 October 2000)

(*c*) International Centre for Settlement of Investment Disputes (ICSID)

During 2000, the following States joined ICSID:

Ukraine (7 July 2000)

Uruguay (8 September 2000)

Kazakhstan (21 October 2000)

Disputes before the Centre

During 2000, arbitration proceedings under the ICSID Convention were instituted in nine new cases. These were:

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

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

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

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

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

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

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

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

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

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

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

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

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

One proceeding (*Lanco International, Inc*. v. *Argentine Republic* (case No. ARB/97/6)) was discontinued and an application for annulment was registered in respect of an award rendered in one proceeding (*Philippe Gruslin* v. *Malaysia* (case No. ARB/99/3)). In addition, 11 proceedings were closed following the rendition of awards:

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

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 Vivendi Universal v. *Argentine Republic* (case No. ARB/97/3)

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

Compagnie Française pour le Développement des Fibres Textiles v. *République de Côte d'Ivoire* (case No. ARB/97/8)

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

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

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)

Joseph C. Lemire v. *Ukraine* (case No. ARB(AF)/98/1)

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

Astaldi S.p.A. & Columbus Latinoamericana de Construcciones S.A. v. *República de Honduras* (case No. ARB/99/8)

As of 31 December 2000, 16 other cases were pending before the Centre. These were:

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

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

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

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

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

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

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

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

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

Alex Genin and others v. *Republic of Estonia* (case No. ARB/99/2)

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

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

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

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

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

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

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5. INTERNATIONAL CIVIL AVIATION ORGANIZATION

(*a*) Membership

On 14 December 2000, the Federal Republic of Yugoslavia deposited with the Government of the United States of America its notification of adherence to the Convention on International Civil Aviation. The adherence took effect on 13 January 2001, bringing the number of States members of the Organization to 186.

(*b*) Other major legal developments

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

The 31st session of the Legal Committee was held at ICAO headquarters in Montreal from 28 August to 8 September 2000. The Committee mainly studied the question of international interests in mobile equipment (aircraft equipment), in respect of which it approved the text of a draft Convention and of a draft Protocol and recommended the convening of a Diplomatic Conference for their adoption (see item (3) below).

Further to the 31st session of the Legal Committee and pursuant to a decision of the Council at its 161st session, on 24 November 2000, the general work programme of the Legal Committee is as follows:

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

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

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

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

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

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

Regarding item (1), the Secretariat Study Group on Legal Aspects of CNS/ATM Systems held its 3rd and 4th meetings in Montreal from 10 to 12 May and from 14 to 15 December 2000, respectively. During the meetings, the Group discussed the implications of article 28 of the Convention on International Civil Aviation in the context of GNSS, the issues relating to universal accessibility and continuity of GNSS services, and other legal principles relating to communications by satellite and unlawful interference with CNS/ATM systems.

Regarding item (2), the Secretariat Study Group on Unruly Passengers held its 3rd meeting on 10 and 11 February and its 4th meeting on 26 and 27 October, both in Montreal. The Group finalized a Draft List of Offences and a Draft Jurisdiction Clause, and incorporated the two documents into a Draft Model Legislation on Offences Committed on Board Civil Aircraft by Unruly or Disruptive Passengers.

Regarding item (3), the Subcommittee of the ICAO Legal Committee on International Interests in Mobile Equipment (Aircraft Equipment) held a third joint session with a Committee of Governmental Experts of the International Institute for the Unification of Private Law (UNIDROIT), which took place in Rome from 20 to 31 March, and concluded its examination of the texts of a draft Convention and a draft Protocol. The texts were reviewed by the Legal Committee at its 31st session and submitted to the Council with a recommendation for convening a Diplomatic Conference for their adoption. During its 161st session, the Council decided, in principle, to convene a Diplomatic Conference in 2001 under the joint auspices of ICAO and UNIDROIT.

(ii) *Settlement of differences*

On 14 March, the Government of the United States of America submitted an Application and Memorial pursuant to article 84 of the Convention on International Civil Aviation and the Rules for the Settlement of Differences, seeking a decision of the Council on a disagreement with 15 European States relating to European Council regulation (EC) No. 925/1999 (“Hushkits”).

On 19 July, the Respondents submitted a Statement of Preliminary Objections, challenging the jurisdiction of the Council in the matter, followed by a Statement of Response submitted by the United States on 15 September. The Council, at the 6th meeting of its 161st session on 16 November, rendered a unanimous decision, with three abstentions, denying the first two preliminary objections and joining the third one to the merits. The Council further decided to invite the parties to continue their direct negotiations, using the good offices of the President of the Council as conciliator, if they so consented, which matters shall be reviewed at the 163rd session. Following that decision and in line with applicable procedures, the Respondents submitted a Counter-Memorial on 1 December 2000.

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6. UNIVERSAL POSTAL UNION

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

No modification was made to the Convention regulating the current legal status as well as the privileges and immunities of the organization.

Concerning the Convention on the Privileges and Immunities of the Specialized Agencies adopted by the General Assembly of the United Nations, the number of Union member countries which have adhered to the said Convention, granting privileges and immunities to the representatives of the member countries, to the staff of the International Bureau of the Universal Postal Union and to the experts, is 102.

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

Beijing Congress

The 1999 Beijing Congress introduced a new text for the Convention on the Universal Postal Service at the beginning of the Universal Postal Convention, stating that postal users and customers are entitled to quality basic postal services at all points in their territory at affordable prices. In that regard, the Beijing Congress instructed the Council of Administration to draw up quickly a list of the Universal Postal Service obligations incumbent upon member countries and giving guidelines on how to set service standards. The Council of Administration at its session in 2002 approved the draft Memorandum.

Management and future development of the Union

The 1999 Beijing Congress created a High Level Group to examine strategic issues concerning the functioning of the Universal Postal Union in the overall context of the challenges facing the postal sector in the next century and their implications for the role and functioning of the Union in a rapidly changing environment. The Group's mandate is to consider the future mission, structure, constituency, financing and decision-making of UPU. The Chairman of the High Level Group presented the interim report of the Group to the Council of Administration at its session in 2002.

The interim report also spelled out the work being done on the recasting of Acts. An ad hoc group will examine the text to ensure that the Convention cov-

ers only those matters which are of a high-level intergovernmental, treaty-related nature, necessitating Congress approval. It should also include the basic instructions by governments to postal operators as to what services they should provide in order to fulfil the Universal Postal Service throughout the single postal territory. The details of how these services are to be provided and the conditions under which they are to be provided should not be discussed by Congress, but should be devolved to the regulations to be fixed by the Postal Operations Council.

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7. WORLD METEOROLOGICAL ORGANIZATION

(*a*) Membership

As of 2000, there were 185 members of WMO, comprising 179 member States and six member Territories, all of which maintain their own meteorological and hydrological services.

(*b*) Consideration of amendments to the WMO Convention

At its fifty-third session (Geneva, 8-15 June 2000), the executive body of WMO, namely the Executive Council, considered the possibility of introducing amendments to the WMO basic act, Convention of the WMO (Washington, 11 October 1947). After consideration of this issue the Council agreed on the need for an analysis of possible changes to the WMO Convention. The Council recognized the potential risks and difficulties in proposing the revision of the WMO Convention and suggested that appropriate caution should be exercised. The Council felt, nonetheless, that the possible changes should be explored and assessed, with a view to examining the benefits and risks. It agreed that a task team should be established to study the matter.

Procedures for amendments to the WMO Convention and analysis of the amendments already adopted under the Convention (subjects and procedures)

1. The Convention of the WMO in its Part XV, article 28, paragraph (*a*), stipulates that "the text of any proposed amendment to the Convention shall be communicated by the Secretary-General to members of the organization at least six months in advance of its consideration by Congress".

2. The Convention does not specify *expresis verbis* who has the legislative authority to propose an amendment to the Convention. However, the Third Congress (1959) agreed by its resolution 4 (Cg-III) that only member States, as the Contracting Parties to the Convention, have the right to propose amendments to the Convention. By the same resolution, Congress instructed the Executive Council to keep under continuous review the Convention between sessions of Congress and to submit to Congress any proposed amendment to the Convention, for its consideration, if necessary.

3. There are two kinds of amendments identified in article 28 of the Convention:

(i) Amendments which involve new obligations for members (paragraph *b*);

(ii) Amendments which do not involve new obligations for members (paragraph *c*).

4. Accordingly, the procedures for adoption and for entry into force for these two categories of amendments differ:

—The first category (i) requires approval by Congress by a two-thirds majority vote, by member States present at Congress provided the quorum is attained (article 12 of the Convention). It shall come into force on acceptance by two thirds of the members of the organization which are States for each such member accepting the amendment, and for each remaining such member on acceptance by it (para. *b*); it implies that the amended article(s) will only be applied to those who accepted it;[a]

—The second category (ii) comes into force upon approval by two thirds of the members of the organization which are States (para. *c*).

5. The Sixth World Meteorological Congress, in April 1971, examined the questions concerning article 28 (Amendments) submitted to it by the Executive Council and decided on an agreed interpretation of certain provisions of article 28 (Cg-VI, General Summary, paras. 5.1.1; 5.1.2; 5.1.3), namely:

(i) In the course of consideration of a proposed draft amendment Congress may receive, discuss and, if so decided, adopt any proposal for modifying this draft, provided that the proposed modification would not result in a change in the basic intent of the draft amendment or in the introduction of a new subject. If any modification is proposed which does not satisfy either of these conditions, it must be proposed as a new amendment to the Convention in accordance with the provisions of article 28 (*a*);

(ii) The two-thirds majority required for the approval by Congress of an amendment under article 28 (*b*) shall be two thirds of the members which are States, present and voting for or against (para. 5.1.2 (*b*));[b]

(iii) If a draft amendment to the Convention being treated in accordance with the provisions of article 28 (*c*) is accepted in Congress by a two-thirds majority of the members which are States voting for and against, but the number of affirmative votes is less than the required two-thirds majority of all members which are States, the same amendment shall be submitted to the next Congress for a new vote if Congress so decides; an amendment being treated under the provision of article 28 (*c*) shall not be submitted to a vote by correspondence for the purpose of securing approval by the necessary two-thirds majority of members which are States.

The Sixth World Meteorological Congress further decided (Cg-VI, General Summary, para. 5.1.4) to accept the recommendation of the Executive Council, that it was not desirable at that time to amend or interpret article 28 for the purpose of providing that amendments to the Convention which are approved in accordance with the provisions of article 28 (*b*) shall enter into force for all members; it was also decided to take no action regarding the proposal for a fusion of article 28 (*b*) and 28 (*c*) of the Convention to provide for only one category of amendments.

6. Since its entry into force in March 1950, the WMO Convention had been subjected to several amendments in accordance with its article 28, paragraph (*c*), namely, all those amendments entered into force upon approval by two thirds of the members which are States. They were therefore considered by members as the amendments which did not involve new obligations for them. The following were amendments adopted by the WMO Congresses, starting from the most recent:

(*a*) 1983 amendment adopted by resolution 41 of the Ninth Congress to article 13 (*c*), increasing to three the lower limit of members of the Executive Council coming from the same region and increasing to nine the upper limit of members of the Executive Council coming from the same region;

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[a] As referred to in article 28 of the Convention, "acceptance" practically means in most of the countries the process of ratification by Parliament. In accordance with the Vienna Convention on the Law of Treaties, "ratification", "acceptance", "approval" and "accession" mean the act by which a State establishes its consent to be bound by a treaty.

[b] Certain members took exception to the decision recorded in this paragraph.

(*b*) 1975 amendments adopted by resolution 48 of the Seventh Congress to articles 2 (*a*), (*b*) and (*c*); 6 (*a*); 7; 13 (*c*) (ii); 14 (*d*); and 18 (*d*) (iii) and to the preamble. These amendments referred to WMO activities in the field of hydrology. These were the most important of all the amendments adopted to the Convention since they adjusted the Convention by clarifying WMO activities in relation to hydrology;

(*c*) 1967 amendment adopted by resolution 3 of the Fifth Congress, introducing into the Convention a new article 5 stipulating that the activities of the organization shall be decided by its members and establishing the system of taking of decisions;

(*d*) 1963 amendments: (i) adopted by resolution 2 of the Fourth Congress deleting article 12 related to the convening of the first meeting of Congress, and (ii) adopted by resolution 1 of the Fourth Congress amending article 13 (*c*) (ii) by fixing the upper limit of members of the Executive Council coming from the same region to seven and including a lower limit of two members of the Executive Council coming from the same region.

(*c*) Application of the WMO General Regulations relating to elections

The Executive Council noted that, as requested by the Thirteenth Congress of WMO in May 1999, the Secretary-General of WMO had sought the advice of the United Nations Legal Counsel as to whether the term "decisions" included "election" in regulations 177 and 194 of the WMO General Regulations concerning sessions of regional associations and technical commissions respectively when the required quorum is not obtained. The Council noted that it was the view of the United Nations Legal Counsel that "as the members of the Organization are masters of their own procedures, it would be for them to take a decision on whether the term 'decision' as used in regulations 177 and 194 of the General Regulations includes 'election' ". In addition, the Legal Counsel referred to a number of regulations related to "Voting by correspondence including elections" between sessions of WMO constituent bodies which are of a general nature. The Council requested the Secretary-General to submit to the Fourteenth Congress the views of the United Nations Legal Counsel on the application of regulations 177 and 194 of the General Regulations.

The Council considered, however, that there was a need for guidance to the regional associations and technical commissions on the application of regulations 177 and 194 of the General Regulations respectively if such a case arose before the Fourteenth Congress. The Council, bearing in mind the discussions during the Thirteenth Congress, decided to adopt the following statement on the application of regulations 177 and 194 which shall be reviewed by the next Congress in accordance with the provision of regulation 2 (*f*) of the General Regulations:

> "In the application of regulations 177 and 194 of the General Regulations, the term 'decisions' does not include 'election'. In the case where no election is held due to the absence of the quorum, the President of the Organization becomes the acting president of the body concerned after the closure of the session in accordance with regulation 16 of the General Regulations. He shall arrange for the election by correspondence of the president of the body concerned, who shall in turn arrange for the election of the vice-president by correspondence as envisaged in regulation 16 of the General Regulations".

The Council requested the Secretary-General to submit this statement to the Fourteenth Congress for its consideration when examining the issue of the application of regulations 177 and 194 of the General Regulations.

(*d*) Formation of the new technical body, namely: Joint WMO/ Intergovernmental Oceanic Commission (IOC) Technical Commission for Oceanography and Marine Meteorology (JCOMM)

At its session in 2000 the Executive Council was pleased to learn that, following approval of JCOMM by WMO Congress-XIII and by the 20th Assembly of IOC, a first Transition Planning Meeting for JCOMM had taken place and developed, inter alia, a proposed structure for JCOMM. It also agreed that WMO would take the lead responsibility for the preparation, organization, conduct and immediate follow-up of the first session of JCOMM (Iceland, June 2001), which would thus take place using WMO procedures and regulations governing technical commissions.

It also referred to the necessity of resolving a number of small but important and constitutional differences between the corresponding organizations. It urged the secretariats to ensure that those issues were resolved as soon as possible and in as transparent a way as possible to ensure that they provided no future impediment to the implementation and operation of JCOMM.

The Council noted that a comparative study had been prepared by the Secretary-General on the differences in the regulations of WMO and IOC relating to the functioning of WMO technical commissions and equivalent bodies of IOC. The Council requested the Secretary-General, in consultation with the Executive Secretary of IOC, to prepare a suitable set of common rules of procedure for the functioning of JCOMM to meet the basic objectives of the relevant regulations of WMO and IOC within the context of regulation 180 of the WMO General Regulations.

(*e*) Working arrangements with the Lake Chad Basin Commission

The Executive Council took note of the request submitted by the Lake Chad Basin Commission for the establishment of working arrangements with WMO. Having considered the objectives and functions of the Commission and taking into account the practice followed by WMO in establishing working arrangements concerning its scientific and technical cooperation with other organizations, the Council agreed that it would be in the mutual interest of both WMO and the Commission to establish a close working relationship. The Council therefore authorized the Secretary-General of WMO to finalize the working arrangements with the Executive Secretary of Lake Chad Basin Commission.

Working Arrangements between the World Meteorological Organization and the Lake Chad Basin Commission

The Secretary-General of the World Meteorological Organization and the Executive Secretary of the Lake Chad Basin Commission, with a view to facilitating the effective attainment of the objectives set forth in their respective constituent instruments, will work in close cooperation with each other and will consult each other regularly with regard to matters of common interest. In particular, such cooperation and consultation shall be set up for the purpose of effective coordination of activities and procedures arising from the activities of both organizations with a view to ensuring optimum benefits for meteorological and hydrological operations and research.

Both organizations agree to keep each other informed on all programmes of work and projected activities in which there may be a mutual interest, and shall exchange publications concerning these and related fields.

Suitable arrangements will be made so that each party to these Working Arrangements may participate as an observer in those sessions and meetings of the other party which relate to areas of common interest.

(*f*) Agreements and arrangements for consultation and cooperation with other organizations

Pursuant to article 26, paragraph (*a*), of the Convention of WMO, the organization may enter into formal agreements with other intergovernmental organizations as may be desirable. In accordance with paragraph (*b*) of the same article, the organization may on matters within its purposes make suitable arrangements for consultation and cooperation with non-governmental international organizations and, with the consent of the Government concerned, with national organizations, governmental or non-governmental.

In 2000, WMO concluded the following agreements and arrangements:

- Agreement between the Government of Finland and WMO for the Implementation of the SIDS [Small Island Developing States] Caribbean Project (signed 23 November 2000)
- Memorandum of Cooperation between the General Directorate of Civil Aviation of Chile and the World Meteorological Organization (signed 24 May 2000)
- Memorandum of Understanding between the Interamerican Development Bank (IADB) and the World Meteorological Organization (signed 25 March 2000)

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8. INTERNATIONAL MARITIME ORGANIZATION

(1) Membership of the organization

During 2000, the Federal Republic of Yugoslavia and Tonga became members of the International Maritime Organization. The membership of the organization now stands at 158. There are also two Associated Members. The membership of the Federal Republic of Yugoslavia did not increase the number of members of the Organization, since, following the dissolution of the former Socialist Federal Republic of Yugoslavia, that State was retained on the list of member States, in line with the practice of the United Nations. With effect from the date of the acceptance by the Federal Republic of Yugoslavia of the IMO Convention, the former Socialist Federal Republic of Yugoslavia was deleted from the list of the organization's member States.

(2) Review of the legal activities of IMO

During 2000, the IMO Legal Committee held two sessions: the eighty-first session (March 2000) and the eighty-second session (October 2000).[162] The Committee considered the following questions:

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

The Legal Committee at its eighty-first session concentrated on this agenda item as a major priority and was successful in completing its consideration of the updated text of a draft convention on civil liability for bunker oil pollution damage which had been under discussion since 1995. The discussions began by considering a variety of topics including, in particular, definitions of shipowner, bunker fuel oil and pollution damage, as well as provisions regulating liability, a draft resolution on limitation of liability, compulsory insurance, financial security, jurisdiction, certificates of financial responsibility, maintenance of electronic records and States with more than one system of law.

The Committee thereafter completed an article-by-article consideration of the item and confirmed its previous recommendation, as approved by the Council and the Assembly, that the draft Convention, as amended, should be submitted to a Diplomatic Conference for adoption, preferably in the first half of 2001, in lieu of a session of the Legal Committee.

At its eighty-second session, the Committee took note of further information on the item which had been submitted but agreed that, in view of the fact that the draft convention had already been circulated for consideration at the Diplomatic Conference, debate should not be reopened. Delegations were encouraged to meet informally to discuss matters in respect of which consensus had not been reached, in order to facilitate agreement during the Diplomatic Conference.

(b) *Provision of financial security*

The Legal Committee at its eighty-first and eighty-second sessions continued its consideration of a draft revised protocol to the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea. The Convention establishes a liability regime for damage suffered by passengers on seagoing vessels. The amendments are primarily to require the carrier to provide financial security for claimants through compulsory insurance of its liability. The Committee focused on a number of issues including the basis of liability, compulsory insurance, limits of liability and a proposal for the convening of a Diplomatic Conference.

(i) As regards the *basis of liability*, the Committee considered a proposal for replacing the existing fault-based liability in the Athens Convention with a strict liability regime, distinguishing between shipping and non-shipping incidents. Opinions among delegations differed, but the Committee decided to accept in principle a compromise consisting of introducing a compensation system based on strict liability for death and injury to passengers in connection with shipping incidents and the maintenance of a fault-based system in the case of non-shipping incidents. Further consideration would be given to the question of burden of proof, on which opinion among delegations also differed.

(ii) As regards *limitation of liability for personal injury*, the Committee considered: (*a*) a revised draft article providing for a per capita limitation, without an overall limit per incident; (*b*) an article allowing a State to prescribe limits of liability under national law for loss of life or personal injury, provided the limits were not less than those prescribed by the Convention; and (*c*) an alternative proposal for

deletion of the whole article, which, it was noted, would result in unlimited liability, except to the extent covered by the Convention on Limitation of Liability for Maritime Claims and its Protocol of 1996. The Committee decided to retain the revised draft article, as referred to in (*a*) above.

(iii) With respect to *compulsory insurance*, the Committee reviewed alternative criteria for determining the basis for insurance levels. Views were also expressed on the basic features of the scheme, including the need for the insurance to provide for adequate levels of compensation, the need to treat all passengers equally and the need to ensure that the compulsory insurance should not be lower than the limits of liability in the draft Protocol. Other matters discussed included the question of overloaded ships and their potential effect on insurance coverage and the issue of whether compulsory insurance should cover only personal injury or death, or also extend to loss or damage to luggage. The Committee decided to revert to those issues at a later stage.

(iv) The Committee recommended to the Council that allowance be made in the 2002-2003 biennium for a two-week diplomatic conference to adopt the protocol. Alternatively, the Committee decided to inform the Council that a one-week conference might be possible if it was convened back to back with a regular session of the Committee so as to allow sufficient time for the consideration of the issue.

As regards *crew claims*, the Committee noted that the Joint IMO/ILO Ad Hoc Expert Working Group regarding Claims for Death, Personal Injury and Abandonment of Seafarers would meet again in October/November 2000. It also noted that, in accordance with its mandate, the Joint Group was ongoing and would arrange for its further meetings, as necessary.

(c) *Draft convention on wreck removal*

The Legal Committee continued its consideration of a proposed convention on wreck removal. This was done on the basis of a report by the coordinator of the Correspondence Group and of a revised, scaled-down version of the draft convention. The draft convention seeks to codify certain rules on wreck removal. Its purpose is to enable any coastal State affected to require shipowners to remove wrecks which are a hazard and which are located in the State's exclusive economic zone outside its territorial sea. While some progress had been made, there were mixed views in the Group about the scaled-down version of the draft convention, particularly insofar as it left controversial matters to be regulated by national legislation.

The Committee decided to devote more time to the item in order to enable the preparation of a draft convention for consideration by a Diplomatic Conference during the 2004-2005 biennium.

The Committee also decided that the work of the Correspondence Group should be suspended until it had considered certain fundamental issues, such as financial security. The representatives of the International Group of P&I Clubs and of the insurance and other sectors of the shipping industry, as appropriate, were requested to submit a document to the Committee at its next session on the availability and features of an adequate insurance cover with respect to the removal of wrecks.

(d) *Work programme and meeting dates*

The Committee noted that there would be no meeting of the Legal Committee in spring 2001, due to the convening of a Diplomatic Conference to adopt the draft Convention on civil liability for pollution damage caused by bunker oil. Consideration was therefore given to the long-term work plan of the Committee, to enable advice to be given to the Council at its eighty-sixth session in June 2001, at which session the long-term work plan of the organization would be decided for submission to the Assembly in November 2001.

The Committee approved the 2001 work programme, as follows:

(i) Action requested as a result of the adoption of the Bunkers Convention;

(ii) Provision of financial security;

(iii) Consideration of a draft convention on wreck removal;

(iv) Monitoring implementation of the HNS Convention;

(v) Draft convention on offshore mobile craft;

(vi) Matters arising from the work of the Council and the Assembly.

The Committee agreed to the following meeting dates:

- International Conference on Liability and Compensation for Bunker Oil Pollution Damage, 2001: 19-23 March 2001
- Eighty-third session of the Legal Committee: 8-12 October 2001

(e) *Long-term work plan*

The Committee agreed to retain the following items for its long-term work plan:

(i) Consideration of the legal status of novel types of craft, such as air-cushion vehicles, operating in the marine environment;

(ii) Possible convention on the regime of vessels in foreign ports;

(iii) Possible revision of maritime law conventions in the light of proven need and subject to the directives in resolution A.500(XII). In that connection, it was noted that resolution A.900(21), regarding objectives of the organization in the 2000s, was also applicable.

(f) *Other matters*

Other matters dealt with by the Committee included:

(i) Noting the information provided by the secretariat and by member States on the status of conventions and other treaty instruments adopted as a result of the work of the Legal Committee;

(ii) Noting the information on the progress made by the HNS Correspondence Group since its last session;

(iii) Noting the information on the progress report on the implementation of the subprogramme for maritime legislation from January to June 2000. In that connection, the Committee expressed its appreciation for the work of the International Maritime Law Institute in preparing legal drafters

and training personnel to implement IMO Conventions in developing countries. It also expressed its appreciation for the ongoing support of the Comité Maritime Internationale for the work of the Institute and noted the need for more voluntary funding of the Institute;

(iv) Giving advice to the Maritime Safety Committee (MSC) on the status of documents and oral interventions by the specialized agencies of the United Nations system under the ITU Conference Rules of Procedures.

(3) Treaties

During 2000, two treaties concerning international law were concluded under the auspices of the International Maritime Organization, as follows:

(a) *Protocol of 2000 on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances (OPRC-HNS Protocol)*

The Conference on International Cooperation on Preparedness and Response to Pollution Incidents by Hazardous and Noxious Substances, held in London in March 2000, adopted the Protocol on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances, 2000.

The Protocol aims at providing a global framework for international cooperation in combating major incidents or threats of marine pollution from ships carrying hazardous and noxious substances such as chemicals. These substances are defined by reference to lists of substances contained in various IMO Conventions and Codes. Similar to the provisions of the International Convention on Oil Pollution Preparedness Response and Cooperation, 1990 (OPRC), the parties to the HNS Protocol will be required to establish measures for dealing with pollution incidents, either nationally or in cooperation with other countries. Ships will be required to carry a shipboard pollution emergency plan to deal specifically with incidents involving HNS.

In accordance with its article 15, the Protocol will enter into force 12 months after the date on which not less than 15 States have either signed it without reservation as to ratification, acceptance or approval or have deposited the requisite instruments of ratification, acceptance, approval or accession, in accordance with article 13 of the Protocol.

(b) *Protocol of 2000 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971*

The International Conference on the Revision of the 1971 Fund Convention, held in London in September 2000, adopted the Protocol of 2000 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.[163]

The purpose of the Protocol is to amend article 43.1 of the 1971 Fund Convention in order to facilitate the orderly termination of that Convention, while ensuring that the 1971 IOPC Fund is able to meet in full its obligations to pay compensation to victims of oil pollution damage covered by the Convention. This need arose because most of the Contracting States to the 1971 Fund Convention with major contributors had left the 1971 Fund and joined the 1992 Fund regime. The 1971 Fund was therefore losing its financial viability.

In accordance with article 3 of the Protocol, the Protocol shall be deemed to have been accepted six months from the date of its adoption unless, prior to that date, objections to acceptance have been communicated to the Secretary-General by not less than one third of the Contracting States to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, and shall enter into force in accordance with article 4, three months after the date on which it is deemed to have been accepted.

(4) Amendments to treaties

(a) *2000 amendments of the limitation amounts in the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969*

These amendments were adopted by the Legal Committee on 18 October 2000 by resolution LEG.1(82). The amendments increase the limitation amounts in the 1992 Protocol to the CLC 1969 by 50.37 per cent. The adoption of the increased limits came in the wake of the *Nakhodka* incident in 1997 off the coast of Japan and the *Erika* disaster off the coast of France in December 1999. At the time of their adoption, the Legal Committee determined that the amendments shall be deemed to have been accepted on 1 May 2002 and will enter into force on 1 November 2003 unless, prior to 1 May 2002, not less than one quarter of the States that were Contracting States to the Protocol on the date of adoption of the amendments have communicated to the organization that they do not accept the amendments.

(b) *2000 amendments of the limits of compensation in the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971*

These amendments were adopted by the Legal Committee on 18 October 2000 by resolution LEG.2(82). Like the amendments to the limitation amounts in the 1992 Protocol to the 1969 CLC Convention, these amendments increase the limits of compensation in the Protocol of 1992 to the 1971 Fund Convention by 50.37 per cent. As for the CLC, the increased limits were adopted in the wake of the *Nakhodka* incident in 1997 off the coast of Japan and the *Erika* disaster off the coast of France in December 1999. At the time of their adoption, the Legal Committee determined that the amendments shall be deemed to have been accepted on 1 May 2002 and will enter into force on 1 November 2003 unless, prior to 1 May 2002, not less than one quarter of the States that were Contracting States to the Protocol on the date of adoption of the amendments have communicated to the organization that they do not accept the amendments.

(c) *2000 (Annex III) amendments to the Annex to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973*

These amendments were adopted by the Marine Environment Protection Committee (MEPC) on 13 March 2000 by resolution MEPC.84(44). At the time of their adoption, MEPC determined that the amendments shall be deemed to have been accepted on 1 July 2001 and will enter into force on 1 January 2002 unless, prior to 1 July 2001, not less than one third of the parties or the parties the combined

merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet have communicated to the organization their objections to the amendments.

(d) *2000 (Annex V) amendments to the Annex to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973*

These amendments were adopted by the Marine Environment Protection Committee on 5 October 2000 by resolution MEPC.89(45). At the time of their adoption, MEPC determined that the amendments shall be deemed to have been accepted on 1 September 2001 and will enter into force on 1 March 2002 unless, prior to 1 September 2001, not less than one third of the parties or the parties the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet have communicated to the organization their objections to the amendments.

(e) *2000 (chapters 5, 14, 15 and 16) amendments to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code) (under MARPOL 73/78 and SOLAS 74)*

These amendments were adopted by the Marine Environment Protection Committee on 5 October 2000 by resolution MEPC.90(45). At the time of their adoption, MEPC determined that the amendments shall be deemed to have been accepted on 1 January 2002 and will enter into force on 1 July 2002 unless, prior to 1 January 2002, not less than one third of the parties or the parties the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet have communicated to the organization their objections to the amendments.

(f) *2000 amendments to the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (BCH Code) (under MARPOL 73/78)*

These amendments were adopted by the Marine Environment Protection Committee on 5 October 2000 by resolution MEPC.91(45). At the time of their adoption, MEPC determined that the amendments shall be deemed to have been accepted on 1 January 2002 and will enter into force on 1 July 2002 unless, prior to 1 January 2002, not less than one third of the parties or the parties the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet have communicated to the organization their objections to the amendments.

(g) *2000 (chapter III) amendments to the International Convention for the Safety of Life at Sea, 1974, as amended*

These amendments were adopted by the Maritime Safety Committee on 26 May 2000 by resolution MSC.91(72). At the time of their adoption, MSC determined that they shall be deemed to have been accepted on 1 July 2001 and enter into force on 1 January 2002 unless, prior to 1 July 2001, more than one third of the Contracting Governments to the Convention or Contracting Governments the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet have notified their objections to the amendments.

(h) *2000 amendments to the Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974*

These amendments were adopted by the Maritime Safety Committee on 26 May 2000 by resolution MSC.92(72). At the time of their adoption, MSC determined that the amendments shall be deemed to have been accepted on 1 July 2001 and enter into force on 1 January 2002 unless, prior to 1 July 2001, more than one third of the parties to the 1988 SOLAS Protocol or parties the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet have notified their objections to the amendments.

(i) *2000 International Code of Safety for High Speed Craft (HSC Code) (under SOLAS 74)*

This Code was adopted by the Maritime Safety Committee on 5 December 2000 by resolution MSC.97(73). The Code will take effect on 1 July 2002 upon the entry into force of the corresponding 2000 amendments to chapter X of the International Convention for the Safety of Life at Sea, 1974.

(j) *2000 International Code for Fire Safety Systems (FSS Code) (under SOLAS 74)*

This Code was adopted by the Maritime Safety Committee on 5 December 2000 by resolution MSC.98(73). The Code will take effect on 1 July 2002 upon the entry into force of the corresponding 2000 revised chapter II-2 amendments to the International Convention for the Safety of Life at Sea, 1974.

(k) *2000 (chapters II-l, II-2, V, IX and X) amendments to the International Convention for the Safety of Life at Sea, 1974*

These amendments were adopted by the Maritime Safety Committee on 5 December 2000 by resolution MSC.99(73). At the time of their adoption, MSC determined that the amendments shall be deemed to have been accepted on 1 January 2002 and shall enter into force on 1 July 2002 unless, prior to 1 January 2002, more than one third of the Contracting Governments to the Convention or Contracting Governments the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet have notified their objections to the amendments.

(l) *2000 amendments (to the Annex) to the Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974*

These amendments were adopted by the Maritime Safety Committee on 5 December 2000 by resolution MSC.100(73). At the time of their adoption, MSC determined that the amendments shall be deemed to have been accepted on 1 January 2002 and shall enter into force on 1 July 2002 unless, prior to 1 January 2002, more than one third of the parties to the 1988 SOLAS Protocol or parties the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet have notified their objections to the amendments.

(m) *2000 amendments (Annexes I and II) to the International Code for Application of Fire Test Procedures (FTP Code)*

These amendments were adopted on 5 December 2000 by resolution MSC.101(73). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 January 2002 and shall enter into force on 1 July 2002 unless, prior to 1 January 2002, more than one third of the Contracting Governments to the Convention or Contracting Governments the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet have notified their objections to the amendments.

(n) *2000 amendments (chapters 5, 8, 14, 15 and 16) to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code) (under MARPOL 73/78 and SOLAS 74)*

These amendments were adopted on 5 December 2000 by resolution MSC.102(73). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 January 2002 and shall enter into force on 1 July 2002 unless, prior to 1 January 2002, more than one third of the Contracting Governments to the Convention or Contracting Governments the combined merchant fleets of which constitute 50 per cent of the gross tonnage of the world's merchant fleet have notified their objections to the amendments.

(o) *2000 amendments (chapters 3, 4, 5, 8, 9, 11, 13, 14 and 18) to the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code) (under SOLAS 1974)*

These amendments were adopted on 5 December 2001 by resolution MSC.103(73). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 January 2002 and shall enter into force on 1 July 2002 unless, prior to 1 January 2002, more than one third of the Contracting Governments to the Convention or Contracting Governments the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet have notified their objections to the amendments.

(p) *2000 amendments to the International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code) (under SOLAS 74)*

These amendments were adopted by the Maritime Safety Committee on 5 December 2000 by resolution MSC.104(73). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 January 2002 and will enter into force on 1 July 2002 unless, prior to 1 January 2002, more than one third of the Contracting Governments to the Convention or Contracting Governments the combined merchant fleets of which constitute not more than 50 per cent of the world's merchant fleet have notified their objections to the amendments.

(q) *2000 amendments to the Guidelines on the Enhanced Programme of Inspections during Surveys of Bulk Carriers (resolution A.744(18), as amended)*

These amendments were adopted on 5 December 2000 by resolution MSC.105(73). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 January 2002 and will enter into force on 1 July 2002 unless, prior to 1 January 2002, more than one third of the Contracting Governments to the Convention or Contracting Governments the combined merchant fleets of which constitute not less than 50 per cent of the world's merchant fleet have notified their objections to the amendments.

(r) *2000 amendments (chapters II, III, IV and V) to the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (BCH Code) (under SOLAS 74 and MARPOL 73/78)*

These amendments were adopted on 5 December 2000 by resolution MSC.106(73). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall become effective, though not mandatory, on 1 July 2002 upon acceptance and entry into force of the corresponding amendments to the IBC Code adopted by resolution MSC.102(73).

(s) *2000 amendments (chapters II, III, IV and V) to the Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (GC Code) (under SOLAS 74)*

These amendments were adopted on 5 December 2000 by resolution MSC.107(73). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall become effective, though not mandatory, on 1 July 2002 upon acceptance and entry into force of the corresponding amendments to the IGC Code adopted by resolution MSC.103(73).

(5) Entry into force of instruments and amendments

Instruments

(*a*) Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974

This Protocol, adopted on 11 November 1988 by the International Conference on the Harmonized System of Survey and Certification, 1988, relates to the International Convention for the Safety of Life at Sea, 1974, and introduces into the Convention provisions for survey and certification harmonized with corresponding provisions in other international instruments. The conditions for the entry into force of the Protocol were met on 2 February 1999 and the amendments entered into force on 3 February 2000.

(*b*) Protocol of 1988 relating to the International Convention on Load Lines, 1966

This Protocol, adopted on 11 November 1988 by the International Conference on the Harmonized System of Survey and Certification, 1988, relates to the International Convention on Load Lines, 1966, and introduces into the Convention

provisions for survey and certification harmonized with corresponding provisions in other international instruments, with a view to increasing further the technical provisions of the Convention. The conditions for entry into force of the Protocol were met on 2 February 1999 and the Protocol entered into force on 3 February 2000.

Amendments

(*a*) 1990 amendments to the Annex to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973

The Marine Environment Protection Committee at its twenty-ninth session (March 1990) adopted by resolution MEPC.39(29) amendments to annexes I and II to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78). The amendments introduce changes to surveys and inspections and the issue, form, duration and validity of certificates in order to harmonize the survey and certification requirements of MARPOL 73/78 with those of the Protocol of 1988 relating to the Safety of Life at Sea, 1974, and the Protocol of 1988 relating to the International Convention on Load Lines, 1966. At the time of their adoption, MEPC determined that the amendments would be deemed to have been accepted six months after the conditions for entry into force of the 1988 SOLAS and Load Lines Protocols had been met. The conditions for entry into force of the two Protocols were met on 2 February 1999, and the deemed acceptance date was consequently 3 August 1999. The amendments therefore entered into force on 3 February 2000.

(*b*) 1990 amendments to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code)

The Marine Environment Protection Committee and the Maritime Safety Committee at their twenty-ninth (March 1990) and fifty-eighth (May 1990) sessions, respectively, adopted by resolutions MEPC.40(29) and MSC.16(58), amendments to the IBC Code, in order to harmonize the survey and certification requirements of the Code with those of the 1988 SOLAS and Load Lines Protocols. At the time of their adoption, MEPC and MSC determined that the amendments would be deemed to have been accepted six months after the conditions for entry into force of the two Protocols had been met, and that they would enter into force six months after their deemed acceptance date. The conditions for entry into force of the two Protocols were met on 2 February 1999 and the deemed acceptance date of the amendments was consequently 3 August 1999. The amendments therefore entered into force on 3 February 2000.

(*c*) 1990 amendments to the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code)

The Maritime Safety Committee at its fifty-eighth session (May 1990) adopted by resolution MSC.17(58) amendments to the ICG Code in order to harmonize the survey and certification requirements of the Code with those of the 1988 SOLAS and Load Lines Protocols. At the time of their adoption, MSC determined that the amendments would be deemed to have been accepted six months after the conditions for the two Protocols had been met, and that they would enter into force six months after their deemed acceptance date. The conditions for entry into force of the

two Protocols were met on 2 February 1999 and the deemed acceptance date of the amendments was consequently 3 August 1999. The amendments therefore entered into force on 3 February 2000.

(*d*) 1990 amendments to the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (BCH Code)

The Marine Environment Protection Committee at its twenty-ninth session (March 1990) adopted, by resolution MEPC.41(29), amendments to the BCH Code in order to harmonize the survey and certification requirements of the Code with those of the 1988 SOLAS and Load Lines Protocols. At the time of their adoption, MEPC determined that the amendments would be deemed to have accepted on the same date on which the amendments to annexes I and II to MARPOL 73/78, adopted by the Committee by resolution MEPC.39(29), and that the amendments would enter into force six months after their deemed acceptance. The conditions for the entry into force of the amendments to annexes I and II having been met on 2 February 1999, the deemed acceptance date for the BCH Code amendments was 3 August 1999, and the amendments therefore entered into force on 3 February 2000.

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

The Maritime Safety Committee at its sixty-ninth session (May 1998) adopted, by resolution MSC.70(69), amendments to chapters 1 to 5 of the annex to the International Convention on Maritime Search and Rescue, 1979. The amendments relate to terms and definitions, organization and coordination, cooperation between States, operating procedures and ship reporting systems. The conditions for the entry into force of the amendments were met on 1 July 1999, and the amendments entered into force on 1 January 2000.

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9. WORLD INTELLECTUAL PROPERTY ORGANIZATION

Introduction

1. In 2000, WIPO concentrated on the implementation of substantive work programmes through three sectors: cooperation with member States; international registration of intellectual property titles; and intellectual property treaty formulation and normative development. WIPO also continued focusing resources and expanding the scope of its programmes on traditional knowledge, genetic resources, folklore and electronic commerce.

Cooperation for development activities

2. With regard to this area, the year 2000 witnessed intense activity in all aspects and regions covered by the relevant programme, while WIPO technical assistance was tailored to meet specific needs and focused on creating lasting institutions.

3. In May 2000, the secretariat signed an agreement with the University of Turin for the granting of the first WIPO joint postgraduate diploma in intellectual property law to jointly design and launch the Postgraduate Specialization Course on Intellectual Property Law. The targeted audience included professors and professionals with a grounding in intellectual property law who wished to acquire advanced knowledge and skills for the teaching and practice of international legislative aspects of intellectual property law. Half of the 40 students admitted to the course each year will come from developing countries and be sponsored by WIPO; the other 20 students will be selected from industrialized countries. Facilities were provided in collaboration with the International Training Centre of ILO.

Norm-setting activities

4. 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.

5. Accelerating the growth of international common principles and rules governing intellectual property requires extensive consultations. Three WIPO Standing Committees on legal matters—one dealing with copyright and related rights, one dealing with patents and one dealing with trademarks, industrial designs and geographical indications—help member States coordinate efforts in these areas and establish priorities.

6. The Working Group on Constitutional Reform presented to the WIPO Assemblies of Member States in September 2000 the most far-reaching constitutional and structural reform since the establishment of WIPO. This was achieved by streamlining the organization's governance structure through the reduction of the number of WIPO governing bodies from 21 to 16.

Standing Committee on Trademarks

7. Members of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications agreed at the end of March 2000 on a set of measures to simplify and harmonize procedures relating to trademark licences. The Committee adopted by consensus a joint recommendation concerning trademark licences which was submitted for formal approval by member States at the September 2000 meeting of the WIPO Assemblies.

Standing Committee on Copyright and Related Rights

8. In 2000, the Committee devoted itself essentially to preparing the final groundwork for the holding of the Diplomatic Conference on the Protection of Audiovisual Performances. To ensure that countries would be ready for the final round of negotiations in the conference, WIPO also conducted six regional consultation meetings in October and November 2000.

Standing Committee on Information Technologies

9. The Committee met from 10 to 14 July 2000 in Geneva to consider a range of questions relating to major automation projects at WIPO. These include the continuation of the WIPOnet project, an initiative to automate the operations of the Patent Cooperation Treaty (IMPACT), the creation of Intellectual Property Digital Libraries (IPDLs) and the Administration Integrated Management System (AIMS).

International registration activities

10. Two milestones for the Organization came in February and March when, respectively, the Hague system for industrial designs attained its 50,000th registration and the Patent Cooperation Treaty (PCT) recorded its 500,000th application. Such numbers indicate the increasing interest by users seeking protection through WIPO while taking on larger markets through international trade. Confirmation of that analysis comes from knowledge that PCT applications had doubled in less than four years, since its 250,000th application was recorded in February 1996.

Patents

11. From 11 May to 2 June 2000, WIPO member States met at a Diplomatic Conference in Geneva, during which the Patent Law Treaty (PLT) and its Regulations on patent formalities and procedures were negotiated. On 1 June 2000, the PLT was adopted by consensus. The PLT simplifies formalities and streamlines procedures for national and regional patent applications and patents. Users of the patent system will thus be able to rely upon predictable and simple procedures for filing national and regional patent applications and for maintaining patents in all Contracting Parties. The PLT incorporates by reference the formality requirements of the Patent Cooperation Treaty, thus ensuring that, once the PLT has entered into force, the same formal requirements will apply to national, regional and international applications, and patents.

12. At its twenty-eighth session, from 13 to 17 March 2000, the PCT Union Assembly adopted amendments to the PCT Regulations relating to the draft Patent Law Treaty and discussed implementation of electronic filing and processing of international applications.

Marks

13. From 2 to 13 October, the Committee of Experts of the Nice Union considered proposals for amendments and other changes to the seventh edition of the International Classification of Goods and Services (Nice Classification) in view of the entry into force of the eighth edition on 1 January 2002.

14. International trademark registrations under the Madrid system surged by 15 per cent compared with 1999, reaching almost 23,000. Renewals rose by 20 per cent to almost 6,900.

Industrial designs

15. In February 2000 the Hague system for industrial designs attained its 50,000th registration.

Electronic commerce; Internet domain names

16. In 2000, WIPO received a request from a number of its member States to initiate a Second WIPO Internet Domain Name Process to study the abusive registration of the following identifiers: personal names; International Nonproprietary Names for pharmaceutical substances; names of international intergovernmental organizations; geographical indications, indications of source and geographic terms; and trade names. In July, the organization began the Second WIPO Internet Domain Name Process, via online and regional consultations, to study the extent of the prob-

lems experienced in these areas and to produce recommendations on avoiding and resolving conflicts.

17. During 2000, the organization conducted a number of regional meetings on electronic commerce and intellectual property issues with the aim of broadening developing countries' participation in global policy formation on intellectual property issues.

18. The WIPO Arbitration and Mediation Centre received 1,841 generic top-level domain (gTLD) cases, concerning over 3,200 domain names. In comparison with the other domain name dispute resolution service providers, the Centre's caseload represents 65 per cent of all Internet Corporation for Assigned Names and Numbers (ICANN) cases; 1,286 (70 per cent) of these cases were resolved through 1,007 decisions by WIPO-appointed panels and 279 terminations. The Centre received 16 country-code top-level domain (ccTLD) cases; seven of these cases were resolved through five decisions of WIPO-appointed panels and two terminations. WIPO domain name cases involved parties from 74 countries worldwide.

The WIPO Arbitration and Mediation Centre

19. A gathering of leading dispute resolution providers and arbitrators opened on 6 November 2000 in Geneva with an acknowledgement that the technological revolution had forced a change in the traditional approach to arbitration. The International Conference on Dispute Resolution in Electronic Commerce examined how electronic commerce had altered the way in which businesses and the legal profession functioned, as well as the associated risks and opportunities.

20. Members of the WIPO Domain Name Panel attended a meeting in Geneva on 7 November to discuss their involvement in the Centre's Domain Name Dispute Resolution Service. The group consisted of 50 panellists from 15 countries. The discussions focused on ways in which the Centre and panellists could work together to maintain the efficient, fair and expeditious resolution of domain name disputes.

21. The annual meeting of the Centre's Arbitration and Mediation Council followed the conference on 8 November. Members were briefed on the Centre's activities including the availability of Domain Name Dispute Resolution Services in both the gTLDs and ccTLDs, tailor-made dispute resolution services, conventional cases and training programmes.

22. The Centre's week of activities culminated with a Workshop for Arbitrators held in Geneva on 9 and 10 November. Fifty participants from 25 countries attended the workshop, the objective of which was to provide training on effective management of the international arbitration process.

Intellectual property and global issues

23. Another outstanding achievement for WIPO in 2000 was the mandate it received from member States, in September 2000, to further explore those issues deriving from the economic exploitation of genetic resources, traditional knowledge and folklore. This mandate included the organization and convening of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. Intense work took place in 2000 in preparation for the first session scheduled for spring 2001. The focus was set on three

intellectual property themes: (*a*) access to genetic resources and benefit-sharing; (*b*) protection of traditional knowledge, innovations and creativity, whether or not associated with those resources; and (*c*) the protection of expressions of folklore, including handicrafts.

Online services

24. The organization has several new online services, such as the WIPO electronic bookshop and the Collection of Laws for Electronic Access (CLEA) database, which provides searchable online access to 900 legislative texts from 35 countries. Texts from a further 35 countries will soon be added.

New members and new accessions

25. In 2000, WIPO received and processed 60 instruments of ratification or accession to WIPO-administered treaties. The following figures show the new adherences to treaties that are in force, with the figure in parentheses being the total number of States party to the corresponding treaty by the end of 2000:

- Convention Establishing the World Intellectual Property Organization: 2 (175)
- Paris Convention for the Protection of Industrial Property: 3 (160)
- Patent Cooperation Treaty: 4 (110)
- Protocol Relating to the Madrid Agreement concerning the International Registration of Marks: 6 (49)
- Trademark Law Treaty: 1 (26)
- Madrid Agreement concerning the International Registration of Marks: 1 (52)
- Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods: 1 (32)
- Nairobi Treaty on the Protection of the Olympic Symbol: 1 (40)
- Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks: 5 (65)
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration: 1 (19)
- Locarno Agreement Establishing an International Classification for Industrial Designs: 2 (39)
- Strasbourg Agreement concerning the International Patent Classification: 2 (47)
- Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks: 2 (17)
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure: 1 (49)
- Berne Convention for the Protection of Literary and Artistic Works: 5 (147)
- Rome International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (jointly administered with ILO and UNESCO): 4 (67)

- Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms: 3 (63)
- Brussels Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite: 1 (24)

26. Furthermore, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (the WIPO "Internet Treaties") received, respectively, nine and seven new adherences, bringing the total to 21 and 18, respectively, at the end of 2000. Each treaty requires 30 adherences to enter into force.

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10. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

(*a*) Agreements with Governments

(i) Letter of agreement between the Government of the Republic of Guinea and UNIDO regarding the implementation of the document on the framework programme for the support and development of the private sector, signed on 11 January 2000;

(ii) Cooperation agreement between the United Nations Industrial Development Organization and the Secretariat of Science, Technology and Productive Innovation, Republic of Argentina, signed on 8 March 2000;

(iii) Agreement between the United Nations Industrial Development Organization and the Government of Colombia regarding the establishment of a UNIDO regional office in Colombia, signed on 22 May 2000;

(iv) Memorandum of Understanding between the Director-General of the United Nations Industrial Development Organization and H.E. Dr. Nasser Saidi, Minister of Economy and Trade, Minister of Industry of the Government of the Lebanese Republic, signed on 3 June 2000;

(v) Agreement between the United Nations Industrial Development Organization and the Government of the Lebanese Republic regarding the establishment of a UNIDO regional office in Beirut, for Arab countries, signed on 3 June 2000;

(vi) Agreement between the Government of Denmark and the United Nations Industrial Development Organization on the Provision of Junior Professional Officers, signed on 18 May and 7 June 2000;

(vii) Memorandum on cooperation in the field of industrial development between the United Nations Industrial Development Organization and the Government of the Republic of Azerbaijan, signed on 5 July 2000;

(viii) Joint communiqué between the Director-General of the United Nations Industrial Development Organization and Ambassador Rosario Green, Secretary for External Relations, Mexico, signed on 12 July 2000.

(*b*) Agreements with intergovernmental, governmental, non-governmental and other organizations and entities

(i) Memorandum of Understanding on working arrangements between the African Development Bank and the African Development Fund and the United Nations Industrial Development Organization, signed on 19 April 2000;

(ii) Framework cooperation agreement between the Spanish Agency for International Cooperation and the United Nations Industrial Development Organization, signed on 23 June 2000;

(iii) Memorandum of Understanding between the United Nations Industrial Development Organization and the Latin American Foundation for Economic Research (FIEL), signed on 23 August 2000;

(iv) Agreement between the Secretariat of Small and Medium-Sized Enterprises of Argentina, the Secretariat of Industry, Trade and Mining of Argentina, the United Nations Industrial Development Organization and the Permanent Observatory of the Small and Medium-Sized Industrial Enterprises—represented in this act by the following members: Banco de la Nación Argentina, Fundación UIA (Argentine Industrial Union Foundation), and Organización Techint, signed on 23 August 2000;

(v) Agreement between the Chief of Cabinet's Office of the Government of Argentina, represented by the Chief of the Cabinet, Dr. Rodolfo H. Terragno, and the United Nations Industrial Development Organization, represented by the Director-General, Mr. Carlos Magariños, signed on 23 August 2000;

(vi) Cooperation agreement between the United Nations Industrial Development Organization and L. M. Ericsson Company, signed on 13 November 2000.

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11. INTERNATIONAL ATOMIC ENERGY AGENCY

Agreement on the Privileges and Immunities of the International Atomic Energy Agency[164]

During 2000, Latvia accepted the Agreement. By the end of the year there were 67 Parties.

Convention on the Physical Protection of Nuclear Material[165]

In 2000, Botswana, the Libyan Arab Jamahiriya, Pakistan and Sudan adhered to the Convention. By the end of the year, there were 68 Parties.

Convention on Early Notification of a Nuclear Accident[166]

In 2000, the Islamic Republic of Iran and Luxembourg adhered to the Convention. By the end of the year, there were 86 Parties.

Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency[167]

In 2000, the Islamic Republic of Iran, Lithuania and Luxembourg adhered to the Convention. By the end of the year, there were 82 Parties.

Vienna Convention on Civil Liability for Nuclear Damage, 1963[168]

In 2000, the status of the Convention remained unchanged, with 32 Parties.

Optional Protocol concerning the Compulsory Settlement of Disputes[169]

In 2000, the status of the Protocol remained unchanged, with two Parties.

Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention[170]

During 2000, Ukraine adhered to the Protocol. By the end of the year, there were 21 Parties.

Convention on Nuclear Safety[171]

In 2000, the European Atomic Energy Community (EURATOM) adhered to the Convention. By the end of the year, there were 53 Parties.

Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management[172]

In 2000, Argentina, Bulgaria, Finland, France, Greece, Latvia, the Netherlands, Poland, Switzerland and Ukraine adhered to the Convention. By the end of the year, there were 23 Contracting States and 41 signatories.

Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage[173]

In 2000, Argentina adhered to the Protocol. By the end of the year, there were three Contracting States and 14 signatories.

Convention on Supplementary Compensation for Nuclear Damage[174]

In 2000, Argentina adhered to the Convention. By the end of the year, there were 3 Contracting States and 13 signatories.

African Regional Cooperative Agreement for Research, Development and Training Related to Nuclear Science and Technology[175] *(AFRA)—(Second Extension)*

The second extension of the Agreement entered into force on 4 April 2000. Algeria, Burkina Faso, Cameroon, Côte d'lvoire, the Democratic Republic of the Congo, Egypt, Ethiopia, Ghana, Kenya, the Libyan Arab Jamahiriya, Madagascar, Mauritius, Morocco, Namibia, Senegal, South Africa, Tunisia, Uganda, the United Republic of Tanzania and Zimbabwe adhered to the Agreement. By the end of the year, there were 20 Parties.

Second Agreement to Extend the 1987 Regional Cooperative Agreement for Research, Development and Training Related to Nuclear Science and Technology, 1987[176] *(RCA)*

During 2000, the status of the Agreement remained unchanged, with 17 Parties.

Revised Supplementary Agreement concerning the Provision of Technical Assistance by IAEA (RSA)

In 2000, Israel, Malta and the former Yugoslav Republic of Macedonia concluded the Agreement. By the end of the year, there were 92 States that concluded an RSA Agreement.

Cooperation Agreement for the Promotion of Nuclear Science and Technology in Latin America and the Caribbean (ARCAL)

In 2000, Mexico adhered to the Agreement. By the end of the year, there was 1 Contracting State and 14 signatories.

IAEA legislative assistance activities

During 2000, legislative assistance continued to be provided to member States to enable them to further develop their nuclear legislation. Emphasis was placed on the interaction between technical and legal experts of the Agency and those of member States. In particular, assistance was given to 19 countries by means of written comments or advice on specific national legislation submitted to the Agency for review.

The Agency's legislative assistance activities in 2000 also included:

—A regional workshop for countries of the Asia and Pacific region on the development of a legal framework governing the safety of radioactive waste management and the safe transport of radioactive material, held in Jakarta from 10 to 14 April 2000;

—A regional seminar on legislation and regulations for radiation protection held in Saclay, France, for 13 to 16 June 2000 for French-speaking African countries;

—A regional workshop on response to nuclear accidents or radiological emergencies and on a legal framework governing emergency preparedness and response and civil liability for nuclear damage, held in Rio de Janeiro, Brazil, from 9 to 17 October 2000 for countries of the Latin America region;

—A training course for the safe transport of radioactive material held in New Illawara, Australia, from 27 November to 8 December 2000 for countries of the Asia and Pacific region.

Convention on the Physical Protection of Nuclear Facilities

The Director-General of IAEA convened, in November 1999, an informal open-ended expert meeting to discuss whether there was a need to revise the Convention on the Physical Protection of Nuclear Material, in the light of the comments made at the March 1999 Board of Governors meeting. The Director-General requested the experts to provide their view on the basic question of whether there was a need to revise the Convention.

The expert meeting recognized that it would not be appropriate or possible at the meeting to arrive at any conclusions as to whether there was a need to revise the Convention. The meeting agreed that a more detailed process should be established to further examine the issues that should be addressed prior to reaching conclusions on further efforts to ensure effective physical protection, in order to prepare the ground thoroughly for any future consideration of the need to revise the Convention. For this purpose, the expert meeting decided to continue its work in the next 18 months in a series of working group meetings with the participation of the IAEA secretariat. The working group was to prepare a report and make recommendations to be submitted to the expert meeting.

The Working Group met in February, June and November 2000. The next meeting of the Working Group is foreseen to take place in January 2001.

Safeguards Agreements

During 2000, two Safeguards Agreements, pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons, were signed with the former Yugoslav Republic of Macedonia and Yemen, and a Safeguards Agreement under the Treaty with Andorra was approved by the IAEA Board of Governors. These agreements have not yet entered into force.

Protocols additional to the Safeguards Agreements between IAEA and Azerbaijan,[177] Bulgaria,[178] Canada,[179] Croatia,[180] Hungary,[181] Lithuania,[182] Norway,[183] Poland,[184] Romania,[185] and Slovenia[186] entered into force. Protocols additional to Safeguards Agreements were signed by Estonia, Namibia, Peru, the Russian Federation, Switzerland, Turkey and Ukraine but have not yet entered into force. Protocols additional to the Safeguards Agreements between IAEA and Andorra, Bangladesh, Latvia and Nigeria were also approved by the IAEA Board of Governors.

By the end of 2000, there were 224 Safeguards Agreements in force with 140 States (and Taiwan Province of China). Safeguards Agreements which satisfy the requirements of the Non-Proliferation Treaty were in force with 128 States. By the end of 2000, 57 States had concluded an Additional Protocol, 53 of which had been signed. Of the 53, 18 had entered into force and 1 was being implemented provisionally pending its entry into force.

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12. WORLD TRADE ORGANIZATION

(*a*) Director-General

The Director-General of the WTO is:

- The Right Honourable Mike Moore of New Zealand, until 31 August 2002 to be followed by
- H.E. Dr. Supachai Panitchpakdi of Thailand, from 1 September 2002 to 31 August 2005.

(*b*) Membership

WTO membership is open to any State or customs territory having full autonomy in the conduct of its trade policies. Accession negotiations concern all aspects of the applicant's trade policies and practices, such as market access concessions and commitments on goods and services, legislation to enforce intellectual property rights, and all other measures which form a Government's commercial policies. Applications for WTO membership are the subject of individual working parties. Terms and conditions related to market access (such as tariff levels and commercial presence for foreign service suppliers) are the subject of bilateral negotiations. The following is a list of 27 Governments for which a working party has been established (still current as of 31 December 2000):

Algeria, Andorra, Armenia, Azerbaijan, Belarus, Bhutan, Bosnia and Herzegovina, Cambodia, Cape Verde, China, Kazakhstan, Lao People's Democratic Republic, Lebanon, Nepal, Republic of Moldova, Russian Federation, Samoa, Saudi Arabia, Seychelles, Sudan, Taiwan Province of China, the former Yugoslav Republic of Macedonia, Tonga, Ukraine, Uzbekistan, Vanuatu and Viet Nam

As at 31 December 2000, there were 140 members of WTO, accounting for more than 90 per cent of world trade. Many of the countries that remain outside the world trade system have requested accession to WTO and are at various stages of a process that has become more complex due to the organization's more expansive coverage relative to its predecessor, GATT.

During 2000, WTO received the following new members:

- Jordan (11 April 2000) by Protocol of Accession (23 December 1999, WT/ACC/JOR/35), Council decision WT/ACC/JOR/34
- Georgia (14 June 2000) by Protocol of Accession (28 October 1999, WT/ACC/GEO/33), Council decision WT/ACC/GEO/32
- Albania (8 September 2000) by Protocol of Accession (2 August 2000, WT/ACC/ALB/53), Council decision WT/ACC/ALB/52
- Sultanate of Oman (9 November 2000) by Protocol of Accession (3 November 2000, WT/ACC/OMN/28), Council decision WT/ACC/OMN/27
- Croatia (30 November 2000) by Protocol of Accession (19 September 2000, WT/ACC/HRV/61), Council decision WT/ACC/HRV/60

It is also important to note the following Council decision in 2000 authorizing the accession of:

- Lithuania, by Protocol of Accession (15 January 2001, WT/ACC/LTU/54), Council decision WT/ACC/LTU/53

Lithuania is expected to become the 141st member of WTO upon the completion of the internal ratification procedures in 2001. The list of WTO members as at 31 December 2000 is contained in the table below.

WTO members (*as at 31 December 2000*)

Albania
Angola
Antigua and Barbuda
Argentina
Australia
Austria
Bahrain
Bangladesh
Barbados
Belgium
Belize
Benin
Bolivia
Botswana
Brazil
Brunei Darussalam
Bulgaria
Burkina Faso
Burundi
Cameroon
Canada
Central African Republic
Chad
Chile
Colombia
Congo
Costa Rica
Côte d'Ivoire
Croatia
Cuba
Cyprus
Czech Republic
Democratic Republic of the Congo
Denmark
Djibouti
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Estonia
European Communities
Fiji
Finland
France
Gabon
Gambia
Georgia
Germany
Ghana
Greece
Grenada
Guatemala
Guinea
Guinea-Bissau
Guyana
Haiti
Honduras
Hong Kong SAR
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Kenya
Kyrgyzstan
Kuwait
Latvia
Lesotho
Liechtenstein
Luxembourg
Macau, China
Madagascar
Malawi
Malaysia
Maldives
Mali
Malta
Mauritania
Mauritius
Mexico
Mongolia
Morocco
Mozambique
Myanmar
Namibia
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway
Oman
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Republic of Korea
Romania
Rwanda
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Senegal
Sierra Leone
Singapore
Slovakia
Slovenia
Solomon Islands
South Africa
Spain
Sri Lanka
Suriname
Swaziland
Sweden
Switzerland
Thailand
Togo
Trinidad and Tobago
Tunisia
Turkey
Uganda
United Arab Emirates
United Kingdom of Great Britain and Northern Ireland
United Republic of Tanzania
United States of America
Uruguay
Venezuela
Zambia
Zimbabwe

(c) Waivers

In 2000, the General Council granted a number of waivers from obligations under the WTO Agreement (see the table below):

Waivers under article IX of the WTO Agreement

Member	*Type*	*Decision of*	*Expiry*	*Document*
Nicaragua	Implementation of Harmonized System			
	— Extension of time limit	3 May 2000	31 Oct. 2000	WT/L/353
	— Extension of time limit	8 Dec. 2000	30 April 2001	WT/L/376
Sri Lanka	Implementation of Harmonized System			
	— Extension of time limit	3 May 2000	31 Oct. 2000	WT/L/352
	— Extension of time limit	8 Dec. 2000	30 April 2001	WT/L/377
Zambia	Renegotiation of schedule			
	— Extension of time limit	3 May 2000	31 Oct. 2000	WT/L/350
	— Extension of time limit	8 Dec. 2000	30 April 2001	WT/L/378
Argentina, Bolivia, Brazil, Brunei Darussalam, Bulgaria, Costa Rica, Egypt, El Salvador, Honduras, Guatemala, Iceland, Israel, Malaysia, Maldives, Mexico, Morocco, New Zealand, Norway, Pakistan, Panama, Paraguay, Switzerland, Thailand, Uruguay, Venezuela	Introduction of Harmonized System changes into WTO Schedules of Tariff Concessions on 1 January 1996			
	— Extension of time limit	3 May 2000	31 Oct. 2000	WT/L/351
	— Extension of time limit (except for Bolivia, Costa Rica, Maldives)	8 Dec. 2000	30 April 2001	WT/L/379
Uruguay	Customs Valuation Agreement			
	— Waiver on minimum values	3 May 2000	1 Jan. 2001	WT/L/354
EC/France	Trading arrangements with Morocco	17 July 2000	Entry into force of Euro-Mediterranean Agreement with Morocco	WT/L/361 and Corr.1
EC	Autonomous preferential treatment to the countries of the Western Balkans	15 Dec. 2000		WT/L/380 and Corr.1
Turkey	Preferential treatment for Bosnia and Herzegovina	8 Dec. 2000	31 Dec. 2006	WT/L/381

Source: WTO Annual Report, 2000.

(*d*) Resolution of trade conflicts under the WTO Dispute Settlement Understanding

Overview

The General Council convenes as the Dispute Settlement Body (DSB) to deal with disputes arising from any agreement contained in the Final Act of the Uruguay Round that is covered by the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). The DSB has the sole authority to establish dispute settlement panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations and authorize suspension of concessions in the event of non-implementation of recommendations.

Composition of the Appellate Body

On 7 April 2000, the DSB appointed Mr. G. Abi-Saab (Egypt) and Mr. A. V. Ganesan (India) to serve on the Appellate Body to replace Mr. El Naggar and Mr. Matsushita, following the expiration of their terms. On 19 March 2000, Mr. C. Beeby passed away and on 25 May 2000, the DSB appointed Mr. Y. Taniguchi (Japan) to serve on the Appellate Body for the remainder of the term of Mr. Beeby.

Dispute settlement activity for 2000

In 2000, the DSB received 33 notifications from members of formal requests for consultations under the DSU. During this period, the DSB established panels to deal with 12 cases in 11 new matters and adopted panel and/or Appellate Body reports in 17 cases, concerning 14 distinct matters. The DSB also received three notifications from members of a mutually agreed solution (settlement) of dispute, and the authority of a panel lapsed in one case (involving two complaints on the same matter).

This section briefly describes the procedural history and, where available, the substantive outcome of these cases. It also describes the implementation status of adopted reports where new developments occurred in the periods covered; cases in which a panel report has been circulated but where an appeal is pending before the Appellate Body; disputes where consultations have been requested but no panel has yet been requested or established; and cases where a mutually agreed solution has been reached.

Appellate Body and/or panel reports adopted

Mexico—Anti-dumping investigation of high-fructose corn syrup (HFCS), complaint by the United States (WT/DS132). This dispute concerns the imposition, on 23 January 1998, of definitive anti-dumping duties by Mexico on imports of high-fructose corn syrup from the United States. The United States contended that the manner in which the application for an anti-dumping investigation was made, as well as the manner in which the determination of threat of injury was made, was inconsistent with articles 2, 3, 4, 5, 6, 7, 9, 10 and 12 of the Anti-Dumping Agreement. The DSB established a panel at its meeting on 25 November 1998. Jamaica reserved its third-party rights. The Panel found no violation of the Anti-Dumping Agreement in the initiation of the investigation, rejecting the United

States' arguments regarding the need to make certain underlying determinations specific and to publish notice of them at the time of initiation. The Panel found, however, that Mexico had acted inconsistently with its obligations under the Anti-Dumping Agreement, in its determination of threat of material injury and in the imposition of the definitive anti-dumping measure on imports of HFCS from the United States. With respect to the final determination of threat of material injury, the Panel concluded that each of the injury factors set forth in the Anti-Dumping Agreement must be specifically addressed in the analysis. The Panel also concluded that the threat of injury must be to the entire domestic industry, and not only that portion of it that directly competed with imports. The report of the Panel was circulated to WTO members on 28 January 2000. The DSB adopted the Panel report at its meeting on 24 February 2000. On 19 April 2000, the parties informed the DSB that they had agreed on a reasonable period for implementation under article 21.3 of the DSU, which would expire on 22 September 2000. At the DSB meeting of 26 September 2000, Mexico stated that it had complied with the panel recommendation by its final determination on the anti-dumping investigation on 20 September 2000. The United States, after examining Mexico's final determination, requested that the DSB refer the matter to the original panel under article 21.5. The DSB did so on 23 October 2000 and the European Communities, Jamaica and Mauritius reserved their third-party rights.

United States—Tax treatment for "Foreign Sales Corporations", complaint by the European Communities (WT/DS108). This dispute concerns tax exemptions and special administrative pricing rules contained in sections 921-927 of the United States Foreign Sales Corporations (FSC) scheme of the Internal Revenue Code. In November 1997, the European Communities contended that these provisions were inconsistent with United States obligations under articles III.4 and XVI of GATT 1994, articles 3.1 (*a*) and (*b*) of the Agreement on Subsidies Agreement (SCM Agreement) and articles 3 and 8 of the Agreement on Agriculture. At its meeting on 22 September 1998, the DSB established a panel. Barbados, Canada and Japan reserved their rights as third parties to the dispute. The Panel found that, through the FSC scheme, the United States had acted inconsistently with its obligations under article 3.1 (*a*) of the Subsidies Agreement and under article 3.3 of the Agreement on Agriculture (and consequently with its obligations under article 8 of that Agreement). The report of the Panel was circulated to WTO members on 8 October. The United States appealed certain issues of law covered in the Panel report and legal interpretations developed by the panel. The Appellate Body upheld the Panel's finding that the FSC measure constituted a prohibited subsidy under article 3.1 (*a*) of the SCM Agreement. However, it reversed the Panel's finding that the FSC measure involved "the provision of subsidies to reduce the costs of marketing exports" of agricultural products under article 9.1 (*d*) of the Agreement on Agriculture and, in consequence, reversed the Panel's findings that the United States had acted inconsistently with its obligations under article 3.3 of the Agreement on Agriculture concerning export subsidies. The Appellate Body found that the United States had acted inconsistently with its obligations under articles 10.1 and 8 of the Agreement on Agriculture by applying export subsidies, through the FSC measure, in a manner resulting in, or threatening to lead to, circumvention of its export subsidy commitments with respect to agricultural products. In reaching these conclusions, the Appellate Body emphasized that "a member of WTO may choose any kind of tax system it wishes" and also that a member "has the sovereign authority to tax any particular categories of income it wishes". However, whatever system of taxation

a member chooses, it must respect its commitments under the WTO Agreement. The report of the Appellate Body was circulated to WTO members on 24 February 2000. The DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, at its meeting on 20 March 2000. A reasonable period of time was determined and then modified by the DSB, at the request of the United States, to expire on 1 November 2000. On 17 November 2000, the United States stated that, with its adoption of the FSC Repeal and Extraterritorial Income Exclusion Act on 15 November, it had implemented the recommendations of the DSB. On the same date, the European Communities claimed that the United States had failed to comply with the DSB recommendations and rulings and requested consultations with the United States under articles 4 and 21.5 of the DSU. The European Communities also requested DSB authorization to take appropriate countermeasures and suspend concessions pursuant to article 4.10 of the SCM Agreement and 22.2 of the DSU. The United States requested that the matter be referred to arbitration under article 22.6 of the DSU. On 7 December 2000, the European Communities notified the DSB that consultations had failed and requested the establishment of a panel pursuant to article 21.5 of the DSU. The DSB referred the matter to the original panel on 20 December. On 21 December 2000, the United States and the European Communities jointly requested the article 22.6 arbitrator to suspend proceedings until the adoption of the Panel report or, if there was an appeal, the Appellate Body report. Arbitration was accordingly suspended.

Republic of Korea—Measures affecting government procurement, complaint by the United States (WT/DS163). This dispute relates to the Inchon International Airport project in the Republic of Korea. At issue was whether the entities that had procurement responsibility for the project since its inception were "covered entities" under the plurilateral Agreement on Government Procurement. The United States argued that the procurement practices of those entities were or had been inconsistent with the Republic of Korea's obligations under the Agreement. On 16 June 1999, the DSU established a panel. The European Communities and Japan reserved their third-party rights in the proceedings. The Panel found that the text of the Republic of Korea's Agreement schedule did not include the entities which were conducting procurement for the airport project, and that those entities were independent from the Ministry of Construction and Transportation, which was a "covered entity". In addition, the Panel examined the United States claim of non-violation nullification or impairment. It found that the traditional approach to non-violation could not be sustained in a situation where there was no actual concession granted. The Panel also examined the non-violation claim in the context of an error in treaty negotiation. It concluded that, based on less than complete answers by the Republic of Korea to certain questions by the United States during negotiations on the Republic of Korea's accession to the Agreement, there had initially been an error on the part of the United States as to which Korean authority was in charge of the project at issue. However, in the light of all the facts, the Panel considered that there was notice of this error and that it was not reasonable or justifiable and therefore found that the United States had not demonstrated that benefits reasonably expected to accrue to it under the Agreement, or in the negotiations resulting in the Republic of Korea's accession to the Agreement, were nullified or impaired by measures taken by the Republic of Korea. The report of the Panel was circulated to WTO members on 1 May 2000. The DSB adopted the Panel report at its meeting on 19 June 2000.

Guatemala—Definitive anti-dumping measures on grey Portland cement, complaint by Mexico (WT/DS156). On 22 September 1999, the DSB established a panel to evaluate the consistency with WTO law of the definitive anti-dumping measure imposed by the authorities of Guatemala on imports of grey Portland cement from Mexico and the proceedings leading thereto, in particular the anti-dumping investigation against imports of grey Portland cement from Cruz Azul, a Mexican exporter. Mexico alleged that the definitive anti-dumping measure was inconsistent with articles 1, 2, 3, 5, 6, 7, 12 and 18 of the Anti-Dumping Agreement and its annexes I and II, as well as with article VI of GATT 1994. The European Communities, Ecuador, Honduras and the United States reserved their third-party rights. The Panel concluded that Guatemala's initiation of an investigation, the conduct of the investigation and the imposition of a definitive anti-dumping measure on imports of grey Portland cement from Mexico's Cruz Azul was inconsistent with the requirements in the Anti-Dumping Agreement. With regard to the initiation of the investigation, the Panel found, inter alia, that the evidence on dumping, threat of injury or causation was insufficient to justify initiation of the investigation and that Guatemala should have rejected the application for anti-dumping duties. With respect to the conduct of the investigation, the Panel found several violations of Mexico's rights of due process. Regarding the final determination of injury caused by dumped imports, the Panel concluded that Guatemala had acted inconsistently with the Anti-Dumping Agreement in that the investigating authority had failed to properly assess the increase in the volume of dumped imports relative to domestic consumption in Guatemala and failed to examine other known factors than the dumped imports that may have been causing injury. The Panel also rejected some of Mexico's claims and refrained from examining claims which it considered to be subsidiary to the principal claims put forward by Mexico and on which a ruling would not provide additional guidance on the implementation of the Panel's recommendations. The report of the Panel was circulated to WTO members on 24 October 2000. The DSB adopted it at its meeting on 17 November 2000. On 12 December 2000, Guatemala informed the DSB that it had removed its anti-dumping measure and complied with the recommendations of the DSB. Mexico welcomed Guatemala's implementation in the case.

Canada—Term of patent protection, complaint by the United States (WT/DS170). This dispute concerns the term of protection for patents in Canada. The United States contended that the TRIPS Agreement obligates members to grant a term of protection for patents that run at least until 20 years after the filing date of the underlying protection, and requires each member to grant this minimum term to all patents existing as of the date of application of the Agreement to that member. The United States alleged that under the Canadian Patent Act the term granted to patents issued on the basis of applications filed before 1 October 1989 was 17 years from the date on which the patent was issued and that that situation was inconsistent with articles 33, 65 and 70 of the TRIPS Agreement. On 22 September 1999, the DSB established a panel. The Panel first found that, pursuant to article 70.2 of the TRIPS Agreement, Canada was required to apply the relevant obligations of the TRIPS Agreement to inventions protected by patents that were in force on 1 January 1996, i.e., the date of entry into force for Canada of the TRIPS Agreement. The Panel further found that section 45 of Canada's Patent Act did not make available in all cases a term of protection that did not end before 20 years from the date of filing, as mandated by article 33 of the TRIPS Agreement, thus rejecting, inter alia, Canada's argument that the 17-year statutory protection under its Patent Act

was effectively equivalent to the 20-year term prescribed by the TRIPS Agreement because of average pendency periods for patents, informal and statutory delays etc. The report of the Panel was circulated to WTO members on 5 May 2000. Canada appealed certain issues of law covered in the Panel report and legal interpretation developed by the Panel. The Appellate Body, however, upheld all of the findings and conclusions of the Panel that were appealed. The Appellate Body report was circulated to WTO members on 18 September 2000. The DSB adopted the Appellate Body report and the Panel report, as upheld by the Appellate Body report, on 12 October 2000. On 23 October 2000, Canada declared its intention to implement the DSB recommendations and rulings. Canada requested a reasonable period of time to do so and stated that it would consult with the United States on the matter. On 15 December 2000, the United States requested that the reasonable period of time be determined by binding arbitration under article 21.3 of the DSU.

United States—Anti-Dumping Act of 1916, complaints by the European Communities (WT/DS136) and Japan (WT/DS162). This dispute concerns the United States Anti-Dumping Act of 1916 ("1916 Act"). This Act allows, under certain conditions, civil actions and criminal proceedings to be brought against importers who have sold foreign-produced goods in the United States at prices which are "substantially less" than the prices at which the same products are sold in a relevant foreign market. An importer found criminally liable is subject to a fine and/or imprisonment, and private complainants may seek treble damages if they suffered injury as a result of a violation of the 1916 Act. The European Communities and Japan separately challenged the 1916 Act on the ground that the Act authorized remedies for "dumping" other than the imposition of anti-dumping duties, and did not respect the procedural requirements or the injury test set out in the relevant provisions of the Anti-Dumping Agreement and article VI of GATT 1994. The European Communities and Japan also argued that the 1916 Act was inconsistent with article III:4 of GATT 1994 and article XVI:4 of the WTO Agreement, and Japan claimed that the 1916 Act was inconsistent with article XI of GATT 1994 and article 18.4 of the Anti-Dumping Agreement. On 1 February 1999, the DSB established a panel at the request of the European Communities. India, Japan and Mexico reserved their third-party rights. On 26 July 1999, the DSB established a second panel at the request of Japan. The European Communities and India reserved their third-party rights. Both panels had the same composition and are therefore referred to as the Panel in these disputes. In two separate reports, circulated to WTO members on 31 March 2000 and 29 May 2000, respectively, the Panel found that it had jurisdiction to consider the claims and rejected the arguments made by the United States concerning the "discretionary" nature of the 1916 Act. The Panel also found that the 1916 Act fell within the scope of application of article VI of GATT 1994 and the Anti-Dumping Agreement, and that the 1916 Act violated articles VI:1 and VI:2 of GATT 1994, as well as certain provisions of the Anti-Dumping Agreement. The United States, the European Communities and Japan all appealed certain legal findings and conclusions of the Panel. The Appellate Body upheld all the findings and conclusions of the Panel that were appealed. The Appellate Body report was circulated to WTO members on 28 August 2000. The DSB adopted the Appellate Body report and the Panel reports, as upheld by the Appellate Body report, on 26 September 2000. At the DSB meeting on 23 October 2000, the United States stated its intention to implement the rulings and recommendations of the DSB and that it would consult with the European Communities and Japan with regard to a reasonable period of time for

implementation. On 17 November 2000, the European Communities and Japan requested that the reasonable period be determined by arbitration under article 21.3 (*c*) of the DSU.

Canada—Patent protection of pharmaceutical products, complaint by the European Communities and their member States (WT/DS114). This dispute concerns the protection of inventions by Canada in the area of pharmaceuticals. The European Communities contended that Canada's Patent Act was not compatible with its obligations under the TRIPS Agreement, because that legislation did not provide for the full protection of patented pharmaceutical inventions for the entire duration of the term of protection envisaged by articles 27.1, 28 and 33 of the TRIPS Agreement. At its meeting on 1 February 1999, the DSB established a panel. Australia, Brazil, Colombia, Cuba, India, Israel, Japan, Poland, Switzerland, and the United States reserved their third-party rights. The Panel found that the "regulatory review exception" provided for in Canada's Patent Act (sect. 55.2(1)) was not inconsistent with article 27.1 of the TRIPS Agreement as it was covered by the exception in article 30 of the Agreement. Under the "regulatory review exception", potential competitors of a patent owner were permitted to use the patented invention, without the authorization of the patent owner during the term of the patent, for the purposes of obtaining government marketing approval, so that they would have regulatory permission to sell in competition with the patent owner by the date on which the patent expired. Regarding the "stockpiling exception" (sect. 55.2(2)), the Panel found a violation of article 28.1 of the TRIPS Agreement that was not covered by the exception in article 30. Under the "stockpiling exception", competitors were allowed to manufacture and stockpile patented goods during a certain period before the patent expired, but the goods could not be sold until after the patent expired. The Panel considered that, unlike the "regulatory review exception", the "stockpiling exception" constituted a substantial curtailment of the exclusionary rights required to be granted to patent owners under article 28.1 to such an extent that it could not be considered to be a limited exception within the meaning of article 30 of the TRIPS Agreement. The report of the Panel was circulated to WTO members on 17 March 2000. The DSB adopted the Panel report at its meeting on 7 April 2000. At the DSB meeting on 23 October 2000, Canada stated its intention to implement the rulings and recommendations of the DSB and that it would consult with the United States with regard to a reasonable period of time for implementation. On 15 December 2000, the United States requested that the reasonable period be determined by arbitration under article 21.3 (*c*) of the DSU.

United States—Imposition of countervailing duties on certain hot-rolled lead and bismuth carbon steel products originating in the United Kingdom, complaint by the European Communities (WT/DS138). This dispute concerns countervailing duties imposed by the United States on certain hot-rolled lead and bismuth carbon steel products (leaded bars), from the United Kingdom. The leaded bars subject to countervailing duties were produced and exported to the United States by United Engineering Steels Limited (UES) and British Steel Engineering Steels (BSES). These companies had acquired, directly or indirectly, leaded bar producing assets that were previously owned by British Steel Corporation (BSC), a State-owned company. Between 1977 and 1986, BSC received subsidies from the British Government. The United States originally imposed countervailing duties on imports of leaded bars from the United Kingdom in 1993. The United States Department of

Commerce subsequently conducted annual administrative reviews of the countervailing duties. In those reviews, the Department of Commerce presumed, notwithstanding the changes in ownership of the assets of BSC used in the production of leaded bars, that the subsidies granted to BSC had "passed through" to the "benefit" of UES and BSplc/BSES. In this dispute, the European Communities complained that the countervailing duties imposed on leaded bars imported in 1994, 1995 and 1996 as a result of the administrative reviews conducted in 1995, 1996 and 1997 violated the obligations of the United States under articles 1.1 (*b*), 10, 14 and 19.4 of the SCM Agreement. The Panel concluded that by imposing countervailing duties on 1994, 1995 and 1996 imports of leaded bars produced by UES and BSES, respectively, the United States had violated article 10 of the SCM Agreement. The Panel found that the United States Department of Commerce should have examined whether there was a continuing "benefit" to UES and BSES from the subsidies previously granted by the British Government to BSC. Moreover, the Panel found that, since the changes in the ownership of the leaded bar producing assets of BSC had occurred at arm's length and for fair market value, UES and BSES could not have received any "benefit" from the subsidies previously granted to BSC. The report of the Panel was circulated to WTO members on 23 December 1999. The United States appealed certain legal findings and conclusions of the Panel. The Appellate Body upheld all of the findings of the Panel that were appealed while modifying some of the reasoning. The Appellate Body stressed that an investigating authority conducting a review of countervailing duties must determine, in the light of all the facts before it, whether there was a continuing need for the application of the duties. As the Panel had made factual findings that UES and BSES had paid fair market value when they acquired the assets of BSC, the Appellate Body held that the Panel had not erred in finding that UES and BSES had received no "benefit" from the subsidies granted. At the outset of the appeal, the Appellate Body received two amicus curiae briefs, in support of the position of the United States, from the American Iron and Steel Institute and the Speciality Steel Industry of North America. The Appellate Body determined that it had the legal authority, under the DSU, to accept and consider amicus curiae briefs in a case in which it was pertinent and useful to do so. The Appellate Body emphasized, however, that individuals and organizations which were not members of WTO had no legal *right* to make submissions to or to be heard by the Appellate Body. Furthermore, the Appellate Body had no legal *duty* to accept and consider unsolicited amicus curiae briefs. In the appeal, the Appellate Body did not find it necessary to take the two amicus curiae briefs into account in rendering its decision. The Appellate Body report was circulated to WTO members on 10 May 2000. The DSB adopted the Appellate Body report and the Panel report, as upheld by the Appellate Body report on 7 June 2000. At the DSB meeting on 5 July 2000, the United States announced that it considered that it had implemented the recommendations of the DSB.

Canada—Certain measures affecting the automotive industry, complaints by Japan (WT/DS139) and the European Communities (WT/DS142). This dispute concerns a Canadian measure providing for an import duty exemption for the importation of certain motor vehicles. Since the conclusion of the Canada–United States Auto Pact in 1965, Canada had granted duty-free treatment to motor vehicles imported by certain manufacturers established in Canada which met three main conditions. First, the manufacturer must have a manufacturing presence in Canada with respect to motor vehicles of the class imported. Second, the sales value of the motor vehicles *produced* in Canada, as a proportion of the sales value of all

motor vehicles *sold* in Canada by that manufacturer, must be equal to or higher than a specified ratio. Third, the "Canadian value-added" in the production of motor vehicles in Canada must be equal to or greater than either a specified amount or, in some cases, a designated percentage of the cost of sales or the cost of production. Both Japan and the European Communities argued that the Canadian measure at issue was inconsistent with articles I:1 and III:4 of GATT 1994. Article 2 of the Agreement on Trade-Related Investment Measures (TRIMs Agreement), article 3 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) and articles II, VI and XVII of the General Agreement on Trade in Services (GATS). In addition, Japan also claimed a violation of article XXIV of GATT 1994. On 1 February 1999, the DSB established a single panel to examine both the complaint by Japan (DS139) and the complaint by the European Communities (DS142). India, the Republic of Korea and the United States reserved their third-party rights. The Panel found that the conditions under which Canada had granted its import duty exemption were inconsistent with article I:1 of GATT 1994 and not justified under article XXIV of GATT 1994. It further found the application of the "Canada value-added" requirements to be inconsistent with article III:4 of GATT 1994. The Panel also found that the import duty exemption constituted a prohibited export subsidy in violation of article 3.1 (*a*) of the SCM Agreement. In addition, the Panel found that the manner in which Canada had conditioned access to the import duty exemption was inconsistent with article II of GATS and could not be justified under article V of GATS. Finally, the Panel found that the application of the "Canada value-added" requirements constituted a violation of article XVII of GATS. The report of the Panel was circulated to WTO members on 11 February 2000. Canada appealed certain issues of law covered in the Panel report and legal interpretations developed by the Panel. The Appellate Body upheld the findings of the Panel that the Canadian import duty exemption was inconsistent with article I:1 of GATT 1994 and article 3.1 (*a*) of the SCM Agreement but reversed the Panel's finding that article 3.1 (*b*) of the SCM Agreement did not extend to subsidies contingent "in fact" upon the use of domestic over imported products. The Appellate Body further considered that the Panel had failed to examine whether the measure at issue affected trade in services as required under article I:1 of GATS. In addition, the Appellate Body reversed the Panel's conclusion that the import duty exemption was inconsistent with the requirements of article II:1 of GATS as well as the Panel's findings leading to that conclusion. The Appellate Body found that the Panel had failed to demonstrate how the import duty exemption granted to certain manufacturers affected the supply of wholesale trade services and the suppliers of wholesale trade services of motor vehicles. The Appellate Body report was circulated to WTO members on 31 May 2000. The DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, on 19 June 2000. On 19 July 2000, Canada announced its intention to comply with the recommendations of the DSB. On 4 August 2000, the European Communities and Japan requested, pursuant to article 21.3 (*c*), that the reasonable period of time for implementation be determined by arbitration. The arbitrator determined that the reasonable period of time for implementation of the recommendations and rulings relating to article I:1 and III:4 of GATT 1994 and article XVII of GATS would expire on 18 February 2001.

United States—Section 110(5) of United States Copyright Act, complaint by the European Communities (WT/DS160). This dispute concerns section 110(5) of the United States Copyright Act, as amended by the Fairness in Music Licensing Act, which was enacted on 27 October 1998. The European Communities contended

that section 110(5) of the United States Copyright Act permitted, under certain conditions, the playing of radio and television music in public places (bars, shops, restaurants etc.) without the payment of a royalty fee. The European Communities considered that the statute was inconsistent with United States obligations under article 9(1) of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS Agreement), requiring members to comply with articles 1 to 21 of the Berne Convention. The dispute centred on the compatibility of two exemptions provided for in section 110(5) of the United States Copyright Act with article 13 of the TRIPS Agreement, which allowed certain limitations or exceptions to exclusive rights of copyright holders, subject to the condition that such limitations were confined to certain special cases, did not conflict with a normal exploitation of the work in question and did not unreasonably prejudice the legitimate interests of the right holder. On 26 May 1999, the DSB established a panel. Australia, Japan and Switzerland reserved their third-party rights. The Panel found that the "business" exemption provided for in subparagraph (B) of section 110(5) of the United States Copyright Act did not meet the requirements of article 13 of the TRIPS Agreement and was thus inconsistent with articles 11bis(1)(iii) and 11(1)(ii) of the Berne Convention (1971) as incorporated into the TRIPS Agreement by article 9.1 of that Agreement. The Panel noted, inter alia, that a substantial majority of eating and drinking establishments and close to half of retail establishments were covered by the business exemption. The Panel further found that the "homestyle" exemption provided for in subparagraph (A) of section 110(5) of the United States Copyright Act met the requirements of article 13 of the TRIPS Agreement and was thus consistent with articles 11bis(1)(iii) and 11(1)(ii) of the Berne Convention (1971) as incorporated into the TRIPS Agreement by article 9.1 of that Agreement. Here, the Panel noted certain limits imposed on the beneficiaries of the exemption, permissible equipment and categories of works as well as the practice by United States courts. The report of the Panel was circulated to WTO members on 15 June 2000. The DSB adopted the Panel report at its meeting on 27 July 2000. On 24 August 2000, the United States informed the DSB of its intention to implement the recommendations of the DSB and proposed 15 months as a reasonable period of time to do so. On 23 October 2000, the European Communities requested that the reasonable period be determined by binding arbitration under article 21.3 (*c*) of the DSB.

Republic of Korea—Definitive safeguard measure on imports of certain dairy products, complaint by the European Communities (WT/DS98). This dispute concerns a safeguard measure imposed by the Republic of Korea, in the form of quantitative restrictions on imports of skimmed milk powder preparations. The European Communities claimed that the Republic of Korea's safeguard measure had been imposed inconsistently with the provisions of articles 2, 4, 5 and 12 of the Agreement on Safeguards and that the safeguard measure violated article XIX:1 (*a*) of GATT 1994, in that the Republic of Korea had not demonstrated that its alleged increase in imports was "a result of unforeseen developments". On 23 July 1998, the DSB established a panel to examine the European Communities complaint. The United States reserved its third-party rights. In its report circulated to WTO members on 21 June 1999, the Panel found that the Republic of Korea had imposed its safeguard measure inconsistently with articles 4.2, 5.1 and 12 of the Agreement on Safeguards. Both the Republic of Korea and the European Communities appealed certain legal findings and conclusions of the Panel. With respect to the European Communities' claim under article XIX:1 (*a*) of GATT 1994, the Appellate Body

disagreed with the conclusion of the Panel that the phrase in that article—"as a result of unforeseen developments and the effect of obligations incurred by a member under this agreement, including tariff concessions"—did not specify anything additional as to the conditions under which measures pursuant to article XIX might be applied. The Appellate Body found that the ordinary meaning of the phrase in its context and in the light of the object and purpose of article XIX of GATT 1994 and the Agreement on Safeguards, was that a member imposing a safeguard measure must demonstrate, as a matter of fact, that these were unexpected developments that led to the increased import which caused or threatened to cause serious injury to the domestic industry. With respect to article 5.1 of the Agreement on Safeguards, the Appellate Body agreed with the Panel that a member had an obligation to apply a safeguard measure only to the extent necessary to meet the objectives in that provision. The Appellate Body, however, modified the Panel's reasoning with respect to the requirement to give a reasoned explanation for the choice of measure selected. On article 12.2 of the Agreement on Safeguards, the Appellate Body reversed the Panel's finding that the Republic of Korea's notification in the case satisfied the requirement to provide "all pertinent information" to the Committee on Safeguards. The report of the Appellate Body was circulated to WTO members on 14 December 1999. The DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, on 12 January 2000. On 11 February 2000, the Republic of Korea informed the DSB that it was studying ways to implement the DSB recommendations. On 21 March 2000, the parties notified the DSB that they had reached agreement on a reasonable period of time for implementation, which set the period until 20 May 2000. On 26 September 2000, the Republic of Korea informed the DSB that it had lifted its safeguard measure on 20 May 2000 and had thereby completed implementation.

Argentina—Safeguard measures on imports of footwear, complaint by the European Communities (WT/DS121). This dispute concerns safeguard measures imposed by Argentina on imports of footwear. The European Communities contended that the provisional and definitive safeguard measures adopted by Argentina, as well as certain modifications to those measures, were inconsistent with articles 2, 3, 5 and 6 of the Agreement on Safeguards and with article XIX of GATT 1994. The European Communities also alleged that the measures had not been properly notified to the Committee on Safeguards in accordance with article 12 of the Agreement on Safeguards. On 23 July 1998, the DSB established a panel to examine the complaint. Indonesia, Paraguay, Uruguay, Brazil and the United States reserved their third-party rights. In its report circulated to WTO members on 25 June 1999, the Panel found Argentina's investigation and determinations of increased imports, serious injury and causation to be inconsistent with articles 2.1 and 4.2 of the Agreement on Safeguards, which set out the conditions that must be demonstrated before a member might apply a safeguard measure. After examining article 2 of the Agreement on Safeguards, as well as article XXIV of GATT 1994, the Panel furthermore concluded that a member that was a party to a customs union might not apply a safeguard measure only to imports from third countries outside the customs union, when the safeguard investigation was conducted and the determination of serious injury was made on the basis of imports from all sources, including from other members of the customs union. The Panel also found that safeguard investigations conducted and safeguard measures imposed after the entry into force of the WTO Agreement which satisfied the requirements of the Agreement on Safeguards also satisfied the requirements of article XIX of GATT 1994. The Panel rejected the European Communities

claims that Argentina had not properly notified its safeguard measures, and declined to make findings on the European Communities claims under articles 5 and 6 of the Agreement on Safeguards relating to the application of the safeguard measures and to the provisional safeguard measures. Argentina and the European Communities appealed certain legal findings and conclusions of the Panel. The Appellate Body reversed the Panel's finding that safeguard investigations conducted and safeguard measures imposed after the entry into force of the WTO Agreement which met the requirements of the Agreement on Safeguards satisfied the requirements of article XIX of GATT 1994. It found that in order to apply a safeguard measure, a member must apply the provisions of *both* the Agreement on Safeguards and article XIX of GATT 1994, and that, pursuant to article XIX, a member imposing a safeguard measure must demonstrate, as a matter of fact, that there were unexpected developments that had led to the increased imports which caused or threatened to cause serious injury to the domestic industry. The Appellate Body upheld the Panel's conclusion that under the Agreement on Safeguards, Argentina could not justify the imposition of safeguard measures only on imports from non-member States of the Common Market of the South (MERCOSUR) when it had conducted a safeguards investigation and made its determinations on the basis of footwear imports from *all* sources, including its MERCOSUR partners. However, the Appellate Body reversed the Panel's legal reasoning with respect to footnote 1 to article 2.1 of the Agreement on Safeguards and article XXIV of GATT 1994. The Appellate Body also upheld the Panel's findings that the safeguard investigation conducted by Argentina, and Argentina's determinations of increased imports, serious injury and causation were not consistent with the requirements contained in articles 2 and 4 of the Agreement on Safeguards. The report of the Appellate Body was circulated to WTO members on 14 December 1999. The DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, on 12 January 2000. On 11 February 2000, Argentina informed the DSB that it was studying ways to implement the recommendations of the DSB.

United States—sections 301-310 of the Trade Act of 1974, complaint by the European Communities (WT/DS152). This dispute concerns certain elements of sections 301 to 310 of the United States Trade Act of 1974. The European Communities claimed that sections 301 to 310, in particular sections 304, 305 and 306, called for unilateral action by the United States in a way that made the legislation as such inconsistent with the multilateral dispute settlement provisions in the DSU, in particular articles 3, 21 and 23 thereof, as well as with certain provisions of GATT 1994 and article XVI:4 of the WTO Agreement. On 2 March 1999, the DSB established a panel to examine the European Communities complaint. Brazil, Canada, Cameroon, Colombia, Costa Rica, Cuba, Dominica, the Dominican Republic, Ecuador, Hong Kong SAR, India, Israel, Jamaica, Japan, the Republic of Korea, Saint Lucia and Thailand reserved their third-party rights. The main European Communities claim was that section 304 was inconsistent with WTO because it mandated the United States Trade Representative, in certain circumstances, to unilaterally decide whether another WTO member had violated WTO rules *before* the completion of multilateral DSU procedures on the matter. The Panel found that, looking only at the statutory language of section 304 there was indeed a serious threat of such unilateral decision being taken, even though nothing forced the United States Trade Representative to do so. That threat, with its apparent "chilling effect" on other members and, indirectly, the marketplace and individual economic operators within it, was found to constitute a prima facie violation of the DSU. However, the Panel

then considered the other elements of section 304, in particular statements by the United States Administration adopted by Congress and confirmed by United States undertakings before the Panel, in which the United States Trade Representative's discretion to take unilateral action before exhaustion of DSU procedures had been curtailed. The Panel regarded the United States undertakings as effectively guaranteeing that under United States law the United States Trade Representative could not make a unilateral decision that another WTO member had violated its WTO obligations until completion of DSU procedures. The Panel concluded that those undertakings had thereby removed the prima facie inconsistency of section 304 with the DSU. The Panel also considered European Communities claims that sections 305 and 306 dealing with the United States Trade Representative's decisions in respect of whether a WTO member had implemented DSB recommendations and what action to take in response were inconsistent with the DSU. The Panel did not decide the controversy of how to sequence article 21.5 and article 22.6. The Panel concluded that under both the United States and the European Communities view, sections 305 and 306 were not inconsistent with article 23 of the DSU. In part, that conclusion was again based on United States decisions and statements that effectively curtailed the United States Trade Representative's discretion to take unilateral action in respect of the implementation of DSB recommendations as well as the suspension of concessions under sections 305 and 306. Finally, the Panel also rejected the European Communities claim that section 306 violated certain provisions of GATT 1994. The Panel did so because the success of the GATT claims depended on the acceptance of the claims under the DSU. The report of the Panel was circulated to WTO members on 22 December 1999. The DSB adopted the Panel report at its meeting on 27 January 2000.

Chile—Taxes on alcoholic beverages, complaints by the European Communities (WT/DS87 and 110). This dispute concerns the tax treatment of certain distilled alcoholic beverages in Chile. Under its legislation on taxation of alcoholic beverages, enacted in 1997, Chile adopted two tax systems, the first, known as the Transitional System, effective until 1 December 2000, and a second, known as the New Chilean System, to be applied from 1 December 2000. The European Communities contended that both tax systems were inconsistent with Chile's obligations under the second sentence of article III:2 of GATT 1994. On 25 March 1998, the DSB decided that the Panel established to examine a previous claim by the European Communities concerning Chile's taxation regime on alcoholic beverages (DS87) should examine this complaint by the European Communities. Peru, Canada and the United States reserved their third-party rights. In its report circulated to WTO members on 15 June 1999, the Panel found that pisco, whisky, brandy, rum, gin, vodka, tequila, liqueurs and several other distilled alcoholic beverages were "directly competitive or substitutable" products. It concluded that, under both the Transitional System and the New Chilean System, domestic and imported beverages were "not similarly taxed" and that the dissimilar taxation was applied "so as to afford protection to domestic production", contrary to article III:2, second sentence, of GATT 1994. Chile appealed certain legal findings and conclusions of the Panel regarding the New Chilean System. The Appellate Body upheld the Panel's overall conclusion that domestic and imported distilled alcoholic beverages were "not similarly taxed" under the New Chilean System, and that the dissimilar taxation was applied "so as to afford protection to domestic production". The Appellate Body, however, modified the reasoning followed by the Panel on some points. The Appellate Body noted that members were free to tax alcoholic beverages according

to their alcohol content and price, so long as the tax classification was not applied so as to afford protection. The report of the Appellate Body was circulated to WTO members on 13 December 1999. The DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, on 12 January 2000. On 11 February 2000, Chile informed the DSB of its intention to implement the recommendations of the DSB, noting that changes to its tax laws required the approval of the National Congress and that it would thus require a reasonable period of time to implement. On 15 March 2000, Chile requested that the reasonable period be determined by arbitration under article 21.3 (*c*) of the DSU. On 23 May 2000, the arbitrator issued its determination that the reasonable period for implementation would expire on 21 March 2001.

Panel Reports pending before the Appellate Body

European Communities—Measures affecting asbestos and asbestos-containing products, complaint by Canada (WT/DS135).This dispute concerns a French decree of 24 December 1996 prohibiting the manufacture, processing, sale, import etc. of asbestos and products containing asbestos. Canada claimed that the decree violated articles 2 and 5 of the SPS Agreement, article 2 of the Agreement on Technical Barriers to Trade (TBT Agreement) and articles III and XI of GATT 1994. Canada also argued, under article XXIII:1 (*b*), nullification and impairment of benefits accruing to it under the various agreements cited. The DSB established a panel on 25 November 1998. Brazil, the United States and Zimbabwe reserved their third-party rights. The Panel found that the "prohibition" part of the decree of 24 December 1996 did not fall within the scope of the TBT Agreement, whereas the part of the decree relating to "exceptions" did fall within the scope of the TBT Agreement. However, as Canada had not made any claim concerning the compatibility with the TBT Agreement of the part of the decree relating to exceptions, the Panel refrained from reaching any conclusion with regard to the latter. The Panel then found that chrysotile asbestos fibres as such and fibres that could be substituted for them as such were like products within the meaning of article III:4 of GATT 1994 and, similarly, that the asbestos-cement products and the fibro-cement products for which sufficient information had been submitted were like products within the meaning of article III:4 of GATT 1994. With respect to the products found to be like, the Panel found that the decree violated article III:4 of GATT 1994. However, it held that the discriminatory treatment under article III:4 was justified under article XX (*b*) of GATT 1994. Finally, the Panel concluded that Canada had not established that it had suffered non-violation nullification or impairment of a benefit within the meaning of article XXIII:1 (*b*) of GATT 1994. The report of the Panel was circulated to WTO members on 18 September 2000. On 23 October 2000, Canada notified the Dispute Settlement Body of its decision to appeal certain issues of law covered in the Panel report and legal interpretations developed by the Panel.

European Communities—Anti-dumping duties on imports of cotton-type bed linen, complaint by India (WT/DS141). This dispute concerns the imposition of anti-dumping duties by the European Communities on imports of cotton-type bed linen from India. India argued that the European Communities had acted inconsistently with its obligations under articles 2, 3, 5, 6, 12 and 15 of the Anti-Dumping Agreement. On 27 October 1999, the DSB established a panel. Egypt, Japan and the United States reserved their third-party rights. The Panel concluded that the European Communities had not acted inconsistently with its obligations under

articles 2.2, 2.2.2, 3.1, 3.4, 3.5, 5.3, 5.4 and 12.2.2 of the Anti-Dumping Agreement in: (*a*) calculating the amount for profit in constructing normal value; (*b*) considering all imports from India (and Egypt and Pakistan) as dumped in the analysis of injury caused by dumped imports; (*c*) considering information for producers comprising the domestic industry but not among the sampled producers in analysing the state of the industry; (*d*) examining the accuracy and adequacy of the evidence prior to initiation; (*e*) establishing industry support for the application; and (*f*) providing public notice of its final determination. However, it concluded that the European Communities had acted inconsistently with its obligations under articles 2.4.2, 3.4 and 15 of the Anti-Dumping Agreement in: (*a*) determining the existence of margins of dumping on the basis of a methodology incorporating the practice of zeroing; (*b*) failing to evaluate all relevant factors, having a bearing on the state of the domestic industry, and specifically all the factors set forth in article 3.4; (*c*) considering information for producers not part of the domestic industry as defined by the investigating authority in analysing the state of the industry; and (*d*) failing to explore possibilities of constructive remedies before applying anti-dumping duties. The Panel report was circulated to WTO members on 30 October 2000. On 1 December 2000, the European Communities notified the DSB of its intention to appeal certain issues of law covered in the Panel report and legal interpretations developed by the Panel.

Thailand—Anti-dumping duties on angles, shapes and sections of iron or non-alloy steel; H-beams from Poland, complaint by Poland (WT/DS122). This dispute concerns the imposition of final anti-dumping duties on imports of certain steel products from Poland. Poland alleges that provisional anti-dumping duties were imposed by Thailand on 27 December 1996, and a final anti-dumping duty of 27.78 per cent of CIF value for these products, produced or exported by any Polish producer or exporter, was imposed on 26 May 1997. Poland further alleges that Thailand refused two requests by Poland for disclosure of findings. Poland contends that these actions by Thailand violated articles 2, 3, 5 and 6 of the Anti-Dumping Agreement. On 19 November 1999, the DSB established a panel. The European Communities, Japan and the United States reserved their third-party rights. The Panel concluded that Poland had failed to establish that Thailand's initiation of anti-dumping investigation on imports of H-beams from Poland was inconsistent with the requirements of articles 5.2, 5.3 and 5.5 of the Anti-Dumping Agreement or article VI of GATT 1994 and that Poland had failed to establish that Thailand had acted inconsistently with its obligations under article 2 of the Anti-Dumping Agreement or article VI of GATT 1994 in the calculation of the amount for profit in constructing normal value. However, it held that Thailand's imposition of the definitive anti-dumping measure on imports of H-beams from Poland was inconsistent with the requirements of article 3 of the Anti-Dumping Agreement. Finally, the Panel concluded that, under article 3.8 of the DSU, in cases where there was infringement of the obligations assumed under a covered agreement, the action was considered prima facie to constitute a case of nullification or impairment of benefits under that agreement, and that, accordingly, to the extent Thailand had acted inconsistently with the provisions of the Anti-Dumping Agreement, it had nullified or impaired benefits accruing to Poland under that Agreement. The report of the Panel was circulated to WTO members on 28 September 2000. On 23 October 2000, Thailand notified the Dispute Settlement Body of its decision to appeal certain issues of law covered in the Panel report and legal interpretations developed by the Panel.

United States—Safeguard measures on import of fresh, chilled or frozen lamb meat, complaints by New Zealand (WT/DS177) and Australia (WT/DS178). This dispute concerns a safeguard measure in the form of a tariff rate quota imposed by the United States in July 1999 on imports of fresh, chilled or frozen lamb meat, primarily from New Zealand and Australia, for a duration of three years. New Zealand and Australia raised a number of claims against this measure under articles 2, 3, 4, 5, 8, 11 and 12 of the Agreement on Safeguards and articles I, II and XIX of GATT 1994. The DSB established a panel on 19 November 1999. The Panel found that inclusion by the United States International Trade Commission of *input* producers (such as growers and feeders of *live* lamb) as producers of the like product at issue (i.e., lamb *meat*) was inconsistent with the definition of the *domestic industry* in article 4.1 (*c*) of the Agreement on Safeguards and that the United States had failed to demonstrate the existence of unforeseen developments and therefore had acted inconsistently with article XIX:1 (*a*). The Panel found no fault with the Commission's analytical approach to determining the existence of a threat of serious injury and ruled that the complainants had failed to establish a violation of article 4.1 (*b*) of the Agreement on Safeguards which defined the concept of "threat of serious injury". The Panel also found no fault with the Commission's analytical approach to evaluating all the injury factors which must be examined when determining whether increased imports threatened to cause serious injury and thus ruled that the complainants had failed to establish a violation of article 4.2 (*a*) of the Agreement on Safeguards. However, the Panel found that the data collected by the Commission in the investigation did not represent a major proportion of the producers forming the domestic industry as defined in the investigation and thus that the United States, by failing to collect representative data, had violated article 4.1 (*c*) of the Agreement on Safeguards. The Panel found that the Commission's application of the "substantial cause" standard (i.e., "increased imports are an important cause and no less than any other cause") in the lamb meat investigation had violated article 4.2 (*b*) of the Agreement on Safeguards. The Panel also found that by violating the more detailed requirements of paragraphs 1 (*c*) and 2 (*b*) of article 4 of the Agreement on Safeguards, the United States had also violated the general requirements of article 2.1 of the Agreement on Safeguards.

Republic of Korea—Measures affecting imports of fresh chilled and frozen beef, complaints by the United States (WT/DS161) and Australia (WT/DS169). This dispute concerns the Republic of Korea's import regime for beef. The United States and Australia challenged: (*a*) the dual retailing system for beef, confining sales of imported beef to specialized stores; (*b*) the alleged restrictions and less favourable treatment imposed by the Livestock Producers Marketing Organization (LPMO) on the importation and distribution of foreign beef; (*c*) the alleged restrictions and less favourable treatment imposed by the functioning of the SBS system; (*d*) LPMO's minimum auction prices and other discharge and tendering practices as well as its refusal to import. In addition, Australia claimed that (*e*) the grass-fed/grain-fed distinction imposed by LPMO in its importation of beef was incompatible with various provisions of the WTO Agreement. The United States also had a general claim that (*f*) the Republic of Korea's import licensing system constituted a restriction which was inconsistent with WTO provisions. Finally, the complaining parties also submitted claims regarding (*g*) the Republic of Korea's domestic support to its bovine industry. The United States and Australia argued that the Republic of Korea's import regime for beef violated articles II, III, XI and XVII of GATT 1994, articles 3, 4, 6 and 7 of the Agreement on Agriculture, and articles 1 and 3 of

the Import Licensing Agreement. On 15 April 1999, the United States requested the establishment of a panel. On 26 May 1999, the DSB established a panel to examine the complaint. Australia, Canada and New Zealand reserved their third-party rights. On 12 July 1999, Australia requested the establishment of a panel. On 26 July 1999, the DSB established a panel. Canada, New Zealand and the United States reserved their third-party rights. At the request of the Republic of Korea, the DSB agreed that, pursuant to article 9.1 DSU, the complaint would be heard by the same panel established in respect of the complaint of the United States. In addition to its various specific defences, the Republic of Korea submitted, as a general defence, that pursuant to its Schedule of Concessions, many of the 17 measures challenged by the complaining parties constituted "remaining restrictions" which benefited from a "transition period" and were required to be eliminated only by 1 January 2001. The report of the Panel was circulated to the members on 31 July 2000. The Panel found that the dual retail system for beef (including the obligation for department stores and supermarkets authorized to sell imported beef to hold a separate display, and the obligation for foreign beef shops to bear a sign "Specialized Imported Beef Stores") was inconsistent with the Republic of Korea's national treatment obligations under article III:4 of GATT and could not be justified under article XX (*d*) of GATT. It also found that the Republic of Korea's domestic support for beef for 1997 and 1998 was not correctly calculated under the Agreement on Agriculture and led to its total domestic support for 1997 and 1998 exceeding its commitment levels, as specified in section 1, part IV, of its schedule, contrary to article 3.2 of the Agreement on Agriculture. The Panel further held that some of LPMO's tender practices, including its lack of and delays in calling for tenders of beef and its discharge practices, constituted import restrictions contrary to article XI:1 of GATT 1994 and article 4.2 of the Agreement on Agriculture. Moreover, the LPMO's call for tenders that were made subject to distinctions between grass-fed and grain-fed cattle imposed, according to the Panel, import restrictions against most Australian imports of beef (which were normally grass-fed), contrary to article XI:1 of GATT 1994. They also treated imports of beef from grass-fed cattle less favourably than provided for in the Republic of Korea's schedule, in breach of article II:1 (*a*) of GATT 1994. A series of other regulations dealing with the importation and distribution of imported beef was also considered to violate the national treatment obligation of article III:4. The other measures challenged but not condemned (mostly those agreed between the parties in the context of bilateral negotiations held between 1990 and 1993) were held to benefit from a transition period until 1 January 2001, by which date they should be phased out or otherwise be brought into conformity with WTO. On 11 September 2000, the Republic of Korea notified its intention to appeal certain issues of law and legal interpretations developed by the Panel.

Active panels

The table below lists those panels that were still active as at 31 December 2000.

Dispute	*Complainant*	*Panel establishment*
Argentina—Measures Affecting Imports of Footwear	United States	26 July 1999
United States—Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan	Japan	20 March 2000
Nicaragua—Measures Affecting Imports from Honduras and Colombia	Colombia	18 May 2000
United States—Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan	Pakistan	19 June 2000
India—Measures relating to Trade and Investment in the Motor Vehicle Sector	United States	27 July 2000
India—Measures affecting the Automotive Sector	European Communities	17 November 2000
United States—Measures treating Export Restraints as Subsidies	Canada	11 September 2000
United States—Section 211, Omnibus Appropriations Act	European Communities	26 September 2000
United States—Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from the Republic of Korea	Republic of Korea	23 October 2000
Philippines—Measures affecting Trade and Investment in the Motor Vehicle Sector	United States	17 November 2000
Argentina—Definitive Anti-Dumping Measures on Imports of Ceramic Floor Tiles from Italy	European Communities	17 November 2000
Chile—Measures affecting the Transit and Importation of Swordfish	European Communities	12 December 2000

Request for consultations

The list below does not include those disputes where a panel was either requested or established in 2000.

Dispute	*Complainant*	*Date of request*
United States—Section 337 of the Tariff Act of 1930 and Amendments thereto	European Communities and member States	12 January 2000
Trinidad and Tobago—Provisional Anti-Dumping Measure on Macaroni and Spaghetti from Costa Rica	Costa Rica	17 January 2000
Ecuador—Definitive Anti-Dumping Measure on Cement from Mexico	Mexico	15 March 2000
Argentina—Certain Measures on the Protection of Patents and Test Data	United States	30 May 2000
Brazil—Measures on Minimum Import Prices	United States	30 May 2000
Romania—Measures on Minimum Import Prices	United States	30 May 2000
Brazil—Measures affecting Patent Protection	United States	30 May 2000
United States—Section 306 of the Trade Act 1974 and Amendments thereto	European Communities	5 June 2000
Nicaragua—Measures affecting Imports from Honduras and Colombia	Honduras	6 June 2000
Mexico—Measures Affecting Trade in Live Swine	United States	10 July 2000
Egypt—Import Prohibition on Canned Tuna with Soybean Oil	Thailand	22 September 2000
United States—Anti-Dumping and Countervailing Measures on Steel Plate from India	India	4 October 2000
Chile—Price Band System and Safeguard Measures relating to Certain Agricultural Products	Argentina	5 October 2000

Dispute	*Complainant*	*Date of request*
Turkey—Anti-Dumping Duty on Steel and Iron Pipe Fittings	Brazil	9 October 2000
European Communities—Measures affecting Soluble Coffee	Brazil	12 October 2000
Belgium—Administration of Measures Establishing Customs Duties for Rice	United States	12 October 2000
Egypt—Definitive Anti-Dumping Measures on Steel Rebar from Turkey	Turkey	6 November 2000
United States—Countervailing Measures concerning Certain Products from the European Communities	European Communities	10 November 2000
United States—Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany	European Communities	10 November 2000
United States—Definitive Safeguard Measures on Imports of Steel Wire Rod and Circular Welded Quality Line Pipe	European Communities	1 December 2000
Philippines—Anti-Dumping Measures regarding Polypropylene Resins from the Republic of Korea	Republic of Korea	15 December 2000
Mexico—Provisional Anti-Dumping Measure on Electric Transformers	Brazil	20 December 2000
United States—Continued Dumping and Subsidy Offset Act of 2000	Australia, Brazil, Chile, European Communities, India, Indonesia, Japan, Republic of Korea and Thailand	21 December 2000
United States—Countervailing Duties on Certain Carbon Steel Products from Brazil	Brazil	21 December 2000
European Communities—Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil	Brazil	21 December 2000

Notification of a mutually agreed solution

Dispute	*Complainant*	*Date settlement notified*
Australia—Measures affecting the Importation of Salmonids	United States	27 October 2000
United States—Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of one Megabyte or above from the Republic of Korea (recourse to article 21.5)	Republic of Korea	20 October 2000
Australia—Subsidies provided to producers and exporters of Automotive Leather (recourse to article 21.5)	United States	24 July 2000
United States—Measures affecting Textiles and Apparel Products	European Communities	24 July 2000
Argentina—Transitional Safeguard Measures on Certain Imports of Woven Fabrics of Cotton and Cotton Mixtures Originating in Brazil	Brazil	27 June 2000

(*e*) Trade in services

In 2000, the Council for Trade in Services held five formal meetings (reports are contained in S/C/M/41-43, S/C/M/46 and S/C/M/48). The Council also held three special meetings devoted to the review of article II (most-favoured-nation). Exemptions (reports are contained in S/C/M/44, 45 and 47), and one special meeting dedicated to the review of the annex on air transport services (report is contained in S/C/M/49).

Cooperation agreement with ITU

On 22 March 1999, the Council had approved the text of a cooperation agreement between ITU and WTO. The text had been forwarded to ITU for consideration by its Council, which had suggested further changes. The ITU secretariat had submitted a revised text, which was discussed by members at the Council meeting held on 14 April 2000. An amended version of the draft was produced by the secretariat and discussed, along with an ITU communication on "WTO participation at ITU conferences and meetings" at the Council meeting held on 26 May. Members suggested two amendments and the Council adopted a revised draft (S/C/9/Rev.1), with an ad referendum procedure.

Proposal of a cooperation agreement with UPU

At its meeting of 25 February, the Council was informed of a proposal by the Universal Postal Union that a cooperation agreement should be established between UPU and WTO. A communication from UPU on the subject was circulated. The Council requested the secretariat to maintain contact with the secretariat of UPU and to keep it informed of developments.

Reopening of the Fourth and Fifth Protocols for acceptance

At the Council meeting of 26 May 2000, following a request from Dominica, the Council adopted a decision (S/L/86) reopening the Fourth Protocol to GATS relating to basic telecommunications for acceptance by Dominica. At the same meeting, following a request from Ghana, the Council adopted a decision (S/L/87) reopening the Fifth Protocol to GATS relating to financial services for acceptance by Ghana.

Requests for observer status

At the meeting held on 25 February 2000, the Council noted requests for observer status from the Islamic Development Bank, the League of Arab States and the World Health Organization. The question of observer status for the World Tourism Organization was also raised. At its meeting on 14 April 2000, the Council agreed to add the names of the Islamic Development Bank and the League of Arab States to the list prepared by the secretariat of all outstanding requests from regional organizations (S/C/W/19/Rev.2). With respect to the requests from the World Health Organization and the World Tourism Organization, members agreed to follow the practice previously adopted in the case of ITU and ICAO and granted the two organizations observer status on an ad hoc basis, which implied inviting them to meetings of the Council when the agenda contained an item of interest to them. The request for observer status from the Common Market for Eastern and Southern Africa (COMESA) was discussed at the Council meeting held on 26 May 2000. Members agreed to add COMESA to the list of outstanding requests for observer status from regional organizations. At the meeting held on 6 October 2000, the Council noted two additional requests, from the Gulf Organization for Industrial Consulting and from the Universal Postal Union, and agreed to add the two requests to the list (S/C/W/19/Rev.4). It was also agreed that, pending the outcome of discussions in the General Council on the issue of observership, any additional requests for observer status would be circulated to members but not inscribed in the agenda of the Services Council.

Review of article II (most-favoured-nation) exemptions

At the Council meetings held in February and April, the Council continued discussions on how to conduct the review of most-favoured-nation exemptions as mandated by paragraph 3 of the annex on article II (most-favoured-nation) exemptions. The secretariat was tasked with reconstructing the compilation of most-favoured-nation exemptions along sectoral lines, as a basis for the review. The first session of the review was held on 29 May, and the Council examined exemptions listed for "all sectors", "business services", "communication services", "construction and related-engineering services" and "distribution services" (S/C/M/44). The second session, held on 5 July 2000, examined exemptions pertaining to "financial services", "tourism and travel-related services", "recreational, cultural and sporting

services" and "transport services". At the third session of the review, on 5 October, members addressed outstanding points arising from the previous sessions and continued discussions on the determination of the date of any further review. It was agreed that the review of most-favoured-nation exemptions would be placed on the agenda of the following regular meeting of the Council in December (S/C/M/47).

Procedures for the certification of rectifications or improvements to schedules of specific commitments

Article XXI:5 of GATS calls upon the Council for Trade in Services to establish procedures for the certification of rectifications or improvements to schedules of specific commitments. The Council had decided to refer the task to the Committee on Specific Commitments in 1997. At its meeting on 14 April 2000, the Council received the draft procedures from the Committee (S/CSC/W/26/Rev.1), as well as a draft decision by the Council adopting such procedures (S/C/W/133). The Council adopted the decision and the procedures (S/L/83 and S/L/84).

NOTES

[1] For detailed information, see *The United Nations Disarmament Yearbook*, vol. 25: 2000 (United Nations publication, Sales No. E.01.IX.1).

[2] United Nations, *Treaty Series*, vol. 729, p. 159.

[3] *2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document*, vol. I (NPT/CONF.2000/28 (Parts I and II)), part I.

[4] A/50/1027, annex.

[5] 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.

[6] See chap. II.A.2 (*f*) of the present volume.

[7] See GOV/INF/2000/8-GC(44)INF/5.

[8] 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.

[9] Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction: CD/CW/WP.400/Rev.1.

[10] See chap. II.A.2 (*f*) of the present volume.

[11] League of Nations, *Treaty Series*, vol. XCIV (1929), p. 65.

[12] Amended Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices: CCW/CONF.I/16 (Part I), annex B.

[13] Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction: CD/1478.

[14] Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects: United Nations, *Treaty Series*, vol. 1342, p. 137.

[15] United Nations, *Treaty Series*, vol. 1833, p. 3.

[16] For the report of the Subcommittee, see A/AC.105/738.

[17] A/AC.105/C.2/2000/CRP.4 and A/AC.105/C.2/2000/CRP.10.

[18] A/AC.105/738, annex III.

[19] A/AC.105/677 and Add.1.

[20] The five treaties 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 the 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).

[21] For a compilation of the presentations, see A/AC.105/C.2/2000/CRP.12.

[22] Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (General Assembly resolution 34/68, annex).

[23] *Official Records of the General Assembly, Fiftieth Session, Supplement No. 20* (A/55/20), chap. II.C, para. 129, and A/AC.105/738, annex III.

[24] Ibid., *Supplement No. 1* (A/55/1).

[25] See A/55/305-S/2000/809.

[26] A/55/502.

[27] A/C.4/55/6.

[28] For the report, see *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 25* (A/55/25).

[29] See ibid., annex I.

[30] A/55/357.

[31] United Nations, *Treaty Series*, vol. 1771, p. 107.

[32] Ibid., vol. 1760, p. 79.

[33] Ibid., vol. 1954, p. 3.

[34] *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.

[35] Ibid., annex I.

[36] A/55/120.

[37] A/55/91.

[38] For the texts of the instruments, see chap. IV of the present volume.

[39] A/55/405.

[40] See *Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, 10-17 April 2000: report prepared by the Secretariat* (United Nations publication, Sales No. E.00.IV.8).

[41] United Nations, *Treaty Series*, vol. 520, p. 151.

[42] Ibid., vol. 1019, p. 175.

[43] Ibid., vol. 976, p. 3.

[44] Ibid., p. 105.

[45] E/CONF.82/15 and Corr.2.

[46] See General Assembly resolution 55/2.

[47] See General Assembly resolution S-20/2, annex.

[48] See General Assembly resolution 54/132, annex.

[49] See General Assembly resolution S-20/3, annex.

[50] See General Assembly resolution S-20/4.

[51] See General Assembly resolution S-20/4 A.

[52] See General Assembly resolution S-20/4 B.

[53] See General Assembly resolution S-20/4 C.

[54] See General Assembly resolution S-20/4 D.

[55] See General Assembly resolution S-20/4 E.

[56] 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.

[57] See resolution S-17/2, annex.

[58] United Nations, *Treaty Series*, vol. 993, p. 3.

[59] Ibid., vol. 999, p. 171.

[60] Ibid.

[61] General Assembly resolution 44/128, annex.

[62] A/55/602/Add.5.

[63] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 36* (A/55/36).

[64] United Nations, *Treaty Series*, vol. 660, p. 195.

[65] CERD/SP/45.

[66] A/55/203.

[67] United Nations, *Treaty Series*, vol. 1249, p. 13.

[68] CEDAW/SP/1995/2, annex.

[69] General Assembly resolution 54/4, annex.

[70] A/55/308.

[71] United Nations, *Treaty Series*, vol. 1465, p. 85.

[72] CAT/SP/1992/L.l.

[73] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 44* (A/55/44).

[74] See A/55/290.

[75] United Nations, *Treaty Series*, vol. 1577, p. 3.

[76] CRC/SP/1995/L.1/Rev.1.

[77] General Assembly resolution 54/263, annex I; see chap. IV of the present volume for the text of the Optional Protocol.

[78] Ibid., annex II; see chap. IV of the present volume for the text of the Optional Protocol.

[79] A/55/201.

[80] General Assembly resolution 45/158, annex.

[81] A/55/205.

[82] A/54/805, annex.

[83] A/55/206, annex.

[84] E/CN.4/1997/74, annex.

[85] E/CN.4/2000/98 and Add.1.

[86] A/55/177.

[87] *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17 July 1998*, vol. I: *Final documents* (United Nations publication, Sales No. E.02.I.5), sect. A.

[88] See A/55/288.

[89] United Nations, *Treaty Series*, vol. 189, p. 137.

[90] Ibid., vol. 606, p. 267.

[91] Ibid., vol. 360, p. 117.

[92] Ibid., vol. 989, p. 175.

[93] For detailed information, see *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 12A* (A/55/12/Add.1).

[94] See A/55/435-S/2000/927.

[95] See A/55/273-S/2000/777.

[96] United Nations, *Treaty Series*, vol. 1833, p. 3.

[97] A/55/61.

[98] See also the annual report of the International Tribunal for the Law of the Sea for 2000, SPLOS/63, and International Tribunal for the Law of the Sea Yearbook—2000 (The Hague: Kluwer Law International).

[99] General Assembly resolution 48/263, annex.

[100] The terms of reference of the trust fund are contained in annex I to resolution 55/7.

[101] SPLOS/25.

[102] ISBA/4/A/8, annex.

[103] A/55/386.

[104] *International Fisheries Instruments with Index* (United Nations publication, Sales No. E.98.V.11), sect. I; see also A/CONF.164/37.

[105] For the composition of the Court, see *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 4* (A/55/4), chap. II, sect. A.

[106] For detailed information, see *I.C.J. Yearbook 1999-2000*, and *I.C.J. Yearbook 2000-2001*.

[107] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 4* (A/55/4).

[108] For the membership of the International Law Commission, see *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 10* (A/55/10), chap. I, sect. A.

[109] For detailed information, see *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 10* (A/55/10).

[110] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* and corrigenda (A/54/10 and Corr.1 and 2), annex.

[111] For membership of UNCITRAL, see *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 17* (A/55/17), chap. I, sect. B; see also *United Nations Commission on International Trade Law Yearbook*, vol. XXXI: 2000.

[112] A/CN.9/468.

[113] The secretariat of UNCITRAL publishes court decisions and arbitral awards relevant to the interpretation or application of a text resulting from the work of UNCITRAL. For a description of CLOUT, see the Users Guide (A/CN.9/SER.C/GUIDE), published in 1993. A/CN.9/SER.C/ABSTRACTS may be accessed through the UNCITRAL homepage: www.uncitral.org.

[114] A/CN.9/476.

[115] A/CN.9/474.

[116] United Nations, *Treaty Series*, vol. 330, p. 3.

[117] Ibid., vol. 1125, pp. 3, 609.

[118] Ibid., vol. 75, p. 2.

[119] Ibid., vol. 249, p. 215.

[120] A/55/164 and Add.1-3 and A/INF/54/5 and Add.1 and 2.

[121] These instruments include: 1961 Vienna Convention on Diplomatic Relations; 1961 Optional Protocol to the Vienna Convention on Diplomatic Relations concerning Acquisition of Nationality; 1961 Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputes; 1963 Vienna Convention on Consular Relations; 1963 Optional Protocol to the Vienna Convention on Consular Relations concerning Acquisition of Nationality; Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes; and 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

[122] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 26* (A/55/26).

[123] Ibid., para. 51.

[124] *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17 July 1998*, vol. I: *Final documents* (United Nations publication, Sales No. E.02.1.5), sect. A.

[125] See ibid., sect. B, annex I.

[126] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 33* (A/55/33).

[127] A/50/1011.

[128] A/51/950 and Add.1-7.

[129] A/55/340.

[130] S/2000/319.

[131] A/55/179 and Add.1.

[132] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 37* (A/55/37).

[133] A/C.6/55/L.2.

[134] General Assembly resolution 52/164, annex.

[135] General Assembly resolution 54/109, annex.

[136] General Assembly resolution 49/60, annex.

[137] General Assembly resolution 51/210, annex.

[138] For more detailed information, see the reports of the Executive Director of UNITAR: *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 14* (A/55/14), covering the period 1 July 1998 to 30 June 2000, and ibid., *Fifty-seventh Session, Supplement No. 14* (A/57/14), covering the period from 1 July 2000 to 30 June 2002.

[139] GB.255/12/7.

[140] ILO, *Official Bulletin*, vol. LXXXII, 2000, Series A, No. 2, pp. 61-69. Information on the preparatory work for the adoption of these instruments is given in order to facilitate reference work. These instruments have been adopted using the *double discussion* procedure. *First discussion*: ILC, 87th session, Geneva, 1999, reports V (1) and (2); ibid., 1999, *Record of Proceedings*, vol. I, No. 20; *Second discussion*: ibid., 88th session, Geneva, 2000, report IV (1) and reports IV (2A and 2B); ibid., *Record of Proceedings*, Nos. 20, 20A and 20B.

[141] ILO, *Official Bulletin*, vol. LXXXIII, 2000, Series A, No. 2, pp. 69-72; ILC, 88th session, Geneva, 2000, *Provisional Records*, Nos. 6-2, 6-2A, 6-2B, 6-2C, 6-2D, 6-2E; ibid., reports VII (1) and (2).

[142] ILO, *Official Bulletin*, vol. LXXXIII, 2000, Series A, No. 2, pp. 72-74; ILC, 88th session, Geneva, 2000, *Record of Proceedings*, No. 4.

[143] ILO, *Official Bulletin*, vol. LXXXIII, 2000, Series A, No. 2, p. 84; ILC, 88th session, Geneva, 2000, *Record of Proceedings*, No. 5.

[144] The report has been published as report III (Part 1) to the 89th session of the Conference (2001) and comprises two volumes: vol. 1A, *General Report and Observations concerning particular countries* (report III (Part 1A)), and vol. IB, *General Survey of the reports concerning the Night Work (Women) Convention, 1919 (No. 4), the Night Work (Women) Convention (Revised), 1934 (No. 41), the Night Work (Women) Convention (Revised), 1948 (No. 89), and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948* (report III (Part IB)).

[145] The full text of the Declaration, as amended, is reproduced in the *Official Bulletin*, vol. LXXXIII, 2000, No. 3 (to be published), documents GB.279/MNE/3, GB/279/12.

[146] GB.277/18/1.

[147] GB.277/18/2.

[148] GB.277/18/3.

[149] GB.277/18/4.

[150] GB.277/18/5.

[151] ILO, *Official Bulletin*, vol. LXXXIII, 2000, Series B, No. 1.

[152] Ibid., No. 2.

[153] Ibid., No. 3.

[154] GB.277/WP/SDL/1, GB.277/WP/SDL/2 and Add.1, GB.277/16.

[155] GB.279/WP/SDL/1-3, GB.279/16.

[156] GB.277/LILS/WP/PRS/1/1 and 2, GB.277/LILS/WP/PRS/2, GB.277/LILS/WP/PRS/3/1 and 2, GB.277/LILS/4, GB.277/11/2.

[157] GB.279/LILS/WP/PRS/1/1-3, GB.279/LILS/WP/PRS/2-5, GB.279/LILS/3 (Rev.1), GB.279/11/2.

[158] IGC(1971)/XII/4.

[159] IGC(1971)/XII/5.

[160] IGC(1971)/XII/6.

[161] The *Bulletin* is now available only via Internet: www.unesco.org/culture/copyright or www.upo.unesco.org/publications/acp; the documents cited are available on the first web site.

[162] The reports of the Legal Committee are contained in documents LEG. 81/11 and LEG. 83/12.

[163] The text of the Protocol is contained in document LEG/CONF.11/6.

[164] INFCIRC/9 Rev.2.

[165] INFCIRC/274/Rev.1.

[166] INFCIRC/335.

[167] INFCIRC/336.

[168] INFCIRC/500.

[169] INFCIRC/500/Add.3.

[170] INFCIRC/402.

[171] INFCIRC/449.

[172] INFCIRC/546.

[173] INFCIRC/566.

[174] INFCIRC/567.

[175] INFCIRC/377.

[176] INFCIRC/167/Add.18.

[177] INFCIRC/580/Add.1.

[178] INFCIRC/178/Add.1.

[179] INFCIRC/164/Add.1.

[180] INFCIRC/463/Add.1.

[181] INFCIRC/174/Add.1.

[182] INFCIRC/413/Add.1.

[183] INFCIRC/177/Add.1.

[184] INFCIRC/179/Add.1.

[185] INFCIRC/180/Add.1.

[186] INFCIRC/538/Add.1.

Chapter IV

TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Treaties concerning international law concluded under the auspices of the United Nations

1. CARTAGENA PROTOCOL ON BIOSAFETY TO THE CONVENTION ON BIOLOGICAL DIVERSITY.[1] DONE AT MONTREAL ON 29 JANUARY 2000[2]

The Parties to this Protocol,

Being Parties to the Convention on Biological Diversity, hereinafter referred to as "the Convention",

Recalling article 19, paragraphs 3 and 4, and articles 8 (*g*) and 17 of the Convention,

Recalling also decision II/5 of 17 November 1995 of the Conference of the Parties to the Convention to develop a Protocol on biosafety, specifically focusing on transboundary movement of any living modified organism resulting from modern biotechnology that may have an adverse effect on the conservation and sustainable use of biological diversity, setting out for consideration, in particular, appropriate procedures for advance informed agreement,

Reaffirming the precautionary approach contained in principle 15 of the Rio Declaration on Environment and Development,

Aware of the rapid expansion of modern biotechnology and the growing public concern over its potential adverse effects on biological diversity, taking also into account risks to human health,

Recognizing that modern biotechnology has great potential for human well-being if developed and used with adequate safety measures for the environment and human health,

Recognizing also the crucial importance to humankind of centres of origin and centres of genetic diversity,

Taking into account the limited capabilities of many countries, particularly developing countries, to cope with the nature and scale of known and potential risks associated with living modified organisms,

Recognizing that trade and environment agreements should be mutually supportive with a view to achieving sustainable development,

Emphasizing that this Protocol shall not be interpreted as implying a change in the rights and obligations of a Party under any existing international agreements,

Understanding that the above recital is not intended to subordinate this Protocol to other international agreements,

Have agreed as follows:

Article 1

OBJECTIVE

In accordance with the precautionary approach contained in principle 15 of the Rio Declaration on Environment and Development, the objective of this Protocol is to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and specifically focusing on transboundary movements.

Article 2

GENERAL PROVISIONS

1. Each Party shall take necessary and appropriate legal, administrative and other measures to implement its obligations under this Protocol.

2. The Parties shall ensure that the development, handling, transport, use, transfer and release of any living modified organisms are undertaken in a manner that prevents or reduces the risks to biological diversity, taking also into account risks to human health.

3. Nothing in this Protocol shall affect in any way the sovereignty of States over their territorial sea established in accordance with international law, and the sovereign rights and the jurisdiction which States have in their exclusive economic zones and their continental shelves in accordance with international law, and the exercise by ships and aircraft of all States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments.

4. Nothing in this Protocol shall be interpreted as restricting the right of a Party to take action that is more protective of the conservation and sustainable use of biological diversity than that called for in this Protocol, provided that such action is consistent with the objective and the provisions of this Protocol and is in accordance with that Party's other obligations under international law.

5. The Parties are encouraged to take into account, as appropriate, available expertise, instruments and work undertaken in international forums with competence in the area of risks to human health.

Article 3

USE OF TERMS

For the purposes of this Protocol:

(*a*) "Conference of the Parties" means the Conference of the Parties to the Convention;

(*b*) "Contained use" means any operation, undertaken within a facility, installation or other physical structure, which involves living modified organisms that are controlled by specific measures that effectively limit their contact with, and their impact on, the external environment;

(*c*) "Export" means intentional transboundary movement from one Party to another Party;

(*d*) "Exporter" means any legal or natural person, under the jurisdiction of the Party of export, who arranges for a living modified organism to be exported;

(*e*) "Import" means intentional transboundary movement into one Party from another Party;

(*f*) "Importer" means any legal or natural person, under the jurisdiction of the Party of import, who arranges for a living modified organism to be imported;

(*g*) "Living modified organism" means any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology;

(*h*) "Living organism" means any biological entity capable of transferring or replicating genetic material, including sterile organisms, viruses and viroids;

(*i*) "Modern biotechnology" means the application of:

a. In vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) and direct injection of nucleic acid into cells or organelles, or

b. Fusion of cells beyond the taxonomic family,

that overcome natural physiological reproductive or recombination barriers and that are not techniques used in traditional breeding and selection;

(*j*) "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 Protocol and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it;

(*k*) "Transboundary movement" means the movement of a living modified organism from one Party to another Party, save that for the purposes of articles 17 and 24 transboundary movement extends to movement between Parties and non-Parties.

Article 4

SCOPE

This Protocol shall apply to the transboundary movement, transit, handling and use of all living modified organisms that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health.

Article 5

PHARMACEUTICALS

Notwithstanding article 4 and without prejudice to any right of a Party to subject all living modified organisms to risk assessment prior to the making of decisions

on import, this Protocol shall not apply to the transboundary movement of living modified organisms which are pharmaceuticals for humans that are addressed by other relevant international agreements or organizations.

Article 6

TRANSIT AND CONTAINED USE

1. Notwithstanding article 4 and without prejudice to any right of a Party of transit to regulate the transport of living modified organisms through its territory and make available to the Biosafety Clearing-House, any decision of that Party, subject to article 2, paragraph 3, regarding the transit through its territory of a specific living modified organism, the provisions of this Protocol with respect to the advance informed agreement procedure shall not apply to living modified organisms in transit.

2. Notwithstanding article 4 and without prejudice to any right of a Party to subject all living modified organisms to risk assessment prior to decisions on import and to set standards for contained use within its jurisdiction, the provisions of this Protocol with respect to the advance informed agreement procedure shall not apply to the transboundary movement of living modified organisms destined for contained use undertaken in accordance with the standards of the Party of import.

Article 7

APPLICATION OF THE ADVANCE INFORMED AGREEMENT PROCEDURE

1. Subject to articles 5 and 6, the advance informed agreement procedure in articles 8 to 10 and 12 shall apply prior to the first intentional transboundary movement of living modified organisms for intentional introduction into the environment of the Party of import.

2. "Intentional introduction into the environment" in paragraph 1 above does not refer to living modified organisms intended for direct use as food or feed, or for processing.

3. Article 11 shall apply prior to the first transboundary movement of living modified organisms intended for direct use as food or feed, or for processing.

4. The advance informed agreement procedure shall not apply to the intentional transboundary movement of living modified organisms identified in a decision of the Conference of the Parties serving as the meeting of the Parties to this Protocol as being not likely to have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health.

Article 8

NOTIFICATION

1. The Party of export shall notify, or require the exporter to ensure notification to, in writing, the competent national authority of the Party of import prior to the intentional transboundary movement of a living modified organism that falls within the scope of article 7, paragraph 1. The notification shall contain, at a minimum, the information specified in annex I.

2. The Party of export shall ensure that there is a legal requirement for the accuracy of information provided by the exporter.

Article 9

ACKNOWLEDGEMENT OF RECEIPT OF NOTIFICATION

1. The Party of import shall acknowledge receipt of the notification, in writing, to the notifier within ninety days of its receipt.

2. The acknowledgement shall state:

(*a*) The date of receipt of the notification;

(*b*) Whether the notification, prima facie, contains the information referred to in article 8;

(*c*) Whether to proceed according to the domestic regulatory framework of the Party of import or according to the procedure specified in article 10.

3. The domestic regulatory framework referred to in paragraph 2 (*c*) above shall be consistent with this Protocol.

4. A failure by the Party of import to acknowledge receipt of a notification shall not imply its consent to an intentional transboundary movement.

Article 10

DECISION PROCEDURE

1. Decisions taken by the Party of import shall be in accordance with article 15.

2. The Party of import shall, within the period of time referred to in article 9, inform the notifier, in writing, whether the intentional transboundary movement may proceed:

(*a*) Only after the Party of import has given its written consent; or

(*b*) After no less than ninety days without a subsequent written consent.

3. Within two hundred and seventy days of the date of receipt of notification, the Party of import shall communicate, in writing, to the notifier and to the Biosafety Clearing-House the decision referred to in paragraph 2 (*a*) above:

(*a*) Approving the import, with or without conditions, including how the decision will apply to subsequent imports of the same living modified organism;

(*b*) Prohibiting the import;

(*c*) Requesting additional relevant information in accordance with its domestic regulatory framework or annex I; in calculating the time within which the Party of import is to respond, the number of days it has to wait for additional relevant information shall not be taken into account; or

(*d*) Informing the notifier that the period specified in this paragraph is extended by a defined period of time.

4. Except in a case in which consent is unconditional, a decision under paragraph 3 above shall set out the reasons on which it is based.

5. A failure by the Party of import to communicate its decision within two hundred and seventy days of the date of receipt of the notification shall not imply its consent to an intentional transboundary movement.

6. Lack of scientific certainty due to insufficient relevant scientific information and knowledge regarding the extent of the potential adverse effects of a living

modified organism on the conservation and sustainable use of biological diversity in the Party of import, taking also into account risks to human health, shall not prevent that Party from taking a decision, as appropriate, with regard to the import of the living modified organism in question as referred to in paragraph 3 above, in order to avoid or minimize such potential adverse effects.

7. The Conference of the Parties serving as the meeting of the Parties shall, at its first meeting, decide upon appropriate procedures and mechanisms to facilitate decision-making by Parties of import.

Article 11

PROCEDURE FOR LIVING MODIFIED ORGANISMS INTENDED FOR DIRECT USE AS FOOD OR FEED, OR FOR PROCESSING

1. A Party that makes a final decision regarding domestic use, including placing on the market, of a living modified organism that may be subject to transboundary movement for direct use as food or feed, or for processing shall, within fifteen days of making that decision, inform the Parties through the Biosafety Clearing-House. This information shall contain, at a minimum, the information specified in annex II. The Party shall provide a copy of the information, in writing, to the national focal point of each Party that informs the Secretariat in advance that it does not have access to the Biosafety Clearing-House. This provision shall not apply to decisions regarding field trials.

2. The Party making a decision under paragraph 1 above shall ensure that there is a legal requirement for the accuracy of information provided by the applicant.

3. Any Party may request additional information from the authority identified in paragraph (*b*) of annex II.

4. A Party may take a decision on the import of living modified organisms intended for direct use as food or feed, or for processing, under its domestic regulatory framework that is consistent with the objective of this Protocol.

5. Each Party shall make available to the Biosafety Clearing-House copies of any national laws, regulations and guidelines applicable to the import of living modified organisms intended for direct use as food or feed, or for processing, if available.

6. A developing country Party or a Party with an economy in transition may, in the absence of the domestic regulatory framework referred to in paragraph 4 above, and in exercise of its domestic jurisdiction, declare through the Biosafety Clearing-House that its decision prior to the first import of a living modified organism intended for direct use as food or feed, or for processing, on which information has been provided under paragraph 1 above, will be taken according to the following:

(*a*) A risk assessment undertaken in accordance with article 15; and

(*b*) A decision made within a predictable time frame, not exceeding two hundred and seventy days.

7. Failure by a Party to communicate its decision according to paragraph 6 above shall not imply its consent or refusal to the import of a living modified organism intended for direct use as food or feed, or for processing, unless otherwise specified by the Party.

8. Lack of scientific certainty due to insufficient relevant scientific information and knowledge regarding the extent of the potential adverse effects of a living modified organism on the conservation and sustainable use of biological diversity in the Party of import, taking also into account risks to human health, shall not prevent that Party from taking a decision, as appropriate, with regard to the import of that living modified organism intended for direct use as food or feed, or for processing, in order to avoid or minimize such potential adverse effects.

9. A Party may indicate its needs for financial and technical assistance and capacity-building with respect to living modified organisms intended for direct use as food or feed, or for processing. Parties shall cooperate to meet these needs in accordance with articles 22 and 28.

Article 12

REVIEW OF DECISIONS

1. A Party of import may, at any time, in the light of new scientific information on potential adverse effects on the conservation and sustainable use of biological diversity, taking also into account the risks to human health, review and change a decision regarding an intentional transboundary movement. In such case, the Party shall, within thirty days, inform any notifier that has previously notified movements of the living modified organism referred to in such decision, as well as the Biosafety Clearing-House, and shall set out the reasons for its decision.

2. A Party of export or a notifier may request the Party of import to review a decision it has made in respect of it under article 10 where the Party of export or the notifier considers that:

(*a*) A change in circumstances has occurred that may influence the outcome of the risk assessment upon which the decision was based; or

(*b*) Additional relevant scientific or technical information has become available.

3. The Party of import shall respond in writing to such a request within ninety days and set out the reasons for its decision.

4. The Party of import may, at its discretion, require a risk assessment for subsequent imports.

Article 13

SIMPLIFIED PROCEDURE

1. A Party of import may, provided that adequate measures are applied to ensure the safe intentional transboundary movement of living modified organisms in accordance with the objective of this Protocol, specify in advance to the Biosafety Clearing-House:

(*a*) Cases in which intentional transboundary movement to it may take place at the same time as the movement is notified to the Party of import; and

(*b*) Imports of living modified organisms to it to be exempted from the advance informed agreement procedure.

Notifications under subparagraph (*a*) above may apply to subsequent similar movements to the same Party.

2. The information relating to an intentional transboundary movement that is to be provided in the notifications referred to in paragraph 1 (*a*) above shall be the information specified in annex I.

Article 14

BILATERAL, REGIONAL AND MULTILATERAL AGREEMENTS AND ARRANGEMENTS

1. Parties may enter into bilateral, regional and multilateral agreements and arrangements regarding intentional transboundary movements of living modified organisms consistent with the objective of this Protocol and provided that such agreements and arrangements do not result in a lower level of protection than that provided for by the Protocol.

2. The Parties shall inform each other, through the Biosafety Clearing-House, of any such bilateral, regional and multilateral agreements and arrangements that they have entered into before or after the date of entry into force of this Protocol.

3. The provisions of this Protocol shall not affect intentional transboundary movements that take place pursuant to such agreements and arrangements as between the parties to those agreements or arrangements.

4. Any Party may determine that its domestic regulations shall apply with respect to specific imports to it and shall notify the Biosafety Clearing-House of its decision.

Article 15

RISK ASSESSMENT

1. Risk assessments undertaken pursuant to this Protocol shall be carried out in a scientifically sound manner, in accordance with annex III and taking into account recognized risk assessment techniques. Such risk assessments shall be based, at a minimum, on information provided in accordance with article 8 and other available scientific evidence in order to identify and evaluate the possible adverse effects of living modified organisms on the conservation and sustainable use of biological diversity, taking also into account risks to human health.

2. The Party of import shall ensure that risk assessments are carried out for decisions taken under article 10. It may require the exporter to carry out the risk assessment.

3. The cost of risk assessment shall be borne by the notifier if the Party of import so requires.

Article 16

RISK MANAGEMENT

1. The Parties shall, taking into account article 8 (*g*) of the Convention, establish and maintain appropriate mechanisms, measures and strategies to regulate, manage and control risks identified in the risk assessment provisions of this Protocol associated with the use, handling and transboundary movement of living modified organisms.

2. Measures based on risk assessment shall be imposed to the extent necessary to prevent adverse effects of the living modified organism on the conservation

and sustainable use of biological diversity, taking also into account risks to human health, within the territory of the Party of import.

3. Each Party shall take appropriate measures to prevent unintentional transboundary movements of living modified organisms, including such measures as requiring a risk assessment to be carried out prior to the first release of a living modified organism.

4. Without prejudice to paragraph 2 above, each Party shall endeavour to ensure that any living modified organism, whether imported or locally developed, has undergone an appropriate period of observation that is commensurate with its life cycle or generation time before it is put to its intended use.

5. Parties shall cooperate with a view to:

(*a*) Identifying living modified organisms or specific traits of living modified organisms that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health; and

(*b*) Taking appropriate measures regarding the treatment of such living modified organisms or specific traits.

Article 17

UNINTENTIONAL TRANSBOUNDARY MOVEMENTS AND EMERGENCY MEASURES

1. Each Party shall take appropriate measures to notify affected or potentially affected States, the Biosafety Clearing-House and, where appropriate, relevant international organizations, when it knows of an occurrence under its jurisdiction resulting in a release that leads, or may lead, to an unintentional transboundary movement of a living modified organism that is likely to have significant adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health in such States. The notification shall be provided as soon as the Party knows of the above situation.

2. Each Party shall, no later than the date of entry into force of this Protocol for it, make available to the Biosafety Clearing-House the relevant details setting out its point of contact for the purposes of receiving notifications under this article.

3. Any notification arising from paragraph 1 above should include:

(*a*) Available relevant information on the estimated quantities and relevant characteristics and/or traits of the living modified organism;

(*b*) Information on the circumstances and estimated date of the release, and on the use of the living modified organism in the originating Party;

(*c*) Any available information about the possible adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, as well as available information about possible risk management measures;

(*d*) Any other relevant information; and

(*e*) A point of contact for further information.

4. In order to minimize any significant adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, each Party under whose jurisdiction the release of the living modified organ-

ism referred to in paragraph 1 above occurs shall immediately consult the affected or potentially affected States to enable them to determine appropriate responses and initiate necessary action, including emergency measures.

Article 18

HANDLING, TRANSPORT, PACKAGING AND IDENTIFICATION

1. In order to avoid adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, each Party shall take necessary measures to require that living modified organisms that are subject to intentional transboundary movement within the scope of this Protocol are handled, packaged and transported under conditions of safety, taking into consideration relevant international rules and standards.

2. Each Party shall take measures to require that documentation accompanying:

(*a*) Living modified organisms that are intended for direct use as food or feed, or for processing, clearly identifies that they "may contain" living modified organisms and are not intended for intentional introduction into the environment, as well as a contact point for further information. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall take a decision on the detailed requirements for this purpose, including specification of their identity and any unique identification, no later than two years after the date of entry into force of this Protocol;

(*b*) Living modified organisms that are destined for contained use clearly identifies them as living modified organisms; and specifies any requirements for the safe handling, storage, transport and use, the contact point for further information, including the name and address of the individual and institution to whom the living modified organisms are consigned; and

(*c*) Living modified organisms that are intended for intentional introduction into the environment of the Party of import and any other living modified organisms within the scope of the Protocol clearly identifies them as living modified organisms; specifies the identity and relevant traits and/or characteristics, any requirements for the safe handling, storage, transport and use, the contact point for further information and, as appropriate, the name and address of the importer and exporter; and contains a declaration that the movement is in conformity with the requirements of this Protocol applicable to the exporter.

3. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall consider the need for and modalities of developing standards with regard to identification, handling, packaging and transport practices, in consultation with other relevant international bodies.

Article 19

COMPETENT NATIONAL AUTHORITIES
AND NATIONAL FOCAL POINTS

1. Each Party shall designate one national focal point to be responsible on its behalf for liaison with the Secretariat. Each Party shall also designate one or more competent national authorities, which shall be responsible for performing the administrative functions required by this Protocol and which shall be authorized

to act on its behalf with respect to those functions. A Party may designate a single entity to fulfil the functions of both focal point and competent national authority.

2. Each Party shall, no later than the date of entry into force of this Protocol for it, notify the Secretariat of the names and addresses of its focal point and its competent national authority or authorities. Where a Party designates more than one competent national authority, it shall convey to the Secretariat, with its notification thereof, relevant information on the respective responsibilities of those authorities. Where applicable, such information shall, at a minimum, specify which competent authority is responsible for which type of living modified organism. Each Party shall forthwith notify the Secretariat of any changes in the designation of its national focal point or in the name and address or responsibilities of its competent national authority or authorities.

3. The Secretariat shall forthwith inform the Parties of the notifications it receives under paragraph 2 above, and shall also make such information available through the Biosafety Clearing-House.

Article 20

INFORMATION-SHARING AND THE BIOSAFETY CLEARING-HOUSE

1. A Biosafety Clearing-House is hereby established as part of the clearing-house mechanism under article 18, paragraph 3, of the Convention, in order to:

(*a*) Facilitate the exchange of scientific, technical, environmental and legal information on, and experience with, living modified organisms; and

(*b*) Assist Parties to implement the Protocol, taking into account the special needs of developing country Parties, in particular the least developed and small island developing States among them, and countries with economies in transition as well as countries that are centres of origin and centres of genetic diversity.

2. The Biosafety Clearing-House shall serve as a means through which information is made available for the purposes of paragraph 1 above. It shall provide access to information made available by the Parties relevant to the implementation of the Protocol. It shall also provide access, where possible, to other international biosafety information exchange mechanisms.

3. Without prejudice to the protection of confidential information, each Party shall make available to the Biosafety Clearing-House any information required to be made available to the Biosafety Clearing-House under this Protocol, and:

(*a*) Any existing laws, regulations and guidelines for implementation of the Protocol, as well as information required by the Parties for the advance informed agreement procedure;

(*b*) Any bilateral, regional and multilateral agreements and arrangements;

(*c*) Summaries of its risk assessments or environmental reviews of living modified organisms generated by its regulatory process, and carried out in accordance with article 15, including, where appropriate, relevant information regarding products thereof, namely, processed materials that are of living modified organism origin, containing detectable novel combinations of replicable genetic material obtained through the use of modern biotechnology;

(*d*) Its final decisions regarding the importation or release of living modified organisms; and

(*e*) Reports submitted by it pursuant to article 33, including those on implementation of the advance informed agreement procedure.

4. The modalities of the operation of the Biosafety Clearing-House, including reports on its activities, shall be considered and decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first meeting, and kept under review thereafter.

Article 21

CONFIDENTIAL INFORMATION

1. The Party of import shall permit the notifier to identify information submitted under the procedures of this Protocol or required by the Party of import as part of the advance informed agreement procedure of the Protocol that is to be treated as confidential. Justification shall be given in such cases upon request.

2. The Party of import shall consult the notifier if it decides that information identified by the notifier as confidential does not qualify for such treatment and shall, prior to any disclosure, inform the notifier of its decision, providing reasons on request, as well as an opportunity for consultation and for an internal review of the decision prior to disclosure.

3. Each Party shall protect confidential information received under this Protocol, including any confidential information received in the context of the advance informed agreement procedure of the Protocol. Each Party shall ensure that it has procedures to protect such information and shall protect the confidentiality of such information in a manner no less favourable than its treatment of confidential information in connection with domestically produced living modified organisms.

4. The Party of import shall not use such information for a commercial purpose, except with the written consent of the notifier.

5. If a notifier withdraws or has withdrawn a notification, the Party of import shall respect the confidentiality of commercial and industrial information, including research and development information as well as information on which the Party and the notifier disagree as to its confidentiality.

6. Without prejudice to paragraph 5 above, the following information shall not be considered confidential:

(*a*) The name and address of the notifier;

(*b*) A general description of the living modified organism or organisms;

(*c*) A summary of the risk assessment of the effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health; and

(*d*) Any methods and plans for emergency response.

Article 22

CAPACITY-BUILDING

1. The Parties shall cooperate in the development and/or strengthening of human resources and institutional capacities in biosafety, including biotechnol-

ogy to the extent that it is required for biosafety, for the purpose of the effective implementation of this Protocol, in developing country Parties, in particular the least developed and small island developing States among them, and in Parties with economies in transition, including through existing global, regional, subregional and national institutions and organizations and, as appropriate, through facilitating private sector involvement.

2. For the purposes of implementing paragraph 1 above, in relation to cooperation, the needs of developing country Parties, in particular the least developed and small island developing States among them, for financial resources and access to and transfer of technology and know-how in accordance with the relevant provisions of the Convention, shall be taken fully into account for capacity-building in biosafety. Cooperation in capacity-building shall, subject to the different situation, capabilities and requirements of each Party, include scientific and technical training in the proper and safe management of biotechnology, and in the use of risk assessment and risk management for biosafety, and the enhancement of technological and institutional capacities in biosafety. The needs of Parties with economies in transition shall also be taken fully into account for such capacity-building in biosafety.

Article 23

PUBLIC AWARENESS AND PARTICIPATION

1. The Parties shall:

(*a*) Promote and facilitate public awareness, education and participation concerning the safe transfer, handling and use of living modified organisms in relation to the conservation and sustainable use of biological diversity, taking also into account risks to human health. In doing so, the Parties shall cooperate, as appropriate, with other States and international bodies;

(*b*) Endeavour to ensure that public awareness and education encompass access to information on living modified organisms identified in accordance with this Protocol that may be imported.

2. The Parties shall, in accordance with their respective laws and regulations, consult the public in the decision-making process regarding living modified organisms and shall make the results of such decisions available to the public, while respecting confidential information in accordance with article 21.

3. Each Party shall endeavour to inform its public about the means of public access to the Biosafety Clearing-House.

Article 24

NON-PARTIES

1. Transboundary movements of living modified organisms between Parties and non-Parties shall be consistent with the objective of this Protocol. The Parties may enter into bilateral, regional and multilateral agreements and arrangements with non-Parties regarding such transboundary movements.

2. The Parties shall encourage non-Parties to adhere to this Protocol and to contribute appropriate information to the Biosafety Clearing-House on living modified organisms released in, or moved into or out of, areas within their national jurisdictions.

Article 25

ILLEGAL TRANSBOUNDARY MOVEMENTS

1. Each Party shall adopt appropriate domestic measures aimed at preventing and, if appropriate, penalizing transboundary movements of living modified organisms carried out in contravention of its domestic measures to implement this Protocol. Such movements shall be deemed illegal transboundary movements.

2. In the case of an illegal transboundary movement, the affected Party may request the Party of origin to dispose, at its own expense, of the living modified organism in question by repatriation or destruction, as appropriate.

3. Each Party shall make available to the Biosafety Clearing-House information concerning cases of illegal transboundary movements pertaining to it.

Article 26

SOCIO-ECONOMIC CONSIDERATIONS

1. The Parties, in reaching a decision on import under this Protocol or under its domestic measures implementing the Protocol, may take into account, consistent with their international obligations, socio-economic considerations arising from the impact of living modified organisms on the conservation and sustainable use of biological diversity, especially with regard to the value of biological diversity to indigenous and local communities.

2. The Parties are encouraged to cooperate on research and information exchange on any socio-economic impacts of living modified organisms, especially on indigenous and local communities.

Article 27

LIABILITY AND REDRESS

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, adopt a process with respect to the appropriate elaboration of international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of living modified organisms, analysing and taking due account of the ongoing processes in international law on these matters, and shall endeavour to complete this process within four years.

Article 28

FINANCIAL MECHANISM AND RESOURCES

1. In considering financial resources for the implementation of this Protocol, the Parties shall take into account the provisions of article 20 of the Convention.

2. The financial mechanism established in article 21 of the Convention shall, through the institutional structure entrusted with its operation, be the financial mechanism for this Protocol.

3. Regarding the capacity-building referred to in article 22 of this Protocol, the Conference of the Parties serving as the meeting of the Parties to this Protocol, in providing guidance with respect to the financial mechanism referred to in paragraph 2 above for consideration by the Conference of the Parties, shall take into

account the need for financial resources by developing country Parties, in particular the least developed and the small island developing States among them.

4. In the context of paragraph 1 above, the Parties shall also take into account the needs of the developing country Parties, in particular the least developed and the small island developing States among them, and of the Parties with economies in transition, in their efforts to identify and implement their capacity-building requirements for the purposes of the implementation of this Protocol.

5. The guidance to the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply, mutatis mutandis, to the provisions of this article.

6. The developed country Parties may also provide, and the developing country Parties and the Parties with economies in transition avail themselves of, financial and technological resources for the implementation of the provisions of this Protocol through bilateral, regional and multilateral channels.

Article 29

CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THIS PROTOCOL

1. The Conference of the Parties shall serve as the meeting of the Parties to this Protocol.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by those that are Parties to it.

3. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, any member of the bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Protocol shall be substituted by a member to be elected by and from among the Parties to this Protocol.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Protocol and shall:

(*a*) Make recommendations on any matters necessary for the implementation of this Protocol;

(*b*) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;

(*c*) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies;

(*d*) Establish the form and the intervals for transmitting the information to be submitted in accordance with article 33 of this Protocol and consider such information as well as reports submitted by any subsidiary body;

(*e*) Consider and adopt, as required, amendments to this Protocol and its annexes, as well as any additional annexes to this Protocol, that are deemed necessary for the implementation of this Protocol; and

(*f*) Exercise such other functions as may be required for the implementation of this Protocol.

5. The rules of procedure of the Conference of the Parties and financial rules of the Convention shall be applied, mutatis mutandis, under this Protocol, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

6. The first meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be convened by the Secretariat in conjunction with the first meeting of the Conference of the Parties that is scheduled after the date of the entry into force of this Protocol. Subsequent ordinary meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held in conjunction with ordinary meetings of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

7. Extraordinary meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Protocol, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the Secretariat, it is supported by at least one third of the Parties.

8. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented as observers at meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Any body or agency, whether national or international, governmental or non-governmental, that is qualified in matters covered by this Protocol and that has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties serving as a meeting of the Parties to this Protocol as an observer may be so admitted, unless at least one third of the Parties present object. Except as otherwise provided in this article, the admission and participation of observers shall be subject to the rules of procedure, as referred to in paragraph 5 above.

Article 30

SUBSIDIARY BODIES

1. Any subsidiary body established by or under the Convention may, upon a decision by the Conference of the Parties serving as the meeting of the Parties to this Protocol, serve the Protocol, in which case the meeting of the Parties shall specify which functions that body shall exercise.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of any such subsidiary bodies. When a subsidiary body of the Convention serves as a subsidiary body to this Protocol, decisions under the Protocol shall be taken only by the Parties to the Protocol.

3. When a subsidiary body of the Convention exercises its functions with regard to matters concerning this Protocol, any member of the bureau of that subsidiary body representing a Party to the Convention but, at that time, not a Party to the Protocol, shall be substituted by a member to be elected by and from among the Parties to the Protocol.

Article 31

SECRETARIAT

1. The Secretariat established by article 24 of the Convention shall serve as the secretariat to this Protocol.

2. Article 24, paragraph 1, of the Convention on the functions of the Secretariat shall apply, mutatis mutandis, to this Protocol.

3. To the extent that they are distinct, the costs of the secretariat services for this Protocol shall be met by the Parties hereto. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, decide on the necessary budgetary arrangements to this end.

Article 32

RELATIONSHIP WITH THE CONVENTION

Except as otherwise provided in this Protocol, the provisions of the Convention relating to its protocols shall apply to this Protocol.

Article 33

MONITORING AND REPORTING

Each Party shall monitor the implementation of its obligations under this Protocol and shall, at intervals to be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, report to the Conference of the Parties serving as the meeting of the Parties to this Protocol on measures that it has taken to implement the Protocol.

Article 34

COMPLIANCE

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of this Protocol and to address cases of non-compliance. These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate. They shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms established by article 27 of the Convention.

Article 35

ASSESSMENT AND REVIEW

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall undertake, five years after the entry into force of this Protocol and at least every five years thereafter, an evaluation of the effectiveness of the Protocol, including an assessment of its procedures and annexes.

Article 36

SIGNATURE

This Protocol shall be open for signature at the United Nations Office at Nairobi by States and regional economic integration organizations from 15 to 26 May 2000, and at United Nations Headquarters in New York from 5 June 2000 to 4 June 2001.

Article 37

ENTRY INTO FORCE

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession by States or regional economic integration organizations that are Parties to the Convention.

2. This Protocol shall enter into force for a State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after its entry into force pursuant to paragraph 1 above, on the ninetieth day after the date on which that State or regional economic integration organization deposits its instrument of ratification, acceptance, approval or accession, or on the date on which the Convention enters into force for that State or regional economic integration organization, whichever shall be the later.

3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of such organization.

Article 38

RESERVATIONS

No reservations may be made to this Protocol.

Article 39

WITHDRAWAL

1. At any time after two years from the date on which this Protocol has entered into force for a Party, that Party may withdraw from the Protocol by giving written notification to the depositary.

2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the depositary, or on such later date as may be specified in the notification of the withdrawal.

Article 40

AUTHENTIC TEXTS

The original of this Protocol, 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 Protocol.

DONE at Montreal on this twenty-ninth day of January, two thousand.

ANNEX I

Information required in notifications under articles 8, 10 and 13

(*a*) Name, address and contact details of the exporter.

(*b*) Name, address and contact details of the importer.

(*c*) Name and identity of the living modified organism, as well as the domestic classification, if any, of the biosafety level of the living modified organism in the State of export.

(*d*) Intended date or dates of the transboundary movement, if known.

(*e*) Taxonomic status, common name, point of collection or acquisition, and characteristics of recipient organism or parental organisms related to biosafety.

(*f*) Centres of origin and centres of genetic diversity, if known, of the recipient organism and/or the parental organisms and a description of the habitats where the organisms may persist or proliferate.

(*g*) Taxonomic status, common name, point of collection or acquisition, and characteristics of the donor organism or organisms related to biosafety.

(*h*) Description of the nucleic acid or the modification introduced, the technique used, and the resulting characteristics of the living modified organism.

(*i*) Intended use of the living modified organism or products thereof, namely, processed materials that are of living modified organism origin, containing detectable novel combinations of replicable genetic material obtained through the use of modern biotechnology.

(*j*) Quantity or volume of the living modified organism to be transferred.

(*k*) A previous and existing risk assessment report consistent with annex III.

(*l*) Suggested methods for the safe handling, storage, transport and use, including packaging, labelling, documentation, disposal and contingency procedures, where appropriate.

(*m*) Regulatory status of the living modified organism within the State of export (for example, whether it is prohibited in the State of export, whether there are other restrictions, or whether it has been approved for general release) and, if the living modified organism is banned in the State of export, the reason or reasons for the ban.

(*n*) Result and purpose of any notification by the exporter to other States regarding the living modified organism to be transferred.

(*o*) A declaration that the above-mentioned information is factually correct.

ANNEX II

Information required concerning living modified organisms intended for direct use as food or feed, or for processing under article 11

(*a*) The name and contact details of the applicant for a decision for domestic use.

(*b*) The name and contact details of the authority responsible for the decision.

(*c*) Name and identity of the living modified organism.

(*d*) Description of the gene modification, the technique used and the resulting characteristics of the living modified organism.

(*e*) Any unique identification of the living modified organism.

(*f*) Taxonomic status, common name, point of collection or acquisition and characteristics of recipient organism or parental organisms related to biosafety.

(*g*) Centres of origin and centres of genetic diversity, if known, of the recipient organism and/or the parental organisms and a description of the habitats where the organisms may persist or proliferate.

(*h*) Taxonomic status, common name, point of collection or acquisition and characteristics of the donor organism or organisms related to biosafety.

(*i*) Approved uses of the living modified organism.

(*j*) A risk assessment report consistent with annex III.

(*k*) Suggested methods for the safe handling, storage, transport and use, including packaging, labelling, documentation, disposal and contingency procedures, where appropriate.

ANNEX III

Risk assessment under article 15

Objective

1. The objective of risk assessment, under this Protocol, is to identify and evaluate the potential adverse effects of living modified organisms on the conservation and sustainable use of biological diversity in the likely potential receiving environment, taking also into account risks to human health.

Use of risk assessment

2. Risk assessment is, inter alia, used by competent authorities to make informed decisions regarding living modified organisms.

General principles

3. Risk assessment should be carried out in a scientifically sound and transparent manner, and can take into account expert advice of, and guidelines developed by, relevant international organizations.

4. Lack of scientific knowledge or scientific consensus should not necessarily be interpreted as indicating a particular level of risk, an absence of risk or an acceptable risk.

5. Risks associated with living modified organisms or products thereof, namely, processed materials that are of living modified organism origin containing detectable novel combinations of replicable genetic material obtained through the use of modern biotechnology, should be considered in the context of the risks posed by the non-modified recipients or parental organisms in the likely potential receiving environment.

6. Risk assessment should be carried out on a case-by-case basis. The required information may vary in nature and level of detail from case to case, depending on the living modified organism concerned, its intended use and the likely potential receiving environment.

Methodology

7. The process of risk assessment may on the one hand give rise to a need for further information about specific subjects, which may be identified and requested during the assessment process, while on the other hand information on other subjects may not be relevant in some instances.

8. To fulfil its objective, risk assessment entails, as appropriate, the following steps:

(*a*) An identification of any novel genotypic and phenotypic characteristics associated with the living modified organism that may have adverse effects on biological diversity in the likely potential receiving environment, taking also into account risks to human health;

(*b*) An evaluation of the likelihood of these adverse effects being realized, taking into account the level and kind of exposure of the likely potential receiving environment to the living modified organism;

(*c*) An evaluation of the consequences should these adverse effects be realized;

(*d*) An estimation of the overall risk posed by the living modified organism based on the evaluation of the likelihood and consequences of the identified adverse effects being realized;

(*e*) A recommendation as to whether or not the risks are acceptable or manageable, including, where necessary, identification of strategies to manage these risks; and

(*f*) Where there is uncertainty regarding the level of risk, it may be addressed by requesting further information on the specific issues of concern or by implementing appropriate risk management strategies and/or monitoring the living modified organism in the receiving environment.

Points to consider

9. Depending on the case, risk assessment takes into account the relevant technical and scientific details regarding the characteristics of the following subjects:

(*a*) *Recipient organism or parental organisms*. The biological characteristics of the recipient organism or parental organisms, including information on taxonomic status, common name, origin, centres of origin and centres of genetic diversity, if known, and a description of the habitat where the organisms may persist or proliferate;

(*b*) *Donor organism or organisms*. Taxonomic status and common name, source and the relevant biological characteristics of the donor organisms;

(*c*) *Vector*. Characteristics of the vector, including its identity, if any, and its source or origin, and its host range;

(*d*) *Insert or inserts and/or characteristics of modification*. Genetic characteristics of the inserted nucleic acid and the function it specifies, and/or characteristics of the modification introduced;

(*e*) *Living modified organism*. Identity of the living modified organism, and the differences between the biological characteristics of the living modified organism and those of the recipient organism or parental organisms;

(*f*) *Detection and identification of the living modified organism*. Suggested detection and identification methods and their specificity, sensitivity and reliability;

(*g*) *Information relating to the intended use*. Information relating to the intended use of the living modified organism, including new or changed use compared to the recipient organism or parental organisms; and

(*h*) *Receiving environment*. Information on the location, geographical, climatic and ecological characteristics, including relevant information on biological diversity and centres of origin of the likely potential receiving environment.

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2. OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT.[3] DONE AT NEW YORK ON 25 MAY 2000[4]

The States Parties to the present Protocol,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences this has for durable peace, security and development,

Condemning the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places generally having a significant presence of children, such as schools and hospitals,

Noting the adoption of the Statute of the International Criminal Court and, in particular, its inclusion as a war crime of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts,

Considering, therefore, that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child there is a need to increase the protection of children from involvement in armed conflict,

Noting that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier,

Convinced that an optional protocol to the Convention raising the age of possible recruitment of persons into armed forces and their participation in hostilities will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Noting that the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 recommended, inter alia, that parties to conflict take every feasible step to ensure that children under the age of 18 years do not take part in hostilities,

Welcoming the unanimous adoption, in June 1999, of International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the worst Forms of Child Labour, which prohibits, inter alia, forced or compulsory recruitment of children for use in armed conflict,

Condemning with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard,

Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

Stressing that this Protocol is without prejudice to the purposes and principles contained in the Charter of the United Nations, including Article 51, and relevant norms of humanitarian law,

Bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflicts and foreign occupation,

Recognizing the special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to this Protocol owing to their economic or social status or gender,

Mindful of the necessity of taking into consideration the economic, social and political root causes of the involvement of children in armed conflicts,

Convinced of the need to strengthen international cooperation in the implementation of this Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict,

Encouraging the participation of the community and, in particular, children and child victims in the dissemination of informational and educational programmes concerning the implementation of the Protocol,

Have agreed as follows:

Article 1

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Article 2

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

Article 3

1. States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under 18 are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that:

(*a*) Such recruitment is genuinely voluntary;

(*b*) Such recruitment is done with the informed consent of the person's parents or legal guardians;

(*c*) Such persons are fully informed of the duties involved in such military service;

(*d*) Such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

Article 4

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.

Article 5

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

Article 6

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of this Protocol within its jurisdiction.

2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.

3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

Article 7

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to this Protocol, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with concerned States Parties and relevant international organizations.

2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes, or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

Article 8

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

Article 9

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 13.

Article 10

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 11

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee prior to the date on which the denunciation becomes effective.

Article 12

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 13

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

3. OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY.[5] DONE AT NEW YORK ON 25 MAY 2000[6]

The States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic of children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation, and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet (Vienna, 1999) and, in particular, its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking of children,

Believing that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and also believing in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on the Protection of Children and Cooperation with Respect to Inter-Country Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in

Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held at Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Have agreed as follows:

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2

For the purpose of the present Protocol:

(*a*) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(*b*) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(*c*) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnationally or on an individual or organized basis:

(*a*) In the context of sale of children as defined in article 2:

(i) The offering, delivering or accepting, by whatever means, a child for the purpose of:

a. Sexual exploitation of the child;

b. Transfer of organs of the child for profit;

c. Engagement of the child in forced labour;

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

(*b*) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;

(*c*) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

2. Subject to the provisions of a State Party's national law, the same shall apply to an attempt to commit any of these acts and to complicity or participation in any of these acts.

3. Each State Party shall make these offences punishable by appropriate penalties that take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, this liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

(*a*) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;

(*b*) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. This Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 5

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in those treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Protocol as a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and if the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7

States Parties shall, subject to the provisions of their national law:

(*a*) Take measures to provide for the seizure and confiscation, as appropriate, of:

(i) Goods such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;

(ii) Proceeds derived from such offences;

(*b*) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (*a*) (i);

(*c*) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(*a*) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

(*b*) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(*c*) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

(*d*) Providing appropriate support services to child victims throughout the legal process;

(*e*) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

(*f*) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(*g*) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6. Nothing in the present article shall be construed as prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

Article 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to these practices.

2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

Article 11

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

(*a*) The law of a State Party;

(*b*) International law in force for that State.

Article 12

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

Article 13

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

Article 14

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 15

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General of the United Nations.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee prior to the date on which the denunciation becomes effective.

Article 16

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 17

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol, to all States Parties to the Convention and all States that have signed the Convention.

4. EUROPEAN AGREEMENT CONCERNING THE INTERNATIONAL CARRIAGE OF DANGEROUS GOODS BY INLAND WATERWAYS (ADN).[7] DONE AT GENEVA ON 26 MAY 2000[8]

The Contracting Parties,

Desiring to establish by joint agreement uniform principles and rules, for the purposes of:

(1) Increasing the safety of international carriage of dangerous goods by inland waterways;

(2) Contributing effectively to the protection of the environment, by preventing any pollution resulting from accidents or incidents during such carriage; and

(3) Facilitating transport operations and promoting international trade,

Considering that the best means of achieving this goal is to conclude an agreement to replace the European Provisions concerning the International Carriage of Dangerous Goods by Inland Waterways annexed to resolution No. 223 of the Inland Transport Committee of the Economic Commission for Europe, as amended,

Have agreed as follows:

CHAPTER I. GENERAL PROVISIONS

Article 1

SCOPE

1. This Agreement shall apply to the international carriage of dangerous goods by vessels on inland waterways.

2. This Agreement shall not apply to the carriage of dangerous goods by seagoing vessels on maritime waterways forming part of inland waterways.

3. This Agreement shall not apply to the carriage of dangerous goods by warships or auxiliary warships or to other vessels belonging to or operated by a State, provided such vessels are used by the State exclusively for governmental and non-commercial purposes. However, each Contracting Party shall, by taking appropriate measures which do not impair the operations or operational capacity of such vessels belonging to or operated by it, ensure that such vessels are operated in a manner compatible with this Agreement, where it is reasonable in practice to do so.

Article 2

REGULATIONS ANNEXED TO THE AGREEMENT

1. The Regulations annexed to this Agreement[9] shall form an integral part thereof. Any reference to this Agreement implies at the same time a reference to the Regulations annexed thereto.

2. The annexed Regulations include:

(1) Provisions concerning the international carriage of dangerous goods by inland waterways;

(2) Requirements and procedures concerning inspections, the issue of certificates of approval, recognition of classification societies, derogations, special authorizations, monitoring, training and examination of experts;

(3) General transitional provisions;

(4) Supplementary transitional provisions applicable to specific inland waterways.

Article 3

DEFINITIONS

For the purposes of this Agreement:

(*a*) "vessel" means an inland waterway or seagoing vessel;

(*b*) "dangerous goods" means substances and articles the international carriage of which is prohibited by, or authorized only on certain conditions by, the annexed Regulations;

(*c*) "international carriage of dangerous goods" means any carriage of dangerous goods performed by a vessel on inland waterways on the territory of at least two Contracting Parties;

(*d*) "inland waterways" means the navigable inland waterways including maritime waterways on the territory of a Contracting Party open to the navigation of vessels under national law;

(*e*) "maritime waterways" means inland waterways linked to the sea, basically used for the traffic of seagoing vessels and designated as such under national law;

(*f*) "recognized classification society" means a classification society which is in conformity with the annexed Regulations and recognized, in accordance with the procedures laid down in these Regulations, by the competent authority of the Contracting Party where the certificate is issued;

(*g*) "competent authority" means the authority or the body designated or recognized as such in each Contracting Party and in each specific case in connection with these provisions;

(*h*) "inspection body" means a body nominated or recognized by the Contracting Party for the purpose of inspecting vessels according to the procedures laid down in the annexed Regulations.

CHAPTER II. TECHNICAL PROVISIONS

Article 4

PROHIBITIONS ON CARRIAGE, CONDITIONS OF CARRIAGE, MONITORING

1. Subject to the provisions of articles 7 and 8, dangerous goods barred from carriage by the annexed Regulations shall not be accepted for international carriage.

2. Without prejudice to the provisions of article 6, the international carriage of other dangerous goods shall be authorized, subject to compliance with the conditions laid down in the annexed Regulations.

3. Observance of the prohibitions and the conditions referred to in paragraphs 1 and 2 shall be monitored by the Contracting Parties in accordance with the provisions laid down in the annexed Regulations.

Article 5

EXEMPTIONS

This Agreement shall not apply to the carriage of dangerous goods to the extent to which such carriage is exempted in accordance with the annexed Regulations. Exemptions may only be granted when the quantity of the goods exempted, or the nature of the transport operation exempted, or the packagings, ensure that transport is carried out safely.

Article 6

SOVEREIGN RIGHT OF STATES

Each Contracting Party shall retain the right to regulate or prohibit the entry of dangerous goods into its territory for reasons other than safety during carriage.

Article 7

SPECIAL REGULATIONS, DEROGATIONS

1. The Contracting Parties shall retain the right to arrange, for a limited period established in the annexed Regulations, by special bilateral or multilateral agreements, and provided safety is not impaired:

(*a*) That the dangerous goods which under this Agreement are barred from international carriage may, subject to certain conditions, be accepted for international carriage on their inland waterways; or

(*b*) That dangerous goods which under this Agreement are accepted for international carriage only on specified conditions may alternatively be accepted for international carriage on their inland waterways under conditions different from those laid down in the annexed Regulations.

The special bilateral or multilateral agreements referred to in this paragraph shall be communicated immediately to the Executive Secretary of the Economic Commission for Europe, who shall communicate them to the Contracting Parties which are not signatories to the said agreements.

2. Each Contracting Party shall retain the right to issue special authorizations for the international carriage in tank vessels of dangerous substances the carriage of which in tank vessels is not permitted under the provisions concerning carriage in the annexed Regulations, subject to compliance with the procedures relating to special authorizations in the annexed Regulations.

3. The Contracting Parties shall retain the right to authorize, in the following cases, the international carriage of dangerous goods on board vessels which do not comply with conditions established in the annexed Regulations, provided that the procedure established in the annexed Regulations is complied with:

(*a*) The use on a vessel of materials, installations or equipment or the application on a vessel of certain measures concerning construction or certain provisions other than those prescribed in the annexed Regulations;

(*b*) Vessel with technical innovations derogating from the provisions of the annexed Regulations.

Article 8

TRANSITIONAL PROVISIONS

1. Certificates of approval and other documents prepared in accordance with the requirements of the Regulations for the Carriage of Dangerous Goods in the Rhine (ADNR), the Regulations for the Carriage of Dangerous Goods on the Danube (ADN-D) or national regulations based on the European Provisions concerning the International Carriage of Dangerous Goods by Inland Waterways as annexed to resolution No. 223 of the Inland Transport Committee of the Economic Commission for Europe or as amended, applicable at the date of application of the annexed Regulations foreseen in article 11, paragraph 1, shall remain valid until their expiry date, under the same conditions as those prevailing up to the date of such application, including their recognition by other States. In addition, these certificates shall remain valid for a period of one year from the date of application of the annexed Regulations in the event that they would expire during that period. However, the period of validity shall in no case exceed five years beyond the date of application of the annexed Regulations.

2. Vessels which, at the date of application of the annexed Regulations foreseen in article 11, paragraph 1, are approved for the carriage of dangerous goods on the territory of a Contracting Party and which conform to the requirements of the annexed Regulations, taking into account, where necessary, their general transitional provisions, may obtain an ADN certificate of approval under the procedure laid down in the annexed Regulations.

3. In the case of vessels referred to in paragraph 2 to be used exclusively for carriage on inland waterways where ADNR was not applicable under domestic law prior to the date of application of the annexed Regulations foreseen in article 11, paragraph 1, the supplementary transitional provisions applicable to specific inland waterways may be applied in addition to the general transitional provisions. Such vessels shall obtain an ADN certificate of approval limited to the inland waterways referred to above, or to a portion thereof.

4. If new provisions are added to the annexed Regulations, the Contracting Parties may include new general transitional provisions. These transitional provisions shall indicate the vessels in question and the period for which they are valid.

Article 9

APPLICABILITY OF OTHER REGULATIONS

The transport operations to which this Agreement applies shall remain subject to local, regional or international regulations applicable in general to the carriage of goods by inland waterways.

CHAPTER III. FINAL PROVISIONS

Article 10

CONTRACTING PARTIES

1. States members of the Economic Commission for Europe whose territory contains inland waterways, other than those forming a coastal route, which form part of the network of inland waterways of international importance as defined in

the European Agreement on Main Inland Waterways of International Importance (AGN) may become Contracting Parties to this Agreement:

(*a*) By signing it definitively;

(*b*) By depositing an instrument of ratification, acceptance or approval after signing it subject to ratification, acceptance or approval;

(*c*) By depositing an instrument of accession.

2. The Agreement shall be open for signature until 31 May 2001 at the Office of the Executive Secretary of the Economic Commission for Europe, Geneva. Thereafter, it shall be open for accession.

3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

Article 11

ENTRY INTO FORCE

1. This Agreement shall enter into force one month after the date on which the number of States mentioned in article 10, paragraph 1, which have signed it definitively, or have deposited their instruments of ratification, acceptance, approval or accession has reached a total of seven.

However, the annexed Regulations, except provisions concerning recognition of classification societies, shall not apply until twelve months after the entry into force of the Agreement.

2. For any State signing this Agreement definitively or ratifying, accepting, approving or acceding to it after seven of the States referred to in article 10, paragraph 1, have signed it definitively or have deposited their instruments of ratification, acceptance, approval or accession, this Agreement shall enter into force one month after the said State has signed it definitively or has deposited its instrument of ratification, acceptance, approval or accession.

The annexed Regulations shall become applicable on the same date. In the event that the term referred to in paragraph 1 relating to the application of the annexed Regulations has not expired, the annexed Regulations shall become applicable after expiry of the said term.

Article 12

DENUNCIATION

1. Any Contracting Party may denounce this Agreement by so notifying in writing the Secretary-General of the United Nations.

2. Denunciation shall take effect twelve months after the date of receipt by the Secretary-General of the written notification of denunciation.

Article 13

TERMINATION

1. If, after the entry into force of this Agreement, the number of Contracting Parties is less than five during twelve consecutive months, this Agreement shall cease to have effect at the end of the said period of twelve months.

2. In the event of the conclusion of a worldwide agreement for the regulation of the multimodal transport of dangerous goods, any provision of this Agreement, with the exception of those pertaining exclusively to inland waterways, the construction and equipment of vessels, carriage in bulk or tankers which is contrary to any provision of the said worldwide agreement shall, from the date on which the latter enters into force, automatically cease to apply to relations between the Parties to this Agreement which become parties to the worldwide agreement, and shall automatically be replaced by the relevant provision of the said worldwide agreement.

Article 14

DECLARATIONS

1. Any State may, at the time of signing this Agreement definitively or of depositing its instrument of ratification, acceptance, approval or accession or at any time thereafter, declare by written notification addressed to the Secretary-General of the United Nations that this Agreement shall extend to all or any of the territories for the international relations of which it is responsible. The Agreement shall extend to the territory or territories named in the notification one month after it is received by the Secretary-General.

2. Any State which has made a declaration under paragraph 1 of this article extending this Agreement to any territory for whose international relations it is responsible may denounce the Agreement in respect of the said territory in accordance with the provisions of article 12.

3. (*a*) In addition, any State may, at the time of signing this Agreement definitively or of depositing its instrument of ratification, acceptance, approval or accession or at any time thereafter, declare by written notification addressed to the Secretary-General of the United Nations that this Agreement shall not extend to certain inland waterways on its territory, provided that the waterways in question are not part of the network of inland waterways of international importance as defined in the AGN. If this declaration is made subsequent to the time when the State signs this Agreement definitively or when it deposits its instrument of ratification, acceptance, approval or accession, the Agreement shall cease to have effect on the inland waterways in question one month after this notification is received by the Secretary-General.

(*b*) However, any State on whose territory there are inland waterways covered by AGN, and which are, at the date of adoption of this Agreement, subject to a mandatory regime under international law concerning the carriage of dangerous goods, may declare that the implementation of this Agreement on these waterways shall be subject to compliance with the procedures set out in the statutes of the said regime. Any declaration of this nature shall be made at the time of signing this Agreement definitively or of depositing its instrument of ratification, acceptance, approval or accession.

4. Any State which has made a declaration under paragraphs 3 (*a*) or 3 (*b*) of this article may subsequently declare by means of a written notification to the Secretary-General of the United Nations that this Agreement shall apply to all or part of its inland waterways covered by the declaration made under paragraphs 3 (*a*) or 3 (*b*). The Agreement shall apply to the inland waterways mentioned in the notification one month after it is received by the Secretary-General.

Article 15

DISPUTES

1. Any dispute between two or more Contracting Parties concerning the interpretation or application of this Agreement shall so far as possible be settled by negotiation between the Parties in dispute.

2. Any dispute which is not settled by direct negotiation may be referred by the Contracting Parties in dispute to the Administrative Committee which shall consider it and make recommendations for its settlement.

3. Any dispute which is not settled in accordance with paragraph 1 or 2 shall be submitted to arbitration if any one of the Contracting Parties in dispute so requests and shall be referred accordingly to one or more arbitrators selected by agreement between the Parties in dispute. If within three months from the date of the request for arbitration the Parties in dispute are unable to agree on the selection of an arbitrator or arbitrators, any of those Parties may request the Secretary-General of the United Nations to nominate a single arbitrator to whom the dispute shall be referred for decision.

4. The decision of the arbitrator or arbitrators appointed under paragraph 3 of this article shall be binding on the Contracting Parties in dispute.

Article 16

RESERVATIONS

1. Any State may, at the time of signing this Agreement definitively or of depositing its instrument of ratification, acceptance, approval or accession, declare that it does not consider itself bound by article 15. Other Contracting Parties shall not be bound by article 15 in respect of any Contracting Party which has entered such a reservation.

2. Any Contracting State having entered a reservation as provided for in paragraph 1 of this article may at any time withdraw such reservation by notifying in writing the Secretary-General of the United Nations.

3. Reservations other than those provided for in this Agreement are not permitted.

Article 17

ADMINISTRATIVE COMMITTEE

1. An Administrative Committee shall be established to consider the implementation of this Agreement, to consider any amendments proposed thereto and to consider measures to secure uniformity in the interpretation and application thereof.

2. The Contracting Parties shall be members of the Administrative Committee. The Committee may decide that the States referred to in article 10, paragraph 1, of this Agreement which are not Contracting Parties, any other State member of the Economic Commission for Europe or of the United Nations or representatives of international intergovernmental or non-governmental organizations may, for questions which interest them, attend the sessions of the Committee as observers.

3. The Secretary-General of the United Nations and the Secretary-General of the Central Commission for the Navigation of the Rhine shall provide the Administrative Committee with secretariat services.

4. The Administrative Committee shall, at the first session of the year, elect a Chairperson and a Vice-Chairperson.

5. The Executive Secretary of the Economic Commission for Europe shall convene the Administrative Committee annually, or at other intervals decided on by the Committee, and also at the request of at least five Contracting Parties.

6. A quorum consisting of not less than one half of the Contracting Parties shall be required for the purpose of taking decisions.

7. Proposals shall be put to the vote. Each Contracting Party represented at the session shall have one vote. The following rules shall apply:

(*a*) Proposed amendments to the annexed Regulations and decisions pertaining thereto shall be adopted in accordance with the provisions of article 19, paragraph 2;

(*b*) Proposed amendment to the annexed Regulations and decisions pertaining thereto shall be adopted in accordance with the provisions of article 20, paragraph 4;

(*c*) Proposals and decisions relating to the recommendation of agreed classification societies, or to the withdrawal of such recommendation, shall be adopted in accordance with the procedure of the provisions of article 20, paragraph 4;

(*d*) Any proposal or decision other than those referred to in subparagraphs (*a*) to (*c*) above shall be adopted by a majority of the Administrative Committee members present and voting.

8. The Administrative Committee may set up such working groups as it may deem necessary to assist it in carrying out its duties.

9. In the absence of relevant provisions in this Agreement, the Rules of Procedure of the Economic Commission for Europe shall be applicable unless the Administrative Committee decides otherwise.

Article 18

Safety Committee

A Safety Committee shall be established to consider all proposals for the amendment of the Regulations annexed to the Agreement, particularly as regards safety of navigation in relation to the construction, equipment and crews of vessels. The Safety Committee shall function within the framework of the activities of the bodies of the Economic Commission for Europe, of the Central Commission for the Navigation of the Rhine and of the Danube Commission which are competent in the transport of dangerous goods by inland waterways.

Article 19

Procedure for amending the Agreement, excluding the annexed Regulations

1. This Agreement, excluding its annexed Regulations, may be amended upon the proposal of a Contracting Party by the procedure specified in this article.

2. Any proposed amendment to this Agreement, excluding the annexed Regulations, shall be considered by the Administrative Committee. Any such amendment considered or prepared during the meeting of the Administrative Committee and adopted by it by a two-thirds majority of the members present and voting shall be communicated by the Secretary-General of the United Nations to the Contracting Parties for their acceptance.

3. Any proposed amendments communicated for acceptance in accordance with paragraph 2 shall come into force with respect to all Contracting Parties six months after the expiry of a period of twenty-four months following the date of communication of the proposed amendment if, during that period, no objection to the amendment in question has been communicated in writing to the Secretary-General of the United Nations by a Contracting Party.

Article 20

PROCEDURE FOR AMENDING THE ANNEXED REGULATIONS

1. The annexed Regulations may be amended upon the proposal of a Contracting Party.

The Secretary-General of the United Nations may also propose amendments with a view to bringing the annexed Regulations into line with other international agreements concerning the transport of dangerous goods and the United Nations Recommendations on the Transport of Dangerous Goods, as well as amendments proposed by a subsidiary body of the Economic Commission for Europe with competence in the area of the transport of dangerous goods.

2. Any proposed amendment to the annexed Regulations shall in principle be submitted to the Safety Committee, which shall submit the draft amendments it adopts to the Administrative Committee.

3. At the specific request of a Contracting Party, or if the secretariat of the Administrative Committee considers it appropriate, amendments may also be proposed directly to the Administrative Committee. They shall be examined at a first session and if they are deemed to be acceptable, they shall be reviewed at the following session of the Committee at the same time as any related proposal, unless otherwise decided by the Committee.

4. Decisions on proposed amendments and proposed draft amendments submitted to the Administrative Committee in accordance with paragraphs 2 and 3 shall be made by a majority of the members present and voting. However, a draft amendment shall not be deemed adopted if, immediately after the vote, five members present declare their objection to it. Adopted draft amendments shall be communicated by the Secretary-General of the United Nations to the Contracting Parties for acceptance.

5. Any draft amendment to the annexed Regulations communicated for acceptance in accordance with paragraph 4 shall be deemed to be accepted unless, within three months from the date on which the Secretary-General circulates it, at least one third of the Contracting Parties, or five of them if one third exceeds that figure, have given the Secretary-General written notification of their objection to the proposed amendment. If the amendment is deemed to be accepted, it shall enter into force for all the Contracting Parties, on the expiry of a further period of three months, except in the following cases:

(*a*) In cases where similar amendments to other international agreements governing the carriage of dangerous goods have already entered into force, or will enter into force at a different date, the Secretary-General may decide, upon written request by the Executive Secretary of the Economic Commission for Europe, that the amendment shall enter into force on the expiry of a different period so as to allow the simultaneous entry into force of these amendments with those to be made to such other agreements or, if not possible, the quickest entry into force of this amendment after the entry into force of such amendments to other agreements; such period shall not, however, be of less than one month's duration;

(*b*) The Administrative Committee may specify, when adopting a draft amendment, for the purpose of entry into force of the amendment, should it be accepted, a period of more than three months' duration.

Article 21

REQUESTS, COMMUNICATIONS AND OBJECTIONS

The Secretary-General of the United Nations shall inform all Contracting Parties and all States referred to in article 10, paragraph 1, of this Agreement of any request, communication or objection under articles 19 and 20 above and of the date on which any amendment enters into force.

Article 22

REVIEW CONFERENCE

1. Notwithstanding the procedure provided for in articles 19 and 20, any Contracting Party may, by notification in writing to the Secretary-General of the United Nations, request that a conference be convened for the purpose of reviewing this Agreement.

A review conference to which all Contracting Parties and all States referred to in article 10, paragraph 1, shall be invited shall be convened by the Executive Secretary of the Economic Commission for Europe if, within a period of six months following the date of notification by the Secretary-General, not less than one fourth of the Contracting Parties notify him of their concurrence with the request.

2. Notwithstanding the procedure provided for in articles 19 and 20, a review conference to which all Contracting Parties and all States referred to in article 10, paragraph 1, shall be invited, shall also be convened by the Executive Secretary of the Economic Commission for Europe upon notification in writing by the Administrative Committee. The Administrative Committee shall make a request if agreed to by a majority of those present and voting in the Committee.

3. If a conference is convened in pursuance of paragraph 1 or 2 of this article, the Executive Secretary of the Economic Commission for Europe shall invite the Contracting Parties to submit, within a period of three months, the proposals which they wish the conference to consider.

4. The Executive Secretary of the Economic Commission for Europe shall circulate to all the Contracting Parties and to all the States referred to in article 10, paragraph 1, the provisional agenda for the conference, together with the texts of such proposals, at least six months before the date on which the conference is to meet.

Article 23

DEPOSITARY

The Secretary-General of the United Nations shall be the depositary of this Agreement.

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

DONE at Geneva, this twenty-sixth day of May two thousand, in a single copy, in the English, French, German and Russian languages for the text of the Agreement proper, and in the French language for the annexed Regulations, each text being equally authentic for the Agreement proper.

The Secretary-General of the United Nations is requested to prepare a translation of the annexed Regulations in the English and Russian languages.

The Secretary-General of the Central Commission for the Navigation of the Rhine is requested to prepare a translation of the annexed Regulations in the German language.

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5. UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME.[10] DONE AT NEW YORK ON 15 NOVEMBER 2000[11]

Article 1

STATEMENT OF PURPOSE

The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

Article 2

USE OF TERMS

For the purposes of this Convention:

(*a*) "Organized criminal group" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;

(*b*) "Serious crime" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;

(*c*) "Structured group" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;

(*d*) "Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

(*e*) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

(*f*) "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(*g*) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

(*h*) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention;

(*i*) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;

(*j*) "Regional economic integration organization" shall mean 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 it; references to "States Parties" under this Convention shall apply to such organizations within the limits of their competence.

Article 3

SCOPE OF APPLICATION

1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of:

(*a*) The offences established in accordance with articles 5, 6, 8 and 23 of this Convention; and

(*b*) Serious crime as defined in article 2 of this Convention;

where the offence is transnational in nature and involves an organized criminal group.

2. For the purpose of paragraph 1 of this article, an offence is transnational in nature if:

(*a*) It is committed in more than one State;

(*b*) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;

(*c*) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or

(*d*) It is committed in one State but has substantial effects in another State.

Article 4

PROTECTION OF SOVEREIGNTY

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Article 5

CRIMINALIZATION OF PARTICIPATION IN AN ORGANIZED CRIMINAL GROUP

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(*a*) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:

(i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;

(ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:

a. Criminal activities of the organized criminal group;

b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;

(*b*) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.

2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.

3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1 (*a*) (i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1 (*a*) (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention.

Article 6

CRIMINALIZATION OF THE LAUNDERING OF PROCEEDS OF CRIME

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(*a*) (i) The conversion or transfer of properly, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in

the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(*b*) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(*a*) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(*b*) Each State Party shall include as predicate offences all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups;

(*c*) For the purposes of subparagraph (*b*), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(*d*) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(*e*) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;

(*f*) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

Article 7

MEASURES TO COMBAT MONEY-LAUNDERING

1. Each State Party:

(*a*) Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, recordkeeping and the reporting of suspicious transactions;

(*b*) Shall, without prejudice to articles 18 and 27 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the crossborder transfer of substantial quantities of cash and appropriate negotiable instruments.

3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Article 8

CRIMINALIZATION OF CORRUPTION

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(*a*) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(*b*) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.

3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.

4. For the purposes of paragraph 1 of this article and article 9 of this Convention, "public official" shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.

Article 9

MEASURES AGAINST CORRUPTION

1. In addition to the measures set forth in article 8 of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.

2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.

Article 10

LIABILITY OF LEGAL PERSONS

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established in accordance with articles 5, 6, 8 and 23 of this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 11

PROSECUTION, ADJUDICATION AND SANCTIONS

1. Each State Party shall make the commission of an offence established in accordance with articles 5, 6, 8 and 23 of this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

3. In the case of offences established in accordance with articles 5, 6, 8 and 23 of this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

4. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.

5. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.

6. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

Article 12

CONFISCATION AND SEIZURE

1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:

(*a*) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

(*b*) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

6. For the purposes of this article and article 13 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

7. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

Article 13

INTERNATIONAL COOPERATION FOR PURPOSES OF CONFISCATION

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(*a*) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(*b*) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 12, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 18 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 18, paragraph 15, requests made pursuant to this article shall contain:

(*a*) In the case of a request pertaining to paragraph 1 (*a*) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(*b*) In the case of a request pertaining to paragraph 1 (*b*) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;

(*c*) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. States Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

Article 14

DISPOSAL OF CONFISCATED PROCEEDS OF CRIME OR PROPERTY

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

3. When acting on the request made by another State Party in accordance with articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:

(*a*) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article 30, paragraph 2 (*c*), of this Convention and to intergovernmental bodies specializing in the fight against organized crime;

(*b*) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

Article 15

JURISDICTION

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 5, 6, 8 and 23 of this Convention when:

(*a*) The offence is committed in the territory of that State Party; or

(*b*) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(*a*) The offence is committed against a national of that State Party;

(*b*) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(*c*) The offence is:

(i) One of those established in accordance with article 5, paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;

(ii) One of those established in accordance with article 6, paragraph 1 (*b*) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 6, paragraph 1 (*a*) (i) or (ii) or (*b*) (i), of this Convention within its territory.

3. For the purposes of article 16, paragraph 10, of this Convention, each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 16

EXTRADITION

1. This article shall apply to the offences covered by this Convention or in cases where an offence referred to in article 3, paragraph 1 (*a*) or (*b*), involves an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.

3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

5. States Parties that make extradition conditional on the existence of a treaty shall:

(*a*) At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the

United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(*b*) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

8. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.

12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.

13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 17

TRANSFER OF SENTENCED PERSONS

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there.

Article 18

MUTUAL LEGAL ASSISTANCE

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in article 3 and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in article 3, paragraph 1 (*a*) or (*b*), is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 10 of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(*a*) Taking evidence or statements from persons;

(*b*) Effecting service of judicial documents;

(*c*) Executing searches and seizures, and freezing;

(*d*) Examining objects and sites;

(*e*) Providing information, evidentiary items and expert evaluations;

(*f*) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(*g*) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(*h*) Facilitating the voluntary appearance of persons in the requesting State Party;

(*i*) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(*a*) The person freely gives his or her informed consent;

(*b*) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(*a*) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(*b*) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(*c*) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(*d*) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

(*a*) The identity of the authority making the request;

(*b*) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(*c*) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(*d*) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(*e*) Where possible, the identity, location and nationality of any person concerned; and

(*f*) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

(*a*) If the request is not made in conformity with the provisions of this article;

(*b*) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

(*c*) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar

offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(*d*) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

(*a*) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(*b*) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government

records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 19

JOINT INVESTIGATIONS

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 20

SPECIAL INVESTIGATIVE TECHNIQUES

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

Article 21

TRANSFER OF CRIMINAL PROCEEDINGS

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases

where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Article 22

ESTABLISHMENT OF CRIMINAL RECORD

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention.

Article 23

CRIMINALIZATION OF OBSTRUCTION OF JUSTICE

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(*a*) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;

(*b*) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

Article 24

PROTECTION OF WITNESSES

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(*a*) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(*b*) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

Article 25

ASSISTANCE TO AND PROTECTION OF VICTIMS

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.

2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Article 26

MEASURES TO ENHANCE COOPERATION WITH LAW ENFORCEMENT AUTHORITIES

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in organized criminal groups:

(*a*) To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:

(i) The identity, nature, composition, structure, location or activities of organized criminal groups;

(ii) Links, including international links, with other organized criminal groups;

(iii) Offences that organized criminal groups have committed or may commit;

(*b*) To provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

4. Protection of such persons shall be as provided for in article 24 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

Article 27

LAW ENFORCEMENT COOPERATION

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:

(*a*) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(*b*) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(*c*) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(*d*) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(*e*) To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities;

(*f*) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to transnational organized crime committed through the use of modern technology.

Article 28

COLLECTION, EXCHANGE AND ANALYSIS OF INFORMATION ON THE NATURE OF ORGANIZED CRIME

1. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved.

2. States Parties shall consider developing and sharing analytical expertise concerning organized criminal activities with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

3. Each State Party shall consider monitoring its policies and actual measures to combat organized crime and making assessments of their effectiveness and efficiency.

Article 29

TRAINING AND TECHNICAL ASSISTANCE

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

(*a*) Methods used in the prevention, detection and control of the offences covered by this Convention;

(*b*) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

(*c*) Monitoring of the movement of contraband;

(*d*) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;

(*e*) Collection of evidence;

(*f*) Control techniques in free trade zones and free ports;

(*g*) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;

(*h*) Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and

(*i*) Methods used in the protection of victims and witnesses.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use

regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

Article 30

OTHER MEASURES: IMPLEMENTATION OF THE CONVENTION THROUGH ECONOMIC DEVELOPMENT AND TECHNICAL ASSISTANCE

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of organized crime on society in general, in particular on sustainable development.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(*a*) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat transnational organized crime;

(*b*) To enhance financial and material assistance to support the efforts of developing countries to fight transnational organized crime effectively and to help them implement this Convention successfully;

(*c*) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to the aforementioned account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

(*d*) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of transnational organized crime.

Article 31

PREVENTION

1. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of transnational organized crime.

2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for organized criminal groups to participate in lawful markets with proceeds of crime, through appropriate legislative, administrative or other measures. These measures should focus on:

(*a*) The strengthening of cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry;

(*b*) The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;

(*c*) The prevention of the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;

(*d*) The prevention of the misuse of legal persons by organized criminal groups; such measures could include:

(i) The establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;

(ii) The introduction of the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction;

(iii) The establishment of national records of persons disqualified from acting as directors of legal persons; and

(iv) The exchange of information contained in the records referred to in subparagraphs (*d*) (i) and (iii) of this paragraph with the competent authorities of other States Parties.

3. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences covered by this Convention.

4. States Parties shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to misuse by organized criminal groups.

5. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by transnational organized crime. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.

6. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing measures to prevent transnational organized crime.

7. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. This includes participation in international projects aimed at the prevention of transnational organized crime, for example by alleviating the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime.

Article 32

CONFERENCE OF THE PARTIES TO THE CONVENTION

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of this Convention.

2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).

3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:

(*a*) Facilitating activities by States Parties under articles 29, 30 and 31 of this Convention, including by encouraging the mobilization of voluntary contributions;

(*b*) Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;

(*c*) Cooperating with relevant international and regional organizations and nongovernmental organizations;

(*d*) Reviewing periodically the implementation of this Convention;

(*e*) Making recommendations to improve this Convention and its implementation.

4. For the purpose of paragraphs 3 (*d*) and (*e*) of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.

5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

Article 33

SECRETARIAT

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.

2. The Secretariat shall:

(*a*) Assist the Conference of the Parties in carrying out the activities set forth in article 32 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;

(*b*) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article 32, paragraph 5, of this Convention; and

(*c*) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

Article 34

IMPLEMENTATION OF THE CONVENTION

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.

2. The offences established in accordance with articles 5, 6, 8 and 23 of this Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of this Convention, except to the extent that article 5 of this Convention would require the involvement of an organized criminal group.

3. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organized crime.

Article 35

SETTLEMENT OF DISPUTES

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 36

SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. This Convention shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 37

RELATION WITH PROTOCOLS

1. This Convention may be supplemented by one or more protocols.

2. In order to become a Party to a protocol, a State or a regional economic integration organization must also be a Party to this Convention.

3. A State Party to this Convention is not bound by a protocol unless it becomes a Party to the protocol in accordance with the provisions thereof.

4. Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.

Article 38

ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the fortieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

Article 39

AMENDMENT

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment

to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 40

DENUNCIATION

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

3. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto.

Article 41

DEPOSITARY AND LANGUAGES

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. 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 plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

6. PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME.[12] DONE AT NEW YORK ON 15 NOVEMBER 2000[13]

PREAMBLE

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat title exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. GENERAL PROVISIONS

Article 1

RELATION WITH THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

STATEMENT OF PURPOSE

The purposes of this Protocol are:

(*a*) To prevent and combat trafficking in persons, paying particular attention to women and children;

(*b*) To protect and assist the victims of such trafficking, with full respect for their human rights; and

(*c*) To promote cooperation among States Parties in order to meet those objectives.

Article 3

USE OF TERMS

For the purposes of this Protocol:

(*a*) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(*b*) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (*a*) of this article shall be irrelevant where any of the means set forth in subparagraph (*a*) have been used;

(*c*) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (*a*) of this article;

(*d*) "Child" shall mean any person under eighteen years of age.

Article 4

SCOPE OF APPLICATION

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5

CRIMINALIZATION

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(*a*) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(*b*) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(*c*) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. PROTECTION OF VICTIMS OF TRAFFICKING IN PERSONS

Article 6

ASSISTANCE TO AND PROTECTION OF VICTIMS OF TRAFFICKING IN PERSONS

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(*a*) Information on relevant court and administrative proceedings;

(*b*) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(*a*) Appropriate housing;

(*b*) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(*c*) Medical, psychological and material assistance; and

(*d*) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

STATUS OF VICTIMS OF TRAFFICKING IN PERSONS IN RECEIVING STATES

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that

permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8

REPATRIATION OF VICTIMS OF TRAFFICKING IN PERSONS

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. PREVENTION, COOPERATION AND OTHER MEASURES

Article 9

PREVENTION OF TRAFFICKING IN PERSONS

1. States Parties shall establish comprehensive policies, programmes and other measures:

(*a*) To prevent and combat trafficking in persons; and

(*b*) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10

INFORMATION EXCHANGE AND TRAINING

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(*a*) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(*b*) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(*c*) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

BORDER MEASURES

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(*a*) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(*b*) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. FINAL PROVISIONS

Article 14

Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15

SETTLEMENT OF DISPUTES

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16

SIGNATURE, RATIFICATION, ACCEPTANCE,
APPROVAL AND ACCESSION

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters

governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17

ENTRY INTO FORCE

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18

AMENDMENT

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19

DENUNCIATION

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20

DEPOSITARY AND LANGUAGES

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, 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 plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

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7. PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME.[14] DONE AT NEW YORK ON 15 NOVEMBER 2000[15]

PREAMBLE

The States Parties to this Protocol,

Declaring that effective action to prevent and combat the smuggling of migrants by land, sea and air requires a comprehensive international approach, including cooperation, the exchange of information and other appropriate measures, including socio-economic measures, at the national, regional and international levels,

Recalling General Assembly resolution 54/212 of 22 December 1999, in which the Assembly urged Member States and the United Nations system to strengthen international cooperation in the area of international migration and development in order to address the root causes of migration, especially those related to poverty, and to maximize the benefits of international migration to those concerned, and encouraged, where relevant, interregional, regional and subregional mechanisms to continue to address the question of migration and development,

Convinced of the need to provide migrants with humane treatment and full protection of their rights,

Taking into account the fact that, despite work undertaken in other international forums, there is no universal instrument that addresses all aspects of smuggling of migrants and other related issues,

Concerned at the significant increase in the activities of organized criminal groups in smuggling of migrants and other related criminal activities set forth in this Protocol, which bring great harm to the States concerned,

Also concerned that the smuggling of migrants can endanger the lives or security of the migrants involved,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing illegal trafficking in and transporting of migrants, including by sea,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument against the smuggling of migrants by land, sea and air will be useful in preventing and combating that crime,

Have agreed as follows:

I. GENERAL PROVISIONS

Article 1

RELATION WITH THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 6 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

STATEMENT OF PURPOSE

The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants.

Article 3

USE OF TERMS

For the purposes of this Protocol:

(*a*) "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;

(*b*) "Illegal entry" shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;

(*c*) "Fraudulent travel or identity document" shall mean any travel or identity document:

(i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or

(ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or

(iii) That is being used by a person other than the rightful holder;

(*d*) "Vessel" shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.

Article 4

SCOPE OF APPLICATION

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 6 of this Protocol, where the offences are transnational in nature and involve an organized criminal group, as well as to the protection of the rights of persons who have been the object of such offences.

Article 5

CRIMINAL LIABILITY OF MIGRANTS

Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.

Article 6

CRIMINALIZATION

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:

(*a*) The smuggling of migrants;

(*b*) When committed for the purpose of enabling the smuggling of migrants:

(i) Producing a fraudulent travel or identity document;

(ii) Procuring, providing or possessing such a document;

(*c*) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (*b*) of this paragraph or any other illegal means.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(*a*) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(*b*) Participating as an accomplice in an offence established in accordance with paragraph 1 (*a*), (*b*) (i) or (*c*) of this article and, subject to the basic concepts of

its legal system, participating as an accomplice in an offence established in accordance with paragraph 1 (*b*) (ii) of this article;

(*c*) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

3. Each State Party shall adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established in accordance with paragraph 1 (*a*), (*b*) (i) and (*c*) of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 (*b*) and (*c*) of this article, circumstances:

(*a*) That endanger, or are likely to endanger, the lives or safety of the migrants concerned; or

(*b*) That entail inhuman or degrading treatment, including for exploitation, of such migrants.

4. Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law.

II. SMUGGLING OF MIGRANTS BY SEA

Article 7

COOPERATION

States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.

Article 8

MEASURES AGAINST THE SMUGGLING OF MIGRANTS BY SEA

1. A State Party that has reasonable grounds to suspect that a vessel that is flying its flag or claiming its registry, that is without nationality or that, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned is engaged in the smuggling of migrants by sea may request the assistance of other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance to the extent possible within their means.

2. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying the marks of registry of another State Party is engaged in the smuggling of migrants by sea may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel. The flag State may authorize the requesting State, inter alia:

(*a*) To board the vessel;

(*b*) To search the vessel; and

(*c*) If evidence is found that the vessel is engaged in the smuggling of migrants by sea, to take appropriate measures with respect to the vessel and persons and cargo on board, as authorized by the flag State.

3. A State Party that has taken any measure in accordance with paragraph 2 of this article shall promptly inform the flag State concerned of the results of that measure.

4. A State Party shall respond expeditiously to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorization made in accordance with paragraph 2 of this article.

5. A flag State may, consistent with article 7 of this Protocol, subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken. A State Party shall take no additional measures without the express authorization of the flag State, except those necessary to relieve imminent danger to the lives of persons or those which derive from relevant bilateral or multilateral agreements.

6. Each State Party shall designate an authority or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of registry or of the right of a vessel to fly its flag and for authorization to take appropriate measures. Such designation shall be notified through the Secretary-General to all other States Parties within one month of the designation.

7. A State Party that has reasonable grounds to suspect that a vessel is engaged in the smuggling of migrants by sea and is without nationality or may be assimilated to a vessel without nationality may board and search the vessel. If evidence confirming the suspicion is found, that State Party shall take appropriate measures in accordance with relevant domestic and international law.

Article 9

SAFEGUARD CLAUSES

1. Where a State Party takes measures against a vessel in accordance with article 8 of this Protocol, it shall:

(*a*) Ensure the safety and humane treatment of the persons on board;

(*b*) Take due account of the need not to endanger the security of the vessel or its cargo;

(*c*) Take due account of the need not to prejudice the commercial or legal interests of the flag State or any other interested State;

(*d*) Ensure, within available means, that any measure taken with regard to the vessel is environmentally sound.

2. Where the grounds for measures taken pursuant to article 8 of this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.

3. Any measure taken, adopted or implemented in accordance with this chapter shall take due account of the need not to interfere with or to affect:

(*a*) The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or

(*b*) The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel.

4. Any measure taken at sea pursuant to this chapter shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

III. PREVENTION, COOPERATION AND OTHER MEASURES

Article 10

INFORMATION

1. Without prejudice to articles 27 and 28 of the Convention, States Parties, in particular those with common borders or located on routes along which migrants are smuggled, shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:

(*a*) Embarkation and destination points, as well as routes, carriers and means of transportation, known to be or suspected of being used by an organized criminal group engaged in conduct set forth in article 6 of this Protocol;

(*b*) The identity and methods of organizations or organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol;

(*c*) The authenticity and proper form of travel documents issued by a State Party and the theft or related misuse of blank travel or identity documents;

(*d*) Means and methods of concealment and transportation of persons, the unlawful alteration, reproduction or acquisition or other misuse of travel or identity documents used in conduct set forth in article 6 of this Protocol and ways of detecting them;

(*e*) Legislative experiences and practices and measures to prevent and combat the conduct set forth in article 6 of this Protocol; and

(*f*) Scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the conduct set forth in article 6 of this Protocol and to prosecute those involved.

2. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

BORDER MEASURES

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of the offence established in accordance with article 6, paragraph 1 (*a*), of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means

of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

SECURITY AND CONTROL OF DOCUMENTS

Each State Party shall take such measures as may be necessary, within available means:

(*a*) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(*b*) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

LEGITIMACY AND VALIDITY OF DOCUMENTS

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for purposes of conduct set forth in article 6 of this Protocol.

Article 14

TRAINING AND TECHNICAL COOPERATION

1. States Parties shall provide or strengthen specialized training for immigration and other relevant officials in preventing the conduct set forth in article 6 of this Protocol and in the humane treatment of migrants who have been the object of such conduct, while respecting their rights as set forth in this Protocol.

2. States Parties shall cooperate with each other and with competent international organizations, non-governmental organizations, other relevant organizations and other elements of civil society as appropriate to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the conduct set forth in article 6 of this Protocol and to protect the rights of migrants who have been the object of such conduct. Such training shall include:

(*a*) Improving the security and quality of travel documents;

(*b*) Recognizing and detecting fraudulent travel or identity documents;

(*c*) Gathering criminal intelligence, relating in particular to the identification of organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol, the methods used to transport smuggled migrants, the misuse of travel or identity documents for purposes of conduct set forth in article 6 and the means of concealment used in the smuggling of migrants;

(*d*) Improving procedures for detecting smuggled persons at conventional and non-conventional points of entry and exit; and

(*e*) The humane treatment of migrants and the protection of their rights as set forth in this Protocol.

3. States Parties with relevant expertise shall consider providing technical assistance to States that are frequently countries of origin or transit for persons who have been the object of conduct set forth in article 6 of this Protocol. States Parties shall make every effort to provide the necessary resources, such as vehicles, computer systems and document readers, to combat the conduct set forth in article 6.

Article 15

Other prevention measures

1. Each State Party shall take measures to ensure that it provides or strengthens information programmes to increase public awareness of the fact that the conduct set forth in article 6 of this Protocol is a criminal activity frequently perpetrated by organized criminal groups for profit and that it poses serious risks to the migrants concerned.

2. In accordance with article 31 of the Convention, States Parties shall cooperate in the field of public information for the purpose of preventing potential migrants from falling victim to organized criminal groups.

3. Each State Party shall promote or strengthen, as appropriate, development programmes and cooperation at the national, regional and international levels, taking into account the socio-economic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the smuggling of migrants, such as poverty and underdevelopment.

Article 16

Protection and assistance measures

1. In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

2. Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol.

3. Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol.

4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children.

5. In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations, where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers.

Article 17

AGREEMENTS AND ARRANGEMENTS

States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements or understandings aimed at:

(*a*) Establishing the most appropriate and effective measures to prevent and combat the conduct set forth in article 6 of this Protocol; or

(*b*) Enhancing the provisions of this Protocol among themselves.

Article 18

RETURN OF SMUGGLED MIGRANTS

1. Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who is its national or who has the right of permanent residence in its territory at the time of return.

2. Each State Party shall consider the possibility of facilitating and accepting the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who had the right of permanent residence in its territory at the time of entry into the receiving State in accordance with its domestic law.

3. At the request of the receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who has been the object of conduct set forth in article 6 of this Protocol is its national or has the right of permanent residence in its territory.

4. In order to facilitate the return of a person who has been the object of conduct set forth in article 6 of this Protocol and is without proper documentation, the State Party of which that person is a national or in which he or she has the right of permanent residence shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. Each State Party involved with the return of a person who has been the object of conduct set forth in article 6 of this Protocol shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person.

6. States Parties may cooperate with relevant international organizations in the implementation of this article.

7. This article shall be without prejudice to any right afforded to persons who have been the object of conduct set forth in article 6 of this Protocol by any domestic law of the receiving State Party.

8. This article shall not affect the obligations entered into under any other applicable treaty, bilateral or multilateral, or any other applicable operational agreement or arrangement that governs, in whole or in part, the return of persons who have been the object of conduct set forth in article 6 of this Protocol.

IV. FINAL PROVISIONS

Article 19

SAVING CLAUSE

1. Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are the object of conduct set forth in article 6 of this Protocol. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 20

SETTLEMENT OF DISPUTES

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 21

SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its

instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 22

ENTRY INTO FORCE

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 23

AMENDMENT

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 24

DENUNCIATION

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 25

DEPOSITARY AND LANGUAGES

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, 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 plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

NOTES

[1] See UNEP/CBD/ExCOP/1/3 and Corr.1, part two, annex.
[2] Not yet in force.
[3] General Assembly resolution 54/263, annex I.
[4] Came into force on 12 February 2002.
[5] General Assembly resolution 48/263, annex II.
[6] Came into force on 18 January 2002, in accordance with article 14 (1).
[7] ECE/TRANS/ADN/CONF/2000/CRP.10.
[8] Not yet in force.
[9] The Regulations are not reproduced here due to their extensive volume.
[10] General Assembly resolution 55/25, annex I.
[11] Not yet in force.
[12] General Assembly resolution 55/25, annex II.
[13] Not yet in force.
[14] General Assembly resolution 55/25, annex III.
[15] Not yet in force.

Chapter V

DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS[1]

A. Decisions of the United Nations Administrative Tribunal[2]

1. JUDGEMENT NO. 951 (28 JULY 2000): AL-KHATIB V. THE COMMISSIONER-GENERAL OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST[3]

Termination of services in the interest of the Agency—"Interest of the Agency" should not be narrowly construed—Staff Regulations and Rules must be invoked regarding allegation of misconduct—Question of harm against the Agency's good image—Question of loss of confidence in staff member

The Applicant entered the service of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) on a temporary indefinite appointment on 2 January 1991, as an Area staff member in the capacity of a Sanitation Labourer. Effective 1 January 1993, he was transferred to the post of Doorkeeper/Cleaner at the North Amman area office.

In October 1996, the Applicant was arrested on a rape charge, and on 5 April 1997, the Great Criminal Court of Jordan found the Applicant innocent. However, on 3 July 1997, the Officer-in-Charge of UNRWA Operations in Jordan wrote to the Applicant and informed him of the decision to terminate his services in the interest of the Agency under Area staff regulation 9.1 and staff rule 109.1, effective that date. The Applicant appealed.

In consideration of the case, the Tribunal noted that while the Respondent enjoyed a wide discretion as to what constituted "the interest of the Agency", it was not a discretion that was unfettered; it was a discretion which must be exercised rationally. Such a decision could not be made capriciously or arbitrarily, and furthermore, the reasons for such a decision should be apparent so that they might be reviewed by a Joint Appeals Board or another body or by the Tribunal.

The Tribunal further considered that the term "in the interest of the Agency", should not be construed so as to embrace only the concept of the convenience of the Agency. There were other competing interests at stake, and it was in the interest of the Agency to be seen to act fairly, and would not be in the interest of the Agency to make decisions that were patently unjust and to act thereon.

In the present case, the Tribunal noted that both FAO, which had also been involved in the investigation of the incident, and the Acting Director of UNRWA Operations in Jordan had been unwilling to accept the acquittal by the Great Criminal Court at face value, and construed the "*atwa*" payment to the accusing woman's family by the Applicant's family as a sign of guilt. Moreover, the Acting Director

had expressed the view that it would have been impossible also for cultural reasons to reinstate the Applicant at the same area office because the staff, particularly the females, would neither understand nor accept his return. In addition, in his view, there was credible information that the Applicant had "not observed due restraint vis-à-vis female visitors to the area office".

The Tribunal recalled that when an allegation or suspicion of misconduct was such so as to result in termination of services, the United Nations Staff Regulations and Rules pertaining to allegations of misconduct must be invoked, and a failure to do so would likely constitute an abuse of power or an abuse of procedure (cf. Judgement No. 877, *Abdulhadi* (1998)). The Tribunal, while satisfied that the Respondent was not bound by the acquittal of the Applicant on the rape charge, was equally satisfied that the Respondent was not entitled, without proper investigation or inquiry and without affording the Applicant a fair hearing, either to reach his own, different verdict in relation to that charge or to terminate the Applicant's services in the interest of the Agency.

The Tribunal also considered the Respondent's contention that the whole affair had harmed the Agency's good image in Jordan, which was tantamount to saying that when an allegation had falsely been made against an innocent person and that false allegation had harmed the Agency's good image, it could nonetheless justify termination of the services of the innocent person. In the opinion of the Tribunal, such a concept would be a defiance of legal principle, justice and common sense.

The Tribunal was furthermore not satisfied that a loss of confidence in the Applicant was sufficient to justify the termination of his services "in the interest of the Agency" unless the facts giving rise to such a loss of confidence were identified.

For the foregoing reasons, the Tribunal ordered the rescission of the decision to terminate the Applicant's appointment, and that he be reinstated in a position with the grade and the step that he held when he was separated, with full payment of salary and emoluments from the date of his separation from service. Should the Respondent, within 30 days of the notification of the present judgement, decide, in the interest of the Agency, that the Applicant should be compensated without further action being taken in his case, the Tribunal fixed the compensation to be paid the Applicant at two years of his net base salary.

2. Judgement No. 954 (28 July 2000): Saaf v. the Commissioner-Genral of the United Nations Relief and Works Agency for Palestine Refugees in the Near East[4]

Complaint against transfer and separation from service because of redundancy—Discretion to transfer must not be abused—Question of disguised disciplinary sanction—Issue of abolition of post being fictitious—Issue of adequate efforts made to reassign staff member—Question of procedural irregularity giving rise to moral damages

The Tribunal dealt with two applications in one judgement. The Applicant first challenged the decision to transfer him with salary protection from the post of Director of UNRWA in Jordan, which was graded D-1, to the P-5 post of Chief of the Programme Planning and Evaluation Office in Jordan.

The record showed the satisfactory nature of the Applicant's performance until the latter half of 1995, when the Jordan office of UNRWA was reorganized. On 4 September 1995, the Acting Deputy Commissioner-General wrote to the Commissioner-General, calling his attention to a "disturbing situation concerning relations between headquarters Amman and the Jordan field office, in particular vis-à-vis the Field Director", and informing him of a "series of incidents" that had taken place in which "the instructions were circumvented" and his "prerogatives ignored", creating serious problems for the Agency. On 14 September 1995, the Applicant wrote to the Commissioner-General, disagreeing with the Acting Deputy Commissioner-General's concerns. He also wrote the Commissioner-General, requesting that he be considered for the post of Field Office Director of the Syrian Arab Republic.

In a letter dated 20 October 1995 to the Applicant, the Commissioner-General expressed dissatisfaction with the Applicant's explanations regarding the contents of the 4 September letter and informed him of his decision to transfer him to the P-5 post in Jordan. The Applicant contended that the transfer was an abuse of discretion and was a disguised disciplinary sanction.

In consideration of the case, the Tribunal recalled that the established law was that, while the Administration had a discretion to transfer (cf. Judgements No. 167, *Fernandez Rodriguez* (1973), and No. 189, *Ho* (1974)), the discretion must not be abused. The discretion to transfer might have been abused, inter alia, if an appropriate procedure was not followed, or the decision had been implemented in an arbitrary manner which resulted, for example, in injury to the good name and dignity of the staff member, or if undue harm and injury was caused to the staff member. In the present case, as the Tribunal observed, the Applicant had been given ample notice of dissatisfaction with his recent performance and he had had an opportunity to comment. The decision to transfer had been taken by the Administration with full knowledge of the Applicant's views on the standard of his performance and the position to which he wished to be transferred. Beyond that the staff member had no right as such to have his interests honoured (cf. Judgement No. 241, *Furst* (1979)). Furthermore, the Tribunal noted that no convincing evidence had been adduced that the Applicant had been treated in a manner that was insulting or damaging to his reputation or that undue harm and injury had been caused him.

The Tribunal held, therefore, that the Administration had not abused its discretion by any procedurally irregular conduct or arbitrary conduct. Furthermore, in the view of the Tribunal, the Administration had not committed a substantive error in coming to the conclusion that a transfer was necessary, principally because the Applicant's performance had not been up to standard.

Regarding the second issue raised by the Applicant concerning the transfer, the Tribunal found no evidence for concluding that there had been a *detournement deprocédure* because the transfer was a disguised disciplinary sanction. The Tribunal had established in a very early case that "although the Administration may not substitute one ground for another as a basis for administrative action, where there are several grounds available to it, it is not obligatory on its part to rely on all such grounds; it may choose to rely on one or more of them." (Cf. Judgements No. 157, *Nelson* (1972), and No. 386, *Cooper* (1987).) However, in the opinion of the Tribunal, there was little evidence that this was the situation in the present case. Indeed, there did not seem to be any evidence of misconduct deserving disciplinary action; rather, the issue was the Applicant's unsatisfactory performance.

The Applicant also raised several issues concerning his termination on the ground of redundancy. The Applicant had been informed on 30 July 1997 that the post he was occupying would be "disestablished as of 31 August 1997", and that since the Commissioner-General was not willing to give him another posting as Field Director and since no other suitable post had been identified for him, he would become redundant on 31 August 1997. Thereafter, the Applicant would be placed on special leave with full pay until 31 October 1997, when he would be separated from the Agency.

As the Tribunal noted, the decision to abolish a post was discretionary and subject to review like any other discretionary power. In the instant case, the question was whether there was a real reason to abolish the Applicant's post, or it was just "to get rid of the Applicant". The record indicated that the Director of Administration and Human Resources was responsible in June 1997 for formulating a plan of action to reduce international staff in order to deal with the Agency's precarious financial position, and as a consequence had decided to abolish the Applicant's post, effective 31 August 1997. The record further indicated that there was no evidence that the abolishment had been improperly motivated, or that it could be described as fictitious. Moreover, in the view of the Tribunal, the fact that the Agency had ultimately decided to pay the Applicant in December if he became redundant rather than in August was not indicative of any wrongdoing, as the decision to abolish the post in August was based on good reasons.

Furthermore, the Tribunal observed that it was established jurisprudence of the Tribunal that upon a post being declared redundant or abolished, the Organization must make every good-faith effort to find the incumbent alternative employment (cf. Judgements No. 85, *Carson* (1962); No. 447, *Abbas* (1989); No. 679, *Fagan* (1994); and No. 910, *Soares* (1998)). In that regard, as the Tribunal noted, the Respondent had made considerable efforts to find the Applicant a suitable post, and there was no evidence in the record that such was not the case. In fact, the Tribunal further noted that when the Applicant's post had been abolished in 1996, the Agency had found an alternate post for him. Moreover, as the Respondent pointed out, all posts of Director in UNRWA carried major responsibilities. Thus, a Director must have the full confidence of the Commissioner-General, and since the Applicant had a recent record of poor performance at the Director level, the Commissioner-General did not wish to consider the Applicant for a vacant post at that level.

The Applicant also questioned the procedure followed in abolishing his post. As the Tribunal recalled, it was a recognized general principle of law that procedural irregularity in the abolition of post was impermissible and could result in a claim of moral injury. The Tribunal, in the present case, was satisfied that there had been neither a fictitious abolition of post nor a failure to make good-faith efforts to find the Applicant an alternative post. Hence, the claim that there was a moral injury could not stand unless there was some other respect in which the Respondent had abused its discretion to abolish the Applicant's post, and the Applicant had not adduced any evidence to that effect.

For the foregoing reasons, both applications were rejected in their entirety.

3. Judgement No. 960 (2 August 2000): Qasem v. the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East[5]

Termination of services for misconduct—Question of Board of Inquiry being properly constituted—Termination in the interest of the Agency/Organization—Circumstantial evidence—Dissenting opinion regarding exceptional circumstances warranting additional compensation

The Applicant entered the service of UNRWA at the Ramallah Men's Training Centre, West Bank, on 15 December 1964 as an Area staff member in the capacity of Clerk/Typist at grade 5 level, on a temporary indefinite appointment, and was given a probationary appointment to the post of Clerk B, effective 1 January 1966. Effective 1 April 1966, he received a promotion to grade 6, and on 10 December 1993, he was promoted to the post of Deputy Field Supply and Transport Officer at grade 16.

On 16 April 1997, the Acting Director of UNRWA Operations, West Bank, convened a Board of Inquiry, to investigate the facts surrounding the interference with a fresh food tender, conducted in April 1997, by an UNRWA Teacher, who appeared to have had confidential information about the value of the lowest tender submitted by one of the bidders. The Board was requested to determine how the UNRWA Teacher had obtained his information and the possible involvement of the UNRWA supply staff in the matter. The Board concluded that several individuals had received confidential information concerning the identity of the lowest bidder, which was used to manipulate the process, and that that information must have been provided by the Applicant. Only three staff could have leaked the information—the Applicant, the Supply Control Officer and the Field Supply and Transport Officer—and the behaviour of the latter two was found not to be improper by the Board. This left the Applicant, who was found to have had improper contact with one of the individuals in receipt of the confidential information, and his demeanour was judged suspect when he gave evidence in the case.

On 23 June 1997, the Acting Director of UNRWA Operations communicated the Board's conclusions to the Applicant; the Acting Director advised him that he had accepted the conclusions and was terminating the Applicant's services for misconduct under staff regulation 10.3 and staff rule 110.1, with effect from 2 May 1997, the day he had been suspended from duty. Subsequently, however, the Commissioner-General changed the ground to termination in the interest of the Agency, in the light of the Applicant's length of service with the Agency and his relatively clean record prior to the matter. The Applicant appealed.

In response to the Applicant's complaint against the composition of the Board of Inquiry, the Tribunal noted that an improper composition of a body was in principle a procedural irregularity which would taint the exercise of a discretion (Judgement No. 172, *Quemerais* (1973)). In the instant case, the Acting Director of UNRWA Operations had initially intended that the Board should be composed of three persons and had nominated three persons, but because of the unavailability of the Assistant Public Information Officer it had carried out its investigations and issued its report as a two-person Board of Inquiry: the FAO officer, who was at the P-4 level, had been appointed and designated as the chair, and the Income Generation Officer, at the P-3 level, had been designated as secretary. The Tribunal considered that the two did not work in the same office; one was not subordinate to the other.

With respect to the Applicant's claim that a three-member Board of Inquiry was essential in examining the complex findings of fact, the Tribunal disagreed. The Tribunal was satisfied that the Legal Adviser's memorandum of 17 March 1997, while expressly stating that the Board of Inquiry should be composed of three persons "as a general rule", held that there was no legal requirement as to the number of persons to be appointed to a Board of Inquiry. What was paramount, in the view of the Tribunal, was that such investigations should be carried out fairly and that no actual or perceived injustice or denial of fair procedures should be apparent.

The Tribunal recalled that the fact that the Applicant's termination of service was on the record ultimately as "in the interest of the Agency" did not alter the fact that the dismissal was for misconduct and that the procedures followed had to comply with at least the general principles of law relating to disciplinary procedures (see Judgement No. 939, *Shahrour* (1999)) for termination in the interest of the Organization.

The Tribunal further recalled that it had been accepted by the Respondent that the case against the Applicant consisted entirely of circumstantial evidence. There was no proof that the Applicant had leaked the confidential information, nor had he made any incriminating admission. As the Tribunal noted, the finding against the Applicant was an inference drawn by the Board of Inquiry from what they found to have been "suspicious circumstances" and "a process of elimination". In that regard, the Tribunal observed that it was held in Judgement No. 934, *Abboud* et al. (1999), that "in order to find wrongdoing on the basis of circumstantial evidence it was necessary to show that the conduct established was not reasonably consistent either with an innocent explanation or with one at variance with the misconduct charged". After a review of the matter, the Tribunal formed the opinion that the conclusions of the Board of Inquiry were unsatisfactory. The Tribunal did not consider that the evidence the Applicant was responsible for the leaks in question was conclusive. While there was undoubtedly evidence which gave rise to seemingly suspicious behaviour on the part of the Applicant, in the opinion of the Tribunal, the Board's analysis of the evidence was flawed and, therefore, its findings could not be relied upon as justification for a decision to terminate the Applicant's services, either for misconduct or in the interest of the Agency.

In view of the foregoing, the Tribunal ordered the rescission of the decision to terminate the Applicant's appointment, and that he be reinstated in a position with the same grade with full payment of salary and emoluments. Should the Respondent, within 30 days of the notification of the present judgement, decide, in the interest of the Agency, that the Applicant should be compensated without further action being taken in his case, the Tribunal fixed the compensation to be paid to the Applicant at two years of his net base salary.

A dissenting opinion was expressed, disagreeing with the award of damages. In the opinion of the dissenting member of the Tribunal, there were exceptional circumstances in the case that warranted greater compensation than the two years' salary that was awarded.

4. Judgement No. 974 (17 November 2000): Robbins v. the Secretary-General of the United Nations[6]

Insufficient compensation award—No right to a promotion—Question of compensation

The Applicant entered the service of the Organization on 22 May 1977, with a probationary appointment as Associate Translator at the P-2 level in the Department of Conference Services, eventually being granted a permanent appointment, and being promoted to the P-4 level in the Centre for Human Rights in Geneva, as an Administrative Officer. On 2 June 1992, she was reassigned to the position of Editor to the Official Records Editing Section, Language Services, Conference Service Division, United Nations Office at Geneva, and, on 1 January 1994, she assumed the post of Chief of the Language Services, receiving a special post allowance to the P-5 level, effective 1 April 1994.

However, she was not successful in being promoted to the P-5 level and was subsequently terminated under the 1996 Early Separation Programme, officially separating from the Organization on 22 May 1997.

The Applicant had appealed her non-promotion to the post of Chief of the Official Records Editing Section at the P-5 level, and the Joint Appeals Board had concluded that her candidature for promotion had been denied full and fair consideration. The Panel had further recommended that the Applicant should be compensated US$ 55,000 for damages she had suffered, basing that amount on what her pension would have amounted to had she been promoted on 1 April 1994, the date on which she had been granted a special post allowance to P-5, and also taking into account a basic hypothesis followed by the United Nations Joint Staff Pension Fund, that the life expectancy of women was 86 years.

In consideration of the case, the Tribunal noted that the Joint Appeals Board had made its recommendation on an erroneous assumption on which to base the calculation of compensation. As the Tribunal recalled, the Applicant had no right to promotion and, consequently, the issue in the case was whether seven months' salary, the amount decided upon by the Respondent in lieu of the recommended $55,000, was adequate compensation for the Respondent's unfair treatment of her—resulting from irregularities in procedure and undue delay in taking the promotion decision—which constituted an abuse of discretion. The Tribunal recalled the lack of transparency on the part of the Administration, the confusion caused by the absence of clear guidelines and the lack of clarity in the decisions by the Administration, the fact that for about two years a firm decision on promotion had not been taken and communicated to the Applicant before she accepted an agreed separation offer, and the eventual failure to fill the post for which the Applicant had applied, all indicating clearly that she had been treated in a very arbitrary and unfair manner.

In the view of the Tribunal, the seriousness of the wrong and moral injury done the Applicant warranted more than the seven months' compensation paid her by the Respondent. The Tribunal found that compensation of 10 months' salary would be appropriate in the circumstances, and ordered the Respondent to pay the Applicant an additional three months' salary. The Tribunal rejected all other pleas.

5. Judgement No. 981 (21 November 2000): Masri v. the Secretary-General of the United Nations[7]

*Non-renewal of appointment for omitting information on the Personal History form—Staff rule 104.10(*a*) on employment of relatives of staff members—Staff rule 104.12(*b*)(ii) on no expectancy of fixed-term appointment—Non-renewal cannot be based on improper motives—Delay in Respondent's answer to appeal*

The Applicant entered the service of the United Nations Disengagement Observer Force (UNDOF) on 14 December 1992, as a Clerk/Typist at the G-3 level, on a one-month and 18-day short-term appointment. On 1 February 1993, his appointment was converted to a three-month fixed-term appointment under the 100 Series of the Staff Rules. His fixed-term appointment was extended several times until 30 November 1996, when he was separated from service because he had failed to disclose on his employment application that his brother worked for UNDOF.

The Applicant appealed, contending that the Administration had "constructive knowledge" of his brother's employment and that, consequently, staff rule 104.10(*a*) did not apply. The rule provided that, "except where another person equally well qualified cannot be recruited, appointment shall not be granted to a person who bears any of the following relationships to a staff member: father, mother, son, daughter, brother or sister". The Respondent, on his part, argued that the onus of providing complete and accurate information on his Personal History form was on the Applicant and that the Administration's reportedly constructive knowledge of his brother's employment did not detract from his responsibility to provide such information.

In consideration of the case, the Tribunal was of the view that the Applicant's omission when filling out the Personal History form must be considered in conjunction with the acceptance by the Administration of the application. The implication was that the information received was satisfactory to the Administration and that, by its acceptance, it had waived the requirement of including that information. The Applicant, then, might have been justified in his belief that such information as he omitted was not relevant to his being appointed as a staff member. He had not misled the Organization, as he had not denied having a brother who was a staff member.

Furthermore, the Administration had accepted the application and then, after several renewals of the Applicant's appointment, it had found fault with the same application. That was a contradiction, in the view of the Tribunal.

The Tribunal observed that staff rule 104.12(*b*)(ii) invoked by the Respondent provided that fixed-term appointments did not carry any expectancy of renewal or of conversion to any other type of appointment. The discretion of the Secretary-General to renew or not to renew a fixed-term contract was wide, but it had its limits. As the Tribunal pointed out, administrative decisions affecting a staff member must not run counter to certain concepts fundamental to the Organization. They must not be improperly motivated, they must not violate due process and they must not be arbitrary, taken in bad faith or be discriminatory.

In the present case, the Tribunal, citing Judgement No. 440, *Shankar*, found that the Administration had not proceeded in good faith: having considered the Applicant as an employee and periodically renewing his employment for four years and suddenly not renewing his employment constituted bad faith. The improper motivation and the arbitrariness of the Administration were evident from the reasons given to the Applicant for the non-renewal of his contract.

As regards the appeals process, the Tribunal noted that after a year had elapsed without a reply from the Respondent, the Joint Appeals Board (JAB) considered the case without the Respondent's reply and recommended in favour of the Applicant. The Tribunal further noted that the Under-Secretary-General for Management had remanded the appeal to the JAB for re-examination because it felt it was not in anyone's interest to have cases considered on the basis of one-sided accounts. The Tribunal, however, found that that explanation did not excuse the conduct of the Administration for its inordinate delay in responding to the appeal, but that indeed, ironically, the entire situation was the sole creation of the Administration.

In the light of the foregoing, the Tribunal ordered the Respondent to pay the Applicant 18 months' net base salary and rejected all other pleas.

6. Judgement No. 983 (21 November 2000): Idriss v. the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East[8]

Termination for misconduct—Disclosure of witnesses' identities—Question whether the Joint Appeals Board had sufficient information to carry out a proper and independent assessment—Dissenting opinion regarding compensation

The Applicant entered the service of UNRWA on 1 January 1985, as an Area staff member, with the title of Welfare Worker, grade 7, Tyre Office, South Lebanon, on a temporary indefinite appointment. On 1 July 1993, his post was reclassified to Social Worker, grade 9. Since his qualifications and experience did not fully meet the requirements of the reclassified post, he was promoted to grade 8. The Applicant was separated from service, effective 13 May 1997.

On 5 February 1996, the Director of UNRWA Affairs convened a Board of Inquiry and subsequently submitted a report to the Director of UNRWA Affairs. The report included a number of allegations made against the Applicant. The Board found, among other things, that the Applicant had misappropriated Agency funds and intentionally deviated from its Regulations and Rules. The Board reconvened, at the request of the Director, on 17 and 18 March 1997, to "confront accused staff members with the accusations" and to give them an opportunity to respond to the allegations. It submitted a supplementary report on 15 April 1997. In the Applicant's case, nothing new came to light and the conclusions of the original report stood, and the Director informed the Applicant that based on the findings of the Board of Inquiry he had decided to terminate the Applicant's services for misconduct pursuant to Area staff regulation 10.2, effective close of business 12 May 1997. The Applicant appealed.

After consideration of the 11 November 1996 report—an interim report—the Tribunal was fully satisfied that there was ample evidence before the Board of Inquiry to justify its conclusions covering the Applicant. The Tribunal also was satisfied that the Board's conclusion was justified as contained in its supplementary report, in which it had concluded that insofar as the Applicant was concerned no new facts had been adduced to cause it to alter its earlier opinion.

The Applicant contended that he had not been afforded an adequate opportunity to defend against the changes of misconduct before the Board of Inquiry because the nature of the charges was too unspecific and lacking in detail; he had not been provided sufficient information as to the nature of the evidence which had been given against him and the identity of a number of witnesses had been withheld.

And he had only been furnished with extracts, instead of the complete report of the Board of Inquiry. Whereas the Tribunal accepted that an amount of "detail" had been kept from the Applicant in the course of the Board's investigation because of the Administration's concern for the safety of witnesses and because of the unwillingness of such witnesses to have their identities revealed since they feared reprisals, the Tribunal was satisfied that that did not unreasonably deny the Applicant's "due process".

When substantial grounds existed for believing that the disclosure of witnesses' identities would endanger them, the Tribunal found that it was reasonable to protect the anonymity of such witnesses, provided that in so doing, the person accused would still have sufficient information to meaningfully address the allegations made against him. As pointed out by the Tribunal, obviously there were cases in which it was essential for the accused person to know the source of the allegations against him in order for him to challenge the honesty, reputation or reliability of a witness. There were also cases in which a witness must be identified so as to afford "due process" to a person with an alibi or a similar defence. In such cases, the Tribunal was satisfied that the rights of an accused person to a fair hearing were superior to those of a person seeking anonymity. Under those circumstances, the matter should not proceed unless there was disclosure of the identity of the accuser or witness as the case might be.

The Tribunal was satisfied that no such circumstances, as outlined above, were apparent in the present case. The accused had been afforded a proper and reasonable opportunity to deal with the charges of misconduct in the course of the investigation by the Board of Inquiry, notwithstanding that certain of the names of the witnesses were withheld from him and notwithstanding that he was given limited "extracts" from testimony rather than the full unedited records.

Regarding the question whether there had been sufficient material before the Joint Appeals Board to enable it to discharge its duties and obligations in a proper manner, the Tribunal observed that there was nothing in the report of the JAB that demonstrated that it had addressed the issues which arose in the proceedings before it. The Tribunal agreed with the Applicant's contention in so far as there was nothing in the JAB report that suggested the JAB had ever dealt with the real issues. The formulaic and arid language used in the JAB report suggested that it had failed to take cognizance of its obligations to review the matters giving rise to the appeal and to make recommendations in a rational and a transparent way.

The Tribunal concluded that the JAB had not had sufficient information to carry out a proper and independent assessment of the proceedings and findings of the Board of Inquiry. It had had before it only "extracts", rather than the full testimonies, and those by themselves did not contain sufficient information to support all of the Board of Inquiry's findings adverse to the Applicant.

The Tribunal was satisfied that the proceedings before the Board of Inquiry had afforded the Applicant such information as was permissible in the light of concerns expressed for the safety of witnesses and were sufficient to vindicate the Applicant's due process rights, limited as they were by the constraints or needs for protecting the witnesses' safety. The Tribunal was, however, not satisfied that such rights had been adequately vindicated by the Respondent or by the JAB in the course of the JAB proceedings.

Since the Respondent's decision to terminate the Applicant's services for misconduct had been based on the findings of the Board of Inquiry rather than on

the recommendations of the JAB (which in any event had recommended that the Respondent's decision should be upheld), the Tribunal was satisfied that that decision was made validly. Although the Tribunal found that the Applicant had not been afforded due process and fair procedures before the JAB, it considered that the shortcomings in the JAB proceedings had been fully redressed by the Tribunal's reconsideration of the entire proceedings. The Tribunal was therefore satisfied that those shortcomings had not resulted in any loss or damage to the Applicant.

In view of the foregoing, the Tribunal rejected the application in its entirety.

The dissenting member of the Tribunal agreed with the majority, but considered that the Applicant should have been awarded compensation for the violation of his right to have had a meaningful review of his appeal by the JAB. That had been rendered impossible by reason of the Administration's unwillingness to furnish to the JAB such information and documents as were necessary for a meaningful review of his case. The dissenting member would have awarded three months' net base salary.

7. Judgement No. 987 (22 November 2000): Edongo v. the Secretary-General of the United Nations[9]

*Summary dismissal for serious misconduct—Jurisprudence regarding disciplinary decisions—Burden of proof in disciplinary cases—Staff rule 110.2(*a*) and (*b*) and ST/AI/371, article II.4, on suspension from duty*

The Applicant entered the service of UNHCR on 6 November 1978 at the P-2 level, as Associate Programme Officer, eventually being promoted to the P-5 level. Effective 1 July 1993, the Applicant was assigned to Kinshasa, as Regional Representative with a special post allowance to the D-1 level, and on 1 July 1995, was promoted to the D-1 level. Effective 1 July 1997, the Applicant was promoted to the post of Deputy Director of the UNHCR Regional Bureau for Africa, based in Geneva. Headquarters audited the operational activities of the regional office in Kinshasa in August 1997, which culminated in the Johansson report. In October 1997, UNHCR conducted a special review of the Kinshasa regional office that formed the basis of the Galter report, which contained findings of misappropriation of UNHCR funds by the Applicant. Thereafter, the Applicant was placed on suspension with full pay from 27 November 1997 to 27 April 1998 and, subsequently, was summarily dismissed for serious misconduct.

In consideration of the case, the Tribunal noted that it had repeatedly held that the Secretary-General was vested with discretionary authority to make disciplinary decisions, including the determination of what constituted serious misconduct as well as the appropriate disciplinary measures. The Tribunal confirmed that the Applicant's conduct in the present case, specifically the Applicant's charging to the United Nations the expenses for the shipment of certain personal purchases, amounted to serious misconduct and was within the Secretary-General's discretion to discipline. As the Tribunal noted, the issue in the instant case was whether the Secretary-General had abused his discretionary right to dismiss the Applicant summarily. In that regard, the Tribunal recalled the body of opinions on the issue: Judgements No. 898, *Uggla* (1998), and No. 941, *Kiwanuka* (1999).

The Applicant argued that there was insufficient evidence on the record for the Respondent to conclude that the Applicant had fraudulently misappropriated funds, and that the Secretary-General had not met his burden to prove beyond a reasonable

doubt that the Applicant, by his actions or omissions, had intended to defraud the Organization. However, the Tribunal noted that the Respondent was not required to establish beyond a reasonable doubt a patent intent to commit the alleged irregularities, or that the Applicant was solely responsible for them (Judgement No. 479, *Caine* (1990)). Recently, in Judgement No. 897, *Jhuthi* (1998), the Tribunal had explained its position on the burden of proof:

> ". . . In disciplinary cases, when the Administration produces evidence that raises a reasonable inference that the Applicant is guilty of the alleged misconduct, generally termed a prima facie case of misconduct, that conclusion will stand. The exception is if the Tribunal chooses not to accept the evidence, or the Applicant provides a credible explanation or other evidence, that makes such a conclusion improbable. This is what was meant when the Tribunal stated in Judgement No. 484, *Omosola* (1990), paragraph II, that 'once a prima facie case of misconduct is established, the staff member must provide satisfactory proof justifying the conduct in question'."

The Respondent asserted that the Organization's prima facie evidence of misconduct was based on the Galter report, which contained allegations of mismanagement and misappropriation of UNHCR funds by the Applicant. Specifically, the report stated that at the time of inquiry the Applicant had not paid either for his personal telephone calls which totalled $16,891 or for the cost of the shipment of personal purchases which totalled $3,934, which costs had been charged to UNHCR.

With respect to the charges for the Applicant's personal telephone calls, the Tribunal recognized that due to the turmoil and instability which prevailed in the area it was clear that the collection from or payment by staff members of sums due for their personal telephone calls had been relegated to a very low priority. Evidently, only a very small percentage of the sums due for such calls had been reimbursed to the Organization, and the Applicant's position regarding non-payment appeared to the Tribunal to have been no different than that of the vast majority of staff. The Tribunal considered that to have singled out the Applicant and to have characterized his behaviour as fraudulent was arbitrary and unwarranted.

With regard to charging the Organization for the costs for transportation of the Applicant's personal purchases from Johannesburg to Kinshasa, the matter was quite different, in the view of the Tribunal. The Tribunal noted that the Applicant had travelled to South Africa on a shopping trip and had charged to the Organization the costs of shipping his purchases back to his duty station. The Tribunal was satisfied that there was ample evidence to support the Joint Disciplinary Committee's finding that the transaction was fraudulent. The Applicant had never sought permission from the Organization to ship his purchases; he had never advised the Organization that he had done so; and he had never informed the Organization that those costs were attributable to him until his actions were detected and payment was demanded.

The Applicant further claimed that the Respondent's decisions to suspend him and to twice extend the suspension period for a total of five months were procedurally irregular, since the Respondent had failed to establish the requisite grounds necessary to impose a suspension under staff rule 110.2(*a*) and (*b*) and ST/AI/371, article II.4. In connection with that rule and the administrative instruction, the Tribunal emphasized the significance of the Respondent's providing a reason when extending the suspension for more than three months (cf. Judgement No. 4, *Howrani* (1951)). The Tribunal observed that the record did indicate that the Applicant had

been informed that the reasons for the extended suspensions were not based only on the fear that if the Applicant was at the workplace there would be a risk of evidence being destroyed or concealed, but also on the fact that additional time was required to complete the investigation. The Tribunal concluded that the Respondent had not taken excessive time in carrying out its investigation, and that it was clear that the five-month suspension of the Applicant was not undue and irregular and was warranted in the circumstances.

For the foregoing reasons, the Tribunal rejected the application in its entirety.

B. Decisions of the Administrative Tribunal of the International Labour Organization[10]

1. JUDGEMENT NO. 1897 (3 FEBRUARY 2000): IN RE CERVANTES (NO. 4), KAGERMEIER (NO. 5) AND MUNNIX (NO. 2) V. EUROPEAN PATENT ORGANISATION[11]

Complaint against extending staff members beyond retirement age—Capacity of staff representatives to lodge an appeal—Question of equal treatment—Question of an amendment to the Staff Rules—Exceptions to the rules—Extension cannot be set aside a posteriori—Issue of imposing penalty on the Organisation

Two staff members who were members of the boards of appeal of the European Patent Organisation (EPO) were given employment contracts beyond the mandatory retirement age of 65. The President of the European Patent Office had requested the measure on an exceptional basis as the staff members did not have the requisite 10 years of service required for receiving a pension. The decision to retain them also would grant them access, after retirement, to the Organisation's health insurance scheme. EPO staff representatives appealed the decision, arguing that it was unlawful, that it breached the principle of equality of treatment and that it prejudiced other staff members participating in the pension scheme by proportionally increasing the cost to them of the pension and health insurance schemes.

The Tribunal firstly observed that in their capacity as the official representatives of the staff, the staff representatives of EPO bodies were able to act not only in their own interests, but also in the interests of the staff, at least when so permitted by the internal rules (see Judgements No. 1147, *in re Raths*, and No. 1618, *in re Baillet No. 2*).

The Tribunal recalled that the right to equal treatment was breached when, in like or comparable situations, one person enjoyed a benefit which was not granted to another. The impugned decisions allowed two staff members reaching the age of 65 years, the age of automatic retirement, to obtain an extension of their service beyond that age so that they could complete a total period of service of 10 years, thereby allowing them to obtain a retirement pension and to maintain their coverage by the health insurance scheme under favourable conditions. As noted by the Tribunal, none of the complainants claimed to be in the situation of reaching 65 years without being able to complete a period of 10 years of service with the Organisation. They could not, therefore, personally complain of inequality of treatment on that score. However, they could argue inequality of treatment with regard to the financial

impact of the measure, and its basis in law. As further noted by the Tribunal, in view of the system of sharing the costs of the retirement and health insurance schemes, the contributors as a whole might have to pay more than if the two beneficiaries had not been granted the disputed extension. The complainants did indeed contend that the challenged decision would give rise to such additional cost and EPO did not exclude the possibility of those additional costs, although it asserted that it would in any case be minimal and would have an almost insignificant impact on the amount paid by each contributor.

The complainants further argued that EPO had not submitted the issue of extending the retirement age of the staff members to the General Advisory Committee. The Tribunal agreed with EPO that the measure did not consist of the adoption or amendment of the rules, and that the impugned measure concerned two individual decisions presented as being exceptional and non-renewable. Furthermore, in view of the minor impact of those decisions on the situation of staff members and their exceptional nature, the Tribunal was of the opinion that EPO had not abused its latitude by refraining from consulting the General Advisory Committee.

In consideration of the merits of the case, the Tribunal noted that the text of article 54 of the Service Regulations clearly provided that "a permanent employee shall be retired . . . automatically, on the last day of the month during which he reaches the age of 65 years", and that article 7 of the Pension Scheme Regulations provided that entitlement to a retirement pension could only be obtained after a period of 10 years' service with the Organisation. The Tribunal also observed that in accordance with the principle, that administrations in their action must abide by the rules of law, an exception to a general rule was therefore possible only when it was provided for by the rules in force. The Tribunal furthermore acknowledged that there was the possibility of granting an exception based on the interpretation of a written text and, moreover, rules might have shortcomings which needed to be remedied during implementation, for example, when a new situation emerged which the "legislator" had not intended to cover and which required an appropriate solution (see Judgements No. 1679, *in re Serlooten*, and No. 1877, *in re Serlooten No. 2*).

In that regard, the Tribunal observed that EPO had not invoked any explicit rule permitting exceptions in specific cases from retirement at the age envisaged in the Service Regulations. The only reason given for granting the exception was the consideration that it would be inequitable to deprive the staff members of a retirement pension on the grounds that, having been appointed after the age of 55 years, they could not fulfil the requirement of 10 years' service. Nor, in the Tribunal's view, was there any evidence produced to show that there were any real shortcomings in the rules. Indeed, the rules appeared to have contemplated such a situation, which was not of an exceptional nature and which was not unforeseeable by the legislator. It was also clear at the time of their recruitment that, when they reached retirement age, they would not fulfil the conditions for entitlement to a retirement pension.

The Tribunal noted that if the rule was not satisfactory, it was for its author to change it. In that respect, EPO argued that the Administrative Council was also the legislator, or the body which was competent to adopt an amendment to the Service Regulations, and therefore to allow exceptions to its own rules. However, in the opinion of the Tribunal, a general principle had it that an authority was bound to respect the rules which it had itself set, and in keeping with the rule that similar acts required similar procedures, the modifications of a rule—including allowing an exception—must respect the same process which had been used for its adoption. This had been done in the present case.

EPO moreover also contended that, having reached the age of 65 years, the two persons concerned ceased to be employees. However, they could be engaged as contract staff, and a teleological interpretation of article 33(2)(*b*) of the European Patent Convention would have it that "the Council is competent to regulate all the issues relating to the conditions of service of its staff, whether or not they were permanent employees". On those grounds, it argued that the Council was competent to convert the status of the two persons concerned from staff members to contract staff under conditions which constituted exceptions to the Service Regulations, in terms, of the duration of service and the conditions for entitlement to a retirement pension. In the opinion of the Tribunal, that argument could not stand. One of the purposes of article 33 of the Convention was to allow the Council to issue general rules, relating to the conditions of service applicable to all staff members. Under article 33, the Council was not authorized to evade the rules set out in the Convention, in the absence of a provision authorizing exceptions, by means of individual decisions which were contrary to the letter and purpose of the Service Regulations.

It followed that the Council's decision to authorize an extension of service beyond the age of 65 years was not lawful and must be set aside.

As the Tribunal observed, the two staff members concerned had already completed the service envisaged during their extension (one of them for only five months) and the recompense due from the Organisation could not be denied to them. They had accepted the extension in good faith and EPO must protect them from any prejudice. There were therefore no grounds for setting aside a posteriori the contracts concluded for the extension of their service.

The conditions for granting compensation for moral damages had not been met, in the opinion of the Tribunal. Moreover, the request to impose a penalty on the Organisation for failing to revoke the decision was at the very least premature. In the light of that judgement, it became devoid of all object.

For the above reasons, the decision of the Administrative Council of EPO to maintain in service two members of the boards of appeal beyond the age of 65 years was set aside, and the Organisation was to pay the complainants the sum of 2,000 euros in costs.

2. Judgement No. 1929 (3 February 2000): in re Beaucent v. Universal Postal Union[12]

Complaint against transfer—Tribunal's review of discretionary decision to transfer staff member—Compulsory transfer of a disciplinary nature—Question of financial and moral damages

The complainant entered the staff of the International Bureau of the Universal Postal Union (UPU) on 26 April 1993, as assistant counsellor responsible for strategic planning at grade P.4. After being appointed to the post of Head of the Finance Section, he was promoted to Counsellor at grade P.5 on 1 June 1997. On 23 February 1998, the Deputy Director-General, as the complainant's first-level supervisor, completed his performance appraisal and career plan report for the period 1 January 1997 to 31 December 1997. He gave him the overall rating "good".

On 30 July 1998, external consultants, contracted at the request of the Council of Administration to carry out a study "evaluating the structuring of UPU", submitted their report. Their recommendations included the merging of the Informatics

and Data Base Section and the Postal Technology Centre. On 28 August 1998, the Deputy Director-General informed the complainant that the above merger would take effect on 1 September. In the context of the merger, the former Head of the Informatics Section, Mr. A., was appointed Head of the Finance Section in place of the complainant. The latter was transferred to the Postal Technology Centre. The Deputy Director-General also sent him a letter the same day enumerating a number of criticisms of his performance. The complainant protested, but the decision was upheld, and he appealed.

In consideration of the case, the Tribunal observed that the right of UPU to decide upon a compulsory transfer that was in its interests, pursuant to staff regulation 1.2, paragraph 1, was rightly not contested. Precedent had it that such a decision was at the Director-General's discretion. In principle, an organization was the judge of its own interests and the Tribunal would not substitute the organization's views with its own; it would not interfere unless the decision was ultra vires, or there was a formal or procedural flaw or a mistake of law or of fact, or some material fact had been overlooked, or some obviously wrong conclusion drawn from the evidence, or there was misuse of authority. (See, for example, Judgements No. 1496, *in re Gusten*; No. 1757, *in re Hardy No. 4*; and No. 1862, *in re Ansorge No. 2*.)

Moreover, as the Tribunal pointed out, compulsory transfer, in the manner in which it was processed, ordered and notified, must not needlessly harm the interests of the staff member, and particularly his dignity, or cause him unnecessary hardship. And the decision must follow a proper inquiry. (See Judgements No. 1496, *in re Gusten*; No. 1726, *in re Mogensen*; No. 1779, *in re Feistauer*; and No. 1862, *in re Ansorge No. 2*.)

Furthermore, compulsory transfer of a disciplinary nature must afford the staff member the safeguards available in the case of disciplinary sanctions, that is, the right of the staff member to be heard before the sanction was ordered, with the option for him to participate in the full processing of the evidence and to make all his pleas.

In the present case, the Tribunal recalled that the Union had contended rather unconvincingly that the compulsory transfer (an administrative measure necessitated by the restructuring) was totally unrelated to the professional criticisms levelled at the staff member in the letter of 28 August 1998, which might subsequently have led to a disciplinary procedure. In fact, as noted by the Tribunal, the compulsory transfer and the letter had been communicated to the staff member on the same occasion, on 28 August 1998, during a brief interview. The fact that the Deputy Director-General had already carried out an investigation and established a file in support of those criticisms on that occasion also gave grounds for believing that they had played an important role in the Director-General's decision to proceed with the compulsory transfer.

Moreover, in a letter to the complainant dated 16 October 1998, the Deputy Director-General agreed that the criticisms made "may no longer have the same importance since your transfer to the Postal Technology Centre". The Tribunal concluded that they were to a great extent behind the decision to transfer the complainant and that they were also intended to justify that decision.

As observed by the Tribunal, the element of sanction inherent in the transfer was borne out by the brutal manner in which it had been announced and put into effect. While the concern to carry out the restructuring rapidly was easily understandable,

it was neither argued nor proven that a permanent transfer was so urgent that it prevented any consultations with the persons concerned. The sudden announcement of a transfer to a post which could be considered inferior, coming into effect a few days later, without prior notice or consultation, had therefore wounded the complainant's dignity. Taken together, the material circumstances gave grounds for considering that the impugned transfer partly constituted a hidden disciplinary sanction.

The Tribunal noted that, as it was not accompanied by the protective measures required before the imposition of disciplinary sanctions, the complainant's right to a hearing had not been respected. The opportunity which he had subsequently been granted to express his views was not sufficient to redress the consequences of that procedural flaw. The impugned decision must, in the opinion of the Tribunal, therefore be set aside and the procedure resumed from the point at which it was flawed, through the application of the relevant terms of staff regulation 10.1 to 10.3.

The Tribunal also noted that the judgement did not prevent the Director-General from taking the measures necessary to safeguard the proper functioning of the service until a final decision could be made: see Judgement No. 1771, *in re De Riemaeker No. 4*. It did not prejudice in any way the decision to be taken on the merits.

In the view of the Tribunal, the complainant's financial claims were premature, since the Tribunal could not yet rule on the merits of the decision. The unlawful nature of the impugned decision and its consequences would undoubtedly justify the granting of moral damages already at the current stage. However, as the Tribunal pointed out, the gravity of the case might be assessed differently, depending on whether or not the Union had a valid reason for carrying out the transfer. Therefore, the Tribunal sent the case back on this point as well.

The Tribunal awarded the complainant 5,000 Swiss francs for costs.

3. Judgement No. 1961 (12 July 2000): in re Cody v. United Nations Industrial Development Organization[13]

Abolition of post and termination of services—Assignment of duties of abolished post to other staff members—Efforts at redeployment—Question of a warning to staff member of abolition of post—Issue of a remedy for staff member terminated short of two years to early retirement

The complainant, who was born in 1942, was employed as an economist with the United Nations Industrial Development Organization (UNIDO), as from 31 July 1973. At the time of his separation, on 21 June 1996, from UNIDO he had a permanent appointment at the P-4 level. On 19 June 1996, as a part of its general staff reduction brought about by budgetary constraints, UNIDO decided to terminate the complainant's permanent appointment with effect from 28 June 1996. His internal appeal was heard by the Joint Appeals Board, which recommended on 8 December 1998 that the decision be reversed and that the complainant be reinstated but that, should reinstatement not be possible, a mutually acceptable agreement be reached with him. By a decision of 7 January 1999, the Director-General maintained the original decision to terminate the complainant's appointment and directed that efforts be made to find a mutually acceptable settlement. Efforts to reach such a settlement having failed, the complainant impugned the decision of 7 January 1999.

The complainant argued that the post he occupied at the time he was terminated had never in fact been abolished and that no proper efforts had been made to redeploy him in accordance with the priority to which his permanent appointment entitled him under the terms of rule 110.02(*a*). He also argued that the Administration had acted unfairly in terminating him after 23 years of service and with two years to go before he became eligible for early retirement with full pension. He also contended that he should have been warned that his position might be in danger prior to the decision being made to abolish it, so that he would have been able to take advantage of the voluntary separation programme.

The complainant's argument that his position had not really been abolished, which found favour with the Joint Appeals Board, was based upon his assertion that most or all of his former duties had been assigned to another staff member. As explained by the Tribunal, that argument confused the abolition of a post with the disappearance of the duties attached to that post. In Judgement No. 139, *in re Chouinard*, the Tribunal had made it clear that it did not consider the assignment of the duties of an abolished post to other staff members as an indication that there had been an abuse of authority, provided that the evidence showed that the number of staff members had in fact been reduced. That was the case here and it was clear from the evidence that the number of staff employed by UNIDO had been substantially reduced at the time the complainant's position was abolished.

With respect to the complainant's argument that he had not been granted the priority to which he was entitled in the efforts to redeploy him, as the Tribunal observed, the evidence showed that the complainant had been considered for a number of available positions in UNIDO but was not found to be suitable for any of them. The complainant had taken issue with the opinions expressed by various persons by whom he was interviewed for such positions, but those were essentially matters of personal judgement with which, in the absence of evidence of fraud or improper motive, the Tribunal would not interfere.

The complainant's contention that he should have been warned of the possible abolition of his post in time to allow him to take advantage of the voluntary separation programme was equally without merit, according to the Tribunal. The deadline for applying for voluntary separation was 8 January 1996, and it was clear that it had been established precisely for the purpose of allowing the employer, who was facing drastic budget cuts, to know how many members of the staff would be leaving voluntarily before it had to undertake involuntary terminations and identify the posts which would have to be abolished. As pointed out by the Tribunal, it would in fact have been impossible to tell the complainant, prior to that date, that his post was likely to be abolished.

In the opinion of the Tribunal, the complainant's case was undoubtedly a sympathetic one, and had been viewed as such by the Organization. He had served it long and faithfully and had been released with a scant two years to go before he would have been entitled to take early retirement with full pension. As noted by the Tribunal, following the impugned decision of 7 January 1999 and in accordance with the terms thereof, the Organization had made an offer to the complainant in terms which would have allowed him to take early retirement with full pension and other benefits on 31 July 1998 and with reimbursement of his contributions to the pension fund, which he had paid out of his own pocket during the period of special leave without pay from June 1996 to July 1998. Although that offer had a limitation

date on it which had now expired, the Tribunal hoped, without imposing any obligation, that the Organization would still make it available to the complainant.

The complaint was dismissed.

4. Judgement No. 1968 (12 July 2000): in re Concannon v. European Patent Organisation[14]

Complaint against promotion of another staff member—Delays in Respondent's answer to appeal—Question of the other staff member being treated as an exceptional case—Limits to President's discretion to make promotions

The complainant appealed against the administrative decision of the President of his employer, the European Patent Office, which is the secretariat of the European Patent Organisation (EPO), promoting the complainant's colleague Mr. C. to grade A4 with effect from 1 December 1997. Prior to that promotion, Mr. C., like the complainant, was at grade A3. In February and March 1998, the complainant and some 200 of his colleagues filed internal appeals with the President in a timely manner. The appeals were referred by the President to the Appeals Committee in April 1998.

In March 1999, the complainant inquired of the Chairman of the Appeals Committee as to when the Committee might be prepared to make its recommendations. He received a reply to the effect that the Committee had not yet received the position paper of the Administration and the complete file. On 19 March 1999, the Director of Personnel Development wrote to the complainant stating that there was a serious backlog in the processing of internal appeals but that his service would endeavour to produce the Administration's position paper as soon as possible. The present complaint was filed on 29 July; the relief sought was either the setting aside of the decision to promote Mr. C. or moral damages.

The defendant claimed that the complaint was irreceivable on two grounds: (*a*) the complainant had not exhausted his internal means of redress; and (*b*) the decision to promote a colleague did not adversely affect the complainant. However, the Tribunal disagreed, citing its case law which stated that where the pursuit of internal remedies was unreasonably delayed the requirement of article VII(1) would have been met if, though doing everything that could be expected to get the matter concluded, the complainant could show that the internal appeal proceedings were unlikely to end within a reasonable time: see Judgements No. 1243, *in re Birendar Singh No. 2*; No. 1404, *in re Rwegellera*; No. 1433, *in re McLean*; No. 1486, *in re Wassef No. 8*; No. 1534, *in re Wassef No. 14*; and No. 1684, *in re Forte*.

In the present case, the Organisation argued that since in fact the complete file and the Administration's position paper had been sent to the Appeals Committee on 12 October 1999, it was now established that the internal appeal was going forward and that the complainant had not accordingly exhausted his internal means of redress. The Tribunal disagreed. Receivability fell to be determined at the time that a complaint was filed, not at some later date. As at 29 July 1999, the complainant had done all that could be reasonably expected of him. He had filed his appeal in time. Approximately a year later he wrote to enquire about its progress and had been informed that the Administration had done nothing but would move forward as soon as possible. He filed his complaint just over four months later having heard nothing further from the Administration. At that time almost 20 months had elapsed since the original challenged decision had been published. In the view of the Tribunal, the

Administration's plea that it had a heavy backlog of internal appeals to deal with might be a reason for the inordinate delay, but it was not an excuse. As at 29 July 1999, it was simply not reasonable to expect the complainant to wait any longer to see even the beginning of the end of the internal appeal procedure. If the Organisation was overloaded with internal appeals, it was for it to remedy the situation rather than expect the complainant to bear the consequences.

The second ground of alleged irreceivability was equally untenable. As detailed below, the gravamen of the complaint was that Mr. C. had not met the published criteria for promotion from A3 to A4. To this the Administration pleaded that it was entitled to treat Mr. C. as an exceptional case. If that was so, as pointed out by the Tribunal, then it was irrelevant that the complainant also had not met all the criteria for promotion from A3 to A4, since he too could claim that he had a right to be considered as an exceptional case and therefore had been adversely affected by the impugned decision. Both had been at the same grade, in the same career stream, and both had been entitled to expect that promotions would only be made fairly and objectively, based on merit and in accordance with law.

As to the merits of the case, the Tribunal observed that pursuant to article 49 of the Service Regulations the President of the Office had sent instructions to the Promotion Board together with relevant information relating to all the staff members who might have been eligible for promotion. The Tribunal recalled that under that article the Promotion Board could submit to the President "special cases", where the usual requirements were not fully met for promotion from A3 to A4. In the present case, both the complainant's name and that of Mr. C. appeared on the list of eligible A3 employees which were attached to the instructions; however, neither met the "normal" requirements established by the President's instructions to the Promotion Board: Mr. C. met neither the requirements for age nor those for years of reckonable service. The Tribunal further noted that Mr. C. had worked in close proximity to the President and under his direct supervision, and was clearly an outstanding employee, and that there could be no doubt that the President had formed the view, prior to any consultation process involving the Promotion Board, that Mr. C. should be promoted to grade A4. Indeed, he had written to the Promotion Board drawing the Board's attention to Mr. C.'s case and suggesting that he be treated as a "special case". However, the Board had declined to recommend the promotion of Mr. C.; the President nevertheless had made the promotion on his own authority.

The Tribunal, while recalling that it was clear that the role of the Promotion Board was essentially consultative and that the Organisation was not obliged to make promotions in accordance with its recommendations, it was equally clear that the Organisation had formally committed itself only to making promotions which had been approved and recommended by the Board. Paragraph 3 of article 49(10) clearly qualified the discretion given to the President by article 49(4) when it stated that the Board shall draw up and send to the President "for his decision" a list of eligible candidates.

The Tribunal, citing Judgement No. 1600, *in re Blimetsrieder and others*, considered that the President might only make promotions in accordance with the Board's recommendations, and since the Board had declined to recommend Mr. C. for promotion, his promotion was irregular. The Tribunal therefore set the decision to promote Mr. C. aside, and awarded the complainant 1,000 euros in costs.

5. Judgement No. 1969 (12 July 2000): in re Wacker v. European Patent Organisation[15]

Request for change of place of home leave—Limits to discretionary decision—Review of place of home leave is an exceptional measure

The complainant, a German national born in 1947, joined the European Patent Office, the secretariat of the European Patent Organisation, in 1984. He was assigned to the Office's Directorate-General 1 in The Hague. By a letter dated 2 March 1998, the complainant requested that his place of home leave be changed from Schwabisch Gmund in Germany to Zamboanga City in the Philippines. He stated that his mother and one sister had recently passed away, most of his other relatives no longer lived in Schwabisch Gmund, and that he had closer personal relationships with members of his wife's family than with his own and he intended to retire to Zamboanga City. The request was denied and the complainant appealed.

The relevant article 60(2) of the Service Regulations read:

> ". . . the home . . . shall be the place with which the [the employee] has the closest connection outside the country in which he is permanently employed. This shall be determined when the employee takes up duties, taking into account the place of residence of the employee's family.
>
> "Any review of this decision may take place only after a special decision by the President of the Office upon a reasoned request by the permanent employee."

The complainant claimed that the Administration, in assessing whether there had been a radical change in his personal circumstances, had not duly considered essential facts. It had applied a strict and rigid interpretation of "home". It had also failed to give any weight to his submission that the "spiritual and psychological" links he had with the Philippines were stronger than those he had with Germany. That aspect had not even been considered. He submitted that the assessment that his current personal circumstances did not qualify as a radical change was an erroneous conclusion resulting from a failure to give the proper weight to the facts.

Since the decision of the President under article 60(2) of the Service Regulations was a discretionary decision (see Judgement No. 525, *in re Hakiri*), the Tribunal would quash such a decision only if it had been taken without authority, or if it was tainted with a procedural or formal flaw or based on a mistake of fact or of law, or if essential facts had been overlooked, or if there was abuse of authority, or if clearly mistaken conclusions had been drawn from the evidence. If none of those grounds was established, the Tribunal might not substitute its view for that of the President. The ground put forward by the complainant was that essential facts had been overlooked in the sense that proper weight had not been given to the facts, leading to an erroneous conclusion.

As the Tribunal observed, there was no evidence to show that any fact had been overlooked. All the points put forward by the complainant had been considered. The impugned decision had been based on a consideration of all the facts. A review of a decision under article 60(2) was an exceptional measure (Judgement No. 525). It was not possible to say that clearly mistaken conclusions had been drawn from the evidence. After taking everything into account, the President had taken a different view to the one held by the complainant in his submissions. It followed that there were no grounds for setting aside the decision.

6. Judgement No. 1983 (12 July 2000): in re Gomes Pedrosa v. United Nations Industrial Development Organization[16]

Non-renewal of short-term appointment—Questions of receivability—Reasons for non-renewal must be given within a reasonable time—Judgement No. 946, in re Fernandez-Caballero (reasons must be given in case staff member chooses to appeal)

The complainant was recruited in August 1994 as a typist by the United Nations Industrial Development Organization (UNIDO) in France. After an initial appointment of one month and 10 days, she was given a series of short-term contracts, the last of which expired on 31 December 1997. On 13 November 1997, while she was in Brazil on mission for the organization, she received a fax message dated 11 November from her first-level supervisor, the Brazilian delegate to the UNIDO Service in France, "confirming" that "by mutual agreement" her contract, due to expire on 31 December 1997, would not be renewed in 1998 and that her wish to be recruited as a technical assistant did not tally with the needs of the service. A second fax message, dated 20 November 1997, confirmed the first one and its author explained that the reference to a "mutual agreement" stemmed from the fact that a few months earlier the complainant had sought her help in finding work in Brazil where she planned to return to live. On 23 November 1997, the complainant answered the two messages. She expressed surprise at their content and stated that she had never agreed to the non-renewal of her appointment; that she had not reached a decision about returning to Brazil; and that although the duties she performed were not those of a typist but of a technical assistant, she was ready to continue performing them. She confirmed those statements in a fax message dated 28 November 1997.

On returning to Paris after taking authorized leave in Brazil, the complainant went to the UNIDO Service in Paris on 5 January 1998, but the Director of the Service reminded her that her appointment had not been renewed and asked her not to return to her former place of work. On 13 January 1998, she wrote a letter of protest to the Director in which she stated that her supervisor's intentions were of no legal value without a letter of confirmation from the Director, as he alone was her employer. The Director wrote to her on 16 January 1998 confirming the non-renewal of her appointment. He also reminded her that her supervisor, the Brazilian delegate, had full authority over her and that the successive renewals of her appointment had always been notified to her by the serving Brazilian delegate. In a letter of 6 February 1998 to the Director-General of UNIDO, the complainant submitted a request, pursuant to staff rule 112.02, for a review of the decision contained in the letter of 16 January. She also asked, in the event of a negative response, to be allowed to come straight to the Tribunal without having to go before the Joint Appeals Board. Having received no reply, she filed the present complaint, in which she sought the quashing of the implied decision and claimed 200,000 French francs in damages, 433,600 francs in back pay for the salary to which she would have been entitled had she been paid in accordance with the duties she actually performed for 40 months, and 40,000 francs in costs.

The Organization had raised several issues of receivability to the complaint. The Tribunal agreed that her claim to back pay was irreceivable because it had been submitted directly to the Tribunal without having been made in an internal appeal. As noted by the Tribunal, contrary to what the complainant asserted in her rejoinder, it was quite separate from her claim concerning the non-renewal of her appointment, and that she was allegedly underpaid bore no relation to the injury caused by the

termination of her appointment. The claim was therefore irreceivable since she had failed to exhaust the internal remedies.

However, her claim to compensation for the injury caused by the non-renewal of her contract was receivable. The defendant cited staff rule 112.02(*a*), which states:

> "A serving or former staff member who wishes to appeal an administrative decision under the terms of regulation 12.1 shall, as a first step, address a letter to the Director-General, requesting that the administrative decision be reviewed. Such a letter must be sent within 60 days from the date the staff member received notification of the decision in writing."

The Organization contended that the non-renewal decision had been given in the letter of 11 November 1997, received by the complainant on 13 November, and that she therefore had until 12 January 1998 to ask the Director-General to review it. Since she submitted it on 6 February 1998 her request was out of time. In the Tribunal's opinion, the plea failed: although the Brazilian delegate's letter of 11 November 1997 told the complainant clearly that her contract would not be renewed, it was a personal letter referring to a "mutual agreement", which obviously did not exist. The letter could not be regarded by the complainant as an administrative decision taken by the competent authority which could set a time limit for appeal. As the Tribunal pointed out, it was true that the complainant had been aware of the Organization's intentions, having been informed of them several times, in particular, in a talk with the Director of the UNIDO Service in France on 6 November 1997 and by the fax messages of 11 and 20 November 1997. Nevertheless, she was right to wait for official notification of an administrative decision from the competent authorities of UNIDO before challenging the measure. Although the letter of 16 January 1998, signed by the Director of the UNIDO Service in France, appeared to be merely a letter of confirmation, it was the only official administrative decision adversely affecting the complainant. The Tribunal concluded that her letter of 6 February 1998 seeking a review of it was therefore in time.

In support of her claim, the complainant submitted that UNIDO was in breach of its duty of good faith and loyalty towards her, particularly since it had failed to inform her in good time of its intention not to renew her contract, and that the termination of her appointment had been based on wrong facts, which amounted to failure to provide reasons.

As noted by the Tribunal, the evidence showed that, being employed under a series of short-term contracts, the complainant knew that her appointment was not automatically renewable. In the absence of convincing written evidence, other than the fax messages of 11 and 20 November 1997, it could not be denied that there was tension between the complainant and the Brazilian delegate, prompted in part by the discrepancy between the tasks the complainant actually performed and the Service's need for a real secretary—the job for which the complainant had been recruited—and not a technical assistant. Consequently, as explained by the Tribunal, the complainant might not allege that the non-renewal of her contract had come as a surprise and that she had been given no warning, which would have been contrary to the principles governing relations between an organization and its staff. As to the absence of one month's notice, UNIDO rightly pointed out that the obligation arising from the provisions of the Staff Regulations applied to dismissal and not to non-renewal of a fixed-term appointment. Nonetheless, as the Tribunal recalled, the case law stated that an organization must always give the reasons for a decision not to renew an appointment and those reasons must be notified to the staff member within a reasonable time.

In the present case, as the Tribunal observed, there was some doubt as to the Organization's real reasons. The first fax message addressed to the complainant referred to a "mutual agreement", which clearly did not exist. The fact that she did not actually perform the duties of a secretary was undoubtedly one of the reasons for the final decision. But that situation was not new. UNIDO seemed to have accepted it and apparently issued no warnings on that score. A letter, submitted in the surrejoinder, addressed by the delegate of Brazil to the Director of the Service and dated 2 February 1999, mentioned that "she never did her work properly and refused to help Mrs. C.", which did imply that there were personal criticisms of the complainant, though the evidence included no assessment of her work. In short, the Tribunal concluded that the above elements, taken together, indicated that the explanation given for the non-renewal of the complainant's appointment was far from clear and precise reasons were lacking. As the Tribunal recalled in Judgement No. 946, *in re Fernandez-Caballero*:

> "As a rule the reasons for any administrative decision must be stated. Non-renewal is plainly a decision of great consequence to a staff member and, though the Director-General is free to make his own assessment of the material facts, the staff member is entitled to know the reasons for the Director-General's conclusions so that he may, if he chooses, lodge first an appeal and then, if need be, a complaint with the Tribunal."

As the Tribunal pointed out, the impugned decision of 16 January 1997 had merely informed the complainant, without any statement of reasons, that the Brazilian delegate "has full authority . . . to choose her staff and, of course, define their duties". The reasons given by the Brazilian delegate, who had only such authority as was mandated by the general management of UNIDO, being neither clear nor established as regards the complainant's agreement to the non-renewal of her appointment, the Tribunal considered that the decision under challenge must be set aside for want of an adequate explanation. The complainant sought neither reinstatement nor a new contract, but redress for injury, which the Tribunal set at 50,000 French francs. Since the complaint had succeeded in part, she was entitled to costs, which the Tribunal set at 20,000 francs.

7. Judgement No. 1987 (12 July 2000): in re Dunseth and Mattmann v. Organisation for the Prohibition of Chemical Weapons[17]

Refusal to reclassify posts—Director-General's competency to reclassify posts—Difference between reclassification of post and promotion to new post grade

Following a review of the classification of posts at the Organisation for the Prohibition of Chemical Weapons (OPCW), the Director-General told staff on 6 and 7 August 1998 that he had decided to "implement all the grade changes recommended in the staffing chart attached to the annexed consultant's report". The decision was to take effect on 1 January 1999. However, concerned at the budgetary implications, the member States asked the Director-General in November 1998 not to reclassify any posts pending further discussions on the Organisation's budget and work programme. Subsequently, they asked him in July 1999 to commission a new classification review after approval by the Executive Council of its terms of reference and scope. As a consequence, the reclassification of 118 posts recommended by the consultant was not implemented as announced on 6 and 7 August 1998.

The complainants, those whose posts were to be reclassified, appealed, emphasizing that the note of 7 August 1998 confirming an internal memorandum

of 6 August, addressed to the staff, presented the implementation of the changes recommended by the consultant as a decision taken by the Director-General. They submitted that the decision fell within the competence of the Director-General by virtue of regulation 2.1 of the Interim Staff Regulations and that it created rights for the staff members concerned.

In rebuttal, the Organisation recalled that the Director-General's powers must be appraised bearing in mind the authority of the Conference of the States Parties, which, according to article VIII(19) of the Chemical Weapons Convention, was "the principal organ of the Organisation" and might consider any questions "relating to the powers and functions of the Executive Council and the Technical Secretariat". Since the Director-General was the head of the Technical Secretariat, the Conference had the power to consider matters falling within his competence. Moreover, the Executive Council had responsibility for overseeing the proper functioning of the Convention, which included, if not expressly at least by implication, the need to be able to count on qualified staff. It followed, so stated the Organisation, that the Director-General could not apply measures to implement his decision of 7 August 1998 until the supreme authorities of the Organisation had approved them or decided on their financing. Accordingly, the decision of 7 August could not be regarded as final and did not create rights for the complainants, particularly as posts could be upgraded only on condition that the incumbents performed their duties satisfactorily and met the requirements for holding a higher post.

The Tribunal observed first that, whatever the general supervisory powers of the Conference of the States Parties or the Executive Council, in August 1998 there was no doubt as to the Director-General's competence for the classification of posts: regulation 2.1 of the Interim Staff Regulations in force at the time said that "the Director-General shall make appropriate provisions for the classification of posts according to the nature of the duties and responsibilities required". In the exercise of his statutory authority the Director-General, in the terms of the note of 7 August 1998, had "decided, as of 1 January 1999, to implement all the grade changes recommended" by the consultant, including those affecting the posts held by the complainants. In the view of the Tribunal, that decision, which was lawful, became final as it was not contested by the persons concerned, and it was sufficiently specific to confer on them rights which could not be challenged by a later decision to postpone implementation of the reclassification pending a further review.

As the Tribunal noted, one might legitimately wonder about the consequences of the reclassification since, as the Organisation rightly stated, the decision of 7 August drew a distinction between reclassifying posts and promoting eligible incumbents: paragraph 4.5 of the note stated that the "incumbent of each post that has been classified at a higher level than its current grade will be promoted to the higher grade, provided that his/her current performance with respect to the functions and responsibilities of the post is satisfactory and provided that the incumbent meets the qualification requirements for the higher grade". But the complainants pointed out that they drew a distinction between the right to reclassification of their posts, which must be automatic, and their promotion, which they conceded was not part of the present case. The Tribunal noted that they expressly limited their claims and it was bound to conclude that the decision of 7 August 1998 had the effect of reclassifying their posts as from 1 January 1999, there being no subsequent decision which could legally rescind the post classification.

Since their complaints succeeded, the complainants were entitled to costs, which the Tribunal set at 20,000 French francs.

8. Judgement No. 1994 (12 July 2000): in re Hebert v. European Patent Organisation[18]

Complaint against raising the amount of financial support provided to a dependant to qualify for dependant allowance—Effect of a national court order for maintenance on a United Nations determination of its dependant allowance

The complainant was a permanent employee at grade B3 with the European Patent Office, the secretariat of the European Patent Organisation (EPO), in Munich. Pursuant to a French court order, her husband had to contribute to the maintenance of his two children by a previous marriage who lived with their mother in France. The complainant paid for the older child until November 1997 and for the younger one until December 1998.

The complainant was entitled to claim a dependant allowance for both children under the conditions laid down in article 69(3)(*a*) of the Service Regulations. This provided that, for the purposes of the Regulations, a dependent child shall be:

> "the legitimate, natural or adopted child of a permanent employee, or of his spouse, who is mainly and continuously supported by the permanent employee or his spouse".

There was no definition in the article of the meaning of "mainly and continuously supported by the permanent employee". By communiqué No. 6, dated 20 March 1996, all staff were informed of new guidelines, drawn up by the President of the Office, for determining whether a child was dependent within the meaning of article 69(3)(*a*) and (*c*). One of the changes concerned the amount of financial support a staff member had to provide for a child not in the custody of the staff member. The new guidelines, insofar as they were relevant to the complainant, provided that where a child was in the custody of a person other than the employee or spouse and was not resident with them, "the child shall be assumed to be 'mainly and continuously supported' by the employee or spouse" if the financial support provided by either of them equalled at least the following amounts:

> "for two children: 9 per cent of the employee's basic salary plus twice the amount of the dependant allowance".

Prior to the introduction of the above guidelines, the relevant criteria, set out in circular 82, dated 19 February 1981, required that in order to qualify for the dependant allowance the permanent employee had to pay a minimum amount in maintenance, which included a personal contribution of a fixed amount in German marks, payable over and above the dependant allowance. In the case of the complainant, the fixed amount that exceeded the allowance was DM 50 for each dependant, the rate applicable to grades C to B4.

The amount of financial support the complainant had to pay after the coming into force of the 1996 guidelines was twice the amount of the dependant allowance, totalling DM 828.60 (DM 414.30 multiplied by 2) plus DM 566.10—representing 9 per cent of her basic salary. The complainant was so informed by a letter dated 12 June 1996.

The complainant filed an internal appeal against the new provision set out in communiqué No. 6 in June 1996. In the course of the internal appeal the Organisation said the guidelines did not limit the entitlement to the dependant allowance. It also said that the Office would review individual cases retrospectively (in accordance with Judgement No. 743, *in re Flick*), to determine whether payment of a

dependant allowance was justified even though the minimum level of support fixed in the guidelines was not being paid in full.

The Appeals Committee concluded that the claim that the provision concerning financial support should be ruled unlawful, should be dismissed, but recommended that with regard to retroactive payment the complainant's case should be reviewed. By a letter dated 6 April 1999, the Principal Director of Personnel informed the complainant of the President's decision to reject her appeal in accordance with the unanimous recommendation of the Committee. That constituted the impugned decision. The Director also stated that a review of her case had not been precluded and he indicated what further information was required from her.

The complainant claimed retrospective payment of the dependant allowance for the period from July 1996 to November 1997 for one child and from July 1996 to December 1998 for the second child plus a sum for costs.

According to the complainant, the court order had placed the financial burden of providing for the children's maintenance solely on her husband. It referred to the "contribution to maintenance" to be paid by him. The complainant submitted that the wording of the phrase "mainly and continuously supported" in article 69 indicated that the relevant criterion was whether the employee contributed more than 50 per cent of the costs of bringing up the child. It was an objective test. Costs varied in each case. In her view it followed that the President had no power to adopt an implementing regulation under which employees who paid less than the minimum fixed in the regulation were excluded from receiving the dependant allowance. If the employee fulfilled a legal obligation to bear alone the costs of bringing up the child as fixed by law or court order, he was entitled to the dependant allowance as long as the amount he was legally obliged to pay equalled or exceeded the allowance. If the implementing regulation resulted in maintenance payments over the legally set amount, that could mean that new disputes would be triggered between the divorced parties. Even if the minimum amounts payable under the guidelines did not apply in all cases, the employees would still be at the mercy of the Organisation as to what criteria would be applied and what evidence would be sufficient. There would be no legal certainty.

The Organisation argued that the method of calculating the personal contribution due for each child based on a proportion of the employee's basic salary and the number of dependent children was justified by the principle that the employee must support the child having regard to his personal resources and provide each child with the same standard of living. The raison d'être of the dependant allowance system was to improve the situation of the child. It was up to the Office to lay down and apply its own conditions irrespective of national laws and decisions taken by national courts. The President of the Office was under no obligation to take account of a child's rights to maintenance under national law or by court order when he set the general condition on which entitlement to a dependant allowance depended. Such rights, being defined according to different criteria in each country, did not necessarily correspond to main support. Taking them into account would be tantamount to an inconsistent application of article 69 that set out the terms of the dependant allowance. Any problems arising between the complainant and the mother of the child were of no relevance in the present case. The court order dated 26 July 1983 referred to "the contribution to maintenance" fixed for the complainant's husband; it did not say that the entire financial burden for the maintenance of the two children was to be borne by him.

In the Tribunal's view, the contribution to maintenance set by the national courts varied from country to country. Contrary to what the complainant contended, the Organisation was not limited to the amounts fixed by any court order when interpreting the meaning of "mainly and continuously supported". The President could lay down the criteria for what was meant by "mainly supported". There was nothing to suggest that the amount of the personal contribution was excessive. In any event, the new guidelines did not have the effect of doing away with the allowance, since the Organisation accepted the possibility of reviewing the personal contribution in individual cases, if circumstances so required. Therefore, the claim failed.

C. Decisions of the World Bank Administrative Tribunal[19]

1. Decision No. 217 (28 January 2000): William L. Visser v. International Bank for Reconstruction and Development[20]

Non-renewal of short-term contract—Question of right to renewal of short-term consultant contract—Issue of giving reasons for non-renewal—Questions regarding written terms of reference—Entitlement to fair evaluation of work performance—Questions of unfair treatment

The Applicant joined the Bank's Economic Development Institute early in 1997 as a short-term consultant. He had previously worked at the World Resources Institute as a Deputy Director and Project Director, and later as Director of International Relations, his position had been dissolved. His last pay day as a consultant was 24 October 1997.

The Applicant challenged the decision not to renew or extend his contract beyond October 1997, submitting that the decision had been made on 16 January 1998 when the Director of the Institute had denied his request for a "Manager's Review". The Respondent, relying on staff rule 7.01 and principle 7 of the Principles of Staff Employment, and on decisions in the cases of *Mr. X* (Decision No. 16 (1984)) and *Atwood* (Decision No. 128 (1993)), argued that as a holder of a short-term consultant appointment the Applicant had no right to any contractual appointment after the expiry of the contractual term.

The Tribunal observed that even where the terms of a contract provided expressly for its expiry at the end of a fixed period, there might be something in the surrounding circumstances which created a right to the renewal of a consultant appointment (*Carter*, Decision No. 175 (1997)), such as a promise by the Bank. The Applicant claimed that he had been given assurances during the recruitment period that amounted to a promise by the Bank of continued employment, should his performance prove satisfactory, which in turn had given rise to a legitimate expectation on his part that his short-term contract would be converted to a long-term multi-year contract beginning in fiscal year 1998. In support of his claim, the Applicant stated that he had had other employment prospects but had not pursued them when he was assured of a firm contract by the Institute.

As noted by the Tribunal, it was clear that the Applicant wanted to secure a long-term contract with the Bank and that he had done everything he could to bring about such a result. But he had been aware that there were uncertainties to be resolved about how to make use of his expertise, what work he was to do and

about the source of funds to pay him. Those uncertainties negated any inference of a promise or assurance giving rise to any entitlement on his part. As distinct from the *Bigman* case (Decision No. 209 (1999)), there was nothing in the facts of the present case to support a finding that a promise had been made to the Applicant about a future contract or that he had been offered anything more than the possibility of a further contract. The Tribunal concluded that the Bank retained a discretion whether or not to grant the Applicant a further contract (*Barnes*, Decision No. 176 (1997)).

The Applicant also complained that he had not been told in good time that his contract would not be renewed. His expectation was that a decision would be made about a further contract at the end of the short-term contract. He had inquired about his situation many times, but he had never received an answer. However, he must have known by August 1997 at the latest that there was little prospect that his contract would be extended or renewed, and that it was up to him to find someone in the Institute or elsewhere willing to offer him a contract. As noted by the Tribunal, he had been given time to seek other opportunities. The Bank was not required to give reasons for the non-renewal of a contract that was stated to be temporary and had a termination date set forth in it (*McKinney*, Decision No. 187 (1998); *Degiacomi*, Decision No. 213 (1999)). The Tribunal concluded that the Applicant had not established any violation of the principles of fair treatment in that respect.

The Applicant also contended that the lack of interest in and support for his work had prevented him from performing to the best of his ability and had thus precluded any possibility of a long-term contract. Specifically, the Applicant complained that the withdrawal by his Task Manager in May 1997 of most of the terms of reference provided to him in January was arbitrary and in breach of contract; he had been left with the responsibility for only half of the electronic symposium project, for which he simply did not have the technical know-how. The Tribunal observed that the Applicant had known since January that he was expected to work on the electronic symposium, and he had not previously suggested that the project was not within his competence. The Applicant's argument that his terms of reference had been withdrawn to set him up for failure was not substantiated. As the Tribunal recalled, the Bank had reserved the right to change the terms of his assignment, and the Task Manager had taken the view that the Applicant's work was not satisfactory and had sought to reorganize his work. In the opinion of the Tribunal, that assessment was not an abuse of discretion; however, fair practice suggested that he should have been given a written statement concerning the change in his terms of reference.

The Applicant also claimed that when he was reassigned to work under the supervision of the Division Chief, he was given no clear instructions in regard to his NGO assignment. The Tribunal observed that the fact that the Applicant had no written terms of reference or instructions for his assignment from the Division Chief was an omission which the Tribunal considered might have contributed to misunderstandings in the first instance: he was entitled to have a clear work programme. The Applicant was, however, a man of seniority and experience. He had discussions with the Chief and received detailed written comments from her on the draft. Even so, his work did not meet her expectations. The Tribunal could not conclude that the lack of written terms of reference was a factor in the Applicant's failure to produce a satisfactory result, though fair treatment required that he receive proper instructions.

In regard to his work on a Partnership paper, the Applicant complained that he had no clear terms of reference, no work plan and no appropriate supervision. He had asked for terms of reference on 8 August 1997 and had set out the agreed focus

for the paper on 22 September, but indicated that it might be difficult to complete the work in the remaining month as the focus had changed. He said that he had no access to the people whose assistance he needed and that information he needed had not been provided to him. He even had to pay personally to get data he required.

The Tribunal, citing Decision No. 176, *Barnes* (1997), and principles 2.1(*d*) and 5.1 of the principles of Staff Employment, concluded that the Applicant had been denied fair treatment in that he had no written statement concerning his terms of reference on either the NGO project or the Partnership paper. But the absence of such terms did not appear to have had any significant effect on the decision not to renew or extend his contract. The more important issue was whether the Bank's evaluation of his work was fair and whether the lack of clear terms of reference or poor supervision had contributed to this.

In that regard, the Tribunal observed that the Applicant, while not entitled to a formal assessment of his work performance pursuant to staff rule 5.03, as a short-term consultant, he was entitled to fair treatment and to an assessment which was neither an abuse of discretion, nor arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure (Decision No. 5, *Saberi* (1981)).

While the Applicant claimed that the Institute had denied him a fair evaluation of his performance, the Tribunal found no substance in the Applicant's claims that the assessment made by the Task Manager involved an abuse of discretion or that it had been made for any reason other than those related to the proper management of the Organization. In regard to the NGO assignment, although the Division Chief had not prepared a written assessment of the Applicant's work, other than her written notes on his outline, and there were, however, as the Tribunal noted, discussions in which she had conveyed her opinion to him. While the Applicant argued that he had complied with all her comments on his draft outline and that her criticisms were the result of prejudice on her part, the Tribunal did not find any prejudice or abuse of discretion. It further noted that the Division Chief had more than once commented favourably in the Applicant's other work.

Regarding the Partnership paper, the Tribunal observed that there also had been no written assessment of the Applicant's work performance. According to the Applicant, the Program Manager and the Regional Coordinator had made positive oral comments on his paper. He had been asked to carry out some revisions in regard to the data and to speak to the new Spanish consultant. The paper had never been completed, because the Applicant had taken the view that he should do no more work unless he received further payment or an extended contract. As the Tribunal observed, the Respondent's submission that the final paper was unsatisfactory to the two supervisors was not in full accord with the evidence. The Program Manager and the Regional Coordinator had testified to the Appeals Committee that they were disappointed that the Applicant had not completed the paper. The Appeals Committee had concluded that the Regional Coordinator had found his work satisfactory and was impressed by the effort that had been put into the paper. In view of the lack of written instructions and the limited time available to the Applicant, the Tribunal considered that the need for those changes might not necessarily have been due to any fault on his part.

As stated above, the Tribunal was of the view that the Applicant had no automatic entitlement to a further contract. The possibility of such a contract remained within the discretion of the Bank, but while the Applicant was not entitled to a

renewal or extension of his contract or to a written evaluation, he was entitled to fair consideration and to an acknowledgement of his work on the Partnership paper, which had been considered satisfactory. The Bank appeared to have wanted that project to be completed but had failed to consider any means of enabling the Applicant to finish it. To that extent it had denied him fair treatment.

The Applicant claimed that he had been offered a six-month consultancy, pending a longer-term agreement. However, the contract sent to him on 13 March 1997 provided for only 82 paid days, from 3 March to 30 June. By that time he had already started work. He signed the contract on 14 April, after being assured that it would be extended by 63 days to a total of 145 days. The Applicant said that he believed that the extension to 145 days would make him a "long-term consultant" entitled to certain benefits, such as health insurance, a pension plan, and sick and annual leave. However, the contract did not qualify as a contract for six months and he was denied those benefits. He complained that he had relied on the assurances given him and that as a result he had suffered financial loss.

The Respondent's explanation was that, initially, sufficient funds could not be found for a six-month contract. Funding for 82 days had been made available. When further funds were subsequently secured, the contract had been extended by 63 days. As the Applicant accepted the short-term contract, he could not now claim any loss. As the Tribunal noted, it was clear that the Applicant expected and wanted the benefits that normally flowed from a continuous contract for six months. There was no evidence that he had been told that his expectations were false before he signed the contract. The Tribunal considered that the Bank had denied fair treatment to the Applicant by failing to ensure to him the benefits that would have flowed from a continuous contract of six months or to advise him in good time of his true position in regard to the benefits associated with such a contract. Further, as noted above, the fact that he did not receive a six-month contract denied him the right to a formal written evaluation under the Staff Rules.

The Applicant claimed US$ 440 as out-of-pocket expenses which he incurred in order to obtain information from the Institute's database. He alleged that he had had to pay that sum to an employee of a consultancy firm working in the Institute, when the person designated to support him did not reply to his requests for data. As the Tribunal noted, the Appeals Committee had found the incident baffling and troubling, and it was a stark indication of how isolated the Applicant must have felt. However, the Committee concluded that, as an experienced professional, the Applicant must bear some of the responsibility; he should have assessed the situation as one that he should report to management before paying the funds.

The Tribunal considered that the isolation of the Applicant, which the incident revealed, must be attributed in part to management deficiencies and indifference. It appeared that the Bank at that time had given little attention to any of the Applicant's concerns and had failed to reply to many of his requests. In the view of the Tribunal, the Bank had denied fair treatment to the Applicant by creating conditions that were not supportive of his work and by failing to reimburse him for the payment that he incurred as a consequence.

The Applicant complained that while he was working in the front office of the Office of the Director of the Institute, he had been treated with disrespect, and he had returned from vacation to find his possessions in a box in the hall and his email account closed. On another occasion, he had found his office occupied by computer analysts, his computer disconnected and his files in disarray. He had furthermore

been kept off the staff email distribution list until near the end of his tenure, thus ensuring his near total isolation. The Tribunal understood that those matters were troubling to the Applicant at the time, and no doubt the more so as they emphasized his temporary status in the organization and his isolation. The Tribunal considered that those actions ought to have been avoided, but they did not require any separate finding of unfair treatment.

It was the Tribunal's decision that the Applicant had not established that there was a promise or assurance by the Bank to renew or extend his short-term contract upon its expiry.

The Tribunal concluded, however, that there were several irregularities in the treatment of the Applicant, resulting in unfair treatment, contrary to the Principles of Staff Employment, by:

(*a*) Not providing the Applicant with a written statement concerning the change in his terms of reference in May 1997 and concerning his later assignments;

(*b*) Failing to acknowledge the satisfactory work done by him on the Partnership paper or to consider any means of enabling the Applicant to complete the paper;

(*c*) Failing to ensure to the Applicant the benefits that would have flowed from a continuous contract of six months, including a formal evaluation under the Staff Rules, or to advise him of his true position in regard to those benefits;

(*d*) Failing to create conditions that were supportive of his work and to reimburse him for his out-of-pocket payment of $440 to obtain data for his Partnership paper.

For the above reasons, the Tribunal ordered the Respondent to pay the Applicant compensation in the amount of $20,000 net of taxes, and costs and expenses of $1,500.

2. Decision No. 225 (28 January 2000): Paul Zwaga v. International Bank for Reconstruction and Development[21]

Non-confirmation and termination of fixed-term contract—Probationary period—Question of abuse of discretionary decision not to confirm appointment—Question whether due process was respected: warnings, opportunity to defend oneself, adequate guidance to an external candidate—Damages for injuries actually suffered

On 2 September 1997, the Applicant joined the Bank as Head (level 23) of the Marketing Unit of the External Affairs Department, Office of the Publisher, on a four-year fixed-term contract. In accordance with World Bank policy, the Applicant's appointment was to be probationary for the first year and would normally be subject to confirmation after the first year.

On 30 June 1998, the Publisher wrote the Acting Director of the External Affairs Department and the Human Resources Officer for the Department who together with the Publisher comprised the management review group, to request approval to terminate the Applicant's employment. In making the request, the Publisher explained that the Applicant's tenure in the Bank was characterized by a history of behaviour and performance problems. Later the same day, the management review group convened to review the Applicant's performance and the Publisher's

recommendation that the Applicant's employment be terminated. After some discussion, the Publisher's recommendation was endorsed.

By a letter dated 30 June 1998, the Publisher informed the Applicant that he had recommended that the Applicant's employment be terminated. He stated that the Applicant's performance and behaviour during the past month had been a "bitter disappointment" and he enumerated a number of examples. The Vice-President of the External Affairs Department thereafter informed the Applicant by a letter of the same date that his appointment had not been confirmed and that his employment would terminate on 30 September 1998.

On 24 September 1998, the Applicant filed a Statement of Appeal with the Appeals Committee against the "non-confirmation and the termination of [his] fixed-term contract".

In its report, the Appeals Committee found that the non-confirmation decision was proper and that there was insufficient evidence that the Publisher had promised the Applicant a one-year extension of his probation. However, it further found that: (*a*) while the Applicant's international recruitment was part of an overall strategy to professionalize the Marketing Unit, senior management of the External Affairs Department had taken no steps to reinforce that message with the Applicant's staff; (*b*) there was no indication that senior management of the Department had attempted to mentor or coach the Applicant in order the help him assimilate to the Bank's culture; and (*c*) the Applicant's managers had not approached him promptly to provide him with a fair opportunity to address the staff complaints that had been made against him. In the light of its findings, the Committee made the following recommendations: (*a*) the Applicant should be awarded compensation in the amount of six months' net salary; (*b*) the Applicant should be compensated for the shipment to his home country of his personal and household effects; and (*c*) the Applicant should be paid attorney's fees.

The Bank accepted the above recommendations, but the Applicant requested an additional three months' net salary for a full release and settlement of his claims. The Bank rejected the Applicant's request and the Applicant filed an application with the Tribunal on 30 June 1999. In his application, he contested the Respondent's decision not to confirm his appointment and its alleged decision to retract its offer of a one-year extension of his probationary period.

In consideration of the case, the Tribunal observed that, pursuant to staff rule 4.02, paragraph 1.02, "the intent of the probationary period is to assess the suitability of the Bank Group and the staff member to each other". An assessment of that suitability was a matter of managerial discretion. (See, e.g., *Salle*, Decision No. 10 (1982).) Furthermore, it was for the Bank to establish the standards which the probationer should satisfy. In *Buranavanichkit*, Decision No. 7 (1982), the Tribunal had held that those standards

> "may refer not only to the technical competence of the probationer but also to his or her character, personality and conduct generally in so far as they bear on ability to work harmoniously and to good effect with supervisors and other staff members".

In the present case, the Respondent had decided not to confirm the Applicant on account of: (*a*) his behaviour and management style; and (*b*) his performance. As pointed out by the Tribunal, the record was abundantly clear that the Respondent was reasonably justified in its criticisms of the Applicant's behaviour and man-

agement skills. The Applicant's poor behaviour and problematic management were evidenced by, among other things, a memorandum of the Human Resources Officer for the External Affairs Department that outlined staff complaints; notes of staff and the Director of the External Affairs Department regarding staff complaints; at least one resignation that was directly attributable to the Applicant; the Applicant's mid-term evaluation; and the correspondence pertaining to the decision to terminate the Applicant's employment. The Applicant himself had acknowledged having a harsh management style. For instance, in his interim review, the Applicant had stated that, in the future, he would demonstrate a more positive attitude.

The Tribunal noted that most of the Applicant's interpersonal problems had existed mainly before he was given adequate feedback by his managers and it recognized that interactions with his staff had seemed to improve later. However, the initial problems did adversely affect the implementation of the new marketing programme for the Bank's publications activities, the main reason for which the Applicant had been recruited.

Regarding the Applicant's professional performance, it was not possible for the Tribunal to ascertain whether certain achievements in the Applicant's work programme, such as the negotiations with Oxford University Press, the negotiations with the Stationary Office, the closing of the World Bank bookstore in Paris, certain sales increases and cost savings, were the outcome of the Applicant's contributions or of other factors as the Respondent alleged. In any event, there were instances where, according to the Publisher, the Applicant's performance had not produced the expected results. In that respect, the Tribunal would not substitute its own judgement for that of the Respondent on the staff member's suitability for employment.

Insofar as the evaluations of the Applicant and the decision made by the Respondent were based upon the unsuitability of the Applicant for Bank employment and, in the absence of bias, arbitrariness or improper motivation on the part of the Applicant's managers, the Tribunal concluded that there had been no abuse of discretion by the Respondent.

Regarding the issue of whether the Applicant had been treated fairly and in accordance with due process in the decision not to confirm him, the Tribunal recalled that it had held in *McNeill*, Decision No. 157 (1997), that probation created rights and obligations for both parties and because the institution had a wide discretionary power to determine whether the probationer should, or should not, be confirmed, that power should be balanced by its duty to meet what the Tribunal had called "the appropriate standards of justice". In *Salle*, Decision No. 10 (1982), the Tribunal had emphasized "the importance of the requirements sometimes subsumed under the phrase 'due process of law'". It added:

> "The very discretion granted to the Respondent in reaching its decision at the end of probation makes it all the more imperative that the procedural guarantees ensuring the staff member of fair treatment be respected."

In connection with probation, the Tribunal had singled out "two basic Guarantees" as "essential to the observance of due process":

> "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).)"

In addition, the Tribunal had held that one of the basic rights of an employee on probation was the right to receive adequate guidance and training (*Rossini*, Decision No. 31 (1987)), and that it was the Bank's duty to make sure that its obligation to provide a staff member on probation with adequate supervision and guidance had been complied with in a reasonable manner (*Salle*, Decision No. 10 (1982)). The Tribunal further noted that the Applicant was an external recruit unfamiliar with the Bank's policies and procedures, and it was to be expected that he would need a reasonable amount of coaching and supervision, at least at the outset of his assignment, to address the problems that were likely to arise during the transitional period.

In reviewing the record, the Tribunal concluded that the Bank had not provided adequate guidance and supervision to the Applicant in the way he was to manage his staff in the implementation of changes described above. In particular, the Bank had failed to deal promptly with the inappropriate behaviour about which a number of staff had complained as early as October 1997. The record indicated that the Applicant had not been formally informed of those serious allegations until mid-January 1998, some four months into his probationary period. The record further indicated that after he was properly notified, the Applicant had changed his behaviour and the complaints had stopped.

This finding of the Tribunal was particularly important since the Applicant's inability to demonstrate "the managerial and interpersonal skills required to build and engage a team effort among his staff and colleagues" was one of the principal reasons given by the Respondent for the non-confirmation of his appointment. The Appeals Committee recommended that the Respondent pay the Applicant compensation for the Bank's failure to provide him a fair opportunity to succeed in the task he was recruited to perform, a recommendation that was accepted by the Bank. The Tribunal found that that compensation was appropriate and that no additional compensation need be awarded by the Tribunal in that respect.

The Tribunal found other instances in the treatment of the Applicant by the Respondent which constituted a breach of due process. In that regard, the Tribunal observed from the record that only one and a half months after the required six months interim review, which had been carried out late, the Applicant had been informed by the Publisher that confirmation was not possible but that the Publisher would be willing to offer him an extension of the probationary period in order to give him another chance to succeed. In the opinion of the Tribunal, the period between the time the Applicant was informed at his interim review that his performance needed improvement and the time that he was informed that confirmation would be impossible (i.e., one and half months) was insufficient time for the Applicant to demonstrate improvement in his performance. A more serious procedural irregularity had occurred, in the view of the Tribunal, when the Applicant was not afforded an opportunity to defend his record. He had a right to a final evaluation of his performance prior to the management review and before any action regarding the non-confirmation of his appointment was taken.

As the Tribunal had ruled in the past, "damages were designed to provide the Applicant with adequate reparation of injury actually suffered" (*McNeill*, Decision No. 157 (1997)). In the present case, the Tribunal found that the Applicant had suffered injury because: (*a*) he had not been treated fairly by the Bank in that the Bank had not provided him with adequate notice and guidance to succeed in the task for which he was recruited to perform, especially at the beginning of his probationary period; and (*b*) of other procedural irregularities. Regarding the first ground, the Tri-

bunal found that the Applicant had been adequately compensated by the Respondent in conformity with the recommendation of the Appeals Committee and found no reason to award additional compensation. However, in the light of other procedural irregularities, the Tribunal concluded that the Applicant was entitled to additional compensation in the amount of four months' net salary and costs in the amount of $5,000.

3. Decision No. 227 (18 May 2000): Bahram Mahmoudi (No. 2) v. International Bank for Reconstruction and Development[22]

Redundant post—Limited review of redundancy decision—Standard for declaring redundancy because of a redesigned post (para. 8.02(c))—Issue of underemployment and abolition of post—Appropriate remedy for serious abuse of discretion—Issue of Applicant's faulty presentation of his case

The Applicant, who held undergraduate and Master's degrees in economics, joined the Bank in 1978 under a temporary appointment. Two years later, he received a fixed-term appointment. He was made a regular staff member effective February 1981 and received a number of gradual promotions over the years.

On 20 January 1998, the two Vice-Presidents of the Africa Region addressed a Notice of Redundancy to the Applicant confirming an earlier indication from the Technical Manager, African Technical Families, Human Development 3, to the effect that his employment would become redundant effective 1 February 1998. The Notice cited staff rule 7.01, paragraph 8.02(*c*), without any elaboration, thus presumably confirming the rationale of the Sector Director's request. The provision dealt with instances where a post description had been revised or the application of an occupational standard had been changed, to the extent that the qualifications of the incumbent did not meet the requirements of the redesigned post.

The Applicant appealed, arguing that the decision to declare him redundant was incorrect and emphasizing the evidence of his good prior performance, as well as his own perception of his continued usefulness within his work group.

As the Tribunal recalled, the Bank must be free to evolve, and therefore to adjust to new needs in its client countries and corresponding new requirements in its activities. The fact that a staff member's skills had been beneficial to the Bank in the past did not insulate him or her from the risk that the relevant work group required a "skills mix" into which he or she did not fit. The Tribunal had ruled that redundancy decisions were "within the discretion of the Bank". Just as in Decision No. 191, *Kocic* (1998), the Tribunal, in the present case, would be unwilling to question the judgement that the Applicant's skills as a generalist had become redundant in the context of programmes which now required specialists. Those decisions were subject only to limited review by the Tribunal and, consequently, "it will not interfere with the exercise of such discretion unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, or improperly motivated" (*Montasser*, Decision No. 156 (1997); see also *Kahenzadeh*, Decision No. 166 (1997)).

The Applicant had alleged that the redundancy decision was "an abuse of power, procedure and discretion, based on a preconceived plan wrongfully designed by the Africa Regional personnel team". He had variously accused the Bank of sabotaging his work programmes, of repeatedly misrepresenting his employment record, of libelling him and of conspiracy to achieve his termination by any means,

and of harassment, discrimination and humiliation. However, none of those allegations had been proved to the Tribunal.

Nevertheless, the Tribunal did find a serious allegation at the heart of the Application. In the Tribunal's view, the Bank had not demonstrated that it had made the prior determination that would have entitled it to invoke paragraph 8.02(*c*) in the Applicant's case. Citing Decision No. 85, *de Raet* (1989), the Tribunal stated that to motivate a redundancy decision under paragraph 8.02(*c*) it was not enough to observe that a staff member was underemployed. Such a decision might have justified redundancy under paragraph 8.02(*b*)—abolition of post—but the fact of underemployment standing alone did not lead to an unavoidable inference that the position had been redesigned. In fact, the Tribunal did not find sufficient evidence of substantive—let alone "dramatic"—changes in the "working conditions and standards applicable to the Applicant" to sustain a redundancy decision based on paragraph 8.02(*c*).

In consideration of a remedy in the case, the Tribunal, while observing that a decision to declare a staff member redundant was one of great importance, and an abuse of discretion in making such a decision was a serious abuse, recalled that under article XII of its statute, compensation, in the event the Applicant was not reinstated, should "not exceed the equivalent of three years' net pay of the Applicant". The Tribunal noted that it might, in exceptional cases, when it considered it justified, order the payment of a higher compensation.

Following its review of all the circumstances, including the context of the Applicant's initial assignment to African Region Renewal Program, as well as the consistent and plausible record of difficulties for his managers in finding a full work programme for him, the Tribunal found that the situation was one which the Bank would ultimately in all likelihood have been forced to deal with in any event by redesigning his position or proceeding under another redundancy regime. That factor must be taken into account in the determination of compensation. Accordingly, the Tribunal decided that, in the event the Bank decided not to reinstate the Applicant, damages in the amount of 18 months' net pay should be granted.

The Tribunal added that the significant relief accorded to the Applicant was granted notwithstanding the regrettably strident and confusing way in which the Applicant had pursued his claim. The Applicant's presentation of the issues had been contradictory. His citations to the evidentiary record had been misleading. His accusation of harassment, conspiracy, libel and falsification of documents had been ill-conceived. Most of the documents he had submitted to the Tribunal had been irrelevant, indeed incapable of sustaining the interpretation he had sought to put on them.

The Tribunal further remarked that the judgement in the present case had been compelled by the plain facts of the record and by the inability of the Bank to justify its action. The Tribunal had not been assisted by the arguments of the Applicant, whose submissions had often missed central points and dwelt upon numerous irrelevancies which unduly complicated the proceedings. Therefore, the Tribunal made no award of costs.

D. Decisions of the Administrative Tribunal of the International Monetary Fund[23]

No decisions were taken by the Administrative Tribunal of the International Monetary Fund during 2000.

NOTES

[1] In view of the large number of judgements that were rendered in 2000 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 volume of the *Yearbook*. For the integral text of the complete series of judgements rendered by the Tribunals, namely, Judgements Nos. 945 to 990 of the United Nations Administrative Tribunal, judgements Nos. 1891 to 1959 of the Administrative Tribunal of the International Labour Organization and decisions Nos. 217 to 237 of the World Bank Administrative Tribunal, see, respectively: documents AT/DEC/945 to AT/DEC/990; *Judgements of the Administrative Tribunal of the International Labour Organization: 88th and 89th Ordinary Sessions*; and *World Bank Administrative Tribunal Reports 2000*.

[2] Under article 2 of its statute, the Administrative Tribunal of the United Nations is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members.

The Tribunal shall be open: (*a*) to any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who has succeeded to the staff member's rights on his death; and (*b*) to any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied.

Article 14 of the statute states that the competence of the Tribunal may be extended to any specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. Such agreements have been concluded, pursuant to the above provisions, with two specialized agencies: 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] Hubert Thierry, President; Julio Barboza, Vice-President; and Kevin Haugh, Member.

[4] Mayer Gabay, Vice-President, presiding; and Chittharanjan Felix Amerasinghe and Kevin Haugh, Members.

[5] Julio Barboza, Vice-President, presiding; and Chittharanjan Felix Amerasinghe and Kevin Haugh, Members.

[6] Hubert Thierry, President; and Chittharanjan Felix Amerasinghe and Marsha A. Echols, Members.

[7] Julio Barboza, Vice-President, presiding; and Chittharanjan Felix Amerasinghe and Kevin Haugh, Members.

[8] Hubert Thierry, President; Julio Barboza, Vice-President; and Kevin Haugh, Member.

[9] Mayer Gabay, Vice-President, presiding; and Chittharanjan Felix Amerasinghe and Kevin Haugh, Members.

[10] 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 2000: International Labour Organization, including the International Training Centre; World Health Organization, including the Pan American Health Organization;

International Telecommunication Union; United Nations Educational, Scientific and Cultural Organization; World Meteorological Organization, Food and Agriculture Organization of the United Nations; European Organization for Nuclear Research; World Trade Organization; International Atomic Energy Agency; World Intellectual Property Organization; European Organization for the Safety of Air Navigation (Eurocontrol); Universal Postal Union; European Southern Observatory; Intergovernmental Council of Copper Exporting Countries; European Free Trade Association; Inter-Parliamentary Union; European Molecular Biology Laboratory; World Tourism Organization; European Patent Organisation; African Training and Research Centre in Administration for Development; Intergovernmental Organisation for International Carriage by Rail; International Center for the Registration of Serials; International Office of Epizootics; United Nations Industrial Development Organization; International Criminal Police Organization—Interpol; International Fund for Agricultural Development; International Union for the Protection of New Varieties of Plants; Customs Cooperation Council; Court of Justice of the European Free Trade Association; Surveillance Authority of the European Free Trade Association; International Service for National Agricultural Research; International Organization for Migration; International Centre for Genetic Engineering and Biotechnology; Organisation for the Prohibition of Chemical Weapons; International Hydrographic Organization; Energy Charter Conference; International Federation of Red Cross and Red Crescent Societies; and Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization. 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 or her 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 or she 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.

[11] Michel Gentot, President; and Jean-François Egli and Seydou Ba, Judges.

[12] Michel Gentot, President; and Julio Barberis and Jean-François Egli, Judges.

[13] Michel Gentot, President; Mella Carroll, Vice-President; and James K. Hugessen, Judge.

[14] Michel Gentot, President; Mella Carroll, Vice-President; and James K. Hugessen, Judge.

[15] Michel Gentot, President; Mella Carroll, Vice-President; and James K. Hugessen, Judge.

[16] Michel Gentot, President; and Jean-François Egli and Seydou Ba, Judges.

[17] Michel Gentot, President; and Jean-François Egli and Seydou Ba, Judges.

[18] Michel Gentot, President; Mella Carroll, Vice-President; and James K. Hugessen, Judge.

[19] 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.

[20] Francisco Orrego Vicuna, a Vice-President as President; and A. Kamal Abul-Magd and Elizabeth Evatt, Judges.

[21] Robert A. Gorman, President; Thio Su Mien, a Vice-President; Bola A. Ajibola and Jan Paulsson, Judges.

[22] Francisco Orrego Vicuna, a Vice-President as President; and Bola A. Ajibola, Elizabeth Evatt and Jan Paulsson, Judges.

[23] 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.

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)

PEACEKEEPING

1. Release of Board of Inquiry report to next of kin of deceased military personnel

Memorandum to the Military Adviser, Department of Peacekeeping Operations

This refers to your memorandum dated 10 November 2000, seeking our advice in connection with the request of the Permanent Mission of a Member State to the United Nations to release the report of the United Nations Interim Force in Lebanon (UNIFIL) Board of Inquiry in the above case to the next of kin of Private X.

With your memorandum, you forwarded to us, inter alia, a letter dated 30 October 2000 from the Military Adviser to the Permanent Mission, addressed to you. In that letter, the Permanent Mission recognized the Organization's policy pursuant to which a United Nations Board of Inquiry report is an internal document of the United Nations and may not be made public either in whole or in part. Nevertheless, the Permanent Mission inquired whether there are exceptions to this policy which would permit the [Member State] Department of Defence to release a copy of the report of the Board or part thereof to the next of kin of the late Private X. The Mission stated that solicitors for Mrs. Y, mother of Private X, had requested the [Member State] authorities to make available a copy of the UNIFIL Board of Inquiry report on Private X's death.

We note that Private X was killed in a shooting incident while serving as part of the [Member State] military contingent in UNIFIL. In that connection, we wish to recall that the policy concerning the release of Board of Inquiry reports involving personnel of a troop-contributing State is set out in the Note to Directors dated 26 April 1995, on the subject "Guidelines concerning Boards of Inquiry". Pursuant to the Note to Directors, a Board of Inquiry report may be released to the Government of a troop-contributing State in cases where the incident under investigation involves the personnel or equipment of that State and may have implications for the procedures, training or otherwise of that State. Furthermore, the Note to Directors makes it clear, inter alia, that a Board of Inquiry report is an internal document of the United Nations which has no particular legal standing and that, even when shared with a troop-contributing State, the report "remains nevertheless an internal docu-

ment of the United Nations and is for official use only and not to be made public in any way, including judicial or legislative proceedings".

Furthermore, the Note to Directors requires that when a Board of Inquiry report is provided to a Government in such cases, it be accompanied by a note verbale which includes the following sentence:

> "This report is an internal document of the United Nations and is being made available for official use only; it is not to be made public in any form either in whole or in part."

The Note to Directors also states, however, that exceptions concerning the release of Board of Inquiry reports "may be considered on a case-by-case basis (for example, in the interest of justice) in consultation with the Office of Legal Affairs".

The Organization has made exceptions to this policy in some recent cases by releasing to the families of victims of serious incidents the factual portion of the Board of Inquiry reports, which in most Board reports bears the title "Description of the incident" or "Narrative of events".

In the present case, the Board of Inquiry report was transmitted to the Permanent Mission of [Member State] under cover of a letter from your predecessor, dated 15 December 1999. In accordance with the Note to Directors, that letter advised the [Member State] Permanent Mission about the internal and confidential nature of the Board of Inquiry report, using the essence of the language from the sentence to be included in a note verbale, as quoted above.

In addition, we are aware that the [Member State] contingent conducted its own investigation, the results of which were contained in a Military Police report. We are also aware that the [Member State] contingent declined requests of cooperation with the UNIFIL Board of Inquiry and refused to allow that Board of Inquiry to interview a key witness from the Irish Contingent. Thus, the report of the UNIFIL Board of Inquiry relies entirely on and restates the [Member State] Military Police report.

Under these circumstances, consistent with the recent exceptions to the general policy, we suggest that the United Nations agree to the release to Private X's mother a copy of the part of the UNIFIL Board of Inquiry report entitled "Description of the incident", which gives a factual description of the circumstances of Private X's death. However, such copy of the "Description of the incident" should be accompanied by a letter from the [Member State] authorities informing Private X's mother that the UNIFIL Board of Inquiry relied entirely on the investigation conducted by the [Member State] Military Police.

28 November 2000

2. Question whether a State's air force and navy assisting in the deployment of that State's contingent in the United Nations mission area can be granted "experts on mission" status—Article 5.1 and article 7 of annex A to the Model Memorandum of Understanding—Security Council resolution 1320 (2000)

Memorandum to the Assistant Secretary-General for Peacekeeping Operations

I wish to refer to your memorandum of 29 November 2000 attaching a note verbale from the Permanent Mission of [Member State] to the United Nations, dated 28 November 2000. The note verbale states that a transport ship of the [Member State] navy and a transport aircraft of the [Member State] air force are going to assist in the deployment of the [Member State] contingent for the United Nations Mission in Ethiopia and Eritrea (UNMEE). The Permanent Mission has requested that the transport ship's company and the crew of the transport aircraft be granted the status of "Experts on missions for the United Nations" under article VI of the Convention on the Privileges and Immunities of the United Nations ("the Convention").

You seek our advice on the legal status of the above-mentioned ship's crew and the transport aircraft's aircrew in the light of the fact that these personnel, who are performing tasks in support of the [Member State] contingent in the mission area, are serving as national support elements above the requirements and authorized strength for UNMEE.

The Model Memorandum of Understanding between the United Nations and States contributing resources to United Nations peacekeeping operations establishes the administrative, logistic and financial terms and conditions which govern the contribution of personnel, equipment and services provided by a Government in support of a United Nations peacekeeping operation (see the annex to the note by the Secretary-General, A/51/967, of 27 August 1997, which contains the Model Memorandum of Understanding).

The Model Memorandum of Understanding in article 5.1 provides for the number of regular personnel to be provided by a contributing State and further states that "any personnel above the level indicated in this Memorandum shall be a national responsibility and thus not subject to reimbursement or other kind of support by the United Nations".

The principle that excess personnel is a national and not a United Nations responsibility is further elaborated upon in section 3 of annex A to the Model Memorandum of Understanding, which contains the general conditions for personnel. Paragraph 7 provides, inter alia, that excess personnel "may be deployed to the [United Nations peacekeeping mission], with the prior approval of the United Nations, if it is assessed by the troop-contributing country and the United Nations to be needed for national purposes". Significantly, paragraph 7 further provides that "this personnel shall be part of the contingent, and as such enjoy the legal status of members of the [United Nations peacekeeping mission]".

Provided that the conditions set out in paragraph 7 of annex A to the Model Memorandum of Understanding have been met, the [Member State] excess personnel would enjoy the legal status that members of the military contingent enjoy and which is provided for in the draft status-of-forces agreements currently being negotiated with the Governments of Eritrea and Ethiopia. By virtue of that status, members

of the military component of UNMEE shall be subject to the exclusive jurisdiction of their respective participating States in respect of any criminal offences that may be committed by them in Eritrea or Ethiopia as the case may be (article 51 (*b*) of both draft status-of-forces agreements).

It should also be recalled that the Security Council by its resolution 1320 (2000) provided in paragraph 6 that "pending the conclusion of [status-of-forces agreements], the model status-of-forces agreement of 9 October 1990 (A/45/594) should apply provisionally". The model status-of-forces agreement, which provides for the privileges and immunities of military contingents, specifically states in paragraph 47(*b*) that members of a military contingent of a peacekeeping mission are "subject to the exclusive jurisdiction of their respective participating States in respect of any criminal offences which may be committed by them in the [host country/territory]".

It would therefore be advisable that an agreement between the United Nations and the Government of the [Member State], on the basis of the Model Memorandum of Understanding, be concluded for the purposes of the personnel and equipment contributed by the Government to UNMEE. In accordance with paragraph 7 of annex A to the Model Memorandum of Understanding, should excess personnel have been approved by the United Nations and assessed by the Government of [Member State] and the United Nations be needed for national purposes, then this should also be addressed in the above-mentioned agreement.

4 December 2000

PERSONNEL

3. Request for dependency benefits—Eligibility of children for dependency status (staff rule 103.24 and ST/IC/1996/40)

Memorandum to Chief, Operational Services Division, Office of Human Resources Management

This refers to your memorandum of 3 December 1999 in which you seek our advice in connection with the request of Ms. X, a staff member of United Nations information centre in Dakar, for dependency benefits in respect of her niece, Y. You have explained that Ms. X, who has held a fixed-term contract since 11 December 1997, first submitted, in support of her request, a certificate which indicated that Y resided with her. However, the Office of Human Resources Management considered that certificate insufficient to establish the child as a dependant and requested the staff member to present adoption papers.

On 5 November 1999, the staff member submitted a *procès-verbal de délégation de puissance paternelle avec charges*, and a *certificat de vie individuelle et de charge de famille*. You have requested us to advise whether, based on these latest documents submitted by the staff member, the Organization may recognize Y as Ms. X's dependent child.

The conditions of eligibility of children for dependency status are set out in staff rule 103.24. Those conditions are spelt out in greater detail in ST/IC/1996/40. Paragraph 5 of the annex to ST/IC/1996/40 lists children who may be eligible for dependency status as the following:

"(*a*) A staff member's natural child;

(*b*) A staff member's legally adopted child;

(*c*) A staff member's stepchild, if residing with the staff member;

(*d*) If legal adoption of the child is not possible because there is no statutory provision for adoption or any prescribed court procedure for formal recognition of customary or de facto adoption in the staff member's home country or country of permanent residence, then a child in respect of whom the following conditions are met:

(i) The child resides with the staff member;

(ii) The staff member can be regarded as having established a parental relationship with the child;

(iii) The child is not a brother or sister of the staff member;

(iv) The number of children for which dependency benefits arebeing claimed by the staff member under this subparagraph does not exceed three."

In all cases, the staff member must provide main and continuing support for the child before the child can be recognized as that staff member's dependant.

In the present case, Y cannot qualify as Ms. X's dependant under paragraph 5(*a*) of ST/IC/1996/40 as she is not Ms. X's natural child, or paragraph 5(*c*) thereof as she is not Ms. X's stepchild. The issue, therefore, is whether Y is Ms. X's legally adopted child as provided in paragraph 5(*b*) of ST/IC/1996/40, or Ms. X's child by virtue of customary or de facto adoption as set out in paragraph 5(*d*) thereof, both of which could qualify her for dependency status.

The document "*Procès-verbal de délégation de puissance paternelle avec charges*" provided by the staff member was issued by the Court of Appeal in [Member State] pursuant to an application by Y's mother, Z, and the staff member. By that document, Z delegates parental authority over Y, as well as the related obligations of support for that child. The reason for the delegation is stated as Z's inability to carry out her responsibility vis-à-vis her children. The document thus provides that Ms. X shall exercise all parental rights and duties over Y, including the responsibility for expenses relating to the child's "maintenance, needs and education", pursuant to article 289 of the "*Code de la Famille*" (the law on the family).

In our view, however, this delegation of parental authority is not a legal adoption. If legal provisions for adoption exist in [Member State], the staff would have to adopt Y in accordance with those provisions in order for Y to be eligible for dependency status. If no such provisions exist, however, the only other avenue for Ms. X to have Y recognized by the United Nations as her dependent child is for Ms. X to produce evidence of Y's customary or de facto adoption. We are not in a position to ascertain what provisions for legal, de facto or customary adoption exist in [Member State]. Moreover, it is not clear to us whether Y's mother intends to give the child up for adoption by Ms. X and to relinquish all parental rights over Y, or merely to obtain financial support for the child from Ms. X.

If Ms. Z's intention is to give the child up for adoption, the child's recognition by the United Nations as Ms. X's dependant would depend on the staff member providing sufficient information that the child meets the criteria stipulated in ST/IC/1996/40. In that connection, Ms. X would have to provide proof that she has legally adopted the child. If legal adoption is not possible in [Member State] and the staff member asserts that the child is her dependant by virtue of de facto or custom-

ary adoption, then the staff member would have to produce proof of compliance with the statutory provisions, if any, for the recognition of such methods of adoption or produce a valid court order recognizing such adoption. In this respect, if the staff member relies on the provisions of the "*Code de la Famille*", we would also request that she submit copies of articles 289 to 292 of that code which are cited in the document from the [Member State] Court of Appeal. Moreover, the intention of Y's mother to give the child up for adoption would have to be clearly established before Y could be recognized as Ms. X's dependant on the basis of a customary or de facto adoption.

26 January 2000

4. QUESTION WHETHER THE JOINT APPEALS BOARD AND THE JOINT DISCIPLINARY COMMITTEE CAN REVIEW THE FILES OF THE OFFICE OF INTERNAL OVERSIGHT SERVICES—PROVISION OF CONFIDENTIALITY FOR STAFF MEMBERS REPORTING TO OIOS

Memorandum to the Chief of the Office of the Under-Secretary-General, Department of Management

This is in response to your request for advice as to whether members of the Joint Appeals Board (JAB) and the Joint Disciplinary Committee (JDC) can review files of the Office of Internal Oversight Services (OIOS) in connection with their consideration of appeals or disciplinary cases.

The General Assembly, in its resolution 48/218 B of 29 July 1994, requested that the Secretary-General ensure that OIOS procedures provide confidentiality and protection against repercussions for staff members and others making reports to OIOS. It also requested that the Secretary-General ensue that procedures are in place to protect the anonymity of staff members.

The Secretary-General, in ST/SGB/273, "Establishment of the Office of Internal Oversight Services", sets forth provisions on confidentiality applicable to OIOS investigations and documents. Paragraphs 18(*b*) and (*c*) of ST/SGB/273 describe the specific instances in which suggestions and reports ("complaints") made to the OIOS by staff members and others, as well as other information, can be disclosed. Those paragraphs read as follows:

> "(*b*) The Under-Secretary-General for Internal Oversight Services shall designate the officials authorized to receive such suggestions and reports. The designated officials shall be responsible for safeguarding the said suggestions and reports from accidental, negligent or wilful disclosure, as well as for ensuring that the identity of the staff members and others who have submitted such reports to the Office is not disclosed, except as otherwise provided in the present bulletin. Unauthorized disclosure of the said suggestions and reports shall constitute misconduct, for which disciplinary measures may be imposed. Except in regard to subparagraph (*e*) below, the identity of staff members and others submitting suggestions and reports to the Office may be disclosed only where such disclosure is necessary for the conduct of proceedings, whether administrative, disciplinary or judicial, and only with their consent.
>
> "(*c*) The above procedures and requirements for the protection of the identity of staff and others making the suggestions and reports shall also apply to staff and others who provide information to or otherwise cooperate with the Office".

ST/SGB/273 makes it clear that: (*a*) OIOS files containing complaints are confidential; (*b*) OIOS has discretion to determine when such files can be disclosed; and (*c*) disclosure of the identity of a complainant may only be done with the complainant's consent and only if necessary for administrative, disciplinary and judicial proceedings. The latter provision does not imply any automaticity: the formulation of the relevant provision ("may be disclosed") indicates the discretionary authority of OIOS in this matter.

These rules are reiterated in the OIOS Investigations Section Manual. According to paragraph 3 of operating procedure B of the OIOS Manual, disclosure of a complainant's identity requires the consent of the OIOS Section Chief. Paragraph 5 of operating procedure B further stipulates that "complaints provided to [OIOS] are not subject to disclosure" except under the circumstances outlined above. In addition, operating procedure A of the OIOS Manual notes that the United Nations offices with disciplinary and administrative authority may use the reports of OIOS on its findings, but contains no similar remarks regarding OIOS files used in preparing reports.

As far as paragraph 18(*c*) of ST/SGB/273 is concerned, the Manual clarifies, in paragraph 4 of operating procedure B, as follows:

> "Confidentiality provisions . . . do not apply to witnesses who provide information in response to questions and inquiries to an investigator during an OIOS Investigations Section (OIOS/IS) investigation. Witnesses who are United Nations staff members are obliged to cooperate with OIOS/IS and must reply honestly and truthfully to questions (ST/SGB/273, para. 4; Article 101, paragraph 3, of the Charter of the United Nations; staff regulation 1.2 and staff rule 104.4 (*e*)). As a consequence of this obligation, witnesses cannot condition their cooperation with OIOS/IS on the basis that their identities or their oral or written testimony remain confidential. Finally, a full confidentiality privilege for witnesses—whether United Nations staff members or others—would stifle any investigation or subsequent administrative, disciplinary or judicial proceedings and was therefore clearly not the intention of the General Assembly when it adopted resolution 48/218 B on [29 July] 1994."

With respect to the authority of the JAB and JDC to obtain documents pertaining to their cases and their obligation to maintain confidentiality, we note the following.

Joint Appeals Board

Staff rule 111.2(*l*) provides:

> "The panel shall have authority to call members of the Secretariat who may be able to provide information concerning the issues before it and shall have access to all documents pertinent to the case. Notwithstanding the preceding sentence, should the panel wish to have information or documents relating to the proceedings of the appointment and promotion bodies in questions involving appointment and promotion, it shall request such information or documents from the Chairperson of the Appointment and Promotion Board, who shall decide on the panel's request, taking into account the interests of confidentiality. This decision of the Chairperson is not subject to appeal. The Chairperson of the panel shall determine which documents are to be transmitted to all members of the panel and the parties."

Joint Disciplinary Committee

Staff rule 110.7(*b*) provides:

> "Proceedings before a Joint Disciplinary Committee shall normally be limited to the original written presentation of the case, together with brief statements and rebuttals, which may be made orally or in writing, but without delay. If the Committee considers that it requires the testimony of the staff member concerned or of other witnesses, it may, at its sole discretion, obtain such testimony by written deposition, by personal appearance before the Committee, before one of its members or before another staff member acting as a special master, or by telephone or other means of communication."

Regarding confidentiality of JDC documents, paragraph 19 of ST/AI/371, entitled "Revised disciplinary measures and procedures", provides:

> "The Chairperson shall direct that all persons involved in Joint Disciplinary Committee proceedings, whether as members, parties, counsel or witnesses, observe strict confidentiality . . .".

Thus, the JAB is authorized to have access to all documents pertinent to a case, but need only hold in confidence information or documents relating to appointment and promotion. The JDC is authorized only to obtain testimony of a concerned staff member or witnesses in addition to the written presentation of a case, and must direct that all persons involved in JDC proceedings observe confidentiality.

In our view, the issues of access to documents and confidentiality must be carefully considered in the light of the important functions served by OIOS, JAB and JDC. We consider that the rules pertaining to the JDC clearly do not establish a JDC right to obtain OIOS files, as staff rule 110.7(*b*) only provides for the JDC to obtain testimony.

Access of the JAB to OIOS files raises a more difficult question. On the one hand, staff rule 111.2(*l*) provides that the JAB shall have "access to all documents pertinent to the case", and there are requirements of confidentiality for both OIOS and the JAB. On the other hand, in our view, the confidentiality requirements on OIOS documents are far more stringent than for the JAB. As explained above, OIOS files containing complaints and the identity of the complainants may only be disclosed pursuant to a discretionary decision by OIOS. This confidentiality requirement is intended to protect whistle-blowers and is essential to the proper functioning of OIOS. In contrast, staff rule 111.2(*l*) does not require broad confidentiality of JAB documents. Rather, it requires only that information or documents relating to appointment and promotion be held in confidence. In effect, the broad confidentiality requirements on OIOS documents could be defeated if OIOS documents containing complaints or the identity of complainants were disclosed to the JAB and were not adequately protected in view of the narrower confidentiality requirements of JAB.

It should also be noted that the above administrative issuances concerning JAB and JDC were formulated and promulgated long before the General Assembly established OIOS. Therefore, relevant provisions of those issuances should be analysed, for purpose of the present inquiry, bearing in mind the letter and spirit of General Assembly resolution 48/218 B, which established OIOS. In particular, paragraph 5(*a*) of that resolution stipulates that OIOS "shall exercise operational independence under the authority of the Secretary-General in the conduct of its duties". In paragraphs 6 and 7 of the resolution, the General Assembly requested the Secretary-

General to ensure that procedures were in place "that provide for direct confidential access of staff to [OIOS] and for protection against repercussions", and that it was necessary to "protect individual rights, the anonymity of staff members, due process for all parties concerned and fairness during any investigations".

It should further be noted that OIOS, acting within its mandate and in the interests of protecting rights of staff, has the right to assign confidential status to documents which may not be specifically referred to either in General Assembly resolution 48/218 B or in ST/SGB/273.

As far as JAB and JDC proceedings are concerned, it is our understanding that, pursuant to operating procedure A of the OIOS Manual, OIOS reports of its findings are routinely made available to the JAB and JDC in cases where OIOS conducted an initial inquiry. However, as for OIOS files, in view of the above considerations, in particular OIOS operational independence and confidentiality requirements, it is our view that OIOS files may be provided to members of JAB and JDC only pursuant to a discretionary decision by OIOS.

27 January 2000

5. Employment of former United Nations procurement officers by United Nations suppliers and vice versa—Sanctions against former staff members and companies that hire offending staff members—Conflicts of interest

Memorandum to the Assistant Secretary-General for Human Resources Management, Department of Management

I refer to your memorandum of 9 February 2000 seeking our advice on the legal aspects of paragraph 28 of General Assembly resolution 52/226 A of 31 March 1998, whereby the Assembly requested the Secretary-General:

> "to submit proposals on possible amendments to the Financial Regulations and Rules of the United Nations and the Staff Regulations and Rules of the United Nations in order to address issues of potential conflict of interest, such as the employment of former United Nations procurement officers by United Nations suppliers and vice versa".

In that connection, you have transmitted a memorandum dated 19 January 1999 to you from the Chief, Procurement Division, Office of Central Support Services, on the same subject.

I also refer to the memorandum of 17 February 2000 addressed to you by the Controller, which has been copied to this Office. In the memorandum, the Controller expressed his concern regarding amendments to any legislative issuances which would further complicate the Organization's procurement regime. The Controller indicates that he favours a "broader approach" to the conflict of interest question, which would pertain to all staff members and not just procurement officers.

A. *The current regulatory framework*

1. *General*

Staff regulation 1.2 comprehensively focuses on the issues of basic rights and obligations of staff and aims at ensuring that the highest standards of efficiency, competence and integrity are upheld. Staff regulation 1.2 (*b*) states that "the concept

of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status". Therefore, staff members are bound to adhere to these standards at all times and they must not allow conflicts of interest to arise between their United Nations employment and their former employment. Accordingly, the existing regulatory framework provides only very general rules on conflict of interest with regard to pre-and post-United Nations activities.

(*a*) *Limitations on recruitment by the United Nations of former employees of United Nations contractors*

Section 7 of ST/AI/1997/7 provides for limitations on recruitment of certain types of personnel and states that:

> "Interns, consultants, individual contractors and personnel provided to the Organization on a non-reimbursable basis, including any gratis personnel, shall not be eligible to apply for, or be appointed to, any post in the Secretariat for a period of six months following the end of their service."

As pointed out in your memorandum of 9 February, these restrictions are limited because individuals working for United Nations contractors are not included.

(*b*) *Limitations on employment of former staff members by United Nations contractors*

Staff regulation 1.2 (*i*) pertains to the obligations of former staff members. It provides as follows:

> "Staff members shall exercise the utmost discretion with regard to all matters of official business. They shall not communicate to any Government, entity, person or any other source any information known to them by reason of their official position that they know or ought to have known has not been made public, except as appropriate in the normal course of their duties or by authorization of the Secretary-General. *These obligations do not cease upon separation from service*". (emphasis added)

B. *Application of the rules*

Breaches of the Staff Regulations and Rules by staff members are dealt with within the internal disciplinary framework. Former staff members, however, are no longer subject to the internal disciplinary measures of the Organization. Therefore, the only recourse that the Organization has, if staff regulations and rules are breached by a former staff member, is to bring a civil action in a national court or to ban future United Nations employment of the individual concerned or the company that has employed the former staff member and which seeks to or may have benefited from such breaches. National Governments have recourse to criminal action for breaches of post-employment conflict of interest and they also have recourse to civil law. The United Nations could only resort to civil action in respect of breaches by former employees and this course of action would be problematic, as outlined below.

We have had the occasion recently to address a breach of staff regulation 1.5[1] in a case which involved a staff member who had left the Organization and had used restricted information to write an article.

In that case, the Under-Secretary-General for Political Affairs asked whether any action could be taken against the former staff member for violation of the Staff Regulations and Rules, in particular, for having used restricted information to write an article. The Legal Counsel, in a note of 15 August 1995, advised as follows:

"The obligations in staff regulation 1.5 not to use information that has come into the hands of a staff member because of his official duties is stated to survive separation from service. However, enforcement of that obligation against a former staff member would be rather difficult".

"Enforcement of staff regulation 1.5 against Mr. X in a national court would have to be based on the notion that the Staff Regulations were part of a contractual commitment by Mr. X to the United Nations that is enforceable by that national court. The problem is that the United Nations has consistently resisted attempts by former staff to sue the Organization and its officials in national courts and has obtained a number of decisions at the highest levels in this and other countries holding that national courts do not have jurisdiction. For the United Nations now to waive its immunity and submit this matter to the national courts would expose the Organization to a ruling by such courts on the internal regulations of the Organization that may not be compatible with the views or practices of the Organization."

Therefore, the only real sanction that can be imposed by the Organization on former staff members in breach of the obligation relating to confidentiality and "discretion with regard to all matters of official business" appears to be an indication in their official status file, which may prevent their re-engagement by the Organization and inhibit their consideration by other United Nations–related organizations with which we might share such information. This indication in the file would become part of a former staff member's official record and so could affect any references.

It may also be possible to impose sanctions on the companies which employ former staff members. One possible sanction would be to ban the company that employs such former staff member that engages in such objectionable conduct from any dealings with the United Nations, and this ban could apply for a specified period of time. If the Organization wishes to pursue such a remedy, we recommend that the Organization warn prospective contractors of this prohibition and possible sanction. This could be done in the Request for Proposal or as an added provision to general conditions of contract.

C. *Comments on the proposals of the Office of Human Resources Management*

In your memorandum of 9 February, you made three proposals in relation to this topic. First, in paragraph 5 you suggested that the following provision be added to section 7 of ST/AI/1997/7:

"In order to avoid conflicts of interest in respect of staff discharging procurement functions, no candidate formally associated, directly or indirectly, with a contractor providing goods or services to the Secretariat may be appointed to discharge any procurement-related functions in the Secretariat for a period of [one] [two] [three] years after the end of their association with the contractor."

In principle, there would be no legal objections against this provision. However, the phrase "formally associated, directly or indirectly", is rather broadly stated, and defining which candidate is "formally associated, directly or indirectly, with a contractor" may prove difficult in practice, if not impossible. Accordingly, the proposed provision may prove unfair to candidates who, for example, when employed by the contractor, had no involvement with United Nations contracts. Therefore, if it is decided to add the above provision, it would be advisable to define more precisely which candidates will be precluded from discharging procurement-related func-

tions. As to the duration of such limitation (e.g., "[one], [two] or [three] years"), we suggest you seek the views of the Procurement Division on the matter.

Secondly, in paragraph 7 of your memorandum, you suggest "the introduction of a special condition in the offer letter and letter of appointment relating to procurement functions, placing the staff member on notice that their appointment is subject to the staff member's undertaking that he or she will not seek or accept employment with a United Nations contractor within a certain period of separation from the United Nations". You sought our advice as to "the validity and enforceability of such a restriction under national law(s)".

It is our understanding that in many national jurisdictions, former governmental employees are subject to post-employment restrictions by means of restrictive covenants in their contracts and by national law. The type of restrictions differ from jurisdiction to jurisdiction, as do the time limits for which the restrictions remain in force. For example, the Canadian Conflict of Interest and Post-Employment Code for Public Office Holders prohibits former public office holders, for a year after leaving office, from accepting "appointment to a board of directors of, or employment with, an entity with which they had direct and significant official dealings during the period of one year immediately prior to the termination of their service in public offices".[2]

United States legislation contains a comprehensive variety of restrictions on former governmental employees with more stringent requirements pertaining to former senior officials and procurement officers. Section 207, of 18 U.S.C., which is a criminal statute, provides for a lifetime restriction on representation on particular matters with which former employees dealt. A former governmental employee is prohibited from "representing any other person before any United States department, agency or court in any particular matter involving specific parties (e.g., a contract, procurement, claim, litigation, investigation or negotiation) in which the United States is a party or has a direct and substantial interest and in which the employee participated personally and substantially as a government official".

British legislation, on the other hand, takes a different approach. Pursuant to the Business Appointment Rules,[3] in their first two years after leaving the Government certain former senior civil servants must obtain Government approval before taking any full, part-time or fee-paid employment. These rules, inter alia, also apply to former civil servants who have had any "official dealing with their prospective employer during the last two years of their government employment" as well as former civil servants who "have had access to commercially sensitive information of competitors of their prospective employer in the course of their official duties".[4]

Thus, the requirement that a former staff member undertakes not to seek or accept employment with a United Nations contractor within a period of one year following separation from the United Nations may in principle be introduced. However, in view of the enforceability problem (see above), it is unclear whether the introduction of the above requirement would be effective in avoiding issues relating to conflicts of interest.

Thirdly, your suggestion in your memorandum that bids or proposals will not be considered when a supplier has hired a former staff member previously engaged in procurement-related activities, while more easily enforced in principle, would not be effective in those instances where a former staff member is not dealing with his or her former colleagues and thus, could not be identified. If a decision is made to pursue this approach, a tightly drafted restriction pertaining to the hiring of former

United Nations procurement officers could be inserted into the general conditions of contract. We would recommend that these restrictions only apply for a specified number of years after a staff member has left the Organization.

D. *Amendment to the Staff Regulations and Rules*

In your memorandum, you expressed concern over whether it would be appropriate to amend the Staff Regulations and Rules to address the conflict of interest issue in relation to procurement officers. Your concern was based on the fact that the provisions of the code of conduct for staff, which is contained in the Staff Regulations and Rules, are applicable to all staff members and are not intended to apply to a particular group of staff members.

In this respect, however, we would note what was stated by the Secretary-General when he was presenting the proposed revisions to article I of the Staff Regulations and chapter I of the Staff Rules (formerly referred to as the "proposed United Nations Code of Conduct") to the General Assembly:

> "It may be that, once the Code of Conduct is adopted, various subsidiary administrative issuances may be adopted . . . [that deal with] particular occupational categories of staff whose activities may require special rules. It is not appropriate to deal with such specialized matters in a Code of Conduct applicable to all United Nations staff without exception."[5]

We would also note the action taken by the General Assembly in its resolution 52/252 of 8 September 1998, in adopting the revisions to article I of the Staff Regulations and chapter I of the 100 series of the Staff Rules of the United Nations. In paragraph 10 of the resolution, the Assembly requested the Secretary-General

> ". . . to prepare, as a matter of priority, additional rules for particular groups of staff such as finance officers, procurement officers and staff of separately funded organs, in accordance with paragraph 10 of his report [A/52/488]."

Finally, we would note paragraph 4 of the annex to the Secretary-General's bulletin (ST/SGB/1998/19) of 10 December 1998, which provides:

> ". . . it is envisaged that additional rules for particular groups of staff such as finance officers, procurement officers and staff of separately funded organs will be prepared and promulgated by administrative issuances dealing with their status, rights and obligations. It is not appropriate to deal with such specialized matters in the Staff Regulations and Rules."

Your suggestions concern only procurement officers. Therefore, we share your view that it might not be appropriate (or necessary) for any amendments to be inserted into the Staff Regulations and Rules and that, therefore, such provisions should be included in implementing administrative issuances.

In the light of the above, if the conflict of interest issue in respect of procurement officers is going to be addressed, it would appear that the issue would be most appropriately addressed in an administrative instruction. These subsidiary rules, which would refer to the Staff Regulations and Rules, could be formulated to address the particular issues of conflict of interest which arise in relation to procurement officers.

26 May 2000

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6. ILLEGAL SEIZURE OF UNICEF PROPERTY TO SATISFY COURT ORDER—IMMUNITY OF THE UNITED NATIONS FROM CIVIL SUIT—ARBITRATION—ARTICLE VIII, SECTION 29(*a*), OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Note verbale to the Permanent Representative of [Member State] to the United Nations

The Under-Secretary-General for Legal Affairs, the Legal Counsel of the United Nations, presents his compliments to the Permanent Representative of [Member State] to the United Nations and has the honour to refer to the notes verbales of 13 January 2000 and 16 November 1999 presented by the United Nations Children's Fund to the Ministry of External Relations of the Government of [Member State], in connection with a claim by Dr. X that has been brought against UNICEF in the [City of Member State] Local Court 1998. The Legal Counsel notes that the honourable court had issued an order in which it purported to hold UNICEF liable for a payment to Dr. X, and has entered subsequent orders relating to execution of the aforesaid order. The Legal Counsel has now learned, with great concern, that on 1 February 2000, the competent [Member State] authorities have seized, by force and without authority or permission, a number of motor vehicles belonging to UNICEF. This illegal seizure of UNICEF property has apparently been conducted in an effort to levy execution of the court's order.

The Legal Counsel recalls that in its notes verbales, UNICEF set out the United Nations legal position as well as the obligations of the Government of [Member State]. In particular, as a subsidiary organ of the United Nations, UNICEF is entitled to the privileges and immunities provided for in the Convention on the Privileges and Immunities of the United Nations (hereinafter "the Convention"), to which [Member State] has been a party since 1977 without reservation. Pursuant to article II, section 2, of the Convention, "the United Nations, its property 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, however, understood that no waiver of immunity shall extend to any measure of execution". Moreover, section 3 provides that "the premises of the United Nations shall be inviolable. The property and assets of the United Nations, 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". The United Nations has maintained its privileges and immunities in respect of the present case.

In accordance with section 34 of the Convention, the Government of [Member State] has a legal obligation to "be in a position under its own law to give effect to the terms of this Convention". Any interpretation of the provisions of the 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.

In the light of the provisions of the Convention and the Charter of the United Nations, the contention that there is no immunity from civil suit would have no legal basis whatsoever either in the Convention on the Privileges and Immunities of the

United Nations or in the Charter of the United Nations. Moreover, as the Government has a legal obligation to give effect to the terms of the Convention, the Government of [Member State] has a legal obligation to advise the competent judicial authorities, including the civil court concerned, of the immunity of UNICEF from every form of legal process, including the civil suit in question and all orders issued therein, including orders of execution of judgement.

The Legal Counsel has the honour to refer to a recent advisory opinion of the International Court of Justice, dated 29 April 1999, on the subject of *Difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights*, in which the Court confirmed the obligation of government authorities of a party to the Convention to convey the findings of the Secretary-General concerning immunity to the concerned national courts.

Notwithstanding the immunity of the Organization from legal process under the applicable provisions of the Convention and the Charter of the United Nations, Dr. X is not without a remedy to redress his complaint. Pursuant to article VIII, section 29(*a*), of the Convention, the United Nations, of which UNICEF is an integral part, is required to provide appropriate modes of settlement of "disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party". Thus, Dr. X must be provided "an appropriate mode of settlement" in cases such as this, where the dispute concerns his contractual relationship with the Organization. In the absence of an agreed settlement, it has been the established practice of the Organization to submit such claims to arbitration on the basis of an arbitration clause in a contract or a separate arbitration agreement. The Legal Counsel has been informed that the UNICEF office in [City of Member State] has already attempted to pursue a negotiated resolution of this matter with Dr. X, and that it has indicated to the Government of [Member State] its readiness to meet further with Dr. X in conjunction with the Ministry of External Relations.

The Legal Counsel recalls that UNICEF has requested the Ministry of External Relations of the Government of [Member State] to take all steps necessary to advise the competent judicial authorities of the privileges and immunities of UNICEF, including the immunity from all orders of execution of judgement, in accordance with the obligations of the Government of [Member State] under the Convention on the Privileges and Immunities of the United Nations and the Charter of the United Nations.

Despite the foregoing, the competent [Member State] authorities have illegally seized UNICEF property in contravention of the Convention and the Charter of the United Nations. The Legal Counsel must protest these violations in the strongest terms and is compelled to demand that the Government of [Member State] take immediate steps to return UNICEF property and to provide adequate assurances that UNICEF, its premises and its staff shall be afforded the protection of the Government against any further violations of international law and all threats of the use of force or violence.

2 February 2000

7. Status of research assistants with the United Nations Institute for Disarmament Research

Memorandum to the Chief, Rules and Regulations Unit, Office of Human Resources Management

1. This is with reference to your memorandum of 28 March 2000 concerning the status of research assistants engaged by the United Nations Institute for Disarmament Research (UNIDIR). In particular, you have inquired whether the UNIDIR research assistants are "staff members" and/or "officials" within the meaning of Article 105 of the Charter of the United Nations and of the Convention on the Privileges and Immunities of the United Nations (hereinafter "the Convention"). Our comments are as follows.

2. The revised "letter of appointment" indicates that such assistants "have the status of an official of the United Nations in accordance with Article 105 of the Charter of the United Nations". Article IV, paragraph 6, of the UNIDIR statute provides that "the Director and the staff of the Institute are officials of the United Nations and are therefore covered by Article 105 of the Charter of the United Nations and by other international agreements and United Nations resolutions defining the status of such officials". The UNIDIR research assistants are therefore clearly officials of the United Nations within the meaning of the Charter and of the Convention and are entitled to the privileges and immunities provided for under article V of the Convention.

3. As to whether the research assistants are "staff members", the "letter of appointment" provides that they are "subject to the authority and direction of the Director of the Institute and to the obligations set forth in article 1 and chapter I of the Staff Regulations and Rules of the United Nations". In accordance with article IV, paragraph 3, of the UNIDIR statute, "the staff of the Institute shall be appointed by the Director under letters of appointment signed by him in the name of the Secretary-General and limited to service with the Institute. The staff shall be responsible to the Director in the exercise of their functions." The Staff Regulations of the United Nations explicitly define the expressions "staff members" and "staff" as meaning all the staff members of the Secretariat, within the meaning of Article 97 of the Charter of the United Nations, whose employment and contractual relationship are defined by letter of appointment subject to regulations promulgated by the General Assembly pursuant to Article 101, paragraph 1, of the Charter. Rule 100.1 of the Staff Rules provides that the staff rules are applicable to all staff members appointed by the Secretary-General except technical assistance project personnel and staff members specifically engaged for conference and other short-term services. Thus to the extent that that their employment is defined by a letter of appointment in the name of the Secretary-General and that, pursuant to such letter of appointment, they are subject to the Staff Regulations and Rules of the United Nations, the UNIDIR research assistants are staff members of the United Nations.

4. In this connection reference should also be made to General Assembly resolution 76 (I) of 7 December 1946, wherein "officials" are "all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates".

5. The "letter of appointment" also provides that "subject to the provisions in this letter, the general conditions of . . . service will be governed by the United Nations Staff Regulations and Rules". Article IV, paragraph 4, of the UNIDIR statute provides that "the terms and conditions of service of the Director and the staff

shall be those provided in the Staff Regulations and Rules of the United Nations, subject to such arrangements for special rules or terms of appointment as may be proposed by the Director and approved by the Secretary-General". Although special terms of appointment for UNIDIR staff have not been approved by the Secretary-General and despite the fact that both the letter of appointment and the UNIDIR statute provide that the conditions of service shall be governed by the Staff Regulations and Rules of the United Nations, we note with concern that the research assistants are, inter alia, placed under a separate remuneration modality, are not subject to staff assessment and are excluded from participation in the United Nations Joint Staff Pension Fund. In the light of the foregoing, and until such time as the Secretary-General approves different conditions of service for UNIDIR staff, the UNIDIR letter of appointment and the conditions of service mentioned therein could be challenged in the Administrative Tribunal.

3 April 2000

PROCEDURAL AND INSTITUTIONAL ISSUES

8. Participation of observers in the Ad Hoc Committee to elaborate international conventions for the suppression of terrorist bombings and acts of nuclear terrorism—The right to attend or participate as observers in the sessions and work of the General Assembly

Note to the Director of the Codification Division, Office of Legal Affairs

This is with reference to your note of 14 February 2000, concerning the participation of observers in the Ad Hoc Committee to elaborate international conventions for the suppression of terrorist bombings and acts of nuclear terrorism established by the General Assembly in its resolution 51/210 of 17 December 1996. You have indicated that, in paragraph 9 of resolution 51/210, the Assembly decided that the Ad Hoc Committee would be "open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency". Although the latter formula, known as the "all States formula", extends full membership in the Ad Hoc Committee to all States as opposed to States Members of the United Nations, it does not affect the participation of observers in the subsidiary organ concerned.

The entities, intergovernmental organizations and other entities which have received a standing invitation to participate as observers in the sessions and work of the General Assembly have the right to participate in the General Assembly and its Main Committees, the Economic and Social Council and their subsidiary organs and all meetings and conferences convened by them unless specifically decided by the principal or subsidiary organ concerned. As such, the entities, intergovernmental organizations and other entities which have received a standing invitation are entitled to participate as observers, if they so desire, in the sessions and work of the Ad Hoc Committee unless the General Assembly or the Ad Hoc Committee specifically decide otherwise. In particular, please note that by its resolutions 45/6 of 16 October 1990 and 51/1 of 15 October 1996, the General Assembly granted permanent observer status to the International Committee of the Red Cross (ICRC) and to Interpol.

By virtue of reciprocal representation provisions in the relationship agreements concluded between the United Nations and each of the specialized agencies and IAEA, the latter have the right to attend meetings of the General Assembly and its subsidiary organs. Thus, unless the General Assembly or the Ad Hoc Committee specifically decide otherwise, the specialized agencies and IAEA also have the right to attend the meetings of the Ad Hoc Committee if they so desire. The right and obligation of IAEA to assist the Ad Hoc Committee in its deliberations, in accordance with paragraph 10 of General Assembly resolution 52/165 of 15 December 1997, is over and above the Agency's right to attend in accordance with the relationship agreement between the United Nations and IAEA.

In the absence of a specific resolution or decision inviting them to do so, non-governmental organizations do not have the right to attend or participate as observers in the sessions and work or the meetings of the General Assembly or its subsidiary organs. As there is no specific invitation in General Assembly resolutions 51/210, 52/165, 53/108 or 54/110, non-governmental organizations do not have the right to attend the meetings of the Ad Hoc Committee.

Based on the foregoing, unless the General Assembly or the Ad Hoc Committee specifically decide otherwise, the entities, intergovernmental organizations and other entities which have received a standing invitation to participate as observers in the sessions and work of the General Assembly, including ICRC and Interpol, and the specialized agencies and IAEA are entitled, if they so desire, to attend the sessions of the Ad Hoc Committee. Unless they are specifically invited, non-governmental organizations do not have such a right.

15 February 2000

9. Status of members of the Advisory Committee on Administrative and Budgetary Questions—Experts on mission travel certificates

Memorandum to the Executive Secretary, Advisory Committee on Administrative and Budgetary Questions

1. This is in response to your memorandum dated 23 February 2000 which seeks our advice on whether members of the Advisory Committee are entitled to the status of experts on mission for the purposes of the application of the Convention on the Privileges and Immunities of the United Nations.

2. The Convention on the Privileges and Immunities of the United Nations (hereinafter "the Convention") does not define experts on mission other than noting that they perform missions for the Organization and that they are neither representatives of Member States nor officials of the Organization. However, the context and practice of the Organization is clear that experts on mission are individuals with particular expertise who have been entrusted with tasks by the Organization and who must therefore have the privileges and immunities necessary to carry out those tasks in an independent manner (see *Yearbook of the International Law Commission*, 1967, vol. II, para. 341, and the advisory opinion of the International Court of Justice in *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, 15 December 1989, *I.C.J. Reports, 1989*, p. 177 and pp. 192-196).

3. Rule 155 of the rules of procedure of the General Assembly provides that the General Assembly shall appoint an Advisory Committee on Administrative and

Budgetary Questions consisting of at least 16 members, including at least three financial experts of recognized standing. Rule 156 provides that the members are elected for three years on the basis of broad geographical representation and on the basis of their personal qualifications and experience. It is clear from these provisions that the General Assembly has selected and mandated members of the Advisory Committee to perform a defined task or mission for the United Nations and consequently Committee members who are not representatives of Member States may be considered as experts on mission while performing those duties for the United Nations.

Privileges and immunities of experts on mission

4. The privileges and immunities accorded by the Convention to experts on mission are "quasi-diplomatic" in nature and are set out in the Convention as follows:

> "*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 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 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;
>
> (*c*) Inviolability for all papers and documents;
>
> (*d*) For the purpose of their communications with the United Nations, 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 in respect of their personal baggage as are accorded to diplomatic envoys.
>
> "*Section 23*. Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert 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."

Travel certificates

5. Your memorandum also raises the related issue of travel certificates for members of the Advisory Committee.

6. Section 26 of the Convention on the Privileges and Immunities of the United Nations enables the Secretary-General to issue a travel certificate to experts on mission. This certificate identifies them as experts on mission for the United Nations and sometimes assists the experts in obtaining a visa. As members of the

Advisory Committee are elected for a period of three years, there would be no legal objection to the issue of such a certificate to members for the period of their elected term on the basis that they have expert-on-mission status only when performing services for the United Nations, i.e., when the Advisory Committee is in session. Indeed, we understand that, since 1991, the actual policy has been to issue such certificates for a maximum period of up to three years.

7. We should add that members of the Advisory Committee who are members of a Permanent Mission would have the privileges and immunities of representatives under article IV of the Convention.

24 February 2000

10. Proposal for participation of the Office of the United Nations High Commissioner for Refugees as founder of a trusteeship in Mexico

Memorandum to the Legal Officer, Office of the Director and Controller, Division of Resources Management, UNHCR

1. This is further to our memorandum to you of 29 November 1999 and in response to your facsimile of 3 March 2000 concerning the above-mentioned matter. You have forwarded to us additional information provided by the UNHCR Branch Office in Mexico regarding the proposal for UNHCR to participate as founder of a trusteeship in Mexico. Please find below our comments in response to the additional information provided by the UNHCR Branch Office. We discussed in our 29 November 1999 memorandum the background of the matter and will not reiterate the background in the present memorandum.

Information and proposal of UNHCR Branch Office

2. The UNHCR Branch Office indicates that, under Mexican law, which would govern the trusteeship, inter alia:

(*a*) Trusteeships are "ordinary commercial transactions in which any person . . . can participate as founder. Nevertheless, in those situations in which the Federal Government assumes this role, its participation will necessarily be through the Ministry of Finance. In case the Federal Government does not participate directly in the creation of the trusteeship, any other person or organization could replace it";

(*b*) In the event "UNHCR participates as founder of the trusteeship . . . this should be seen strictly as a private commercial transaction regulated through private law, therefore, no different from any other type of commercial contracts necessary to run an operation";

(*c*) The trusteeship "does not lead to the creation of an entity or organization which might have legal personality. The trusteeship is about an agreement through which one party (UNHCR) transmits certain funds/resources for an already earmarked objective/goal, ensuring that funds are exclusively used for the objectives set". The trusteeship "implies a legal mechanism which permits UNHCR to carry out the process of transferring the land to the refugee beneficiaries".

3. The Branch Office proposes that "UNHCR establishes itself as founder of the trusteeship, thus replacing the Mexican Government, and therewith making unnecessary the participation of the Ministry of Finance". The Branch Office also proposes that UNHCR participate in the "Technical Committee" which the Branch

Office states "is a way of ensuring that the best interests of the refugee population are served according to UNHCR criteria and norms". The Branch Office indicates that UNHCR has already been serving as a member of the Technical Committee and that "no decision made in this Technical Committee has led to conflicts of interest". The Branch Office further indicates that "in case conflicts of interest would arise, it would be better for UNHCR to be part of the Technical Committee and be able to vote and take decisions that would actually favour the programme and its beneficiaries according to the UNHCR mandate and programmes".

Analysis and recommendation

4. We continue to have concerns and questions regarding the proposal for UNHCR to "establish itself as founder of the trusteeship". The UNHCR Branch Office refers to the conclusion of an agreement under which UNHCR would transmit "funds/resources for an already earmarked objective/goal, ensuring that funds [resources] are exclusively used for the objectives set". It is not clear how UNHCR could be a founder of the trusteeship and "transmit" the assets of the trusteeship since, as we understand it, UNHCR does not have ownership over the assets of the trusteeship. We understand that the goal of the trusteeship is to provide for the transfer of ownership of land to the Guatemala refugees in Mexico. The Branch Office indicates in that regard that the trusteeship "implies a legal mechanism which permits UNHCR to carry out the process of transferring the land to the refugee beneficiaries".

5. We would not consider it advisable for UNHCR to enter into any "legal mechanism" providing for UNHCR to transfer land, without UNHCR first having ownership of the land, including free and clear title to the land. However, the UNHCR Branch Office has indicated that "UNHCR does not have the right to own real estate in Mexico".

6. Furthermore, we continue to believe that the status of UNHCR as founder of the trusteeship could make UNHCR subject to the national laws and authorities, since the trusteeship would be governed by Mexican law. We point out in this connection that even if the trusteeship instruments do not create "an entity or different legal party", as referred to by the Branch Office, and even if those instruments include the standard no waiver of privileges and immunities clause, we consider that local courts could misconstrue the participation of UNHCR as founder of the trusteeship as a waiver of the privileges and immunities that UNHCR enjoys, should any legal actions be brought against the trusteeship. We also continue to believe that the status of UNHCR as founder of the trusteeship could expose UNHCR to financial liability, as UNHCR could be held responsible for the activities carried out by the trusteeship.

7. In addition to the above, we note that the information that you provided to us on 20 October 1999 indicated that the trusteeship was originally set up by the Mexican Commission for Assistance to Refugees (COMAR) and that, "in the plan outlined for the trusteeship, it is the Mexican Government which, through COMAR, holds its control". Since, as we understand it, the Mexican Government has participated in the trusteeship from its inception, albeit through COMAR, rather than the Ministry of Finance, it would seem appropriate for the Mexican Government to remain involved in the matter, rather than attempt to conclude intricate legal instruments to have UNHCR replace or bypass the Government as founder of the trusteeship.

8. As far as the proposal for UNHCR to participate as a member on the Technical Committee relating to the trusteeship, we recognize the value that UNHCR would bring to the Committee, as discussed by the Branch Office. However, we believe that such participation poses a risk of subjecting UNHCR and/or its staff to the national laws and authorities as well as potential liability arising out of the activities of the trusteeship. We also continue to believe that there is a risk that UNHCR and/or its staff could be placed in conflict with policies of the Organization, as a result of participating in the affairs and decision-making of the trusteeship. As discussed below, rather than being a member on the Technical Committee, UNHCR could provide assistance to the Technical Committee, e.g. by providing advisory services to the Committee.

9. Taking into account the above and consistent with the long-standing practice in these matters, we believe that authorization from the General Assembly or other appropriate legislative body would be required in order for UNHCR to participate as the founder of the trusteeship and a member of its Technical Committee. We consider that the best course of action would be for the Government to remain as founder of the trusteeship and for UNHCR to cooperate with the Government and provide assistance in support of the trusteeship. In such case, UNHCR could conclude a cooperation agreement with the Government setting out the manner in which it would cooperate with the Government and provide assistance for the activities of the trusteeship.

23 March 2000

11. Definition of "United Nations affiliated bodies" in relation to the statute of the Joint Inspection Unit—United Nations subsidiary organs and bodies—Question whether such bodies must abide by the provisions of the statute

Memorandum to the Executive Secretary, Joint Inspection Unit

Introduction

This is in response to your memorandum of 14 March 2000, in which you seek the opinion of this Office with regard to the following three questions:

(*a*) In the light of the provisions of paragraph 2 of article 1 of the statute of the Joint Inspection Unit (JIU), what is the meaning of the term "United Nations affiliated bodies" used in the latest report of JIU?

(*b*) Did the General Assembly by adopting the JIU statute commit all "United Nations affiliated bodies" to abide by the provision of the Statute?

(*c*) Is the JIU list of "United Nations affiliated bodies" comprehensive?

The JIU statute was approved by the General Assembly in its resolution 31/192 of 22 December 1976. Paragraph 2 of article 1 of the statute, which defines the authority of JIU vis-à-vis the organizations of the United Nations system, states that:

> "2. The Unit shall perform its functions in respect of and shall be responsible to the General Assembly and similarly to the competent legislative organs of those specialized agencies and other international organizations within the United Nations system which accept the present statute (all of which shall hereinafter be referred to as the organizations). The Unit shall be a subsidiary organ of the legislative bodies of the organizations."

The latest report of JIU, submitted to the General Assembly at its fifty-fourth session,[6] in chapter II entitled "Participating organizations", states that the organizations which "*have accepted* the statute of the Joint Inspection Unit" (emphasis added) encompass the United Nations, including its affiliated bodies, ILO, FAO, UNESCO, ICAO, WHO, UPU, ITU, WMO, IMO, WIPO, UNIDO and IAEA. The report further clarifies in a footnote to the term "affiliated bodies" that such bodies include UNICEF, UNCTAD, UNDP, UNEP, UNFPA, UNDCP, WFP, UNRWA, Habitat and UNHCR.

The United Nations and its subsidiary organs are not required to adopt a special decision accepting the statute of JIU

First, we would like to observe that the introductory wording of chapter II does not quite adequately reflect what transpires from paragraph 2 of article 1 of the JIU statute. Under that paragraph, JIU is, first of all, responsible to the General Assembly, which is the organ of the United Nations that established JIU by resolution 31/192 and can either amend its statute, or, if necessary, dissolve JIU. Under paragraph 2 of article 1 of the statute, in addition, JIU is authorized by the General Assembly to perform its functions in respect of and be responsible to the competent legislative organs of those specialized agencies and other organizations within the United Nations system which accept its statute.

The term "the United Nations" is defined by the Charter of the United Nations, the preamble to which states that the respective Governments "do hereby establish an international organization to be known as the United Nations". Thus, the term "the United Nations" refers to the international organization established by the Charter, including all the principal and subsidiary organs provided for by the Charter or established on the basis of the authority conferred by the Charter. This term excludes organizations established by other intergovernmental agreements as separate entities with their own legal personality. The term "the United Nations system", although it has no definition based on a formal legal source, is usually understood to encompass the United Nations, its specialized agencies and other related organizations. The term "the organizations within the United Nations system", which is used in resolutions of United Nations organs and other official documents as an addressee, does not include the United Nations proper as an organization.

It follows from the foregoing that, strictly legally speaking, the United Nations should not be listed as an organization which has accepted the statute of JIU in accordance with its provisions. The United Nations and its subsidiary organs are bound by the statute of JIU through General Assembly resolution 31/192 which approved the statute and established JIU. Unlike specialized agencies and other intergovernmental organizations, the United Nations and its subsidiary organs are not, therefore, required to adopt any additional decisions stipulating that they accept the JIU statute. For the reasons explained below, we suggest that the introductory phrase of chapter II of JIU reports in the future be revised to read as follows: "In accordance with its statute, the Joint Inspection Unit performs its functions with respect to the United Nations, including its programmes, funds and offices, and with respect to the following organizations which have accepted its statute in accordance with its provisions".

United Nations subsidiary organs and bodies

We do not have any information in our files as to why JIU in its reports uses the term "United Nations affiliated bodies" with reference to entities which are "sub-

sidiary bodies of the United Nations". Article 7 of the Charter, which establishes the six principal organs of the United Nations, in paragraph 2 grants general authority to establish subsidiary organs. The paragraph provides that "such subsidiary organs as may be found necessary may be established in accordance with the present Charter". In Article 22, the Charter gives the General Assembly specific authority to set up "such subsidiary organs as it deems necessary for the performance of its functions". Article 29 of the Charter stipulates that the Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.

Although the term "subsidiary body" is not defined in the Charter or in General Assembly or Security Council resolutions or their rules of procedure, it has always been understood in United Nations practice—and this Office has always advised to that effect—that one body is a "subsidiary" of another if it has in fact been established by the other body. As noted in the *Repertory of Practice of United Nations Organs* (1955, vol. I, Article 7, para. 9), in the practice of the United Nations such expressions as "Commissions", "Committees", "subsidiary organs", "subsidiary bodies" and "subordinate bodies" have been used interchangeably. However, for the purposes of the *Repertory*, all such bodies are treated as falling within the scope of the term "subsidiary organs", which is used in Article 7 of the Charter.

As pointed out in the *Repertory*, subsidiary organs of the United Nations vary widely with respect to their membership, structure, scope of activity, powers, method of reporting and duration. Subsidiary organs are most frequently composed of States. Their membership may include all Member States, as in UNCTAD, or a number of specified Member States, as in the case of UNDP or UNICEF. Some subsidiary organs are composed of individuals, appointed in their individual capacity, for example, the Investment Committee, the Advisory Committee on Administrative and Budgetary Questions or JIU. In some instances, as in the case of the Administrative Committee on Coordination, a subsidiary organ is composed of the executive heads of all organizations of the United Nations system as well as the executive heads of United Nations programmes, funds and offices. There are also subsidiary organs which are judicial bodies and as such have substantial independence within the scope of their responsibilities. One example is the United Nations Administrative Tribunal, established by the General Assembly. Other examples are the two International Tribunals, for the former Yugoslavia and for Rwanda, established by the Security Council. Basic information about United Nations subsidiary organs may be found in chapter III of the *Repertory* which relates to Article 7 of the Charter and contains the analytical summary of practice concerning subsidiary organs. Additional information about subsidiary organs may be found in volume I of Supplements 1 to 5 to the *Repertory*. Volume I of *Supplement 6* has not been published yet. Volume I of the *Repertory* and of its Supplements also contains information regarding Article 22 of the Charter, which gives the General Assembly the authority to establish subsidiary organs. This information includes lists of the subsidiary organs established by the General Assembly.

What is the meaning of the term "United Nations affiliated bodies"?

With reference to your first question, we would like to point out that, with the exception of the World Food Programme, all entities listed in the report of JIU as "United Nations affiliated bodies" are subsidiary bodies of the United Nations. WFP was established by resolutions of the General Assembly and the FAO Conference. Therefore, it is a joint subsidiary body of both the United Nations and FAO. Unlike

other subsidiary organs of the United Nations, the entities listed in the JIU report belong to the category of United Nations subsidiary bodies which enjoy a considerable degree of autonomy from their parent organ or, in the case of WFP, organs. Although these subsidiary bodies are still not completely independent, since their parent organ or organs can always change their structure or even terminate their activities (for example, by resolution 48/162 of 20 December 1993, the General Assembly decided that the then governing organs of UNDP, UNICEF and WFP, subject to the agreement of the FAO Conference, should be transformed into Executive Boards and should have 36 members each), they have substantial operational independence in the areas of their mandated activities and in financial matters since most of them are financed through voluntary contributions. Since these subsidiary bodies carry out much of their substantive work in the limited area of their mandated activities, such as caring for refugees (UNHCR and UNRWA), nurturing children (UNICEF) etc., their activities closely resemble those of specialized agencies. There is no official definition of this type of United Nations subsidiary body which would formally distinguish them from other United Nations subsidiary organs. However, because of their special nature these subsidiary bodies have always been treated differently within the United Nations, which is reflected by the fact that the executive heads of special secretariats of these bodies are invited to participate in the work of the Administrative Committee on Coordination. In United Nations practice these subsidiary bodies are usually referred to as "United Nations programmes, funds and offices". Therefore, if for any particular reason JIU in its reports wants to single out the United Nations subsidiary organs which have substantial operational autonomy, we suggest that the term "United Nations affiliated bodies" be replaced with "United Nations programmes, funds and offices".

Should "United Nations affiliated bodies" abide by the provisions of the JIU statute?

Since, pursuant to paragraph 2 of article 1 of its statute, JIU is entrusted with the authority to perform its functions in respect of the General Assembly, the Unit, undoubtedly, also has the authority to perform its functions in respect of the subsidiary organs of the Assembly, as well as with regard to such other subsidiary bodies of the United Nations, whose scope of activities falls within the purview of the power of the General Assembly as it is defined in Chapter IV of the Charter. The statute, thus, is binding on all United Nations subsidiary bodies, without distinction between the various types, in respect of which the General Assembly may exercise its authority. Consequently, United Nations programmes, funds and offices must abide by the provisions of the JIU statute. Acceptance of the statute, as a condition for the exercise by JIU of its authority, under the statute is only required in the case of specialized agencies and other international organizations within the United Nations system. This condition does not apply to United Nations programmes, funds and offices despite their substantial operational autonomy from the General Assembly.

Is the JIU list of "United Nations affiliated bodies" comprehensive?

We would like first to reiterate our observation that the use of the term "United Nations affiliated bodies" in JIU reports is not correct because the entities listed under this term cannot be called affiliated bodies. As to the question whether the JIU list is comprehensive on the basis of other criteria, we are not in a position to answer this question, since JIU does not specify in its request the criteria on the basis

of which the composition of the list of a special group of United Nations subsidiary bodies is be determined. Should JIU consider it advisable to include in the list only the United Nations subsidiary bodies that have substantial operational autonomy, it may wish to place on the list the United Nations programmes, funds and offices that are invited to participate in the work of the Administrative Committee on Coordination.

5 April 2000

12. AUTHORITY OF THE SECRETARY-GENERAL IN AMENDING THE UNITAR STATUTE—QUESTION WHETHER FULL-TIME UNITAR SENIOR FELLOWS CAN BE GRANTED THE STATUS OF UNITED NATIONS OFFICIALS

Letter to the Executive Director of UNITAR, Geneva

In your letter of 13 March 2000 concerning amendments to the UNITAR statute, you refer to the fact that the General Assembly in its resolution 43/201 of 20 December 1988 takes note of the report of the Secretary-General contained in document A/43/697/Add.l, but does not explicitly endorse the amendments to the UNITAR statute proposed in that report. As also noted in your letter, the same resolution introduced an additional provision which grants the full-time UNITAR senior fellows the status of officials of the United Nations. Following the adoption of the resolution this provision became article VI, paragraph 2, of the UNITAR statute. In the light of the foregoing, you inquire whether, in the absence of any formal acceptance by the Assembly of the amendments to the UNITAR statute set forth in the Secretary-General's report, it may be taken for granted that these amendments should be incorporated in the statute.

With reference to your inquiry, please be advised as follows.

UNITAR was established by the Secretary-General following the adoption on 11 December 1963 by the General Assembly of its resolution 1934 (XVIII). By paragraph 2 of that resolution, the Assembly requested the Secretary-General to take the necessary steps to establish the Institute, taking account of its frame of reference, as defined in paragraph 3 of General Assembly resolution 1827 (XVII) of 18 December 1962 and of the views expressed at the eighteenth session of the Assembly and at the thirty-sixth session of the Economic and Social Council. Thus, the General Assembly vested the Secretary-General with the authority to establish the Institute. In pursuance of that authority the Secretary-General approved the statute of UNITAR and, as provided for in article XI of the statute, may amend it after consultations with the Board of the Institute.

By resolution 42/197 of 11 December 1987, the General Assembly, without undermining the authority of the Secretary-General to amend the statute, requested the Secretary-General to restructure the Institute as specified in paragraph 4 of the resolution. This request was implemented by the Secretary-General through the adoption of a set of amendments to the UNITAR statute which were brought to the attention of the General Assembly at its forty-third session in the Secretary-General's report on the subject. As pointed out in the report, the amendments to the statute adopted by the Secretary-General incorporated the proposals of the Board of Trustees of the Institute, which had been consulted on the amendments. It appears that the Assembly was satisfied with the implementation of its request, because in

paragraph 1 of its resolution 43/201 of 20 December 1988 the Assembly took note of the Secretary-General's report without expressing any reservations.

It follows from the above that the Secretary-General has the authority to amend the statute of UNITAR without seeking the approval of the General Assembly, when it relates to matters which fall within his competence as the Secretary-General of the United Nations. Therefore, the amendments to the UNITAR statute which were mentioned in the aforementioned report of the Secretary-General to the General Assembly at its forty-third session did not require formal approval by the Assembly.

With regard to the full-time UNITAR senior fellows, it should be observed that only the General Assembly has the competence to decide which categories of employees can be granted the status of officials of the United Nations and, therefore, enjoy the privileges and immunities granted under the Convention on the Privileges and Immunities of the United Nations. Consequently, this proposal could not have been implemented without a decision by the General Assembly, and the Secretary-General in his report sought the concurrence of the Assembly on this issue. This was done in paragraph 10 of resolution 43/201, which stipulates that the full-time UNITAR senior fellows should be granted the status of officials of the United Nations.

27 April 2000

13. Status, privileges and immunities under international law of the Permanent Observer Mission of Palestine to the United Nations

Letter to the Permanent Observer of Palestine to the United Nations, New York

I have the honour to refer to your letter of 1 May 2000 in which you requested a legal statement on the status, privileges and immunities under international law of the Permanent Observer Mission of Palestine to the United Nations.

As you know, the representation of Palestine to and in the United Nations derives from General Assembly resolution 3237 (XXIX) of 22 November 1974, in which the Assembly:

> "1. [*Invited*] the Palestine Liberation Organization to participate in the sessions and the work of the General Assembly in the capacity of observer;
>
> "2. [*Invited*] the Palestine Liberation Organization to participate in the sessions and the work of all international conferences convened under the auspices of the General Assembly in the capacity of observer;
>
> "3. [*Considered*] that the Palestine Liberation Organization is entitled to participate as an observer in the sessions and the work of all international conferences convened under the auspices of other organs of the United Nations;
>
> "4. [*Requested*] the Secretary-General to take the necessary steps for the implementation of the present resolution."

The resolution did not address the question of the status, privileges and immunities of the Palestine Liberation Organization, nor did it refer to the establishment by the Palestine Liberation Organization of a permanent office in New York. The decision to establish an office of the Permanent Observer of the Palestine Liberation Organization was, however, communicated to the Secretary-General by the Palestine Liberation Organization shortly after the adoption of the resolution in February

1975, and was taken note of in a letter of acknowledgement signed on behalf of the Secretary-General by the then Under-Secretary-General for General Assembly Affairs, Mr. Bradford Morse, dated 3 March 1975.

In its resolution 3375 (XXX) of 10 November 1975, the General Assembly invited the Palestine Liberation Organization to participate, inter alia, in all efforts, deliberations and conferences under United Nations auspices.

Subsequently, in its resolution 42/210 B of 17 December 1987, the General Assembly:

> "*Guided* by the purposes and principles of the Charter of the United Nations and its relevant provisions, . . .
>
> "*Having been apprised* of the action being considered in the host country, the United States of America, which might impede the maintenance of facilities of the Permanent Observer Mission of the Palestine Liberation Organization to the United Nations in New York, which enables it to discharge its official functions,
>
> "*Recalling* its resolutions 3237 (XXIX) of 22 November 1974 and 3375 (XXX) of 10 November 1975,
>
> "*Taking note* with appreciation of the Secretary-General's position on the Permanent Observer Mission of the Palestine Liberation Organization to the United Nations, as described in the statement of 22 October 1987, which reads: 'The members of the Palestine Liberation Organization Observer Mission are, by virtue of resolution 3237 (XXIX), invitees to the United Nations. As such, they are covered by sections 11, 12 and 13 of the Headquarters Agreement of 26 June 1947. There is therefore a treaty obligation on the host country to permit Palestine Liberation Organization Observer Mission personnel to enter and remain in the United States to carry out their official functions at United Nations Headquarters.',
>
> "1. [*Reiterated*] that the Permanent Observer Mission of the Palestine Liberation Organization to the United Nations in New York is covered by the provisions of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations and should be enabled to establish and maintain premises and adequate functional facilities, and that the personnel of the Mission should be enabled to enter and remain in the United States to carry out their official functions . . . ".

In its resolutions 42/229 A of 2 March 1988 and 42/230 of 23 March 1988, the General Assembly again reaffirmed "that the Permanent Observer Mission of the Palestine Liberation Organization to the United Nations in New York is covered by the provisions of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations and that it should be enabled to establish and maintain premises and adequate functional facilities and that the personnel of the Mission should be enabled to enter and remain in the United States of America to carry out their official functions".

Finally, in its resolution 43/177 of 15 December 1988, the General Assembly:

> "*Recalling* its resolution 3237 (XXIX) of 22 November 1974 on the observer status for the Palestine Liberation Organization and subsequent relevant resolutions,

"1. [*Acknowledged*] the proclamation of the State of Palestine by the Palestine National Council on 15 November 1988;

"2. [*Affirmed*] the need to enable the Palestinian people to exercise their sovereignty over the territory occupied since 1967;

"3. [*Decided*] that, effective as of 15 December 1988, the designation 'Palestine' should be used in place of designation 'Palestine Liberation Organization' in the United Nations system, without prejudice to the observer status and functions of the Palestine Liberation Organization within the United Nations system, in conformity with relevant United Nations resolutions and practice".

It should also be noted that in its resolution 52/250 of 7 July 1998, the General Assembly decided "to confer upon Palestine, in its capacity as observer, and as contained in the annex to the present resolution, additional rights and privileges of participation in the sessions and work of the General Assembly and the international conferences convened under the auspices of the Assembly or other organs of the United Nations, as well as United Nations conferences". While pursuant to that resolution Palestine now enjoys several of the rights and privileges of participation otherwise exclusively enjoyed by States Members of the United Nations, General Assembly resolution 52/250 did not explicitly affect the legal status, privileges and immunities of Palestine in the United Nations.

Based on General Assembly resolutions 3237 (XXIX), 42/210 B, 42/229 A, 42/230 and 43/177, the General Assembly has, however, repeatedly confirmed that the maintenance of the facilities of the Permanent Observer Mission of Palestine to the United Nations in New York is a necessary requirement to enable it to discharge its official functions and that it is covered by sections 11, 12 and 13 of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (Public Law 80-357 vol. 11 UNTS, p. 11) (hereinafter, "the Headquarters Agreement").

It is widely accepted that certain functional privileges and immunities flow by necessary intendment from the Charter of the United Nations and the Headquarters Agreement, without which the invited entity would not be in a position to carry out its functions. The latter is explicitly confirmed in the aforementioned General Assembly resolutions.

Functional privileges and immunities certainly extend to immunity from legal process in respect of words spoken and written or any act performed in the exercise of the observer functions. Moreover, since the Permanent Observer Mission of Palestine to the United Nations in New York is a direct result of General Assembly resolution 3237 (XXIX) and is restricted to United Nations matters, that presence should be considered as not covering the receipt of service of legal process both personally and in rent in regard to matters completely unrelated to that presence. Any measure which might impede the maintenance of facilities of the Permanent Observer Mission of Palestine to the United Nations in New York or its ability to discharge its official functions would contravene the Charter of the United Nations, the Headquarters Agreement and the relevant General Assembly resolutions.

5 May 2000

14. Accreditation of non-governmental organizations by regional preparatory meetings—Economic and Social Council resolution 1996/31

Facsimile to Senior Legal Officer, Legal Liaison Office, United Nations Office at Geneva

This is with reference to your facsimile of 19 July 2000 concerning the review of paragraph 49 of Economic and Social Council resolution 1996/31 of 25 July 1996, concerning the accreditation of non-governmental organizations by regional preparatory meetings. Our comments are as follows.

Part VII of Economic and Social Council resolution 1996/31 sets out the procedures for the accreditation of non-governmental organizations to international conferences convened by the United Nations and their preparatory process. As the resolution is a resolution of the Economic and Social Council, it cannot bind the General Assembly or international conferences convened by the General Assembly unless the Assembly so decides. In this case, however, the General Assembly has in its resolution 54/154 of 17 December 1999 confirmed that Economic and Social Council resolution 1996/31 governs the accreditation of non-governmental organizations to the Preparatory Committee and the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. The procedures set out in paragraphs 41 to 54 of resolution 1996/31 govern the accreditation of non-governmental organizations to the Preparatory Committee and the World Conference.

Pursuant to paragraph 49 of resolution 1996/31, it is explicitly stated, however, that "a non-governmental organization that has been granted accreditation to attend a session of the preparatory committee, including related preparatory meetings of regional commissions, may attend all its future sessions, as well as the conference itself". As such, a non-governmental organization which has been accredited by a regional preparatory meeting may attend all meetings of the Preparatory Committee and the World Conference itself unless the Preparatory Committee or the World Conference decide otherwise. While it is acknowledged that paragraph 49 accords the regional preparatory meeting unusual prerogatives in this regard, the regional groups and organizations are nonetheless bound by Economic and Social Council resolution 1996/31, and in particular the relevance and competence criteria provided for in paragraph 44, in accrediting non-governmental organizations to their preparatory meetings.

Based on the foregoing, if a regional preparatory meeting accredits a particular non-governmental organization to attend its meetings, that non-governmental organization, in accordance with paragraph 49 of Economic and Social Council resolution 1996/31, may attend future meetings of the Preparatory Committee and the World Conference itself. In this regard, it should be recalled that, pursuant to paragraph 41 of Council resolution 1996/31, accreditation is ultimately the prerogative of the Preparatory Committee. Moreover, paragraph (*f*) of Preparatory Committee decision 1/5 provides that "in the event that a Government raises questions concerning the accreditation of a non-governmental organization, the final decision on those cases shall be taken by the Preparatory Committee, in accordance with the standard process set out in Council resolution 1996/31". Thus, if a Government objects to a non-governmental organization which has been previously accredited by a regional preparatory meeting, a final decision on the accreditation of the non-governmental

organization to the Preparatory Committee and to the World Conference shall be taken by the Preparatory Committee, in accordance with the standard process set out in Council resolution 1996/31.

21 July 2000

15. Observer status in the General Assembly for the Inter-Parliamentary Union—Procedures for obtaining observer status with the United Nations for intergovernmental organizations—Question whether the Secretary-General may intervene in the process

Memorandum to the Assistant Secretary-General for External Relations

This is with reference to your memorandum of 28 September 2000 regarding the request of the Inter-Parliamentary Union (IPU) for observer status in the General Assembly. In particular, knowing that it is ultimately a Member State's decision, you indicate that the Secretary-General has requested a "creative" approach to bolster the Union's efforts in this regard and inquire whether we would be willing to consider a "common strategy" and to meet with IPU. Our comments are as follows.

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 entities and intergovernmental organizations. The first step is for a Member State or States to request the inclusion of an appropriate item in the agenda of the General Assembly. Pursuant to the relevant rules, the request must be accompanied by an explanatory memorandum and, if possible, by basic documents or a draft resolution. 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 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.

Moreover, in its decision 49/426 of 9 December 1994, the General Assembly decided that the granting of the observer status in the General Assembly should be confined to States and to those intergovernmental organizations whose activities cover matters of interest to the Assembly. In paragraphs 2 and 3 of General Assembly resolution 54/195 of 17 December 1999, the Assembly also decided that any request by an organization for the granting of observer status in the General Assembly would be considered in plenary session after the consideration of the issue by the Sixth Committee of the General Assembly and requested the Secretary-General to take appropriate measures to bring to the attention of all the Member States of the General Committee and General Assembly the criteria and procedures laid down by the General Assembly whenever a request is made by an organization seeking observer status in the General Assembly.

Generally speaking, the question of granting observer status is therefore exclusively the prerogative of Member States. Moreover, as the Secretary-General is called upon, pursuant to resolution 54/195, to remind the Member States of the General Committee and General Assembly of the criteria and procedures laid down by the General Assembly whenever a request is made by an organization seeking observer status in the General Assembly, he is equally if not more so bound to respect those criteria and procedures.

With respect to IPU, in particular, it is important to note that it is not deemed to be an intergovernmental organization. As indicated above, in its decision 49/426, the General Assembly decided to limit observer status to States and intergovernmental organizations. It should also be kept in mind that, pursuant to article 3 of the Cooperation Agreement between the United Nations and the Inter-Parliamentary Union, the Union merely has the right, upon its request, to be invited to send its representatives to be present during the plenary sessions of the General Assembly. Subject to the decisions of the convening or subsidiary organ concerned, it may also be invited to participate in conferences convened under the auspices of the United Nations or in the Main Committees and subsidiary organs of the General Assembly. The Cooperation Agreement was welcomed by the General Assembly in its resolution 51/7 of 25 October 1996. Since then, the Assembly has adopted several resolutions (52/7, 53/13, 54/12 and 54/281) which, although calling for continued close cooperation and for increased and strengthened cooperation between the two organizations, have not provided for enhanced participation rights or observer status for IPU. The item on "Cooperation between the United Nations and the Inter-Parliamentary Union" has been included in the agenda of the General Assembly annually since the fiftieth regular session and will be considered under agenda item 26 during the fifty-fifth regular session.

In the light of the foregoing, it is clearly for Member States to consider the question of according observer status to IPU. Given the criteria and procedures established in General Assembly decisions and resolutions in this regard, it would be legally inappropriate for the Secretary-General to intervene. In the absence of a mandate from the Assembly, either through the annual agenda item or through the inscription of a new item on observer status for IPU, the Secretary-General should inform the Union that this is a matter for the General Assembly and that its efforts to obtain observer status should therefore be directed at the Member States and not at the Secretariat.

2 October 2000

16. Meaning of "officials" of the Economic and Social Commission for Western Asia

Memorandum to the Chief, Administrative Services Division, Economic and Social Commission for Western Asia

I refer to your request to review the proposal put forward by the Government of Lebanon as to the meaning of the expression "officials of the Commission" in article 1, subsection (i), of the Agreement between the United Nations and the Government of [Member State], concerning the headquarters of the United Nations Economic and Social Commission for Western Asia, signed at Beirut on 27 August 1997 ("the ESCWA Headquarters Agreement").

Article 1(i) of the ESCWA Headquarters Agreement currently defines "officials of the Commission" as "the Executive Secretary and all members of the staff of the Commission, irrespective of nationality, with the exception of those who are locally recruited and assigned to hourly rates". Thus the definition excludes staff members who are "locally recruited and assigned to hourly rates". The Government of Lebanon has proposed the amendment of article 1(i) of the ESCWA Headquarters Agreement so that the expression "officials of the Commission" will mean "the Executive Secretary and all members of the Commission, irrespective of nationality, with the exception of those who are locally recruited". The proposed amendment thus purports to exclude all locally recruited staff members of the Commission as officials of the Commission, irrespective of whether they are assigned to hourly rates.

For the purposes of articles V and VII of the Convention on the Privileges and Immunities of the United Nations ("the General Convention"), a definition of the term "officials" was established by the General Assembly in resolution 76 (I) of 7 December 1946. By that resolution, the General Assembly approved "the granting of the privileges and immunities referred to in articles V and VII of the Convention on the Privileges and Immunities of the United Nations . . . 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". This definition allows for no distinction among staff members of the United Nations on the basis of nationality or residence, or according to whether they are internationally or locally recruited.

As the proposed amendment would contravene General Assembly resolution 76 (I) and article V of the General Convention, the Government of Lebanon's proposal is unacceptable. In addition, the Government of Lebanon should be advised that any interpretation of the provisions of the General 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 in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.

7 December 2000

17. Applicability of local laws to United Nations premises—1947 United Nations Headquarters Agreement—Building codes

Facsimile to the Inspector, Report Coordinator, Joint Inspection Unit

I refer to your facsimile of 28 November 2000 in which you seek our advice as to the applicability of local laws to the premises of the United Nations. Our comments are as follows.

The status of the Headquarters district in relation to local, state and federal law is dealt with in the 1947 Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations ("the Headquarters Agreement").

Section 7(*b*) of the Headquarters Agreement states that, "except as otherwise provided in this agreement or in the General Convention [Convention in the Privileges and Immunities of the United Nations], the federal, state and local law of the United States shall apply within the Headquarters district". Section 8 of the Agreement provides:

"The United Nations shall have the power to make regulations, operative within the Headquarters district, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. No federal, state or local law or regulation of the United States which is inconsistent with a regulation of the United Nations authorized by this section shall, to the extent of such inconsistency, be applicable within the Headquarters district . . .".

To date, four regulations have been adopted under the above-mentioned exception from federal, state and local law. These concern (*a*) the United Nations social security system, (*b*) qualifications for professional and other special occupational services with the United Nations, (*c*) the times and hours of operation of services within the Headquarters district and (*d*) the limitation of damages in respect of acts occurring within the Headquarters district. As such, United States local, state and federal law not inconsistent with the aforementioned General Assembly regulations or the Convention on the Privileges and Immunities of the United Nations applies to United Nations premises. As there are no regulations enacted by the Organization in the area of building codes, the New York building codes apply to United Nations premises.

The "inviolability" of United Nations premises is governed by section 9(*a*) of the Headquarters Agreement. Section 9(*a*) provides: "The Headquarters district shall be inviolable. Federal, state or local officers or officials of the United States, whether administrative, judicial, military or police, shall not enter the Headquarters district to perform any official duties therein except with the consent of and under conditions agreed to by the Secretary-General." Access to United Nations premises by local authorities is subject to the consent of the Secretary-General. As such, the City of New York does not have the authority to enter United Nations premises and conduct routine inspections without the consent of the Secretary-General. Legally speaking, the Secretary-General would not withhold such consent in the absence of a compelling reason.

It is not for the Office of Legal Affairs to comment on the financial implications of the steps necessary to achieve compliance with the law or on the consequential financial burden on Member States. This is a matter for the Controller and/or the Advisory Committee on Administrative and Budgetary Questions and the Fifth Committee.

It is important to note that the United Nations seeks to ensure compliance with architectural and safety standards in a number of different ways. These may include: (*a*) inspections upon appointment, when the United Nations permits inspections by local authorities upon request and prior appointment; (*b*) the use of contractors/consultants, when the United Nations hires consultants to inspect and monitor mechanical or electrical devices and prepare reports on their status and compliance with the code; (*c*) inspections by United Nations staff employed to ensure compliance; and (*d*) by provisions in a contract, when the United Nations requires that construction contractors comply with all local codes and the contract is drafted accordingly.

11 December 2000

B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations

[No legal opinions of secretariats of intergovernmental organizations to be reported for 2000.]

NOTES

[1] Under the current staff regulations, staff regulation 1.2 (*i*) generally reproduces the text of former staff regulation 1.5.

[2] Section 30(*a*), Conflict of Interest and Post-Employment Code for Public Office Holders, June 1994.

[3] See: Civil Service Management Code, 10 April 1996 (annex A).

[4] The aim of these rules is twofold. The first aim is to avoid any suspicion that the advice and decision of a civil servant might be influenced by the hope or expectation of future employment with a particular firm or organization. The second aim is to avoid the risk that a particular firm might gain an improper advantage over its competitors by employing someone who has had access to technical or other information which may affect that firm or its competitors.

[5] Report of the Secretary-General entitled "Review of the efficiency of the administrative and financial functioning of the United Nations: proposed United Nations Code of Conduct" (17 October 1997), A/52/488, para. 10.

[6] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 34.*

Part Three

JUDICIAL DECISIONS ON QUESTIONS RELATING TO THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter VII

DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS*

[No decision or advisory opinion from International Tribunals on questions relating to the United Nations and related intergovernmental organizations to be reported for 2000.]

* See chapter III.A of this volume for information on the International Court of Justice, the two international ad hoc tribunals and the International Tribunal for the Law of the Sea.

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

[No decision or advisory opinion from national tribunals on questions relating to the United Nations and related intergovernmental organizations to be reported for 2000.]

Part Four

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LEGAL BIBLIOGRAPHY OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. INTERNATIONAL ORGANIZATIONS AND INTERNATIONAL LAW IN GENERAL

1. General
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C. INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS

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