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CONTENTS

Part Four. Bibliography

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 forty-first 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 2003. Decisions given in 2003 by the national tribunals relating to the legal status of the various organizations are found in chapter VIII.

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

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

Chapter V contains selected decisions of administrative tribunals of the United Nations and related intergovernmental organizations. Chapter VI reproduces selected legal opinions of the United Nations and related intergovernmental organizations. Selected decisions and advisory opinions of international tribunals are included in chapter VII.

Finally, the bibliography, which is prepared under the responsibility of the Office of Legal Affairs by the Dag Hammarskjold Library, lists works and articles of a legal character published in 2003.

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

ABBREVIATIONS

ABCC	Advisory Board on Compensation Claims
ACE	Advisory Committee on Enforcement
AHDC	Ad Hoc Disciplinary Committee
AJAB	Advisory Joint Appeals Board
AOAD	Arab Organization for Agricultural Development
APB	Appointment and Probations Board
BCIE	Central American Bank for Economic Integration
BONUCA	United Nations Peacebuilding Office in the Central African Republic
CERN	European Organization for Nuclear Research
CGWI	Council Group on Aviation War Risk Insurance
CMI	Comité Maritime International
COMEST	World Commission on the Ethics of Scientific Knowledge and Technology
CPA	Coalition Provisional Authority
CTBTO	Preparatory Commission for the Comprehensive Nuclear-Test Ban-Treaty Organization
DDIA	Dubai Development and Investment Authority
DESA	Department of Economic and Social Affairs
DOALOS	Division for Ocean Affairs and the Law of the Sea
DPKO	Department of Peacekeeping Operations
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EAC	East African Community
ECE	Economic Commission for Europe
ECOWAS	Economic Community of West African States
EEC/EUROSTAT	European Economic Community/Statistical Office of the European Commission
EPO	European Patent Organization
ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
ESCWA	Economic and Social Commission for Western Asia
ETOEs	Extraterritorial Offices of Exchange
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FFOA	Former Food and Agriculture Organization of the United Nations and other United Nations Staff Association
GATT	General Agreement on Tariffs and Trade
IAEA	International Atomic Energy Agency

IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDA	International Development Association
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IGC	Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore
ILO	International Labour Organization
IMF	International Monetary Fund
IMFC	International Monetary and Financial Committee
IMO	International Maritime Organization
INCB	International Narcotics Control Board
INT	Department of Institutional Integrity
INSTRAW	International Research and Training Institute for the Advancement of Women
ISO	International Standards Organization
ISOLDE Collaboration	On-Line Isotope Mass Separator Collaboration
ITC	International Trade Centre
ITLOS	International Tribunal for the Law of the Sea
ITU	International Telecommunication Union
JAB	Joint Appeals Board
JDC	Joint Disciplinary Committee
JEN	Spanish Industry and Energy Ministry's nuclear energy institute
JIU	United Nations Joint Inspection Unit
JMC	Joint Military Commission
LDCs	Least-developed countries
LEB (ICAO)	International Civil Aviation Authority Legal Bureau
MEPC	Marine Environment Protection Committee
MINUCI	United Nations Mission in Côte d'Ivoire
MINURSO	United Nations Mission for the Referendum in Western Sahara
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo
MSC	Maritime Safety Committee
NATO	North Atlantic Treaty Organization
NEPAD	New Partnership for Africa's Development
NGOs	Non-Governmental Organizations
OAPLAC	Office for Asia-Pacific, Latin America and the Caribbean
OAS	Organization of American States

OHRM	Office of Human Resources Management
OIPC	Organisation Internationale de Police Criminelle (Interpol)
OPCW	Organization for the Prohibition of Chemical Weapons
OSCE	Organization for Security and Cooperation in Europe
RO/IB	Receiving Office of the International Bureau
SCIT	Standing Committee on Information Technologies
SCP	Standing Committee on the Law of Patents
SCT	Standing Committee on Trademarks
SFOR	NATO Stabilization Force
SGWI	Special Group on Aviation War Risk Insurance
SGWI-RG	Special Group on Aviation War Risk Insurance Review Group
SRSG	Special Representative of the Secretary-General
UIC	International Union of Railways
UNAMA	United Nations Assistance Mission in Afghanistan
UNAMI	United Nations Assistance Mission for Iraq
UNAMSIL	United Nations Mission in Sierra Leone
UNAT	United Nations Administrative Tribunal
UNCHS	United Nations Centre for Human Settlements
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDOF	United Nations Disengagement Observer Force
UNDP	United Nations Development Programme
UN-ECE	United Nations Economic Commission for Europe
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNESCO-IHE	UNESCO Institute for Water Education
UNFICYP	United Nations Peacekeeping Force in Cyprus
UNFPA	United Nations Population Fund
UN-HABITAT	United Nations Human Settlement Programme
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
UNIKOM	United Nations Iraq-Kuwait Observer Mission
UNITAF	Unified Task Force
UNITAR	United Nations Institute for Training and Research
UN-LiREC	United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean
UNMAS	United Nations Mine Action Service
UNMEE	United Nations Mission in Ethiopia and Eritrea

UNMIK	United Nations Mission in Kosovo
UNMIL	United Nations Mission in Liberia
UNMISET	United Nations Mission of Support in East Timor
UNMOVIC	United Nations Monitoring, Verification and Inspection Commission
UNOGBIS	United Nations Peacebuilding Support Office in Guinea Bissau
UNOMIG	United Nations Observer Mission in Georgia
UNPOS	United Nations Political Office for Somalia
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNSCO	Office of the United Nations Special Coordinator for the Middle East
UNSECOORD	Office of the United Nations Security Coordinator
UNTOP	United Nations Tajikistan Office of Peacebuilding
UNTSO	United Nations Truce Supervision Organization
UPU	Universal Postal Union
USDOC	United States Department of Commerce
USITC	United States International Trade Commission
USPTO	United States Patent and Trademark Office
WEOG	Western European and Other States Group
WHA	World Health Assembly
WHO	World Health Organization
WHO/EURO	World Health Organization, Regional Office for Europe
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization
WTO	World Tourism 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

Estonia

Procedure for the Recognition of Travel Documents of Foreign States and International Organisations

Regulation of the Minister of Foreign Affairs
No 1 of 21 January 2003.

This Regulation is established on the basis of 15 (2) of the Identity Documents Act (Riigi Teataja I 1999, 25, 365; 2000, 25, 148; 26, 150; 40, 254; 86, 550; 2001, 16, 68; 31, 173; 56, 338; 2002, 61, 375; 63, 387; 90, 516).

1. *The basis of the recognition of travel documents of foreign states and international organisations*

The basis of the recognition of travel documents of foreign states and international organisations (hereinafter referred to as the Travel Documents) is the international agreement of Estonia or the diplomatic note.

2. *Submission of the travel documents for recognition*

Foreign states and international organisations that issue the travel documents transmit samples of the documents and necessary preliminary information to the Estonian Ministry of Foreign Affairs through diplomatic channels.

3. *Notification of the recognition of the travel documents*

The Ministry of Foreign Affairs notifies the Estonian Citizenship and Migration Board and the Estonian Board of Border Guard of the recognition of the travel documents of foreign states and international organisations.

4. *Implementing provision*

Regulation of the Minister of Foreign Affairs No 5 of 26 June 2002 "Procedure for the Recognition of Travel Documents of Foreign State" (*Riigi Teataja Lisa* 2002, 92, 1428) is hereby declared invalid.

Minister Kristiina OJULAND
Chancellor Priit KOLBRE

Chapter II

TREATIES CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Treaties concerning the legal status of the United Nations

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

The following States acceded to the Convention in 2003:**

State	*Date of receipt of instrument of accession*
Sri Lanka	19 June 2003
United Arab Emirates	2 June 2003

As at 31 December 2003, there were 148 States parties to the Convention.***

2. AGREEMENTS RELATING TO MISSIONS, OFFICES AND MEETINGS

(a) Arrangements between the United Nations and the Government of the Former Yugoslav Republic of Macedonia Regarding the Joint EEC/EUROSTAT Work Session on Population and Housing Census, to be held in Ohrid from 21 to 23 May 2003. Geneva, 29 January 2003 and 9 May 2003****

I

Letter from the United Nations

29 January 2003

Madam,

I have the honour to give you below the text of arrangements between the United Nations and the Government of The former Yugoslav Republic of Macedonia (hereinafter referred to as "the Government") in connection with the Joint ECE/Eurostat Work Session

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

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

*** For the list of those States, see *Multilateral Treaties Deposited with the Secretary-General of the United Nations* (United Nations publication, Sales No. E.04. V.2, ST/LEG/SER.E/22).

**** Came into force on 9 May 2003, in accordance with the provisions of the said letters.

on Population and Housing Censuses, to be held, at the invitation of the Government, in Ohrid, from 21 to 23 May 2003.

"Arrangements Between the United Nations and the Government of the Former Yugoslav Republic of Macedonia Regarding the Joint ECE/EUROSTAT Work Session on Population and Housing Censuses to be Held in Ohrid from 21 to 23 May 2003.

1. Participants in the Work Session 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 the 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 Work Session, namely:

(a) to supply to all UN staff members who are to be brought to Skopje, air tickets, economy class, Geneva-Skopje-Geneva, to be used on the airlines that cover this itinerary;

(b) to arrange the transfers between Skopje Airport and Ohrid for United Nations staff members, and to pay all corresponding costs;

(c) to supply vouchers for air freight or excess baggage for documents and records; and

(d) to pay to all staff, on their arrival in The former Yugoslav Republic of Macedonia, 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 Work Session, together with terminal expenses up to 120 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 Work Session adequate facilities including personnel resources, space and office supplies as described in the attached annex.*

4. The Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of (i) injury to person or damage to property in conference or office premises provided for the Work Session; (ii) the transportation provided by the Government; and (iii) the employment for the Work Session of personnel provided or arranged by the Government; and the Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand.

5. The Convention of 13 February 1946 on the Privileges and Immunities of the United Nations, to which The former Yugoslav Republic of Macedonia is a party, shall be applicable to the Work Session, in particular:

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

(b) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and persons performing functions in connection with the Work Session shall enjoy such privileges and immunities, facilities and

* The annex is not reproduced herein.

courtesies as are necessary for the independent exercise of their functions in connection with the Work Session;

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

(d) All participants and all persons performing functions in connection with the Work Session shall have the right of unimpeded entry into and exit from The former Yugoslav Republic of Macedonia. Visas and entry permits, where required, shall be granted promptly and free of charge.

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

7. The Government shall notify the local authorities of the convening of the Work Session and request appropriate protection.

8. Any dispute concerning the interpretation or implementation of these arrangements, except for a dispute subject to the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations or of any other applicable agreement, will, unless the parties agree otherwise, be submitted to a tribunal of three arbitrators, one of whom will be appointed by the Secretary-General of the United Nations, one by the Government and the third, who will be the Chairman, by the other two arbitrators. If either party does not appoint an arbitrator within three months of the other party having notified the name of its arbitrator or if the first two arbitrators do not within three months of the appointment or nominations 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 former Yugoslav Republic of Macedonia which shall enter into force on the date of your reply and shall remain in force for the duration of the Work Session and for such additional period as is necessary for its preparation and winding up.

Accept, Madam, the assurances of my highest consideration.

(Signed) Sergei Ordzhonikidze

II

LETTER FROM THE PERMANENT MISSION OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA TO THE UNITED NATIONS OFFICE AT GENEVA AND OTHER INTERNATIONAL ORGANIZATIONS IN SWITZERLAND

09 May 2003

Excellency,

In have the honour to acknowledge receipt of Your letter dated 29 January 2003 addressed to the Permanent Mission of the Republic of Macedonia to the United Nations Office at Geneva and Other International Organisations in Switzerland, which refers to the Agreement between United Nations and the Government of the Republic of Macedonia regarding the Joint EEC/EUROSTAT work session on population and housing census, to be held in Ohrid from 21 to 23 May 2003.

I herewith confirm the consent of the Government of the Republic of Macedonia with the proposed text of the Agreement and therefore Your letter and this reply constitute an Agreement between the Republic of Macedonia and United Nations regarding the Joint EEC/EUROSTAT work session on population and housing census.

Please accept, Excellency, the assurance of my highest consideration.

Sincerely,

(Signed) Dragica ZAFIROVSKA

Chargé d'Affaires a.i

(b) Memorandum of Agreement between the United Nations and the Government of France for the Provision of Personnel to the United Nations Assistance Mission in Afghanistan. New York, 4 March 2003*

Whereas according to General Assembly resolution 51/243 the Secretary-General may accept gratis personnel to provide temporary and urgent assistance in the case of new and/or expanded mandates of the Organization, pending a decision by the General Assembly on the level of resources required,

Whereas the Government of France (hereinafter "the Government") has proposed to assist the Organization by making available to it the services of lightly armed personnel to provide close protection within the United Nations Assistance Mission in Afghanistan (UNAMA),

Whereas the Secretary-General has, as an exceptional measure, authorized acceptance of the personnel offered by the Government,

Whereas in his report to the Security Council dated 18 March 2002 (S/2002/278) the Secretary-General stated that "The mission would not have any uniformed personnel, with the exception of a few advisers on military and civilian police matters, and a few lightly armed international personnel required to provide close protection",

Whereas the establishment of UNAMA, with the mandate and structure described in the above-mentioned report, was approved by the Security Council in its resolution 1401 (2002) of 28 March 2002,

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

The United Nations and the Government (hereinafter referred to as "the Parties") have agreed on the following:

Article 1

OBLIGATIONS OF THE GOVERNMENT

1. The Government agrees to make available to UNAMA for the duration and the purposes of this Agreement the services of gendarmes (hereinafter "personnel") who shall be considered as members of UNAMA and who, in order to provide close protection within UNAMA, shall be lightly armed. The personnel are listed in appendix I to this Agreement. The appendix may be amended by a simple notification from the Government in the context of personnel rotation and the amendment shall be considered to have been tacitly accepted by the United Nations after 15 days have elapsed since the notification.

2. Unless otherwise specified elsewhere in this Agreement, the Government shall pay all costs connected with the employment of personnel, including salaries, travel costs to and from the location where personnel will be based and allowances and other benefits to which they are entitled. In particular, personnel may take annual leave in accordance with the conditions of employment provided to them by the Government, but within the limits of the leave to which staff members are entitled. Accordingly, personnel with less than six months in service shall be entitled to annual leave at the rate of one and a half days for each full month of continuous service. Personnel accepted initially for a period of more than six months, or whose service is extended beyond six months, shall be entitled to annual leave at the rate of two and a half days for each full month of continuous service. Leave requests shall be approved in advance by the Special Representative of the Secretary-General or by the person authorized to act on his behalf.

3. The Government shall ensure that, during the entire period of service under this Agreement, personnel are suitably covered by adequate medical and life insurance as well as insurance coverage for service-incurred illness, disability or death.

Article 2

OBLIGATIONS OF THE UNITED NATIONS

1. The United Nations shall provide to personnel the offices, support staff, equipment and other resources needed for the performance of the tasks entrusted to them within UNAMA.

2. The costs incurred by personnel who are required to travel in the performance of their duties in the mission area shall be paid by the United Nations in the same conditions as the costs incurred by staff members.

3. The United Nations accepts no liability as regards requests for compensation for illness, injury or death of personnel attributable or related to the provision of the services covered in this Agreement, except in cases where the illness, injury or death is the direct result of serious negligence by staff members of the Organization. The amounts reimbursed by the insurances mentioned in paragraph 3 of article 1 of this Agreement shall be deducted from any sum which the Organization is required to pay.

Article 3

OBLIGATIONS OF PERSONNEL

The Government accepts the conditions and obligations stated below and shall, as necessary, ensure that personnel providing services under this Agreement fulfil these obligations:

(a) Personnel shall perform their functions under the authority and in full compliance with the instructions of the Special Representative of the Secretary-General or of any person acting on his behalf;

(b) Personnel shall undertake to respect the impartiality and independence of the United Nations and shall neither seek nor accept instructions regarding the tasks to be performed under this Agreement from any Government or from any authority external to the Organization;

(c) Personnel shall refrain from any conduct which would adversely reflect on the Organization and shall not engage in any activity which is incompatible with the aims and objectives of the United Nations;

(d) Personnel shall observe all the regulations and all the rules, instructions, procedures and directives issued by the United Nations and UNAMA;

(e) 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 Special Representative of the Secretary-General to the media or to any Government, institution, person or other authority external to the Organization any information that has not been made public and which has become known to them only by reason of their association with the Organization. They shall not use any such information without the written authorization of the Special Representative of the Secretary-General and, in any event, such information shall not be used for personal gain. These obligations shall not lapse upon expiration of this Agreement;

(f) Personnel shall sign an undertaking, reproduced in appendix II of this Agreement.

Article 4

LEGAL STATUS OF PERSONNEL

1. Personnel shall in no way have the status of United Nations staff members.

2. In the performance of their duties with the United Nations, personnel shall have the status of "experts on missions", as defined in sections 22 and 23 of article VI of the Convention on the Privileges and Immunities of the United Nations.

Article 5

ACCOUNTABILITY

1. If personnel do not give satisfaction in their work or do not observe the standards of conduct specified above, the United Nations may decide to terminate their services, in which case it shall give reasons for the decision and one month's notice to the persons concerned.

2. Any serious dereliction of the duties and obligations incumbent on personnel which, in the opinion of the Special Representative of the Secretary-General, justifies

termination of the services of the person concerned before the period of notice has expired shall be notified at once to the Government in order to obtain its agreement to immediate termination. The Secretary-General may, if the circumstances so require, restrict or prohibit access to the Mission premises by the person concerned.

3. The Government shall reimburse to the United Nations the amount of any financial loss or damage to equipment or property belonging to the Organization caused by gratis personnel provided by it, if such loss or damage (a) occurred outside the activity performed in the Organization, or (b) result from serious negligence, intentional misconduct or violation of the applicable rules and policies, whether deliberate or resulting from carelessness on the part of personnel.

Article 6

THIRD PARTY CLAIMS

It shall be the responsibility of the United Nations to settle any request for compensation submitted by third parties when the loss or deterioration of property belonging to them or death or bodily harm were caused by actions or omissions of personnel in the exercise of the functions performed by them for UNAMA under the agreement with the Government. However, if the loss, deterioration, death or injury are attributable to serious negligence or intentional misconduct by such personnel, the Government shall be required to reimburse to the United Nations any sums paid by the Organization to claimants and any costs incurred by it in settling the request for compensation submitted.

Article 7

CONSULTATION

The United Nations and the Government shall consult each other on any question that may arise under this Agreement, including any question connected with the legal status of personnel covered by the Agreement, regarding waiver of immunity in accordance with the relevant provisions of the Convention on the Privileges and Immunities of the United Nations.

Article 8

SETTLEMENT OF DISPUTES

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

Article 9

ENTRY INTO FORCE, DURATION AND TERMINATION

This Agreement shall enter into force on the date of its signature and shall remain in force until the Parties decide by mutual agreement to terminate it or until it is terminated by one of the Parties after one month's notice has been given in writing to the other Party.

Article 10

AMENDMENT

This Agreement may be amended by written agreement between the two Parties. Each Party shall give all due attention to any amendment proposed by the other Party.

In witness whereof, the respective representatives of the United Nations and of the Government have signed this Agreement.

Done in New York, on 4 March 2003, in duplicate in the French language.

For the United Nations:	*For the Government:*
Jean-Marie Guéhenno	Jean-Marc Rochereau De La Sablière
Under-Secretary-General *Department of Peacekeeping Operation*	*Ambassador, Permanent Representative of France to the Security Council and Head of the Permanent Mission of France to the United Nations in New York*

APPENDIX I*

APPENDIX II

Undertaking

I the undersigned, a member of personnel made available by the French Government to UNAMA to provide close protection within the Mission in accordance with the Memorandum of Agreement between the United Nations and the French Government concerning the provision of personnel to UNAMA, hereby undertake to observe the following requirements:

(a) I understand that, as a member of personnel, I shall in no way have the status of a United Nations staff member;

(b) I also understand that, in the performance of my duties with the United Nations, I shall have the status of an "expert on mission" within the meaning of sections 22 and 23 of article VI of the Convention on the Privileges and Immunities of the United Nations;

(c) I shall perform my duties under the authority of the Special Representative of the Secretary-General or of any other person acting in his name, and shall follow his instructions;

(d) I shall respect the impartiality and independence of the United Nations and shall neither seek nor accept instructions from any Government or any authority external to the Organization concerning the performance of my duties as a member of personnel;

(e) I shall refrain from any conduct that would adversely reflect on the Organization and shall not engage in any activity which is incompatible with the aims and objectives of the United Nations or with the performance of my duties;

(f) I shall exercise the utmost discretion in all matters relating to my work and shall not communicate at any time without the authorization of the Special Representative of the Secretary-General to the media or to any Government, institution, person or any other external authority information that has not been made public and which has become known to me solely by reason of my activities with the Organization. I shall not use such information without the written authorization of the

* Appendix I is not published herein.

Special Representative of the Secretary-General and shall not use such information for my personal gain. These obligations shall not lapse at the end of my mission;

(g) I shall observe all the regulations and all the rules, instructions, procedures and directives issued by the United Nations and the Special Representative of the Secretary-General.

Name in capital letters

Signature

Date

(c) Agreement between the United Nations and the Government of Kazakhstan regarding the arrangements for the International Ministerial Conference of Landlocked and Transit Developing Countries and Donor Countries and International Financial and Development Institutions on Transit Transport Cooperation (with attachments*). New York, 27 June 2003**

WHEREAS at its 57th Session, the General Assembly in its resolution 57/242 accepted the offer made by the Government of Kazakhstan to host the International Ministerial Conference of Landlocked and Transit Developing Countries and Donor Countries and International Financial and Development Institutions on Transit Transport Cooperation at Almaty, and

WHEREAS the General Assembly of the United Nations, by paragraph 17 of resolution 47/202 of 22 December 1992, reaffirms that United Nations bodies may hold sessions away from their established headquarters when a Government issuing an invitation for a session to be held within its territory has agreed to defray the actual additional costs directly or indirectly involved, after consultation with the Secretary-General as to their nature and possible extent.

NOW THEREFORE, the United Nations and the Government hereby, agreed as follows:

Article I

DATE AND PLACE OF THE CONFERENCE

The Conference shall be held at Almaty, from 25 to 29 August 2003.

Article II

PARTICIPATION IN THE CONFERENCE

1. Participation in the Conference shall be open to the following:

(a) All States Members of the United Nations;

(b) Organizations that have received standing invitations from the General Assembly to participate in conferences in the capacity of observers;

(c) Specialized and related agencies of the United Nations;

(d) Intergovernmental organs of the United Nations;

(e) Intergovernmental and non-governmental organizations;

* The attachments are not published herein.

** Came into force on 27 June 2003 by signature, in accordance with article XIII.

(f) Officials of the United Nations Secretariat;

(g) Other persons invited by the United Nations.

2. The Secretary-General of the United Nations shall designate the officials of the United Nations to attend the Conference for the purpose of servicing it.

3. The public meetings of the Conference shall be open to representatives of information media accredited by the United Nations at its discretion after consultation with the Government.

Article III

PREMISES, EQUIPMENT, UTILITIES AND SUPPLIES

1. The Government shall provide the necessary premises, including conference rooms for informal meetings, office space, working areas and other related facilities, as specified in the schedule hereto. The Government shall at its expense furnish, equip and maintain in good repair all these premises and facilities in a manner that the United Nations considers adequate for the effective conduct of the Conference. The conference rooms shall be equipped for reciprocal simultaneous interpretation between six languages and shall have facilities for sound recording in that manner in that number of languages as well as facilities for press, television, radio and film operations, to the extend required by the United Nations. The premises shall remain at the disposal of the United Nations 24 hours a day from two weeks prior to the Conference until a maximum of six days after its close.

2. The Government shall provide, if possible within the conference area: bank, post office, telephone and telegram facilities, as well as appropriate eating facilities, a travel agency and a secretarial service centre, equipped in consultation with the United Nations, for the use of delegations to the conference on a commercial basis.

3. The Government shall bear the cost of all necessary utility services, including local telephone communications, of the secretariat of the Conference and its communications by facsimile or telephone with United Nations Headquarters when such communications are authorized by or on behalf of the Executive Secretary of the Conference.

4. The Government shall bear the cost of transport and insurance charges, from any established United Nations office to the site of the Conference and return, of all United Nations equipment and supplies required for the adequate functioning of the Conference. The United Nations shall determine the mode of shipment of such equipment and supplies.

Article IV

ACCOMMODATION

The Government shall ensure that adequate accommodation in hotels or residences is available at reasonable rates for persons participating in or attending the Conference.

Article V

MEDICAL FACILITIES

1. Medical facilities adequate for first aid in emergencies shall be provided by the Government within the conference area.

2. For serious emergencies, the Government shall ensure immediate transportation and admission to a hospital.

Article VI

TRANSPORT

1. The Government shall provide transport between the Almaty airport and the conference area and principal hotels for the members of the United Nations Secretariat servicing the Conference upon their arrival and departure.

2. The Government shall ensure the availability of transport for all participants and those attending the Conference between the Almaty airport, the principal hotels and the conference area.

3. The Government shall provide an adequate number of cars with drivers for official use by the principal officers and the secretariat of the Conference, as well as such other local transportation as is required by the secretariat in connection with the Conference.

Article VII

POLICE PROTECTION

The Government shall furnish such police protection as may be required to ensure the effective functioning of the Conference in an atmosphere of security and tranquillity free from interference of any kind. While such police services shall be under the direct supervision and control of a senior officer provided by the Government, this officer shall work in close co-operation with a designated senior official of the United Nations.

Article VIII

LOCAL PERSONNEL

1. The Government shall appoint a liaison officer who shall be responsible, in consultation with the United Nations, for making and carrying out the administrative and personnel arrangements for the Conference as required under this Agreement.

2. The Government shall recruit and provide an adequate number of secretaries, typists, clerks, personnel for the reproduction and distribution of documents, assistant conference officers, ushers, messengers, bilingual receptionists, telephone operators, cleaners and workmen required for the proper functioning of the Conference, as well as drivers for the cars referred to in article VI, paragraphs 1 and 3. The exact requirements in this respect will be established by the United Nations in consultation with the Government. Some of the persons shall be available at least one week before the opening of the Conference and until a maximum of six days after its close, as required by the United Nations.

Article IX

FINANCIAL ARRANGEMENTS

1. The Government, in addition to the financial obligations provided for elsewhere in this Agreement, shall, in accordance with General Assembly resolution 42/202, paragraph 17, bear the actual additional costs directly or indirectly involved in holding the Conference in Almaty, Kazakhstan rather than at New York. Such costs, which are provisionally estimated at approximately $US 337,000 shall include, but not restricted to, the actual additional costs of travel and staff entitlements of the United Nations officials assigned to plan for or attend the Conference, as well as the costs of shipping any necessary equipment and supplies. Arrangements for the travel of United Nations officials required to plan for or service the Conference and for the shipment of any necessary equipment and supplies

shall be made by the Secretariat in accordance with the Staff Regulations and Rules of the United Nations and its related administrative practices regarding travel standard, baggage allowances, subsistence payments and terminal expenses.

2. The Government shall, not later than 1 July 2003 deposit with the United Nations the sum of $US 337,000 representing the total estimated costs referred to in paragraph 1. If necessary, the Government shall make further advances as requested by the United Nations so that the latter will not at any time have to finance temporarily from its cash resources the extra costs that are the responsibility of the Government.

3. The deposit and the advances required by paragraph 2 shall be used only to pay the obligations of the United Nations in respect of the Conference.

4. After the Conference, the United Nations shall give the Government a detailed set of accounts showing the actual additional costs incurred by the United Nations and to be borne by the Government pursuant to paragraph 1. These costs shall be expressed in United States dollars, using the United Nations official rate of exchange at the time the payments are made. The United Nations, on the basis of this detailed set of accounts, shall refund to the Government any funds unspent out of the deposit or the advances required by paragraph 2. Should the actual additional costs exceed the deposit, the Government shall remit the outstanding balance within one month of the receipt of the detailed accounts. The final accounts shall be subject to audit as provided in the Financial Regulations and Rules of the United Nations, and the final adjustment of accounts shall be subject to any observations which may arise from the audit carried out by the United Nations Board of Auditors, whose determination shall be accepted as final by both the United Nations and the Government.

Article X

LIABILITY

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

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

(b) Injury to persons or damage to or loss of property caused by, or incurred in using, the transport services referred to in article VI that are provided by or are under the control of the Government;

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

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

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to which the Government of Kazakhstan is a party, shall be applicable in respect of the Conference. In particular, the representatives of States and of the intergovernmental organs referred to in article II, above, shall enjoy the privileges and immunities provided under article IV of the Convention, the officials of the United Nations performing functions in connection with the Conference referred to

in article II, paragraphs 1*(f)* and 2, above, shall enjoy the privileges and immunities under articles V and VII of the Convention and any experts on mission for the United Nations in connection with the Conference shall enjoy the privileges and immunities provided under articles VI and VII of the Convention.

2. The representatives or observers referred to in article II, paragraph 1 *(b)*, *(d)*, *(e)* and *(g)*, above, shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with their participation in the Conference.

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

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

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

6. All persons referred to in article II shall have the right of entry into and exit from Kazakhstan, and no impediment shall be imposed on their transit to and from the conference site. They shall be granted facilities for speedy travel. Visas and entry permits, where required, shall be granted free of charge, as speedily as possible and not later than two weeks before the date of the opening of the Conference, provided the application for the visa is made at least three weeks before the opening of the Conference; if the application is made later, the visa shall be granted not later than three days from the receipt of the application. Arrangements shall also be made to ensure that visas for the duration of the Conference are delivered at Almaty to participants who were unable to obtain them prior to their arrival. Exit permits, where required, shall be granted, as speedily as possible, and in any case not later than three days before the closing of the Conference.

7. For the purpose of the Convention on the Privileges and Immunities of the United Nations, the conference premises specified in article III, paragraph 1, above, shall be deemed to constitute premises of the United Nations in the sense of section 3 of the Convention and access thereto shall be subject to the authority and control of the United Nations. The premises shall be inviolable for the duration of the Conference, including the preparatory stage and the winding-up.

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

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

Article XII

SETTLEMENT OF DISPUTE

Any dispute between the United Nations and the Government concerning the interpretation or application of this Agreement that is not settled by negotiation or other agreed mode of settlement shall be referred at the request of either party for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General of the United Nations, one to be named by the Government and the third, who shall be the chairman, to be chosen by the first two; if either party fails to appoint an arbitrator within 60 days of the appointment by the other party, or if these two arbitrators should fail to agree on the third arbitrator within 60 days of their appointment, the President of the International Court of Justice may make any necessary appointments at the request of either party. However, any such dispute that involves a question regulated by the Convention on the Privileges and Immunities of the United Nations shall be dealt with in accordance with section 30 of that Convention.

Article XIII

FINAL PROVISIONS

1. This Agreement may be modified by written agreement between the United Nations and the Government.

2. This Agreement shall enter into force immediately upon signature by the Parties and shall remain in force for the duration of the Conference and for such a period thereafter as is necessary for all matters relating to any of its provisions to be settled.

SIGNED this 27th day of June 2003 at New York in duplicate in English.

For the United Nations	*For the Government of Kazakhstan*
[*Signature*]	[*Signature*]
Anwarul K. CHOWDHURY	Kazhmurat NAGMANOV
Under-Secretary-General	*Minister of Transport*
and High Representative	*and Communications*

(d) Exchange of letters constituting an agreement between the United Nations and the Government of Samoa regarding the arrangements for the Pacific Regional Preparatory Meeting, to be held in Apia from 4 to 8 August 2003. New York, 29 July 2003 and 22 August 2003*

I

LETTERS FROM THE UNITED NATIONS

29 July 2003

Excellency,

I have the honour to enclose the revised text of the Agreement between the United Nations and the Government of Samoa regarding the Arrangements for the Pacific Regional Preparatory Meeting which will be held in Apia, Samoa from 4 to 8 August 2003.

* Came into force on 22 August 2003, in accordance with the provisions of the said letters.

This version incorporates a number of changes requested by your Government, specifically:

(a) deletion of the provisions in paragraphs 8*(d)* and 8*(h)*

(b) deletion of third and fourth sentences of paragraph 9*(e)*

(c) alternative wording for the last sentence of paragraph 11. We have consulted with the Office of Legal Affairs regarding the proposed changes to the chapeau of paragraph 11, and they have advised against retaining the proposed amendments as the word "appropriate" would bring uncertainty as to the type of action, claim or other demand for which the Government is responsible. Moreover, such actions, claims or other demands are not meant to relate to privileges and immunities but to matters listed in subparas. 11 *(a)* to *(c)*. With regard to the names of the participants from eligible Pacific Small Islands Developing States and the Associate Members of the Regional Commissions, this information has been incorporated in the Agreement under paragraph 7 *(b)*. Please note that the participants under paragraph 7 *(b)* are only those for whom the United Nations will provide travel support, and are part of the total number of participants listed in paragraph 5.

It is our understanding that, although Samoa is neither a party to the 1946 Convention on Privileges and Immunities of the United Nations nor to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, the provisions of both Conventions shall be deemed applicable for the purpose of the Meeting.

We look forward to an early acceptance of this text so that the Agreement can be concluded.

Accept, Excellency, the assurances of my highest consideration,

(*Signed*)

Nitin Desai

Under-Secretary-General

Department of Economic and Social Affairs

* * *

29 July 2003

Excellency,

1. I have the honour to refer to resolution 57/262, in which the General Assembly endorsed the convening of an International Meeting to review the implementation of the Barbados Program of Action for the sustainable development of Small Island Developing States (hereinafter "SIDS"). The resolution was further elaborated by the Commission on Sustainable Development at its 11th session, when it was agreed that a regional preparatory process for SIDS would be included, and that the Pacific Regional Preparatory Meeting (hereinafter referred to as the "Meeting") would be held.

2. The Meeting, organized by the United Nations, represented by the Department of Economic and Social Affairs (hereinafter referred to as "the United Nations") in cooperation with the Government of Samoa (hereinafter referred to as "the Government"), will be held in Apia, Samoa from 4 to 8 August 2003.

3. The objective of this Meeting is to provide a forum for the Pacific SIDS to present their national assessment reports, to discuss common priorities for action, and to develop a regional synthesis report that will be presented to an Inter-regional Preparatory Meeting of SIDS in January 2004.

4. The Meeting will be attended by the following:

(a) Government representatives;

(b) Representatives of Associate Members of the United Nations Regional Economic Commissions;

(c) Invited experts, including lead speakers and moderators;

(d) Representatives of the United Nations Specialized Agencies and Regional Economic Commissions;

(e) Officials of the United Nations.

5. The total number of participants will be approximately 80.

6. The Meeting will be conducted in English.

7. The United Nations will be responsible for:

(a) Extending invitations to the participants and necessary follow up with them to ensure their participation;

(b) Providing financial contributions to enable:

(i) Participation of 15 delegates from Pacific SIDS (Cook Islands, Fiji, Kiribati, Marshall Islands, Micronesia, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu and Vanuatu);

(ii) Through voluntary funds, participation of a further 15 delegates from the Pacific SIDS listed above and 5 delegates from Associate Members of Regional Commissions (American Samoa, French Polynesia, Guam, New Caledonia and Northern Marianas, Wallis and Futuna);

(iii) Participation of six officials of the United Nations (Manuel Dengo, Chief, Water Resources and SIDS Branch; Diane Quarless, Chief, SIDS Unit; Espen Ronneberg, Interregional Adviser on SIDS; Hiroshi Tamada, Information Systems Specialist; Nubia Soto, Technical Cooperation Assistant);

(c) Overall technical support to the organization of plenary sessions that will include: (i) the preparation of scope of work for thematic papers; and (ii) the identification and lining-up of speakers and a moderator;

(d) Coordination and management of donors' financial assistance through a Trust Fund to support participation in the preparatory meeting and supporting activities as appropriate, especially arranging the participation of delegates from developing countries;

(e) Discussions with various UN agencies to secure their participation at the Meeting;

(f) Drafting of the recommendations of the preparatory meeting;

(g) Technical and logistical support during the Meeting.

8. The Government will be responsible for:

(a) Planning and organizing activities and services related to various sessions and side events, including provision and allocation of space/halls for all sessions;

(b) Organizing and implementing security arrangements for the whole Meeting, including those for the Meeting participants, VIPs, Meeting premises and hotels, etc;

(c) Facilitating the obtaining of reduced hotel(s) rates for the Meeting participants;

(d) Making transportation arrangements between: (i) airport and hotels; (ii) hotels and Meeting sites; and (iii) various Meeting premises;

(e) Preparing the Meeting documentation and ensuring its distribution during the sessions;

(f) Providing substantive and technical secretariat services for the Meeting, and maintaining records of Meeting-servicing activities;

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

(a) The Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1946 ("the Convention"), to which the Government is not a party, shall nevertheless be applicable in respect of the Meeting;

(b) The representatives of States participating in the Meeting shall enjoy the privileges and immunities provided under Article IV of the Convention and the participants invited by the United Nations, shall enjoy the privileges and immunities accorded to experts on mission for the United Nations under Articles VI and VII of the Convention. Officials of the United Nations participating in or performing functions in connection with the Meeting shall enjoy the privileges and immunities provided under Articles V and VII of the Convention. The privileges and immunities provided under Articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly on 21 November 1947, shall be applicable to officials of Specialized Agencies participating in or performing functions in connection with the Meeting.

(c) Without prejudice to the provisions of the Convention, 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;

(d) 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;

(e) All participants and all persons performing functions in connection with the Meeting shall have the right of unimpeded entry into and exit from Samoa. Visas and entry permits, where required, shall be granted free of charge and as speedily as possible. Arrangements shall also be made to ensure that visas for the duration of the Meeting are delivered at the airport of arrival to those participants who were unable to obtain them prior to their arrival.

10. The Government shall furnish such police protection as may be required to ensure the effective functioning of the Meeting in an atmosphere of security and tranquillity free from interference of any kind. While such police services shall be under the direct supervision and control of a senior officer provided by the Government, this Officer shall work in close cooperation with a designated senior official of the United Nations.

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

(a) injury to persons, or damage to or loss of property in Meeting or office premises provided for the Meeting;

(b) injury to persons, or damage to or loss of property caused by or incurred in using the transportation provided by your Government;

(c) the employment for the Meeting of personnel provided or arranged for by your Government.

The Government shall indemnify and hold the United Nations and its personnel harmless in respect of any such action, claim or demand except where it is agreed between the United Nations and the Government that such damage, loss or injury is caused by the gross negligence or willful misconduct of the United Nations.

12. Any dispute between the United Nations and the Government of Samoa concerning the interpretation or application of this Agreement, except for a dispute that is regulated by Section 30 of the Convention or any other applicable agreement, shall be resolved by negotiations or any other agreed mode of settlement. Any such dispute that is not settled by negotiation or any other agreed mode of settlement shall be submitted at the request of either party for a final decision to a tribunal of three arbitrators, one of whom shall be appointed by the Secretary-General of the United Nations, one by the Government, and the third, who shall be the Chairman, by the other two arbitrators. If either Party does not appoint an arbitrator within three months of the appointment by the other Party having notified the name of its arbitrator, or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them appoint the Chairman, then such arbitrator shall be nominated by the President of the International Court of Justice at the request of either Party to the dispute. Except as otherwise agreed by the Parties, the tribunal shall adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the Parties, and take all decisions by a two-thirds majority. Its 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.

13. I further propose that upon receipt of your Government's confirmation in writing of the above, this exchange of letters shall constitute an Agreement between the United Nations and the Government of Samoa in relation to the hosting of the Pacific Regional Preparatory Meeting, 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 for all matters relating to any of its provisions to be settled.

Accept, Excellency, the assurances of my highest consideration.

(*Signed*)

Nitin Desai

Under-Secretary-General

Department of Economic and Social Affairs

II

LETTER FROM THE PERMANENT MISSION OF SAMOA TO THE UNITED NATIONS

22 August 2003

Excellency,

I have the honour to acknowledge receipt of your letter of 29 July 2003 and to say that the Agreement as revised is acceptable.

Accept, Excellency, the assurances of my highest consideration.

(Signed)

Tuiloma NERONI SLADE

Ambassador/Permanent Representative

(e) Agreement between the United Nations and the Government of the Kingdom of Thailand regarding the Fifth Meeting of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction. New York, 4 September 2003 and Geneva, 8 September 2003*

WHEREAS the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction ("the Convention") was concluded at Oslo on 18 September 1997;

WHEREAS the Convention, pursuant to its Article 17, paragraph 1, entered into force on 1 March 1999, i.e., the first day of the sixth month after the month in which the 40th instrument of ratification, acceptance, approval or accession had been deposited;

WHEREAS, in accordance with Article 11, paragraph 2 of the Convention, the First Meeting of States Parties was convened by the Secretary-General of the United Nations within one year after the entry into force of the Convention in Maputo, Mozambique, from 3 to 7 May 1999;

WHEREAS, in accordance with Article 11, paragraph 2 of the Convention, subsequent meetings shall be convened by the Secretary-General of the United Nations annually until the first Review Conference;

WHEREAS the General Assembly of the United Nations, by resolution 57/74 of 22 November 2002, requested the Secretary-General of the United Nations, in accordance with Article 11, paragraph 2 of the Convention, to undertake the preparations necessary to convene the Fifth Meeting of the States Parties ("Fifth Meeting") at Bangkok from 15 to 19 September 2003;

WHEREAS the General Assembly, by that same resolution, requested the Secretary-General, on behalf of States Parties and in accordance with Article 11, paragraph 4 of the Convention, to invite States not parties to the Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations to attend the Meeting as observers;

* Came into force on 8 September 2003 by signature, in accordance with article XIII.

WHEREAS, pursuant to Article 14, paragraph 1 of the Convention, the costs of the Fifth Meeting shall be borne by the States Parties and States not parties to the Convention participating therein, in accordance with the United Nations scale of assessments adjusted appropriately;

NOW THEREFORE, the United Nations and the Government of the Kingdom of Thailand ("the Government") hereby agree as follows:

Article I

DATE AND PLACE OF THE FIFTH MEETING

The Fifth Meeting shall be held at the United Nations Conference Centre in Bangkok from 15 to 19 September 2003.

Article II

ATTENDANCE AT THE FIFTH MEETING

1. In accordance with the provisions of the Convention and the rules of procedure agreed by the States Parties, the Fifth Meeting shall be open to:

(a) Representatives of the States Parties to the Convention;

(b) Representatives of States not parties to the Convention;

(c) Representatives of the United Nations;

(d) Representatives of other relevant international organizations or institutions;

(e) Representatives of regional organizations;

(f) Representatives of the International Committee of the Red Cross;

(g) Representatives of relevant non-governmental organizations.

2. The public meetings of the Fifth Meeting shall be open to representatives of the information media accredited to the Fifth Meeting in consultation with the Government.

Article III

PREMISES, EQUIPMENT, UTILITIES AND SUPPLIES

1. The premises and general equipment, utilities and supplies for the Fifth Meeting shall be provided by the United Nations. The Government shall make available such additional equipment and supplies as are required for the Fifth Meeting but are not available in the United Nations Conference Centre, as specified in the Annex to this Agreement.

2. Without prejudice to the present article, the Government and the United Nations may mutually agree to change the specifications detailed in the Annex, by means of an exchange of letters, in order to secure the most adequate usage of the premises and equipment of the Fifth Meeting.

Article IV

ACCOMMODATION

The Government shall ensure that adequate accommodation in hotels or residences, within reasonable distance of the United Nations Conference Centre, is available at commercial rates for persons participating in or attending the Fifth Meeting. The

Government shall ensure that, upon reasonable notice, sufficient block bookings are made in appropriate hotels to accommodate United Nations staff.

Article V

MEDICAL FACILITIES

The United Nations will provide adequate medical facilities for first aid in emergencies at the United Nations Conference Centre. The Government shall ensure that immediate access and admission to hospital is available whenever required, and that the necessary transport is constantly available on call.

Article VI

TRANSPORT

1. The Government shall provide transport between the Bangkok international airport, the principal hotels, and the United Nations Conference Centre for members of the United Nations Secretariat servicing the Conference upon their arrival and departure, as well as transportation to and from the hotel and the Conference Centre for the duration of the Fifth Meeting and a reasonable time before and after for the preparation of and settlement of all matters related to the Fifth Meeting. The Government shall ensure that such official transportation is expeditiously provided as required for the appropriate servicing of the Fifth Meeting.

2. The Government shall ensure the availability of transport between the Bangkok international airport, the United Nations Conference Centre and the principal hotels for all participants and those attending the Conference.

3. The Government shall make available at its own cost appropriate transportation for heads of delegations who are ministers, United Nations senior officials and senior officials of regional or international organizations to and from the airport as well as to and from the Conference Centre as required.

4. The coordination and use of cars, buses and minibuses made available pursuant to this article shall be ensured by transportation dispatchers to be provided by the Government.

Article VII

POLICE PROTECTION

1. The Government shall make available such police protection as is required to ensure the efficient functioning of the Fifth Meeting without interference of any kind. Such police service shall be under the direct supervision and control of a senior officer to be provided by the Government and shall work in close cooperation with the Director of the Security and Safety Unit at the United Nations Conference Centre, so as to ensure a proper atmosphere of security and tranquility.

2. Security within the United Nations Conference Centre, including access control and related equipment, shall be the responsibility of the United Nations. The Government shall be responsible for all security arrangements, and the provision of any necessary equipment, outside the United Nations Conference Centre premises.

Article VIII

LOCAL PERSONNEL

1. The Government shall make available at its own cost an official who shall act as a liaison officer between the Government and the United Nations, and shall be responsible and have the requisite authority, in consultation with the United Nations, for carrying out the administrative and personnel arrangements for the Fifth Meeting as required under this Agreement.

2. The Government shall make available at its own cost and place under the general supervision of the United Nations the local personnel required:

(a) to ensure the proper functioning of the additional equipment referred to in Article III above;

(b) to work as secretaries, clerks, messengers, conference room ushers, drivers, telephone operators, or similar.

Detailed requirements for local personnel are specified in the Annex to this Agreement.* The United Nations will advise the Government of the required duration for the engagement of local personnel.

3. The Government shall make available at its own cost, at the request of the United Nations, such of the local personnel referred to in this Article as might be required by the United Nations, before the opening and after the closing of the Fifth Meeting, for a period of at least seven days in advance and five days following.

4. The Government shall make available at its own cost, at the request of the United Nations, adequate numbers of the local personnel referred to in paragraph 2 above to maintain such night services as may be required in connection with the Fifth Meeting.

Article IX

FINANCIAL ARRANGEMENTS

1. In accordance with Article 14 of the Convention, all costs of the Fifth Meeting shall be borne by the States Parties and States not parties to the Convention participating therein, in accordance with the United Nations scale of assessment adjusted appropriately. Notwithstanding the above, the Government shall bear the costs associated with the provision of some services as provided for in this Agreement.

2. The United Nations shall provide the States Parties with an accounting of all funds received and disbursed. The statement of accounts shall be subject to audit as provided in the Financial Regulations and Rules of the United Nations.

3. Actual costs shall be determined after the closure of the Fifth Meeting and all related expenditures have been reported and recorded in the accounts of the United Nations.

Article X

LIABILITY

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

* The Annex is not published herein.

(a) injury to persons or damage to or loss of property caused by, or incurred in using, the transport services referred to in Article VI that are provided by or are under the control of the Government;

(b) the employment, for the Fifth Meeting, of the personnel referred to in Article VIII.

2. The Government shall hold harmless the United Nations and its officials in respect of any such action, claim or demand, except where it is agreed by the United Nations and the Government that such action, claim or demand is caused by the gross negligence or wilful misconduct of the United Nations officials.

Article XI

PRIVILEGES AND IMMUNITIES

1. The Agreement relating to the Headquarters of Economic Commission for Asia and the Far East in Thailand, signed on 26 May 1954 ("the Headquarters Agreement"), shall apply to the Fifth Meeting. In particular, representatives of States shall enjoy the privileges and immunities provided under article VI of the Headquarters Agreement. United Nations officials performing functions in connection with the Fifth Meeting shall enjoy the privileges and immunities provided under articles VIII and X of the Headquarters Agreement, and any experts on missions for the United Nations in connection with the Fifth Meeting shall enjoy the privileges and immunities provided under articles IX and X of the Headquarters Agreement.

2. The representatives of the specialized agencies and the International Atomic Energy Agency shall enjoy the privileges and immunities provided by the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947 or the Agreement on the Privileges and Immunities of the International Atomic Energy Agency of 1 July 1959, as appropriate, as specified in the present Agreement.

3. Representatives of international and regional organizations, non-governmental organizations and other institutions referred to in Article II (d) to (g) who are invited in accordance with the agreed rules of procedure shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with their participation in the Fifth Meeting.

4. The local personnel requested by the United Nations and provided by the Government under Article VIII above shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Fifth Meeting.

5. Without prejudice to the preceding paragraphs of the present Article, all persons performing functions in connection with the Fifth Meeting, including those referred to in Article VIII and all those invited to the Fifth Meeting, shall enjoy such privileges, immunities and facilities as are necessary for the independent exercise of their functions in connection with the Fifth Meeting. The representatives of the information media referred to in Article II, paragraph 2 above shall be accorded the appropriate facilities necessary for the independent exercise of their functions relating to the Fifth Meeting.

6. All persons referred to in Article II shall have the right of unimpeded entry into and exit from Thailand, and no impediment shall be imposed on their transit to and from the Fifth Meeting premises. They shall be granted facilities for speedy travel. Visas and

entry permits, where required, shall be granted free of charge and as speedily as possible. When applications are made four weeks before the opening of the Fifth Meeting, visas shall be granted not later than two weeks before the opening of the Fifth Meeting. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible and not later than three days before the opening. Arrangements shall also be made to ensure that visas for the duration of the Fifth Meeting are delivered at the point of arrival to those who were unable to obtain them prior to their arrival.

7. All persons referred to in Article II above shall have the right to take out of Thailand, at the time of their departure, without any restriction, any unexpended portions of the funds they brought into Thailand in connection with the Fifth Meeting.

8. The Government shall allow, for use immediately prior to, after and during the Fifth Meeting, the temporary importation, tax-free and duty-free, of all equipment, including audio, video, photographic and other technical equipment accompanying representatives of the information media accredited to the Fifth Meeting and for use in connection with the Fifth Meeting, and shall waive import duties and taxes on supplies necessary for the Fifth Meeting. It shall issue without delay any necessary import and export permits for this purpose.

Article XII

SETTLEMENT OF DISPUTES

Any dispute between the United Nations and the Government concerning the interpretation or application of this Agreement that is not settled by negotiation or other agreed mode of settlement shall be referred at the request of either party for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General of the United Nations, one to be named by the Government, and the third, who shall be Chair, to be chosen by the first two arbitrators. If either party fails to appoint an arbitrator within 60 days of the appointment by the other party, or if these two arbitrators should fail to agree on the third arbitrator within 60 days of their appointment, the President of the International Court of Justice may make any necessary appointments at the request of either party. However, any such dispute that involves a question regulated by the Convention on the Privileges and Immunities of the United Nations shall be dealt with in accordance with section 30 of that Convention.

Article XIII

FINAL PROVISIONS

1. This Agreement may be modified by written agreement between the United Nations and the Government.

2. This Agreement shall enter into force on the date of the signature and shall remain in force for the duration of the Fifth Meeting and for a period thereafter as is necessary for all matters relating to any of its provisions to be settled.

In witness thereof, the undersigned being duly authorized plenipotentiary of the Government and duly appointed representative of the United Nations, have on behalf of the Parties signed the present Agreement in two copies in English.

For the United Nations
(*Signed)*
Nobuyasu Abe
Under-Secretary-General
for Disarmament Affairs
New York, 4 September 2003

For the Government of Thailand
(*Signed)*
Laxanachantorn Laohaphan
Ambassador Extraordinary and
Plenipotentiary
Geneva, 8 September 2003

(f) Agreement between the United Nations and the Government of the Republic of Côte d'Ivoire concerning the Status of the United Nations Mission in Côte d'Ivoire. Abidjan, 18 September 2003*

Considering that the United Nations Mission in Côte d'Ivoire (hereinafter referred to as "MINUCI"), established pursuant to Security Council resolution 1479 (2003) of 13 May 2003, in accordance with the recommendations in the report of the Secretary-General of 26 March 2003 (S/2003/374), is responsible for fulfilling the mandate, set forth in the aforementioned Security Council resolution, to facilitate the implementation of the Linas-Marcoussis Agreement concluded on 23 January 2003 by the Ivorian political forces and approved by the Conference of Heads of State on Côte d'Ivoire on 25 and 26 January 2003 (S/2003/99);

Considering that the Government of the Republic of Côte d'Ivoire (hereinafter referred to as the "Government") wishes to support MINUCI in accomplishing its mission;

The United Nations and the Government have agreed as follows:

1. In order for MINUCI to carry out its mission effectively, it should benefit from the sustained cooperation of the Government with regard to its activities and those of its members in the performance of their official duties, as well as those of contractors whose services have been secured by the Mission. MINUCI will also be given access to airport facilities and ground and sea installations in Côte d'Ivoire for the transport of its logistical means and its equipment.

2. The Government shall extend to MINUCI, as an organ of the United Nations, its property, funds and assets and its members listed in paragraph 3 (a), (b) and (c) below, the privileges and immunities provided for in the Convention on the Privileges and Immunities of the United Nations (hereinafter referred to as the "Convention"), to which Côte d'Ivoire is a party. Additional facilities as provided for herein are also required for the contractors and their employees (hereinafter referred to as "United Nations contractors") engaged by the United Nations or by MINUCI to perform services exclusively for MINUCI and/or supply exclusively to MINUCI materials, supplies, equipment and other goods in support of its activities.

* Came into force on 18 September 2003 by signature, in accordance with its provisions.

3. The Government shall extend to:

(a) The high-ranking members of MINUCI, whose names shall be communicated to the Government, the privileges and immunities, exemptions and facilities which are enjoyed by diplomatic envoys in accordance with international law;

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

(c) Other persons performing missions of the United Nations, including United Nations liaison officers, the privileges and immunities accorded to experts performing missions of the United Nations under Article VI and Article VII, section 26 of the Convention;

Subject to the provisions of the previous clauses, the aforementioned members of MINUCI shall be immune from legal process in respect of acts performed by them in their official capacity (this immunity shall include their spoken or written words);

(d) United Nations contractors who have not been engaged locally shall be accorded repatriation facilities in time of crisis and exemption from taxes on the services provided to MINUCI, including corporate, income, social security and other similar taxes arising directly from the provision of such services.

4. The privileges and immunities necessary for the fulfilment of the functions of MINUCI also include:

(a) Unrestricted freedom of entry and exit, without delay or hindrance, of its members and United Nations contractors, their property, supplies, materials and spare parts and means of transport; issuance by the Government, free of charge and without any restriction, of multiple-entry visas for members of MINUCI and issuance by the Government, free of charge and without restriction, of any visa, authorization or permit required by United Nations contractors;

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

(c) The right to import, free of duty or other restrictions, equipment, materials, supplies and other goods which are for the exclusive and official use of MINUCI;

(d) The right to re-export or otherwise dispose of such equipment, as far as it is still usable, and all unconsumed materials, supplies and other goods so imported or cleared ex customs that have not been transferred or otherwise ceded to the Government or to an entity designated by the Government, on terms and conditions to be agreed upon;

(e) The issuance by the Government, as soon as possible, of all permits, authorizations and licences required for the import or acquisition of materials, supplies, equipment and other goods used in support of MINUCI, even though they may be imported or purchased

by United Nations contractors, without any restriction or administrative costs, charges or tax duties, including value added tax in the case of significant purchases;

(f) Acceptance by the Government of permits or licences issued by the United Nations for the operation of vehicles used in support of MINUCI; acceptance by the Government or, where necessary, validation by the Government, without any restriction and as soon as possible, of licences and certificates already issued by appropriate authorities in other States in respect of aircraft and vessels used in support of MINUCI; issuance by the Government, without any restriction and as soon as possible, of authorizations, licences and certificates, where required, for the acquisition, use, operation and maintenance of aircraft and vessels used in support of MINUCI.

All permits, licences, authorizations or other certificates shall, however be granted by the Government free of charge;

(g) The right to fly the United Nations flag and affix identifying signs of the United Nations on premises, aircraft and vessels used in support of MINUCI;

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

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

5. The Government shall provide MINUCI, free of charge and in cooperation with the Mission, such areas for headquarters, camps or other premises as may be necessary for the conduct of the operational and administrative activities of MINUCI. Without prejudice to the fact that all such premises remain Ivoirian territory, they shall be inviolable and subject to the exclusive control and authority of the United Nations. The premises, equipment, furniture or materials placed at the disposal of MINUCI and its members, as the case may be, shall remain the property of the State of Côte d'Ivoire.

6. The Government undertakes to assist MINUCI as far as possible in obtaining materials, supplies, equipment and other goods and services from local sources required for its subsistence and operations. With regard to the materials, provisions, supplies, equipment and other goods and services purchased locally by MINUCI or by United Nations contractors for the official and exclusive use of MINUCI, the Government shall take the appropriate administrative measures to exempt or reimburse any duty or tax included in the purchase price. The Government shall exempt MINUCI and United Nations contractors from value added taxes on all local purchases of significance. In making purchases on the local market, MINUCI shall, on the basis of observations made and information provided by the Government in that respect, avoid any adverse effect on the local economy.

7. The Government shall ensure that the provisions of the Convention on the Safety of United Nations and Associated Personnel, to which Côte d'Ivoire is a party, are applied in respect of MINUCI, its property, resources and members. In particular:

(a) The Government shall take all appropriate measures to ensure the safety and security of the members of MINUCI. In particular, it shall take all appropriate steps to

protect members of MINUCI, their equipment and their premises from any attack or action that would prevent them from discharging their mandate, without prejudice to the fact that the said premises are inviolable and subject to the exclusive control and authority of the United Nations;

(b) If members of the United Nations are captured or detained in the course of the performance of their duties and their identification has been established, they shall not be subjected to any interrogation but shall be promptly released and returned to United Nations or other appropriate authorities. Pending their release, such personnel shall be treated in accordance with universally recognized standards of human rights and the principles and spirit of the Geneva Conventions of 1949;

(c) The Government shall submit the following crimes to the jurisdiction of national law and apply appropriate punishments in view of their grave nature:

(i) The murder, kidnapping or other attack upon the person or liberty of any member of MINUCI;

(ii) A violent attack upon the official premises, the private accommodation or the means of transport of any member of MINUCI likely to endanger his or her person or liberty;

(iii) The threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act;

(iv) The attempt to commit any such attack;

(v) Any act constituting participation in, or being an accomplice in, any such attack or in an attempt to commit such an attack, or any act constituting the organization of such an attack;

(d) The Government shall establish its jurisdiction over the crimes set out in paragraph 7 *(c)* above:

(i) When the crime is committed in its territory;

(ii) When the alleged offender is a national of the country;

(iii) When the alleged offender—other than a member of MINUCI—is present in its territory and it does not extradite such person to the State where the crime was committed, or to the State of which such person is a national, or to the State where such person usually resides if that person is stateless, or to the State of which the victim is a national;

(e) The Government shall ensure the prosecution, without exception or delay, of persons accused of the crimes set out in paragraph 7 *(c)* above who are present in its territory (and have not been extradited), and of persons who come under its jurisdiction and who are accused of other acts that affect MINUCI or its members, as soon as these acts, whether committed against government forces or against the civilian population, have given rise to criminal proceedings.

8. The Government shall provide to MINUCI, at the Mission's request and when necessary, maps and other information that may help to ensure the safety and security of MINUCI in carrying out its tasks and in its movements. At the request of the Chief Liaison Officer, armed escorts shall be provided to protect United Nations personnel in the performance of their duties.

9. It is understood that paragraphs 5 to 11 of General Assembly resolution 52/247 of 26 June 1998 shall apply to all third-party claims against the United Nations resulting from or attributable to MINUCI or to the activities of its members.

10. Any dispute between the United Nations and the Government regarding the interpretation or application of this Agreement, with the exception of any dispute governed by section 30 of the Convention or section 32 of the Convention on the Privileges and Immunities of the Specialized Agencies, shall be settled by negotiation or by some other form of settlement that has been agreed upon. Any dispute that cannot be settled by negotiation, or by another form of settlement that has been agreed upon, shall be referred, by one or other of the parties, to a court of arbitration composed of three members for a final decision; one arbitrator shall be appointed by the Secretary-General of the United Nations, another by the Government and the third, who shall preside over the court, by the other two arbitrators. If one party does not appoint an arbitrator within three months of receiving notification of the other party's appointment of an arbitrator, or if the two arbitrators appointed by the parties do not appoint a president within three months of the appointment of the second arbitrator, the third arbitrator shall be appointed, at the request of one or other of the parties to the dispute, by the President of the International Court of Justice.

This Agreement shall enter into force on the date of its signature.

Done at Abidjan, on 18 September 2003, in duplicate in the French language.

For the Government of the Republic of Côte d'Ivoire	*For the United Nations*
Bamba Mamadou	Albert Tevoedjre
Minister for Foreign Affairs of the Republic of Côte d'Ivoire	*Special Representative of the Secretary-General of the United Nations*

(g) Agreement between Liberia and the United Nations concerning the Status of the United Nations Mission in Liberia. Monrovia, 6th November 2003*

I. Definitions

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

(a) "UNMIL" means the United Nations Mission in Liberia, established in accordance with Security Council resolution 1509 of 19 September 2003 with the mandate described in the above-mentioned resolution based on the recommendations contained in the Secretary-General's report of 11 September 2003 (S/2003/875).

UNMIL 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 UNMIL to whom he delegates a specified function or authority;

* Came into force on 6 November 2003 by signature, in accordance with article XI.

(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 UNMIL;

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

(b) a "member of UNMIL" means the Special Representative of the Secretary General and any member of the civilian or military components;

(c) "the Government" means the Government of Liberia including all competent local authorities;

(d) "the territory" means the territory of Liberia;

(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 UNMIL;

(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 UNMIL, engaged by the United Nations, including juridical as well as natural persons and their employees and sub-contractors, to perform services and/or supply equipment, provisions, supplies, materials and other goods in support of UNMIL 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 UNMIL and contractors in support of UNMIL activities;

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

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

II. Application of the present Agreement

2. Unless specifically provided otherwise, the provisions of the present Agreement and any obligation undertaken by the Government or any privilege, immunity, facility or concession granted to UNMIL or any member thereof or to contractors apply throughout Liberia.

III. Application of the Convention

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

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

IV. Status of UNMIL

5. UNMIL 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 the present arrangements. UNMIL 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 UNMIL and its international status:

(a) The United Nations shall ensure that UNMIL shall conduct its operation in Liberia 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 UNESCO Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict;

(b) The Government undertakes to treat at all times the military personnel of UNMIL 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.

UNMIL 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 UNMIL.

United Nations flag, markings and identification

8. The Government recognizes the right of UNMIL to display within Liberia 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, UNMIL shall give sympathetic consideration to observations or requests of the Government.

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

Communications

10. UNMIL shall enjoy the facilities in respect to communications provided in article III of the Convention and shall, in co-ordination with the Government, use such facilities as may be required for the performance of its tasks. Issues with respect to communications which may arise and which are not specifically provided for in the present Agreement shall be dealt with pursuant to the relevant provisions of the Convention.

11. Subject to the provisions of paragraph 10:

(a) UNMIL shall have the right to install, in consultation with the Government, and operate United Nations radio stations to disseminate information relating to its mandate. UNMIL 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 Liberia 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 co-operation with the Government.

(b) UNMIL shall enjoy, within the territory of Liberia, 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 UNMIL, 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 co-operation with the Government and shall be allocated expeditiously. 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 shall be charged at the most favourable rate.

(c) UNMIL may make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of UNMIL. The Government shall be informed of the nature of such arrangements and shall not interfere with or apply censorship to the mail of UNMIL or its members. In the event that postal arrangements applying to private mail of members of UNMIL 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. UNMIL 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 UNMIL, vessels, aircraft and equipment, freedom of movement without delay throughout Liberia. 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 Liberia, be co-coordinated with the Government. The Government undertakes to supply UNMIL, where necessary, with maps and other information, including locations of mine fields 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 and shall carry the third party insurance.

14. UNMIL and its members as well as contractors, together with their vehicles, including vehicles of contractors used exclusively in the performance of their services for UNMIL, 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 and compulsory pilotage charges. However, UNMIL will not claim exemption from charges, which are in fact charges for services rendered, it being understood that such charges for services rendered shall be charged at the most favourable rates.

Privileges and immunities of UNMIL

15. UNMIL, as a subsidiary organ of the United Nations, enjoys the status, privileges and immunities of the United Nations in accordance with the Convention. The provisions of article II of the Convention which apply to UNMIL shall also apply to the property, funds and assets of participating States used in Liberia in connection with the national

contingents serving in UNMIL, as provided for in paragraph 4 of the present Agreement. The Government recognizes the right of UNMIL 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 UNMIL 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 UNMIL, 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 UNMIL, 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 UNMIL 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 Liberia 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 UNMIL and the Government at the earliest possible date.

V. Facilities for UNMIL and its Contractors

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

16. The Government shall provide without cost to UNMIL 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 UNMIL. Without prejudice to the fact that all such premises remain Liberia 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 UNMIL to those premises shall be guaranteed.

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

18. UNMIL 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 who are not members of UNMIL to such premises.

Provisions, supplies and services, and sanitary arrangements

20. The Government agrees to grant expeditiously all necessary authorizations, permits and licenses required for the import and export of equipment, provisions, supplies, fuels, materials and other goods exclusively used in support of UNMIL, including in respect of import and export 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 UNMIL as far as possible in obtaining equipment, provisions, supplies, fuel, materials and other goods and services from local sources required for its subsistence and operations. In respect of equipment, provisions, supplies, materials and other goods and services purchased locally by UNMIL or by contractors for the official and exclusive use of UNMIL, 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 UNMIL and contractors from general sales taxes in respect of all local purchases for official use. In making purchases on the local market, UNMIL 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 Liberia nationals resident in Liberia, in support of UNMIL, the Government agrees to provide contractors with facilities concerning their entry into and departure from Liberia 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, licenses or permits. Contractors, other than Liberia nationals resident in Liberia, shall be accorded exemption from taxes in Liberia on the services provided to UNMIL, including corporate, income, social security and other similar taxes arising directly from the provisions of such services.

23. UNMIL and the Government shall co-operate with respect to sanitary services and shall extend to each other their fullest co-operation in matters concerning health, particularly with respect to the control of communicable diseases, in accordance with international conventions.

Recruitment of local personnel

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

Currency

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

VI. Status of the members of UNMIL

Privileges and immunities

26. The Special Representative, the Commander of the military component of UNMIL, and such high-ranking members of the Special Representative's staff as may be

agreed upon with the Government shall have the status specified in sections 19 and 27 of the Convention, provided that the privileges and immunities therein referred to shall be those accorded to diplomatic envoys by international law.

27. Officials of the United Nations assigned to the civilian component to serve with UNMIL, as well as United Nations Volunteers who shall be assimilated thereto, remain officials of the United Nations entitled to the privileges and immunities of articles V and VII of the Convention.

28. Military observers, United Nations civilian police and civilian personnel other than United Nations officials whose names are for that 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 UNMIL shall have the privileges and immunities specifically provided for in the present Agreement.

30. Unless otherwise specified in the present Agreement, locally recruited personnel of UNMIL 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 UNMIL 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 Liberia. 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 UNMIL shall have the right to import free of duty their personal effects in connection with their arrival in Liberia. They shall be subject to the laws and regulations of Liberia governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in Liberia with UNMIL. Special facilities will be granted by the Government for the speedy processing of entry and exit formalities for all members of UNMIL, including the military component, upon prior written notification. On departure from Liberia, members of UNMIL 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 UNMIL.

33. The Special Representative shall co-operate with the Government and shall render all assistance within his power in ensuring the observance of the customs and fiscal laws and regulations of Liberia by the members of UNMIL, in accordance with the present Agreement.

Entry, residence and departure

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

35. The Government of Liberia undertakes to facilitate the entry into and departure from Liberia of the Special Representative and members of UNMIL and shall be kept informed of such movement. For that purpose, the Special Representative and members

of UNMIL 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 Liberia. They shall also be exempt from any regulations governing the residence of aliens in Liberia, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in Liberia.

36. For the purpose of such entry or departure, members of UNMIL 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 the present 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 shall be accepted in lieu of the said identity card.

Identification

37. The Special Representative shall issue to each member of UNMIL before or as soon as possible after such member's first entry into Liberia, 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 the present Agreement, such identity card shall be the only document required of a member of UNMIL.

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

Uniforms and arms

39. Military members and United Nations military observers and civilian police of UNMIL shall wear, while performing official duties, the national military or police uniform of their respective States with standard United Nations accoutrements. United Nations Security Officers and Field Service officers may wear the United Nations uniform. The wearing of civilian dress by the above-mentioned members of UNMIL may be authorized by the Special Representative at other times. Military members, military observers and civilian police of UNMIL and United Nations Security Officers designated by the Special Representative may possess and carry arms while on official duty in accordance with their orders. Those carrying weapons while on official duty other than those undertaking close protection duties must be in uniform at that time.

Permits and licenses

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

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

authorizations, licenses 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 license issued by the Special Representative to a member of UNMIL for the carrying or use of firearms or ammunition in connection with the functioning of UNMIL.

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 UNMIL, as well as locally recruited personnel. To this end personnel designated by the Special Representative shall police the premises of UNMIL 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 in so far as such employment is necessary to maintain discipline and order among members of UNMIL.

44. The military police of UNMIL shall have the power of arrest over the military members of UNMIL. 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 UNMIL. 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 UNMIL:

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

(b) When such a member of UNMIL 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 UNMIL, 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)*, UNMIL 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. UNMIL 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 44–46.

Safety and security

48. The Government shall ensure that the provisions of the Convention on the Safety of United Nations and Associated Personnel are applied to and in respect of UNMIL, its property, assets and its members. In particular:

(i) The Government shall take all appropriate measures to ensure the safety and security of members of UNMIL. In particular, it shall take all appropriate steps to protect members of UNMIL, their equipment and premises from attack or any action that prevents them from discharging their mandate. This is without prejudice to the fact that all premises of UNMIL are inviolable and subject to the exclusive control and authority of the United Nations.

(ii) If members of UNMIL are captured or detained in the course of the performance of their duties and their identification has been established, they shall not be subjected to interrogation and they shall be promptly released and returned to United Nations or other appropriate authorities. Pending their release such personnel shall be treated in accordance with universally recognized standards of human rights and the principles and spirit of the Geneva Conventions of 1949.

(iii) The Government shall establish the following acts as crimes under its national law, and make them punishable by appropriate penalties taking into account their grave nature:

(a) a murder, kidnapping or other attack upon the person or liberty of any member of UNMIL;

(b) a violent attack upon the official premises, the private accommodation or the means of transportation of any member of UNMIL likely to endanger his or her person or liberty;

(c) a threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act;

(d) an attempt to commit any such attack; and

(e) an act constituting participation as an accomplice in any such attack, or in an attempt to commit such attack, or in organizing or ordering others to commit such attack.

(iv) The Government shall establish its jurisdiction over the crimes set out in paragraph 48 (iii) above: *(a)* when the crime was committed in its territory; *(b)* when the alleged offender is one of its nationals, *(c)* when the alleged offender, other than a member of UNMIL, is present in its territory, unless it has extradited such a person to the State on whose territory the crime was committed, or to the State of his or her nationality, or to the State of his or her habitual residence if he or she is a stateless person, or to the State of the nationality of the victim.

(v) The Government shall ensure the prosecution without exception and without delay of persons accused of acts described in paragraph 48 (iii) above who are present within its territory (if the Government does not extradite them) as well as those persons that are subject to its criminal jurisdiction who are accused of other acts in relation to UNMIL 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.

49. Upon the request of the Special Representative, the Government shall provide such security as necessary to protect UNMIL, its property and members during the exercise of their functions.

Jurisdiction

50. All members of UNMIL 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 UNMIL and after the expiration of the other provisions of the present Agreement.

51. Should the Government consider that any member of UNMIL 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 the present Agreement;

(b) Military members of the military component of UNMIL 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 Liberia.

52. If any civil proceeding is instituted against a member of UNMIL before any court of Liberia, 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 the present Agreement shall apply;

(b) If the Special Representative certifies that the proceeding is not related to official duties, the proceeding may continue. If the Special Representative certifies that a member of UNMIL 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 ninety days. Property of a member of UNMIL that is certified by the Special Representative to be needed by the defendant for the fulfilment of his official duties shall be free from seizure for the satisfaction of a judgement, decision or order. The personal liberty of a member of UNMIL shall not be restricted in a civil proceeding, whether to enforce a judgement, decision or order, to compel an oath or for any other reason.

Deceased members

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

VII. Limitation of liability of the United Nations

54. Third party claims for property loss or damage and for personal injury, illness or death arising from or directly attributed to it, 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 paragraph 55 of the present 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 had 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 UNMIL, to which UNMIL or any member thereof is a party and over which the courts of Liberia do not have jurisdiction because of any provision of the present 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 thirty 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 thirty-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 thirty 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 UNMIL, 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 UNMIL and the Government concerning the interpretation or application of the present Agreement shall, unless otherwise agreed by the parties, be submitted to a tribunal of three arbitrators. The provisions relating to the establishment and procedures of the claims commission shall apply, *mutatis mutandis*, to the establishment and procedures of the tribunal. The decisions of the tribunal shall be final and binding on both parties.

58. All differences between the United Nations and the Government of Liberia 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 set out in section 30 of the Convention.

IX. Supplemental arrangements

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

X. Liaison

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

XI. Miscellaneous provisions

61. Wherever the present Agreement refers to privileges, immunities and rights of UNMIL and to the facilities Liberia undertakes to provide to UNMIL, 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. The present Agreement shall enter into force upon signature by or for the Secretary-General of the United Nations and the Government.

63. The present Agreement shall remain in force until the departure of the final element of UNMIL from Liberia, except that:

(a) The provisions of paragraphs 50 and 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.

In witness whereof, the undersigned being duly authorized plenipotentiary of the Government and duly appointed representative of the United Nations, have on behalf of the Parties signed the present Agreement.

Done at Monrovia on the 6th November of the year 2003.

For the United Nations	*For the Government of Liberia*
[*Signed*]	[*Signed*]
Special Representative of the Secretary-General	*Chairman of the National Transitional Government*

(h) Agreement between the United Nations and the Government of the United Mexican States regarding the Arrangements for the High-Level Political Conference for the Purpose of Signing the United Nations Convention Against Corruption. Vienna, 10 November 2003* **

Preamble

Whereas, the General Assembly of the United Nations by its resolution 57/169 of 18 December 2002 decided to convene the high-level political conference for the purpose of signing the United Nations Convention against Corruption in Mexico by the end of 2003;

Whereas, the General Assembly of the United Nations accepted with appreciation the offer of the Government of the United Mexican States (hereinafter referred to as "the Government") to host a high-level political conference for the purpose of signing the United Nations Convention against Corruption;

Considering that the General Assembly of the United Nations requested the Office on Drugs and Crime of the Secretariat to work with the Government of Mexico,

* Came into force on 10 November 2003 by signature, in accordance with article XIV.

** Annexes I to VIII are not published herein.

in consultation with Member States, in formulating proposals for the organization of the high-level political conference.

WHEREAS, the General Assembly of the United Nations in Section A, paragraph 17, of resolution 47/202 of 22 December 1992 reaffirmed that United Nations bodies may hold sessions away from their established headquarters when the Government issuing an invitation for a session to be held within its territory agrees to defray the actual additional costs directly or indirectly involve, after consultation with the Secretary-General as to their nature and possible extent;

NOW THEREFORE, the United Nations and the Government hereby agree on the following arrangements for the high-level political conference and related events, hereinafter referred to as the "Conference";

Article I

DATE AND PLACE OF THE CONFERENCE

The Conference shall be held at the Centro de Convenciones y Exposiciones Yucatan Siglo XXI, Mérida, Mexico, from 9 to 11 December 2003.

Article II

PARTICIPATION IN THE CONFERENCE

1. Participation in the Conference shall be open to:

(a) representatives of all States;

(b) representatives of United Nations Departments, Offices, Funds and Specialized Agencies;

(c) representatives of organizations and of other entities that have received a standing invitation from the General Assembly of the United Nations to participate in its sessions and work;

(d) representatives of regional intergovernmental organizations and other interested international bodies;

(e) representatives of non-governmental organizations, participating actively in the Ad Hoc Committee for the Negotiation of a Convention against Corruption, with due regard to the provisions of section VII of Economic and Social Council resolution 1996/31 of 25 July 1996 and in particular to the relevance of their activities to the work of the Conference;

(f) representatives of the private sector;

(g) experts invited to the Conference in their individual capacity.

2. The Secretary-General of the United Nations shall designate officials of the United Nations assigned to attend the Conference for the purpose of servicing it.

3. The public meetings of the Conference shall be open to representatives of information media accredited by the United Nations at its discretion after consultation with the Government.

4. Distinguished guests officially invited to the Conference by the Government in consultation with the United Nations shall be given access to the Conference area by the United Nations.

Article III

PREMISES, EQUIPMENT, UTILITIES AND SUPPLIES

1. The Government shall provide, at its own expense, for as long as required for the Conference, the necessary premises, including conference rooms for formal and informal meetings, for the Side Events, delegates' and interpreters' lounges, suitable office space, storage areas, adequate space for exhibitions, and other related facilities as specified in Annexes I, II and III hereto.

2. The premises and facilities referred to under paragraph 1 above shall remain at the disposal of the United Nations 24 hours a day throughout the Conference and for such additional time in advance of the opening and closing of the Conference as the United Nations Secretariat, in consultation with the Government, shall deem necessary for the preparation and settlement of all matters connected with the Conference.

3. The Government shall, at its own expense, furnish, equip and maintain in good repair all the aforesaid rooms and facilities in a manner the United Nations considers adequate for the effective conduct of the Conference. The conference room designated as the Plenary Hall shall be equipped for reciprocal simultaneous interpretation in the six languages of the United Nations. The Conference room designated for the side events shall be equipped for reciprocal simultaneous interpretation in three languages (English, French, Spanish). Both conference rooms shall have facilities for sound recordings in the respective languages. Each interpretation booth shall have the capacity to switch to all other channels (the "floor",—i.e. the speaker—plus each language channel). The Arabic and Chinese booths shall have the capacity of overriding the English and French booths.

4. The Government shall at its own expense furnish, equip and maintain such equipment as facsimiles, photocopying machines, personal computers with international keyboards, printers and such other equipment and office supplies as are necessary for the effective conduct of the Conference by the United Nations. Furthermore, the Government will provide equipment and installations for the effective conduct of the work of journalists covering the event.

5. The Government shall provide the adequate supplies required for producing the documentation of the Conference in Mérida and the United Nations shall reimburse the Government for the cost of such supplies in an amount not to exceed the cost that would have been incurred by the United Nations for a similar quantity of supplies had the Conference been held at headquarters.

6. The Government shall install, at its own expense, within the Conference area, a registration desk, restaurant facilities, money exchange booths and automatic teller machines, a post office, telephone, facsimile and Internet facilities, information and travel facilities, as well as a business centre, equipped in consultations with the United Nations, for the use of delegations to the Conference on a commercial basis.

7. The Government shall install at its own expense facilities for written press coverage, film coverage, satellite transmission in an open signal of the proceedings, to the extent required by the United Nations.

8. In addition to the press and film facilities and satellite transmission in an open signal mentioned in paragraph 7 above, the Government shall provide, at its own expense, a press working area; a briefing room for correspondents; radio and television studios and areas for interviews and programme preparation.

9. The Government shall bear the cost of all necessary utility services, including local telephone communications of the secretariat of the Conference and its communications by facsimile, telephone, e-mail between the secretariat of the Conference and United Nations offices when such communications are made or authorized by, or on behalf of, the Secretary-General of the United Nations, including official United Nations information communications between the Conference site and United Nations Headquarters and the various United Nations Information Centres.

10. The Government shall bear the cost of the transport and insurance charges, from any established United Nations office to the site of the Conference and return, of all United Nations supplies and equipment required for the adequate functioning of the Conference. The United Nations shall determine the mode of shipment of such equipment and supplies, after consultations with the Government of Mexico.

Article IV

MEDICAL FACILITIES

1. Medical facilities adequate for first aid in emergencies shall be provided by the Government within the Conference area.

2. For serious emergencies, the Government shall ensure immediate transportation and admission to a hospital.

Article V

ACCOMMODATION

The Government shall ensure that adequate accommodation in hotels or residences is available at reasonable commercial rates for persons participating in or attending the Conference.

Article VI

TRANSPORTATION

1. The Government shall provide transport between the airport and the conference area and principal hotels for the members of the United Nations Secretariat servicing the Conference.

2. The Government shall ensure the availability of transport for all participants and those attending the Conference between the airport, the principal hotels and the Conference area.

3. The Government, in consultation with the United Nations, shall provide at its expense an adequate number of cars with drivers for official use by the principal officers and the secretariat of the Conference, as well as such other local transportation as required by the UN Secretariat in connection with the Conference, see Annex IV of the present agreement.

Article VII

SECURITY

The Government shall provide at its expense such security that is required to ensure the efficient functioning of the Conference in an atmosphere of security and tranquillity free from interference of any kind. While such security services shall be under the direct

supervision and control of a senior officer appointed by the Government, this officer shall work in close cooperation and coordination with a designated senior official of the United Nations.

Article VIII

LOCAL PERSONNEL FOR THE CONFERENCE

1. The government shall nominate an official who shall act as a liaison officer between the Government and the United Nations and shall be responsible, in consultation with the Secretary of the Conference, for making the necessary arrangements for the Conference as required under this Agreement.

2. The Government shall engage and provide at its own expense an adequate number of technical personnel required in addition to the United Nations staff (see Annex VII);

(a) to ensure the proper functioning of the equipment and facilities referred to in Article III above;

(b) to reproduce and distribute the documents and press releases needed by the Conference;

(c) to work as secretaries, typists, clerks, messengers, conference room ushers, drivers, etc.

(d) to provide custodial and maintenance services for the equipment and premises made available in connection with the Conference.

3. The Government shall arrange, at the request of the Secretary of the Conference, for an adequate number of the local personnel referred to in paragraph 2 above, to be available before the opening and after the closing of the Conference.

4. The Government shall arrange, at the request of the Secretary of the Conference, for an adequate number of the local personnel referred to in paragraph 2 above, to be available in order to maintain such night-time services as may be required in connection with the Conference.

Article IX

FINANCIAL ARRANGEMENTS

1. The Government, in addition to the financial obligations provided for elsewhere in this Agreement, shall, in accordance with General Assembly resolutions 40/243, section I, paragraph 5 and 47/202 of 22 December 1992, bear the actual additional costs directly or indirectly involved in holding the Conference in Mérida rather than at the United Nations Office at Vienna. Such additional costs which are provisionally estimated at approximately US$ 230,979 shall include, but not be restricted to, the actual additional costs of travel and of staff entitlements of the United Nations officials assigned by the Secretary-General of the United Nations to undertake preparatory visits to Mérida and to attend the Conference, as well as the costs of shipment of equipment and supplies not available locally. Arrangements for such travel and shipment shall be made by the United Nations Secretariat in accordance with the Staff Regulations and Rules of the United Nations and its related administrative practices in regard to travel standards, baggage allowance, subsistence payments (*per diem*) and terminal expenses.

2. The Government shall, upon the signature of this Agreement, deposit with the United Nations the sum of US$ 300,000, representing the total estimated costs referred to

in paragraph 1 above and expenditures that may be incurred to support the side events of the Conference, such as travel costs of participants in those events, and other expenditures which the Government of Mexico will specify.

3. If necessary, the Government shall make further advances as requested by the United Nations so that the latter will not at any time have to finance temporarily from its cash resources the extra costs that are the obligations of the Government.

4. The deposit and the advances referred to in paragraphs 2 and 3 above respectively shall be used only to pay the obligations of the United Nations in respect of the Conference, as well as the expenditures indicated in paragraph 2 above.

5. After the conclusion of the Conference, the United Nations shall give the Government a detailed set of accounts showing the actual additional costs incurred by the United Nations and to be borne by the Government pursuant to paragraphs 1 and 2 of this article. These costs shall be expressed in United States dollars using the United Nations official rate of exchange at the time the United Nations paid the cost. The United Nations, on the basis of this detailed set of accounts, shall refund to the Government any funds unspent out of the deposit or the advances referred to in paragraph 2 and 3 of this article. Should the actual additional costs exceed the deposit, the Government shall remit the outstanding balance within one month of the receipt of the detailed accounts. The final accounts shall be subject to audit as provided in the Financial Regulations and Rules of the United Nations, and the final adjustment of accounts shall be subject to any observations which may arise from the audit carried out by the Board of Auditors, whose determination shall be accepted as final by both the United Nations and the Government.

6. Nothing in the present agreement shall preclude the Government of Mexico from seeking financing mechanisms to cover the resources required to fulfill its obligations under the present agreement.

Article X

LIABILITY

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

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

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

(c) the employment for the Conference of the personnel provided by the Government under Article VII and VIII.

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

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities for the United Nations, adopted by the General Assembly on 13 February 1946, to which the United Mexican States are a party since 26 November 1962, shall be applicable in respect to the Conference. In particular, the representatives of States referred to in article II, paragraph 1 (a) above, shall enjoy the privileges and immunities provided under article IV of the Convention; the officials of

the United Nations and of the specialized agencies performing functions in connection with the Conference referred to in article II, paragraphs 1 (b) and 2 above, shall enjoy the privileges and immunities provided under articles V and VII of the Convention; and any experts on mission for the UN in connection with the Conference shall enjoy the privileges and immunities provided under articles VI and VII of the Convention.

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

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

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

5. All persons referred to in Article II shall have the right of entry into and exit from the United Mexican States, and no impediment shall be imposed on their transit to and from the Conference area. They shall be granted facilities for speedy travel. Immigration documentation (*in lieu* of visa), where required, shall be granted free of charge as soon as feasible and not later than two weeks before the date of the opening of the Conference. If the application for this documentation is not made at least two-and-a-half weeks before the opening of the Conference, such documentation shall be granted as promptly and speedily as possible and in any case not later than three days from the receipt of the application. The delegates and participants in the Conference shall not require a visa to be stamped in their passport for entry in to Mexico. However, they shall require an immigration document, conferring to them the status of "distinguished visitor", for the issuance of which they shall apply to the diplomatic or consular authorities of Mexico, which shall issue such document free of charge.

6. For the purpose of the application of the Convention on the Privileges and Immunities for the United Nations, the Conference premises as specified in article III shall be deemed to constitute premises of the United Nations in the sense of section 3 of the Convention and access thereto shall be under the control and authority of the United Nations. The premises shall be inviolable for the duration of the Conference, including the preparatory stage and winding-up.

7. All persons referred to in article II, above, shall have the right to take out of the United Mexican States at the time of their departure, without any restriction, any unspent portions of the funds they brought into the United Mexican States or received in connection with the Conference and to reconvert any such funds at the prevailing market exchange rate.

Article XII
Import duties and tax

The Government will provide the necessary facilities to allow the temporary import, tax and duty free and without requesting the presentation of permit for the goods, equipment and necessary inputs to be used during the conduct of the Conference; as well as the expeditious paper work for the permits for the technical equipment that the media bring with them, provided that they present a letter issued by the Mexican Consulate, that

also contains the identification data of the media institution they represent. No articles imported under this exemption may be sold, hired or lent out or otherwise disposed of in the United Mexican States except under conditions agreed with the Government.

Article XIII

SETTLEMENT OF DISPUTES

Any dispute between the United Nations and the Government 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 shall, if not settled by negotiation or other agreed mode of settlement, be submitted at the request of either party 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 two other arbitrators. If either party does not appoint an arbitrator within three months of the appointment by the other party, or if the first two arbitrators do not appoint the chairman within three months of the appointment of the second one of them, then such arbitrator shall be nominated by the President of the International Court of Justice at the request of either party. Accept as otherwise agreed by the parties, the tribunal shall adopt its own rules between the parties, and take all decisions by a two-third 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.

Article XIV

FINAL PROVISIONS

1. This agreement may be modified by written agreement between the United Nations and the Government.

2. This Agreement shall enter into force immediately upon signature by the Parties and shall remain in force for the duration of the Conference and for such a period thereafter as is necessary for all matters relating to any of the provisions to be settled.

SIGNED this tenth day of November 2003 at Vienna.

In duplicate in English.

For the United Nations	*For the Government of the United Mexican States*
(Signed)	*(Signed)*
Antonio Maria COSTA	Patricia ESPINOSA
Director-General, UNOV *Executive Director* *Office of Drugs and Crime*	*Permanent Representative of Mexico to the United Nations, Vienna*

(i) Exchange of letters constituting an Agreement between the United Nations and the Government of Democratic Socialist Republic of Sri Lanka regarding the hosting of the Interregional Workshop on "Engaged Governance". New York, 13 November 2003 and Colombo, 28 November 2003*

I
Letter from the United Nations

13 November 2003

Excellency,

I have the honour to refer to the arrangements for holding the Interregional Workshop on "Engaged Governance" (hereinafter referred to as the "Workshop"). The Workshop will be organized between the United Nations, represented by the Department of Economic and Social Affairs (hereinafter referred to as "the United Nations") and the Government of Democratic Socialist Republic of Sri Lanka, represented by the Ministry of Policy Development and Implementation (hereinafter referred to as "the Government"). The Workshop will orient the participants to the emerging concept of "engaged governance" and provide training for its further application.

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

1. The Workshop will be attended by the following participants:

(a) up to 14 international participants invited by the United Nations;

(b) approximately 5 to 10 participants from the host country;

(c) three officials from the United Nations Secretariat;

(d) three resource persons invited by the United Nations.

2. The total number of participants will be approximately 29 to 34.

3. The Workshop will be conducted in English.

United Nations will be responsible for:

(a) the planning and actual running of the Workshop and the preparation of the appropriate documentation in consultation with the Government;

(b) the travel and daily subsistence allowance for the participants and resource persons invited by the United Nations and for the United Nations officials;

(c) the preparation and publications of the records of the Workshop.

5. The Government will provide the following:

(a) administrative support personnel, including secretarial assistance for the Workshop;

(b) local transportation between the hotel and Workshop facilities;

(c) conference rooms, meeting facilities and office space as required;

(d) audio visual aids relevant to the Workshop;

(e) assistance in arranging hotel accommodations.

* Came into force on 28 November 2003, in accordance with the provisions of the said letters.

(f) all aspects related to the organization of participants of local media representatives;

(g) all costs, if any, related to national participants;

(h) office supplies, stationery, office and reproduction equipment such as personal computers, typewriters and duplicating machines;

(i) access to telephone, facsimile, telex and other electronic communication devices;

6. The Government shall furnish such police protection as may be required to ensure the effective functioning of the Workshop in an atmosphere of security and tranquility free from interference of any kind. While such police services shall be under the direct supervision and control of a senior officer provided by the Government, this officer shall work in close cooperation with a designated senior official of the United Nations.

7. The Workshop will be held at the Hotel Taj Samudra in Colombo on 9, 10, and 11 December 2003. All facilities will be arranged by the Government in consultation with the United Nations.

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

(a) The Convention on the Privileges and Immunities of the United Nations ("the Convention"), adopted by the General Assembly on 13 February 1946, to which the Government is a party, shall be applicable in respect of the Workshop. In particular, the participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by Articles VI and VII of the Convention. Officials of the United Nations participating in or performing functions in connection with the Workshop shall enjoy the privileges and immunities provided under Articles V and VII of the Convention. The privileges and immunities provided in the Convention shall apply, *mutatis mutandis*, to the officials of the specialized agencies participating in the Workshop.

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

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

(d) All participants and all persons performing functions in connection with the Workshop shall have the right to unimpeded entry into and exit from the Democratic Socialist Republic of Sri Lanka. Visas and entry permits, where required, shall be granted free of charge. When applications are made four weeks before the opening of the Workshop, visas shall be granted no later than two weeks before the opening of the Workshop. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible and no later than three days before the opening. Arrangements shall also be made to ensure that the visas for the duration of the Workshop are delivered to the airport of arrival to those participants who were unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge, as speedily as possible, and in any case not later than three days before the closing of the Workshop.

9. It is further understood that the Government shall be responsible for dealing with any action, claim or other demand against the United Nations or its officials arising out of:

(a) Injury to persons or damage to or loss of property in conference or office premises provided for the Workshop;

(b) Injury to persons, or damage to or loss of property caused by or incurred in using transportation provided by the Government;

(c) The employment for the Workshop of personnel provided or arranged by the Government; and the Government shall indemnify and hold the United Nations and its personnel harmless in respect of any such action, claim or other demand.

10. Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provisions of the Convention or of any other applicable agreement, shall, unless the parties otherwise agree, be resolved by negotiations or any other agreed mode of settlement. Any such dispute that is not settled by negotiations or any other agreed mode of settlement shall, unless the parties otherwise agree, be submitted at the request of either party for a final decision 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 Chairperson, 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 Chairperson, 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-third 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.

11. I further propose that upon receipt of your Government's confirmation in writing of the above, this exchange of letters shall constitute an Agreement between the United Nations and the Government of Democratic Socialist Republic of Sri Lanka regarding the hosting of the Interregional Workshop on "Engaged Governance", which shall enter into force on the date of your reply and shall remain in force for the duration of the Workshop and for such additional period as is necessary for the completion of its work and for the resolution of any matters arising out of the Agreement.

Accept, Excellency, the assurances of my highest consideration.

(Signed)

José Antonio Ocampo

Under-Secretary-General

II

LETTER FROM THE MINISTRY OF POLICY DEVELOPMENT AND IMPLEMENTATION, SRI LANKA

28 November 2003

Dear Mr. Ocampo,

I have the honour to refer to your letter No.DESA/03/250 of 13th November 2003 relating to the arrangement for the hosting of the Interregional Workshop on Engaged Governance to be held in Colombo, Sri Lanka from 09 to 11th December 2003.

I have the honour to confirm that the terms of your proposal are acceptable to the Monitoring and Progress Review Division of the Ministry of Policy Development and Implementation hitherto referred to as the Government of Sri Lanka.

Consequently your letter and this reply shall constitute an Agreement between the United Nations and the Government of Sri Lanka, which shall enter into force on today's date and shall remain in force for the duration of the Workshop, and for such additional period as is necessary for its preparation and for all matters relating to any of its provisions to be settled.

Accept, Excellency, the assurances of my highest consideration.

(Signed)
S. RAHUBADDA
Additional Secretary
Ministry of Policy Development and Implementation

(j) Framework Agreement between the United Nations and the Kingdom of Sweden on the Arrangements regarding Privileges and Immunities and certain other matters concerning United Nations Meetings held in Sweden. New York, 19 November 2003*

WHEREAS the holding of United Nations Meetings in Sweden throughout the years have been rewarding for both Parties and continues to generate opportunities for successful exchanges;

CONSIDERING that an agreement on the relevant arrangements regarding privileges and immunities of representatives, observers and others attending and working with such Meetings in Sweden would facilitate the negotiations to take place in the context of future Meetings;

TAKING INTO ACCOUNT that on 28 August 1947, Sweden became a contracting state to the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946; and

TAKING INTO ACCOUNT that on 12 September 1951, Sweden became a contracting state to the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly of the United Nations on 21 November 1947,

* Came into force on 1 July 2004 by the exchange of instruments of ratification, in accordance with article IX.

The United Nations and the Kingdom of Sweden hereby agree as follows:

Article I

DEFINITIONS

For the purpose of the present Agreement:

(a) "Parties" to the Agreement are the Kingdom of Sweden (Sweden) and the United Nations;

(b) "Meeting" or "Meetings" means any seminars, symposia, courses, workshops and other meetings of small-scale participation held in Sweden under the auspices of the United Nations; and

(c) "Meeting premises" shall include all premises, including conference rooms for informal meetings, office space, working areas and other related facilities provided for by Sweden for each particular Meeting, as appropriate.

Article II

OBJECT AND PURPOSE

This Agreement applies to all Meetings held in Sweden under the auspices of the United Nations. It lays down arrangements regarding privileges and immunities and other matters during such Meetings within the territory of Sweden, if not otherwise agreed in writing.

Article III

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, shall be applicable in respect of Meetings held in Sweden. In particular,

(a) *Representatives of states* shall enjoy the privileges and immunities provided under article IV of the Convention;

(b) *Officials of the United Nations* performing functions in connection with a Meeting shall enjoy the privileges and immunities provided under articles V and VII of the Convention;

(c) *Experts on mission for the United Nations* in connection with a Meeting shall enjoy the privileges and immunities provided for under article VI and VII of the Convention.

2. The *Representatives of the specialized and related agencies of the United Nations* shall, as appropriate, enjoy the privileges and immunities provided by the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly on 21 November 1947 or the Agreement on the Privileges and Immunities of the International Atomic Energy Agency of 1 July 1959.

3. The personnel provided by Sweden performing functions on behalf of the United Nations that are directly related to the servicing of the Meeting shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Meeting.

4. Without prejudice to the preceding paragraphs, all participants and persons performing functions in connection with a Meeting, including local personnel and all those

invited to the Meeting, shall enjoy facilities and courtesies necessary for the independent exercise of their functions in connection with a Meeting.

Article IV

RIGHT OF ENTRY AND EXIT

1. All participants and persons performing functions in connection with a Meeting held in Sweden shall have the right of entry into and exit from Sweden, and no impediment shall be imposed on their transit to and from the Meeting premises.

2. They shall be granted facilities for speedy travel. Visas and entry permits, where required, shall be granted free of charge, as speedily as possible and not later than two weeks before the date of the opening of the Meeting, provided the application for the visa is made at least three weeks before the opening of the Meeting; if the application is made later, the visa shall be granted not later than three days from the receipt of the application. Arrangements shall also be made to ensure that visas for the duration of the Meeting are delivered at the airport of arrival to participants who were unable to obtain them prior to their arrival.

3. Exit permits, where required, shall be granted free of charge, as speedily as possible, and in any case not later than three days before the closing of the Meeting.

Article V

IMPORT AND EXPORT

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

Article VI

POLICE PROTECTION

Sweden shall furnish such police protection as may be required to ensure the effective functioning of a Meeting in an atmosphere of security and tranquillity free from interference of any kind. When such police services are needed, a senior government official shall be appointed, who shall work in close co-operation with a designated senior official of the United Nations.

Article VII

LIABILITY

1. Sweden shall be responsible for dealing with any action or claim against the United Nations or its officials arising out of:

(a) Injury to persons or damage or loss of property in Meeting premises;

(b) Injury to persons or damage to or loss of property caused by, or incurred in using the transportation provided by or under the control of Sweden in connection with a Meeting;

(c) The employment for the Meeting of personnel provided or arranged by Sweden.

2. Sweden shall hold harmless and indemnify the United Nations and its officials in respect of any such action or claim, except where it is agreed by Sweden and the Secretary-General of the United Nations that such actions or claims arise from gross negligence or wilful misconduct of such persons.

Article VIII

SETTLEMENT OF DISPUTES

Any dispute concerning the interpretation or the application of this Agreement, except for a dispute subject to section 30 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 resolved by negotiations or any other agreed mode of settlement. Any such dispute that is not settled by negotiations or any other agreed mode of settlement shall be submitted at the request of either Party for a final decision to a tribunal of three arbitrators, one of whom shall be appointed by the Secretary-General of the United Nations, one by Sweden and the third, who shall be the Chairman, by the other two arbitrators. If either Party does not appoint an arbitrator within three months of the other Party having notified the name of its arbitrator or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them appoint a Chairman, then such arbitrator shall be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the Parties, the tribunal shall adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the Parties, and take all decisions by a two-thirds majority. Its decision on all questions of procedure and substance shall be final and, even if rendered in default of one of the parties, be binding on both of them.

Article IX

FINAL PROVISIONS

1. This Agreement does not relieve the Parties from entering into *ad hoc* agreements regarding organizational and financial matters in relation to each Meeting held in Sweden.

2. This Agreement shall be signed by both Parties. It shall be subject to ratification by Sweden, and shall enter into force on the first day of the first month following the receipt by the United Nations of the notification from the Government of its ratification.

3. This Agreement can be modified by written agreement between the Parties; such modifications being subject to the necessary requirements referred to in paragraph 1.

4. This Agreement is concluded for an unlimited period. Either Party may denounce this Agreement by notifying the other Party. This Agreement shall cease to apply six months after the date of receipt of such notification. Such denunciation shall not affect Meetings for which *ad hoc* agreements regarding organizational and financial matters have already been concluded.

Done in New York, 19 November 2003, in two originals in the English language.

For the United Nations	*For the Government of the Kingdom of Sweden*
(Signed)	*(Signed)*
Ralph Zacklin	Pierre Schori
Assistant Secretary-General for Legal Affairs	*Ambassador Extraordinary and Plenipotentiary Permanent Representative to the United Nations*

I
Letter from the United Nations to the Permanent Representative of Sweden

19 November 2003

Excellency,

In the context of the Framework Agreement between the United Nations and the Kingdom of Sweden on Arrangements regarding Privileges and Immunities and Certain Other Matters concerning United Nations Meetings held in Sweden ("the Agreement"), signed today, I wish to confirm the following.

In accordance with the longstanding practice of the United Nations relating to Meetings held away from Headquarters and pursuant to the relevant articles of the United Nations Charter, article IV of the Agreement is interpreted by the United Nations as not excluding the presentation by the host country of well-founded objections concerning a particular individual. Such objections, however, will only be entertained if they relate to specific criminal or security-related matters and not to nationality, religion, professional or political affiliation.

Accept, Excellency, the assurances of my highest consideration.

(Signed)
Ralph Zacklin
Assistant Secretary-General for Legal Affairs

II
Letter from the Permanent Representative of Sweden to the United Nations

22 March 2004

Mr. Zacklin,

I have the honor to refer to the Framework Agreement between the Kingdom of Sweden and the United Nations on the Arrangements regarding Privileges and Immunities and Certain Other Matters concerning United Nations Meetings held in Sweden, signed in New York on 19 November 2003 by you and myself.

It has been brought to my attention that paragraph 3 of Article IX of the Agreement contains a minor error. The reference in paragraph 3 to "paragraph 1" should rightly be to "paragraph 2".

The corrected text of paragraph 3 of Article IX would consequently read as follows: "This Agreement can be modified by written agreement between the Parties; such modifications being subject to the necessary requirements referred to in paragraph 2."

I therefore have the honour to propose, in accordance with Article 79 of the Vienna Convention on the Law of Treaties, that this corrected text replaces the defective text *ab initio*.

Should the United Nations be in agreement with the above proposal, this letter and your reply confirming the present understanding will constitute a rectification of the Agreement.

Yours sincerely,

(Signed)

Pierre SCHORI

Ambassador Extraordinary and Plenipotentiary
Permanent Representative to the United Nations

III
LETTER FROM THE UNITED NATIONS TO THE PERMANENT REPRESENTATIVE OF SWEDEN

24 March 2004

Your Excellency,

I refer to your letter of 22 March 2004 proposing, on behalf of the Kingdom of Sweden, the rectification of the text of paragraph 3 of Article IX of the Framework Agreement between the United Nations and the Kingdom of Sweden on Arrangements regarding Privileges and Immunities and Certain Other Matters concerning United Nations Meetings held in Sweden, signed in New York on 19 November 2003 ("the Framework Agreement").

I have the honour to confirm that the United Nations is in agreement with your proposal and that your letter together with this reply will constitute a rectification of the Framework Agreement.

Accept, Your Excellency, the assurances of my highest consideration.

(Signed)

Ralph ZACKLIN

Assistant Secretary-General
Officer-in-Charge, Office of Legal Affairs

(k) Agreement between the United Nations and the Government of the People's Republic of China regarding the Arrangements for the Sixtieth Session of the Commission and the Eighth Session of the Special Body on Pacific Island Developing Countries of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP). Beijing, 27 November 2003*

WHEREAS the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), at the first phase of its fifty-ninth session held on 24 and 25 April 2003 in Bangkok, accepted the offer of the Government of the People's Republic of China (hereinafter referred to as "the Government") to host the sixtieth session of the Commission and decided that it should be held at Shanghai, the People's Republic of China from 22 to 28 April 2004;

WHEREAS ESCAP noted at the first phase of its fifty-ninth session that in accordance with its resolution 58/1 of 22 May 2002 on restructuring the conference structure of the Commission, the eighth session of the Special Body on Pacific Island Developing Countries would be held back to back with the Commission session at Shanghai on 20 and 21 April 2004; and

WHEREAS the General Assembly of the United Nations, by paragraph 17 of its resolution 47/202 of 22 December 1992, reaffirmed that United Nations bodies may hold sessions away from their established headquarters when the Government issuing the invitation for sessions to be held within its territory has agreed to defray, after consultations with the Secretary-General of the United Nations as to their nature and possible extent, the actual additional costs incurred,

NOW THEREFORE, the United Nations and the Government, noting that this Agreement shall cover the sixtieth session of ESCAP and the eighth session of the Special Body on Pacific Island Developing Countries (hereinafter referred to as "the Sessions"), agree as follows:

Article I
DATES AND PLACE OF THE SESSIONS

1. The sixtieth session of the Commission shall be held at Shanghai, the People's Republic of China, from 22 to 28 April 2004.

2. The eighth session of the Special Body on Pacific Island Developing Countries shall be held at Shanghai, the People's Republic of China on 20 and 21 April 2004.

Article II
ATTENDANCE AT THE SESSIONS

1. The Sessions shall be open to participation, in accordance with the rules and procedures of the Commission, by the representatives or observers of:

(a) Members and associate members of ESCAP;

(b) Member states of the United Nations;

(c) Organizations that have received standing invitations from the General Assembly to participate in conferences in the capacity of observers;

(d) Specialized and related agencies of the United Nations;

* Came into force on 27 November 2003 by signature, in accordance with article XIV.

(e) Other intergovernmental organizations;

(f) Intergovernmental organs of the United Nations;

(g) Non-governmental organizations;

(h) Officials of the United Nations Secretariat;

(i) Other persons invited by the United Nations.

2. The Secretary-General of the United Nations shall designate the officials of the United Nations assigned to attend the Sessions for the purpose of servicing it.

3. The public meetings of the Sessions shall be open to representatives of information media accredited by the United Nations after consultation with the Government.

4. Without prejudice to the privileges and immunities granted to them under this Agreement, it is the duty of all participants in the Sessions to respect the laws and regulations of China.

Article III

PREMISES, EQUIPMENT, UTILITIES AND SUPPLIES

1. The Government shall provide, at its own expense, the necessary premises, including conference rooms for informal meetings, office space, working areas and other related facilities as specified in the Annex.* The Government shall, at its expense, furnish, equip and maintain in good repair all these premises and facilities in a manner that the United Nations considers adequate for the effective conduct of the Sessions. The conference rooms shall be equipped for reciprocal simultaneous interpretation between four (4) languages (Chinese, English, French and Russian) and shall have facilities for sound recording in that number of languages as well as facilities for press, television, radio and film operations, to the extent required by the United Nations. The premises shall remain at the disposal of the United Nations from three days prior to the Sessions until a maximum of two days after its close. The premises shall remain at the disposal of the United Nations 24 hours a day.

2. The Government shall provide, if possible within the conference area: bank, post office, telephone, telefax and electronic-mailing facilities, as well as appropriate eating facilities, a travel agency and a secretariat services centre, in consultation with the United Nations, for the use of delegations to the Sessions on a commercial basis.

3. The Government shall bear the cost of all necessary utility and facility services, including local telephone communications, of the secretariat of the Sessions and its communications by electronic mail, fax or telephone with ESCAP (headquarters in Bangkok) when such communications are authorized by or on behalf of the responsible officials of the ESCAP.

4. The Government shall bear the cost of transport and insurance charges, from ESCAP office to the site of the Sessions and return, of all United Nations equipment and supplies not available in Shanghai, which are required for the adequate functioning of the Sessions. The United Nations shall determine the mode of shipment of such equipment and supplies.

* The Annex is not published herein.

Article IV

ACCOMMODATION

The Government shall ensure that adequate accommodation in hotels or residences is available at reasonable commercial rates for persons participating in or attending the Sessions.

Article V

MEDICAL FACILITIES

1. Medical facilities adequate for first aid in emergencies shall be provided by the Government, at its own expense, within the conference area.

2. For serious emergencies, the Government shall ensure immediate transportation and admission to a hospital.

Article VI

TRANSPORT

1. The Government shall provide, at its own expense, transport for the ESCAP secretariat servicing the Sessions between the Shanghai airports, the principal hotels and the conference area.

2. The Government shall ensure the availability of transport for all participants and those attending the Sessions between the Shanghai airports, the principal hotels and the conference area.

3. The Government, in consultation with the United Nations, shall provide an adequate number of cars with drivers for official use by the principal officers and the secretariat of the Sessions, as well as such other local transportation as is required by the secretariat in connection with the Sessions.

4. The coordination and use of cars, buses and minibuses made available pursuant to this article shall be ensured by transportation dispatchers to be provided by the Government.

Article VII

POLICE PROTECTION

The Government shall furnish, at its own expense, such police protection as may be required to ensure the effective functioning of the Sessions in an atmosphere of security and tranquility free from interference of any kind. While such police services shall be under the direct supervision and control of a senior officer provided by the Government, this officer shall work in close co-operation with a designated senior official of the United Nations.

Article VIII

LOCAL PERSONNEL

1. The Government shall make available, at its own cost, an official who shall act as a liaison officer between the Government and the United Nations, and shall be responsible and have the requisite authority, in consultation with the United Nations, for making and carrying out the administrative and personnel arrangements for the Sessions as required under this Agreement.

2. The Government shall recruit and provide, at its own expense, the local personnel required in addition to the United Nations staff to ensure smooth conduct of the Sessions, as specified in the Annex.

3. The Government shall arrange, at its own expense, for some of the local staff referred to in paragraph 2 above, to be available before and after the closing of the Sessions, as required by the United Nations.

Article IX

FINANCIAL ARRANGEMENTS

1. The Government, in addition to the financial obligations provided for elsewhere in this Agreement, shall, in accordance with General Assembly resolution 47/202, paragraph 17, bear the actual additional costs directly or indirectly involved in holding the Sessions at Shanghai rather than at Bangkok. Such costs, which are provisionally estimated at approximately $291,310.00[1], shall include, but not be restricted to, the actual additional costs of travel and staff entitlements of the United Nations officials assigned to plan for or attend the Sessions, as well as the costs of shipping any necessary equipment and supplies. Arrangements for the travel of United Nations officials required to plan for or service the Sessions and for the shipment of any necessary equipment and supplies shall be made by the ESCAP secretariat in accordance with the Staff Regulations and Rules of the United Nations and its related administrative practices regarding travel standard, baggage allowances, subsistence payments and terminal expenses.

2. The Government shall, no later than 20 February 2004, deposit with the United Nations the sum of US$291,310.00.

3. If necessary, the Government shall make additional deposits as requested by the United Nations so that the latter will not at any time have to finance temporarily from its cash resources the extra costs that are the responsibility of the Government.

4. The deposit referred to in paragraph 2 above shall be used only to pay the obligations of the United Nations in respect of the Sessions.

5. After the conclusion of the Sessions, the United Nations shall give the Government a detailed set of accounts showing the actual additional costs incurred by the United Nations and to be borne by the Government pursuant to paragraph 1 of this article. These costs shall be expressed in United States dollars, using the United Nations official rate of exchange at the time the United Nations paid the cost. The United Nations, on the basis of this detailed set of accounts, shall refund to the Government any funds unspent out of the deposits referred to in paragraph 2 and 3 within one month of the receipt of the detailed accounts. Should the actual additional costs exceed the deposit, the Government shall remit the outstanding balance within one month of the receipt of the detailed accounts. The final accounts shall be subject to audit as provided in the Financial Regulations and Rules of the United Nations, and the final adjustment of accounts shall be subject to any observations which may arise from the audit carried out by the United Nations Board of Auditors, whose determination shall be accepted as final by both the United Nations and the Government.

[1] The costs for the ESCAP preparatory missions are not included in this amount, they will be covered by direct payment by the Government.

Article X

LIABILITY

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

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

(b) Injury to persons or damage to or loss of property caused by, or incurred in using transport services referred to in article VI that are provided by or are under the control of the Government;

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

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

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to which the Government became a party on 11 September 1979, shall be applicable in respect of the Sessions. In particular, the representatives of members and associate members of ESCAP and states referred to in article II, paragraph 1 *(a)* and *(b)*, above, shall enjoy the privileges and immunities provided under article IV of the Convention, the officials of the United Nations performing functions in connection with the Sessions referred to in article II, paragraphs 1*(h)* and 2, above, shall enjoy the privileges and immunities provided under articles V and VII of the Convention and any expert on mission for the United Nations in connection with the Sessions referred to in article II, paragraph 1*(i)*, above, shall enjoy the privileges and immunities provided under articles VI and VII of the Convention.

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

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

4. The participants referred to in Article II, paragraph 1*(g)*, shall be accorded the appropriate facilities necessary for the independent exercise of their functions in connection with the Sessions.

5. The Government shall take the necessary measure to ensure that the entry into and exit from China for all persons referred to in Article II are facilitated without undue delay. Visas and entry permits, where required, shall be granted to all those invited to the Sessions free of charge, as speedily as possible and no later than two weeks before the date of the opening of the Sessions, provided the applications for the visa is made at least three weeks before the opening of the Sessions. If the application is not made at least three weeks

before the opening of the Sessions, the visa shall be granted when possible within three days of receipt of the application.

6. For the purpose of the Convention on the Privileges and Immunities of the United Nations, the conference premises specified in article III, paragraph 1, above, shall be deemed to constitute premises of the United Nations in the sense of section 3 of the Convention and access thereto shall be subject to the authority and control of the United Nations. The premises shall be inviolable for the duration of the Sessions, including the preparatory stage and the winding-up.

7. All persons referred to in article II, above, shall have the right to take out of China at the time of their departure, without any restriction, any unexpended portions of the funds they brought in to China in connection with the Sessions and to reconvert any such funds at the prevailing market rates.

8. The privileges and immunities accorded under this Agreement are granted in the interest 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 official or expert in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.

Article XII

Import duties and tax

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

Article XIII

Settlement of disputes

Any dispute between the United Nations and the Government concerning the interpretation or application of this Agreement that is not settled by negotiation or other agreed mode of settlement shall be referred at the request of either party for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General of the United Nations, one to be named by the Government and the third, who shall be the chairman, to be chosen by the first two; if either party fails to appoint an arbitrator within 60 days of the appointment by the other party, or if these two arbitrators should fail to agree on the third arbitrator within 60 days of their appointment, the President of the International Court of Justice may make any necessary appointments at the request of either party.

Article XIV

Final provisions

1. This Agreement may be modified by written agreement between the United Nations and the Government.

2. This Agreement shall enter into force immediately upon signature by the Parties and shall remain in force for the duration of the Sessions and for such a period thereafter as is necessary for all matters relating to any of its provisions to be settled.

SIGNED this twenty-seventh day of November 2003 at Beijing in duplicate in the English and Chinese languages, each text being authentic.

For the United Nations	*For the Government of the People's Republic of China*
(Signed)	*(Signed)*
Kim HAK-SU	Shen GUOFANG
Executive Secretary ESCAP	*Assistant Minister Ministry of Foreign Affairs*

3. AGREEMENTS RELATING TO THE UNITED NATIONS CHILDREN'S FUND

Basic Cooperation Agreement between the United Nations Children's Fund and the Government of St. Kitts and Nevis. Basseterre, 22 April 2003*

Preamble

WHEREAS the United Nations Children's Fund (UNICEF) was established by the General Assembly of the United Nations by resolution 57 (I) of 11 December 1946 as an organ of the United Nations and, by this and subsequent resolutions, was charged with the responsibility of meeting, through the provision of financial support, supplies, training and advice, the emergency and long-range needs of children and their continuing needs and providing services in the fields of maternal and child health, nutrition, water supply, basic education and supporting services for women in developing countries, with a view to strengthening, where appropriate, activities and programmes of child survival, development and protection in countries with which UNICEF cooperates, and

WHEREAS UNICEF and the Government of St. Kitts and Nevis wish to establish the terms and conditions under which UNICEF shall, in the framework of the operational activities of the United Nations and within its mandate, cooperate in programmes in St. Kitts and Nevis,

NOW, THEREFORE, UNICEF and the Government, in a spirit of friendly cooperation, have entered into the present Agreement.

Article I

DEFINITIONS

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

(a) "Appropriate authorities" means central, local and other competent authorities under the law of the country;

* Came into force on 22 April 2003 by signature, in accordance with article XXIII.

(b) "Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946;

(c) "Experts on mission" means experts coming within the scope of articles VI and VII of the Convention;

(d) "Government" means the Government of St. Kitts and Nevis;

(e) "Greeting Card Operation" means the organizational entity established within UNICEF to generate public awareness, support and additional funding for UNICEF mainly through the production and marketing of greeting cards and other products;

(f) "Head of the office" means the official in charge of the UNICEF office;

(g) "Country" means the country where a UNICEF office is located or which receives programme support from a UNICEF office located elsewhere;

(h) "Parties means" UNICEF and the Government;

(i) "Persons performing services for UNICEF" means individual contractors, other than officials, engaged by UNICEF to perform services in the execution of programmes of cooperation;

(j) "Programmes of cooperation" means the programmes of the country in which UNICEF cooperates, as provided in article III below;

(k) "UNICEF" means the United Nations Children's Fund;

(I) "UNICEF office" means any organizational unit through which UNICEF cooperates in programmes; it may include the field offices established in the country;

(m) "UNICEF officials" means all members of the staff of UNICEF employed under the Staff Regulations and Rules of the United Nations, with the exception of persons who are recruited locally and assigned to hourly rates, as provided in General Assembly resolution 76 (I) of 7 December 1946.

Article II

Scope of the Agreement

1. The present Agreement embodies the general terms and conditions under which UNICEF shall cooperate in programmes in the country.

2. UNICEF cooperation in programmes in the country shall be provided consistent with the relevant resolutions, decisions, regulations and rules and policies of the competent organs of the United Nations, including the Executive Board of UNICEF.

Article III

Programmes of cooperation and master plan of operations

1. The programmes of cooperation agreed to between UNICEF and the Government shall be contained in a master plan of operations to be concluded between UNICEF, the Government and, as the case may be, other participating organizations.

2. The master plan of operations shall define the particulars of the programmes of cooperation, setting out the objectives of the activities to be carried out, the undertakings of UNICEF, the Government and the participating organizations and the estimated financial resources required to carry out the programmes of cooperation.

3. The Government shall permit UNICEF officials, experts on mission and persons performing services for UNICEF to observe and monitor all phases and aspects of the programmes of cooperation.

4. The Government shall keep such statistical records concerning the execution of the master plan of operations as the Parties may consider necessary and shall supply any of such records to UNICEF at its request.

5. The Government shall cooperate with UNICEF in providing the appropriate means necessary for adequately informing the public about the programmes of cooperation carried out under the present Agreement.

Article IV

UNICEF OFFICE

1. UNICEF may establish and maintain an office in the country as the Parties may consider necessary to facilitate the implementation of the programmes of cooperation.

2. UNICEF may, with the agreement of the Government, establish and maintain a regional/area office in the country to provide programme support to other countries in the region/area.

3. In the event that UNICEF does not maintain an office in the country, it may, with the agreement of the Government, provide support for programmes of cooperation agreed to between UNICEF and the Government under the present Agreement through a UNICEF regional/area office established in another country.

Article V

ASSIGNMENT TO UNICEF OFFICE

1. UNICEF may assign to its office in the country officials, experts on mission and persons performing services for UNICEF, as is deemed necessary by UNICEF, to provide support to the programmes of cooperation in connection with:

(a) The preparation, review, monitoring and evaluation of the programmes of cooperation;

(b) The shipment, receipt, distribution or use of the supplies, equipment and other materials provided by UNICEF;

(c) Advising the Government regarding the progress of the programmes of cooperation;

(d) Any other matters relating to the application of the present Agreement.

2. UNICEF shall, from time to time, notify the Government of the names of UNICEF officials, experts on mission and persons performing services for UNICEF; UNICEF shall also notify the Government of any changes in their status.

Article VI

GOVERNMENT CONTRIBUTION

1. The Government shall provide to UNICEF as mutually agreed upon and to the extent possible:

(a) Appropriate office premises for the UNICEF office, alone or in conjunction with the United Nations system organizations;

(b) Costs of postage and telecommunications for official purposes;

(c) Costs of local services such as equipment, fixtures and maintenance of office premises;

(d) Transportation for UNICEF officials, experts on mission and persons performing services for UNICEF in the performance of their official functions in the country.

2. The Government shall also assist UNICEF:

(a) In the location and/or in the provision of suitable housing accommodation for internationally recruited UNICEF officials, experts on mission and persons performing services for UNICEF;

(b) In the installation and supply of utility services, such as water, electricity, sewerage, fire protection services and other services, for UNICEF office premises.

3. In the event that UNICEF does not maintain a UNICEF office in the country, the Government undertakes to contribute towards the expenses incurred by UNICEF in maintaining a UNICEF regional/area office elsewhere, from which support is provided to the programmes of cooperation in the country, up to a mutually agreed amount, taking into account contributions in kind, if any.

Article VII

UNICEF SUPPLIES, EQUIPMENT AND OTHER ASSISTANCE

1. UNICEF's contribution to programmes of cooperation may be made in the form of financial and other assistance. Supplies, equipment and other assistance intended for the programmes of cooperation under the present Agreement shall be transferred to the Government upon arrival in the country, unless otherwise provided in the master plan of operations.

2. UNICEF may place on the supplies, equipment and other materials intended for programmes of cooperation such markings as are deemed necessary to identify them as being provided by UNICEF.

3. The Government shall grant UNICEF all necessary permits and licences for the importation of the supplies, equipment and other materials under the present Agreement. It shall be responsible for, and shall meet the costs associated with, the clearance, receipt, unloading, storage, insurance, transportation and distribution of such supplies, equipment and other materials after their arrival in the country.

4. While paying due respect to the principles of international competitive bidding, UNICEF will attach high priority to the local procurement of supplies, equipment and other materials which meet UNICEF requirements in quality, price and delivery terms.

5. The Government shall exert its best efforts, and take the necessary measures, to ensure that the supplies, equipment and other materials, as well as financial and other assistance intended for programmes of cooperation, are utilized in conformity with the purposes stated in the master plan of operations and are employed in an equitable and efficient manner without any discrimination based on sex, race, creed, nationality or political opinion. No payment shall be required of any recipient of supplies, equipment and other materials furnished by UNICEF unless, and only to such extent as, provided in the relevant master plan of operations.

6. No direct taxes, value-added tax, fees, tolls or duties shall be levied on the supplies, equipment and other materials intended for programmes of cooperation in accordance with the master plan of operations. In respect of supplies and equipment purchased locally for programmes of cooperation, the Government shall, in accordance with section 8 of the Convention, make appropriate administrative arrangements for the remission or return of any excise duty or tax payable as part of the price.

7. The Government shall, upon request by UNICEF, return to UNICEF any funds, supplies, equipment and other materials that have not been used in the programmes of cooperation.

8. The Government shall maintain proper accounts, records and documentation in respect of funds, supplies, equipment and other assistance under this Agreement. The form and content of the accounts, records and documentation required shall be as agreed upon by the Parties. Authorized officials of UNICEF shall have access to the relevant accounts, records and documentation concerning distribution of supplies, equipment and other materials, and disbursement of funds.

9. The Government shall, as soon as possible, but in any event within sixty (60) days after the end of each of the UNICEF financial years, submit to UNICEF progress reports on the programmes of cooperation and certified financial statements, audited in accordance with existing government rules and procedures.

Article VIII

INTELLECTUAL PROPERTY RIGHTS

1. The Parties agree to cooperate and exchange information on any discoveries, inventions or works, resulting from programme activities undertaken under the present Agreement, with a view to ensuring their most efficient and effective use and exploitation by UNICEF and the Government under applicable law.

2. Patent rights, copyright rights and other similar intellectual property rights in any discoveries, inventions or works under paragraph 1 of this article resulting from programmes in which UNICEF cooperates may be made available by UNICEF free of royalties to other Governments with which UNICEF cooperates for their use and exploitation in programmes.

Article IX

APPLICABILITY OF THE CONVENTION

The Convention shall be applicable *mutatis mutandis* to UNICEF, its office, property, funds and assets and to its officials and experts on mission in the country.

Article X

LEGAL STATUS OF UNICEF OFFICE

1. UNICEF, its property, funds and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.

2. *(a)* The premises of the UNICEF office shall be inviolable. The property and assets of UNICEF, wherever located and by whomsoever held, shall be immune from search,

requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

(b) The appropriate authorities shall not enter the office premises to perform any official duties, except with the express consent of the head of the office and under conditions agreed to by him or her.

3. The appropriate authorities shall exercise due diligence to ensure the security and protection of the UNICEF office, and to ensure that the tranquility of the office is not disturbed by the unauthorized entry of persons or groups of persons from outside or by disturbances in its immediate vicinity.

4. The archives of UNICEF, and in general all documents belonging to it, wherever located and by whomsoever held, shall be inviolable.

Article XI

UNICEF funds, assets and other property

1. Without being restricted by financial controls, regulations or moratoria of any kind:

(a) UNICEF may hold and use funds, gold or negotiable instruments of any kind and maintain and operate accounts in any currency and convert any currency held by it into any other currency;

(b) UNICEF shall be free to transfer its funds, gold or currency from one country to another or within any country, to other organizations or agencies of the United Nations system;

(c) UNICEF shall be accorded the most favourable, legally available rate of exchange for its financial activities.

2. UNICEF, its assets, income and other property shall:

(a) Be exempt from all direct taxes, value-added tax, fees, tolls or duties; it is understood, however, that UNICEF will not claim exemption from taxes which are, in fact, no more than charges for public utility services, rendered by the Government or by a corporation under government regulation, at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemized.

(b) Be exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by UNICEF for its official use. It is understood, however, that articles imported under such exemptions will not be sold in the country into which they were imported except under conditions agreed with the Government;

(c) Be exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

Article XII

Greeting cards and other UNICEF products

Any materials imported or exported by UNICEF or by national bodies duly authorized by UNICEF to act on its behalf, in connection with the established purposes and objectives of the UNICEF Greeting Card Operation, shall be exempt from all customs duties, prohibitions and restrictions, and the sale of such materials for the benefit of UNICEF shall be exempt from all national and local taxes.

Article XIII

UNICEF OFFICIALS

1. Officials of UNICEF shall:

(a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with UNICEF;

(b) Be exempt from taxation on the salaries and emoluments paid to them by UNICEF;

(c) Be immune from national service obligations;

(d) Be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;

(e) Be accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable ranks forming part of diplomatic missions to the Government;

(f) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;

(g) Have the right to import free of duty their furniture, personal effects and all household appliances, at the time of first taking up their post in the host country.

2. The head of the UNICEF office and other senior officials, as may be agreed between UNICEF and the Government, shall enjoy the same privileges and immunities accorded by the Government to members of diplomatic missions of comparable ranks. For this purpose, the name of the head of the UNICEF office may be incorporated in the diplomatic list.

3. UNICEF officials shall also be entitled to the following facilities applicable to members of diplomatic missions of comparable ranks:

(a) To import free of custom and excise duties limited quantities of certain articles intended for personal consumption in accordance with existing government regulation;

(b) To import a motor vehicle free of customs and excise duties, including value-added tax, in accordance with existing government regulation.

Article XIV

EXPERTS ON MISSION

1. Experts on mission shall be granted the privileges and immunities specified in article VI, sections 22 and 23, of the Convention.

2. Experts on mission may be accorded such additional privileges, immunities and facilities as may be agreed upon between the Parties.

Article XV

PERSONS PERFORMING SERVICES FOR UNICEF

1. Persons performing services for UNICEF shall:

(a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with UNICEF;

(b) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys.

2. For the purpose of enabling them to discharge their functions independently and efficiently, persons performing services for UNICEF may be accorded such other privileges, immunities and facilities as specified in article XIII above, as may be agreed upon between the Parties.

Article XVI

Access facilities

UNICEF officials, experts on mission and persons performing services for UNICEF shall be entitled:

(a) To prompt clearance and issuance, free of charge, of visas, licences or permits, where required;

(b) To unimpeded access to or from the country, and within the country, to all sites of cooperation activities, to the extent necessary for the implementation of programmes of cooperation.

Article XVII

Locally recruited personnel assigned to hourly rates

The terms and conditions of employment for persons recruited locally and assigned to hourly rates shall be in accordance with the relevant United Nations resolutions, decisions, regulations and rules and policies of the competent organs of the United Nations, including UNICEF. Locally recruited personnel shall be accorded all facilities necessary for the independent exercise of their functions for UNICEF.

Article XVIII

Facilities in respect of communications

1. UNICEF shall enjoy, in respect of its official communications, treatment not less favourable than that accorded by the Government to any diplomatic mission (or intergovernmental organization) in matters of establishment and operation, priorities, tariffs, charges on mail and cablegrams and on teleprinter, facsimile, telephone and other communications, as well as rates for information to the press and radio.

2. No official correspondence or other communication of UNICEF shall be subjected to censorship. Such immunity shall extend to printed matter, photographic and electronic data communications and other forms of communications as may be agreed upon between the Parties. UNICEF shall be entitled to use codes and to dispatch and receive correspondence either by courier or in sealed pouches, all of which shall be inviolable and not subject to censorship.

3. UNICEF shall have the right to operate radio and other telecommunication equipment on United Nations registered frequencies and those allocated by the Government between its offices, within and outside the country, and in particular with UNICEF headquarters in New York.

4. UNICEF shall be entitled, in the establishment and operation of its official communications, to the benefits of the International Telecommunication Convention (Nairobi, 1982) and the regulations annexed thereto.

Article XIX

FACILITIES IN RESPECT OF MEANS OF TRANSPORTATION

The Government shall grant UNICEF necessary permits or licenses for, and shall not impose undue restrictions on, the acquisition or use and maintenance by UNICEF of civil aeroplanes and other craft required for programme activities under the present Agreement.

Article XX

WAIVER OF PRIVILEGES AND IMMUNITIES

The privileges and immunities accorded under the present Agreement are granted in the interests of the United Nations, and not for the personal benefit of the persons concerned. The Secretary-General of the United Nations has the right and the duty to waive the immunity of any individual referred to in articles XIII, XIV and XV in any case where, in his opinion, such immunity impedes the course of justice and can be waived without prejudice to the interests of the United Nations and UNICEF.

Article XXI

CLAIMS AGAINST UNICEF

1. UNICEF cooperation in programmes under the present Agreement is provided for the benefit of the Government and people of the country and, therefore, the Government shall bear all the risks of the operations under the present Agreement.

2. The Government shall, in particular, be responsible for dealing with all claims arising from or directly attributable to the operations under the present Agreement that may be brought by third parties against UNICEF, UNICEF officials, experts on mission and persons performing services for UNICEF and shall, in respect of such claims, indemnify and hold them harmless, except where UNICEF and the Government agree that the particular claim or liability was caused by gross negligence or wilful misconduct.

Article XXII

SETTLEMENT OF DISPUTES

Any dispute between UNICEF and the Government relating to the interpretation and application of the present Agreement which is not settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairman. If within thirty (30) days of the request for arbitration either Party has not appointed an arbitrator, or if within fifteen (15) days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure for the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

Article XXIII

ENTRY INTO FORCE

1. The present Agreement shall enter into force immediately upon signature by the Parties.

2. The present Agreement supersedes and replaces all previous Basic Agreements, including addenda thereto, between UNICEF and the Government.

Article XXIV

AMENDMENTS

The present Agreement may be modified or amended only by written agreement between the Parties hereto.

Article XXV

TERMINATION

The present Agreement shall cease to be in force six months after either of the Parties gives notice in writing to the other of its decision to terminate the Agreement. The Agreement shall, however, remain in force for such an additional period as might be necessary for the orderly cessation of UNICEF activities, and the resolution of any disputes between the Parties.

IN WITNESS WHEREOF, the undersigned, being duly appointed representative of UNICEF and duly authorized plenipotentiary of the Government, have on behalf of the Parties signed the present Agreement, in the English language.

Done at Basseterre this 22nd day of April, two thousand and three.

For the United Nations Children's Fund	*For the Government:*
(Signed)	*(Signed)*
Aboubacar SAIBOU	Denzil L. DOUGLAS
Representative	*Prime Minister*

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

Agreement between the United Nations High Commissioner for Refugees and the Government of the Republic of Tajikistan on Cooperation. Dushanbe, 8 May 2003*

Whereas the Office of the United Nations High Commissioner for Refugees was established by the United Nations General Assembly 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

* Came into force provisionally on 8 May 2003 by signature, in accordance with article XVII.

authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the Statute and of seeking permanent solutions for the problem of refugees by assisting governments and, subject to the approval of the governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities,

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

Whereas the Statute of the Office of the United Nations High Commissioner for Refugees provides in its Article 16 that the High Commissioner shall consult the governments of the countries of residence of refugees as to the need for appointing representatives therein and that in any country recognising such need, there may be appointed a representative approved by the government of that country,

Whereas the Office of the United Nations High Commissioner for Refugees and the Government of the Republic of Tajikistan wish to establish the terms and conditions under which the Office, within its mandate, shall be represented in the Country,

Now Thereof, the Office of the United Nations High Commissioner for Refugees and the Government of the Republic of Tajikistan, in spirit of friendly co operation, have entered into this Agreement.

Article I

Definitions

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

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

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

(c) "Government" means the Government of the Republic of Tajikistan;

(d) "Host Country" or "Country" means the Republic of Tajikistan;

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

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

(g) "UNHCR Office" means all the offices and premises, installations and facilities occupied or maintained in the country;

(h) "UNHCR Representative" means the UNHCR official in charge of the UNHCR office in the country;

(i) "UNHCR officials" means all members of the staff of UNHCR employed under the Staff Regulations and Rules of the United Nations, with the exception of persons

who are recruited locally and assigned to hourly rates as provided in General Assembly resolution 76(I);

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

(k) "Persons performing services on behalf of UNHCR" means natural and juridical persons and their employees, other than nationals of the host country, retained by UNHCR to execute or assist in the carrying out of its programmes;

(l) "UNHCR personnel" means UNHCR officials, experts on mission and persons performing services on behalf of UNHCR.

Article II

PURPOSE OF THIS AGREEMENT

This Agreement embodies the basic conditions under which UNHCR shall, within its mandate, co-operate with the Government, open office in the Country, and carry out its international protection and humanitarian assistance functions in favour of refugees and other persons of its concern in the host Country.

Article III

CO-OPERATION BETWEEN THE GOVERNMENT AND UNHCR

1. Co-operation between the Government and UNHCR in the field of international proection 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 co-operation with the Government with respect to the preparation and review of projects for refugees and other persons of concern.

3. For any UNHCR-funded projects to be implemented by the Government, the terms and conditions including the commitment of the Government and the High Commissioner with respect to the furnishing of funds, supplies, equipment and services or other assistance for refugees and other persons of concern shall be set forth in project agreements to be signed by the Government and UNHCR.

4. The Government shall at all times grant UNHCR personnel unimpeded access to refugees and other persons of concern to UNHCR and to the sites of UNHCR projects in order to monitor all phases of their implementation.

Article IV

UNHCR OFFICE

1. The Government welcomes that UNHCR establish and maintain an office or offices in the country for providing international protection and humanitarian assistance to refugees and other persons of concern to UNHCR.

2. UNHCR may designate, with the consent of the Government, the UNHCR office in the Country to serve as a Regional/Area office and the Government shall be notified in writing of the number and level of the officials assigned to it.

3. The UNHCR office will exercise functions as assigned by the High Commissioner, in relation to his mandate for refugees and other persons of his concern, including the establishment and maintenance of relations between UNHCR and other governmental or non-governmental organizations functioning in the Country.

Article V

UNHCR Personnel

1. UNHCR may assign to the office in the Country such officials or other personnel as UNHCR deems necessary for carrying out its international protection and humanitarian assistance functions.

2. The Government shall be informed of the category of the officials and other personnel to be assigned to the UNHCR office in the Country.

3. UNHCR may designate officials to visit the country for purposes of consulting and co-operating with the corresponding officials of the Government or other parties involved in refugee work in connection with: *(a)* the review, preparation, monitoring and evaluation of international protection and humanitarian assistance programmes; *(b)* the shipment, receipt, distribution, use and disposal of the material means, equipment and other materials, furnished by UNHCR; *(c)* seeking permanent solutions for the problem of refugees; and *(d)* any other matters relating to the application of this Agreement.

Article VI

Facilities for implementation of UNHCR humanitarian programmes

1. The Government, in agreement with UNHCR, shall take any measure which may be necessary to exempt UNHCR officials, experts on mission and persons performing services on behalf of UNHCR from regulations or other legal provisions which may interfere with operations and projects carried out under this Agreement, and shall grant them such other facilities as may be necessary for the speedy and efficient execution of UNHCR humanitarian programmes for refugees in the Country. Such measures shall include the authorization to operate, free of license 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, and shall put them at the disposal of UNHCR free of charge, or at a nominal rent.

3. The Government shall ensure that the UNHCR office is at all times supplied with the necessary public services, and that such public services are supplied on equitable terms.

4. The Government shall take the necessary measures, when required, to ensure the security and protection of the premises of the UNHCR office and its personnel.

5. The Government shall facilitate the location of suitable housing accommodation for UNHCR personnel recruited internationally.

Article VII

PRIVILEGES AND IMMUNITIES

1. The Government shall apply to UNHCR, its property, funds and assets, and to its officials and experts on mission the relevant provisions of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, attached as Annex I* which is an integral part of the present Agreement. The Government also agrees to grant to UNHCR and its personnel such additional privileges and immunities as may be necessary for the effective exercise of the international protection and humanitarian assistance functions of UNHCR.

2. Without prejudice to paragraph 1 of this Article, the Government shall in particular extend to UNHCR the privileges, immunities, rights and facilities provided in Articles VIII to XV of this Agreement.

Article VIII

UNHCR OFFICE, PROPERTY, FUNDS, AND ASSETS

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

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

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

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

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

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

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

5. While UNHCR will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid (such as Value Added Tax), nevertheless when UNHCR is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, the Government will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

6. Any materials imported or exported by UNHCR, by national or international bodies duly accredited by UNHCR to act on its behalf in connection with humanitarian

* United Nations *Treaty Series,* vol. 1, I-4. (Annex not published herein.)

assistance for refugees, shall be exempt from all customs payments and prohibitions and restrictions.

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

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

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

8. UNHCR shall enjoy the most favourable legal rate of exchange.

Article IX

COMMUNICATION FACILITIES

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

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

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

4. The Government shall ensure that UNHCR be enabled to effectively operate its radio and other telecommunications equipment, including satellite communications systems, on networks using the frequencies allocated by or co-ordinated with the competent national authorities under the applicable International Telecommunication Union's regulations and norms currently in force.

Article X

UNHCR OFFICIALS

1. The UNHCR Representative and Deputy Representative, and other senior officials shall enjoy, while in the Country, in respect of themselves, their spouses and dependent relatives, the privileges and immunities, exemptions and facilities normally accorded to diplomatic envoys. For this purpose the Ministry of Foreign Affairs shall include their names in the Diplomatic List.

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

(a) Immunity from personal arrest and detention;

(b) Immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity, such immunity to continue even after termination of employment with UNHCR;

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

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

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

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

(g) Exemption from any form of taxation on income derived by them from sources outside the Country;

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

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

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

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

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

ii) reasonable quantities of certain Articles for personal use or consumption and not for gift or sale.

3. UNHCR officials who are nationals of or permanent residents in the Host Country shall enjoy those privileges and immunities provided for in the Convention.

Article XI

Locally recruited personnel assigned to hourly rates

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

2. The terms and conditions of employment for locally recruited personnel shall be in accordance with the relevant United Nations resolutions, Regulations and Rules.

Article XII

EXPERTS ON MISSION

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

(a) immunity from personal arrest or detention;

(b) immunity from legal process of every kind in respect of words spoken or written and acts done by them in the course of the performance of their mission. This immunity shall continue to be accorded notwithstanding that they are no longer employed on missions for UNHCR;

(c) inviolability for all papers and documents;

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

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

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

Article XIII

PERSONS PERFORMING SERVICES ON BEHALF OF UNHCR

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

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

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

Article XIV

NOTIFICATION

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

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

Article XV

WAIVER OF IMMUNITY

Privileges and immunities are granted to UNHCR personnel in the interests of the United Nations and UNHCR and not for the personal benefit of the individuals concerned. The Secretary-General of the United Nations may waive the immunity of any of UNHCR personnel in any case where, in his opinion, the immunity would impede the course of

justice and it can be waived without prejudice to the interests of the United Nations and UNHCR.

Article XVI

SETTLEMENT OF DISPUTES

Any dispute between UNHCR and the Government arising out of or relating to this Agreement shall be settled amicably by negotiation or other agreed mode of settlement, failing which such dispute shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be a chairman. If within thirty days of the request for arbitration either Party has not appointed an arbitrator or if within fifteen days of the appointment of two arbitrators the third arbitrator has not be appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. All decisions of the arbitrators shall require a vote of two of them. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

Article XVII

GENERAL PROVISIONS

1. This Agreement shall be implemented on an interim basis from the date of its signing by both Parties and shall enter into force on the date of notification of the Office of the United Nations High Commissioner for Refugees by the Government of the completion of all required constitutional procedures.

2. This Agreement shall be interpreted in light of its primary purpose, which is to enable UNHCR to carry out its international mandate for refugees fully and efficiently and to attain its humanitarian objectives in the Country.

3. Any relevant matter for which no provision is made in this Agreement shall be settled by the Parties in keeping with relevant resolutions and decisions of the appropriate organs of the United Nations. Each Party shall give full and sympathetic consideration to any proposal advanced by the other Party under this paragraph.

4. Consultations with a view to amending this Agreement may be held at the request of the Government or UNHCR. Amendments shall be made by joint written agreement.

5. This Agreement shall cease to be in force six months after either of the contracting Parties gives notice in writing to the other of its decision to terminate the Agreement, except as regards the normal cessation of the activities of UNHCR in the Country and the disposal of its property in the Country.

In Witness Whereof the undersigned, being duly appointed representatives of the United Nations High Commissioner for Refugees and the Government, respectively, have on behalf of the Parties signed this Agreement, in the Tajik, English and Russian languages, all three equally authoritative. For purposes of interpretation and in case of conflict, the English text shall prevail.

Done in Dushanbe, 08 May 2003.

For the Office of the United Nations High Commissioner for Refugees.

For the Government of the Republic of Tajikistan.

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

1. STATUS OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES.* APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 21 NOVEMBER 1947

In 2003, the following States acceded to the Convention in respect of the specialized agencies indicated below:

States	*Date of receipt of instrument of accession*	*Specialized agencies*
Albania	15 December 2003	FAO (second revised text), IMF, IBRD, WHO (third revised text), IFC, IDA
United Arab Emirates	11 December 2003	ILO, FAO (second revised text), ICAO, UNESCO, IMF, IBRD, WHO (third revised text), UPU, ITU, WMO, IMO (second revised text), IFAD, IFC, WIPO, UNIDO

In addition, the following States undertook to apply the provisions of the Convention to the following specialized agencies:

States	*Date of receipt of instrument of application*	*Specialized agencies*
Netherlands	4 April 2003	IMO (second revised text)
Spain	12 December 2003	IFAD, WIPO, UNIDO

As at 31 December 2003, there were 110 States parties to the Convention.**

2. AGREEMENTS RELATING TO THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Agreement between the Kingdom of the Netherlands and the United Nations Educational, Scientific and Cultural Organization concerning the seat of the UNESCO-IHE Institute for Water Education. Paris, 18 March 2003***

The Kingdom of the Netherlands

and

the United Nations Educational, Scientific and Cultural Organization,

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* United Nations *Treaty Series,* vol. 33, p. 261.

** For the list of those States, see *Multilateral Treaties Deposited with the Secretary-General of the United Nations* (United Nations publication, Sales No. E.04. V.2, ST/LEG/SER.E/22).

*** Came into force on 1 May 2003 by signature, in accordance with article 16.

Having regard to the Aide Memoire concluded on March 22, 2000, between the Director-General of UNESCO, the Minister of Foreign Affairs of the Kingdom of the Netherlands, the Minister for Development Cooperation of the Netherlands, the Minister of Education, Culture and Science of the Netherlands, the Vice Minister of the Ministry of Transport, Public Works and Water Management of the Netherlands, and the Chairman of the Board of Governors of the IHE (International Institute for Infrastructural, Hydraulic and Environmental Engineering)-Foundation,

Mindful of the water-related challenges faced by humanity and the paramount role of education, training and awareness raising to prepare professionals and the public worldwide to solve the inherent technical, legal, administrative, social and management problems, as discussed and stated by the World Water Vision consultations and respective Reports, Framework for Action Document and deliberations of the Second World Water Forum and associated Ministerial Conference,

Noting that the Convention on the Privileges and Immunities of the Specialized Agencies adopted on 21 November 1947 by the United Nations General Assembly, to which the Kingdom of the Netherlands is a party, applies to UNESCO Officials servicing the UNESCO-IHE Institute for Water Education, and that individual or specific privileges not covered by this Convention make further provisions necessary,

Desiring, therefore, to conclude an Agreement for the purpose of determining such individual or specific privileges to be granted by the Government of the Kingdom of the Netherlands with respect to the UNESCO-IHE Institute for Water Education,

Have agreed as follows:

Article 1

DEFINITIONS

In this Agreement:

(a) "Convention" means the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947;

(b) "Director" means the Director of the Institute;

(c) "Director-General" means the Director-General of UNESCO;

(d) "Experts" means persons, other than those referred to in subparagraph *(g)* of this article, designated by UNESCO or the Institute to perform official missions for the Institute;

(e) "the Government" means the Government of the Kingdom of the Netherlands;

(f) "Institute" means the UNESCO Institute for Water Education (IHE UNESCO);

(g) "Officials" means persons appointed or recruited by UNESCO for employment with the Institute for the purpose of carrying out its official functions, including the Director; it does not include private servants (persons who are in the domestic service of officials), or persons recruited locally and remunerated on an hourly basis;

(h) "Parties" means the Kingdom of the Netherlands and UNESCO;

(i) "Premises" means the premises of the Institute and any buildings, parts of buildings or facilities used by the Institute on a permanent or temporary basis, to carry out its official functions;

(j) "UNESCO" means the United Nations Educational, Scientific and Cultural Organization.

Article 2

APPLICATION OF THE CONVENTION

Except as otherwise provided in this Agreement, the status, privileges and immunities of the Institute shall be governed by the provisions of the Convention.

Article 3

IMMUNITY FROM LEGAL PROCESS

1. Within the scope of its official activities, the Institute shall enjoy immunity from any form of legal process, except in the case of:

(a) express waiver by the Director-General of immunity in a particular case

(b) civil action by a third party for damages arising out of an accident caused by a vehicle belonging to or operated on behalf of the Institute where the damages are not recoverable from insurance.

2. Notwithstanding the provisions of paragraph 1, the property of the Institute wherever located and by whomsoever held, shall be immune from search, foreclosure, seizure, all forms of attachment, injunction or other legal process except in so far as in any particular case the Director-General of UNESCO shall have expressly waived the immunity of the Institute.

Article 4

INVIOLABILITY OF THE PREMISES

1. The premises of the Institute shall be inviolable.

2. The Netherlands authorities may not enter the premises without the consent given by or on behalf of the Director-General or the Director acting on his behalf. If neither of them can be reached in time, such consent shall be assumed in case of fire or other emergency requiring prompt protective action.

3. In other cases, the Director-General or the Director acting on his behalf, shall give serious consideration to a request for permission from the Netherlands authorities to enter the premises, without prejudice to the interests of the Institute.

Article 5

LAW AND AUTHORITY ON THE PREMISES OF THE INSTITUTE

The Institute shall have the right to make internal regulations in order to enable it to carry out its work. Subject to the foregoing provision, the laws and regulations of the Netherlands shall apply at the Institute.

Article 6

INVIOLABILITY OF THE ARCHIVES

The archives of the Institute shall be inviolable. The inviolability of the archives shall be understood to apply to all records, correspondence, manuscripts, photographs, films,

recordings, documents, computer data and computer files belonging to or held by the Institute, wherever they are located.

Article 7

EXEMPTION FROM TAXES AND DUTIES

1. In addition to section 9 and 10 of the Convention the Institute shall, within the scope of its official activities, be exempt from the following taxes:

(a) import taxes and duties (*belastingen bij invoer*);

(b) motor vehicle tax (*motorrijtuigenbelasting*);

(c) tax on passenger motor vehicles and motorcycles (*BPM*);

(d) value added tax (*omzetbelasting*) paid on goods and services involving considerable expenditure or supplied on a recurring basis;

(e) excise duties (*accijnzen*) included in the price of alcoholic beverages and hydrocarbons such as fuel oils and motor fuels;

(f) energy tax (*regulerende energiebelasting*);

(g) real property transfer tax (*overdrachtsbelasting*);

(h) insurance tax (*assurantiebelasting*);

(i) tax on tap water (*belasting op leidingwater*).

2. The exemptions provided for in paragraph 1 *(d)*, *(e)*, *(f)* and *(g)* of this article may be granted by way of a refund. The exemptions provided for in this article shall apply in accordance with the regulations in force in the Kingdom of the Netherlands. Such regulations, however, shall not affect the general principles laid down in this article.

3. No exemption shall be accorded in respect of taxes and duties which represent charges for specific services rendered.

4. Goods acquired or imported under the terms set out in paragraph 1 of this article shall not be sold, given away, or otherwise disposed of in the Netherlands, except in accordance with conditions agreed upon with the Government.

Article 8

PRIVILEGES AND IMMUNITIES OF OFFICIALS

1. In addition to the provisions of section 19 of the Convention the Officials shall also:

(a) enjoy immunity referred to in paragraph *(a)* of that section notwithstanding that the Officials concerned may have ceased to be Officials of UNESCO;

(b) enjoy immunity from arrest or detention and from inspection or seizure of their personal and/or official baggage;

(c) in accordance with the regulations in force, if they are non residents, have relief from duties and taxes (except payments for services) in respect of import of their furniture and personal effects, including motor vehicles, at the time of first taking up their post in the Netherlands and the right on the termination of their function in the Netherlands to export with relief from duties and taxes their furniture and personal effects, subject, in both cases, to the conditions agreed with the Government and the regulations in force

applicable to international organisations situated within the territory of the Kingdom of the Netherlands.

2. The Director shall enjoy with respect to himself and to members of his family forming part of his household the privileges and immunities granted to heads of diplomatic missions accredited to the Government, in accordance with the Vienna Convention on Diplomatic Relations of 18 April 1961.

3. A Deputy Director or other senior Official, when acting on behalf of the Director during his absence from duty, shall be accorded the same immunities as are accorded to the Director.

4. Officials of rank P.5 and above shall enjoy the privileges and immunities granted to diplomatic agents in accordance with the Vienna Convention on Diplomatic Relations of 18 April 1961.

5. With regard to non-official acts, confirmed as such by the Institute, immunity shall not apply in the case of a motor-traffic offence committed by an Official, nor in the case of a civil action by a third party for damage arising from an accident caused by a motor vehicle belonging or driven by an Official.

Article 9

PRIVILEGES AND IMMUNITIES OF EXPERTS

1. Annex IV to the Convention shall apply to Experts.

2. With regard to non-official acts, confirmed as such by the Institute, with respect to section 3 of Annex IV to the Convention, the immunities provided therein shall not apply to civil action by a third party for damage arising from an accident caused by a motor vehicle belonging to or driven by him.

Article 10

NOTIFICATION

With respect to section 18 of the Convention the following shall also apply:

1. The Institute shall promptly notify the Government of:

(a) the appointment of Officials and Experts, their arrival and their final departure, or the termination of their functions with UNESCO or the Institute;

(b) the arrival and final departure of members of the families forming part of the households of Officials and, where appropriate, the fact that a person has ceased to form part of the household;

(c) the arrival and final departure of domestic employees of Officials and, where appropriate, the fact that they are leaving the employ of such persons.

2. The privileges and immunities granted to the respective categories of persons referred to under paragraph 1 of this article shall be implemented upon arrival of such persons and shall be repealed two weeks after notification to the Ministry that either the person has terminated his function with the Institute, or has ceased to be a member of the family forming part of the household of an Official. In any case, privileges and immunities shall be repealed immediately after final departure of the persons concerned.

3. The Government shall issue to the Officials, to the members of the families forming part of the households of the Officials and to the domestic employees of the Officials an

identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to the Host State authorities.

Article 11

Social Security

1. In the event that the Institute shall have established its own social security system offering comparable coverage to the coverage under the legislation of the Netherlands, or shall adhere to such a social security system, the Institute and its Officials to whom the aforementioned scheme applies, shall be exempt from social security provisions in the Netherlands.

2. The provisions of paragraph 1 of this article shall apply, *mutatis mutandis,* to the members of the families forming part of the households of the Officials, unless they are employed otherwise than by the Institute or self-employed in the Netherlands or unless they receive social security benefits from the Kingdom of the Netherlands.

Article 12

Employment of Family Members of Officials

1. Members of the family forming part of the household of Officials of the Institute shall be authorised to engage in gainful employment in the Netherlands for the duration of the term of office of the Official concerned.

2. The following persons are members of the family forming part of the household in the sense of paragraph 1:

(a) the spouses or registered partners of Officials of the Institute;

(b) children of Officials of the Institute who are under the age of 18;

(c) children of Officials of the Institute aged 18 or over, but not older than 27, provided that they formed part of the Official's household prior to their first entry into the Netherlands and still form part of this household, and that they are unmarried, financially dependent on the Official concerned and are attending education in the Netherlands.

3. Persons mentioned in paragraph 2 of this Article who obtain gainful employment shall have no immunity from criminal, civil or administrative jurisdiction with respect to matters arising in the course of or in connection with such employment, provided that measures of execution are taken without infringing the inviolability of their person or of their residence, if they are entitled to such inviolability.

4. In case of the insolvency of a person aged under 18 with respect to a claim arising out of gainful employment of that person under this Article, the immunity of the Official of whose family the person concerned is a member shall be waived by the Institute for the purpose of settlement of the claim, in accordance with the provisions of the applicable international legal instrument regarding waiver.

5. The employment referred to in paragraph 1 of this Article shall be in accordance with Netherlands legislation, including fiscal and social security legislation.

Article 13

SETTLEMENT OF DISPUTES

1. Any dispute between the Parties concerning the interpretation or application of this Agreement shall be settled through negotiation or any other means agreed by the Parties.

2. If the dispute cannot be settled through the means mentioned in paragraph 1 above it may be submitted, at the request of any Party, to final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration involving International Organisations and States of July 1996, as in effect on the date of submission of the dispute to the Court. The number of arbitrators shall be three.

Article 14

AMENDMENTS TO AGREEMENT

1. At the request of either Party, this Agreement as well as the Annex may be amended by mutual consent at any time.

2. Any such amendment may be effected by an exchange of Notes.

Article 15

DURATION OF AGREEMENT AND CONDITIONS OF TERMINATION

1. This Agreement shall be terminated in the event that the Institute is transferred from the territory of the Kingdom of the Netherlands or in the event that the Institute ceases to exist.

2. In case of dissolution of the Institute, the dissolution shall take place in accordance with the relevant provision of the Statutes.

Article 16

ENTRY INTO FORCE

1. This Agreement shall enter into force on the first day of the second month after the date of signing the Agreement.

2. With respect to the Kingdom of the Netherlands, this Agreement shall apply to the part of the Kingdom in Europe only.

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

DONE at Paris, on 18 March 2003, in duplicate, in the English language.

For the Kingdom of the Netherlands	*For the United Nations Educational, Scientific and Cultural Organization*
(s.) L. P. VAN VLDST	(s.) K. MATSUURA

3. AGREEMENTS RELATING TO THE WORLD HEALTH ORGANIZATION

(*a*) Agreement between the World Health Organization and Serbia and Montenegro on the status of the Office of the World Health Organization in Serbia and Montenegro. 21 and 25 February 2003*

I
Letter from the World Health Organization

21 February 2003

Dear Sir,

I have the honour to inform you that the World Health Organization, Regional Office for Europe (WHO/EURO), has been working in the field of health and humanitarian assistance in Serbia and Montenegro since late October 1992. WHO/EURO started with a small office in Belgrade, and now has offices in Belgrade, Podgorica and Pristina.

Serbia and Montenegro became a full Member State of WHO on 28 November 2000. The first regular collaborative agreement between the Federal Republic of Yugoslavia and WHO, so-called Biennial Collaborative Agreement (BCA), for the biennium 2002–2003 was signed on 18 February 2002.

WHO's main goals and objectives are to provide public health expertise focusing on the implementation of the BCA and on the assistance to refugees, internally displaced persons and vulnerable groups within the framework of humanitarian assistance. These goals will be achieved through the provision of:

- Supporting the Ministry of Health at all levels (Federal and Republic) to develop health policies and to reorganize the health system;
- Coordination of the medical assistance given by all the health-interested humanitarian aid and development organizations in the country;
- Facilitating the exchange of information in the field of public health with all partners in health.

At present, WHO is concentrating on coordination of humanitarian assistance activities in the health sector, humanitarian assistance to vulnerable groups, provision of medical supplies, prevention and control of communicable diseases, collaboration with the health authorities in the fields of pharmaceuticals and health care policies, and community-based mental health care and starting implementation of the activities agreed in the BCA.

Keeping the above excellent relations with the various ministerial bodies, local authorities and institutions in mind, WHO should now like to formalize its presence in Serbia and Montenegro. In the light of similar agreements concluded between your Government and United Nations bodies, we propose the following:

1. For the purpose of this Agreement:

(a) the World Health Organization shall hereinafter be referred to as 'WHO';

(b) the World Health Organization, Regional Office for Europe, shall hereinafter be referred to as 'WHO/EURO';

* Came into force on 25 February 2003, in accordance with its provisions.

(c) the Federal Government of Serbia and Montenegro shall hereinafter be referred to as 'the Government';

(d) 'the Office' shall be the Office of WHO/EURO in Serbia and Montenegro, and any sub-offices which may be established in Serbia and Montenegro, with the consent of the Government;

(e) 'Officials of the Office' include the Head of Office and all members of its staff, irrespective of nationality, employed under the Staff Regulations and Rules of WHO with the exception of persons who are recruited locally and assigned to hourly rates;

(f) 'Experts on mission' means individuals, other than officials of the office, performing missions for WHO/EURO;

(g) 'Office personnel' means Officials of the Office, experts on mission and locally recruited personnel assigned to hourly rates.

2. The Office shall be based in Belgrade with sub-offices in Pristina and Podgorica. Should WHO/EURO wish to establish additional sub-offices in Serbia and Montenegro, it shall seek the consent of the Government.

3. The Office shall provide full support in the field of humanitarian assistance, specifically in the health sector, and collaborate accordingly with all health-oriented aid bodies in Serbia and Montenegro.

4. The Office shall be composed of an adequate number of officials and locally recruited personnel assigned to hourly rates.

5. The Office shall notify the Government of the names and categories of Office personnel, and of changes in the status thereof.

6. Office personnel shall be provided with special identification documents by the Government as proof of their status in accordance with this Agreement.

7. The Government shall apply to the Office and to officials of the Office and experts on mission, the privileges and immunities provided for in the Convention on the Privileges and Immunities of the Specialized Agencies, including its Annex VII with respect to the World Health Organization (hereinafter 'the Convention') to which Serbia and Montenegro has acceded on 12 March 2001.

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

9. The premises of the Office and its means of transport shall be inviolable and subject to exclusive control and authority of the Head of Office, without prejudice to the provisions of Para 27 below. The property, fund and assets of the Office, including its means of transport, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

10. The archives of the Office, and in general all documents belonging to or held by it, shall be inviolable.

11. The funds, assets, income and other property of the Office shall be exempt from:

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

(b) All indirect taxes for large purchases of articles intended for official use of the Office. The Government shall make appropriate arrangements for the remission or reimbursement of such taxes paid;

(c) Customs duties and prohibitions and restrictions on articles imported or exported by the Office for its official use, provided that articles imported under such exemption will not be sold in Serbia and Montenegro except under conditions agreed upon with the Government, and

(d) Customs duties and prohibitions and restrictions in respect of the import and export of WHO publications.

12. The Office shall not be subject to any financial controls, regulations or moratoria and may freely:

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

(b) Bring funds securities and foreign currency into Serbia and Montenegro from any other country, use them within Serbia and Montenegro or transfer them to other countries.

13. The Office shall enjoy the most favourable legal rate of exchange.

14. The Office shall enjoy, in respect of its official communications treatment not less favourable than that accorded by the Government to any other Government including its diplomatic missions or to other international organizations in matters of priorities, tariffs, and charges on mail, cables, telephotos, telephone, telegraph, telex and other communications.

15. The Government shall secure the inviolability of the official communications and correspondence of the Office and shall not apply any censorship to its communications and correspondence. Such inviolability, without limitation by reason of this enumeration, shall extend to publications, photographs, slides, film and sound recording.

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

17. The Head of the Office, including any official acting on his/her behalf, during his/her absence from duty, shall be accorded in respect of himself/herself, his/her spouse and minor children, the privileges and immunities exemptions and facilities accorded to diplomatic envoys in accordance with international law. For this purpose, the Ministry of Foreign Affairs of Serbia and Montenegro shall include their names in the Diplomatic List.

18. Officials of the Office shall enjoy the following facilities, privileges and immunities:

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

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

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

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

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

(f) Exemption from any form of taxation on income derived by them from sources outside Serbia and Montenegro;

(g) Freedom to hold or maintain within Serbia and Montenegro foreign exchange, foreign currency accounts and movable property and the right upon termination of employment with the Office to take out of Serbia and Montenegro their funds for the lawful possession of which they can show good cause;

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

(i) The right to import for personal use, free of duty and other levies, prohibitions and restrictions on imports their furniture and personal effects in one or more separate shipments at the time of first taking up their post and thereafter to import necessary additions to the same, including motor vehicles, according to the regulations applicable in Serbia and Montenegro, to diplomatic representatives accredited in Serbia and Montenegro, and reasonable quantities of certain articles of personal use of consumption and not for gift or sale.

19. Officials of the Office who are nationals of or permanent residents in Serbia and Montenegro shall enjoy only those privileges and immunities provided for in the Convention.

20. The terms and conditions of employment for the personnel recruited locally and assigned to hourly rates to perform services for the Office shall be in accordance with the relevant WHO resolutions, regulations and rules.

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

(a) Immunity from personal arrest or detention;

(b) Immunity from legal process of every kind in respect of words spoken or written and acts done by them in the course of the performance of their missions. This immunity shall continue to be accorded notwithstanding that they are no longer performing their missions;

(c) Inviolability for all papers and documents;

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

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

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

22. In performing official functions, the Office and Office personnel shall enjoy the following additional facilities:

(a) Prompt clearance and issuance, free of charge, of visas, licenses or permits, where required;

(b) Unimpeded freedom of entry and exit without delay or hindrance of Office personnel, property, supplies, equipment, means of transport and spare parts;

(c) Unimpeded freedom of movement throughout Serbia and Montenegro of Office personnel, property, supplies, equipment, means of transport and spare parts, to the extent necessary for carrying out the mandate of the Office;

(d) Access to all documentary material of a public nature relevant for the effective operation of the Office;

(e) The right to have contacts with federal, republican, provincial and local authorities, including Government agencies, in accordance with procedures agreed upon with the Ministry of Foreign Affairs of Serbia and Montenegro;

(f) The right to have direct contacts with non-government organizations, private institutions, associations and individuals;

(g) The right to fly the WHO flag and display the WHO emblem on Office premises and means of transport; and

(h) The right to make arrangement through its own facilities for the processing and transport of private mail addressed to or emanating from Officials of the Office and experts on missions. The Government shall be informed of the nature of these arrangements and shall not interfere with or apply censorship to such mail.

23. It is understood that, upon the request of the Head of the Office, the Government shall take all the effective and adequate measures to ensure the appropriate security, safety and protection of the Office premises, its property and of Office personnel.

24. It is understood that the Government shall assist the Office in finding such suitable premises as may be required for conducting the official and administrative activities of the Office throughout the territory of Serbia and Montenegro. The Government shall also facilitate the location of suitable housing accommodation for Office personnel recruited internationally.

25. It is understood that without prejudice to the privileges, immunities, rights and facilities specified in this Agreement, all Office personnel shall respect the laws and regulations of Serbia and Montenegro.

26. If the Government considers that there has been an abuse of the privileges and immunities conferred by this Agreement, consultations will be held between the competent authorities and the Head of the Office to determine whether any such abuse has occurred and if so to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to the Government and to WHO, either party may submit the question as to whether such an abuse has occurred for resolution in accordance with the provisions on settlement of disputes under Para 28 below.

27. Privileges and immunities are granted to Office personnel in the interests of WHO and not for the personal benefit of the individual concerned. The WHO Regional Director for Europe shall have the right and duty to waive the immunity of any Office personnel in any case where in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of WHO.

28. Any dispute, controversy or claim arising out of or relating to the present Agreement, or the breach, termination or invalidity thereof, shall, unless it is settled amicably by negotiation or other agreed mode of settlement, be settled by arbitration at the request of either party, in accordance with the UNCITRAL Arbitration Rules then obtaining. The parties hereto agree to be bound by any arbitration award rendered under this clause as the final adjudication of such dispute, controversy or claim.

29. 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.

30. This agreement shall enter into force upon receipt of your positive reply by the World Health Organization.

31. This Agreement shall cease to be in force six months after either of the contracting parties gives notice in writing to the other party of its decision to terminate the provisions of the Agreement, except as regards the normal cessation of activities of the Office in Serbia and Montenegro and the disposal of its property therein.

If the above provisions meet with your approval, I would propose that this letter and your reply thereto constitute an Agreement between the World Health Organization and Serbia and Montenegro on the status of the Office of the World Health Organization in Serbia and Montenegro.

Marc Danzon

II

Letter from the Minister of Foreign Affairs of Serbia and Montenegro

25 February 2003

Dear Sir,

I have the honour to acknowledge receipt of your letter of 21 February 2003, which reads as follows:

[See letter I above]

I have also the honour to inform that the Federal Government of Serbia and Montenegro is fully agreed to the provisions contained in your letter, to the effect that your letter and the reply thereto constitute an Agreement between Serbia and Montenegro and the World Health Organization on the status of the Office of the World Health Organization in Serbia and Montenegro entering into force upon receipt of the reply of Serbia and Montenegro by the World Health Organization.

Please accept, Sir, the assurance of my highest consideration.

(Signed)

Goran Svilanović

(b) Basic Agreement between the World Health Organization and the Government of Azerbaijan for the Establishment of Technical Advisory Cooperation Relations. Geneva, 22 August 2003 and 2 September 2003*

The World Health Organization (hereinafter referred to as "the Organization"); and The Government of Azerbaijan (hereinafter referred to as "the Government"),

Desiring to give effect to the resolutions and decisions of the United Nations and of the Organization relating to technical advisory cooperation, and to obtain mutual agreement concerning its purpose and scope as well as the responsibilities which shall be assumed and the services which shall be provided by the Government and the Organization;

Declaring that their mutual responsibilities shall be fulfilled in a spirit of friendly cooperation,

Have agreed as follows:

Article I
Establishment of Technical Advisory Cooperation

1. The Organization shall establish technical advisory cooperation with the Government, subject to budgetary limitation or the availability of the necessary funds. The Organization and the Government shall cooperate in arranging, on the basis of the requests received from the Government and approved by the Organization, mutually agreeable plans of operation for the carrying out of the technical advisory cooperation.

2. Such technical advisory cooperation shall be established in accordance with the relevant resolutions and decisions of the World Health Assembly, the Executive Board and other organs of the Organization.

3. Such technical advisory cooperation may consist of:

(a) making available the services of advisers in order to render advice and cooperate with the Government or with other parties;

(b) organizing and conducting seminars, training programmes, demonstration projects, expert working groups and related activities in such places as may be mutually agreed;

(c) awarding scholarships and fellowships or making other arrangements under which candidates nominated by the Government and approved by the Organization shall study or receive training outside the country;

(d) preparing and executing pilot projects, tests, experiments or research in such places as may be mutually agreed upon;

(e) carrying out any other form of technical advisory cooperation which may be agreed upon by the Organization and the Government.

4. *(a)* Advisers who are to render advice to and cooperate with the Government or with other parties shall be selected by the Organization in consultation with the Government. They shall be responsible to the Organization;

(b) in the performance of their duties, the advisers shall act in close consultation with the Government and with persons or bodies so authorized by the Government, and

* Came into force on 2 September 2003 by signature, in accordance with article VI.

shall comply with instructions from the Government as may be appropriate to the nature of their duties and the cooperation in view and as may be mutually agreed upon between the Organization and the Government;

(c) the advisers shall, in the course of their advisory work, make every effort to instruct any technical staff the Government may associate with them, in their professional methods, techniques and practices, and in the principles on which these are based.

5. Any technical equipment or supplies which may be furnished by the Organization shall remain its property unless and until such time as title may be transferred in accordance with the policies determined by the World Health Assembly and existing at the date of transfer.

6. The Government shall be responsible for dealing with any claims which may be brought by third parties against the Organization and its advisers, agents and employees and shall hold harmless the Organization and its advisers, agents and employees in case of any claims or liabilities resulting from operations under this Agreement, except where it is agreed by the Government and the Organization that such claims or liabilities arise from the gross negligence or wilful misconduct of such advisers, agents or employees.

Article II

PARTICIPATION OF THE GOVERNMENT IN TECHNICAL ADVISORY COOPERATION

1. The Government shall do everything in its power to ensure the effective development of the technical advisory cooperation.

2. The Government and the Organization shall consult together regarding the publication, as appropriate, of any findings and reports of advisers that may prove of benefit to other countries and to the Organization.

3. The Government shall actively collaborate with the Organization in the furnishing and compilation of findings, data, statistics and such other information as will enable the Organization to analyse and evaluate the results of the programmes of technical advisory cooperation.

Article III

ADMINISTRATIVE AND FINANCIAL OBLIGATIONS OF THE ORGANIZATION

1. The Organization shall defray, in full or in part, as may be mutually agreed upon, the costs necessary to the technical advisory cooperation which are payable outside the country, as follows:

(a) the salaries and subsistence (including duty travel *per diem*) of the advisers;

(b) the costs of transportation of the advisers during their travel to and from the point of entry into the country;

(c) the cost of any other travel outside the country;

(d) insurance of the advisers;

(e) purchase and transport to and from the point of entry into the country of any equipment or supplies provided by the Organization;

(f) any other expenses outside the country approved by the Organization.

2. The Organization shall defray such expenses in local currency as are not covered by the Government pursuant to Article IV, paragraph 1, of this Agreement.

Article IV

ADMINISTRATIVE AND FINANCIAL OBLIGATIONS OF THE GOVERNMENT

1. The Government shall contribute to the cost of technical advisory cooperation by paying for, or directly furnishing, the following facilities and services:

(a) local personnel services, technical and administrative, including the necessary local secretarial help, interpreter-translators and related assistance;

(b) the necessary office space and other premises;

(c) equipment and supplies produced within the country;

(d) transportation of personnel, supplies and equipment for official purposes within the country;

(e) postage and telecommunications for official purposes;

(f) facilities for receiving medical care and hospitalization by the international personnel.

2. The Government shall defray such portion of the expenses to be paid outside the country as are not covered by the Organization, and as may be mutually agreed upon.

3. In appropriate cases the Government shall put at the disposal of the Organization such labour, equipment, supplies and other services or property as may be needed for the execution of its work and as may be mutually agreed upon.

Article V

FACILITIES, PRIVILEGES AND IMMUNITIES

1. The Government, insofar as it is not already bound to do so, shall apply to the Organization, its staff, funds, properties and assets the appropriate provisions of the Convention on the Privileges and Immunities of the Specialized Agencies.

2. Staff of the Organization, including advisers engaged by it as members of the staff assigned to carry out the purposes of this Agreement, shall be deemed to be officials within the meaning of the above Convention. The WHO Programme Coordinator/Representative appointed to the Government of Azerbaijan shall be afforded the treatment provided for under Section 21 of the said Convention.

Article VI

1. This Basic Agreement shall enter into force upon signature by the duly authorized representatives of the Organization and of the Government.

2. This Basic Agreement may be modified by agreement between the Organization and the Government, each of which shall give full and sympathetic consideration to any request by the other for such modification.

3. This Basic Agreement may be terminated by either party upon written notice to the other party and shall terminate sixty days after receipt of such notice.

In witness whereof the undersigned, duly appointed representatives of the Organization and the Government respectively, have, on behalf of the Parties, signed the present Agreement at this day of 2003, in the English and Russian languages in three copies each.

For the Government of Azerbaijan	*For the World Health Organization*
Dr. Ali Insanov	Dr. M. Danzon
02/09/03	22/8/03

4. AGREEMENTS RELATING TO THE WORLD METEOROLOGICAL ORGANIZATION

Agreement between the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization and the World Meteorological Organization. Geneva, 27 June 2003 and Vienna, 11 July 2003*

Whereas the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (hereinafter the "Commission") was established for the purpose of carrying out the necessary preparations for the effective implementation of the Comprehensive Nuclear-Test-Ban Treaty;

Whereas the World Meteorological Organization (hereinafter the "Organization") a specialized agency of the United Nations, is recognized as the organization responsible, for facilitating international cooperation in the field of meteorology, hydrology and related geophysical services, and promoting the rapid exchange of meteorological information;

Now, therefore, the Commission and the Organization have decided to conclude an agreement for cooperation and have agreed as follows:

Article I

Cooperation and consultation

1. The Commission and the Organization agree that with a view to facilitating the effective attainment of the objectives set forth in their respective constitutional instruments, within the general framework established by the Charter of the United Nations, they will act in close cooperation with each other and will consult each other regularly in regard to matters of common interest.

2. The Commission recognizes the responsibilities of the Organization as set forth in the Convention of that Organization and recognized in the agreement between the Unite Nations and the Organization.

3. The Organization recognizes the responsibilities of the Commission as set forth in the Comprehensive Nuclear-Test-Ban Treaty and the Resolution Establishing the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization, and as recognized in the agreement between the United Nations and the Commission.

4. In particular, the Organization recognizes the responsibility of the Commission with regard to the verification regime for the Comprehensive Nuclear-Test-Ban Treaty,

* Came into force with retroactive effect on 23 May 2003, in accordance with article XIII.

without prejudice to the responsibility of the Organization in matters relating to meteorology and other geophysical sciences and their operational aspects as defined in its Convention.

5. More specifically, the Commission and the Organization agree to cooperate closely with regard to meteorological measurements, the exchange of meteorological observations and transport modeling, and to establish specific procedures to that end in accordance with the provisions of this Agreement.

6. In all cases where either organization proposes to initiate a programme or activity on a subject in which the other organization has or may have a substantial interest, the first party shall consult the other before bringing to finality the programme or initiating the activity.

Article II

Reciprocal representation

1. Representatives of the Organization shall be invited to attend the sessions of the Commission and to participate without vote in the deliberations of that body and, where appropriate, of its working groups with respect to items on their agenda in which the Organization has an interest.

2. Representatives of the Commission shall be invited to attend the Congress of the Organization and to participate without vote in the deliberations of that body, and where appropriate, of its committees or commissions with respect to items on their agenda in which the Commission has an interest.

3. Representatives of the Commission shall be invited, as appropriate, to attend meetings of the Executive Council of the Organization and to participate without a vote in the deliberations of that body and of its committees with respect to items on their agenda in which the Commission has an interest.

4. Appropriate arrangements shall be made by agreement from time to time for the reciprocal representation of the Commission and the Organization at other meetings convened under their respective auspices which consider matters in which the other organization has an interest.

Article III

Exchange of information and documents

1. Subject to such arrangements as may be necessary for the safeguarding of confidential material, the Provisional Technical Secretariat of the Commission and the Secretariat of the Organization shall keep each other fully informed concerning all projected activities and all programmes of work which may be of interest to the other party.

2. The Commission and the Organization recognize that they may find it necessary to apply certain limitations for the safeguarding of confidential information furnished to them. They therefore agree that nothing in this Agreement shall be construed as requiring either of them to furnish such information as would, in the judgement of the party possessing the information, constitute a violation of the confidence of any of its Members or anyone from whom it has received such information or otherwise interfere with the orderly conduct of its operations.

3. The parties agree that meteorological data which are exchanged in accordance with the provisions of this Agreement shall, subject to the need to protect those observations from illegal commercial use, not be subject to any other restrictions.

4. The Executive Secretary of the Commission and the Secretary-General of the Organization or their representatives shall, at the request of either party, arrange for consultations regarding the provision by either party of such special information as may be of interest to the other party.

Article IV

PROPOSAL OF AGENDA ITEMS

After such preliminary consultations as may be necessary, the Organization shall include on the provisional agenda of its Congress or its Executive Council items proposed to it by the Commission. Similarly, the Commission shall include on its provisional agenda items proposed by the Organization. Items submitted by either party for consideration by the other shall be accompanied by an explanatory memorandum.

Article V

COOPERATION BETWEEN SECRETARIATS

The Provisional Technical Secretariat of the Commission and the Secretariat of the Organization shall maintain a close working relationship in accordance with such arrangements as may have been agreed upon from time to time by the Executive Secretary of the Commission and the Secretary-General of the Organization.

Article VI

ADMINISTRATIVE AND TECHNICAL COOPERATION

The Commission and the Organization agree to consult each other from time to time regarding the most efficient use of personnel and resources and appropriate methods of avoiding the establishment and operation of competitive or overlapping facilities and services.

Article VII

STATISTICAL SERVICES

In view of the desirability of maximum cooperation in the statistical field and of minimizing the burdens placed on national governments and other organizations from which information may be collected, the Commission and the Organization undertake to avoid undesirable duplication between them with respect to the collection, compilation and publication of statistics and to consult with each other on the most efficient use of information, resources and technical personnel in the field of statistics.

Article VIII

PERSONNEL ARRANGEMENTS

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

2. The Commission and the Organization agree to cooperate regarding the exchange of personnel and to determine conditions of such cooperation in supplementary arrangements to be concluded for that purpose in accordance with Article X of this Agreement.

Article IX

FINANCING OF SPECIAL SERVICES

If compliance with a request for assistance made by either organization to the other would involve substantial expenditure for the organization complying with the request, consultation shall take place with a view to determining the most equitable manner of meeting such expenditure.

Article X

IMPLEMENTATION OF THE AGREEMENT

The Executive Secretary of the Commission and the Secretary-General of the Organization may enter into such arrangements for the implementation of this Agreement as may be found desirable in the light of the operating experience of the two organizations.

Article XI

NOTIFICATION TO THE UNITED NATIONS AND FILING AND RECORDING

1. In accordance with its agreement with the United Nations, the Organization will inform the United Nations forthwith of the terms of the present Agreement.

2. On the coming into force of the present Agreement in accordance with the provisions of Article XIII, it will be communicated to the Secretary-General of the United Nations for filing and recording.

Article XII

REVISION, TERMINATION AND SUCCESSION

1. On six months' notice given by either party, this Agreement shall be subject to revision by agreement between the Commission and the Organization.

2. This Agreement may be terminated by either party on 31 December of any year by notice given not later than 30 June of that year.

3. Upon the succession of either party, the successor organization shall notify the other party of its succession in respect of this Agreement.

Article XIII

ENTRY INTO FORCE

1. This Agreement shall come into force on its approval by the Commission and by the Congress of the Organization.

2. Upon the approval of this Agreement by the Commission and its endorsement by the Executive Council of the Organization, and pending its approval by the Congress of the Organization, the Executive Secretary of the Commission and the Secretary-General of the Organization may implement provisional measures consistent with this Agreement.

Protocol

This Agreement was approved by the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization on 21 November 2000 and by the Congress of the World Meteorological Organization on 23 May 2003, and thus, in accordance with the terms of Article XIII of the Agreement, it entered into force on the latter date.

In witness whereof, the Executive Secretary of the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization and the Secretary-General of the World Meteorological Organization have affixed their signatures to two original copies of the Agreement in the English language.

For the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO):

Mr. W. HOFFMANN
Executive Secretary
Vienna 11/07/2003

For the World Meteorological Organization (WMO):

PROF. G.O.P. OBASI
Secretary-General
Geneva 27/06/2003

Part Two

LEGAL ACTIVITIES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter III

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

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

1. DISARMAMENT AND RELATED MATTERS[1]

(a) Nuclear disarmament and non-proliferation issues

Despite the submission of a proposal on the programme of work by five former Presidents of the Conference of Disarmament,[2] no agreement was reached on the Conference's overall programme of work. Thus, no subsidiary bodies were established to consider items on its agenda, including nuclear disarmament. The issue of nuclear disarmament was addressed by delegations at plenary meetings.

On 10 January 2003, the Democratic People's Republic of Korea announced its withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), 1968,[3] which was the first such withdrawal since the NPT's entry into force in 1970. At the second Session of the Preparatory Committee for the 2005 NPT Review Conference, held in Geneva from 28 April to 9 May 2003, the Committee devoted most of its time to a substantive structured review of the status and operation of the NPT under the agenda item entitled, "Preparatory work for the review of the operation and status of the Treaty in accordance with article VIII, paragraph 3, of the Treaty, in particular, consideration of principles, objectives and ways in order to promote the full implementation of the Treaty, as well as its universality, including specific matters of substance related to the implementation of the Treaty and Decisions 1 and 2, as well as the resolution on the Middle East adopted in 1995, and the outcome of the 2000 Review Conference, including developments affecting the operation and purpose of the Treaty."

Efforts by the International Atomic Energy Agency (IAEA) to implement a strengthened safeguards system continued during the year and by the end of 2003, the number of States yet to bring into force their comprehensive safeguards agreements, in accordance with their obligations under the NPT, decreased from 48 to 45. The number of States which had brought into force additional protocols to their safeguards agreements increased from 28 to 38. Furthermore, it was also reported by the Director General of IAEA to the 47th General Conference that a legal framework had been prepared to allow independent verification of nuclear material released from the military programmes of the Russian Federation and the United States and to ensure that sensitive information relating to the design of nuclear

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[1] For detailed information, see *The United Nations Disarmament Yearbook*, vol. 28:2003 (United Nations publication, Sales No. E.04.IX.1).

[2] CD/1693 and Rev.1, (23 January 2003).

[3] United Nations *Treaty Series,* vol. 729, p. 161.

weapons would not be divulged. The framework was to be used as a basis for the negotiation of agreements between the IAEA and each of the two States.

The third Conference on Facilitating the Entry into Force of the Comprehensive Nuclear-Test-Ban Treaty, 1996, was convened in Vienna from 3 to 5 September 2003, during which it adopted a Final Declaration and Measures to Promote the Entry into Force of the Comprehensive Nuclear-Test-Ban Treaty.[4] The Final Declaration stressed the importance of a universal and effectively verifiable Comprehensive Nuclear-Test-Ban Treaty as a major instrument in the field of nuclear disarmament and non-proliferation; stated that ratifying States would consider appointing a Special Representative to assist the coordinating State in the performance of its function to promote its entry into force; and recommended that States consider establishing a trust fund, financed through voluntary contributions, to support an outreach programme for promoting the Treaty.

The first Review meeting of the Contracting parties to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 1997,[5] was held in November 2003, in Vienna. An issue of general concern was the comparatively small number of Contracting parties which numbered 33 at the end of 2003.[6]

Regarding the Convention on the Physical Protection of Nuclear Material, 1979,[7] the open-ended group of legal and technical experts met to prepare a draft amendment to the Convention and submitted its final report to the Director General of IAEA. The report was circulated to all States parties for consideration as to whether to initiate the procedure for the convening of an amendment conference in accordance with article 20 of the Convention. At the 47th General Conference of the IAEA, a group of States parties announced that they would submit a proposed amendment to the depositary of the Convention for circulation and request all States to support the holding of a diplomatic conference to consider it. By the end of 2003, no such proposal had been received by the depositary.

Also in 2003, the 47th General Conference of the IAEA endorsed the Board of Governor's approval of the strengthened revised text of the Code of Conduct on the Safety and Security of Radioactive Sources,[8] while recognizing that it was not a legally binding instrument. Subsequently, further work was carried out on developing practical guidelines for its compliance, including specific guidelines on the import and export of radioactive sources.

At the bilateral level, the Treaty on Strategic Offensive Reductions (SORT) between the Russian Federation and the United States entered into force on 1 June 2003.[9] In accordance with the provisions of the Treaty, each party undertook to reduce and limit strategic nuclear warheads by 31 December 2012 to between 1700 and 2200. The Treaty would remain in force until December 2012 and may be extended or superseded by subsequent agreement.

Consideration by the General Assembly

On 8 December 2003 the General Assembly adopted the following resolutions in the area of nuclear disarmament and non-proliferation: resolution 58/71, adopted by recorded

[4] CTBT-ART.XIV/2003/5.

[5] United Nations *Treaty Series,* vol. 2153, p. 303.

[6] For detailed information, see IAEA JC/RM.1/06/Final version.

[7] United Nations *Treaty Series,* vol. 1456, p. 101.

[8] The IAEA published the Code of Conduct in 2001 under the symbol IAEA/CODEOC/2001. For detailed information, see GOV/2000/34-GC(44/7) and GOV/2003/49-GC(47)/9.

[9] For the text of the Treaty, see http://www.state.gov.

vote of 173 in favor to 1 with 4 abstentions, entitled "Comprehensive Nuclear-Test-Ban Treaty", in which the General Assembly welcomed the Final Declaration of the third Conference on Facilitating the Entry into Force of the Comprehensive Nuclear-Test-Ban Treaty, held at Vienna from 3 to 5 September 2003, and stressed the importance and urgency of signature and ratification to achieve the earliest entry into force of the Treaty; resolution 58/68, adopted by recorded vote of 162 in favor to 4 with 10 abstentions, entitled "The risk of nuclear proliferation in the Middle East", in which the General Assembly reaffirmed the importance of Israel's accession to the Treaty on the Non-Proliferation of Nuclear Weapons and placement of all its nuclear facilities under comprehensive International Atomic Energy Agency safeguards; resolution 58/64, entitled "Convention on the Prohibition of the Use of Nuclear Weapons"; resolution 58/59, adopted by recorded vote of 164 in favor to 2 with 14 abstentions, entitled "A path to the total elimination of nuclear weapons", in which the General Assembly established an *ad hoc* committee in the Conference on Disarmament as early as possible during its 2004 session to negotiate a non-discriminatory, multilateral and internationally and effectively verifiable treaty banning the production of fissile material for nuclear weapons or other nuclear devices; the General Assembly also included the principle of irreversibility to be applied to nuclear disarmament, nuclear and other related arms controls and reduction measures; resolution 58/57, entitled "The Conference on Disarmament decision (CD/1547) of 11 August 1998 to establish, under item 1 of its agenda entitled 'Cessation of the nuclear arms race and nuclear disarmament', an *ad hoc* committee to negotiate, on the basis of the report of the Special Coordinator (CD/1299) and the mandate contained therein, a non-discriminatory, multilateral and internationally and effectively verifiable treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices"; resolution 58/56, adopted by recorded vote of 112 in favor to 45 with 20 abstentions, entitled "Nuclear disarmament", in which the General Assembly was mindful of paragraph 74 and other relevant recommendations in the Final Document of the Thirteenth Conference of Heads of States or Government of Non-Aligned Countries, held at Kuala Lumpur from 20 to 25 February 2003,[10] called upon the Conference of Disarmament to establish, as soon as possible and as the highest priority, an *ad hoc* committee on nuclear disarmament and to commence negotiations on a phased programme for the complete elimination of nuclear weapons with a specified framework of time; resolution 58/51, entitled "Towards a nuclear-weapon-free world: a new agenda"; resolution 58/50, entitled "Reduction of non-strategic nuclear weapons"; resolution 58/49, entitled "Nuclear-weapon-free southern hemisphere and adjacent areas"; resolution 58/47, entitled "Reducing nuclear danger"; resolution 58/46, entitled "Follow-up to the advisory opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons"; resolution 58/43, entitled "Promotion of multilateralism in the area of disarmament and non-proliferation"; resolution 58/40, entitled "Prohibition of the dumping of radioactive waste"; and resolution 58/35, adopted by a recorded vote of 119 in favor to none with 58 abstentions, entitled "Conclusion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons", in which the General Assembly noted with satisfaction that in the Conference on Disarmament there was no objection, in principle, to the idea of an international convention to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons, although the difficulties with regard to evolving a common approach acceptable to all was pointed out.

[10] A/57/759-S/2003/332, annex I.

(b) The Biological and Chemical Conventions

During the year under review, calls to further strengthen the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BWC), 1972,[11] and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC), 1992,[12] continued, as did efforts by States parties to implement national measures in response.

In order to prepare for the First Annual Meeting of States Parties to the BWC, a Meeting of Experts was held in Geneva from 18 to 29 August 2003. The Meeting of Experts considered the adoption of necessary national measures to implement the prohibitions set forth in the BWC, including the enactment of penal legislation and national mechanisms to establish and maintain the security and oversight of pathogenic microorganisms and toxins.[13] The First Annual Meeting of States Parties to the BWC was held in Geneva from 10 to 14 November 2003.[14]

During 2003, four additional States became parties to the BWC, bringing the total number of parties to 151.[15]

From 28 April to 9 May 2003, the First Special Session of the Conference of the States Parties to Review the Operation of the CWC was convened in The Hague. The Conference reviewed the operation of the CWC since its entry into force in 1997, and offered guidelines for effective future implementation.[16] The Conference also adopted a Political Declaration[17] in which it reaffirmed, *inter alia*, the commitment of the States parties to comply with the obligations under the provisions of the Convention and declared that its universal, full and effective implementation would exclude completely the possibility of the use of chemical weapons. Furthermore, the Eighth Session of the Conference of States Parties to the CWC was held in The Hague from 20 to 24 October 2003, during which it adopted a Plan of Action Regarding the Implementation of Article VII Obligations[18] (national implementation measures) to foster the full implementation of the CWC and to implement the recommendations made in the final document of the First Review Conference.[19]

During 2003, ten additional States became parties to the CWC, bringing the total number of parties to 158.[20]

On 22 May 2003, the Security Council adopted resolution 1483, reaffirming the importance of the disarmament of weapons of mass destruction in Iraq. The resolution invited the United Kingdom and the United States, which had begun their own inspections

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[11] United Nations *Treaty Series,* vol. 1015, p. 163.

[12] United Nations *Treaty Series,* vol. 1975, p. 3.

[13] For the report of the Meeting of Experts, see BWC/MSP.2003, Parts I and II.

[14] For the report of the Annual Meeting, see BWC/MSP/2003/4, vol. I and II.

[15] Antigua and Barbuda, Palau, Timor Leste and the Sudan.

[16] See Report of the First Special Session of the Conference of the States Parties to Review the Operation of the CWC, (RC-1/5, 9 May 2003) available from www.opcw.ord/docs.

[17] See RC-1/3, 9 May 2003. See also Appendix III of *The United Nations Disarmament Yearbook*, vol. 28:2003 (United Nations publication, Sales No. E.04.IX.1).

[18] C-8/DEC.16, 24 October 2003.

[19] CCW/CONF.I/16.

[20] For a complete list of signatories and States parties to CWC, see *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2003* (ST/LEG/SER.E/22).

in Iraq after the United Nations Monitoring, Verification and Inspection Commission's (UNMOVIC) withdrawal, to keep the Council informed of any discoveries relating to such weapon programmes. The resolution also underlined the Council's intention to revisit the mandates of UNMOVIC and IAEA to conduct inspections in Iraq. As at the end of 2003, the Council had not done so and UNMOVIC continued to operate under the assertion that the Security Council had not rescinded its mandate.

Consideration by the General Assembly

On 8 December 2003, the General Assembly adopted, without a vote, resolution 58/72, entitled "Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction", in which it welcomed the reaffirmation made in the Final Declaration of the Fourth Review Conference[21] (1996) that under all circumstances the use of bacteriological (biological) and toxin weapons and their development, production and stockpiling are effectively prohibited under article I of the Convention. The Assembly further reaffirmed its call upon all signatory States that had not yet ratified the Convention to do so without delay; called upon those States that had not signed the Convention to become parties thereto at an early date; and called upon all States parties to participate in the exchange of information and data agreed to in the Final Declaration of the Third Review Conference[22] (1991).

On the same date, the General Assembly also adopted, without a vote, resolution 58/52, entitled "Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction", in which it emphasized the necessity of universal adherence to the Convention; urged all States parties to the Convention to meet in full and on time their obligations under the Convention and to support the Organization for the Prohibition of Chemical Weapons (OPCW) in its implementation activities; and welcomed the cooperation between the United Nations and OPCW within the framework of the Relationship Agreement between the United Nations and the Organization,[23] in accordance with the provisions of the Convention.

(c) Conventional weapons issues

In the area of small arms and light weapons, the Group of Governmental Experts (GGE) on the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (CCW), 1980,[24] completed its negotiations of a new Protocol on Explosive Remnants of War, which was adopted by the Meeting of the States parties to the CCW on 28 November 2003, and annexed to the CCW as Protocol V.[25] The Meeting of States parties also decided that the GGE should continue in 2004 to consider, *inter alia*, the implementation of existing principles of international humanitarian law and to further study possible preventive measures aimed at improving the design of certain types

[21] BWC/CONF.IV/9, part II.
[22] BWC/CONF.III/23, part II.
[23] See General Assembly resolution 55/283 of 7 September 2001.
[24] United Nations *Treaty Series*, vol. 1342, p. 137.
[25] Doc.CCW/MSP/2003/2.

of munitions, including sub-munitions. During the year, the GGE further concluded that it was both feasible and desirable to develop an international instrument to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons and recommended that the General Assembly take a decision on the negotiation of such an instrument.[26]

During 2003, there were also some developments in the area of mines. The Fifth Annual Meeting[27] of States parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997,[28] was held in Bangkok, from 15 to 19 September 2003. The general status and operation of the Convention was reviewed and it was noted that during 2003, 11 States had become parties to the Convention, bringing the total number of parties to 136. No requests had been made for a deadline extension for completing destruction of anti-personnel mines, as provided for under article 5 of the Convention, nor for clarification of compliance as provided for under article 8. In accordance with article 12 of the Convention, the Fifth Annual Meeting decided that the Convention's first review conference would be held in Nairobi from 29 November to 3 December 2004 and that preparatory meetings would be convened in Geneva on 13 February and from 28 to 29 June 2004. Furthermore, the Fifth Annual Conference of the States parties to the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996,[29] annexed to the CCW, was held in Geneva on 26 November 2003 and reviewed the status and operation of the Protocol II, as amended, and appealed to all States that had not yet done so to take all measures to accede to it as soon as possible.[30]

The ninth Plenary meeting of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies[31] was held in Vienna, from 10 to 12 December 2003, during which it carried out an assessment of the functioning of the Arrangement. Furthermore, important steps were also taken to enhance export controls on conventional arms and dual-use goods and technologies, with special emphasis on strengthening the capabilities of member governments to combat the threat of terrorism. The Plenary approved a number of major initiatives, including tightening controls over Man Portable Air Defence Systems (MANPADS); enhancing transparency of small arms and light weapons transfers; establishing elements for national legislation on arms brokering; and imposing export controls on certain unlisted items when necessary to support United Nations arms embargoes.

Consideration by the General Assembly

During its fifty-eighth session, the General Assembly adopted eight resolutions and one decision dealing with the subject of conventional weapons. Seven resolutions were adopted on 8 December 2003 and one resolution was adopted on 23 December 2003.

The General Assembly adopted the two following resolutions in the area of transparency: resolution 58/28, entitled "Objective information on military matters, including

[26] A/58/138.
[27] BWC/CONF.V.
[28] United Nations *Treaty Series,* vol. 2056, p. 211.
[29] United Nations *Treaty Series,* vol. 2048, p. 93.
[30] CCW/AP.II/CONF.5/2, annex III.
[31] For detailed information, see www.wassenaar.org.

transparency of military expenditures" and resolution 58/54, entitled "Transparency in armaments". It further adopted two resolutions and one decision relating to the illicit trade in small arms and light weapons: resolution 58/55, entitled "Promotion at the regional level in the Organization for Security and Cooperation in Europe of the United Nations Programme of Action on the Illicit Trade in Small Arms and Light Weapons in All its Aspects", resolution 58/58, entitled "Assistance to States for curbing the illicit traffic in small arms and collecting them", and resolution 58/241 of 23 December 2003, entitled "The illicit trade in small arms and light weapons in all its aspects".

Also on 8 December 2003, the General Assembly adopted, without a vote, resolution 58/42, entitled "National legislation on transfer of arms, military equipment and dual-use goods and technology", in which it, *inter alia*, stressed the importance for Member States to have effective legislation to control the transfer and movement of arms, military equipment and dual-use goods and technology into or out of their own territories. The Assembly further invited Member States that were in a position to do so, to enact or improve such legislation and to inform the Secretary-General of such legislation on a voluntary basis. Furthermore, by resolution 58/69, entitled "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", adopted without a vote, the General Assembly called upon all States that had not yet done so to take all measures to become parties, as soon as possible, to the Convention and the Protocols thereto, as amended, as well as the amendment of article I, extending the scope of the Convention and the Protocols thereto to include armed conflicts of a non-international character. It further expressed support for the work of the Group of Governmental Experts and encouraged the Group to submit a draft instrument to States parties for consideration at their November meeting on explosive remnants of war as well as to report on its work on mines other than anti-personnel mines and on compliance.

In the area of anti-personnel mines, the General Assembly adopted resolution 58/53, by a recorded vote of 153 to none, with 23 abstentions, entitled "Implementation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction". In the resolution, the General Assembly, *inter alia*, urged all States parties to provide the Secretary-General with complete and timely information as required under article 7 of the Convention, in order to promote transparency and compliance with the Convention; requested that the Secretary-General undertake necessary preparations to convene the Convention's First Review Conference in Nairobi in 2004; and urged participation at the highest possible level in a high-level segment at the end of the Review Conference.

Finally, also on 8 December 2003, the General Assembly adopted decision 58/519, entitled "Consolidation of peace through practical disarmament measures".

(d) Regional disarmament

During 2003, the United Nations, in cooperation with regional and sub-regional organizations, intensified its efforts to curb proliferation of conventional arms, in particular through the implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects. Significant efforts were also undertaken in relation to the regional nuclear-weapon-free zones.

1. Africa

During 2003, the United Nations Regional Centre for Peace and Disarmament in Africa continued, in cooperation with regional and sub-regional organizations and Member States, to promote the implementation of multilateral legal instruments in the area of disarmament as well as the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects.

2. Americas

The United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UN-LiREC) continued to undertake a wide range of activities in the area of disarmament and non-proliferation in close cooperation with States in the region, United Nations agencies, international organizations, and non-governmental organizations. It was actively involved in the strengthening of the Nuclear-Weapon-Free Zone created by the Treaty of Tlateloco, 1967, and promoted the implementation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997.[32] Furthermore, the Department of Disarmament Affairs of the United Nations and the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean signed a Memorandum of Understanding, in April 2003, aimed at enhancing their cooperation in the area of disarmament and non-proliferation.

3. Asia and the Pacific

In 2003, the activities of the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific focused on issues relating to nuclear-weapon-free zones and, in this context, organized several regional conferences and seminars and provided support to the five Central Asian States[33] in their efforts to conclude a Central Asian Nuclear-Weapon-Free Zone treaty.

4. Europe

On 11 and 12 March, the Department of Disarmament Affairs organized, in partnership with Organization for Security and Co-operation in Europe (OSCE) and with the cooperation of the Government of Slovenia, the Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects in South Eastern Europe, in Slovenia, during which participants shared information on measures taken by States in the sub-region, including legislative measures.

Consideration by the General Assembly

On 8 December 2003, the General Assembly adopted the following resolutions regarding regional disarmament: resolution 58/63, adopted without a vote, entitled "United Nations regional centres for peace and disarmament", in which the General Assembly recalled the

[32] United Nations *Treaty Series,* vol. 2056, p. 211.

[33] Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

reports of the Secretary-General on the United Nations Regional Center for Peace and Disarmament in Africa,[34]United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific,[35]and the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean;[36] resolution 58/62, entitled "United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific"; resolution 58/61, entitled "United Nations Regional Centre for Peace and Disarmament in Africa"; resolution 58/60, entitled "United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean"; resolution 58/38, entitled "Regional disarmament"; resolution 58/43, entitled "Confidence-building measures in the regional and subregional context"; resolution 58/34, entitled "Establishment of a nuclear-weapon-free zone in the Middle East"; resolution 58/31, entitled "Consolidation of the regime established by the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco)" and resolution 58/30, entitled "African Nuclear-Weapon-Free Zone Treaty (Treaty of Pelindaba)".

(e) Terrorism and disarmament

On 20 January 2003, the Security Council held a high-level meeting on combating terrorism and adopted resolution 1456 containing a declaration whereby the Council, *inter alia*, underlined the importance of fully complying with existing legal obligations in the field of disarmament, arms limitations and non-proliferation and, where necessary, strengthening international instruments in this field.

Aimed at filling the gaps left by the existing 12 universal counter-terrorism treaties, the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 (on terrorism) met from 31 March to 3 April 2003 to continue its efforts to conclude, *inter alia*, a draft international convention for the suppression of acts of nuclear terrorism.[37] The work continued during the fifty-eighth session of the General Assembly, in the framework of a Working Group of the Sixth Committee.[38] By resolution 58/81 of 9 December 2003, entitled "Measures to eliminate international terrorism", adopted without a vote, the General Assembly decided that the Ad Hoc Committee should continue its efforts to resolve the outstanding issues related to the draft convention and requested it to report to the General Assembly at its fifty-ninth session on progress made in the implementation of its mandate.

Pursuant to General Assembly resolution 57/83 of 22 November 2002, the Secretary-General submitted a report[39] to the General Assembly at its fifty-eighth session, containing views of Member States and information received from international organizations on "Measures to prevent terrorists from acquiring weapons of mass destruction". On 8 December 2003, the General Assembly adopted resolution 58/48, without a vote, on the same subject and, taking note of the report of the Secretary-General, urged Member States to take and strengthen national measures, as appropriate, to prevent terrorists from

[34] A/58/139.
[35] A/58/190.
[36] A/58/122.
[37] For the report of the Ad Hoc Committee, see *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 37* (A/58/37).
[38] For the report of the Working Group, see A/C.6/58/L.10.
[39] A/58/208 and Add.1.

acquiring such weapons. It also requested the Secretary-General to compile a report on measures already taken by international organizations on issues relating to the linkage between the fight against terrorism and the proliferation of weapons of mass destruction, to seek the views of Member States on additional relevant measures for tackling the global threat posed by the acquisition by terrorists of weapons of mass destruction, and to report to the General Assembly at its fifty-ninth session.

(f) Outer space and disarmament

In 2003, despite efforts undertaken by various Member States to harmonize views on a mandate for an ad hoc committee on the prevention of an arms race in outer space, the Conference on Disarmament did not reach consensus on its formulation. Furthermore, the Conference was not able to agree on its programme of work and, therefore, no substantive work on the topic was carried out.

On 8 December 2003, the General Assembly adopted, with a recorded vote of 174 to none, with four abstentions, resolution 58/36 entitled "Prevention of an Arms Race in Outer Space", in which it recognized that negotiations for the conclusion of an international agreement or agreements to prevent an arms race in outer space remained a priority task of the Ad Hoc Committee and that concrete proposals on confidence-building measures could form an integral part of such agreements. It further reaffirmed its recognition that the legal regime applicable to outer space did not in and of itself guarantee the prevention of an arms race in outer space, that the regime played a significant role in the prevention of an arms race in that environment, that there was a need to consolidate and reinforce that regime and enhance its effectiveness and that it was important to comply strictly with existing agreements, both bilateral and multilateral.

(g) Human rights, human security and disarmament

The 55th Session of the Sub-Commission on the Promotion and Protection of Human Rights continued to consider the question relating to the threat that conventional and non-conventional weapons posed to human rights. Its discussion focused on two working papers entitled "Human rights and weapons of mass destruction, or with indiscriminate effect, or of a nature to cause superfluous injury or unnecessary suffering"[40] and "Prevention of human rights violations committed with small arms and light weapons".[41] By decision 2003/105 of 13 August 2003, entitled "Sub-Commission on the Promotion and Protection of Human Rights: The prevention of human rights violations committed with small arms and light weapons", the Sub-Commission decided to request the Secretary-General to transmit a questionnaire elaborated by the Special Rapporteur on this topic to governments, national human rights institutions and non-governmental organizations, in order to solicit information required in connection with the Special Rapporteur's report, in particular on the national laws and training programmes used to implement the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.[42]

[40] E/CN.4/Sub.2/2003/35.

[41] E/CN.4/Sub.2/2003/29.

[42] For the text of the Basic Principles, see the website of the Office of the High Commissioner for Human Rights, http://www.unhchr.ch.

2. OTHER POLITICAL AND SECURITY QUESTIONS

(a) Membership of the United Nations

As at the end of 2003, the number of Member States remained at 191.

(b) Legal aspects of peaceful uses of outer space

The Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space held its forty-second session at the United Nations Office at Vienna from 24 March to 4 April 2003.[43] During the session, Algeria was welcomed as a new member of the Committee and its Subcommittees.

In connection with the agenda item on the status and application of the five United Nations treaties on outer space, the Legal Subcommittee noted the status of the said five treaties[44] and reconvened its Working Group on this topic.[45] The terms of reference of the Working Group included the status of treaties, review of their implementation and obstacles to their universal acceptance, as well as promotion of space law. The Working Group would also review the application and implementation of the concept of the "launching State". Furthermore, the Legal Subcommittee agreed that the merits and substance of the proposed General Assembly resolution on the application of the legal concept of the "launching State"[46] should be further considered by the Committee at its forty-sixth session (from 11 to 20 June 2003).

Various international organizations reported to the Legal Subcommittee on their activities relating to space law, including the European Centre for Space Law, the European Organization for the Exploitation of Meteorological Satellites, the International Astronautical Federation, the International Institute of Space Law, the International Law Association and Intersputnik. It was also informed about the activities of the International Centre for Space Law in Kyiv. Moreover, the Legal Subcommittee had before it the report of the Group of Experts on Ethics of Outer Space,[47] which had been requested, at its forty-fourth session in 2001, to identify which aspects of the report of the World Commission on the Ethics of Scientific Knowledge and Technology (COMEST) of the United Nations Educational, Scientific and Cultural Organization (UNESCO) might need to be studied by the Committee and to draft a report in consultation with other international organizations and in close liaison with COMEST. The Legal Subcommittee noted that it was the primary international forum for the development of international space law and that the entire

[43] For the report of the Legal Subcommittee, see A/AC.105/805.

[44] The treaties include: Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, 1967 (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, 1968 (General Assembly resolution 2345 (XXII), annex); Convention on International Liability for Damage Caused by Space Objects, 1972 (General Assembly resolution 2777(XXVI), annex); Convention on Registration of Objects Launched into Outer Space, 1975 (General Assembly resolution 3235 (XXIX), annex); and Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, 1979 (General Assembly resolution 34/68, annex).

[45] For the report of the Working Group, see A/AC.105/805, annex I.

[46] A/AC.105/C.2/L.242.

[47] For the report of the Group of Experts on the Ethics of Outer Space see A/AC.105/C.2/L.240/Rev.1.

body of space law developed by it was founded on ethical principles. It noted that the Committee might wish to consider the report at its forty-sixth session.

Regarding the agenda item entitled "Matters relating to: *(a)* the definition and delimitation of outer space; and *(b)* the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union", the Legal Subcommittee had before it, *inter alia*, a note by the Secretariat entitled "Questionnaire on possible legal issues with regard to aerospace objects: replies from Member States".[48] The Legal Subcommittee re-established its Working Group under this agenda item to consider only matters relating to the definition and delimitation of outer space.[49]

With regard to the review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, the Legal Subcommittee noted that, in view of the work being conducted by the Scientific and Technical Subcommittee on this topic, opening a discussion on revision of the Principles was not warranted.

Regarding the agenda item on the examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment,[50] the Legal Subcommittee considered two sub-items: *(a)* Considerations relating to the possibility of the United Nations serving as supervisory authority under the preliminary draft protocol; and *(b)* Considerations relating to the relationship between the terms of the preliminary draft protocol and the rights and obligations of States under the legal regime applicable to outer space. The Legal Subcommittee had before it a report of the Secretariat entitled "Convention on International Interests in Mobile Equipment (opened for signature in Cape Town on 16 November 2001)[51] and its preliminary draft protocol on matters specific to space assets: considerations relating to the possibility of the United Nations serving as Supervisory Authority under the protocol"[52]. The Legal Subcommittee took note of the report of the Working Group established under this agenda item.[53]

Two new items entitled "Practice of States and international organizations in registering space objects" and "Contributions by the Legal Subcommittee to the Committee on the Peaceful Uses of Outer Space for the preparation of its report to the General Assembly for its review of the progress made in the implementation of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III)" were proposed by the Legal Subcommittee for inclusion in its agenda for its forty-third session. It was further agreed that a Working Group would be established to consider the former of these items in 2005 and 2006.

The Committee on Peaceful Uses of Outer Space, at its forty-sixth session, held at the United Nations Office at Vienna from 11 to 20 June 2003, took note of the Legal Subcommittee's report and a number of views were expressed concerning its work.[54]

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[48] A/AC.105/635 and Add.1–8.

[49] For the report of the Working Group, see A/AC.105/805, annex II.

[50] The International Institute for the Unification of Private Law (UNIDROIT) is depositary for the Convention. For the text of the Convention, see http://www.unidroit.org.

[51] DCME Doc. No. 74 (ICAO).

[52] A/AC.105/C.2/L.238.

[53] For the report of the Working Group, see A/AC.105/805, annex III.

[54] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 20* (A/58/20).

Consideration by the General Assembly

At its fifty-eighth session, the General Assembly, on the recommendation of the Special Political and Decolonization Committee (Fourth Committee), adopted, without a vote, resolution 58/89 of 9 December 2003, entitled "International cooperation in the peaceful uses of outer space", in which it, *inter alia*, endorsed the report of the Committee on the Peaceful Uses of Outer Space[55] as well as the recommendation of the Committee regarding the Legal Subcommittee. It also agreed that the report of the Group of Experts on the Ethics of Outer Space[56] should be transmitted to UNESCO with the request that it keep the Committee and its subcommittees informed about its activities relating to outer space and endorsed the decision of the Committee to grant permanent observer status to the Regional Centre for Remote Sensing of the North African States and the International Institute for Applied Systems Analysis. Also on the recommendation of the Fourth Committee, the General Assembly adopted, without a vote, resolution 58/90 of 9 December 2003, entitled "Review of the implementation of the recommendations of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space", in which it requested the Committee to submit its report on the review of the implementation of the recommendations of UNISPACE III to the General Assembly at its fifty-ninth session.

(c) United Nations peacekeepers

Consideration by the General Assembly

At its fifty-seventh session, the General Assembly adopted resolution 57/336 on 18 June 2003, without a vote, entitled "Comprehensive review of the whole question of peacekeeping operations in all their aspects". The resolution noted the widespread interest in contributing to the work of the Special Committee on Peacekeeping Operations and welcomed the report of the Special Committee.[57]

(d) Peacekeeping operations and other United Nations missions

United Nations operations or missions established in 2003

1. Côte d'Ivoire

The United Nations Mission in Côte d'Ivoire (MINUCI) was established for an initial period of six months by Security Council resolution 1479 adopted on 13 May 2003. According to paragraph 2 of the resolution, the mandate of MINUCI is to facilitate the implementation by the Ivorian parties of the Linas-Marcoussis Agreement, and including a military component, by complementing the operations of the French troops and the Economic Community of West African States (ECOWAS) forces.

By resolution 1514 adopted on 13 November 2003, the Security Council decided to extend the mandate of MINUCI until 4 February 2004.

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[55] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 20* (A/58/20).

[56] For the report of the Group of Experts on the Ethics of Outer Space, see A/AC.105/C.2/L.240/Rev.a.

[57] A/57/767.

2. Democratic Republic of the Congo

During 2003, the mandate of the United Nations organization Mission in the Democratic Republic of the Congo (MONUC), which was established by Security Council resolution 1279 (1999), was modified by the Security Council. By its resolution 1493 adopted on 28 July 2003, the Security Council, acting under Chapter VII of the United Nations Charter, decided to extend the mandate of MONUC and authorized it:

– to assist the Government of National Unity and Transition in disarming and demobilizing those Congolese combatants who may voluntarily decide to enter the disarmament, demobilization and reintegration (DDR) process within the framework of the Multi-Country Demobilization and Reintegration Programme, pending the establishment of a national DDR programme in coordination with the United Nations Development Programme and other agencies concerned;

– to take the necessary measures in the areas of deployment of its armed units, and as it deems it within its capabilities, *(a)* to protect United Nations personnel, facilities, installations and equipment; *(b)* to ensure the security and freedom of movement of its personnel, including in particular those engaged in missions of observation, verification or in the process of the disarmament, demobilization, repatriation, reintegration or resettlement (DDRRR); *(c)* to protect civilians and humanitarian workers under imminent threat of physical violence; *(d)* and to contribute to the improvement of the security conditions in which humanitarian assistance is provided;

– to use all necessary means to fulfil its mandate in the Ituri district and, as it deems it within its capabilities, in North and South Kivu.

In the same resolution, the Security Council also *(a)* authorized increasing the military strength of MONUC to 10,800 personnel; and *(b)* encouraged MONUC, in coordination with other United Nations agencies, donors and non-governmental organizations, to provide assistance, during the transition period, for the reform of the security forces, the re-establishment of a State based on the rule of law and the preparation and holding of elections, throughout the territory of the Democratic Republic of the Congo.

By its resolution 1489 of 16 June 2003 and resolution 1493 of 28 July 2003, the Security Council decided to extend the mandate of MONUC until 30 July 2003 and 30 July 2004, respectively.

3. Liberia

The United Nations Mission in Liberia (UNMIL) was established for an initial period of 12 months by Security Council resolution 1509 adopted on 19 September 2003. In paragraph 1 of the resolution, the Secretary-General was requested to transfer authority from the ECOWAS-led ECOMIL forces to UNMIL on 1 October 2003. The Council, acting under Chapter VII of the Charter of the United Nations, decided in paragraph 3 of the resolution that UNMIL would have the following mandate:

– to support the implementation of the Liberian ceasefire agreement by *(a)* observing and monitoring the implementation of the ceasefire agreement and investigating violations of the ceasefire; *(b)* establishing and maintaining continuous liaison with the field headquarters of all the parties' military forces; *(c)* assisting in the development of cantonment sites and providing security at these sites; *(d)* observing and monitoring

disengagement and cantonment of military forces of all the parties; *(e)* supporting the work of the Joint Monitoring Committee (JMC); *(f)* developing, as soon as possible, preferably within 30 days of the adoption of the resolution, in cooperation with the JMC, relevant international financial institutions, international development organizations, and donor nations, an action plan for the overall implementation of a disarmament, demobilization, reintegration, and repatriation (DDRR) programme for all armed parties; with particular attention to the special needs of child combatants and women; and addressing the inclusion of non-Liberian combatants; *(g)* carrying out voluntary disarmament and collecting and destroying weapons and ammunition as part of an organized DDRR programme; *(h)* liasing with the JMC and advising on the implementation of its functions under the Comprehensive Peace Agreement and the ceasefire agreement; *(i)* providing security at key government installations, in particular ports, airports, and other vital infrastructure;

– to protect United Nations personnel, facilities, installations and equipment, ensure the security and freedom of movement of its personnel and, without prejudice to the efforts of the government, to protect civilians under imminent threat of physical violence, within its capabilities;

– to support humanitarian and human rights assistance by *(a)* facilitating the provision of humanitarian assistance, including by helping to establish the necessary security conditions; *(b)* contributing towards international efforts to protect and promote human rights in Liberia, with particular attention to vulnerable groups including refugees, returning refugees and internally displaced persons, women, children, and demobilized child soldiers, within UNMIL's capabilities and under acceptable security conditions, in close cooperation with other United Nations agencies, related organizations, governmental organizations, and non-governmental organizations; *(c)* ensuring an adequate human rights presence, capacity and expertise within UNMIL to carry out human rights promotion, protection, and monitoring activities;

– to support security reform by *(a)* assisting the transitional government of Liberia in monitoring and restructuring the police force of Liberia, consistent with democratic policing, developing a civilian police training programme, and otherwise assisting in the training of civilian police, in cooperation with ECOWAS, international organizations, and interested States; *(b)* assisting the transitional government in the formation of a new and restructured Liberian military in cooperation with ECOWAS, international organizations and interested States;

– and to support the implementation of the peace process by *(a)* assisting the transitional Government, in conjunction with ECOWAS and other international partners, in re-establishment of national authority throughout the country, including the establishment of a functioning administrative structure at both the national and local levels; *(b)* assisting the transitional government in conjunction with ECOWAS and other international partners in developing a strategy to consolidate governmental institutions, including a national legal framework and judicial and correctional institutions; *(c)* assisting the transitional government in restoring proper administration of natural resources; *(d)* assisting the transitional government, in conjunction with ECOWAS and other international partners, in preparing for national elections scheduled for no later than the end of 2005.

Finally, in paragraph 7 of the resolution, the Liberian Government was requested to conclude a status-of-force agreement with the Secretary-General within 30 days of adoption of the resolution, and the Security Council noted that pending the conclusion

of such an agreement the model status-of-force agreement dated 9 October 1990[58] would apply provisionally.

Changes in the mandate and/or extensions of time limits of ongoing United Nations operations or missions in 2003

1. Cyprus

By resolution 1486 adopted on 11 June 2003 and resolution 1517 adopted on 24 November 2003, the Security Council decided to extend until 15 December 2003 and 15 June 2004, respectively, the mandate of the United Nations Peacekeeping Force in Cyprus (UNFICYP) which was established by Security Council resolution 186 (1964).

2. Georgia

By resolution 1462 adopted on 30 January 2003 and resolution 1494 adopted on 30 July 2003, the Security Council decided to extend until 31 July 2003 and 31 January 2004, respectively, the United Nations Observer Mission in Georgia (UNOMIG) which was established by Security Council resolution 858 (1993).

3. Lebanon

By resolution 1461 adopted on 30 January 2003 and resolution 1496 adopted on 31 July 2003, the Security Council decided to extend until 31 July 2003 and 31 January 2004, respectively, the mandate of the United Nations Interim Force in Lebanon (UNIFIL), which was established by Security Council resolutions 425 and 426 (1979).

4. Sierra Leone

By resolution 1470 adopted on 28 March 2003 and resolution 1508 adopted on 19 September 2003, the Security Council decided to extend until 30 September 2003 and 30 March 2004, respectively, the mandate of the United Nations Mission in Sierra Leone (UNAMSIL)[59] which was established by Security Council resolution 1270 (1999).

5. Situation between Ethiopia and Eritrea

By resolution 1466 adopted on 14 March 2003 and resolution 1507 adopted on 12 September 2003, the Security Council decided to extend until 15 September 2003 and 15 March 2004, respectively, the mandate of the United Nations Mission in Ethiopia and Eritrea (UNMEE) which was established by Security Council resolution 1312 (2000).

6. Situation between Iraq and Kuwait

By resolution 1490, adopted on 3 July 2003, the Security Council, acting under Chapter VII of the United Nations Charter, decided to extend for a final period until 6 October 2003

[58] A/45/594.

[59] See also resolution 1492 adopted by the Security Council on 18 July 2003 and in which the Council approved the recommendation by the Secretary-General, that the drawdown of UNAMSIL should proceed according to the "modified status quo" option towards withdrawal by December 2004.

the United Nations Iraq-Kuwait Observation Mission (UNIKOM) which was established under Chapter VII of the United Nations Charter by Security Council resolution 689 (1991).

7. Syria and Israel

By resolution 1488 adopted on 26 June 2003 and resolution 1520 adopted on 22 December 2003, the Security Council decided to extend until 31 December 2003 and 30 June 2004, respectively, the United Nations Disengagement Observer Force (UNDOF) which was established by Security Council resolution 350 (1974).

8. Timor-Leste

By resolution 1480 adopted on 19 May 2003, the Security Council decided to extend until 20 May 2004 the mandate of the United Nations Mission of Support in East Timor (UNMISET) which was established by Security Council resolution 1410 (2002).

9. Western Sahara

By resolution 1463 adopted on 30 January 2003, resolution 1469 adopted on 25 March 2003, resolution 1485 adopted on 30 May 2003, resolution 1495 adopted on 31 July 2003 and resolution 1513 adopted on 28 October 2003, the Security Council decided to extend until 31 March 2003, 31 May 2003, 31 July 2003, 31 October 2003 and 31 January 2004, respectively, the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) which was established by Security Council resolution 690 (1991).

Other ongoing United Nations peacekeeping missions

Two other United Nations peacekeeping missions were operating in 2003. The United Nations Interim Administration Mission in Kosovo (UNMIK) was established by resolution 1244 (1999) and the United Nations Truce Supervision Organization (UNTSO) was established by resolution 50 (1948), in which the Security Council called for a cessation of hostilities in Palestine and decided that the truce should be supervised by the United Nations Mediator, with a group of military observers ; the first group of military observers which arrived in the region in June 1948 has become known as the UNTSO.[60]

Political and peacebuilding missions

The following political and peacebuilding missions were operating in 2003: Office of the United Nations Special Coordinator for the Middle East (UNSCO) since 1 October 1999; United Nations Political Office for Somalia (UNPOS) since 15 April 1995, United Nations Peacebuilding Support Office in Guinea-Bissau (UNOGBIS) since 3 March 1999; United Nations Peacebuilding Office in the Central African Republic (BONUCA) since 15 February 2000; United Nations Tajikistan Office of Peacebuilding (UNTOP) since 1 June 2000; Office of the Special Representative of the Secretary-General for the Great

[60] For the first explicit reference to UNTSO in a Security Council resolution, see Security Council resolution 73 (1949), para. 5.

Lakes Region, since 19 December 1997; and the Office of the Special Representative of the Secretary-General for West Africa, since 29 November 2001.

The United Nations Assistance Mission for Iraq (UNAMI) was established for an initial period of twelve months by Security Council resolution 1500, adopted on 14 August 2003. According to paragraph 2 of the resolution, the mandate of UNAMI is to support the Secretary-General in the fulfilment of his mandate under resolution 1483 (2003) in accordance with the structure and responsibilities set out in his report of 15 July 2003.[61] In resolution 1483 (2003), the Secretary-General was requested to take a number of measures, namely:

– to appoint a Special Representative for Iraq whose independent responsibilities would involve reporting regularly to the Council on his activities under the resolution, coordinating activities of the United Nations in post-conflict processes in Iraq, coordinating among United Nations and international agencies engaged in humanitarian assistance and reconstruction activities in Iraq, and, in coordination with the Authority, assisting the people of Iraq through: *(a)* coordinating humanitarian and reconstruction assistance by United Nations agencies and between United Nations agencies and non-governmental organizations; *(b)* promoting the safe, orderly, and voluntary return of refugees and displaced persons; *(c)* working intensively with the Authority, the people of Iraq, and others concerned to advance efforts to restore and establish national and local institutions for representative governance, including by working together to facilitate a process leading to an internationally recognized, representative government of Iraq; *(d)* facilitating the reconstruction of key infrastructure, in cooperation with other international organizations; *(e)* promoting economic reconstruction and the conditions for sustainable development, including through coordination with national and regional organizations, as appropriate, civil society, donors, and the international financial institutions; *(f)* encouraging international efforts to contribute to basic civilian administration functions; *(g)* promoting the protection of human rights; *(h)* encouraging international efforts to rebuild the capacity of the Iraqi civilian police force; and *(i)* encouraging international efforts to promote legal and judicial reform;

– to continue, in coordination with the Authority, the exercise of his responsibilities under Security Council resolution 1472 adopted on 28 March 2003 and resolution 1476 adopted on 24 April 2003, for a period of six months following the adoption of the resolution, and terminate within this time period, in the most cost effective manner, the ongoing operations of the "Oil-for-Food" Programme (the Programme), both at headquarters level and in the field, transferring responsibility for the administration of any remaining activity under the Programme to the Authority, including by taking certain measures set out in the resolution.

By resolution 1471 adopted on 28 March 2003, the Security Council decided to extend until 28 March 2004 the mandate of the United Nations Assistance Mission in Afghanistan (UNAMA) which was established by Security Council resolution 1401 (2002).

[61] S/2003/715.

(e) Action by Member States authorized by the United Nations Security Council

Action authorized in 2003

1. Côte d'Ivoire

In its resolution 1464 adopted on 4 February 2003, the Security Council, acting under Chapter VII of the United Nations Charter, authorized Member States participating in the Economic Community of West African States (ECOWAS) forces in accordance with Chapter VIII together with the French forces supporting them to take the necessary steps to guarantee the security and freedom of movement of their personnel and to ensure, without prejudice to the responsibilities of the Government of National Reconciliation, the protection of civilians immediately threatened with physical violence within their zones of operation, using the means available to them, for a period of six months after which the Council would assess the situation and decide whether to renew the authorization. The Security Council also requested ECOWAS, through the command of its force, and France to report to the Council periodically, through the Secretary-General, on all aspects of the implementation of their respective mandates.

In its resolution 1498 adopted on 4 August 2003, the Security Council decided to renew for a period of six months the authorization given to Member States participating in the ECOWAS forces together with French forces supporting them.

2. Liberia

In its resolution 1497 adopted on 1 August 2003, the Security Council, acting under Chapter VII of the United Nations Charter, authorized Member States to establish a Multinational Force in Liberia to support the implementation of the ceasefire agreement of 17 June 2003, including establishing conditions for initial stages of disarmament, demobilization and reintegration activities, to help establish and maintain security in the period after the departure of the current President and the installation of a successor authority, taking into account the agreements to be reached by the Liberian parties, and to secure the environment for the delivery of humanitarian assistance, and to prepare for the introduction of a longer-term United Nations stabilization force to relieve the Multinational Force. The Security Council authorized the Member States participating in the Multinational Force to take all necessary measures to fulfil its mandate. Finally, the Council requested the Secretary-General through his Special Representative to report to the Council periodically on the situation in Liberia in relation to the implementation of the resolution, including information on implementation by the Multinational Force of its mandate.

3. Situation between Iraq and Kuwait

In its resolution 1511 adopted on 16 October 2003, the Security Council, acting under Chapter VII of the United Nations Charter, authorized a multinational force under unified command to take all necessary measures, first, to contribute to the maintenance of security and stability in Iraq, including for the purpose of ensuring necessary conditions for the implementation of the timetable and programme for the drafting of a new constitution for Iraq and for the holding of democratic elections under that constitution, and secondly, to

contribute to the security of the United Nations Assistance Mission for Iraq (UNAMI), the Governing Council of Iraq and other institutions of the Iraqi interim administration, and key humanitarian and economic infrastructure. The Security Council also decided that the Council would review the requirements and mission of the multinational force not later than one year from the date of the resolution, and that in any case the mandate of the force would expire upon the completion of the political process as described in paragraphs 4 through 7 and 10 of the resolution. The Council requested that the United States, on behalf of the multinational force, report to the Security Council on the efforts and progress of this force as appropriate and not less than every six months.

4. Democratic Republic of the Congo

In its resolution 1484 adopted on 30 May 2003, the Security Council, acting under Chapter VII of the United Nations Charter, authorized the deployment of an Interim Emergency Multinational Force until 1 September 2003 in Bunia in close coordination with MONUC, in particular its contingent currently deployed in the town, to contribute to the stabilization of the security conditions and the improvement of the humanitarian situation in Bunia, to ensure the protection of the airport, the internally displaced persons in the camps in Bunia and, if the situation requires it, to contribute to the safety of the civilian population, United Nations personnel and the humanitarian presence in the town. The Security Council also stressed that this Interim Emergency Multinational Force was to be deployed on a strictly temporary basis to allow the Secretary-General to reinforce MONUC's presence in Bunia. The Security Council authorized the Member States participating in the Interim Emergency Multinational Force in Bunia to take all necessary measures to fulfil its mandate and, further, requested the leadership of the Interim Emergency Multinational Force in Bunia to report regularly to the Council through the Secretary-General, on the implementation of its mandate.

In its resolution 1501 adopted on 26 August 2003, the Security Council extended the mandate of the Interim Emergency Multinational Force. In the resolution, the Security Council, acting under Chapter VII of the United Nations Charter, authorized the multinational force, within the limits of the means at the disposal of those elements of the Force which would not yet have left Bunia before 1 September 2003, to provide assistance to the MONUC contingent deployed in the town and its immediate surroundings, if MONUC requested them to do so and if exceptional circumstances demanded it, during the period of the Force's disengagement which should last until 15 September 2003 at the latest.

Changes in authorization and/or extensions of time limits in 2003

1. Afghanistan

During 2003, the Security Council extended the mandate of the International Security Assistance Force previously deployed in Afghanistan in accordance with Security Council resolution 1386 (2001).

In its resolution 1510 adopted on 13 October 2003, the Security Council, acting under Chapter VII of the United Nations Charter, authorized the expansion of the mandate of the International Security Assistance Force to allow it, as resources permit, to support the Afghan Transitional Authority and its successors in the maintenance of security in areas of Afghanistan outside of Kabul and its environs, so that the Afghan Authorities as well as

the personnel of the United Nations and other international civilian personnel engaged, in particular, in reconstruction and humanitarian efforts, could operate in a secure environment, and to provide security assistance for the performance of other tasks in support of the Bonn Agreement. The Council authorized the Member States participating in the International Security Assistance Force to take all necessary measures to fulfil its mandate and requested the leadership of the International Security Assistance Force to provide quarterly reports on the implementation of its mandate to the Security Council through the Secretary-General. Further, the Council, decided to extend for a period of 12 months the authorization of the International Security Assistance Force, as defined in Security Council resolution 1386 (2001) and in the resolution.

2. Bosnia and Herzegovina

In its resolution 1491 adopted on 11 July 2003, the Security Council, acting under Chapter VII of the United Nations Charter, authorized the Member States to continue for a further planned period of 12 months the multinational stabilization force (SFOR) as established in accordance with its resolution 1088 (1996).[62]

(f) Security Council Committees

Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

According to the annual report of the Committee,[63] among the Committee's notable achievements in 2003 was the issuance of a reformatted version of its consolidated list of individuals and entities maintained pursuant to paragraph 4 *(b)* of resolution 1267 (1999), paragraph 8 *(c)* of resolution 1333 (2000) and paragraphs 1 and 2 of resolution 1390 (2002). The Committee approved the names of 77 individuals and 7 entities for addition to the list.

Counter-Terrorism Committee

The Counter-Terrorism Committee, established pursuant to Security Council resolution 1373 (2001), continued during 2003 to review reports from Member States on the implementation of relevant measures to suppress and prevent terrorism.

Security Council Committee established pursuant to resolution 1518 (2003) (concerning Iraq)

On 24 November 2003, the Security Council adopted resolution 1518 and, acting under Chapter VII of the Charter, decided, *inter alia*, to establish, with immediate effect, a Committee of the Security Council, consisting of all members of the Council, to continue to identify pursuant to paragraph 19 of resolution 1483 (2003) individuals and entities referred to in paragraph 19 of that resolution, including by updating the list of individuals and entities that have already been identified by the Committee established pursuant to paragraph 6 of resolution 661 (1990). By paragraph 19 of resolution 1483 (2003), the

[62] See para. 18.
[63] S/2004/281.

Security Council decided to terminate the Committee established pursuant to paragraph 6 of resolution 661 (1990) after the period specified therein and, further, decided that the Committee shall identify individuals and entities referred to in paragraph 23 of the resolution. In paragraph 23 of resolution 1483 (2003), the Security Council decided that all Member States in which there are *(a)* funds or other financial assets or other economic resources of the previous Government of Iraq or its state bodies, corporations, or agencies, located outside Iraq as of the date of the resolution, or *(b)* funds or other financial assets or economic resources that have been removed from Iraq, or acquired, by Saddam Hussein or other senior officials of the former Iraqi regime and their immediate family members, including entities owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, shall freeze without delay those funds or other financial assets or economic resources and, unless these funds or other financial assets or economic resources are themselves the subject of a prior judicial, administrative, or arbitral lien or judgement, immediately shall cause their transfer to the Development Fund for Iraq, it being understood that, unless otherwise addressed, claims made by private individuals or non-government entities on those transferred funds or other financial assets may be presented to the internationally recognized, representative government of Iraq.

Security Council Committee established pursuant to resolution 1521 (2003) concerning Liberia

On 22 December 2003, the Security Council, acting under Chapter VII of the Charter, decided, inter alia, to establish a Committee of the Security Council, consisting of all members of the Council, to undertake the following tasks: *(a)* to monitor the implementation of the measures in paragraphs 2, 4, 6 and 10 of the resolution, taking into consideration the reports of the expert panel established by paragraph 22 of the resolution; *(b)* to seek from all States, particularly those in the subregion, information about the actions taken by them to implement effectively those measures; *(c)* to consider and decide upon requests for the exemptions set out in paragraphs 2 *(e)*, 2 *(f)* and 4 *(c)* of the resolution; *(d)* to designate the individuals subject to the measures imposed by paragraph 4 of the resolution and to update this list regularly; *(e)* to make relevant information publicly available through appropriate media, including the list referred to in subparagraph *(d)* above; *(f)* to consider and take appropriate action, within the framework of the resolution, on pending issues or concerns brought to its attention concerning the measures imposed by resolutions 1343 (2001), 1408 (2002) and 1478 (2003) while those resolutions were in force; and *(g)* to report to the Council with its observations and recommendations;

In paragraph 2 of the resolution, the Council, *inter alia*, decided that all States shall *(a)* take the necessary measures to prevent the sale or supply to Liberia, by their nationals or from their territories or using their flag vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, whether or not originating in their territories; and *(b)* take the necessary measures to prevent any provision to Liberia by their nationals or from their territories of technical training or assistance related to the provision, manufacture, maintenance or use of the items in subparagraph *(a)*. In paragraph 2, the Council also clarified the application of subparagraphs *(a)* and *(b)* in certain instances and, further, decided that the measures imposed in those subparagraphs shall not apply to certain supplies.

In paragraph 4 of the resolution, the Council, *inter alia*, decided that all States shall take the necessary measures to prevent the entry into or transit through their territories of all such individuals, as designated by the Committee, who constitute a threat to the peace process in Liberia, or who are engaged in activities aimed at undermining peace and stability in Liberia and the subregion, including those senior members of former President Charles Taylor's Government and their spouses and members of Liberia's former armed forces who retain links to former President Charles Taylor, those individuals determined by the Committee to be in violation of paragraph 2 of the resolution, and any other individuals, or individuals associated with entities, providing financial or military support to armed rebel groups in Liberia or in countries in the region, provided that nothing in the paragraph shall oblige a State to refuse entry into its territory to its own nationals. In paragraph 4 *(b)* the Council, further, decided that the measures shall continue to apply to the individuals already designated pursuant to paragraph 7 *(a)* of resolution 1343 (2001), pending the designation of individuals by the Committee as required by and in accordance with paragraph 4 *(a)* above. The Council further decided in paragraph 4 *(c)* that the measures imposed by paragraph 4 *(a)* shall not apply where the Committee determines that such travel is justified on the grounds of humanitarian need, including religious obligation, or where the Committee concludes that an exemption would otherwise further the objectives of the Council's resolutions.

The Council decided, in paragraph 6 of the resolution, that all States shall take the necessary measures to prevent the direct or indirect import of all rough diamonds from Liberia to their territory, whether or not such diamonds originated in Liberia.

The Council decided, in paragraph 10 of the resolution, that all States shall take the necessary measures to prevent the import into their territories of all round logs and timber products originating in Liberia.

3. ENVIRONMENTAL, ECONOMIC, SOCIAL, CULTURAL, HUMAN RIGHTS, HUMANITARIAN AND OTHER RELATED QUESTIONS

(a) Environmental questions

Twenty-second session of the Governing Council of the United Nations Environment Programme

The Governing Council of the United Nations Environment Programme (UNEP) held its twenty-second session at UNEP headquarters in Nairobi, from 3 to 7 February 2003. A number of decisions were adopted during this session.[64] Some of them refer to international law, either to international environmental conventions or to international environmental law in general.

1. Decisions related to international environmental conventions

In its decision 22/2, entitled "Regional seas programmes", the Governing Council in Part III requested the Executive Director to encourage and support regional seas conventions, such as the Convention on the Protection of the Marine Environment and the

[64] For the text of the decisions adopted during this session, see A/58/25.

Coastal Region of the Mediterranean, 1995,[65] and called upon littoral states of shared inland waters to collectively establish legal instruments for the protection of the environment of the respective areas as soon as possible. In Part B of the same decision, the Executive Director was also requested to facilitate the finalization of the host country agreements for the co-hosted regional coordinating unit with Japan and the Republic of Korea.

The Governing Council decided in its decision 22/17, Part II, C, entitled "Status of international conventions and protocols in the field of the environment", to invite States that had not yet done so to consider signing, ratifying or acceding to conventions and protocols in the field of environment, to proceed with their implementation and to provide the secretariat of UNEP with information on new conventions and protocols in the field of the environment as well as information on any changes to the status of the existing conventions and protocols in the field of environment.

2. Decisions related to international environmental law in general

In its decision 22/2, Part V, entitled "Marine safety and protection of the marine environment from accidental pollution", the Governing Council invited the International Maritime Organization to actively review international regulations regarding single tankers, especially those involved in the transport of heavy fuel oil.

In decision 22/17, Part II, A, entitled "Follow-up to the Global Judges Symposium focusing on capacity-building in the area of environmental law", the Executive Director was called on to support the improvement of the capacity of peoples involved in the process of promoting, implementing, developing and enforcing environmental law at the national and local levels such as judges, prosecutors and legislators. In a following decision (22/17, Part II, B), entitled "Enhancing the application of principle 10 of the Rio Declaration on Environment and Development", the Executive Director was requested to intensify efforts in the provision of access to information regarding, *inter alia,* legislation and regulations in the area of sustainable development.

Status of international instruments and consideration by the General Assembly

1. The United Nations Framework Convention on Climate Change, 1992,[66] and the Kyoto Protocol to the United Nations Framework Convention on Climate Change (the Kyoto Protocol), 1997 [67]

During 2003, six States ratified the Kyoto Protocol and 13 acceded to it, bringing the number of parties to 120.

At its fifty-eighth session, on 23 December 2003, the General Assembly adopted without a vote resolution 58/243, entitled "Protection of global climate for present and future generations of mankind"; in this resolution, the Assembly, *inter alia,* called upon States to work cooperatively towards achieving the ultimate objective of the United Nations

[65] United Nations *Treaty Series*, vol. 27, p. 45. The convention, originally entitled "Convention for the Protection of the Mediterranean Sea against Pollution", was adopted on 16 February 1976, entered into force on 12 February 1978 and was revised in Barcelona, on 10 June 1995 as the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean.

[66] United Nations *Treaty Series,* vol. 1771, p. 107.

[67] Decision 1/CP.3 of the Conference of the States Parties to the Convention at its third session.

Framework Convention on Climate Change and noted the preparation undertaken for the implementation of the flexible mechanism established by the Kyoto Protocol.

2. The Convention on Biological Diversity, 1992,[68] and the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (the Cartagena Protocol), 2000[69]

During 2003, one State ratified the Convention on Biological Diversity, bringing the number of parties to 188. During the same year, 20 States ratified the Cartagena Protocol, 12 States acceded to it and one State approved it, bringing the number of parties to 79 and leading to its entry into force on 11 September 2003.

At its fifty-eighth session, on 23 December 2003, the General Assembly adopted, without a vote, resolution 58/212, entitled "Convention on Biological Diversity"; in this resolution, the Assembly, having taken note of the report submitted to it by the Secretary General,[70] welcomed the entry into force of the Cartagena Protocol, urged parties to the Convention on Biological Diversity to facilitate the transfer of technology for the effective implementation of the Convention and invited States to consider ratifying or acceding to the International Treaty on Plant Genetic Resources for Food and Agriculture, 2001.[71]

3. The United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994[72]

During 2003, five States acceded to the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, bringing the number of parties to 191.

At its fifty-eighth session, on 23 December 2003, the General Assembly adopted without a vote resolution 58/242, entitled "Implementation of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa"; in this resolution, the Assembly, *inter alia,* took note of the report submitted to it by the Secretary General[73] and urged the international community to take effective measures for the implementation of the United Nations Convention through bilateral and multilateral cooperation programmes. On the same day, the General Assembly adopted without a vote resolution 58/211, entitled "International Year of Deserts and Desertification, 2006", in which, following the recommendation of the Governing Council of UNEP, the Assembly decided to declare 2006 the International Year of Deserts and Desertification.

4. Other international conventions

(i) *Conventions entering into force in 2003*

The Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants, 1998,[74] entered into force on 23 October 2003.

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[68] United Nations *Treaty Series*, vol. 1760, p. 79.

[69] C.N.251.2000.TREATIES-1 of 27 April 2000.

[70] A/58/191.

[71] Text adopted by the Food and Agriculture Organization (FAO) Conference, at its thirty-first Session, through resolution 3/2001.

[72] United Nations *Treaty Series*, vol. 1954, p. 3.

[73] A/58/158.

[74] ECOSOC doc. EB.AIR/1998/2.

During 2003, two States ratified this Protocol; one accepted it and one approved it, bringing the number of parties to 18.

The Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Heavy Metals, 1998,[75] entered into force on 29 December 2003. In 2003, four States ratified the Protocol, one State acceded to it and one State accepted it, bringing the number of parties to 20.

(ii) *Change related to the number of parties to other conventions*

During 2003:

– two States acceded to the Vienna Convention for the Protection of the Ozone Layer, 1985,[76] and the Montreal Protocol on Substances that Deplete the Ozone Layer, (the Montreal Protocol) 1987,[77] bringing the number of parties to 187 and 186, respectively;

– six States became parties to the Amendment to the Montreal Protocol, 1990,[78] 14 States became parties to the Amendment to the Montreal Protocol, 1992,[79] 23 States became parties to the Amendment to the Montreal Protocol, 1997,[80] and 18 States became parties to the Amendment to the Montreal Protocol, 1999,[81] bringing the number of parties to 170, 158, 112 and 63, respectively;

– two States acceded to the Protocol to the Convention on Long-range Transboundary Air Pollution on Long-term Financing of the Co-operative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe, 1979,[82] bringing the number of parties to 41;

– one State ratified, one State acceded to and one State accepted the Protocol to the 1979 Convention on Long-range Transboundary Air Pollution to Abate Acidification, Eutrophication and Ground-level Ozone, 1999,[83] bringing the number of parties to seven;

– five States acceded to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989,[84] bringing the number of parties to 158;

– three States ratified, four States accepted and one State approved the Amendment to the Basel Convention, 1995,[85] bringing the number of parties to 43;

– one State acceded to the "Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal, 1999,[86] bringing the number of parties to one;

[75] ECOSOC doc. EB.AIR/1998/1.
[76] United Nations *Treaty Series*, vol. 1513, p. 293.
[77] United Nations *Treaty Series*, vol. 1522, p. 3.
[78] UNEP/OzL.Pro.2/3, Annex II.
[79] UNEP/OzL.Pro.4/15, Annex III.
[80] UNEP/OzL.Pro.9/12, Annex IV.
[81] C.N.1231.TREATIES-1 of 28 January 2000.
[82] United Nations *Treaty Series*, vol. 1491, p. 167.
[83] ECOSOC doc. EB.AIR/1999/1.
[84] United Nations *Treaty Series*, vol. 1673, p. 57.
[85] UNEP/CHW.3/35.
[86] UNEP/CHW.1/WG/1/9/2.

– one State ratified the Amendment to the Convention on Environmental Impact Assessment in a Transboundary Context, 2001,[87] bringing the number of parties to two;

– one State ratified and one State acceded to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992,[88] bringing the number of parties to 35;

– two States ratified and one State acceded to the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1999,[89] bringing the number of parties to ten;

– one State ratified, three States acceded and one State approved the Convention on the Transboundary Effects of Industrial Accidents, 1992,[90] bringing the number of parties to 31;

– five States ratified the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 1998,[91] bringing the number of parties to 28;

– ten States ratified and six States acceded to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998,[92] bringing the number of parties to 54;

– 15 States ratified and three States acceded to the Stockholm Convention on Persistent Organic Pollutants, 2001,[93] bringing the number of parties to 42.

Other consideration by the General Assembly

At its fifty-eighth session, the General Assembly adopted without a vote three resolutions concerning environmental issues.

In its resolution 58/209 adopted on 23 December 2003 and entitled "Report of the Governing Council of the United Nations Environment Programme on its twenty-second session", the Assembly took note of the report of the Governing Council of the UNEP on its twenty-second session.[94] On the same day, the General Assembly also adopted resolution 58/216 on "Sustainable development in mountain regions" and resolution 58/217, entitled "International Decade for Action, 'Water for Life', 2005–2015". In the latter resolution, the General Assembly proclaimed the period from 2005 to 2015 the International Decade for Action, "Water for Life", to commence on World Water Day, 22 March 2005.

[87] C.N.44.2002.TREATIES-1 of 25 January 2002.
[88] United Nations *Treaty Series*, vol. 1936, p. 269.
[89] ECOSOC doc. M.p/WAT/AC.1/1991/1 of 24 March 1999.
[90] United Nations *Treaty Series*, vol. 2105, p. 457.
[91] United Nations *Treaty Series*, vol. 2161, p. 447.
[92] UNEP/FAO/PIC/CONF/5.
[93] C.N.531.2001.TREATIES-96 of 19 June 2001.
[94] A/58/25.

(b) Economic questions

Consideration by the General Assembly

At its fifty-eighth session, the General Assembly adopted a significant number of resolutions addressing economic issues. Among the resolutions, the following were adopted covering topics identified below:

– the economic field in general: resolution 58/129 adopted without a vote on 19 December 2003, entitled "Towards global partnership",[95] in which the Assembly stressed, first that the principles and approaches that govern global partnerships should be built on the firm foundation of the United Nations purposes and principles as set out in the United Nations Charter, and secondly that partnership should be consistent with national laws; and resolution 58/198 adopted on 23 December 2003 by recorded vote of 125 in favour to 1, with 37 abstentions, on "Unilateral economic measures as a means of political and economic coercion against developing countries",[96] in which the Assembly urged the international community to adopt measures to eliminate the use of unilateral coercive economic measures against developing countries that are not authorized by relevant organs of the United Nations or are inconsistent with the principles of international law as set forth in the United Nations Charter and that contravene the basic principles of the multilateral trading system;

– the field of international trade: resolution 58/197 adopted without a vote on 23 December 2003, entitled "International trade and development",[97] in which the Assembly recognized the crucial role of the expeditious implementation of the World Trade Organization agreements, in particular the Agreement on Textiles and Clothing; and resolution 58/204 entitled "Commodities".[98]

(c) Social questions

Population issues

1. Thirty-sixth session of the Commission on Population and Development

The Commission on Population and Development held its thirty-sixth session in New York from 31 March to 4 April 2003.[99] The Commission's work focused on the relationships between population, education and development. In order to facilitate the Commission's discussions, the Secretary General submitted to it a report on the topic, in which education as a human right was emphasized.[100]

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[95] See, for the report of the Secretary-General, A/58/227.

[96] See, for the report of the Secretary-General, A/58/301.

[97] See, for the report of the Secretary-General, A/58/414.

[98] See, for the report of the Secretary-General of the United Nations Conference on Trade and Development, A/57/381, annex.

[99] See E/2003/25.

[100] E/CN.9/2003/3.

2. Regular and annual sessions of the Executive Board of the United Nations Development Programme/United Nations Population Fund

The Executive Board of the United Nations Development Programme/United Nations Population Fund (UNDP/UNFPA) held two regular sessions in New York, from 20 to 23 January 2003 and from 8 to 12 September 2003 and one annual session in New York, from 6 to 19 June 2003.[101] Activities were devoted, *inter alia,* to gender issues. Structural and cultural differences were addressed in the context of a rights-based approach to development. The Fund worked to further the Secretary-General's human rights plan of action, entitled "Strengthening human rights-related United Nations action at country level: National protection systems and country teams". The Fund also encouraged the development and enforcement of laws prohibiting all forms of gender-based violence.

3. Status of international instruments and consideration by the General Assembly

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990[102]

During 2003, three States ratified and two States acceded to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 bringing the number of parties to 24 and leading to its entry into force on 1 July 2003.

At its fifty-eighth session, on 23 December 2003, the General Assembly adopted without a vote resolution 58/208, entitled "International migration and development", in which, after having recalled the Convention, the Assembly took note of the report of the Secretary-General on the matter.[103]

Social development issues

1. Forty-first session of the Commission for Social Development

The Commission for Social Development held its forty-first session in New York on 27 February 2002 and from 10 to 21 February 2003.[104] It made recommendations to the Economic and Social Council, including a recommendation on the drafting of a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities.

2. Status of international instruments and consideration by the General Assembly

Project of a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities

During 2003, the Ad Hoc Committee established by General Assembly resolution 56/168 in 2001 to consider proposals for a comprehensive and integral international

[101] See E/2003/35.
[102] United Nations *Treaty Series*, vol. 2220, p. 3.
[103] A/58/98.
[104] See E/2003/26.

convention to promote and protect the rights of persons with disabilities held its second session in New York from 16 to 27 June 2003. In its report,[105] the Committee recommended to the General Assembly that a convention be elaborated and that negotiations thereon be conducted in the Committee.

At its fifty-eighth session, the General Assembly adopted without a vote two resolutions referring to, *inter alia,* a convention on protection and promotion of the rights and dignity of persons with disabilities. The first resolution, resolution 58/132, was adopted on 22 December 2003 and entitled "Implementation of the World Programme of Action concerning Disabled Persons", while the second resolution, resolution 58/246, was adopted on 23 December 2003 and entitled "Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities". The Assembly welcomed the report of the Ad Hoc Committee in resolution 58/246 and invited States in resolution 58/132 to continue to participate actively in the negotiations within the Committee and, more generally, urged governments to address the situation of persons with disabilities with respect to all actions taken to implement existing human rights treaties to which they are parties. In the latter resolution, the Assembly also took note of the report of the Secretary-General on the implementation of the World Programme of Action concerning Disabled Persons,[106] in which the Secretary-General identified the development of international agreements on employment indicators as a priority.

Sporting issues

Consideration by the General Assembly

On 3 November 2003, the General Assembly adopted without a vote two resolutions with respect to sport issues: resolution 58/5 on "Sport as a means to promote education, health, development and peace", and resolution 58/6 entitled "Building a peaceful and better world through sport and the Olympic ideal". In the former, the Assembly invited governments to accelerate the elaboration of an international anti-doping convention in all sports activities.

(d) Cultural questions

Thirty-second session of the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO)

The General Conference of UNESCO held its thirty-second session in Paris from 29 September to 17 October 2003. On the last day of the session, the Conference adopted the Convention for the Safeguarding of the Intangible Cultural Heritage, 2003.[107]

The Security Council, in resolution 1483, adopted on 22 May 2003 on the situation between Iraq and Kuwait, acting under Chapter VII of the Charter of the United Nations, called upon UNESCO, and other international organizations, as appropriate, to assist in the implementation of its decision contained in paragraph 7 of the resolution; this decision required all Member States to take appropriate steps to facilitate the safe return to Iraqi

[105] See A/58/118 and Corr.1.
[106] A/58/61.
[107] MISC/2003/CLT/CH/14.

institutions of Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from the Iraq National Museum, the National Library, and other locations in Iraq since the adoption of resolution 661 (1990) of 6 August 1990, including by establishing a prohibition on trade in or transfer of such items and items with respect to which reasonable suspicion exists that they have been illegally removed.

Twelfth session of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its restitution in Case of Illicit Appropriation

The Committee held its twelfth session in Paris from 25 to 28 March 2003.[108] In the recommendation No. 4 of its report,[109] it invited States, *inter alia,* to ensure that police and customs and border services receive special training with regard to the illicit trafficking of cultural property so as best, where applicable, to implement the relevant UNESCO Conventions (the First Protocol for the Protection of Cultural Property in the Event of Armed Conflict, 1954,[110] and the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970[111]) the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 1995,[112] and other relevant international instruments.

Status of international instruments and consideration by the General Assembly

1. The Convention for the Safeguarding of the Intangible Cultural Heritage, 2003,[113] and the Convention for the Protection of the World Cultural and Natural Heritage, 1972[114]

During 2003, one State ratified and one State accepted the Convention for the Protection of the World Cultural and Natural Heritage, bringing the number of parties to 177.

In resolution 58/124 adopted without a vote on 17 December 2003, entitled "United Nations Year for Cultural Heritage, 2002", the General Assembly took note of the adoption of the Convention for the Safeguarding of the Intangible Cultural Heritage by the General Conference of UNESCO at its thirty-second session on 17 October 2003. In the same resolution, the Assembly also welcomed the ratifications of the Convention for the Protection of the World Cultural and Natural Heritage, 1972.

2. Other International Conventions

During 2003:

– five States acceded to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954,[115] and to the Second Protocol to the Convention for

[108] A/58/314.
[109] *Ibid.,* at p. 15.
[110] United Nations *Treaty Series,* vol. 249, p. 358.
[111] United Nations *Treaty Series,* vol. 823, p. 231.
[112] *ILM*, vol. 34, at p. 1322.
[113] MISC/2003/CLT/CH/14.
[114] United Nations *Treaty Series,* vol. 1037, p. 151.
[115] United Nations *Treaty Series,* vol. 249, p. 240.

the Protection of Cultural Property in the Event of Armed Conflict, 1999,[116] bringing the number of parties to 109 and 20 States, respectively;

– one State ratified and another acceded to the First Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954,[117] bringing the number of parties to 88;

– three States ratified and three States accepted the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970,[118] bringing the number of parties to 103;

– two States ratified the Convention on the Protection of the Underwater Cultural Heritage, 2001,[119] bringing the number of parties to two;

– three States became parties to the Convention on Stolen or Illegally Exported Cultural Objects of the International Institute for the Unification of Private Law, 1995,[120] bringing the number of parties to 21.

Other consideration by the General Assembly

At its fifty-eighth session, on 3 December 2003, the General Assembly adopted without a vote resolution 58/17, entitled "Return or restitution of cultural property to the countries of origin", in which the Assembly urged States to introduce effective national and international measures to prevent and combat illicit trafficking in cultural property, including special training for police, customs and border services. At the same session, on 19 December 2003, the General Assembly adopted resolution 58/128, entitled "Promotion of religious and cultural understanding, harmony and cooperation". In this resolution, the Assembly urged States to enact or rescind legislation, where necessary, to prohibit any discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

Consideration by the Economic and Social Council

On 22 July 2003, the Economic and Social Council adopted without a vote resolution 2003/29, entitled "Prevention of crimes that infringe on the cultural heritage of people in the form of movable property". In this resolution, the Economic and Social Council encouraged Member States to consider, where appropriate and in accordance with national law, when concluding relevant agreements with other States, the Model Treaty for the Prevention of Crimes that Infringe on the Cultural Heritage of People in the Form of Movable Property.[121]

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[116] United Nations *Treaty Series,* vol. 2253, p. 172.
[117] United Nations *Treaty Series,* vol. 249, p. 358.
[118] United Nations *Treaty Series,* vol. 823, p. 231.
[119] *ILM*, vol. 41, at p. 40.
[120] *ILM*, vol. 34, at p. 1322.
[121] The Model Treaty was adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in Havana on September 1990.

(e) Human rights and humanitarian questions

Human rights and humanitarian issues in general

1. Fifty-ninth session of the Commission on Human Rights

The Commission on Human Rights held its fifty-ninth session from 17 March to 24 April 2003, in Geneva. During this session, the Commission adopted a significant number of resolutions.[122] The following resolutions did not directly lead to any action by the General Assembly but contain points of legal interest:

– resolution 2003/4, entitled "Combating defamation of religions", in which the Commission urged all States, within their national framework, in conformity with international human rights instruments, to take all appropriate measures to combat hatred, discrimination, intolerance and acts of violence, intimidation and coercion motivated by religious intolerance, and to encourage understanding, tolerance and respect in matters relating to freedom of religion or belief;

– resolution 2003/19 on "The right to education", in which the Commission urged all States to take all necessary legislative measures to prohibit explicitly discrimination in education on the basis of race, colour, descent, national, ethnic or social origin, sex, language, religion, political or other opinion, property, disability, birth or other status which has the purpose or effect of nullifying or impairing equality of treatment in education; in this resolution, the Commission also called upon all States to take all appropriate legislative measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, and to take measures to incorporate in their legislation appropriate sanctions for violations and the provision of redress and rehabilitation;

– resolution 2003/20 on "Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights", in which the Commission urged all States to take appropriate legislative measures, in line with their international obligations, to prevent the illegal international trafficking in toxic and hazardous products and wastes, the transfer of toxic and hazardous products and wastes through fraudulent waste-recycling programmes, and the transfer of pollution industries, industrial activities and technologies, which generate hazardous wastes, from developed to developing countries;

– resolution 2003/22, entitled "Women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing", in which the Commission reaffirmed women's rights to an adequate standard of living, including adequate housing, as enshrined in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, 1966,[123] and urged governments to comply fully with their international and regional obligations and commitments concerning land tenure and the equal rights of women to own property and to an adequate standard of living, including adequate housing. In the same resolution, the Commission also affirmed that discrimination in law against women with respect to having access to, acquiring and securing land, property and housing, as well as financing for land, property and housing, constitutes a violation of a woman's human right to protection

[122] For the text of these resolutions, see E/2003/23.

[123] United Nations *Treaty Series,* vol. 993, p. 3.

against discrimination; finally, the Commission urged States to design and revise laws to ensure that women are accorded full and equal rights to own land and other property, and the right to adequate housing, including through the right of inheritance, and to undertake administrative reforms and other necessary measures to give women the same right as men to credit, capital, appropriate technologies, access to markets and information;

– resolution 2003/26 on "Promotion of the enjoyment of the cultural rights of everyone and respect for different cultural identities", in which the Commission reiterated, first that everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits, and secondly that everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author; the Commission also reaffirmed that all peoples have the right of self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development;

– resolution 2003/34 on "The right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms", in which the Commission called upon the international community to give due attention to the right to a remedy and, in particular, in appropriate cases, to receive restitution, compensation and rehabilitation, for victims of grave violations of international human rights law and humanitarian international law;

– resolution 2003/36 on "Interdependence between democracy and human rights", in which the Commission declared that the essential elements of democracy include respect for human rights and fundamental freedoms including, *inter alia*, freedom of association and freedom of expression and opinion, and also include access to power and its exercise in accordance with the rule of law, the holding of periodic free and fair elections by universal suffrage and by secret ballot as the expression of the will of the people, a pluralistic system of political parties and organizations, the separation of powers, the independence of the judiciary, transparency and accountability in public administration, and free, independent and pluralistic media;

– resolution 2003/38, entitled "Question of enforced or involuntary disappearances", in which the Commission reminded States first that, as proclaimed in article 2 of the Declaration on the Protection of All Persons from Enforced Disappearance, no State shall practice, permit or tolerate enforced disappearances, secondly that all acts of enforced or involuntary disappearance are crimes punishable by appropriate penalties which should take due account of their extreme seriousness under penal law and thirdly that, as proclaimed in article 11 of the Declaration, all persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured; the Commission also invited States to take legislative steps to prevent enforced or involuntary disappearances;

– resolution 2003/39 on "Integrity of the judicial system", in which the Commission listed a number of rights that everyone is entitled to claim under any judicial system, such as the right to a fair and public hearing by a competent, independent and impartial tribunal established by law;

– resolution 2003/42 on "The right to freedom of opinion and expression", in which the Commission called upon States to respect all human rights and fundamental freedoms and called on all parties to armed conflict to respect international humanitarian law, including

their obligations under the Geneva Conventions of 12 August 1949 for the protection of victims of war and the two Additional Protocols thereto of 8 June 1977, whose provisions extend protection to journalists in situations of armed conflict; in the same resolution, the Commission encouraged States to review their procedures and legislation to ensure that any limitations on the right to freedom of expression are only such as are provided by law and are necessary for the respect of the rights and reputations of others, or for the protection of national security or of public order (*ordre public*) or of public health or morals; finally, the Commission urged States to refrain from imposing restrictions which are not consistent with the provisions of article 19, paragraph 3, of the International Covenant on Civil and Political Rights, 1966;[124]

– resolution 2003/53 entitled "Extrajudicial, summary or arbitrary executions", in which the Commission reiterated the obligation of all States to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, while ensuring the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law, to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions; the Commission also reaffirmed the obligation of States to ensure the protection of the inherent right to life of all persons under their jurisdiction and called upon States to investigate promptly and thoroughly all cases of killings committed in the name of passion or in the name of honour, all killings committed for any discriminatory reason, and to bring those responsible to justice before a competent, independent and impartial judiciary, and to ensure that such killings are neither condoned nor sanctioned by government officials or personnel; finally, the Commission urged States in which the death penalty has not been abolished to comply with their obligations as assumed under relevant provisions of international human rights instruments, including in particular articles 6, 7 and 14 of the International Covenant on Civil and Political Rights, 1966,[125] and articles 37 and 40 of the Convention on the Rights of the Child, 1989;[126]

– resolution 2003/66 on the "Convention on the Prevention and Punishment of the Crime of Genocide", in which the Commission invited States that had not yet ratified or acceded to the Convention to do so and, where necessary to enact national legislation in conformity with the provisions of the Convention;

– resolution 2003/67 on "The question of the death penalty", in which the Commission called upon States that no longer applied the death penalty but maintained the penalty under their legislation to abolish it and, urged all States that still applied the death penalty to respect a number of conditions, such as not to impose the death penalty for any but the most serious crimes and only pursuant to a final judgment rendered by an independent and impartial competent court, and to ensure the right to a fair trial and the right to seek pardon or commutation of sentence;

– resolution 2003/71 entitled "Human rights and the environment as part of sustainable development", in which the Commission reaffirmed that everyone has the right, individually and in association with others, to participate in peaceful activities against violations of

[124] United Nations *Treaty Series,* vol. 999, p. 171.
[125] *Ibid.*
[126] United Nations *Treaty Series*, vol. 1577, p. 3.

human rights and fundamental freedoms and called upon States to take all necessary and appropriate measures to protect the exercise of everyone's human rights when promoting environmental protection and sustainable development;

– resolution 2003/72 on "Impunity", in which the Commission emphasized the importance of taking all necessary and possible steps to hold accountable perpetrators, including their accomplices, of violations of international human rights and humanitarian law and recognized that amnesties should not be granted to those who commit violations of international humanitarian and human rights law that constitute serious crimes and urged States to take action in accordance with their obligations under international law; in the resolution, the Commission also recognized that, for the victims of human rights violations, public knowledge of their suffering and the truth about the perpetrators, including their accomplices, of these violations were essential steps towards rehabilitation and reconciliation, and urged States to intensify their efforts to provide victims of human rights violations with a fair and equitable process through which these violations could be investigated and made public and to encourage victims to participate in such a process; finally, the Commission reaffirmed that crimes such as genocide, crimes against humanity, war crimes and torture are violations of international law and that perpetrators of such crimes should be prosecuted or extradited by States, and urged all States to take effective measures to implement their obligations to prosecute or extradite perpetrators of such crimes.

2. Fifty-fifth session of the Sub-Commission on the Promotion and Protection of Human Rights

The Sub-Commission on the Promotion and Protection of Human Rights held its fifty-fifth session in Geneva from 28 July to 15 August 2003. During this session, the Sub-Commission adopted a significant number of resolutions.[127] Some of them contain legal matters which were not directly addressed by the General Assembly or by the Commission:

– resolution 2003/2 on "Corruption and its impact on the full enjoyment of human rights, in particular economic, social and cultural rights", in which the Sub-Commission urged States to introduce national mechanisms to prevent and combat corruption through the establishment of specific anti-corruption legislation;

– resolution 2003/3, entitled "Report of the Working Group on Contemporary Forms of Slavery", in which the Sub-Commission urged States to review, enact or amend legislation to outlaw all forms of discrimination based on descent and invited States to review and, where necessary, to reform legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys; in this resolution, the Sub-Commission also called upon States to recognize that human trafficking is a gross violation of human rights and fundamental freedoms and, hence, to criminalize it in all its forms and to condemn and penalize traffickers and intermediaries and urged them to ensure that their policies and laws do not legitimize prostitution as the victims' choice of work, or promote the legalization or regulation of prostitution; the Sub-Commission also addressed in the same resolution the child labour issue and, in this respect, urged States *(a)* to ensure that the worst forms of child labour are prohibited and that the penalties are commensurate with the crimes committed and that this legislation

[127] For the text of these resolutions, see E/CN.4/Sub.2/2003/43.

is properly enforced, *(b)* while attempting ultimately to eliminate child labour and child domestic labour by, *inter alia*, enacting and implementing laws on compulsory and free primary education, to adopt and enforce measures and regulations to eliminate all discrimination against girls in education, skills development and training and to protect child workers, in particular child domestic workers, and ensure that they are not exploited and *(c)* to introduce comprehensive legislation to prohibit bonded labour in all its forms, as a matter of urgency, including provisions for the punishment of any future employers of bonded labourers; this legislation should include measures of compensation for having been subjected to bonded labour and debt bondage, rehabilitation assistance including, at a minimum and where applicable, the grant of enough land to sustain a single family throughout the year, and legal provisions to protect the ownership and occupation of such land by former bonded labourers; finally, the Sub-Commission invited States to introduce consolidated legislation on forced labour in general and recommended that governments, as a matter of priority, review, amend and enforce existing laws or enact new laws, to prevent the misuse of the Internet for trafficking, for the purposes of prostitution, pornography and the sexual exploitation of women and children;

– resolution 2003/10, entitled "International Criminal Court", in which the Sub-Commission regretted that the immunity allowed to nationals of States parties or not parties to the Rome Statute who participate in operations established or authorized by the Security Council for the maintenance or restoration of international peace and security, under the terms of Council resolution 1422 (2002) of 12 July 2002, had been extended by resolution 1487 (2003) of 12 June 2003, at the risk of perpetuating a temporary derogation by misconstruing article 16 of the Rome Statute;

– resolution 2003/11, entitled "Transfers of persons with particular reference to the death penalty", in which the Sub-Commission urged all States *(a)* not to transfer persons to the jurisdiction of States which still use the death penalty unless there is a guarantee that the death penalty will be neither sought nor applied in the particular case, *(b)* not to transfer persons to the jurisdiction of States where the person transferred may be held without trial or subject to an unfair trial, *(c)* to ensure that no person is transferred to the jurisdiction of another State outside the context of extradition, *(d)* to ensure that all persons have the effective possibility of challenging any proposed transfer to the jurisdiction of another State before its courts; in the same resolution, the Sub-Commission also reminded all States which refuse to transfer a person to the authorities of another State on one of the grounds indicated above that, where a person is suspected of having committed an international crime, that is to say, an offence in relation to which any State may exercise jurisdiction, they must ensure that *(a)* their national courts have the jurisdiction to try such suspects; *(b)* international crimes are treated as crimes in national law; *(c)* they do in fact prosecute such suspects, to which end any other State must provide such cooperation as is necessary and compatible with human rights law; and *(d)* the sentences imposed on those convicted are commensurate with the gravity of the offence; it was moreover added that nothing in the resolution precluded the possibility of transfer to the jurisdiction of the International Criminal Court;

– resolution 2003/17 on "Prohibition of forced evictions", in which the Sub-Commission reaffirmed that the practice of forced eviction constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing, the right to remain, the right to freedom of movement, the right to privacy, the right to property, the right to an adequate standard of living, the right to security of the home, the right to security of the person,

the right to security of tenure and the right to equality of treatment; in the resolution, the Sub-Commission also urged governments to undertake immediately measures, at all levels, aimed at eliminating the practice of forced evictions by, *inter alia*, repealing existing plans involving forced evictions as well as any legislation allowing for forced evictions and by adopting and implementing legislation ensuring the right to security of tenure for all residents;

– resolution 2003/19, entitled "Optional protocol to the International Covenant on Economic, Social and Cultural Rights", in which the Sub-Commission urged the open-ended working group of the Commission to draft an optional protocol to the International Covenant on Economic, Social and Cultural Rights that is comprehensive in scope and that provides that communications may be initiated by individual and collective victims as well as by individuals and groups empowered to initiate complaints on behalf of individual and collective victims; further, the instrument should be conceptualized as both a complaint mechanism and an inquiry procedure and preclude State party reservations;

– resolution 2003/21 on "The right of non-citizens", in which the Sub-Commission affirmed that international human rights law requires, in principle, the equal treatment of citizens and non-citizens and that States should ensure that all exceptions to this principle in their national legislation are consistent with international human rights standards;

– resolution 2003/22, entitled "Discrimination based on work and descent", in which the Sub-Commission reaffirmed that discrimination based on work and descent is a form of discrimination prohibited by international human rights law;

– resolution 2003/26, entitled "Systematic rape, sexual slavery and slavery-like practices", in which the Sub-Commission considered that the latest verdicts of the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone acknowledging that rape and, more recently, sexual enslavement are crimes against humanity, and the special recognition in the Rome Statute of the International Criminal Court that sexual violence and sexual slavery committed in the context of either an internal or an international armed conflict may constitute crimes against humanity, war crimes and genocide falling within the jurisdiction of the Court, represent a significant step in the protection of women's human rights as they challenge widespread acceptance that torture, rape and violence against women are an integral part of war and conflict and hold the perpetrators of such crimes accountable; in the same resolution, the Sub-Commission also reiterated that States should provide effective criminal penalties and compensation for unremedied violations in order to end the cycle of impunity with regard to sexual violence committed during armed conflicts.

3. Status of international instruments and consideration by the General Assembly

(i) *The International Covenant on Civil and Political Rights, 1966,*[128] *the Optional Protocols thereto (the Optional Protocol to the International Covenant on Civil and Political Rights, 1966,*[129] *and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989*[130]*) and the International Covenant on Economic, Social and Cultural Rights, 1966*[131]

During 2003, two States ratified the Covenant on Civil and Political Rights and the Optional Protocol thereto, and two States acceded to the Second Optional Protocol thereto, bringing the number of parties to 151, 104 and 51, respectively. During the same year, two States ratified the Covenant on Economic, Social and Political Rights, bringing the number of parties to 148.

At its fifty-eighth session, on 22 December, the General Assembly adopted without a vote resolution 58/165, entitled "International Covenants on Human Rights". In this resolution, having taken note of the report of the Secretary-General on the matter,[132] the Assembly, *inter alia,* welcomed the annual reports of the Human Rights Committee submitted to it at its fifty-seventh[133] and fifty-eighth[134] sessions and strongly appealed to all States that had not yet done so to become parties to the two Covenants and the Protocols thereto. The Assembly also stressed the importance of avoiding the erosion of human rights by derogations, underlined the necessity of strict observance of the agreed conditions and procedures for derogation under article 4 of the Covenant on Civil and Political Rights, and encouraged States parties to consider limiting the extent of any reservation lodged in respect of the Covenants, to formulate any reservations as precisely and narrowly as possible and to ensure that no reservation is incompatible with the object and purpose of the relevant treaty. Finally, the Assembly emphasized that States must ensure that any measures to combat terrorism comply with their obligations under relevant international law, including their obligations under the Covenants.

(ii) *The International Convention on the Elimination of All Forms of Racial Discrimination, 1966*[135]

During 2003, one State ratified and one State acceded to the Convention on the Elimination of All Forms of Racial Discrimination, bringing the number of parties to 169.

At its fifty-eighth session, on 22 December, the General Assembly adopted, by recorded vote of 174 in favour to 2, with 2 abstentions, resolution 58/160, entitled "Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action". In the resolution, the Assembly, *inter alia,* welcomed the emphasis placed by the Committee on the Elimination of Racial Discrimination on the importance

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[128] United Nations *Treaty Series,* vol. 999, p. 171.
[129] *Ibid.*
[130] United Nations *Treaty Series*, vol. 1642, p. 414.
[131] United Nations *Treaty Series,* vol. 993, p. 3.
[132] A/58/307.
[133] A/57/40.
[134] A/58/40.
[135] United Nations *Treaty Series,* vol. 660, p. 195.

of follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the measures recommended to strengthen the implementation of the Convention as well as the functioning of the Committee[136] and also took note of the recommendations contained in the interim report of the Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance;[137] in the same resolution, the Assembly acknowledged that no derogation from the prohibition of racial discrimination, genocide, the crime of apartheid or slavery was permitted, as defined in the obligations under the relevant human rights instruments.

(iii) *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984,[138] and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002*[139]

During 2003, two States acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and two States ratified and one State acceded to the Optional Protocol thereto, bringing the number of parties to 134 and 3, respectively.

At its fifty-eighth session, on 22 December, the General Assembly adopted without a vote resolution 58/164 on "Torture and other cruel, inhuman or degrading treatment or punishment". In the resolution, the Assembly, *inter alia,* welcomed the report of the Committee against Torture[140] and took note of the interim report of the Special Rapporteur of the Commission on Human Rights on the question of torture.[141] The Assembly also stressed that, under article 4 of the Convention, torture must be made an offence under domestic criminal law, and emphasized that acts of torture are serious violations of international humanitarian law and that the perpetrators are liable to prosecution and punishment. Finally, the Assembly underlined the obligations of States parties under article 10 of the Convention to ensure education and training for personnel who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

(iv) *The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990*[142]

During 2003, three States ratified and one State acceded to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, bringing the number of parties to 24 and leading to its entry into force on 1 July 2003.

At its fifty-eighth session, on 22 December, the General Assembly adopted without a vote resolution 58/166 on "International Convention on the Protection of the Rights of All Migrant Workers and Memberships of their Families". In the resolution, the Assembly, *inter alia,* took note of the report of the Secretary-General on the status of the Convention,[143]

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[136] A/57/18.
[137] A/58/313.
[138] United Nations *Treaty Series*, vol. 1465, p. 85.
[139] General Assembly resolution 57/199, annex.
[140] A/58/44.
[141] A/58/120.
[142] United Nations *Treaty Series*, vol. 2220, p. 3.
[143] A/58/221.

acknowledged with appreciation its entry into force and called upon all Member States that had not yet done so to consider urgently signing and ratifying or acceding to it. On the same day, the General Assembly also adopted without a vote resolution 58/190, entitled "Protection of migrants", in which all Members States were requested *(a)*, in conformity with national legislation and applicable international legal instruments to which they were party, firmly to prosecute violations of labour law with regard to the conditions of work of migrant workers; *(b)* to enact domestic criminal legislation to combat the international trafficking of migrants; *(c)* when enacting national security legislation measures, to observe national legislation and applicable international legal instruments to which they are party, in order to respect the human rights of migrants; in the resolution, the Assembly also underlined the duty of States parties to the Vienna Convention on Consular Relations, 1963,[144] to ensure full respect of the rights of foreign nationals, regardless of their immigration status, to communicate with a consular official of their own State in the case of detention, and the obligation of the State in whose territory the detention occurs to inform the foreign national of that right.

(v) *Other international conventions*

During 2003, one State acceded to the Convention on the Prevention and Punishment of the Crime of Genocide, 1948,[145] bringing the number of parties to 135.

In 2003, two States acceded to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, 1968,[146] bringing the number of parties to 48.

(vi) *Other consideration by the General Assembly*

On 22 December 2003, the General Assembly adopted a number of other resolutions addressing human rights issues and containing points of legal interest. In addition to the resolutions adopted with respect to particular regions of the world,[147] the Assembly adopted the following resolutions:

– resolution 58/162, adopted by recorded vote of 125 in favour to 6, with 29 abstentions, entitled "Use of mercenaries as a means of violating human rights and implementing the exercise of the right of peoples to self-determination"; in the resolution, the Assembly, *inter alia,* welcomed the entry into force of the Convention against the Recruitment, Use, Financing and Training of Mercenaries, 1989,[148] and called upon all States to take legislative measures to ensure that their territories and other territories under their control, as well as their nationals, were not used for recruitment, assembly, financing, training and transit of mercenaries for the planning of activities designed to impede the right of peoples to self-determination, to destabilize or overthrow the government of any State or to dismember

[144] United Nations *Treaty Series*, vol. 596, p. 261.

[145] United Nations *Treaty Series,* vol. 78, p. 277.

[146] United Nations *Treaty Series*, vol. 754, p. 73.

[147] See resolution 58/191 on the "Situation of human rights in Cambodia", resolution 58/176 on the "Subregional Centre for Human Rights and Democracy in Central Africa", resolution 58/163 on "The right of the Palestinian people to self-determination", resolution 58/196 on the "Situation of human rights in the Democratic Republic of the Congo", resolution 58/195 on the "Situation of human rights in the Islamic Republic of Iran", resolution 58/247 on the "Situation of human rights in Myanmar" and resolution 58/194 on the "Situation of human rights in Turkmenistan".

[148] United Nations *Treaty Series,* vol. 2163, p. 75.

or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the right of peoples to self-determination;

– resolution 58/167, adopted without a vote on "Human rights and cultural diversity", in which the Assembly, *inter alia,* urged States to ensure that their legal systems reflect multicultural diversity within their societies.

– resolution 58/168, adopted without a vote, entitled "Strengthening United Nations action in the field of human rights through the promotion of international cooperation and the importance of non-selectivity, impartiality and objectivity"; in the resolution, the Assembly, *inter alia,* reiterated that, by virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all people had the right freely to determine, without external reference, their political status and to pursue their economic, social and cultural development, and that every State had the duty to respect that right within the provisions of the Charter, including respect for territorial integrity; the Assembly also invited Members to consider adopting, as appropriate, within the framework of their respective legal systems and in accordance with their obligations under international law, especially the Charter and international human rights instruments, the measures that they may deem appropriate to achieve further progress in international cooperation in promoting and encouraging respect for human rights and fundamental freedoms;

– resolution 58/171, adopted by recorded vote of 125 in favour to 53, entitled "Human rights and unilateral coercive measures"; in the resolution, the Assembly, *inter alia,* urged all States to refrain from adopting or implementing any unilateral measures not in accordance with international law and the Charter of the United Nations, in particular those of a coercive nature with extraterritorial effect, which create obstacles to trade relations among States, those that impede the full achievement of economic and social development by the population of the affected countries, and those that hinder their well-being and that create obstacles to the full enjoyment of their human rights;

– resolution 58/172, adopted by recorded vote of 173 in favour to 3, with 5 abstentions, on "The right to development", in which the Assembly, *inter alia,* stressed the importance of a genuine political commitment on the part of all governments through a firm legal framework as far as corruption is concerned and urged States to sign and ratify the United Nations Convention against Corruption as soon as possible;

– resolution 58/173, adopted by recorded vote of 174 in favour to 2, with 4 abstentions, on "The right of everyone to the enjoyment of the highest attainable standard of physical and mental health"; in the resolution, the Assembly, *inter alia,* urged States to take steps in order to achieve the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical mental health, including, in particular, the adoption of legislative measures; in this respect, the Assembly invited States to consider signing and ratifying the World Health Organization Framework Convention on Tobacco Control;[149]

– resolution 58/178, adopted without a vote, entitled "Declaration on the Right and Responsibility of Individuals, Group and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms"; in the resolution, the Assembly, *inter alia,* urged States to ensure that any measures to combat terrorism and preserve national security comply with their obligations under international law, in

[149] See, WHO HD 9130.6 and resolution WHA 26.1.

particular under international human rights law, and did not hinder the work and safety of human rights defenders;

– resolution 58/182, adopted without a vote on the "Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities"; in the resolution, the Assembly, *inter alia,* took note of the report of the Secretary-General on the matter[150] and reaffirmed the obligation of States to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law;

– resolution 58/183, adopted without a vote, entitled "Human rights in the administration of justice"; in the resolution, the Assembly, *inter alia,* affirmed that States must ensure that any measures taken to combat terrorism, including in the administration of justice, comply with their obligations under international law, in particular international human rights, refugee and humanitarian law;

– resolution 58/184, adopted by recorded vote of 179 in favour to none, with 1 abstention, on the "Elimination of all forms of religious intolerance"; in the resolution, the Assembly, *inter alia,* urged States to ensure that their constitutional and legal system provided effective guarantees of freedom of thought, conscience, religion or belief, including the provision of effective remedies in cases where the right to freedom of thought, conscience, religion or belief was violated; the Assembly also called upon States to ensure, in particular, that no one within their jurisdiction was, because of their religion or belief, deprived of the right to life, liberty and security of person, the right to freedom of expression, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment and the right not to be arbitrarily arrested or detained, and to protect their physical integrity and bring to justice all perpetrators of violations of these rights; finally, the Assembly urged States to recognize the right of all persons to worship or assemble in connection with a religion or belief and emphasized that restrictions on the freedom to manifest religion or belief were permitted only if those limitations were prescribed by law, were necessary to protect public safety, order, health or morale, or the fundamental rights and freedoms of others, and were applied in a manner that does not vitiate the right to freedom of thought, conscience and religion;

– resolution 58/186, adopted by recorded vote of 176 in favour to 1, with 2 abstentions, on "The right to food"; in the resolution, the Assembly, *inter alia,* reaffirmed the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger;

– resolution 58/187, adopted by recorded vote of 181 in favour to none, with 1 abstention, entitled "Protection of human rights and the fundamental freedoms while countering terrorism"; in the resolution, the Assembly took note of the report of the Secretary-General on this issue,[151] encouraged States, while countering terrorism, to take into account relevant United Nations resolutions and decisions on human rights and reaffirmed that States must ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular international human rights, refugee and humanitarian law;

– resolution 58/188, adopted by recorded vote of 106 in favour to 55, with 19 abstentions, entitled "Respect for the purposes and principles contained in the Charter of the United

[150] A/58/255.

[151] E/CN.4/2003/120.

Nations to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms and in solving international problems of a humanitarian character"; in the resolution, the Assembly, *inter alia,* stressed the vital role of the work of the United Nations and regional arrangements in promoting and encouraging respect for human rights and fundamental freedoms, as well as in solving international problems of a humanitarian character, and affirmed that all States, in these activities, must fully comply with the principles set forth in Article 2 of the Charter, in particular respecting the sovereign equality of all States and refraining from the threat or use of force against the territorial integrity or political independence of any State, or acting in any manner inconsistent with the purpose of the United Nations;

– resolution 58/189, adopted by recorded vote of 111 in favour to 10, with 55 abstentions, entitled "Respect for the principles of national sovereignty and diversity of democratic systems in electoral processes as an important element for the promotion and protection of human rights"; in the resolution, the Assembly, *inter alia,* affirmed, first that all peoples have the right to self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development, secondly that every State has the duty to respect that right, in accordance with the provisions of the Charter, and finally that peoples have the right to determine methods and to establish institutions regarding electoral processes;

At its fifty-eighth session, on 22 December 2003, the General Assembly also adopted the following resolutions in the field of human rights: resolution 58/158 entitled "International Decade of the World's Indigenous People";[152] resolution 58/159 on "The incompatibility between democracy and racism"; resolution 58/161 on "Universal realization of the right of peoples to self-determination"; resolution 58/170 entitled "Enhancement of international cooperation in the field of human rights"; resolution 58/174 on "Human rights and terrorism"; resolution 58/175 entitled "National institutions for the promotion and protection of human rights";[153] resolution 58/180 on "Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization";[154] resolution 58/181 entitled "United Nations Decade for Human Rights Education, 1995–2004";[155] resolution 58/192 entitled "Promotion of peace as a vital requirement for the full enjoyment of all human rights by all" and resolution 58/193 on "Globalization and its impact on the full enjoyment of all human rights".

Humanitarian assistance

Consideration by the General Assembly

In addition to the numerous resolutions adopted in relation with humanitarian assistance to particular countries,[156] the General Assembly adopted several resolutions on the issue of humanitarian assistance in general, which contain matters of legal interest:

[152] See, for the report of the Secretary-General, A/58/289.

[153] See, for the report of the Secretary-General, A/58/261.

[154] See, for the report of the Secretary-General, A/58/212.

[155] See, for the report of the Secretary-General, A/58/318.

[156] See resolution 58/115 on the "Assistance for humanitarian relief and the economic and social rehabilitation of Somalia", resolution 58/26 on the "Emergency humanitarian assistance to Malawi", resolution 58/27 B on the "Emergency international assistance for peace, normalcy and reconstruction

– resolution 58/25, adopted without a vote on 5 December 2003, entitled "International cooperation on humanitarian assistance in the field of natural disasters, from relief to development"; in the resolution, the Assembly, *inter alia,* called upon States to adopt, where required, and to continue to implement effectively necessary legislative and other appropriate measures to mitigate the effects of natural disasters;

– resolution 58/114, adopted without a vote on 17 December 2003, entitled "Strengthening of the coordination of emergency humanitarian assistance of the United Nations"; in the resolution, having taken note of the report of the Secretary-General, [157] the Assembly, *inter alia,* strongly condemned all forms of violence to which humanitarian personnel and United Nations and its associated personnel were increasingly subjected, as well as any act or failure to act, contrary to international law, which obstructed or prevented humanitarian personnel and United Nations and its associated personnel from discharging their humanitarian functions; in the same resolution, the Assembly also reaffirmed the obligation of all States and parties to an armed conflict to protect civilians in armed conflicts in accordance with international humanitarian law, and invited States to promote a culture of protection, taking into account the particular needs of women, children, older persons and persons with disabilities;

– resolution 58/127, adopted without a vote on 19 December 2003, entitled "Assistance in mine action"; in the resolution, the Assembly, *inter alia,* took note of the report of the Secretary-General on the subject[158] and invited States to explore the possibility of strengthening internationally negotiated and non-discriminatory legal instruments that address landmines and other unexploded ordnance, as well as their victims.

Women's issues

1. Twenty-eighth and twenty-ninth session of the Committee on the Elimination of Discrimination against Women

The Committee held its twenty-eighth and twenty-ninth sessions in New York from 13 to 31 January 2003 and from 30 June to 18 July 2003, respectively.[159] According to a March 2003 report,[160] the activities of the Committee were largely devoted to reviewing reports of States on measures they had taken to implement the Convention on the Elimination of All Forms of Discrimination against Women, 1979.[161]

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of war-stricken Afghanistan", resolution 58/233 on the "New Partnership for Africa's Development: progress in implementation and international support", resolution 58/123 on the "Special assistance for the economic recovery and reconstruction of the Democratic Republic of the Congo", resolution 58/116 on the "Economic assistance for the reconstruction and development of Djibouti", resolution 58/117 on the "International assistance to and cooperation with the Alliance for the Sustainable Development of Central Africa", resolution 58/120 on the "Special Emergency economic assistance for the recovery and the development of the Comoros" and resolution 58/121 on the "Assistance for humanitarian relief, rehabilitation and development for Timor-Leste".

[157] A/58/89.

[158] A/58/260.

[159] A/58/38.

[160] *Ibid.*

[161] United Nations *Treaty Series*, vol. 1249, p. 13.

2. The United Nations Development Fund for Women

According to the report of the Secretary-General,[162] the activities of the United Nations Development Fund for Women in 2003 consisted of, *inter alia,* expanding the capacity for effective implementation at the national level of the Convention on the Elimination of All Forms of Discrimination against Women, 1979.

3. Status of international instruments and consideration by the General Assembly

(i) *The Convention on the Elimination of All Forms of Discrimination against Women, 1979,*[163] *and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999*[164]

During 2003, three States ratified and two States acceded to the Convention on the Elimination of All Forms of Discrimination against Women, bringing the number of parties to 175; six States ratified and four States acceded to the Optional Protocol thereto, bringing the number of parties to 59.

At its fifty-eighth session, on 22 December, the General Assembly adopted without a vote three resolutions, all referring to the above mentioned Convention, resolution 58/145, resolution 58/147 and resolution 58/148, entitled respectively "Convention on the Elimination of All Forms of Discrimination against Women", "Elimination of domestic violence against women" and "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". In resolution 58/147, the Assembly focused on violence against women as a human rights issue. The Assembly stressed in this resolution that States have an obligation to exercise due diligence to prevent, investigate and punish the perpetrators of domestic violence against women and to provide protection to the victims, and also stressed that not to do so violated and impaired or nullified the enjoyment of their human rights and fundamental freedoms; in addition, the Assembly reaffirmed the commitment to handle criminal matters relating to all forms of domestic violence and called upon States, *inter alia, (a)* to adopt, strengthen and implement legislation that prohibits domestic violence, prescribes punitive measures and establishes adequate legal protection against domestic violence and periodically to review, evaluate and revise these laws and regulations so as to ensure their effectiveness in eliminating domestic violence; *(b)* to make domestic sexual violence a criminal offence and to ensure proper investigation and prosecution of perpetrators; *(c)* to adopt and/or strengthen policies and legislation in order to strengthen preventive measures, protect the human rights of victims, ensure proper investigation and prosecution of perpetrators and provide legal and social assistance to victims of domestic violence; *(d)* to take measures to ensure the protection of women subjected to violence, access to just and effective remedies, *inter alia*, through compensation and indemnification and healing of victims, and the rehabilitation of perpetrators.

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[162] A/59/135.

[163] United Nations *Treaty Series*, vol. 1249, p. 13.

[164] United Nations *Treaty Series*, vol. 2131, p. 83.

(ii) *The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990*[165]

During 2003, three States ratified and two States acceded to the Convention, bringing the number of parties to 24 and leading to its entry into force on 1 July 2003.

In resolution 58/143, adopted without a vote on 22 December 2003 and entitled "Violence against women migrant workers", the General Assembly, after taking note of the report of the Secretary-General,[166] acknowledged the entry into force of the Convention and called upon States, *inter alia,* to sign and ratify it and to put in place penal and criminal sanctions to punish perpetrators of violence against women migrant workers.

4. Other consideration by the General Assembly

At its fifty eighth-session, the General Assembly adopted without a vote, on 22 December 2003, resolution 58/146, entitled "Improvement of the situation of women in rural areas" and, on 23 December 2003, resolution 58/206, entitled "Women in development".

In resolution 58/146, the Assembly took note of the report of the Secretary-General[167] and invited members States, *inter alia,* to design and revise laws to ensure that, where private ownership of land and property exists, rural women are accorded full and equal rights to own land and other property.

In resolution 58/206, after having taken note of the report of the Secretary-General on the matter,[168] the Assembly urged States, *inter alia, (a)* to promote and protect the rights of women workers, to take action to remove legal barriers to gender equality at work; *(b)* to design and revise laws that ensure that women are accorded full and equal rights to own land and other property, including through inheritance, and to undertake administrative reforms and other necessary measures to give women the same right as men to credit, capital and appropriate technologies and access to markets and information; *(c)* to promote, through legislation, family-friendly and gender sensitive work environments, the facilitation of breastfeeding for working mothers and the provision of the necessary care for working women's children and other dependants and *(d)* to create and maintain a non-discriminatory and gender-sensitive legal environment by reviewing legislation, with a view to striving to remove discriminatory provisions as soon as possible, preferably by 2005, and eliminating legislative gaps that leave women and girls without protection of their rights and without effective recourse against gender-based discrimination.

Children, youth and ageing persons' issues

1. Status of international instruments and consideration by the General Assembly

The Convention on the Rights of the Child, 1989.[169] and the two Optional Protocols thereto, the Optional Protocol on the involvement of children in armed conflict, 2000,[170]

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[165] United Nations *Treaty Series,* vol. 2220, p. 3.
[166] A/58/161.
[167] A/58/167 and Add.1.
[168] A/58/135.
[169] United Nations *Treaty Series*, vol. 1577, p. 3.
[170] *Ibid.*

and the Optional Protocol on the sale of children, child prostitution and child pornography, 2000.[171]

During 2003, one State acceded to the Convention on the Rights of the Child, bringing the number of parties to 192; 18 States ratified and three States acceded to the first Optional Protocol, and 15 States ratified and eight States acceded to the second Optional Protocol, bringing the number of parties to 67 and 69, respectively.

At its fifty-eighth session, on 22 December 2003, the General Assembly adopted without a vote resolution 58/156 on "The girl child", in which the Assembly stressed the need for full and urgent implementation of the rights of the girl child as guaranteed to her under all human rights instruments, including the above mentioned Convention and the Protocols thereto. The Assembly also called upon States *(a)* to institute legal reforms to ensure the full and equal enjoyment by the girl child of all human rights and fundamental freedoms and to take effective action against violations of those rights and freedoms; *(b)* to enact and strictly enforce laws to ensure marriage is entered into only with the free and full consent of the intending spouses, to enact and strictly enforce laws concerning the minimum legal age of consent and the minimum age for marriage and to raise the minimum age for marriage where necessary; and *(c)* to enact and enforce legislation to protect girls from all forms of violence and exploitation.

During the same session, on 22 December 2003, the General Assembly adopted another resolution on the "Rights of child" which referred to the above mentioned international instruments. Resolution 58/157, was adopted by recorded vote of 179 in favour to 1, and focused on particular issues: first, on the implementation of the Convention on the Rights of the Child and the Optional Protocols thereto; secondly, on promoting and protecting the rights of children and non-discrimination against children; thirdly, on prevention and eradication of the sale of children, child prostitution and child pornography and, fourthly, on children in armed conflict.

Regarding the first issue, the General Assembly expressed its concern about the great number of reservations to the Convention, and urged Members States to withdraw reservations incompatible with the object and purpose of the Convention and to consider reviewing other reservations with a view to withdrawal. In addition, the Assembly called upon Member States that had not yet done so to sign, ratify or accede to the international instruments protecting the rights of children and to take all appropriate measures for the implementation of these rights by, *inter alia,* putting in place effective national legislation and ensuring adequate and systematic training in the rights of the child for professional groups working with and for children, including specialized judges, law enforcement officials and lawyers.

Regarding the second issue, the General Assembly called upon Member States to ensure the protection of the rights of children in relation to a series of matters, such as identity, family relations and birth registration, poverty, health, education, freedom from violence, non-discrimination, the girl child, children with disabilities, migrant children, children working and/or living on the street, refugee and internally displaced children, children alleged to have infringed or recognized as having infringed penal law, recovery and social reintegration and child labour. In this respect, the Assembly urged all States that had not yet done so to consider ratifying the Conventions adopted by the International Labour Organization, namely the Convention concerning Minimum Age for Admission

[171] United Nations *Treaty Series*, vol. 1577, p. 3.

to Employment, 1973,[172] and the Convention concerning the Prohibition and Immediate Action for the elimination of the Worst Forms of Child Labour, 1999.[173]

2. Other consideration by the General Assembly

At its fifty-eighth session, the General Assembly adopted without a vote on 22 December 2003 resolution 58/133, entitled "Policies and programmes involving youth" in which, after taking note of the report of the Secretary-General[174], the Assembly reaffirmed the obligations of States to promote and protect human rights and fundamental freedoms and their full enjoyment by young people.

Health issues

Consideration by the General Assembly

During 2003, the General Assembly adopted a number of resolutions concerning health. In resolution 58/179, adopted on 22 December 2003 by recorded vote of 181 in favour to 1, entitled "Access to medication in the context of pandemics such as HIV/AIDS, tuberculosis and malaria", the Assembly reaffirmed that the right of everyone to the enjoyment of the highest attainable standard of physical and mental health was a human right; the Assembly also called upon States to adopt and implement legislation, in accordance with applicable international law, including international agreements acceded to, to safeguard access to preventive, curative or palliative pharmaceutical products or medical technologies free from any limitations by third parties.

Refugees and displaced persons' issues

1. The Office of the United Nations High Commissioner for Refugees (UNHCR)

In a report on "Strengthening the capacity of the Office of the UN High Commissioner for Refugees to carry out its mandate",[175] the High Commissioner listed among the actions to be taken by the General Assembly, the accession by States to the Convention relating to the Status of Refugees, 1951,[176] the Protocol to the Convention relating to the Status of Refugees, 1967,[177] the Convention relating to the status of Stateless Persons, 1954,[178] and the Convention on the Reduction of Statelessness, 1961,[179] and the implementation of the Agenda for Protection.

Moreover, in the annual report submitted to the General Assembly,[180] the High Commissioner informed the General Assembly that the "Convention Plus" programme had been launched. The purpose of this initiative was the development of special agreements or arrangements to facilitate progress towards durable solutions with respect to the protection of refugees.

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[172] United Nations *Treaty Series,* vol. 1015, p. 297.
[173] United Nations *Treaty Series,* vol. 2133, p. 161.
[174] E/CN.5/2003/4.
[175] A/58/410.
[176] United Nations *Treaty Series*, vol. 189, p. 137.
[177] United Nations *Treaty Series*, vol. 606, p. 267.
[178] United Nations *Treaty Series*, vol. 360, p. 117.
[179] United Nations *Treaty Series*, vol. 989, p. 175.
[180] A/58/12.

2. The fifty-fourth session of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees

The Executive Committee of the Programme of the UNHCR held its fifty-fourth session in Geneva from 29 September to 3 October 2003. Many decisions were taken by the Committee at the end of the session involving legal considerations.[181]

On the issue of "International Protection" (decision B), the Committee recognized that such protection is both a legal concept and at the same time an action-oriented function.

On the question of "The return of persons found not to be in need of international protection" (decision C), the Committee *(a)* recalled the obligation of States to receive back their own nationals, as well as the right of States, under international law, to expel aliens while respecting obligations under international refugees and human rights law; *(b)* recalled also that the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000,[182] set out the obligation of States parties to facilitate and accept, without undue or unreasonable delay, the return of a person who had been smuggled and who was its national or who had the right of permanent residence in its territory at the time of the return; *(c)* reaffirmed the right of everyone to leave any country, including his or her own, and to return to his or her own country as well as the obligation of States to receive back their nationals; *(d)* recalled further that Annex 9 to the Convention on International Civil Aviation, 1944,[183] required that States, when requested to provide travel documents to facilitate the return of its nationals, respond within a reasonable period of time, and no more than 30 days after such request was made; *(e)* urged States to adopt measures leading to the grant of legal status to stateless persons; *(f)* recommended that UNCHR complement the efforts of States in the return of persons found not to be in need of international protection by, *inter alia,* continuing its dialogue with States to review their citizenship legislation.

On the issue of "Protection Safeguards in Interception Measures" (decision D), the Committee, *inter alia, (a)* recalled the emerging legal framework for combating criminal and organized smuggling and trafficking of persons, in particular the Protocol Against the Smuggling of Migrants by Land, Sea and Air, 2000,[184] which, *inter alia,* contemplates the interception of vessels enjoying freedom of navigation in accordance with international law, on the basis of consultations between the flag State and the intercepting State in accordance with international maritime law, provided that there are reasonable grounds to suspect that the vessel is engaged in the smuggling of migrants by sea; *(b)* recalled also the duty of States and shipmasters to ensure the safety of life at sea and to come to the aid of those in distress or in danger of being lost at sea, as contained in numerous instruments of the codified system of international maritime law; *(c)* recognized that States had international obligations regarding the security of civilian air transportation and that persons whose identities are unknown represent a potential threat to the security of air transportation as contained in numerous instruments of the codified system on international aviation law; *(d)* recommended, as far as interception measures were concerned, that State authorities and agents acting on behalf of the intercepting State should take, consistent with their obligations under international law, all appropriate steps in the implementation of interception measures to preserve and to protect the right of life and the right not to be

[181] For the text of the decisions, see A/58/12/Add.1.
[182] A/55/383.
[183] United Nations *Treaty Series*, vol. 15, p. 295.
[184] United Nations *Treaty Series*, vol. 189, p. 137.

subjected to torture or other cruel, inhuman or degrading treatment or punishment of persons intercepted; that interception measures should take into account the fundamental difference, under international law, between those who seek and are in need of international protection, and those who can resort to the protection of their country of nationality or of another country; that intercepted asylum-seekers and refugees should not become liable to criminal prosecution under the Protocol Against the Smuggling of Migrants by Land, Sea and Air, 2000, by reason of having been the object of conduct set forth in article 6 of the Protocol, nor should any intercepted person incur any penalty for illegal entry or presence in a State in cases where the terms of article 31 of the Convention relating to the Status of Refugees, 1951,[185] are met.

On the question of protection from sexual abuse and exploitation (decision E), the Committee urged States, *inter alia,* to respect and ensure the right of all individuals within their territory and subject to their jurisdiction, to security of person, by enforcing relevant national laws, consistent with international law.

3. Status of international instruments and consideration by the General Assembly

The Convention relating to the Status of Refugees, 1951,[186] the Protocol to the Convention relating to the Status of Refugees, 1967,[187] the Convention relating to the status of Stateless Persons, 1954,[188] and the Convention on the Reduction of Statelessness, 1961.[189]

During 2003, one State acceded to the Convention relating to the Status of Refugees and two States acceded to the Protocol thereto, bringing the number of parties to 142 and 141, respectively; one State acceded to both the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness, bringing the number of parties to 55 and 27, respectively.

At its fifty-eighth session, on 22 December 2003, the General Assembly adopted without a vote resolution 58/151, entitled "Office of the UNHCR". On the same day, the General Assembly also adopted without a vote resolution 58/169 on "Human rights and mass exodus", in which the Assembly took note of the report of the Secretary-General on the subject.[190]

4. Other consideration by the General Assembly

In addition to the resolutions adopted in relation to particular regional areas,[191] the General Assembly adopted at its fifty-eighth session, on 22 December 2003, resolution 58/153 entitled "Implementing actions proposed by the UN High Commissioner for

[185] United Nations *Treaty Series*, vol. 189, p. 137.
[186] United Nations *Treaty Series*, vol. 189, p. 137.
[187] United Nations *Treaty Series*, vol. 606, p. 267.
[188] United Nations *Treaty Series*, vol. 360, p. 117.
[189] United Nations *Treaty Series*, vol. 989, p. 175.
[190] A/58/186.
[191] Regarding Africa, see resolution 58/149 on "Assistance to refugees, returnees and displaced persons in Africa" and resolution 57/306 on "Investigation into sexual exploitation of refugees by aid workers in West Africa"); regarding the Countries of the Commonwealth of Independent States and the Neighboring States, see resolution 58/154 on "Follow-up to the Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and the Neighboring States".

Refugees to strengthen the capacity of his Office to carry out its mandate" and resolution 58/177 on "Protection of and assistance to internally displaced persons". In these resolutions, the Assembly took note respectively of the report of the High Commissioner[192] and of the report of the Representative of the Secretary-General.[193]

(f) International drug control

Forty-sixth session of the Commission on Narcotic Drugs

The Commission held its forty-sixth session in Vienna from 8 to 17 March 2003.[194] Among the numerous resolutions adopted by the Commission during this session,[195] were resolution 46/1, entitled "Renewing emphasis on demand reduction prevention and treatment efforts in compliance with the international drug control treaties" and resolution 46/4, entitled "Supporting the international drug control system through joint action", in which the Commission highlighted the importance of effective drug control legislation to reduce drug trafficking and illicit use of drugs and urged States parties to take all measures to safeguard the integrity of the international drug control treaties, in particular to ensure the full implementation of those provisions which oblige States parties to limit the use of narcotics drugs and psychotropic substances exclusively to medical and scientific purposes. The Commission also called upon States in resolution 46/1 to ensure that national laws, particularly those regarding possession and use of drugs, were in conformity with the international drug control treaties and were actively implemented.

Seventy-sixth, seventy-seventh and seventy-eighth sessions of the International Narcotics Control Board (INCB)

The INCB held its seventy-sixth, seventy-seventh and seventy-eighth sessions, all in Vienna, from 3 to 7 February, from 26 May to 6 June and from 29 October to 14 November 2003, respectively.[196] The work of the Control Board was entirely devoted to reviewing the implementation of the international drug treaties.

Status of international instruments and consideration by the General Assembly

The Convention on Psychotropic Substances, 1971,[197] the Protocol amending the Single Convention on Narcotic Drugs, 1972,[198] the Single Convention on Narcotic Drugs as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1975,[199] and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.[200]

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[192] A/58/410.
[193] A/58/393.
[194] See E/2003/28/Rev.1, E/CN.7/2003/19/Rev.1.
[195] *Ibid.*
[196] See E/INCB/2003/1.
[197] United Nations *Treaty Series*, vol. 1019, p. 175.
[198] United Nations *Treaty Series*, vol. 976, p. 3.
[199] United Nations *Treaty Series*, vol. 976, p. 105.
[200] ECOSOC doc. E/CONF.82/15, Corr.1 and Corr.2.

During 2003, two States acceded to the Convention on Psychotropic Substances, one State acceded to the Protocol amending the Single Convention on Narcotic Drugs, two States ratified the Single Convention on Narcotic Drugs as amended by the latter Protocol and one State acceded to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, bringing the number of parties to 174, 121, 175 and 168, respectively.

At its fifty-eighth session, on 22 December 2003, the General Assembly adopted resolution 58/141 entitled "International cooperation against the world drug problem", in which the Assembly addressed different aspects of the world drug problem. The Assembly reaffirmed that combating drug abuse must be carried out with full respect for the sovereignty and territorial integrity of States, the principle of non-intervention in the internal affairs of States and all human rights and fundamental freedoms, and on the basis of the principles of equal rights and mutual respect.

(g) Crime prevention issues

Twelfth session of the Commission on Crime Prevention and Criminal Justice

The Commission on Crime Prevention and Criminal Justice held its twelfth session in Vienna from 13 to 22 May 2003.[201] At this session, the Commission considered a report from the Centre for International Crime Prevention, [202] in which it was stated that one of the core priorities of the Centre was the promotion of the ratification process of the United Nations Convention against Transnational Organized Crime, 2000,[203] and the three supplementing Protocols thereto, as well as the provision of assistance to States seeking to ratify them. It was also reported that efforts were developed towards the completion of the negotiation of the draft United Nations Convention against Corruption.

Fifth, sixth and seventh sessions of the Ad Hoc Committee for the Negotiation of a Convention against Corruption

In 2003, the Ad Hoc Committee established by General Assembly resolution 55/61 held three sessions in Vienna, respectively from 10 to 21 March, from 21 July to 8 August and from 29 September to 1 October 2003.[204] During the last session, on 1 October 2003, it approved the draft United Nations Convention against Corruption[205] and decided to submit it to the General Assembly.

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[201] See E/2003/30.
[202] See E/CN.15/2003/2, p. 4, para. 6.
[203] A/55/383.
[204] See the October report of the Ad Hoc Committee (A/58/422).
[205] *Ibid*, at p. 18, para. 103.

Status of international instruments and consideration by the General Assembly

1. The United Nations Convention against Transnational Organized Crime, 2000,[206] and the three Protocols supplementing the United Convention against Transnational Organized Crime (the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000,[207] the Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000,[208] and the Protocol against the Illicit Manufacturing in Firearm, Their Parts and Components and Ammunition, 2000[209])

During 2003, 28 States ratified and three States acceded to the United Nations Convention against Transnational Organized Crime, bringing the number of parties to 59 and leading to its entry into force on 29 September 2003; 21 States ratified and three States acceded to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, bringing the number of parties to 45 and leading to its entry into force on 23 December 2003; 18 States ratified and two States acceded to the Protocol against Smuggling of Migrants by Land, Sea and Air, bringing the number of parties to 40; finally, five States ratified and four States acceded to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, bringing the number of parties to 12.

At its fifty-eighth session, on 22 December 2003, the General Assembly adopted without a vote three resolutions related to the United Nations Convention against Transnational Organized Crime, namely, resolution 58/135 entitled "International cooperation in the fight against transnational organized crime: assistance to States in capacity-building with a view to facilitating the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto"; resolution 58/137 entitled "Strengthening international cooperation in preventing and combating trafficking in persons and in protecting victims of such trafficking" and resolution 58/140 entitled "Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity".

In all three resolutions, the General Assembly welcomed the entry into force of the Convention and the forthcoming entry into force of the first Protocol thereto, and urged States and regional organizations that had not yet done so to ratify the Convention and the three Protocols thereto.

In resolutions 58/135 and 58/140, the General Assembly took note of the Secretary-General reports on the respective matters[210] and, in resolution 58/137, the Assembly urged Members States to take a series of legal measures: *(a)* to employ a comprehensive approach to combating trafficking in persons, incorporating law enforcement efforts and, where appropriate, the confiscation and seizure of the proceeds of trafficking; *(b)* to criminalize trafficking in persons; *(c)* to establish the offences of trafficking in persons as a predicate offence for money-laundering offences; *(d)* to adopt legislative or other measures to reduce the demand that fosters all forms of trafficking in persons; *(e)* to discourage, especially among men, the demand that fosters sexual exploitation in accordance with the Protocol

[206] A/55/383.
[207] *Ibid.*
[208] *Ibid.*
[209] A/55/383/Add.2.
[210] See E/CN/2003/5 and A/58/222, respectively.

to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; *(f)* to adopt measures in accordance with their domestic law in order to first, fight sexual exploitation with a view to abolishing it, by prosecuting and punishing those who engage in that activity; secondly, treat victims and witness with sensitivity throughout criminal judicial proceedings in accordance with the Convention; thirdly, promote the legislative and other measures necessary to establish a wide range of assistance to the victims of trafficking; and fourthly, to provide humane treatment for all these victims in accordance with the Protocol related to the trafficking persons. In the same resolution, the General Assembly also urged Member States to ensure that the measures taken against trafficking in persons are consistent with internationally recognized principles of non-discrimination and that they respect the human rights and fundamental freedoms of victims.

2. The United Nations Convention against Corruption, 2003[211]

During 2003, one State ratified the United Nations Convention against Corruption, bringing the number of parties to one.

In resolution 58/4, adopted without a vote on 31 October 2003, entitled "United Nations Convention against Corruption", the General Assembly adopted the United Nations Convention against Corruption and urged all States to ratify it as soon as possible.

On 23 December 2003, the General Assembly adopted without a vote resolution 58/205, entitled "Preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets to the countries of origin". Having taken note of the report of the Secretary General,[212] the General Assembly stated in the resolution that the prevention of corrupt practices, transfer of assets of illicit origin and the return of such assets to the countries of origin had not been adequately regulated by all national legislation and international legal instruments. As a result, the Assembly underlined the responsibility of all governments to enact laws aimed at preventing those practices and encouraged all of them that had not yet done so to enact such laws.

3. Other international conventions

During 2003:

– two States ratified and 18 States acceded to the International Convention against the Taking of Hostages, 1979,[213] bringing the number of parties to 136;

– 18 States acceded to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973,[214] bringing the number of parties to 144;

– 12 States ratified and 25 States acceded to the International Convention for the Suppression of Terrorist Bombings, 1997,[215] bringing the number of parties to 115;

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[211] A/58/422.
[212] A/58/125.
[213] United Nations *Treaty Series*, vol. 1316, p. 205.
[214] United Nations *Treaty Series*, vol. 1035, p. 167.
[215] United Nations *Treaty Series*, vol. 2149, p. 256..

– and 19 States ratified and 12 States acceded to the International Convention for the Suppression of the Financing of Terrorism, 1999, [216] bringing the number of parties to 107.

4. Other consideration by the General Assembly

On 22 December 2003, the General Assembly adopted two resolutions concerning crime prevention which were not directly related to specific conventions, namely resolution 58/136, entitled "Strengthening international cooperation and technical assistance in promoting the implementation of the universal conventions and protocols related to terrorism within the framework of the activities of the Center for International Crime Prevention" and resolution 58/139 on the "United Nations African Institute for the Prevention of Crime and the Treatment of Offenders".

(h) Ad hoc international criminal tribunals

Statutes of the ad hoc international criminal tribunals

The Security Council adopted resolution 1503 on 28 August 2003 and resolution 1512 on 27 October 2003, in which, acting under Chapter VII of the United Nations Charter, it decided to amend, respectively, article 15[217] (The Prosecutor) and articles 11 (Composition of the Chambers) and 12 quater[218] (Status of *ad litem* judges) of the Statute of the International Criminal Tribunal for Rwanda.

In resolution 1481 adopted on 19 May 2003, the Security Council decided, under Chapter VII of the United Nations Charter, to amend article 13 quater[219] (Status of *ad litem* judges) of the Statute of the International Criminal Tribunal for the former Yugoslavia.

Consideration by the General Assembly

At its fifty-eighth session, the General Assembly adopted decision 58/504 on 9 October 2003, in which it took note of the eighth 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,[220] and decision 58/505 on 9 October 2003, in which it took note of the tenth 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.[221]

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[216] United Nations *Treaty Series*, vol. 2178, p. 197.
[217] For the text of the amendment, see Security Council resolution 1503 (2003), annex I.
[218] For the text of the amendment, see Security Council resolution 1512 (2003), annex.
[219] For the text of the amendment, see Security Council resolution 1481 (2003), annex.
[220] See A/58/140-S/2003/707.
[221] See A/58/297-S/2003/829.

(i) Safety of United Nations personnel

During 2003, six States acceded to the Convention on the Safety of United Nations and Associated Personnel, 1994,[222] bringing the number of parties to 69.

Consideration by the General Assembly

At its fifty-eighth session, the General Assembly adopted without a vote two resolutions addressing the issue of safety of United Nations personnel;[223] resolution 58/82 adopted on 9 December 2003, entitled "Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel", and resolution 58/122 adopted on 17 December 2003, entitled "Safety and security of humanitarian personnel and protection of United Nations personnel".

In both resolutions, after having taken note of the reports of the Secretary-General on the respective subjects,[224] the Assembly first, urged States to ensure that crimes against United Nations and associated personnel do not go unpunished and that the perpetrators of such crimes are brought to justice, secondly called upon States to consider becoming parties to and to respect fully their obligations under the relevant international instruments, in particular the Convention on the Safety of United Nations and Associated Personnel, and finally recommended that the Secretary-General continue to seek the inclusion of, and that host countries include, key provisions of the Convention, including those regarding the prevention of attacks against members of the operation, the establishment of such attacks as crimes punishable by law and the prosecution or extradition of offenders, in future as well as, if necessary, in existing status-of-forces, status-of-mission and host country agreements negotiated between the United Nations and those countries, mindful of the importance of the timely conclusion of such agreements.

Moreover, in resolution 58/122, the General Assembly, welcoming the adoption by the Security Council of resolution 1502 on 26 August 2003 on the safety and security of humanitarian personnel and United Nations and its associated personnel, also *(a)* called upon all States to consider becoming parties to and to respect fully their obligations under the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies; *(b)* called upon all States to provide adequate and prompt information in the event of the arrest or detention of humanitarian personnel or United Nations and its associated personnel, to afford them the necessary medical assistance and to allow independent medical teams to visit and examine the health of those detained, and urged them to take the necessary measures to ensure the speedy release of United Nations and other personnel carrying out activities in fulfilment of the mandate of a United Nations operation who have been arrested or detained in violation of their immunity, in accordance with the relevant conventions and applicable international humanitarian law; and *(c)* requested the Secretary-General to seek the inclusion, in negotiations of headquarters and other mission agreements concerning United Nations and its associated personnel, of the applicable conditions contained in

[222] United Nations *Treaty Series*, vol. 2051, p. 363.

[223] See also resolution 57/338 adopted by the General Assembly at its fifty-seventh session on 15 September 2003 and entitled "Condemnation of the attack on United Nations personnel and premises in Baghdad".

[224] See A/58/187 and A/58/344, respectively.

the Convention on the Privileges and Immunities of the United Nations, the Convention on the Privileges and Immunities of the Specialized Agencies and the Convention on the Safety of United Nations and Associated Personnel.

4. LAW OF THE SEA

(a) Status of international instruments[225]

In 2003, four States became parties to the United Nations Convention on the Law of the Sea (the Convention), 1982,[226] bringing the total number of States parties to 145. Six States became parties to the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 1994,[227] bringing the total number of States parties to 117. Nineteen additional States became parties to the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995,[228] bringing the total number of States parties to 51. One State became a party to the Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, 1997,[229] bringing the total number of States parties to 13. On 31 May 2003, the Protocol on the Privileges and Immunities of the International Seabed Authority, 1998,[230] entered into force, 30 days after the date of the deposit of the tenth instrument of ratification, approval, acceptance or accession. Subsequently, one more State became a party to the Protocol, bringing the total number of States parties to 11.

(b) Report of the Secretary-General[231]

The report of the Secretary-General on oceans and the law of the sea was submitted to the General Assembly at its fifty-eighth session and covers a number of areas, including maritime space, safety of navigation, crimes at sea, marine resources, the marine environment and sustainable development, marine science and technology, settlement of disputes, capacity-building and international cooperation and coordination.

In the section of the report relating to maritime space, it was noted that, at its ninth annual session (28 July to 7 August 2003), the International Seabed Authority had considered a proposal by the secretariat of the Authority to carry out a study on the implications of article 82, paragraph 4, of the Convention. It was generally agreed that the study should be limited to the responsibilities of the Authority set out in the relevant provisions of article 82. Furthermore, in the area of maritime claims and the delimitation of maritime zones, it was reported that, in order to improve information regarding legislative measures undertaken by States parties in implementing the Convention, the Division for

[225] For a complete list of signatories and States parties to the international instruments relating to the law of the sea, see *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2003* (ST/LEG/SER.E/22).

[226] United Nations *Treaty Series*, vol. 1833, p. 3.

[227] United Nations *Treaty Series*, vol. 1836, p. 3.

[228] United Nations *Treaty Series*, vol. 2167, p. 3.

[229] United Nations *Treaty Series*, vol. 2167, p. 271.

[230] United Nations *Treaty Series*, vol. 2214, p. 133.

[231] A/58/65 and Add.1.

Ocean Affairs and the Law of the Sea, Office of Legal Affairs, had circulated a questionnaire to all States in February 2002, requesting input on the application of its provisions. As of February 2003, replies had been received from 22 States parties and two non-parties.

Regarding safety of navigation, it was reported that many aspects of this subject are regulated within the framework of a number of United Nations organizations, in particular the International Maritime Organisation (IMO), which constitutes a comprehensive and substantial body of global rules and regulations. It was further noted that the outcome of the initiative of the Office of the United Nations High Commissioner for Refugees (UNHCR) and IMO in 2002 to consider more effective modes of cooperation in response to emergency situations at sea and challenges posed by complex rescue scenarios had been considered by the IMO Subcommittee on Radio Communications and Search and Rescue in January 2003. As a consequence, the Maritime Safety Committee (MSC), at its seventy-seventh session, from 28 May to 6 June, adopted amendments relating to the new chapter V of the International Convention for the Safety of Life at Sea, 1974.[232] The amendments were expected to enter into force on 1 July 2006. Furthermore, also at its seventy-seventh session, the MSC approved draft amendments to the International Convention on Maritime Search and Rescue, 1979,[233] for adoption in 2004, and adopted amendments to the 1988 Protocol to the International Convention on Load Lines, 1966.[234] Furthermore, the IMO Marine Environment Protection Committee (MEPC), at its forty-ninth session in July 2003, considered a proposal to amend annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978[235] relating thereto, relating to single-hull oil tankers.[236] A new Convention on Seafarers' Identity Documents was also adopted on 19 June 2003 at the ninety-first session of the International Labour Conference to replace the 1958 Convention on the same subject.[237]

Regarding crimes at sea, it was reported that the IMO Legal Committee had begun considering possible amendments to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988,[238] and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988,[239] in order to strengthen the means of combating unlawful acts, including terrorist acts. Moreover, in order to facilitate cooperation among States against the illicit traffic in narcotic drugs and psychotropic substances by sea, the United Nations International Drug Control Programme had prepared, with the assistance of an expert working group, a Practical Guide for Competent National Authorities under article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.[240] The Guide addressed, *inter alia*, the legal and practical considerations to be borne in mind when establishing or designating a competent national authority.

In the area of marine resources, the marine environment and sustainable development, it was noted that a draft convention to address the problem of invasive species in ballast

[232] Resolution MSC.142(77). United Nations *Treaty Series*, vol. 1184, p. 2.
[233] United Nations *Treaty Series*, vol. 1405, p. 97.
[234] Resolution MSC.143 (77). For the text of the Protocol, see MCS 77/26/Add.1.
[235] United Nations *Treaty Series*, vol. 1340, p. 61.
[236] MEPC 49/16/1.
[237] For the text of the Revised Convention, see the website of the International Labour Organization, http://www.ilo.org.
[238] United Nations *Treaty Series*, vol. 1678, p. 201.
[239] *Ibid*.
[240] United Nations *Treaty Series*, vol. 1582, p. 95.

water was to be finalized in 2003, under the auspices of IMO, to enable its adoption at a Diplomatic Conference on Ballast Water Management in early 2004.[241]

In the section of the report on dispute settlement, it was noted that the annex VII arbitral tribunal constituted for the MOX Plant case (*Ireland v. United Kingdom*) had began to hear oral arguments in June 2003 but suspended proceedings until 1 December 2003, in view of questions raised regarding the positions of the parties under the law of the European Communities. The European Commission had brought to the attention of the annex VII arbitral tribunal that it was examining the question of whether to institute proceedings under article 226 of the European Community Treaty. The annex VII arbitral tribunal declined to order provisional measures specifically requested by Ireland and instead affirmed the provisional measures that had been prescribed by the International Tribunal for the Law of the Sea in 2001.[242]

It was also noted in the report that at a special Meeting of States parties, on 2 September 2003, Mr. Anthony Amos Lucky (Trinidad and Tobago) was elected as a judge to fill a vacancy in the International Tribunal for the Law of the Sea.

(c) Consideration by the General Assembly

At its fifty-seventh session, the General Assembly, on 23 December 2003, without reference to a Main Committee, adopted by a recorded vote of 156 to 1, with 2 abstentions, resolution 58/240, entitled "Oceans and the law of the sea", in which it noted with satisfaction the continued contribution of the International Tribunal of the Law of the Sea to the peaceful settlement of disputes in accordance with Part XV of the Convention, underlined the important role of the Tribunal concerning the interpretation or application of the Convention and the Agreement relating to the Implementation of Part XI of the Convention, encouraged States parties to the Convention that had not yet done so 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 parties to note the provisions of annexes V, VI, VII and VIII to the Convention concerning, respectively, conciliation, the Tribunal, arbitration and special arbitration. By the same resolution, the General Assembly welcomed the work of IMO in developing guidelines on places of refuge for ships in need of assistance and in developing amendments to the International Convention for the Safety of Life at Sea, 1974,[243] and to the International Convention on Maritime Search and Rescue, 1979,[244] and the work of the International Labour Organization to consolidate and modernize international maritime labour standards. Moreover, the Assembly urged flag States without an effective maritime administration and appropriate legal frameworks to establish or enhance the necessary infrastructure, legislative and enforcement capabilities to ensure effective compliance with, and implementation and enforcement of, their responsibilities under international law and invited IMO and other relevant competent international

[241] For the most recent draft articles, see text prepared during the 48th session of MEPC (7–11 October 2002), IMO document MEPC 48/21, annex 2.

[242] See Order No. 3 entitled "Suspension of Proceedings on Jurisdiction and Merits, and Request for Further Provisional Measures" available on the website of the International Bureau of the Permanent Court of Arbitration, which is serving as registry in the proceedings, at http://www.pca-cpa.org.

[243] United Nations *Treaty Series,* vol. 1184, p. 2.

[244] United Nations *Treaty Series*, vol. 1405, p. 97.

organizations to study, examine and clarify the role of the "genuine link" in relation to the duty of flag States to exercise effective control over ships flying their flag. The Assembly further requested the Secretary-General, in cooperation and consultation with relevant agencies, organizations and programmes of the United Nations system, to prepare and disseminate to States a comprehensive elaboration of the duties and obligations of flag States, including the potential consequences for non-compliance prescribed in the relevant international instruments. It called upon States and relevant international bodies to cooperate in the prevention and combating of piracy and armed robbery at sea and invited States to participate in the review by the Legal Committee of IMO of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988,[245] and its 1988 Protocol, to strengthen means of combating such unlawful acts, including terrorist acts. The General Assembly also welcomed the convening by IMO of a diplomatic conference to adopt an international convention for the control and management of ships' ballast waters and sediments. Resolution 58/240 further contained, in its annex, amendments to the terms of reference, guidelines and rules of the Trust Fund for the purpose of facilitating the preparation of submissions to the Commission on the Limits of the Continental Shelf for developing States, in particular the least developed countries and small island developing States, and compliance with article 76 of the Convention.

On 24 November 2003, the General Assembly also adopted, without reference to a Main Committee, and without a vote, resolution 58/14, entitled "Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments", in which it, taking note with appreciation of the report of the Secretary-General,[246] welcomed the entry into force of the Convention on the Conservation and Management of Fishery Resources in the South-East Atlantic Ocean, 2001,[247] on 13 April 2003, and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993,[248] on 24 April 2003.

5. INTERNATIONAL COURT OF JUSTICE[249]

(a) Organization of the Court

In November 2002, the General Assembly and the Security Council had re-elected Judges Shi Jiuyong and A. G. Koroma and elected Messrs H. Owada, B. Simma and P. Tomka as Members of the Court for a term of nine years beginning on 6 February 2003. On that latter date, the Court elected Judge Shi Jiuyong as President and Raymond Ranjeva as Vice-President of the Court, for a term of three years.

In accordance with Article 29 of the Statute, the Court forms annually a Chamber of Summary Procedure, which was constituted as follows in 2003:

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[245] United Nations *Treaty Series,* vol. 1678, p. 201.

[246] A/58/215.

[247] United Nations *Treaty Series* vol. 2221, p. 189.

[248] United Nations *Treaty Series* vol. 2221, p. 91.

[249] For the composition of the Court, see *Official Records of the General Assembly, Fifty-eighth Session, Supplement No.4 and corrigendum* (A/58/4 and Corr.1).

Members

President Shi Jiuyong
Vice-President R. Ranjeva
Judges G. Parra-Aranguren, A. S. Al-Khasawneh and T. Buergenthal

Substitute Members

Judges N. Elaraby and H. Owada.

Following elections held on 6 February 2003, the Court's Chamber for Environmental Matters, which was established in 1993 pursuant to Article 26, paragraph 1 of the Statute, and whose mandate in the following composition runs to February 2006, is composed as follows:

President Shi Jiuyong
Vice-President R. Ranjeva
Judges G. Guillaume, P.H. Kooijmans, F. Rezek, B. Simma and P. Tomka.

(b) Jurisdiction of the Court

As at 31 December 2003, 64 States had made declarations recognizing as compulsory the jurisdiction of the Court, as contemplated by Article 36, paragraphs 2 and 5, of the Statute.

Peru. . . . . 7 July 2003

[Translation from the Spanish]

"In accordance with Article 36, paragraph 2, of the Statute of the International Court of Justice, the Government of Peru recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation and on condition of reciprocity, the jurisdiction of the International Court of Justice in all legal disputes, until such time as it may give notice withdrawing this declaration.

This declaration does not apply to any dispute with regard to which the parties have agreed or shall agree to have recourse to arbitration or judicial settlement for a final and binding decision or which has been settled by some other method of peaceful settlement.

The Government of Peru reserves the right at any time by means of a notification addressed to the Secretary-General of the United Nations to amend or withdraw this declaration or reservations set out herein. Such notification shall take effect on the day on which it is received by the Secretary-General of the United Nations.

This declaration shall apply to countries that have entered reservations or set conditions with respect to it, with the same restrictions as set by such countries in their respective declarations."

Lima, 9 April 2003.

(c) Contentious cases before the Court[250]

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

On 3 February 2003, the Court delivered its judgment, a summary of which is given below, followed by the text of the operative paragraph.

On 24 April 2001, the Federal Republic of Yugoslavia (hereinafter referred to as the "FRY") instituted proceedings, whereby, referring to Article 61 of the Statute of the Court, it requested the Court to revise the Judgment delivered on 11 July 1996 in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections (I.C.J. Reports 1996 (II)*, p. 595).

Since the Court included upon the Bench no judge of the nationality of either of the Parties, the FRY chose Mr. Vojin Dimitrijevic and Bosnia and Herzegovina Mr. Sead Hodzic to sit as judges *ad hoc*. After Mr. Hodzic had subsequently resigned from his duties, Bosnia and Herzegovina designated Mr. Ahmed Mahiou to sit in his stead.

Bosnia and Herzegovina filed its written observations on the admissibility of the FRY's Application within the time-limit fixed by the Court. The Court decided that a second round of written pleadings was not necessary. Public hearings were held on 4, 5, 6 and 7 November 2002.

At the oral proceedings, the following final submissions were presented by the Parties:

On behalf of the Government of the FRY, at the hearing of 6 November 2002:

> "For the reasons advanced in its Application of 23 April 2001 and in its pleadings during the oral proceedings held from 4 to 7 November 2002, the Federal Republic of Yugoslavia respectfully requests the Court to adjudge and declare:
>
> - that there are newly discovered facts of such a character as to lay the 11 July 1996 Judgment open to revision under Article 61 of the Statute of the Court; and
>
> - that the Application for revision of the Federal Republic of Yugoslavia is therefore admissible."

On behalf of the Government of Bosnia and Herzegovina, at the hearing of 7 November 2002:

> "In consideration of all that has been submitted by the representatives of Bosnia and Herzegovina in the written and oral stages of these proceedings, Bosnia and Herzegovina requests the Court to adjudge and declare that the Application for revision of the Judgment of 11 July 1996, submitted by the Federal Republic of Yugoslavia on 23 April 2001, is not admissible."

[250] The materials contained herein are based on the summaries prepared by the Registry of the Court of its judgements, advisory opinions and orders. The full texts of the judgements, advisory opinions and orders are published in the *I.C.J Reports.* Procedural orders such as those relating to time-limits in particular proceedings are not reflected.

The Court notes that in its Application for revision of the 1996 Judgment, the FRY relies on Article 61 of the Statute, which provides for revision proceedings to open with a judgment of the Court declaring the Application admissible on the grounds contemplated by the Statute; article 99 of the Rules makes express provision for proceedings on the merits if, in its first judgment, the Court has declared the application admissible.

Thus, the Court points out, the Statute and the Rules of Court foresee a "two-stage procedure". The first stage of the procedure for a request for revision of the Court's judgment should be "limited to the question of admissibility of that request". Therefore, at the current stage of the proceedings the Court's decision is limited to the question whether the request satisfies the conditions contemplated by the Statute. Under Article 61 of the Statute, these conditions are as follows:

(a) the application should be based upon the "discovery" of a "fact";

(b) the fact, the discovery of which is relied on, must be "of such a nature as to be a decisive factor";

(c) the fact should have been "unknown" to the Court and to the party claiming revision when the judgment was given;

(d) ignorance of this fact must not be "due to negligence"; and

(e) the application for revision must be "made at latest within six months of the discovery of the new fact" and before ten years have elapsed from the date of the judgment.

The Court observes that an application for revision is admissible only if each of the conditions laid down in Article 61 is satisfied. If any one of them is not met, the application must be dismissed.

The Court then begins by ascertaining whether there is here a "fact" which, although in existence at the date of its Judgment of 11 July 1996, was at that time unknown both to the FRY and to the Court.

In this regard, it notes that in its Application for revision of the Court's Judgment of 11 July 1996, the FRY contended the following:

> "The admission of the FRY to the United Nations as a new Member on 1 November 2000 is certainly a new fact. It can also be demonstrated, and the Applicant submits, that this new fact is of such a nature as to be a decisive factor regarding the question of jurisdiction *ratione personae* over the FRY.
>
> After the FRY was admitted as a new Member on 1 November 2000, dilemmas concerning its standing have been resolved, and it has become an unequivocal fact that the FRY did not continue the personality of the SFRY, was not a Member of the United Nations before 1 November 2000, was not a State party to the Statute, and was not a State party to the Genocide Convention. . .
>
> The admission of the FRY to the United Nations as a new Member clears ambiguities and sheds a different light on the issue of the membership of the FRY in the United Nations, in the Statute and in the Genocide Convention."

The Court points out that in its oral pleadings, the FRY did not invoke its admission to the United Nations in November 2000 as a decisive "new fact", within the meaning of Article 61 of the Statute, capable of founding its request for revision of the 1996 Judgment. The FRY claimed that this admission "as a new Member" as well as the Legal Counsel's

letter of 8 December 2000 inviting it, according to the FRY, "to take treaty actions if it wished to become a party to treaties to which the former Yugoslavia was a party" were

> "events which. . . revealed the following two decisive facts:
>
> 1. the FRY was not a party to the Statute at the time of the Judgment; and
>
> 2. the FRY did not remain bound by article IX of the Genocide Convention continuing the personality of the former Yugoslavia".

The Court observes that it is on the basis of these two "facts" that, in its oral argument, the FRY ultimately founded its request for revision. The FRY further stressed at the hearings that these "newly discovered facts" had not occurred subsequently to the Judgment of 1996. In this regard, the FRY stated that "the FRY never argued or contemplated that the newly discovered fact would or could have a retroactive effect".

For its part, Bosnia and Herzegovina maintained the following:

> "there is no 'new fact' capable of 'laying the case open' to revision pursuant to Article 61, paragraph 2, of the Court's Statute: neither the admission of Yugoslavia to the United Nations which the Applicant State presents as a fact of this kind, or in any event as being the source of such a fact, nor its allegedly new situation vis-à-vis the Genocide Convention. . . constitute facts of that kind".

In short, Bosnia and Herzegovina submitted that what the FRY referred to as "facts" were "the consequences. . . of a fact, which is and can only be the admission of Yugoslavia to the United Nations in 2000". It stated that "Article 61 of the Statute of the Court. . . requires that the fact was 'when the judgment was given, unknown to the Court and also to the party claiming revision'" and that "this implies that. . . the fact in question actually did exist 'when the judgment was given'". According to Bosnia and Herzegovina, the FRY "is regarding its own change of position [as to its continuation of the personality of the SFRY] (and the ensuing consequences) as a new fact". Bosnia and Herzegovina concluded that the "new fact" invoked by the FRY "is subsequent to the Judgment whose revision is sought". It noted that the alleged new fact could have "no retroactive or retrospective effect".

With a view to providing the context for the contentions of the FRY, the Court then recounts the background to the case:

In the early 1990s the SFRY, made up of Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia, began to break up. On 25 June 1991 Croatia and Slovenia both declared independence, followed by Macedonia on 17 September 1991 and Bosnia and Herzegovina on 6 March 1992. On 22 May 1992, Bosnia and Herzegovina, Croatia and Slovenia were admitted as Members to the United Nations; as was the former Yugoslav Republic of Macedonia on 8 April 1993.

On 27 April 1992 the "participants of the joint session of the SFRY Assembly, the National Assembly of the Republic of Serbia and the Assembly of the Republic of Montenegro" adopted a declaration. Expressing the will of the citizens of their respective Republics to stay in the common state of Yugoslavia, they stated that:

> "1. The Federal Republic of Yugoslavia, continuing the state, international legal and political personality of the Socialist Federal Republic of Yugoslavia, shall strictly abide by all the commitments that the SFR of Yugoslavia assumed internationally,

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Remaining bound by all obligations to international organizations and institutions whose member it is. . ."

An official note of the same date from the Permanent Mission of Yugoslavia to the United Nations stated *inter alia*

"Strictly respecting the continuity of the international personality of Yugoslavia, the Federal Republic of Yugoslavia shall continue to fulfil all the rights conferred to, and obligations assumed by, the Socialist Federal Republic of Yugoslavia in international relations, including its membership in all international organizations and participation in international treaties ratified or acceded to by Yugoslavia." (United Nations doc. A/46/915, annex I.)

On 22 September 1992, the General Assembly adopted resolution 47/1, whereby, upon the recommendation contained in Security Council resolution 777 (1992) of 19 September 1992, it considered "that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations; and therefore decides that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly".

On 29 September 1992, in response to a letter from the Permanent Representatives of Bosnia-Herzegovina and Croatia requesting certain clarifications, the Under-Secretary-General and Legal Counsel of the United Nations addressed a letter to them, in which he stated that the "considered view of the United Nations Secretariat regarding the practical consequences of the adoption by the General Assembly of resolution 47/1" was as follows:

"While the General Assembly has stated unequivocally that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot automatically continue the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations and that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations, the only practical consequence that the resolution draws is that the Federal Republic of Yugoslavia (Serbia and Montenegro) shall not *participate* in the work of the General Assembly. It is clear, therefore, that representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro) can no longer *participate* in the work of the General Assembly, its subsidiary organs, nor conferences and meetings convened by it.

On the other hand, the resolution neither terminates nor suspends Yugoslavia's *membership* in the Organization. Consequently, the seat and nameplate remain as before, but in Assembly bodies representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot sit behind the sign 'Yugoslavia'. Yugoslav missions at United Nations Headquarters and offices may continue to function and may receive and circulate documents. At Headquarters, the Secretariat will continue to fly the flag of the old Yugoslavia as it is the last flag of Yugoslavia used by the Secretariat. The resolution does not take away the right of Yugoslavia to participate in the work of organs other than Assembly bodies. The admission to the United Nations of a new Yugoslavia under Article 4 of the Charter will terminate the situation created by resolution 47/1." (United Nations doc. A/47/485; emphasis added in the original.)

On 29 April 1993, the General Assembly, upon the recommendation contained in Security Council resolution 821 (1993) (couched in terms similar to those of Security Council resolution 777 (1992)), adopted resolution 47/229 in which it decided that "the

Federal Republic of Yugoslavia (Serbia and Montenegro) shall not participate in the work of the Economic and Social Council".

The Court recalls that between the adoption of General Assembly resolution 47/1 of 22 September 1992 and the admission of the FRY to the United Nations on 1 November 2000, the legal position of the FRY remained complex. As examples thereof, the Court cites several changes to the English text of certain relevant paragraphs of the "*Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties*", prepared by the Treaty Section of the Office of Legal Affairs, which was published at the beginning of 1996 (those changes were directly incorporated into the French text of the Summary published in 1997); it also referred to the letters sent by the Permanent Representatives of Bosnia and Herzegovina, Croatia, Slovenia and the former Yugoslav Republic of Macedonia which questioned the validity of the deposit of the declaration recognizing the compulsory jurisdiction of the International Court of Justice by the FRY dated 25 April 1999, and which set out their "permanent objection to the groundless assertion of the Federal Republic of Yugoslavia (Serbia and Montenegro), which has also been repudiated by the international community, that it represents the continuity of our common predecessor, and thereby continues to enjoy its status in international organizations and treaties".

The Court adds to the above account of the FRY's special situation that existed between September 1992 and November 2000, certain details concerning the United Nations membership dues and rates of assessment set for the FRY during that same period.

The Court then recalls that on 27 October 2000, Mr. Koštunica, the newly elected President of the FRY, sent a letter to the Secretary-General requesting admission of the FRY to membership in the United Nations; and that, on 1 November 2000, the General Assembly, upon the recommendation of the Security Council, adopted resolution 55/12, by which it decided to admit the Federal Republic of Yugoslavia to membership in the United Nations.

The Court observes that the admission of the FRY to membership of the United Nations on 1 November 2000 put an end to Yugoslavia's *sui generis* position within the United Nations. It notes that, on 8 December 2000, the Under-Secretary-General, the Legal Counsel, sent a letter to the Minister for Foreign Affairs of the FRY, reading in pertinent parts:

> "Following [the admission of the Federal Republic of Yugoslavia to the United Nations on 1 November 2000], a review was undertaken of the multilateral treaties deposited with the Secretary-General, in relation to many of which the former Socialist Federal Republic of Yugoslavia (the SFRY) and the Federal Republic of Yugoslavia (FRY) had undertaken a range of treaty actions . . .
>
> It is the Legal Counsel's view that the Federal Republic of Yugoslavia should now undertake treaty actions, as appropriate, in relation to the treaties concerned, if its intention is to assume the relevant legal rights and obligations as a successor State." (Letter by the Legal Counsel of the United Nations, Application of Yugoslavia, annex 27.)

The Court further notes that at the beginning of March 2001, a notification of accession to the Genocide Convention by the FRY was deposited with the Secretary-General of the United Nations; and that, on 15 March 2001, the Secretary-General, acting in his capacity as depositary, issued a Depositary Notification (C.N.164.2001.TREATIES-1), indicating that the accession of the FRY to the 1948 Convention on the Prevention and Punishment of the

Crime of Genocide "was effected on 12 March 2001" and that the Convention would "enter into force for the FRY on 10 June 2001".

The Court, in order to complete the contextual background, also recalls the proceedings leading up to the delivery of the Judgment of 11 July 1996, as well as the passages in that Judgment relevant to the present proceedings.

It refers to its Order dated 8 April 1993, by which it indicated certain provisional measures with a view to the protection of rights under the Genocide Convention. It recalls that in this Order the Court, referring to Security Council resolution 777 (1992), General Assembly resolution 47/1 and the Legal Counsel's letter of 29 September 1992, stated, *inter alia,* that, "while the solution adopted is not free from legal difficulties, the question whether or not Yugoslavia is a Member of the United Nations and as such a party to the Statute of the Court is one which the Court does not need to determine definitively at the present stage of the proceedings"; and that it concluded that "article IX of the Genocide Convention, to which both Bosnia-Herzegovina and Yugoslavia are parties, thus appears to the Court to afford a basis on which the jurisdiction of the Court might be founded to the extent that the subject-matter of the dispute relates to 'the interpretation, application or fulfilment' of the Convention, including disputes 'relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III' of the Convention." The Court further refers to its second Order on provisional measures, of 13 September 1993, by which it confirmed that it had *prima facie* jurisdiction in the case on the basis of article IX of the Genocide Convention.

It finally observes that, in its Judgment of 11 July 1996, on the preliminary objections raised by the FRY, it came to the conclusion that both Parties were bound by the Convention when the Application was filed. In the operative part of its Judgment the Court, having rejected the preliminary objections raised by the FRY, found that "on the basis of article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, it has jurisdiction to adjudicate upon the dispute" and that "the Application filed by the Republic of Bosnia and Herzegovina on 20 March 1993 is admissible".

In order to examine whether the FRY relies on facts which fall within the terms of Article 61 of the Statute, the Court observes first that, under the terms of paragraph 1 of that Article, an application for revision of a judgment may be made only when it is "based upon the discovery" of some fact which, "when the judgment was given", was unknown. These are the characteristics which the "new" fact referred to in paragraph 2 of that Article must possess. Thus, both paragraphs refer to a fact existing at the time when the judgment was given and discovered subsequently. A fact which occurs several years after a judgment has been given is not a "new" fact within the meaning of Article 61; this remains the case irrespective of the legal consequences that such a fact may have.

The Court points out that, in the present case, the admission of the FRY to the United Nations occurred on 1 November 2000, well after the 1996 Judgment. It concludes accordingly that that admission cannot be regarded as a new fact, within the meaning of Article 61, capable of founding a request for revision of that Judgment.

The Court goes on to note that, in the final version of its argument, the FRY claims that its admission to the United Nations and the Legal Counsel's letter of 8 December 2000 simply "revealed" two facts which had existed in 1996 but had been unknown at the time: that it was not then a party to the Statute of the Court and that it was not bound by the Genocide Convention. The Court finds that, in advancing this argument, the FRY does

not rely on facts that existed in 1996. In reality, it bases its Application for revision on the legal consequences which it seeks to draw from facts subsequent to the Judgment which it is asking to have revised. Those consequences, even supposing them to be established, cannot be regarded as facts within the meaning of Article 61. The Court finds that the FRY's argument cannot accordingly be upheld.

The Court furthermore notes that the admission of the FRY to membership of the United Nations took place more than four years after the Judgment which it is seeking to have revised. At the time when that Judgment was given, the situation obtaining was that created by General Assembly resolution 47/1. In this regard the Court observes that the difficulties which arose regarding the FRY's status between the adoption of that resolution and its admission to the United Nations on 1 November 2000 resulted from the fact that, although the FRY's claim to continue the international legal personality of the Former Yugoslavia was not "generally accepted" (see Security Council resolution 777 (1992) of 19 September 1992), the precise consequences of this situation were determined on a case-by-case basis (for example, non-participation in the work of the General Assembly and the Economic and Social Council). Resolution 47/1 did not, *inter alia,* affect the FRY's right to appear before the Court or to be a party to a dispute before the Court under the conditions laid down by the Statute. Nor did it affect the position of the FRY in relation to the Genocide Convention. To "terminate the situation created by resolution 47/1", the FRY had to submit a request for admission to the United Nations as had been done by the other Republics composing the SFRY. The Court points out that all these elements were known to the Court and to the FRY at the time when the Judgment was given. Nevertheless, what remained unknown in July 1996 was if and when the FRY would apply for membership in the United Nations and if and when that application would be accepted, thus terminating the situation created by General Assembly resolution 47/1.

The Court emphasizes that General Assembly resolution 55/12 of 1 November 2000 cannot have changed retroactively the *sui generis* position which the FRY found itself in vis-à-vis the United Nations over the period 1992 to 2000, or its position in relation to the Statute of the Court and the Genocide Convention. Furthermore, the letter of the Legal Counsel of the United Nations dated 8 December 2000 cannot have affected the FRY's position in relation to treaties. The Court also observes that, in any event, the said letter did not contain an invitation to the FRY to accede to the relevant conventions, but rather to "undertake treaty actions, as appropriate, . . . as a successor State".

The Court concludes from the foregoing that it has not been established that the request of the FRY is based upon the discovery of "some fact" which was "when the judgment was given, unknown to the Court and also to the party claiming revision". It finds that one of the conditions for the admissibility of an application for revision prescribed by paragraph 1 of Article 61 of the Statute has therefore not been satisfied. The Court finally indicates that it therefore does not need to address the issue of whether the other requirements of Article 61 of the Statute for the admissibility of the FRY's Application have been satisfied.

The full text of the *operative paragraph* (para. 75) reads as follows:

"For these reasons,

THE COURT,

By ten votes to three,

Finds that the Application submitted by the Federal Republic of Yugoslavia for revision, under Article 61 of the Statute of the Court, of the Judgment given by the Court on 11 July 1996, is inadmissible.

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Koroma, Parra-Aranguren, Al-Khasawneh, Buergenthal, Elaraby; *Judge* ad hoc Mahiou;

AGAINST: *Judges* Vereshchetin, Rezek; *Judge* ad hoc Dimitrijevic."

Judge Koroma and Judge *ad hoc* Mahiou appended separate opinions to the judgement; Judge Vereshchetin and Judge *ad hoc* Dimitrijevic appended dissenting opinions; and Judge Rezek appended a declaration.

* * *

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

On 6 November 2003, 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. 1–20)

On 2 November 1992, the Islamic Republic of Iran (hereinafter called "Iran") instituted proceedings against the United States of America (hereinafter called "the United States") in respect of a dispute "aris[ing] out of the attack [on] and destruction of three offshore oil production complexes, owned and operated for commercial purposes by the National Iranian Oil Company, by several warships of the United States Navy on 19 October 1987 and 18 April 1988, respectively".

In its Application, Iran contended that these acts constituted a "fundamental breach" of various provisions of the Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran, which was signed in Tehran on 15 August 1955 and entered into force on 16 June 1957 (hereinafter called "the 1955 Treaty"), as well as of international law. The Application invoked, as a basis for the Court's jurisdiction, article XXI, paragraph 2, of the 1955 Treaty.

Within the time-limit fixed for the filing of the Counter-Memorial, the United States raised a preliminary objection to the jurisdiction of the Court pursuant to article 79, paragraph 1, of the Rules of Court of 14 April 1978. By a Judgment dated 12 December 1996, the Court rejected the preliminary objection of the United States according to which the 1955 Treaty did not provide any basis for the jurisdiction of the Court and found that it had jurisdiction, on the basis of article XXI, paragraph 2, of the 1955 Treaty, to entertain the claims made by Iran under article X, paragraph 1, of that Treaty.

The United States Counter-Memorial included a counter-claim concerning "Iran's actions in the Gulf during 1987–88 which, among other things, involved mining and other attacks on U.S.-flag or U.S.-owned vessels". By an Order of 10 March 1998 the Court held that this counter-claim was admissible as such and formed part of the proceedings.

Public sittings were held between 17 February and 7 March 2003, at which the Court heard the oral arguments and replies on the claim of Iran and on the counter-claim of the United States. At those oral proceedings, the following final submissions were presented by the Parties:

On behalf of the Government of Iran, at the hearing of 3 March 2003, on the claim of Iran:

"The Islamic Republic of Iran respectfully requests the Court, rejecting all contrary claims and submissions, to adjudge and declare:

1. That in attacking and destroying on 19 October 1987 and 18 April 1988 the oil platforms referred to in Iran's Application, the United States breached its obligations to Iran under article X, paragraph 1, of the Treaty of Amity, and that the United States bears responsibility for the attacks; and

2. That the United States is accordingly under an obligation to make full reparation to Iran for the violation of its international legal obligations and the injury thus caused in a form and amount to be determined by the Court at a subsequent stage of the proceedings, the right being reserved to Iran to introduce and present to the Court in due course a precise evaluation of the reparation owed by the United States; and

3. Any other remedy the Court may deem appropriate";

at the hearing of 7 March 2003, on the counter-claim of the United States:

"The Islamic Republic of Iran respectfully requests the Court, rejecting all contrary claims and submissions, to adjudge and declare:

That the United States counter-claim be dismissed."

On behalf of the Government of the United States, at the hearing of 5 March 2003, on the claim of Iran and the counter-claim of the United States:

"The United States respectfully requests that the Court adjudge and declare:

1. that the United States did not breach its obligations to the Islamic Republic of Iran under article X, paragraph 1, of the 1955 Treaty between the United States and Iran; and

2. that the claims of the Islamic Republic of Iran are accordingly dismissed.

With respect to its counter-claim, the United States requests that the Court adjudge and declare:

1. Rejecting all submissions to the contrary, that, in attacking vessels in the Gulf with mines and missiles and otherwise engaging in military actions that were dangerous and detrimental to commerce and navigation between the territories of the United States and the Islamic Republic of Iran, the Islamic Republic of Iran breached its obligations to the United States under article X, paragraph 1, of the 1955 Treaty; and

2. That the Islamic Republic of Iran is accordingly under an obligation to make full reparation to the United States for its breach of the 1955 Treaty in a form and amount to be determined by the Court at a subsequent stage of the proceedings."

Basis of jurisdiction and factual background (paras. 21–26)

The Court begins by pointing out that its task in the present proceedings is to determine whether or not there have been breaches of the 1955 Treaty, and if it finds that such is the case, to draw the appropriate consequences according to the submissions of the Parties. The Court is seised both of a claim by Iran alleging breaches by the United States, and of a

counter-claim by the United States alleging breaches by Iran. Its jurisdiction to entertain both the claim and the counter-claim is asserted to be based upon article XXI, paragraph 2, of the 1955 Treaty.

The Court recalls that, as regards the claim of Iran, the question of jurisdiction has been the subject of its judgment of 12 December 1996. It notes that certain questions have however been raised between the Parties as to the precise significance or scope of that Judgment, which will be examined below.

As to the counter-claim, the Court also recalls that it decided by its Order of 10 March 1998 to admit the counter-claim, and indicated in that Order that the facts alleged and relied on by the United States "are capable of falling within the scope of article X, paragraph 1, of the 1955 Treaty as interpreted by the Court", and accordingly that "the Court has jurisdiction to entertain the United States counter-claim in so far as the facts alleged may have prejudiced the freedoms guaranteed by article X, paragraph 1" (*I.C.J. Reports 1998*, p. 204, para. 36). It notes that in this respect also questions have been raised between the Parties as to the significance and scope of that ruling on jurisdiction, and these will be examined below.

The Court points out that it is however established, by the decisions cited, that both Iran's claim and the counter-claim of the United States can be upheld only so far as a breach or breaches of article X, paragraph 1, of the 1955 Treaty may be shown, even though other provisions of the Treaty may be relevant to the interpretation of that paragraph. Article X, paragraph 1, of the 1955 Treaty reads as follows: "Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation."

The Court then sets out the factual background to the case, as it emerges from the pleadings of both Parties, observing that the broad lines of this background are not disputed, being a matter of historical record. The actions giving rise to both the claim and the counter-claim occurred in the context of the general events that took place in the Persian Gulf—which is an international commercial route and line of communication of major importance—between 1980 and 1988, in particular the armed conflict that opposed Iran and Iraq. In 1984, Iraq commenced attacks against ships in the Persian Gulf, notably tankers carrying Iranian oil. These were the first incidents of what later became known as the "Tanker War": in the period between 1984 and 1988, a number of commercial vessels and warships of various nationalities, including neutral vessels, were attacked by aircraft, helicopters, missiles or warships, or struck mines in the waters of the Persian Gulf. Naval forces of both belligerent parties were operating in the region, but Iran has denied responsibility for any actions other than incidents involving vessels refusing a proper request for stop and search. The United States attributes responsibility for certain incidents to Iran, whereas Iran suggests that Iraq was responsible for them.

The Court takes note that two specific attacks on shipping are of particular relevance in this case. On 16 October 1987, the Kuwaiti tanker *Sea Isle City*, reflagged to the United States, was hit by a missile near Kuwait harbour. The United States attributed this attack to Iran, and three days later, on 19 October 1987, it attacked two Iranian offshore oil production installations in the Reshadat ["Rostam"] complex. On 14 April 1988, the warship USS *Samuel B. Roberts* struck a mine in international waters near Bahrain while returning from an escort mission; four days later the United States employed its naval forces to attack and destroy simultaneously the Nasr ["Sirri"] and Salman ["Sassan"] complexes.

These attacks by United States forces on the Iranian oil platforms are claimed by Iran to constitute breaches of the 1955 Treaty; and the attacks on the *Sea Isle City* and the USS *Samuel B. Roberts* were invoked in support of the United States' claim to act in self-defence. The counter-claim of the United States is however not limited to those attacks.

The United States request to dismiss Iran's claim because of Iran's allegedly unlawful conduct (paras. 27–30)

The Court first considers a contention to which the United States appears to have attributed a certain preliminary character. The United States asks the Court to dismiss Iran's claim and refuse it the relief it seeks, because of Iran's allegedly unlawful conduct, i.e., its violation of the 1955 Treaty and other rules of international law relating to the use of force.

The Court notes that in order to make the finding requested by the United States it would have to examine Iranian and United States actions in the Persian Gulf during the relevant period—which it has also to do in order to rule on the Iranian claim and the United States counter-claim. At this stage of its judgment, it does not therefore need to deal with this request.

Application of article XX, paragraph 1 (d), of the 1955 Treaty (paras. 31–78)

The Court recalls that the dispute in the present case has been brought before it on the jurisdictional basis of article XXI, paragraph 2, of the 1955 Treaty, which provides that "Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means."

The Court further recalls that by its Judgment of 12 December 1996, it found that it had jurisdiction, on the basis of this article, "to entertain the claims made by the Islamic Republic of Iran under article X, paragraph 1, of that Treaty" (*I.C.J. Reports 1996 (II)*, p. 821, para. 55 (2)). Its task is thus to ascertain whether there has been a breach by the United States of the provisions of article X, paragraph 1; other provisions of the Treaty are only relevant in so far as they may affect the interpretation or application of that text.

In that respect, the Court notes that the United States has relied on article XX, paragraph 1 (d), of the Treaty as determinative of the question of the existence of a breach of its obligations under article X. That paragraph provides that

> "The present Treaty shall not preclude the application of measures:
>
> . . .
>
> *(d)* necessary to fulfil the obligations of a High Contracting Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests."

In its Judgment on the United States preliminary objection of 12 December 1996, the Court ruled that article XX, paragraph 1 *(d)*, does not afford an objection to admissibility, but "is confined to affording the Parties a possible defence on the merits" (*I.C.J. Reports 1996 (II)*, p. 811, para. 20). In accordance with article XXI, paragraph 2, of the Treaty, it is now for the Court to interpret and apply that subparagraph, inasmuch as such a defence is asserted by the United States.

To uphold the claim of Iran, the Court must be satisfied both that the actions of the United States, complained of by Iran, infringed the freedom of commerce between the territories of the Parties guaranteed by article X, paragraph 1, and that such actions were not justified to protect the essential security interests of the United States as contemplated by article XX, paragraph 1 *(d)*. The question however arises in what order the Court should examine these questions of interpretation and application of the Treaty.

In the present case, it appears to the Court that there are particular considerations militating in favour of an examination of the application of article XX, paragraph 1 *(d)*, before turning to article X, paragraph 1. It is clear that the original dispute between the Parties related to the legality of the actions of the United States, in the light of international law on the use of force. At the time of those actions, neither Party made any mention of the 1955 Treaty. The contention of the United States at the time was that its attacks on the oil platforms were justified as acts of self-defence, in response to what it regarded as armed attacks by Iran, and on that basis it gave notice of its action to the Security Council under Article 51 of the United Nations Charter. Before the Court, it has continued to maintain that it was justified in acting as it did in exercise of the right of self-defence; it contends that, even if the Court were to find that its actions do not fall within the scope of article XX, paragraph 1 *(d)*, those actions were not wrongful since they were necessary and appropriate actions in self-defence. Furthermore, as the United States itself recognizes in its Rejoinder, "The self-defence issues presented in this case raise matters of the highest importance to all members of the international community", and both Parties are agreed as to the importance of the implications of the case in the field of the use of force, even though they draw opposite conclusions from this observation. The Court therefore considers that, to the extent that its jurisdiction under article XXI, paragraph 2, of the 1955 Treaty authorizes it to examine and rule on such issues, it should do so.

The question of the relationship between self-defence and article XX, paragraph 1 *(d)*, of the Treaty has been disputed between the Parties, in particular as regards the jurisdiction of the Court. In the view of the Court, the matter is one of interpretation of the Treaty, and in particular of article XX, paragraph 1 *(d)*. The question is whether the parties to the 1955 Treaty, when providing therein that it should "not preclude the application of measures. . necessary to protect [the] essential security interests" of either party, intended that such should be the effect of the Treaty even where those measures involved a use of armed force; and if so, whether they contemplated, or assumed, a limitation that such use would have to comply with the conditions laid down by international law. The Court considers that its jurisdiction under article XXI, paragraph 2, of the 1955 Treaty to decide any question of interpretation or application of (*inter alia*) article XX, paragraph 1 *(d)*, of that Treaty extends, where appropriate, to the determination whether action alleged to be justified under that paragraph was or was not an unlawful use of force, by reference to international law applicable to this question, that is to say, the provisions of the Charter of the United Nations and customary international law.

The Court therefore examines first the application of article XX, paragraph 1 *(d)*, of the 1955 Treaty, which in the circumstances of this case, as explained above, involves the principle of the prohibition in international law of the use of force, and the qualification to it constituted by the right of self-defence. On the basis of that provision, a party to the Treaty may be justified in taking certain measures which it considers to be "necessary" for the protection of its essential security interests. In the present case, the question whether

the measures taken were "necessary" overlaps with the question of their validity as acts of self-defence.

In this connection, the Court notes that it is not disputed between the Parties that neutral shipping in the Persian Gulf was caused considerable inconvenience and loss, and grave damage, during the Iran-Iraq war. It notes also that this was to a great extent due to the presence of mines and minefields laid by both sides. The Court has no jurisdiction to enquire into the question of the extent to which Iran and Iraq complied with the international legal rules of maritime warfare. It can however take note of these circumstances, regarded by the United States as relevant to its decision to take action against Iran which it considered necessary to protect its essential security interests. Nevertheless, the legality of the action taken by the United States has to be judged by reference to article XX, paragraph 1 *(d)*, of the 1955 Treaty, in the light of international law on the use of force in self-defence.

The Court observes that the United States has never denied that its actions against the Iranian platforms amounted to a use of armed force. The Court indicates that it will examine whether each of these actions met the conditions of article XX, paragraph 1 *(d)*, as interpreted by reference to the relevant rules of international law.

Attack of 19 October 1987 on Reshadat (paras. 46–64)

The Court recalls that the first installation attacked, on 19 October 1987, was the Reshadat complex, which was also connected by submarine pipeline to another complex, named Resalat. At the time of the United States attacks, these complexes were not producing oil due to damage inflicted by prior Iraqi attacks. Iran has maintained that repair work on the platforms was close to completion in October 1987. The United States has however challenged this assertion. As a result of the attack, one platform was almost completely destroyed and another was severely damaged and, according to Iran, production from the Reshadat and Resalat complexes was interrupted for several years.

The Court first concentrates on the facts tending to show the validity or otherwise of the claim to exercise the right of self-defence. In its communication to the Security Council at the time of the attack, the United States based this claim on the existence of "a series of unlawful armed attacks by Iranian forces against the United States, including laying mines in international waters for the purpose of sinking or damaging United States flag ships, and firing on United States aircraft without provocation"; it referred in particular to a missile attack on the *Sea Isle City* as being the specific incident that led to the attack on the Iranian platforms. Before the Court, it has based itself more specifically on the attack on the *Sea Isle City*, but has continued to assert the relevance of the other attacks.

The Court points out that the United States has not claimed to have been exercising collective self-defence on behalf of the neutral States engaged in shipping in the Persian Gulf. Therefore, in order to establish that it was legally justified in attacking the Iranian platforms in exercise of the right of individual self-defence, the United States has to show that attacks had been made upon it for which Iran was responsible; and that those attacks were of such a nature as to be qualified as "armed attacks" within the meaning of that expression in Article 51 of the United Nations Charter, and as understood in customary law on the use of force. The United States must also show that its actions were necessary and proportional to the armed attack made on it, and that the platforms were a legitimate military target open to attack in the exercise of self-defence.

Having examined with great care the evidence and arguments presented on each side, the Court finds that the evidence indicative of Iranian responsibility for the attack

on the *Sea Isle City*, is not sufficient to support the contentions of the United States. The conclusion to which the Court has come on this aspect of the case is thus that the burden of proof of the existence of an armed attack by Iran on the United States, in the form of the missile attack on the *Sea Isle City*, has not been discharged.

In its notification to the Security Council, and before the Court, the United States has however also asserted that the *Sea Isle City* incident was "the latest in a series of such missile attacks against United States flag and other non-belligerent vessels in Kuwaiti waters in pursuit of peaceful commerce".

The Court finds that even taken cumulatively, and reserving the question of Iranian responsibility, these incidents do not seem to the Court to constitute an armed attack on the United States.

Attacks of 18 April 1988 on Nasr and Salman and "Operation Praying Mantis" (paras. 65–72)

The Court recalls that the second occasion on which Iranian oil installations were attacked was on 18 April 1988, with the attacks on the Salman and Nasr complexes. Iran states that the attacks caused severe damage to the production facilities of the platforms; that the activities of the Salman complex were totally interrupted for four years, its regular production being resumed only in September 1992, and reaching a normal level in 1993; and that activities in the whole Nasr complex were interrupted and did not resume until nearly four years later.

The nature of the attacks on the Salman and Nasr complexes, and their alleged justification, was presented by the United States to the United Nations Security Council in a letter from the United States Permanent Representative of 18 April 1988, which stated, *inter alia*, that the United States had "exercised their inherent right of self-defence under international law by taking defensive action in response to an attack by the Islamic Republic of Iran against a United States naval vessel in international waters of the Persian Gulf", namely the mining of the USS *Samuel B. Roberts*; according to the United States, "This [was] but the latest in a series of offensive attacks and provocations Iranian naval forces have taken against neutral shipping in the international waters of the Persian Gulf."

The Court notes that the attacks on the Salman and Nasr platforms were not an isolated operation, aimed simply at the oil installations, as had been the case with the attacks of 19 October 1987; they formed part of a much more extensive military action, designated "Operation Praying Mantis", conducted by the United States against what it regarded as "legitimate military targets"; armed force was used, and damage done to a number of targets, including the destruction of two Iranian frigates and other Iranian naval vessels and aircraft.

As in the case of the attack on the *Sea Isle City*, the first question is whether the United States has discharged the burden of proof that the USS *Samuel B. Roberts* was the victim of a mine laid by Iran. The Court notes that mines were being laid at the time by both belligerents in the Iran-Iraq war, so that evidence of other mine laying operations by Iran is not conclusive as to responsibility of Iran for this particular mine. The main evidence that the mine struck by the USS *Samuel B. Roberts* was laid by Iran was the discovery of moored mines in the same area, bearing serial numbers matching other Iranian mines, in particular those found aboard the vessel *Iran Ajr*. This evidence is highly suggestive, but not conclusive.

Furthermore, no attacks on United States-flagged vessels (as distinct from United States-owned vessels), additional to those cited as justification for the earlier attacks on the Reshadat platforms, have been brought to the Court's attention, other than the mining of the USS *Samuel B. Roberts* itself. The question is therefore whether that incident sufficed in itself to justify action in self-defence, as amounting to an "armed attack". The Court does not exclude the possibility that the mining of a single military vessel might be sufficient to bring into play the "inherent right of self-defence"; but in view of all the circumstances, including the inconclusiveness of the evidence of Iran's responsibility for the mining of the USS *Samuel B. Roberts*, the Court is unable to hold that the attacks on the Salman and Nasr platforms have been shown to have been justifiably made in response to an "armed attack" on the United States by Iran, in the form of the mining of the USS *Samuel B. Roberts*.

Criteria of necessity and proportionality (paras. 73–77)

The Court points out that in the present case a question of whether certain action is "necessary" arises both as an element of international law relating to self-defence and on the basis of the actual terms of article XX, paragraph 1 (d), of the 1955 Treaty, already quoted, whereby the Treaty does "not preclude. . . measures. . . necessary to protect [the] essential security interests" of either party. The Court therefore turns to the criteria of necessity and proportionality in the context of international law on self-defence. One aspect of these criteria is the nature of the target of the force used avowedly in self-defence.

The Court indicates that it is not sufficiently convinced that the evidence available supports the contentions of the United States as to the significance of the military presence and activity on the Reshadat oil platforms; and it notes that no such evidence is offered in respect of the Salman and Nasr complexes. However, even accepting those contentions, for the purposes of discussion, the Court finds itself unable to hold that the attacks made on the platforms could have been justified as acts of self-defence. In the case both of the attack on the *Sea Isle City* and the mining of the USS *Samuel B. Roberts*, the Court is not satisfied that the attacks on the platforms were necessary to respond to these incidents.

As to the requirement of proportionality, the attack of 19 October 1987 might, had the Court found that it was necessary in response to the *Sea Isle City* incident as an armed attack committed by Iran, have been considered proportionate. In the case of the attacks of 18 April 1988, however, they were conceived and executed as part of a more extensive operation entitled "Operation Praying Mantis". As a response to the mining, by an unidentified agency, of a single United States warship, which was severely damaged but not sunk, and without loss of life, neither "Operation Praying Mantis" as a whole, nor even that part of it that destroyed the Salman and Nasr platforms, can be regarded, in the circumstances of this case, as a proportionate use of force in self-defence.

Conclusion (para. 78)

The Court thus concludes from the foregoing that the actions carried out by United States forces against Iranian oil installations on 19 October 1987 and 18 April 1988 cannot be justified, under article XX, paragraph 1 (d), of the 1955 Treaty, as being measures necessary to protect the essential security interests of the United States, since those actions constituted recourse to armed force not qualifying, under international law on the question, as acts of self-defence, and thus did not fall within the category of measures contemplated, upon its correct interpretation, by that provision of the Treaty.

Iran's claim under article X, paragraph 1, of the 1955 Treaty (paras. 79–99)

Having satisfied itself that the United States may not rely, in the circumstances of the case, on the defence to the claim of Iran afforded by article XX, paragraph 1 *(d)*, of the 1955 Treaty, the Court turns to that claim, made under article X, paragraph 1, of that Treaty, which provides that "Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation."

In its Judgment of 12 December 1996 on the preliminary objection of the United States, the Court had occasion, for the purposes of ascertaining and defining the scope of its jurisdiction, to interpret a number of provisions of the 1955 Treaty, including article X, paragraph 1. It noted that the Applicant had not alleged that any military action had affected its freedom of navigation, so that the only question to be decided was "whether the actions of the United States complained of by Iran had the potential to affect 'freedom of commerce'" as guaranteed by that provision (*I.C.J. Reports 1996 (II)*, p. 817, para. 38). After examining the contentions of the Parties as to the meaning of the word, the Court concluded that "it would be a natural interpretation of the word 'commerce' in article X, paragraph 1, of the Treaty of 1955 that it includes commercial activities in general—not merely the immediate act of purchase and sale, but also the ancillary activities integrally related to commerce" (ibid., p. 819, para. 49).

In that decision, the Court also observed that it did not then have to enter into the question whether article X, paragraph 1, "is restricted to commerce 'between' the Parties" (*I.C.J. Reports 1996 (II)*, p. 817, para. 44). However it is now common ground between the Parties that that provision is in terms limited to the protection of freedom of commerce "between the territories of the two High Contracting Parties". The Court observes that it is oil exports from Iran to the United States that are relevant to the case, not such exports in general.

In the 1996 Judgment, the Court further emphasized that "article X, paragraph 1, of the Treaty of 1955 does not strictly speaking protect 'commerce' but 'freedom of commerce'", and continued: "Unless such freedom is to be rendered illusory, the possibility must be entertained that it could actually be impeded as a result of acts entailing the destruction of goods destined to be exported, or capable of affecting their transport and storage with a view to export" (ibid., p. 819, para. 50). The Court also noted that "Iran's oil production, a vital part of that country's economy, constitutes an important component of its foreign trade", and that "On the material now before the Court, it is. . . not able to determine if and to what extent the destruction of the Iranian oil platforms had an effect upon the export trade in Iranian oil. . ." (ibid., p. 820, para. 51). The Court concludes by observing that if, at the present stage of the proceedings, it were to find that Iran had established that such was the case, the claim of Iran under article X, paragraph 1, could be upheld.

Before turning to the facts and to the details of Iran's claim, the Court mentions that the United States has not succeeded, to the satisfaction of the Court, in establishing that the limited military presence on the platforms, and the evidence as to communications to and from them, could be regarded as justifying treating the platforms as military installations (see above). For the same reason, the Court is unable to regard them as outside the protection afforded by article X, paragraph 1, of the 1955 Treaty, as alleged by the United States.

The Court in its 1996 Judgment contemplated the possibility that freedom of commerce could be impeded not only by "the destruction of goods destined to be exported", but also by acts "capable of affecting their transport and their storage with a view to export"

(*I.C.J. Reports 1996 (II)*, p. 819, para. 50). In the view of the Court, the activities of the platforms are to be regarded, in general, as commercial in nature; it does not, however, necessarily follow that any interference with such activities involves an impact on the freedom of commerce between the territories of Iran and the United States.

The Court considers that where a State destroys another State's means of production and transport of goods destined for export, or means ancillary or pertaining to such production or transport, there is in principle an interference with the freedom of international commerce. In destroying the platforms, whose function, taken as a whole, was precisely to produce and transport oil, the military actions made commerce in oil, at that time and from that source, impossible, and to that extent prejudiced freedom of commerce. While the oil, when it left the platform complexes, was not yet in a state to be safely exported, the fact remains that it could be already at that stage destined for export, and the destruction of the platform prevented further treatment necessary for export. The Court therefore finds that the protection of freedom of commerce under article X, paragraph 1, of the 1955 Treaty applied to the platforms attacked by the United States, and the attacks thus impeded Iran's freedom of commerce. However, the question remains whether there was in this case an interference with freedom of commerce "between the territories of the High Contracting Parties".

The United States in fact contends further that there was in any event no breach of article X, paragraph 1, inasmuch as, even assuming that the attacks caused some interference with freedom of commerce, it did not interfere with freedom of commerce "between the territories of the two High Contracting Parties". First, as regards the attack of 19 October 1987 on the Reshadat platforms, it observes that the platforms were under repair as a result of an earlier attack on them by Iraq; consequently, they were not engaged in, or contributing to, commerce between the territories of the Parties. Secondly, as regards the attack of 18 April 1988 on the Salman and Nasr platforms, it draws attention to United States Executive Order 12613, signed by President Reagan on 29 October 1987, which prohibited, with immediate effect, the import into the United States of most goods (including oil) and services of Iranian origin. As a consequence of the embargo imposed by this Order, there was, it is suggested, no commerce between the territories of the Parties that could be affected, and consequently no breach of the Treaty protecting it.

Iran has asserted, and the United States has not denied, that there was a market for Iranian crude oil directly imported into the United States up to the issuance of Executive Order 12613 of 29 October 1987. Thus Iranian oil exports did up to that time constitute the subject of "commerce between the territories of the High Contracting Parties" within the meaning of article X, paragraph 1, of the 1955 Treaty.

The Court observes that at the time of the attack of 19 October 1987 no oil whatsoever was being produced or processed by the Reshadat and Resalat platforms, since these had been put out of commission by earlier Iraqi attacks. While it is true that the attacks caused a major setback to the process of bringing the platforms back into production, there was at the moment of the attacks on these platforms no ongoing commerce in oil produced or processed by them.

The Court further observes that the embargo imposed by Executive Order 12613 was already in force when the attacks on the Salman and Nasr platforms were carried out; and that, it has not been shown that the Reshadat and Resalat platforms would, had it not been for the attack of 19 October 1987, have resumed production before the embargo was

imposed. The Court must therefore consider the significance of that Executive Order for the interpretation and application of article X, paragraph 1, of the 1955 Treaty.

The Court sees no reason to question the view sustained by Iran that, over the period during which the United States embargo was in effect, petroleum products were reaching the United States, in considerable quantities, that were derived in part from Iranian crude oil. It points out, however, that what the Court has to determine is not whether something that could be designated "Iranian" oil entered the United States, in some form, during the currency of the embargo; it is whether there was "commerce" in oil between the territories of Iran and the United States during that time, within the meaning given to that term in the 1955 Treaty.

In this respect, what seems to the Court to be determinative is the nature of the successive commercial transactions relating to the oil, rather than the successive technical processes that it underwent. What Iran regards as "indirect" commerce in oil between itself and the United States involved a series of commercial transactions: a sale by Iran of crude oil to a customer in Western Europe, or some third country other than the United States; possibly a series of intermediate transactions; and ultimately the sale of petroleum products to a customer in the United States. This is not "commerce" between Iran and the United States, but commerce between Iran and an intermediate purchaser; and "commerce" between an intermediate seller and the United States.

The Court thus concludes, with regard to the attack of 19 October 1987 on the Reshadat platforms, that there was at the time of those attacks no commerce between the territories of Iran and the United States in respect of oil produced by those platforms and the Resalat platforms, inasmuch as the platforms were under repair and inoperative; and that the attacks cannot therefore be said to have infringed the freedom of commerce in oil between the territories of the High Contracting Parties protected by article X, paragraph 1, of the 1955 Treaty, particularly taking into account the date of entry into force of the embargo effected by Executive Order 12613. The Court notes further that, at the time of the attacks of 18 April 1988 on the Salman and Nasr platforms, all commerce in crude oil between the territories of Iran and the United States had been suspended by that Executive Order, so that those attacks also cannot be said to have infringed the rights of Iran under article X, paragraph 1, of the 1955 Treaty.

The Court is therefore unable to uphold the submissions of Iran, that in carrying out those attacks the United States breached its obligations to Iran under article X, paragraph 1, of the 1955 Treaty. In view of this conclusion, the Iranian claim for reparation cannot be upheld.

The Court furthermore concludes that, in view of this finding on the claim of Iran, it becomes unnecessary to examine the argument of the United States (referred to above) that Iran might be debarred from relief on its claim by reason of its own conduct.

United States Counter-Claim (paras. 101–124)

The Court recalls that the United States has filed a counter-claim against Iran and refers to the corresponding final submissions presented by the United States in the Counter-Memorial.

The Court further recalls that, by an Order of 10 March 1998 it found "that the counter-claim presented by the United States in its Counter-Memorial is admissible as such and forms part of the current proceedings."

Iran's objections to the Court's jurisdiction and to the admissibility of the United States counter-claim (paras. 103–116)

Iran maintains that the Court's Order of 10 March 1998 did not decide all of the preliminary issues involved in the counter-claim presented by the United States; the Court only ruled on the admissibility of the United States counter-claim in relation to article 80 of the Rules of Court, declaring it admissible "as such", whilst reserving the subsequent procedure for further decision. Iran contends that the Court should not deal with the merits of the counter-claim, presenting five objections.

The Court considers that it is open to Iran at this stage of the proceedings to raise objections to the jurisdiction of the Court to entertain the counter-claim or to its admissibility, other than those addressed by the Order of 10 March 1998. It points out that this Order does not address any question relating to jurisdiction and admissibility not directly linked to article 80 of the Rules. The Court indicates that it will therefore proceed to address the objections now presented by Iran.

The Court finds that it cannot uphold the first objection of Iran to the effect that the Court cannot entertain the counter-claim of the United States because it was presented without any prior negotiation, and thus does not relate to a dispute "not satisfactorily adjusted by diplomacy" as contemplated by article XXI, paragraph 2, of the 1955 Treaty. The Court points out that it is established that a dispute has arisen between Iran and the United States over the issues raised in the counter-claim; and that it is sufficient for the Court to satisfy itself that the dispute was not satisfactorily adjusted by diplomacy before being submitted to the Court.

The Court finds that the second objection of Iran, according to which the United States is in effect submitting a claim on behalf of third States or of foreign entities and has no title to do so, is devoid of any object and cannot be upheld The Court recalls that the first submission presented by the United States in regard to its counter-claim simply requests the Court to adjudge and declare that the alleged actions of Iran breached its obligations to the United States, without mention of any third States.

In its third objection, Iran contends that the United States counter-claim extends beyond article X, paragraph 1, of the 1955 Treaty, the only text in respect of which the Court has jurisdiction, and that the Court cannot therefore uphold any submissions falling outside the terms of paragraph 1 of that article. The Court notes that the United States, in presenting its final submissions on the counter-claim, no longer relies, as it did at the outset, on article X of the 1955 Treaty as a whole, but on paragraph 1 of that article only, and, furthermore, recognizes the territorial limitation of article X, paragraph 1, referring specifically to the military actions that were allegedly "dangerous and detrimental to commerce and navigation *between the territories of the United States and the Islamic Republic of Iran*" (emphasis added) rather than, generally, to "military actions that were dangerous and detrimental to maritime commerce". By limiting the scope of its counter-claim in its final submissions, the United States has deprived Iran's third objection of any object, and the Court finds that it cannot therefore uphold it.

In its fourth objection Iran maintains that "the Court has jurisdiction to rule only on counter-claims alleging a violation by Iran of freedom of commerce as protected under article X, (1), and not on counter-claims alleging a violation of freedom of navigation as protected by the same paragraph". The Court notes nevertheless, that Iran seems to have changed its position and recognized that the counter-claim could be founded on a violation

of freedom of navigation. The Court further observes that it also concluded in 1998 that it had jurisdiction to entertain the United States Counter-Claim in so far as the facts alleged may have prejudiced the freedoms (in the plural) guaranteed by article X, paragraph 1, of the 1955 Treaty, i.e., freedom of commerce and freedom of navigation. This objection of Iran thus cannot be upheld by the Court.

Iran presents one final argument against the admissibility of the United States Counter-Claim, which however it concedes relates only to part of the counter-claim. Iran contends that the United States has broadened the subject-matter of its claim beyond the submissions set out in its counter-claim by having, belatedly, added complaints relating to freedom of navigation to its complaints relating to freedom of commerce, and by having added new examples of breaches of freedom of maritime commerce in its Rejoinder in addition to the incidents already referred to in the Counter-Claim presented with the Counter-Memorial.

The Court observes that the issue raised by Iran is whether the United States is presenting a new claim. The Court is thus faced with identifying what is "a new claim" and what is merely "additional evidence relating to the original claim". It is well established in the Court's jurisprudence that the parties to a case cannot in the course of proceedings "transform the dispute brought before the Court into a dispute that would be of a different nature." The Court recalls that it has noted in its Order of 10 March 1998 in the present case that the Counter-Claim alleged "attacks on shipping, the laying of mines, and other military actions said to be 'dangerous and detrimental to maritime commerce'" (*I.C.J. Reports 1998*, p. 204, para. 36). Subsequently to its Counter-Memorial and Counter-Claim and to that Order of the Court, the United States provided detailed particulars of further incidents substantiating, in its contention, its original claims. In the view of the Court, the United States has not, by doing so, transformed the subject of the dispute originally submitted to the Court, nor has it modified the substance of its counter-claim, which remains the same. The Court therefore cannot uphold the objection of Iran.

Merits of the United States Counter-Claim (paras. 119–123)

Having disposed of all objections of Iran to its jurisdiction over the counter-claim, and to the admissibility thereof, the Court considers the counter-claim on its merits. It points out that, to succeed on its counter-claim, the United States must show that: *(a)* its freedom of commerce or freedom of navigation *between the territories* of the High Contracting Parties to the 1955 Treaty was impaired; and that *(b)* the acts which allegedly impaired one or both of those freedoms are attributable to Iran.

The Court recalls that article X, paragraph 1, of the 1955 Treaty does not protect, as between the Parties, freedom of commerce or freedom of navigation in general. As already noted above, the provision of that paragraph contains an important territorial limitation. In order to enjoy the protection provided by that text, the commerce or the navigation is to be between the territories of the United States and Iran. The United States bears the burden of proof that the vessels which were attacked were engaged in commerce or navigation between the territories of the United States and Iran.

The Court then examines each of Iran's alleged attacks, in chronological order, from the standpoint of this requirement of the 1955 Treaty and concludes that none of the vessels described by the United States as being damaged by Iran's alleged attacks was engaged in commerce or navigation "between the territories of the two High Contracting Parties". Therefore, the Court concludes that there has been no breach of article X, paragraph 1,

of the 1955 Treaty in any of the specific incidents involving these ships referred to in the United States pleadings.

The Court takes note that the United States has also presented its claim in a generic sense. It has asserted that as a result of the cumulation of attacks on US and other vessels, laying mines and otherwise engaging in military actions in the Persian Gulf, Iran made the Gulf unsafe, and thus breached its obligation with respect to freedom of commerce and freedom of navigation which the United States should have enjoyed under article X, paragraph 1, of the 1955 Treaty.

The Court observes that, while it is a matter of public record that as a result of the Iran-Iraq war navigation in the Persian Gulf involved much higher risks, that alone is not sufficient for the Court to decide that article X, paragraph 1, was breached by Iran. It is for the United States to show that there was an *actual impediment* to commerce or navigation *between* the territories of the two High Contracting Parties. However, the United States has not demonstrated that the alleged acts of Iran actually infringed the freedom of commerce or of navigation between the territories of the United States and Iran. The Court also notes that the examination above of specific incidents shows that none of them individually involved any interference with the commerce and navigation protected by the 1955 Treaty; accordingly the generic claim of the United States cannot be upheld.

The Court has thus found that the counter-claim of the United States concerning breach by Iran of its obligations to the United States under article X, paragraph 1, of the 1955 Treaty, whether based on the specific incidents listed, or as a generic claim, must be rejected; there is therefore no need for it to consider, under this head, the contested issues of attribution of those incidents to Iran. In view of the foregoing, the United States claim for reparation cannot be upheld.

The full text of the *operative paragraph* (para. 125) reads as follows:

"For these reasons,

THE COURT,

1. By fourteen votes to two,

Finds that the actions of the United States of America against Iranian oil platforms on 19 October 1987 and 18 April 1988 cannot be justified as measures necessary to protect the essential security interests of the United States of America under article XX, paragraph 1 *(d)*, of the 1955 Treaty of Amity, Economic Relations and Consular Rights between the United States of America and Iran, as interpreted in the light of international law on the use of force; *finds* further that the Court cannot however uphold the submission of the Islamic Republic of Iran that those actions constitute a breach of the obligations of the United States of America under article X, paragraph 1, of that Treaty, regarding freedom of commerce between the territories of the parties, and that, accordingly, the claim of the Islamic Republic of Iran for reparation also cannot be upheld;

IN FAVOUR: *President* Shi; *Vice-President* Ranjeva; *Judges* Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Buergenthal, Owada, Simma, Tomka; *Judge* ad hoc Rigaux;

AGAINST: *Judges* Al-Khasawneh, Elaraby;

2. By fifteen votes to one,

Finds that the counter-claim of the United States of America concerning the breach of the obligations of the Islamic Republic of Iran under article X, paragraph 1, of the above-mentioned 1955 Treaty, regarding freedom of commerce and navigation between the territories of the parties, cannot be upheld; and accordingly, that the counter-claim of the United States of America for reparation also cannot be upheld.

IN FAVOUR: *President* Shi; *Vice-President* Ranjeva; *Judges* Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Tomka; *Judge* ad hoc Rigaux;

AGAINST: *Judge* Simma."

Judges Al-Khasawneh and Elaraby appended dissenting opinions to the judgement; Judge Ranjeva, Vice-President, and Judge Koroma appended declarations; and Judges Buergenthal, Higgins, Kooijmans, Owada, Parra-Aranguren, Simma and Judge *ad hoc* Rigaux separate opinions.

* * *

3. Application for Revision of the Judgement of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) *(El Salvador v. Honduras)*

On 18 December 2003, 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. 1–14)

On 10 September 2002, the Republic of El Salvador (hereinafter "El Salvador") submitted a request to the Court for revision of the Judgment delivered on 11 September 1992 by the Chamber of the Court formed to deal with the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* (*I.C.J. Reports 1992*, p. 351).

In its Application, El Salvador requested the Court "To proceed to form the Chamber that will hear the Application for revision of the Judgment, bearing in mind the terms that El Salvador and Honduras agreed upon in the Special Agreement of 24 May 1986."

The Parties having been duly consulted by the President, the Court, by an Order of 27 November 2002, decided to grant their request for the formation of a special chamber to deal with the case; it declared that three Members of the Court had been elected to sit alongside two ad hoc judges chosen by the Parties: President G. Guillaume; Judges F. Rezek, T. Buergenthal; Judges ad hoc S. Torres Bernárdez (chosen by Honduras) and F. H. Paolillo (chosen by El Salvador).

On 1 April 2003, within the time-limit fixed by the Court, Honduras filed its written observations on the admissibility of El Salvador's Application. Public sittings were held on 8, 9, 10 and 12 September 2003.

At the oral proceedings, the following final submissions were presented by the Parties:

On behalf of the Government of the Republic of El Salvador,

"The Republic of El Salvador respectfully requests the Chamber, rejecting all contrary claims and submissions to adjudge and declare that:

1. The Application of the Republic of El Salvador is admissible based on the existence of new facts of such a nature as to leave the case open to revision, pursuant to Article 61 of the Statute of the Court, and

2. Once the request is admitted that it proceed to a revision of the Judgment of 11 September 1992, so that a new judgment fixes the boundary line in the sixth disputed sector of the land boundary between El Salvador and Honduras as follows:

'Starting at the old mouth of the Goascorán River at the entry point known as the Estero de la Cutú, located at latitude 13 degrees 22 minutes 00 seconds north and longitude 87 degrees 41 minutes 25 seconds west, the border follows the old bed of the Goascorán River for a distance of 17,300 metres up to the place known as Rompición de Los Amates, located at latitude 13 degrees 26 minutes 29 seconds north and longitude 87 degrees 43 minutes 25 seconds west, which is where the Goascorán River changed course.'."

On behalf of the Government of the Republic of Honduras,

"In view of the facts and arguments presented above, the Government of the Republic of Honduras requests the Chamber to declare the inadmissibility of the Application for revision presented on 10 September 2002 by El Salvador."

Basis of jurisdiction and circumstances of the case (paras. 15–22)

The Chamber begins by stating that, under Article 61 of the Statute, revision proceedings open with a judgment of the Court declaring the Application admissible on the grounds contemplated by the Statute, and that article 99 of the Rules of Court makes express provision for proceedings on the merits if, in its first judgment, the Court has declared the Application admissible.

The Chamber observes that, at this stage, its decision is thus limited to the question whether El Salvador's request satisfies the conditions contemplated by the Statute. Under Article 61, these conditions are as follows:

(a) the application should be based upon the "discovery" of a "fact";

(b) the fact the discovery of which is relied on must be "of such a nature as to be a decisive factor";

(c) the fact should have been "unknown" to the Court and to the party claiming revision when the judgment was given;

(d) ignorance of this fact must not be "due to negligence"; and

(e) the application for revision must be "made at latest within six months of the discovery of the new fact" and before ten years have elapsed from the date of the judgment.

The Chamber observes that "an application for revision is admissible only if each of the conditions laid down in Article 61 is satisfied. If any one of them is not met, the application must be dismissed."

However, El Salvador appears to argue *in limine* that there is no need for the Chamber to consider whether the conditions of Article 61 of the Statute have been satisfied, since,

by its attitude, "Honduras implicitly acknowledged the admissibility of El Salvador's Application".

In this respect, the Chamber observes that regardless of the parties' views on the admissibility of an application for revision, it is in any event for the Court, when seised of such an application, to ascertain whether the admissibility requirements laid down in Article 61 of the Statute have been met. Revision is not available simply by consent of the parties, but solely when the conditions of Article 61 are met.

The new facts alleged by El Salvador concern on the one hand the avulsion of the river Goascorán and on the other the "Carta Esférica" and the report of the 1794 *El Activo* expedition.

Avulsion of the river Goascorán (paras. 23–40)

"In order properly to understand El Salvador's present contentions", the Chamber first recapitulates part of the reasoning in the 1992 Judgment in respect of the sixth sector of the land boundary.

The Chamber then indicates that in the present case, El Salvador first claims to possess scientific, technical and historical evidence showing, contrary to what it understands the 1992 decision to have been, that the Goascorán did in the past change its bed, and that the change was abrupt, probably as a result of a cyclone in 1762. El Salvador argues that evidence can constitute "new facts" for purposes of Article 61 of the Statute.

El Salvador further contends that the evidence it is now offering establishes the existence of an old bed of the Goascorán debouching in the Estero La Cutú, and the avulsion of the river in the mid-eighteenth century or that at the very least, it justifies regarding such an avulsion as plausible. These are said to be "new facts" for purposes of Article 61. According to El Salvador, the facts thus set out are decisive, because the considerations and conclusions of the 1992 Judgment are founded on the rejection of an avulsion which, in the Chamber's view, had not been proved.

El Salvador finally maintains that, given all the circumstances of the case, in particular the "bitter civil war [which] was raging in El Salvador" "for virtually the whole period between 1980 and the handing down of the Judgment on 11 September 1992", its ignorance of the various new facts which it now advances concerning the course of the Goascorán was not due to negligence.

The Chamber states that Honduras, for its part, argues that with regard to the application of Article 61 of the Statute, it is "well-established case law that there is a distinction in kind between the facts alleged and the evidence relied upon to prove them and that only the discovery of the former opens a right to revision". Accordingly, in the view of Honduras, the evidence submitted by El Salvador cannot open a right to revision.

Honduras adds that El Salvador has not demonstrated the existence of a new fact. In reality, El Salvador is seeking "a new interpretation of previously known facts" and asking the Chamber for a "genuine reversal" of the 1992 Judgment.

Honduras further maintains that the facts relied on by El Salvador, even if assumed to be new and established, are not of such a nature as to be decisive factors in respect of the 1992 Judgment.

Honduras argues lastly that El Salvador could have had the scientific and technical studies and historical research which it is now relying on carried out before 1992.

Turning to consideration of El Salvador's submissions concerning the avulsion of the Goascorán, the Chamber recalls that an application for revision is admissible only if each of the conditions laid down in Article 61 is satisfied, and that if any one of them is not met, the application must be dismissed; in the present case, the Chamber begins by ascertaining whether the alleged facts, supposing them to be new facts, are of such a nature as to be decisive factors in respect of the 1992 Judgment.

In this regard, the Chamber first recalls the considerations of principle on which the Chamber hearing the original case relied for its ruling on the disputes between the two States in six sectors of their land boundary. According to that Chamber, the boundary was to be determined "by the application of the principle generally accepted in Spanish America of the *uti possidetis juris*, whereby the boundaries were to follow the colonial administrative boundaries" (para. 28 of the 1992 Judgment). The Chamber did however note that "the *uti possidetis juris* position can be qualified by adjudication and by treaty". It reasoned from this that "the question then arises whether it can be qualified in other ways, for example, by acquiescence or recognition". It concluded that "There seems to be no reason in principle why these factors should not operate, where there is sufficient evidence to show that the parties have in effect clearly accepted a variation, or at least an interpretation, of the *uti possidetis juris* position" (para. 67 of the 1992 Judgment).

The Chamber then considered "The contention of El Salvador that a former bed of the river Goascorán forms the *uti possidetis juris* boundary". In this respect, it observed that:

"[this contention] depends, as a question of fact, on the assertion that the Goascorán formerly was running in that bed, and that at some date it abruptly changed its course to its present position. On this basis El Salvador's argument of law is that where a boundary is formed by the course of a river, and the stream suddenly leaves its old bed and forms a new one, this process of 'avulsion' does not bring about a change in the boundary, which continues to follow the old channel." (Para. 308 of the 1992 Judgment.)

The Chamber added that:

"No record of such an abrupt change of course having occurred has been brought to the Chamber's attention, but were the Chamber satisfied that the river's course was earlier so radically different from its present one, then an avulsion might reasonably be inferred." (Ibid.)

Pursuing its consideration of El Salvador's argument, the Chamber did however note:

"There is no scientific evidence that the previous course of the Goascorán was such that it debouched in the Estero La Cutú. . . rather than in any of the other neighbouring inlets in the coastline, such as the Estero El Coyol" (para. 309 of the 1992 Judgment).

Turning to consideration as a matter of law of El Salvador's proposition concerning the avulsion of the Goascorán, the Chamber observed that El Salvador "suggests. . . that the change in fact took place in the 17th century" (para. 311 of the 1992 Judgment). It concluded that "On this basis, what international law may have to say, on the question of the shifting of rivers which form frontiers, becomes irrelevant: the problem is mainly one of Spanish colonial law." (Para. 311 of the 1992 Judgment.)

Beginning in paragraph 312 of the 1992 Judgment, the Chamber turned to a consideration of a different ground. At the outset, it tersely stated the conclusions which it had reached and then set out the reasoning supporting them. In the view of the Chamber, "any claim by El Salvador that the boundary follows an old course of the river abandoned at

some time before 1821 must be rejected. It is a new claim and inconsistent with the previous history of the dispute." (Para. 312 of the 1992 Judgment.)

In the present case, the Chamber observes that, whilst in 1992 the Chamber rejected El Salvador's claims that the 1821 boundary did not follow the course of the river at that date, it did so on the basis of that State's conduct during the nineteenth century.

The Chamber concludes that, in short, it does not matter whether or not there was an avulsion of the Goascorán. Even if avulsion were now proved, and even if its legal consequences were those inferred by El Salvador, findings to that effect would provide no basis for calling into question the decision taken by the Chamber in 1992 on wholly different grounds. The facts asserted in this connection by El Salvador are not "decisive factors" in respect of the Judgment which it seeks to have revised.

Discovery of new copies of the "Carta Esférica" and report of the 1794 El Activo expedition (paras. 41–55)

The Chamber then examines the second "new fact" relied upon by El Salvador in support of its Application for revision, namely, the discovery in the Ayer Collection of the Newberry Library in Chicago of a further copy of the "Carta Esférica" and of a further copy of the report of the expedition of the *El Activo*, thereby supplementing the copies from the Madrid Naval Museum to which the 1992 Chamber made reference in paragraphs 314 and 316 of its Judgment.

The Chamber points out that Honduras denies that the production of the documents found in Chicago can be characterized as a new fact. For Honduras, this is simply "another copy of one and the same document already submitted by Honduras during the written stage of the case decided in 1992, and already evaluated by the Chamber in its Judgment". The Chamber proceeds first, as it did in respect of the avulsion, to determine first whether the alleged facts concerning the "Carta Esférica" and the report of the *El Activo* expedition are of such a nature as to be decisive factors in respect of the 1992 Judgment.

The Chamber recalls in this regard that its predecessor in 1992, after having held El Salvador's claims concerning the old course of the Goascorán to be inconsistent with the previous history of the dispute, considered "the evidence made available to it concerning the course of the river Goascorán in 1821" (para. 313 of the 1992 Judgment). The 1992 Chamber paid particular attention to the chart prepared by the captain and navigators of the vessel *El Activo* around 1796, described as a "Carta Esférica", which Honduras had found in the archives of the Madrid Naval Museum. That Chamber concluded from the foregoing "that the report of the 1794 expedition and the 'Carta Esférica' leave little room for doubt that the river Goascorán in 1821 was already flowing in its present-day course" (para. 316 of the 1992 Judgment).

In the present case, the Chamber observes in this connection, that the two copies of the "Carta Esférica" held in Madrid and the copy from Chicago differ only as to certain details, such as for example, the placing of titles, the legends, and the handwriting. These differences reflect the conditions under which documents of this type were prepared in the late eighteenth century; they afford no basis for questioning the reliability of the charts that were produced to the Chamber in 1992. The Chamber notes further that the Estero La Cutú and the mouth of the Rio Goascorán are shown on the copy from Chicago, just as on the copies from Madrid, at their present-day location. The new chart produced by El Salvador

thus does not overturn the conclusions arrived at by the Chamber in 1992; it bears them out.

As for the new version of the report of the *El Activo* expedition found in Chicago, it differs from the Madrid version only in terms of certain details, such as the opening and closing indications, spelling, and placing of accents. The body of the text is the same, in particular in the identification of the mouth of the Goascorán. Here again, the new document produced by El Salvador bears out the conclusions reached by the Chamber in 1992.

The Chamber concludes from the foregoing that the new facts alleged by El Salvador in respect of the "Carta Esférica" and the report of the *El Activo* expedition are not "decisive factors" in respect of the Judgment whose revision it seeks.

Final observations (paras. 56–59)

The Chamber takes note of El Salvador's further contention that proper contextualization of the alleged new facts "necessitates consideration of other facts that the Chamber weighed and that are now affected by the new facts".

The Chamber states that it agrees with El Salvador's view that, in order to determine whether the alleged "new facts" concerning the avulsion of the Goascorán, the "Carta Esférica" and the report of the *El Activo* expedition fall within the provisions of Article 61 of the Statute, they should be placed in context, which the Chamber has done. However, the Chamber recalls that, under that Article, revision of a judgment can be opened only by "the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence". Thus, the Chamber cannot find admissible an application for revision on the basis of facts which El Salvador itself does not allege to be new facts within the meaning of Article 61.

The full text of the *operative paragraph* (para.60) reads as follows:

"For these reasons,

The Chamber,

By four votes to one,

Finds that the Application submitted by the Republic of El Salvador for revision, under Article 61 of the Statute of the Court, of the Judgment given on 11 September 1992, by the Chamber of the Court formed to deal with the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, is inadmissible.

In Favour: Judge Guillaume, *President of the Chamber*; *Judges* Rezek, Buergenthal; *Judge* ad hoc Torres Bernárdez;

Against: *Judge* ad hoc Paolillo".

Judge *ad hoc* Paolillo appended a dissenting opinion to the Judgment of the Chamber.

* * *

4. Avena and other Mexican Nationals (Mexico v. United States of America)

On 5 February 2003, the Court delivered an order regarding provisional measures, a summary of which is given below, followed by the text of the operative paragraph.

The Court begins by recalling that, on 9 January 2003, the United Mexican States (hereinafter "Mexico") instituted proceedings against the United States of America (hereinafter the "United States") for "violations of the Vienna Convention on Consular Relations (done on 24 April 1963)" (hereinafter the "Vienna Convention") allegedly committed by the United States. The Court notes that, in its Application, Mexico bases the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on article I of the Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes, 1963, (hereinafter the "Optional Protocol").

The Court notes further that in its Application Mexico asks the Court to adjudge and declare:

> "(1) that the United States, in arresting, detaining, trying, convicting, and sentencing the 54 Mexican nationals on death row described in this Application, violated its international legal obligations to Mexico, in its own right and in the exercise of its right of consular protection of its nationals, as provided by articles 5 and 36, respectively of the Vienna Convention;
>
> (2) that Mexico is therefore entitled to *restitutio in integrum*;
>
> (3) that the United States is under an international legal obligation not to apply the doctrine of procedural default, or any other doctrine of its municipal law, to preclude the exercise of the rights afforded by article 36 of the Vienna Convention;
>
> (4) that the United States is under an international legal obligation to carry out in conformity with the foregoing international legal obligations any future detention of or criminal proceedings against the 54 Mexican nationals on death row or any other Mexican national in its territory, whether by a constituent, legislative, executive, judicial or other power, whether that power holds a superior or a subordinate position in the organization of the United States, and whether that power's functions are international or internal in character;
>
> (5) that the right to consular notification under the Vienna Convention is a human right;
>
> and that, pursuant to the foregoing international legal obligations,
>
> (1) the United States must restore the *status quo ante*, that is, re-establish the situation that existed before the detention of, proceedings against, and convictions and sentences of, Mexico's nationals in violation of the United States international legal obligations;
>
> (2) the United States must take the steps necessary and sufficient to ensure that the provisions of its municipal law enable full effect to be given to the purposes for which the rights afforded by article 36 are intended;
>
> (3) the United States must take the steps necessary and sufficient to establish a meaningful remedy at law for violations of the rights afforded to Mexico and its nationals by article 36 of the Vienna Convention, including by barring the imposition, as a matter of municipal law, of any procedural penalty for the failure timely to raise a claim or defence based on the Vienna Convention where competent authorities of the

United States have breached their obligation to advise the national of his or her rights under the Convention; and

(4) the United States, in light of the pattern and practice of violations set forth in this Application, must provide Mexico a full guarantee of the non-repetition of the illegal acts."

The Court further recalls that on 9 January 2003 Mexico also submitted a request for the indication of provisional measures in order to protect its rights, asking that, pending final judgment in this case, the Court indicate:

"*(a)* That the Government of the United States take all measures necessary to ensure that no Mexican national be executed;

(b) That the Government of the United States take all measures necessary to ensure that no execution dates be set for any Mexican national;

(c) That the Government of the United States report to the Court the actions it has taken in pursuance of subparagraphs *(a)* and *(b)*; and

(d) That the Government of the United States ensure that no action is taken that might prejudice the rights of the United Mexican States or its nationals with respect to any decision this Court may render on the merits of the case."

The Court finally notes that, by a letter of 20 January 2003, Mexico informed the Court that, further to the decision of the Governor of the State of Illinois to commute the death sentences of all convicted individuals awaiting execution in that State, it was withdrawing its request for provisional measures on behalf of three of the 54 Mexican nationals referred to in the Application: Messrs. Juan Caballero Hernández, Mario Flores Urbán and Gabriel Solache Romero. In that letter, Mexico further stated that its request for provisional measures would stand for the other 51 Mexican nationals imprisoned in the United States and that "[t]he application stands, on its merits, for the fifty-four cases".

The Court then summarizes the arguments put forward by the Parties during the public hearings held on 21 January 2003.

The Court begins its reasoning by observing that, on a request for the indication of provisional measures, it need not finally satisfy itself, before deciding whether or not to indicate such measures, that it has jurisdiction on the merits of the case, yet it may not indicate them unless the provisions invoked by the Applicant appear, *prima facie*, to afford a basis on which the jurisdiction of the Court might be founded.

The Court goes on to note that Mexico has argued that the issues in dispute between itself and the United States concern articles 5 and 36 of the Vienna Convention and fall within the compulsory jurisdiction of the Court under article I of the Optional Protocol, and that Mexico has accordingly concluded that the Court has the jurisdiction necessary to indicate the provisional measures requested. The Court notes that the United States has said that it "does not propose to make an issue now of whether the Court possesses *prima facie* jurisdiction, although this is without prejudice to its right to contest the Court's jurisdiction at the appropriate stage later in the case". In view of the foregoing, the Court accordingly considers that, *prima facie*, it has jurisdiction under article I of the aforesaid Optional Protocol to hear the case.

The Court then recalls that in its Application Mexico asked the Court to adjudge and declare that the United States "violated its international legal obligations to Mexico, in its own right and in the exercise of its right of consular protection of its nationals, as provided

by articles 5 and 36, respectively of the Vienna Convention"; that Mexico is seeking various measures aimed at remedying these breaches and avoiding any repetition thereof; and that Mexico contends that the Court should preserve the right to such remedies by calling upon the United States to take all necessary steps to ensure that no Mexican national be executed and that no execution date be set in respect of any such national.

The Court further recalls that the United States has acknowledged that, in certain cases, Mexican nationals have been prosecuted and sentenced without being informed of their rights pursuant to article 36, paragraph 1 *(b)*, of the Vienna Convention, but that it argues, however, that in such cases, in accordance with the Court's Judgment in the *LaGrand* case[251], it has the obligation "by means of its own choosing, [to] allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in that Convention", and that it submits that, in the specific cases identified by Mexico, the evidence indicates the commitment of the United States to providing such review and reconsideration. According to the United States, such review and reconsideration can occur through the process of executive clemency—an institution "deeply rooted in the Anglo-American system of justice"—which may be initiated by the individuals concerned after the judicial process has been completed. It contends that such review and reconsideration has already occurred in several cases during the last two years; that none of the Mexicans "currently under sentence of death will be executed unless there has been a review and reconsideration of the conviction and sentence that takes into account any failure to carry out the obligations of article 36 of the Vienna Convention"; that, under the terms of the Court's decision in the *LaGrand* case, this is a sufficient remedy for its breaches, and that there is accordingly no need to indicate provisional measures intended to preserve the rights to such remedies.

The Court also notes that, according to Mexico, the position of the United States amounts to maintaining that "the Vienna Convention entitles Mexico only to review and reconsideration, and that review and reconsideration equals only the ability to request clemency"; and that, in Mexico's view, "the standardless, secretive and unreviewable process that is called clemency cannot and does not satisfy this Court's mandate [in the *LaGrand* case]".

The Court concludes that there is thus a dispute between the Parties concerning the rights of Mexico and of its nationals regarding the remedies that must be provided in the event of a failure by the United States to comply with its obligations under article 36, paragraph 1, of the Vienna Convention; that this dispute belongs to the merits and cannot be settled at this stage of the proceedings; and that the Court must accordingly address the issue of whether it should indicate provisional measures to preserve any rights that may subsequently be adjudged on the merits to be those of the Applicant.

The Court notes, however, that the United States argues that it is incumbent upon the Court, pursuant to Article 41 of its Statute, to indicate provisional measures "not to preserve only rights claimed by the Applicant, but 'to preserve the respective rights of either party'"; that, "[a]fter balancing the rights of both Parties, the scales tip decidedly against Mexico's request in this case"; that the measures sought by Mexico to be implemented immediately amount to "a sweeping prohibition on capital punishment for Mexican nationals in the United States, regardless of United States law", which "would drastically interfere with United States sovereign rights and implicate important federalism interests"; that this

[251] *LaGrand (Germany v. United States of America), Judgment 27 June 2001.*

would, moreover, transform the Court into a "general criminal court of appeal", which the Court has already indicated in the past is not its function; and that the measures requested by Mexico should accordingly be refused.

The Court points out that, when considering a request for the indication of provisional measures, it "must be concerned to preserve. . . the rights which may subsequently be adjudged by the Court to belong either to the Applicant or to the Respondent", without being obliged at that stage of the proceedings to rule on those rights; that the issues brought before the Court in this case "do not concern the entitlement of the federal states within the United States to resort to the death penalty for the most heinous crimes"; that "the function of this Court is to resolve international legal disputes between States, *inter alia,* when they arise out of the interpretation or application of international conventions, and not to act as a court of criminal appeal"; that the Court may indicate provisional measures without infringing these principles; and that the argument put forward on these specific points by the United States accordingly cannot be accepted.

The Court goes on to state that "provisional measures are indicated 'pending the final decision' of the Court on the merits of the case, and are therefore only justified if there is urgency in the sense that action prejudicial to the rights of either party is likely to be taken before such final decision is given". It further points out that the jurisdiction of the Court is limited in the present case to the dispute between the Parties concerning the interpretation and application of the Vienna Convention with regard to the individuals which Mexico identified as being victims of a violation of the Convention. Accordingly, the Court observes, it cannot rule on the rights of Mexican nationals who are not alleged to have been victims of a violation of that Convention.

The Court further states that "the sound administration of justice requires that a request for the indication of provisional measures founded on article 73 of the Rules of Court be submitted in good time"; it recalls in this respect that the Supreme Court of the United States, when considering a petition seeking the enforcement of an Order of this Court, observed that: "It is unfortunate that this matter came before us while proceedings are pending before the ICJ that might have been brought to that court earlier". The Court further observes that, in view of the rules and time-limits governing the granting of clemency and the fixing of execution dates in a number of the states of the United States, the fact that no such dates have been fixed in any of the cases before the Court is not *per se* a circumstance that should preclude the Court from indicating provisional measures.

The Court finds that it is apparent from the information before it in this case that three Mexican nationals, Messrs. César Roberto Fierro Reyna, Roberto Moreno Ramos and Osvaldo Torres Aguilera, are at risk of execution in the coming months, or possibly even weeks; that their execution would cause irreparable prejudice to any rights that may subsequently be adjudged by the Court to belong to Mexico. The Court accordingly concludes that the circumstances require that it indicate provisional measures to preserve those rights, as Article 41 of its Statute provides.

The Court points out that the other individuals listed in Mexico's Application, although currently on death row, are not in the same position as the three persons identified in the preceding paragraph and that the Court may, if appropriate, indicate provisional measures under Article 41 of the Statute in respect of those individuals before it renders final judgment in this case.

The Court finally observes that it is clearly in the interest of both Parties that their respective rights and obligations be determined definitively as early as possible; and that it

is therefore appropriate that the Court, with the co-operation of the Parties, ensure that a final judgment be reached with all possible expedition.

The Court concludes by pointing out that the decision given 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 any questions relating to the admissibility of the Application, or relating to the merits themselves; and that it leaves unaffected the right of the Governments of Mexico and the United States to submit arguments in respect of those questions.

The full text of the *operative paragraph* (para. 59) reads as follows:

"For these reasons,

THE COURT,

Unanimously,

I. *Indicates* the following provisional measures:

(a) The United States of America shall take all measures necessary to ensure that Mr. César Roberto Fierro Reyna, Mr. Roberto Moreno Ramos and Mr. Osvaldo Torres Aguilera are not executed pending final judgment in these proceedings;

(b) The Government of the United States of America shall inform the Court of all measures taken in implementation of this Order.

II. *Decides* that, until the Court has rendered its final judgment, it shall remain seised of the matters which form the subject of this Order."

Judge Oda appended a declaration to the Order of the Court.

* * *

5. Certain Criminal Proceedings in France (Republic of the Congo v. France)

On 17 June 2003, the Court delivered an order regarding provisional measures, a summary of which is given below, followed by the text of the operative paragraph.

Application and request for a provisional measure (paras. 1–4, 22–24)

By Application filed in the Registry of the Court on 9 December 2002, the Republic of the Congo (hereinafter "the Congo") sought to institute proceedings against the French Republic (hereinafter "France") on the grounds, first, of alleged

"violation of the principle that a State may not, in breach of the principle of sovereign equality among all Members of the United Nations, as laid down in Article 2, paragraph 1, of the Charter of the United Nations, exercise its authority on the territory of another State,

by unilaterally attributing to itself universal jurisdiction in criminal matters

and by arrogating to itself the power to prosecute and try the Minister of the Interior of a foreign State for crimes allegedly committed in connection with the exercise of his powers for the maintenance of public order in his country",

and second, alleged "violation of the criminal immunity of a foreign Head of State—an international customary rule recognized by the jurisprudence of the Court".

By the Application the Congo requested the Court:

> "to declare that the French Republic shall cause to be annulled the measures of investigation and prosecution taken by the *Procureur de la République* of the Paris *Tribunal de grande instance*, the *Procureur de la République* of the Meaux *Tribunal de grande instance* and the investigating judges of those courts".

The Application further contained a "Request for the indication of a provisional measure", directed to the preservation of the rights of the Congo under both of the categories mentioned above, and seeking "an order for the immediate suspension of the proceedings being conducted by the investigating judge of the Meaux *Tribunal de grande instance*"; upon receipt of the consent of France to the jurisdiction, the Court was convened for the purpose of proceeding to a decision on the request for the indication of a provisional measure as a matter of urgency; and that public hearings on the request were held on 28 and 29 April 2003.

Factual background (paras. 10–19)

The Order outlines as follows the factual background of the case, as stated in the Application or by the Parties at the hearings:

A complaint was filed on 5 December 2001, on behalf of certain human rights organizations, with the *Procureur de la République* of the Paris *Tribunal de grande instance* "for crimes against humanity and torture allegedly committed in the Congo against individuals having Congolese nationality, expressly naming H.E. Mr. Denis Sassou Nguesso, President of the Republic of the Congo, H.E. General Pierre Oba, Minister of the Interior, Public Security and Territorial Administration, General Norbert Dabira, Inspector-General of the Congolese Armed Forces, and General Blaise Adoua, Commander of the Presidential Guard".

The *Procureur de la République* of the Paris *Tribunal de grande instance* transmitted that complaint to the *Procureur de la République* of the Meaux *Tribunal de grande instance*, who ordered a preliminary enquiry and then on 23 January 2002 issued a *réquisitoire* (application for a judicial investigation of the alleged offences), and the investigating judge of Meaux initiated an investigation.

It was argued by the complainants that the French courts had jurisdiction, as regards crimes against humanity, by virtue of a principle of international customary law providing for universal jurisdiction over such crimes, and as regards the crime of torture, on the basis of articles 689–1 and 689–2 of the French Code of Criminal Procedure.

The *Procureur de la République* of the *Tribunal de grande instance* of Meaux, in his *réquisitoire* of 23 January 2002, requested investigation both of crimes against humanity and of torture, without mentioning any jurisdictional basis other than article 689–1 of that Code.

The complaint was referred to the *parquet* of the *Tribunal de grande instance* of Meaux taking into account that General Norbert Dabira possessed a residence in the area of that court's jurisdiction; however, the investigation was initiated against a non-identified person, not against any of the Congolese personalities named in the complaint.

The testimony of General Dabira was first taken on 23 May 2002 by judicial police officers who had taken him into custody, and then on 8 July 2002 by the investigating judge, as a *témoin assisté* (legally represented witness). (It has been explained by France that a *témoin assisté* in French criminal procedure is a person who is not merely a witness, but

to some extent a suspect, and who therefore enjoys certain procedural rights (assistance of counsel, access to the case file) not conferred on ordinary witnesses). On 16 September 2002, the investigating judge issued against General Dabira, who had by then returned to the Congo, a *mandat d'amener* (warrant for immediate appearance), which, it was explained by France at the hearing, could be enforced against him should he return to France, but is not capable of being executed outside French territory.

The Application states that when the President of the Republic of the Congo, H.E. Mr. Denis Sassou Nguesso "was on a State visit to France, the investigating judge issued a *commission rogatoire* (warrant) to judicial police officers instructing them to take testimony from him". However no such *commission rogatoire* has been produced, and France has informed the Court that no *commission rogatoire* was issued against President Sassou Nguesso, but that the investigating judge sought to obtain evidence from him under article 656 of the Code of Criminal Procedure, applicable where evidence is sought through the diplomatic channel from a "representative of a foreign power"; the Congo acknowledged in its Application that President Sassou Nguesso was never "*mis en examen*, nor called as a *témoin assisté*".

It is common ground between the Parties that no acts of investigation (*instruction*) have been taken in the French criminal proceedings against the other Congolese personalities named in the Application (H.E. General Pierre Oba, Minister of the Interior, and General Blaise Adoua), nor in particular has any application been made to question them as witnesses.

Jurisdiction (paras. 20–21)

After recalling the need for a *prima facie* basis of jurisdiction in order for provisional measures to be indicated, the Court notes that in the Application the Congo proposed to found the jurisdiction of the Court upon a consent thereto yet to be given by France, as contemplated by article 38, paragraph 5, of the Rules of the Court; and that by a letter dated 8 April 2003 from the Minister for Foreign Affairs of France, France consented explicitly to the jurisdiction of the Court to entertain the Application on the basis of that text.

Reasoning of the Court (paras. 22–40)

The Court takes note that the circumstances relied on by the Congo, which in its view require the indication of measures requiring suspension of the French proceedings, are set out as follows in the request:

> "The proceedings in question are perturbing the international relations of the Republic of the Congo as a result of the publicity accorded, in flagrant breach of French law governing the secrecy of criminal investigations, to the actions of the investigating judge, which impugn the honour and reputation of the Head of State, of the Minister of the Interior and of the Inspector-General of the Armed Forces and, in consequence, the international standing of the Congo. Furthermore, those proceedings are damaging to the traditional links of Franco-Congolese friendship. If these injurious proceedings were to continue, that damage would become irreparable."

It observes that at the hearings the Congo re-emphasized the irreparable prejudice which in its contention would result from the continuation of the French criminal proceedings before the *Tribunal de grande instance* of Meaux, in the same terms as in the request; and that the Congo further stated that the prejudice which would result if no provisional measures are indicated would be the continuation and exacerbation of the

prejudice already caused to the honour and reputation of the highest authorities of the Congo, and to internal peace in the Congo, to the international standing of the Congo and to Franco-Congolese friendship.

The Court observes that the rights which, according to the Congo's Application, are subsequently to be adjudged to belong to the Congo in the present case are, first, the right to require a State, in this case France, to abstain from exercising universal jurisdiction in criminal matters in a manner contrary to international law, and second, the right to respect by France for the immunities conferred by international law on, in particular, the Congolese Head of State.

The Court further observes that the purpose of any provisional measures that the Court might indicate in this case should be to preserve those claimed rights; that the irreparable prejudice claimed by the Congo and summarized above would not be caused to those rights as such; that however this prejudice might, in the circumstances of the case, be regarded as such as to affect irreparably the rights asserted in the Application. The Court notes that in any event it has not been informed in what practical respect there has been any deterioration internally or in the international standing of the Congo, or in Franco-Congolese relations, since the institution of the French criminal proceedings, nor has any evidence been placed before the Court of any serious prejudice or threat of prejudice of this nature.

The Court observes that the first question before it at the present stage of the case is thus whether the criminal proceedings currently pending in France entail a risk of irreparable prejudice to the right of the Congo to respect by France for the immunities of President Sassou Nguesso as Head of State, such as to require, as a matter of urgency, the indication of provisional measures.

The Court takes note of the statements made by the Parties as to the relevance of article 656 of the French Code of Criminal Procedure (see above), and of a number of statements made by France as to the respect in French criminal law for the immunities of Heads of State. It then observes that it is not now called upon to determine the compatibility with the rights claimed by the Congo of the procedure so far followed in France, but only the risk or otherwise of the French criminal proceedings causing irreparable prejudice to such claimed rights. The Court finds, on the information before it, that, as regards President Sassou Nguesso, there is at the present time no risk of irreparable prejudice, so as to justify the indication of provisional measures as a matter of urgency; and neither is it established that any such risk exists as regards General Oba, Minister of the Interior of the Republic of the Congo, for whom the Congo also claims immunity in its Application.

The Court then considers, as a second question, the existence of a risk of irreparable prejudice in relation to the claim of the Congo that the unilateral assumption by a State of universal jurisdiction in criminal matters constitutes a violation of a principle of international law; the Court observes that in this respect the question before it is thus whether the proceedings before the *Tribunal de grande instance* of Meaux involve a threat of irreparable prejudice to the rights invoked by the Congo justifying, as a matter of urgency, the indication of provisional measures.

The Court notes that, as regards President Sassou Nguesso, the request for a written deposition made by the investigating judge on the basis of article 656 of the French Code of Criminal Procedure has not been transmitted to the person concerned by the French Ministry of Foreign Affairs; that, as regards General Oba and General Adoua, they have

not been the subject of any procedural measures by the investigating judge; and that no measures of this nature are threatened against these three persons. The Court concludes that therefore there is no urgent need for provisional measures to preserve the rights of the Congo in that respect.

As regards General Dabira, the Court notes that it is acknowledged by France that the criminal proceedings instituted before the *Tribunal de grande instance* of Meaux have had an impact upon his own legal position, inasmuch as he possesses a residence in France, and was present in France and heard as a *témoin assisté*, and in particular because, having returned to the Congo, he declined to respond to a summons from the investigating judge, who thereupon issued a *mandat d'amener* against him. It points out, however, that the practical effect of a provisional measure of the kind requested would be to enable General Dabira to enter France without fear of any legal consequences. The Congo, in the Court's view, has not demonstrated the likelihood or even the possibility of any irreparable prejudice to the rights it claims resulting from the procedural measures taken in relation to General Dabira.

The Court finally sees no need for the indication of any measures of the kind directed to preventing the aggravation or extension of the dispute.

The full text of the *final paragraph* of the Order (para. 41) reads as follows:

"For these reasons,

THE COURT,

By fourteen votes to one,

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* Shi; *Vice-President* Ranjeva; *Judges* Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Al-Khasawneh, Buergenthal, Elaraby, Owada, Simma, Tomka;

AGAINST: *Judge* ad hoc de Cara."

Judges Koroma and Vereshchetin appended a Joint separate opinion to the Order and Judge *ad hoc* de Cara a dissenting opinion.

* * *

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

By a letter of 9 September 2003, the Governments of the Libyan Arab Jamahiriya and the United Kingdom jointly notified the Court that they had "agreed to discontinue with prejudice the proceedings initiated by the Libyan Application filed on 3 March 1992".

Following that notification, on 10 September 2003, the President of the Court, Judge Shi, made an Order placing on record the discontinuance of the proceedings with prejudice, by agreement of the Parties, and directing the removal of the case from the Court's List.

* * *

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

By a letter of 9 September 2003, the Governments of the Libyan Arab Jamahiriya and the United States jointly notified the Court that they had "agreed to discontinue with prejudice the proceedings initiated by the Libyan Application filed on 3 March 1992".

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(d) Request for advisory opinion

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory

On 8 December 2003, the United Nations General Assembly adopted resolution ES-10/14, whereby it decided, pursuant to Article 65 of the Statute of the Court, to request the International Court of Justice to give an urgent advisory opinion on the following question:

> "What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?".

Certified true copies of the resolution and of the report of the Secretary-General[252] referred to therein were transmitted to the Court under cover of a letter from the Secretary-General of the United Nations dated 8 December 2003 and received in the Registry by facsimile on 10 December 2003.

By an Order of 19 December 2003, the Court fixed 30 January 2004 as the time-limit within which written statements might be submitted to it on the question. By the same Order, the Court further decided that, in the light of resolution ES-10/14 and the report of the Secretary-General transmitted with the request, and taking into account the fact that the General Assembly had granted Palestine a special status of observer and that the latter was co-sponsor of the draft resolution requesting the advisory opinion, Palestine may also submit a written statement on the question within the above time-limit.

The Court further fixed 23 February 2004 as the date for the opening of hearings during which oral statements and comments might be presented. By the same Order, the Court decided that, for the reasons set out above, Palestine may also take part in the said hearings.

[252] A/ES-10–248.

(e) Pending cases as at 31 December 2003

1. *Avena and other Mexican Nationals (Mexico v. United States of America) (2003-)*
2. *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore) (2003-)*
3. *Certain Criminal Proceedings in France (Republic of the Congo v. France) (2002-)*
4. *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda) (2002-)*
5. *Frontier Dispute (Benin/Níger) (2002-)*
6. *Territorial and Maritime Dispute (Nicaragua v.* Colombia*) (2001-)*
7. *Certain Property (Liechtenstein v. Germany) (2001-)*
8. *Maritime Delimitation between Nicaragua and Honduras in the Carribbean Sea (Nicaragua v. Honduras) (1999-)*
9. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia and Montenegro) (1999-)*
10. *Armed activities on the territory of the Congo (Democratic Republic of the Congo v.Uganda) (1999-)*
11. *Legality of Use of Force (Serbia and Montenegro v. Belgium) (1999-)*
12. *Legality of Use of Force (Serbia and Montenegro v. Canada) (1999-)*
13. *Legality of Use of Force (Serbia and Montenegro v. France) (1999-)*
14. *Legality of Use of Force (Serbia and Montenegro v. Germany) (1999-)*
15. *Legality of Use of Force (Serbia and Montenegro v. Italy) (1999-)*
16. *Legality of Use of Force (Serbia and Montenegro v. Netherlands) (1999-)*
17. *Legality of Use of Force (Serbia and Montenegro v. Portugal) (1999-)*
18. *Legality of Use of Force (Serbia and Montenegro v. United Kingdom) (1999-)*
19. *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo) (1998-)*
20. *Gabčíkovo-Nagymaros Project (Hungary/Slovakia) (1993-)*
21. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) (1993-)*

(f) Consideration by the General Assembly

The General Assembly, by its decision 58/510 of 31 October 2003, took note of the report of the International Court of Justice.[253]

[253] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 4 and corrigendum* (A/58/4 and Corr.1).

6. INTERNATIONAL LAW COMMISSION[254]

(a) Fifty-fifth session of the Commission[255]

The International Law Commission held the first part of its fifty-fifth session from 5 May to 6 June 2003 and the second part from 7 July to 8 August 2003 at its seat at the United Nations Office at Geneva. The Commission considered the following items.

In the course of the fifty-fifth session, the Commission had before it the first report of the Special Rapporteur (Mr. Giorgio Gaja) on the topic "Responsibility of international organizations"[256], dealing with the scope of the work and general principles concerning responsibility of international organizations. In the report, the Special Rapporteur explained that the Commission's work on State responsibility could not fail to affect the study of the current topic and that it would be reasonable to follow the same approach on issues that were parallel to those concerning States. It was also stressed that such an approach did not assume that similar issues between the two topics would necessarily lead to analogous solutions. The Rapporteur proposed three draft articles concerning responsibility of international organizations, "Scope of the present draft articles" (article 1), "Use of terms" (article 2) and "General Principles" (article 3). Draft articles 1 and 3 and, subsequently, an amended version of draft article 2, were referred to the Drafting Committee. The Commission adopted articles 1 to 3 as recommended by the Drafting Committee together with commentaries. Furthermore, bearing in mind the close relationship between the topic and the work of international organizations, the Commission requested the Secretariat to circulate, on an annual basis, the chapter of the report of the Commission on this topic to the United Nations, its Specialized Agencies and some other international organizations for their comments.

Regarding the topic "Diplomatic Protection", the Commission considered the fourth report[257] of the Special Rapporteur (Mr. John Robert Dugard) concerning draft articles 17 to 22 on the diplomatic protection of corporations and shareholders and of other legal persons. The Commission considered and referred draft articles 17 to 22 to the Drafting Committee. Furthermore, having considered the report of the Drafting Committee on draft articles 8 [10], 9 [11] and 10 [14], the Commission adopted draft articles 8 [10], 9 [11] and 10 [14], with commentaries.

In relation to the topic "International liability for injurious consequences arising out of acts not prohibited by international law" (International liability in case of loss from transboundary harm arising out of hazardous activities), the Commission had before it the Special Rapporteur's (Mr. Pemmeraju Sreenivasa Rao) first report[258] pertaining to the legal regime for the allocation of loss in case of transboundary harm arising out of hazardous activities. The report reviewed the work of the Commission in the previous years, analysed the liability regimes of various instruments and offered conclusions for the Commission's consideration. The Commission established an open-ended working group, which held

[254] For the membership of the International Law Commission, see *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), chap. I, sect. A.

[255] For detailed information, see *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10).

[256] A/CN.4/532.

[257] A/CN.4/530 and Corr.1 (Spanish only) and Add.1.

[258] A/CN.4/531.

three meetings, to assist the Special Rapporteur in considering the future orientation of the topic in light of his report and the debate in the Commission.

Concerning the topic "Unilateral Acts of States", the Commission considered the sixth report[259] of the Special Rapporteur (Mr. Victor Rodríguez Cedaño) dealing with the unilateral act of recognition, with special emphasis on recognition of States. The Commission established an open-ended Working Group, which held six meetings, and adopted its recommendations, dealing with the definition of the scope of the topic and the method of work.

As regards the topic "Reservation to treaties", the Commission considered the eighth report[260] of the Special Rapporteur (Mr. Alain Pellet) relating to withdrawal and modification of reservations and interpretative declarations as well as to the formulation of objections to reservations and interpretative declarations. Furthermore, the Commission considered and provisionally adopted 11 draft guidelines (with three model clauses) and commentaries thereto, dealing with withdrawal and modification of reservations. It also decided to refer to the Drafting Committee five other draft guidelines on this topic.

At its fifty-fourth session, in 2002, the Commission decided to include the topic "Shared natural resources", in its programme of work and appointed Mr. Chusei Yamada as Special Rapporteur.[261] During its fifty-fifth session, the Commission considered the Special Rapporteur's first report[262] which was of a preliminary nature and set out the background on the topic and proposed to limit its scope to the study of confined transboundary groundwaters, oil and gas, with work to proceed initially on the study on transboundary groundwaters. In introducing his report, the Special Rapporteur indicated that he intended to conduct studies on the practice of States with respect to uses and management, including pollution prevention, and cases of conflicts, as well as domestic and international rules. Furthermore, he would attempt to extract some legal norms from existing regimes and possibly prepare some draft articles.

With regard to the topic "Fragmentation of international law: difficulties arising from the diversification and expansion of international law", which was also included in the Commission's programme of work at its previous session[263], the Commission decided to establish an open-ended Study Group and appointed Mr. Martti Koskenniemi as Chairman. The Study Group held four meetings and established a schedule for work to be carried out during the remaining part of the quinquennium (2003–2006), agreed upon the distribution among its members of the preparation of the studies endorsed by the Commission in 2002,[264] decided upon the methodology to be adopted for studies and held a preliminary

[259] A/CN.4/534.

[260] A/CN.4/535 and Add.1.

[261] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10); chap. X.A.1, paras. 518–519.

[262] A/CN.4/533 and Add.1.

[263] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10), chap. IX, para. 492.

[264] The following topics were included in 2002: *(a)* The function and scope of the lex specialis rule and the question of "self-contained regimes"; *(b)* The interpretation of treaties in the light of "any relevant rules of international law applicable in the relations between the parties" (art. 31 (3) *(c)* of the Vienna Convention on the Law of Treaties), in the context of general developments in international law and concerns of the international community; *(c)* The application of successive treaties relating to the same subject matter (art. 30 of the Vienna Convention on the Law of Treaties); *(d)* The modification of multilateral treaties between certain of the parties only (art. 41 of the Vienna Convention on the Law of Treaties); *(e)* Hierarchy in

discussion of an outline by the Chairman of the question of "The function and scope of the *lex specialis* rule and the question of 'self-contained regimes'". The Commission took note of the report of the Study Group.

(b) Consideration by the General Assembly

On 9 December 2003, the General Assembly adopted resolution 58/77, entitled "Report of the International Law Commission on the work of its fifty-fifth session" , without a vote. The General Assembly, taking note of the report of the International Law Commission on the work of its fifty-fifth session, reiterated the invitation to governments to provide information regarding State practice on the topic "Unilateral acts of States" and invited governments to submit information regarding national legislation, bilateral and other agreements and arrangements with regard to the use and management of transboundary groundwaters, in particular those governing quality and quantity of such waters, relevant to the topic entitled "Shared natural resources". Furthermore, the General Assembly requested the Secretary-General to invite States and international organizations to submit information concerning their practice relevant to the topic "Responsibility of international organizations", including cases in which States members of an international organization may be regarded as responsible for acts of the Organization.

7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW [265]

(a) Thirty-sixth session of the Commission [266]

The United Nations Commission on International Trade Law held its thirty-sixth session in Vienna from 30 June to 11 July 2003 and adopted its report on 11 July 2003. During the session, the Commission considered and adopted the UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects and requested the Secretariat to consolidate the *Model Legislative Provisions* with the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects into a single publication. The Commission recommended that States assess the economic efficiency of their regimes and give favorable consideration to the Legislative Provisions when revising or adopting legislation related to private participation in the development and operation of public infrastructure. With regard to the draft UNCITRAL Legislative Guide on Insolvency Law, the Commission considered and approved in principle the policy considerations reflected in the draft legislative guide, the key objectives, general features and structure of the insolvency regime, subject to completion consistent with the key objectives of the draft guide. The Commission recommended that the Working Group on Insolvency Law coordinate with the World Bank with a view to aligning the text of the World Bank's *Principles and Guidelines for effective Insolvency and Creditor Rights Systems* with the draft UNCITRAL Legislative Guide. The Working Group was requested to complete its work and submit the draft Legislative Guide to the Commission at its next session for finalization and adoption.With respect to the

international law: jus cogens, obligations erga omnes, Article 103 of the Charter of the United Nations, as conflict rules.

[265] For the membership of the United Nations Commission on International Trade Law, see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 17 (*A/58/17), chap. I, sect. B.

[266] A/58/17.

topic of arbitration, the Commission had before it the report of the Working Group on its thirty-seventh and thirty-eighth sessions and noted that the Secretariat had held an expert group meeting in conjunction with the Organisation for Economic Cooperation and Development, which found that arbitration was an appropriate method to resolve intra-corporate disputes, in particular those involving parties from different States. With respect to transport law, the Commission had before it the report of the Working Group on its tenth and eleventh sessions and noted the progress made in the development of an instrument on transport law.[267] In connection with electronic commerce, the Commission noted the progress made by the Secretariat in the development of a preliminary draft convention dealing with selected issues on electronic contracting.[268] With regard to its work on security interests, the Commission had before it the report of the Working Group on its second and third sessions and a report on a joint session of Working Groups on insolvency law and security interests. The Commission reaffirmed the mandate of the Working Group to develop an efficient legal regime for security rights in goods and to consider extending the scope of its work to cover trade receivables, letters of credit, deposit accounts and intellectual and industrial property rights.[269] In connection with the subject "Monitoring the implementation of the 1958 New York Convention",[270] the Commission requested the Secretariat to re-circulate to States the questionnaire by the Secretariat relating to the legal regime in their jurisdictions governing the recognition and enforcement of foreign awards and intensify its efforts to obtain replies to the questionnaire. The Commission considered future work in the area of procurement law and noted that whilst the UNCITRAL Model Law on Procurement of Goods, Construction and Services, had proved to be an important benchmark in procurement law reform, there was need to consider work in new areas such as in electronic procurement practices. The Secretariat was requested to prepare detailed studies in the area and formulate proposals on how to address them. On a proposal for the Secretariat to prepare a study of fraudulent financial and trade practices, the Commission considered a note by the Secretariat, which observed that commercial fraud had grown significantly. The Commission however noted that its resources were fully engaged in the formulation of private law rules and related activities and therefore appealed to the Commission on Crime Prevention and Criminal Justice for assistance in conducting a study on commercial fraud as the basis for possible future work in the area. With regard to case law on UNCITRAL texts (CLOUT) and digests of case law, the Commission observed that a draft of nine chapters of the digest of case law on the United Nations Convention on Contracts for the International Sale of Goods, 1980,[271] and initial drafts of the digest on the Model Law on International Commercial Arbitration[272] had been prepared.

(b) Consideration by the General Assembly

At its fifty-eighth session, the General Assembly, on the recommendation of the Sixth Committee, adopted resolution 58/75 of 9 December 2003, entitled "Report of the United Nations Commission on International Trade Law on the work of its thirty-sixth session, in

[267] A/CN.9/525 and A/CN.9/526.
[268] A/CN.9/527 and A/CN.9/528.
[269] A/CN.9/531 and A/CN.9/532.
[270] For the text of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, see United Nations *Treaty Series*, vol. 330, p. 3.
[271] United Nations *Treaty Series*, vol. 1489, p. 3.
[272] United Nations *Treaty Series*, vol. 1489, p. 3.

which it took note of the report of the Commission on the work of its thirty-sixth session, and commended the Commission for the progress made in its work on privately financed infrastructure projects, insolvency law, secured transactions, electronic contracting, interim measures in international commercial arbitration, transport law, procurement law and the legislative implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

(c) Model Legislative Provisions on Privately Financed Infrastructure Projects

On 9 December 2003, the General Assembly, on the recommendation of the Sixth Committee, adopted resolution 58/76, entitled "Model Legislative Provisions on Privately Financed Infrastructure Projects of the United Nations Commission on International Trade Law", The Assembly, *inter alia*, expressed its appreciation to UNICTRAL for the completion and adoption of the Model Legislative Provisions, and recommended that all States give due consideration to the Model Legislative Provisions and the UNICTRAL Legislative Guide on Privately Financed Infrastructure Projects when revising or adopting legislation related to private participation in the development and operation of public infrastructure.

UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects

Foreword

The following pages contain a set of general recommended legislative principles entitled "legislative recommendations" and model legislative provisions (the "model provisions") on privately financed infrastructure projects. The legislative recommendations and the model provisions are intended to assist domestic legislative bodies in the establishment of a legislative framework favourable to privately financed infrastructure projects. They are followed by notes that offer an analytical explanation to the financial, regulatory, legal, policy and other issues raised in the subject area. The user is advised to read the legislative recommendations and the model provisions together with the notes, which provide background information to enhance the understanding of the legislative recommendations and model provisions.The legislative recommendations and the model provisions consist of a set of core provisions dealing with matters that deserve attention in legislation specifically concerned with privately financed infrastructure projects.

The model provisions are designed to be implemented and supplemented by the issuance of regulations providing further details. Areas suitable for being addressed by regulations rather than by statutes are identified accordingly. Moreover, the successful implementation of privately financed infrastructure projects typically requires various measures beyond the establishment of an appropriate legislative framework, such as adequate administrative structures and practices, organizational capability, technical, legal and financial expertise, appropriate human and financial resources and economic stability.

It should be noted that the legislative recommendations and the model provisions do not deal with other areas of law that also have an impact on privately financed infrastructure projects but on which no specific legislative recommendations are made in the *UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects*.[273] Those

[273] United Nations publication, Sales No. E.01.V.4.

other areas of law include, for instance, promotion and protection of investments, property law, security interests, rules and procedures on compulsory acquisition of private property, general contract law, rules on government contracts and administrative law, tax law and environmental protection and consumer protection laws. The relationship of such other areas of law to any law enacted specifically with respect to privately financed infrastructure projects should be borne in mind.

Part One

Legislative recommendations

I. General legislative and institutional framework

Constitutional, legislative and institutional framework

(*see chap. I, "General legislative and institutional framework", paras. 2–14*)

Recommendation 1. *The constitutional, legislative and institutional framework for the implementation of privately financed infrastructure projects should ensure transparency, fairness and the long-term sustainability of projects. Undesirable restrictions on private sector participation in infrastructure development and operation should be eliminated.*

Scope of authority to award concessions

(*see chap. I, "General legislative and institutional framework", paras. 15–22*)

Recommendation 2. *The law should identify the public authorities of the host country (including, as appropriate, national, provincial and local authorities) that are empowered to award concessions and enter into agreements for the implementation of privately financed infrastructure projects.*

Recommendation 3. *Privately financed infrastructure projects may include concessions for the construction and operation of new infrastructure facilities and systems or the maintenance, modernization, expansion and operation of existing infrastructure facilities and systems.*

Recommendation 4. *The law should identify the sectors or types of infrastructure in respect of which concessions may be granted.*

Recommendation 5. *The law should specify the extent to which a concession might extend to the entire region under the jurisdiction of the respective contracting authority, to a geographical subdivision thereof or to a discrete project, and whether it might be awarded with or without exclusivity, as appropriate, in accordance with rules and principles of law, statutory provisions, regulations and policies applying to the sector concerned. Contracting authorities might be jointly empowered to award concessions beyond a single jurisdiction.*

Administrative coordination

(*see chap. I, "General legislative and institutional framework", paras. 23–29*)

Recommendation 6. *Institutional mechanisms should be established to coordinate the activities of the public authorities responsible for issuing approvals, licences, permits or authorizations required for the implementation of privately financed infrastructure projects in accordance with statutory or regulatory provisions on the construction and operation of infrastructure facilities of the type concerned.*

Authority to regulate infrastructure services

(*see chap. I, "General legislative and institutional framework", paras. 30–53*)

Recommendation 7. *The authority to regulate infrastructure services should not be entrusted to entities that directly or indirectly provide infrastructure services.*

Recommendation 8. *Regulatory competence should be entrusted to functionally independent bodies with a level of autonomy sufficient to ensure that their decisions are taken without political interference or inappropriate pressures from infrastructure operators and public service providers.*

Recommendation 9. *The rules governing regulatory procedures should be made public. Regulatory decisions should state the reasons on which they are based and should be accessible to interested parties through publication or other means.*

Recommendation 10. *The law should establish transparent procedures whereby the concessionaire may request a review of regulatory decisions by an independent and impartial body, which may include court review, and should set forth the grounds on which such a review may be based.*

Recommendation 11. *Where appropriate, special procedures should be established for handling disputes among public service providers concerning alleged violations of laws and regulations governing the relevant sector.*

II. Project risks and government support

Project risks and risk allocation

(*see chap. II, "Project risks and government support", paras. 8–29*)

Recommendation 12. *No unnecessary statutory or regulatory limitations should be placed upon the contracting authority's ability to agree on an allocation of risks that is suited to the needs of the project.*

Government support

(*see chap. II, "Project risks and government support", paras. 30–60*)

Recommendation 13. *The law should clearly state which public authorities of the host country may provide financial or economic support to the implementation of privately financed infrastructure projects and which types of support they are authorized to provide.*

Part Two

Model legislative provisions

I. General provisions

Model provision 1. Preamble

(*see recommendation 1 and chap. I, paras. 2–14*)

WHEREAS the [*Government*] [*Parliament*] of [. . .] considers it desirable to establish a favourable legislative framework to promote and facilitate the implementation of privately financed infrastructure projects by enhancing transparency, fairness and long-term sustainability and removing undesirable restrictions on private sector participation in infrastructure development and operation;

WHEREAS the [*Government*] [*Parliament*] of [. . .] considers it desirable to further develop the general principles of transparency, economy and fairness in the award of contracts by public authorities through the establishment of specific procedures for the award of infrastructure projects;

[*Other objectives that the enacting State might wish to state*];

Be it therefore enacted as follows:

Model provision 2. Definitions

(*see introduction, paras. 9–20*)

For the purposes of this law:

(a) "Infrastructure facility" means physical facilities and systems that directly or indirectly provide services to the general public;

(b) "Infrastructure project" means the design, construction, development and operation of new infrastructure facilities or the rehabilitation, modernization, expansion or operation of existing infrastructure facilities;

(c) "Contracting authority" means the public authority that has the power to enter into a concession contract for the implementation of an infrastructure project [*under the provisions of this law*];[274]

(d) "Concessionaire" means the person that carries out an infrastructure project under a concession contract entered into with a contracting authority;

(e) "Concession contract" means the mutually binding agreement or agreements between the contracting authority and the concessionaire that set forth the terms and conditions for the implementation of an infrastructure project;

(f) "Bidder" and "bidders" mean persons, including groups thereof, that participate in selection proceedings concerning an infrastructure project;[275]

(g) "Unsolicited proposal" means any proposal relating to the implementation of an infrastructure project that is not submitted in response to a request or solicitation issued by the contracting authority within the context of a selection procedure;

(h) "Regulatory agency" means a public authority that is entrusted with the power to issue and enforce rules and regulations governing the infrastructure facility or the provision of the relevant services.[276]

[274] It should be noted that the authority referred to in this definition relates only to the power to enter into concession contracts. Depending on the regulatory regime of the enacting State, a separate body, referred to as "regulatory agency" in subparagraph *(h)*, may have responsibility for issuing rules and regulations governing the provision of the relevant service.

[275] The term "bidder" or "bidders" encompasses, according to the context, both persons that have sought an invitation to take part in pre-selection proceedings or persons that have submitted a proposal in response to a contracting authority's request for proposals.

[276] The composition, structure and functions of such a regulatory agency may need to be addressed in special legislation (see recommendations 7–11 and chap. I, "General legislative and institutional framework", paras. 30–53).

Model provision 3. Authority to enter into concession contracts

(*see recommendation 2 and chap. I, paras. 15–18*)

The following public authorities have the power to enter into concession contracts[277] for the implementation of infrastructure projects falling within their respective spheres of competence: [*the enacting State lists the relevant public authorities of the host country that may enter into concession contracts by way of an exhaustive or indicative list of public authorities, a list of types or categories of public authority or a combination thereof*].[278]

Model provision 4. Eligible infrastructure sectors

(*see recommendation 4 and chap. I, paras. 19–22*)

Concession contracts may be entered into by the relevant authorities in the following sectors: [*the enacting State indicates the relevant sectors by way of an exhaustive or indicative list*].[279]

II. Selection of the concessionaire

Model provision 5. Rules governing the selection proceedings

(*see recommendation 14 and chap. III, paras. 1–33*)

The selection of the concessionaire shall be conducted in accordance with model provisions 6–27 and, for matters not provided herein, in accordance with [*the enacting State indicates the provisions of its laws that provide for transparent and efficient competitive procedures for the award of government contracts*].[280]

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[277] It is advisable to establish institutional mechanisms to coordinate the activities of the public authorities responsible for issuing the approvals, licences, permits or authorizations required for the implementation of privately financed infrastructure projects in accordance with statutory or regulatory provisions on the construction and operation of infrastructure facilities of the type concerned (see legislative recommendation 6 and chap. I, "General legislative and institutional framework", paras. 23–29). In addition, for countries that contemplate providing specific forms of government support to infrastructure projects, it may be useful for the relevant law, such as legislation or regulation governing the activities of entities authorized to offer government support, to identify clearly which entities have the power to provide such support and what kind of support may be provided (see chap. II, "Project risks and government support").

[278] Enacting States may generally have two options for completing this model provision. One alternative may be to provide a list of authorities empowered to enter into concession contracts, either in the model provision or in a schedule to be attached thereto. Another alternative might be for the enacting State to indicate the levels of government that have the power to enter into those contracts, without naming the relevant public authorities. In a federal State, for example, such an enabling clause might refer to "the Union, the states [or provinces] and the municipalities". In any event, it is advisable for enacting States that wish to include an exhaustive list of authorities to consider mechanisms allowing for revisions of such a list as the need arises. One possibility to that end might be to include the list in a schedule to the law or in regulations that may be issued thereunder.

[279] It is advisable for enacting States that wish to include an exhaustive list of sectors to consider mechanisms allowing for revisions of such a list as the need arises. One possibility to that end might be to include the list in a schedule to the law or in regulations that may be issued thereunder.

[280] The user's attention is drawn to the relationship between the procedures for the selection of the concessionaire and the general legislative framework for the award of government contracts in the enacting State. While some elements of structured competition that exist in traditional procurement methods may be usefully applied, a number of adaptations are needed to take into account the particular needs of privately financed infrastructure projects, such as a clearly defined pre-selection phase, flexibility in the formulation of requests for proposals, special evaluation criteria and some scope for negotiations with bidders. The selection procedures reflected in this chapter are based largely on the features of the principal method for the procurement of services under the UNCITRAL Model Law on Procurement of

1. Pre-selection of bidders

Model provision 6. Purpose and procedure of pre-selection

(*see chap. III, paras. 34–50*)

1. The contracting authority shall engage in pre-selection proceedings with a view to identifying bidders that are suitably qualified to implement the envisaged infrastructure project.

2. The invitation to participate in the pre-selection proceedings shall be published in accordance with [*the enacting State indicates the provisions of its laws governing publication of invitation to participate in proceedings for the pre-qualification of suppliers and contractors*].

3. To the extent not already required by [*the enacting State indicates the provisions of its laws on procurement proceedings that govern the content of invitations to participate in proceedings for the pre-qualification of suppliers and contractors*],[281] the invitation to participate in the pre-selection proceedings shall include at least the following:

(a) A description of the infrastructure facility;

(b) An indication of other essential elements of the project, such as the services to be delivered by the concessionaire, the financial arrangements envisaged by the contracting authority (for example, whether the project will be entirely financed by user fees or tariffs or whether public funds such as direct payments, loans or guarantees may be provided to the concessionaire);

(c) Where already known, a summary of the main required terms of the concession contract to be entered into;

(d) The manner and place for the submission of applications for pre-selection and the deadline for the submission, expressed as a specific date and time, allowing sufficient time for bidders to prepare and submit their applications; and

(e) The manner and place for solicitation of the pre-selection documents.

4. To the extent not already required by [*the enacting State indicates the provisions of its laws on procurement proceedings that govern the content of the pre-selection documents to be provided to suppliers and contractors in proceedings for the pre-qualification of*

Goods, Construction and Services, which was adopted by UNCITRAL at its twenty-seventh session, held in New York from 31 May to 17 June 1994 (the "Model Procurement Law"). The model provisions on the selection of the concessionaire are not intended to replace or reproduce the entire rules of the enacting State on government procurement, but rather to assist domestic legislators to develop special rules suited for the selection of the concessionaire. The model provisions assume that there exists in the enacting State a general framework for the award of government contracts providing for transparent and efficient competitive procedures in a manner that meets the standards of the Model Procurement Law. Thus, the model provisions do not deal with a number of practical procedural steps that would typically be found in an adequate general procurement regime. Examples include the following matters: manner of publication of notices, procedures for issuance of requests for proposals, record-keeping of the procurement process, accessibility of information to the public and review procedures. Where appropriate, the notes to these model provisions refer the reader to provisions of the Model Procurement Law, which may, mutatis mutandis, supplement the practical elements of the selection procedure described herein.

[281] A list of elements typically contained in an invitation to participate in pre-qualification proceedings can be found in article 25, paragraph 2, of the Model Procurement Law.

suppliers and contractors],[282] the pre-selection documents shall include at least the following information:

(a) The pre-selection criteria in accordance with model provision 7;

(b) Whether the contracting authority intends to waive the limitations on the participation of consortia set forth in model provision 8;

(c) Whether the contracting authority intends to request only a limited number[283] of pre-selected bidders to submit proposals upon completion of the pre-selection proceedings in accordance with model provision 9, paragraph 2, and, if applicable, the manner in which this selection will be carried out;

(d) Whether the contracting authority intends to require the successful bidder to establish an independent legal entity established and incorporated under the laws of [*the enacting State*] in accordance with model provision 30.

5. For matters not provided in this model provision, the pre-selection proceedings shall be conducted in accordance with [*the enacting State indicates the provisions of its laws on government procurement governing the conduct of proceedings for the pre-qualification of suppliers and contractors*].[284]

Model provision 7. Pre-selection criteria

(*see recommendation 15 and chap. III, paras. 34–40, 43 and 44*)

In order to qualify for the selection proceedings, interested bidders must meet objectively justifiable criteria[285] that the contracting authority considers appropriate in the particular proceedings, as stated in the pre-selection documents. These criteria shall include at least the following:

(a) Adequate professional and technical qualifications, human resources, equipment and other physical facilities as necessary to carry out all the phases of the project, including design, construction, operation and maintenance;

(b) Sufficient ability to manage the financial aspects of the project and capability to sustain its financing requirements;

(c) Appropriate managerial and organizational capability, reliability and experience, including previous experience in operating similar infrastructure facilities.

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[282] A list of elements typically contained in pre-qualification documents can be found in article 7, paragraph 3, of the Model Procurement Law.

[283] In some countries, practical guidance on selection procedures encourages domestic contracting authorities to limit the prospective proposals to the lowest possible number sufficient to ensure meaningful competition (for example, three or four). The manner in which rating systems (in particular quantitative ones) may be used to arrive at such a range of bidders is discussed in the *Legislative Guide* (see chap. III, "Selection of the concessionaire", paras. 48 and 49). See also footnote 14.

[284] Procedural steps on pre-qualification proceedings, including procedures for handling requests for clarifications and disclosure requirements for the contracting authority's decision on the bidders' qualifications, can be found in article 7 of the Model Procurement Law, paragraphs 2–7.

[285] The laws of some countries provide for some sort of preferential treatment for domestic entities or afford special treatment to bidders that undertake to use national goods or employ local labour. The various issues raised by domestic preferences are discussed in the *Legislative Guide* (see chap. III, "Selection of the concessionaire", paras. 43 and 44). The *Legislative Guide* suggests that countries that wish to provide some incentive to national suppliers may wish to apply such preferences in the form of special evaluation criteria, rather than by a blanket exclusion of foreign suppliers. In any event, where domestic preferences are envisaged, they should be announced in advance, preferably in the invitation to the pre-selection proceedings.

Model provision 8. Participation of consortia

(*see recommendation 16 and chap. III, paras. 41 and 42*)

1. The contracting authority, when first inviting the participation of bidders in the selection proceedings, shall allow them to form bidding consortia. The information required from members of bidding consortia to demonstrate their qualifications in accordance with model provision 7 shall relate to the consortium as a whole as well as to its individual participants.

2. Unless otherwise [authorized by . . . [*the enacting State indicates the relevant authority*] and] stated in the pre-selection documents, each member of a consortium may participate, either directly or indirectly, in only one consortium[286] at the same time. A violation of this rule shall cause the disqualification of the consortium and of the individual members.

3. When considering the qualifications of bidding consortia, the contracting authority shall consider the capabilities of each of the consortium members and assess whether the combined qualifications of the consortium members are adequate to meet the needs of all phases of the project.

Model provision 9. Decision on pre-selection

(*see recommendation 17 (for para. 2) and chap. III, paras. 47–50*)

1. The contracting authority shall make a decision with respect to the qualifications of each bidder that has submitted an application for pre-selection. In reaching that decision, the contracting authority shall apply only the criteria that are set forth in the pre-selection documents. All pre-selected bidders shall thereafter be invited by the contracting authority to submit proposals in accordance with model provisions 10–17.

2. Notwithstanding paragraph 1, the contracting authority may, provided that it has made an appropriate statement in the pre-selection documents to that effect, reserve the right to request proposals upon completion of the pre-selection proceedings only from a limited number[287] of bidders that best meet the pre-selection criteria. For this purpose, the contracting authority shall rate the bidders that meet the pre-selection criteria on the basis of the criteria applied to assess their qualifications and draw up the list of bidders that will be invited to submit proposals upon completion of the pre-selection proceedings. In drawing up the list, the contracting authority shall apply only the manner of rating that is set forth in the pre-selection documents.

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[286] The rationale for prohibiting the participation of bidders in more than one consortium to submit proposals for the same project is to reduce the risk of leakage of information or collusion between competing consortia. Nevertheless, the model provision contemplates the possibility of ad hoc exceptions to this rule, for instance, in the event that only one company or only a limited number of companies could be expected to deliver a specific good or service essential for the implementation of the project.

[287] In some countries, practical guidance on selection procedures encourages domestic contracting authorities to limit the prospective proposals to the lowest possible number sufficient to ensure meaningful competition (for example, three or four). The manner in which rating systems (in particular quantitative ones) may be used to arrive at such a range of bidders is discussed in the *Legislative Guide* (see chap. III, "Selection of the concessionaire", para. 48). It should be noted that the rating system is used solely for the purpose of the pre-selection of bidders. The ratings of the pre-selected bidders should not be taken into account at the stage of evaluation of proposals (see model provision 15), at which all pre-selected bidders should start out on an equal standing.

2. Procedure for requesting proposals

Model provision 10. Single-stage and two-stage procedures for requesting proposals

(*see recommendations 18 (for para. 1) and 19 (for paras. 2 and 3) and chap. III, paras. 51–58*)

1. The contracting authority shall provide a set of the request for proposals and related documents issued in accordance with model provision 11 to each pre-selected bidder that pays the price, if any, charged for those documents.

2. Notwithstanding the above, the contracting authority may use a two-stage procedure to request proposals from pre-selected bidders when the contracting authority does not deem it to be feasible to describe in the request for proposals the characteristics of the project such as project specifications, performance indicators, financial arrangements or contractual terms in a manner sufficiently detailed and precise to permit final proposals to be formulated.

3. Where a two-stage procedure is used, the following provisions apply:

(a) The initial request for proposals shall call upon the bidders to submit, in the first stage of the procedure, initial proposals relating to project specifications, performance indicators, financing requirements or other characteristics of the project as well as to the main contractual terms proposed by the contracting authority;[288]

(b) The contracting authority may convene meetings and hold discussions with any of the bidders to clarify questions concerning the initial request for proposals or the initial proposals and accompanying documents submitted by the bidders. The contracting authority shall prepare minutes of any such meeting or discussion containing the questions raised and the clarifications provided by the contracting authority;

(c) Following examination of the proposals received, the contracting authority may review and, as appropriate, revise the initial request for proposals by deleting or modifying any aspect of the initial project specifications, performance indicators, financing requirements or other characteristics of the project, including the main contractual terms, and any criterion for evaluating and comparing proposals and for ascertaining the successful bidder, as set forth in the initial request for proposals, as well as by adding characteristics or criteria to it. The contracting authority shall indicate in the record of the selection proceedings to be kept pursuant to model provision 26 the justification for any revision to the request for proposals. Any such deletion, modification or addition shall be communicated in the invitation to submit final proposals;

[288] In many cases, in particular for new types of project, the contracting authority may not be in a position, at this stage, to have formulated a detailed draft of the contractual terms envisaged by it. Also, the contracting authority may find it preferable to develop such terms only after an initial round of consultations with the pre-selected bidders. In any event, however, it is important for the contracting authority, at this stage, to provide some indication of the key contractual terms of the concession contract, in particular the way in which the project risks should be allocated between the parties under the concession contract. If this allocation of contractual rights and obligations is left entirely open until after the issuance of the final request for proposals, the bidders may respond by seeking to minimize the risks they accept, which may frustrate the purpose of seeking private investment for developing the project (see chap. III, "Selection of the concessionaire", paras. 67–70; see further chap. II, "Project risks and government support", paras. 8–29).

(d) In the second stage of the proceedings, the contracting authority shall invite the bidders to submit final proposals with respect to a single set of project specifications, performance indicators or contractual terms in accordance with model provisions 11–17.

Model provision 11. Content of the request for proposals

(*see recommendation 20 and chap. III, paras. 59–70*)

To the extent not already required by [*the enacting State indicates the provisions of its laws on procurement proceedings that govern the content of requests for proposals*],[289] the request for proposals shall include at least the following information:

(a) General information as may be required by the bidders in order to prepare and submit their proposals;[290]

(b) Project specifications and performance indicators, as appropriate, including the contracting authority's requirements regarding safety and security standards and environmental protection;[291]

(c) The contractual terms proposed by the contracting authority, including an indication of which terms are deemed to be non-negotiable;

(d) The criteria for evaluating proposals and the thresholds, if any, set by the contracting authority for identifying non-responsive proposals; the relative weight to be accorded to each evaluation criterion; and the manner in which the criteria and thresholds are to be applied in the evaluation and rejection of proposals.

Model provision 12. Bid securities

(*see chap. III, para. 62*)

1. The request for proposals shall set forth the requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required bid security.

2. A bidder shall not forfeit any bid security that it may have been required to provide, other than in cases of:[292]

(a) Withdrawal or modification of a proposal after the deadline for submission of proposals and, if so stipulated in the request for proposals, before that deadline;

(b) Failure to enter into final negotiations with the contracting authority pursuant to model provision 17, paragraph 1;

(c) Failure to submit its best and final offer within the time limit prescribed by the contracting authority pursuant to model provision 17, paragraph 2;

(d) Failure to sign the concession contract, if required by the contracting authority to do so, after the proposal has been accepted;

(e) Failure to provide required security for the fulfilment of the concession contract after the proposal has been accepted or to comply with any other condition prior to signing the concession contract specified in the request for proposals.

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[289] A list of elements typically contained in a request for proposals for services can be found in article 38 of the Model Procurement Law.

[290] A list of elements that should be provided can be found in chapter III, "Selection of the concessionaire", paragraphs 61 and 62, of the *Legislative Guide*.

[291] See chapter III, "Selection of the concessionaire", paragraphs 64–66.

[292] General provisions on bid securities can be found in article 32 of the Model Procurement Law.

Model provision 13. Clarifications and modifications

(*see recommendation 21 and chap. III, paras. 71 and 72*)

The contracting authority may, whether on its own initiative or as a result of a request for clarification by a bidder, review and, as appropriate, revise any element of the request for proposals as set forth in model provision 11. The contracting authority shall indicate in the record of the selection proceedings to be kept pursuant to model provision 26 the justification for any revision to the request for proposals. Any such deletion, modification or addition shall be communicated to the bidders in the same manner as the request for proposals at a reasonable time prior to the deadline for submission of proposals.

Model provision 14. Evaluation criteria

(*see recommendations 22 (for para. 1) and 23 (for para. 2) and chap. III, paras. 73-77*)

1. The criteria for the evaluation and comparison of the technical proposals[293] shall include at least the following:

(a) Technical soundness;

(b) Compliance with environmental standards;

(c) Operational feasibility;

(d) Quality of services and measures to ensure their continuity.

2. The criteria for the evaluation and comparison of the financial and commercial proposals[294] shall include, as appropriate:

(a) The present value of the proposed tolls, unit prices and other charges over the concession period;

(b) The present value of the proposed direct payments by the contracting authority, if any;

(c) The costs for design and construction activities, annual operation and maintenance costs, present value of capital costs and operating and maintenance costs;

(d) The extent of financial support, if any, expected from a public authority of [*the enacting State*];

(e) Soundness of the proposed financial arrangements;

(f) The extent of acceptance of the negotiable contractual terms proposed by the contracting authority in the request for proposals

(g) The social and economic development potential offered by the proposals.

Model provision 15. Comparison and evaluation of proposals

(*see recommendation 24 and chap. III, paras. 78–82*)

1. The contracting authority shall compare and evaluate each proposal in accordance with the evaluation criteria, the relative weight accorded to each such criterion and the evaluation process set forth in the request for proposals.

2. For the purposes of paragraph 1, the contracting authority may establish thresholds with respect to quality, technical, financial and commercial aspects. Proposals that fail to

[293] See chapter III, "Selection of the concessionaire", paragraph 74.

[294] See chapter III, "Selection of the concessionaire", paragraphs 75–77.

achieve the thresholds shall be regarded as non-responsive and rejected from the selection procedure.[295]

Model provision 16. Further demonstration of fulfilment of qualification criteria

(*see recommendation 25 and chap. III, paras. 78–82*)

The contracting authority may require any bidder that has been pre-selected to demonstrate again its qualifications in accordance with the same criteria used for pre-selection. The contracting authority shall disqualify any bidder that fails to demonstrate again its qualifications if requested to do so.[296]

Model provision 17. Final negotiations

(*see recommendations 26 (for para. 1) and 27 (for para. 2) and chap. III, paras. 83 and 84*)

1. The contracting authority shall rank all responsive proposals on the basis of the evaluation criteria and invite for final negotiation of the concession contract the bidder that has attained the best rating. Final negotiations shall not concern those contractual terms, if any, that were stated as non-negotiable in the final request for proposals.

2. If it becomes apparent to the contracting authority that the negotiations with the bidder invited will not result in a concession contract, the contracting authority shall inform the bidder of its intention to terminate the negotiations and give the bidder reasonable time to formulate its best and final offer. If the contracting authority does not find that proposal acceptable, it shall terminate the negotiations with the bidder concerned. The contracting authority shall then invite for negotiations the other bidders in the order of their ranking until it arrives at a concession contract or rejects all remaining proposals. The contracting authority shall not resume negotiations with a bidder with which negotiations have been terminated pursuant to this paragraph.

3. Negotiation of concession contracts without competitive procedures

Model provision 18. Circumstances authorizing award without competitive procedures

(*see recommendation 28 and chap. III, para. 89*)

Subject to approval by [*the enacting State indicates the relevant authority*],[297] the contracting authority is authorized to negotiate a concession contract without using the procedure set forth in model provisions 6 to 17 in the following cases:

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[295] This model provision offers an example of an evaluation process that a contracting authority may wish to apply to compare and evaluate proposals for privately financed infrastructure projects. Alternative evaluation processes are described in chapter III, "Selection of the concessionaire", paragraphs 79–82, of the *Legislative Guide*, such as a two-step evaluation process or the two-envelope system. In contrast to the process set forth in this model provision, the processes described in the *Legislative Guide* are designed to allow the contracting authority to compare and evaluate the non-financial criteria separately from the financial criteria so as to avoid situations where undue weight would be given to certain elements of the financial criteria (such as the unit price) to the detriment of the non-financial criteria. In order to ensure the integrity, transparency and predictability of the evaluation stage of the selection proceedings, it is recommended that the enacting State set forth in its law the evaluation processes that contracting authorities may use to compare and evaluate proposals and the details of the application of this process.

[296] Where pre-qualification proceedings have been engaged in, the criteria shall be the same as those used in the pre-qualification proceedings.

[297] The rationale for subjecting the award of the concession contract without competitive procedures to the approval of a higher authority is to ensure that the contracting authority engages in direct negotiations with bidders only in the appropriate circumstances (see chap. III, "Selection of the concessionaire", paras.

(a) When there is an urgent need for ensuring continuity in the provision of the service and engaging in the procedures set forth in model provisions 6 to 17 would be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the contracting authority nor the result of dilatory conduct on its part;

(b) Where the project is of short duration and the anticipated initial investment value does not exceed the amount [of [*the enacting State specifies a monetary ceiling*]] [set forth in [*the enacting State indicates the provisions of its laws that specify the monetary threshold below which a privately financed infrastructure project may be awarded without competitive procedures*]];[298]

(c) Where the project involves national defence or national security;

(d) Where there is only one source capable of providing the required service, such as when the provision of the service requires the use of intellectual property, trade secrets or other exclusive rights owned or possessed by a certain person or persons;

(e) In cases of unsolicited proposals falling under model provision 23;

(f) When an invitation to the pre-selection proceedings or a request for proposals has been issued but no applications or proposals were submitted or all proposals failed to meet the evaluation criteria set forth in the request for proposals and if, in the judgement of the contracting authority, issuing a new invitation to the pre-selection proceedings and a new request for proposals would be unlikely to result in a project award within a required time frame;[299]

(g) In other cases where the [*the enacting State indicates the relevant authority*] authorizes such an exception for compelling reasons of public interest.[300]

85–96). The model provision therefore suggests that the enacting State indicate a relevant authority that is competent to authorize negotiations in all cases set forth in the model provision. The enacting State may provide, however, for different approval requirements for each subparagraph of the model provision. In some cases, for instance, the enacting State may provide that the authority to engage in such negotiations derives directly from the law. In other cases, the enacting State may make the negotiations subject to the approval of different higher authorities, depending on the nature of the services to be provided or the infrastructure sector concerned. In those cases, the enacting State may need to adapt the model provision to these approval requirements by adding the particular approval requirement to the subparagraph concerned, or by adding a reference to provisions of its law where these approval requirements are set forth.

[298] As an alternative to the exclusion provided in subparagraph *(b)*, the enacting State may consider devising a simplified procedure for request for proposals for projects falling thereunder, for instance by applying the procedures described in article 48 of the Model Procurement Law.

[299] The enacting State may wish to require that the contracting authority include in the record to be kept pursuant to model provision 26 a summary of the results of the negotiations and indicate the extent to which those results differed from the project specifications and contractual terms of the original request for proposals, and that it state the reasons therefore.

[300] Enacting States that deem it desirable to authorize the use of negotiated procedures on an ad hoc basis may wish to retain subparagraph *(g)* when implementing the model provision. Enacting States wishing to limit exceptions to the competitive selection procedures may in turn prefer not to include the subparagraph. In any event, for purposes of transparency, the enacting State may wish to indicate here or elsewhere in the model provision other exceptions, if any, authorizing the use of negotiated procedures that may be provided under specific legislation.

Model provision 19. Procedures for negotiation of a concession contract

(*see recommendation 29 and chap. III, para. 90*)

Where a concession contract is negotiated without using the procedures set forth in model provisions 6–17 the contracting authority shall:[301]

(a) Except for concession contracts negotiated pursuant to model provision 18, subparagraph *(c)*, cause a notice of its intention to commence negotiations in respect of a concession contract to be published in accordance with [*the enacting State indicates the provisions of any relevant laws on procurement proceedings that govern the publication of notices*];

(b) Engage in negotiations with as many persons as the contracting authority judges capable[302] of carrying out the project as circumstances permit;

(c) Establish evaluation criteria against which proposals shall be evaluated and ranked.

4. Unsolicited proposals[303]

Model provision 20. Admissibility of unsolicited proposals

(*see recommendation 30 and chap. III, paras. 97–109*)

As an exception to model provisions 6 to 17, the contracting authority[304] is authorized to consider unsolicited proposals pursuant to the procedures set forth in model provisions 21 to 23, provided that such proposals do not relate to a project for which selection procedures have been initiated or announced.

Model provision 21. Procedures for determining the admissibility of unsolicited proposals

(*see recommendations 31 (for paras. 1 and 2) and 32 (for para. 3) and chap. III, paras. 110–112*)

1. Following receipt and preliminary examination of an unsolicited proposal, the contracting authority shall promptly inform the proponent whether or not the project is considered to be potentially in the public interest.[305]

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[301] A number of elements to enhance transparency in negotiations under this model provision are discussed in chapter III, "Selection of the concessionaire", paragraphs 90–96, of the *Legislative Guide*.

[302] Enacting States wishing to enhance transparency in the use of negotiated procedures may establish, by specific regulations, qualification criteria to be met by persons invited to negotiations pursuant to model provisions 18 and 19. An indication of possible qualification criteria is contained in model provision 7.

[303] The policy considerations on the advantages and disadvantages of unsolicited proposals are discussed in chapter III, "Selection of the concessionaire", paragraphs 98–100, of the *Legislative Guide*. States that wish to allow contracting authorities to handle such proposals may wish to use the procedures set forth in model provisions 21–23.

[304] The model provision assumes that the power to entertain unsolicited proposals lies with the contracting authority. However, depending on the regulatory system of the enacting State, a body separate from the contracting authority may have the responsibility for entertaining unsolicited proposals or for considering, for instance, whether an unsolicited proposal is in the public interest. In such a case, the manner in which the functions of such a body may need to be coordinated with those of the contracting authority should be carefully considered by the enacting State (see footnotes 1, 3 and 24 and the references cited therein).

[305] The determination that a proposed project is in the public interest entails a considered judgement regarding the potential benefits to the public that are offered by the project, as well as its relationship to the Government's policy for the infrastructure sector concerned. In order to ensure the integrity, transparency and predictability of the procedures for determining the admissibility of unsolicited proposals, it may be

2. If the project is considered to be potentially in the public interest under paragraph 1, the contracting authority shall invite the proponent to submit as much information on the proposed project as is feasible at this stage to allow the contracting authority to make a proper evaluation of the proponent's qualifications[306] and the technical and economic feasibility of the project and to determine whether the project is likely to be successfully implemented in the manner proposed in terms acceptable to the contracting authority. For this purpose, the proponent shall submit a technical and economic feasibility study, an environmental impact study and satisfactory information regarding the concept or technology contemplated in the proposal.

3. In considering an unsolicited proposal, the contracting authority shall respect the intellectual property, trade secrets or other exclusive rights contained in, arising from or referred to in the proposal. Therefore, the contracting authority shall not make use of information provided by or on behalf of the proponent in connection with its unsolicited proposal other than for the evaluation of that proposal, except with the consent of the proponent. Except as otherwise agreed by the parties, the contracting authority shall, if the proposal is rejected, return to the proponent the original and any copies of documents that the proponent submitted and prepared throughout the procedure.

Model provision 22. Unsolicited proposals that do not involve intellectual property, trade secrets or other exclusive rights

(*see recommendation 33 and chap. III, paras. 113 and 114*)

1. Except in the circumstances set forth in model provision 18, the contracting authority shall, if it decides to implement the project, initiate a selection procedure in accordance with model provisions 6 to 17 if the contracting authority considers that:

(a) The envisaged output of the project can be achieved without the use of intellectual property, trade secrets or other exclusive rights owned or possessed by the proponent; and

(b) The proposed concept or technology is not truly unique or new.

2. The proponent shall be invited to participate in the selection proceedings initiated by the contracting authority pursuant to paragraph 1 and may be given an incentive or a similar benefit in a manner described by the contracting authority in the request for proposals in consideration for the development and submission of the proposal.

Model provision 23. Unsolicited proposals involving intellectual property, trade secrets or other exclusive rights

(*see recommendations 34 (for paras. 1 and 2) and 35 (for paras. 3 and 4) and chap. III, paras. 115–117*)

1. If the contracting authority determines that the conditions of model provision 22, paragraph 1 *(a)* and *(b)*, are not met, it shall not be required to carry out a selection procedure pursuant to model provisions 6 to 17. However, the contracting authority may

advisable for the enacting State to provide guidance, in regulations or other documents, concerning the criteria that will be used to determine whether an unsolicited proposal is in the public interest, which may include criteria for assessing the appropriateness of the contractual arrangements and the reasonableness of the proposed allocation of project risks.

[306] The enacting State may wish to provide in regulations the qualification criteria that need to be met by the proponent. Elements to be taken into account for that purpose are indicated in model provision 7.

still seek to obtain elements of comparison for the unsolicited proposal in accordance with the provisions set out in paragraphs 2 to 4.[307]

2. Where the contracting authority intends to obtain elements of comparison for the unsolicited proposal, the contracting authority shall publish a description of the essential output elements of the proposal with an invitation for other interested parties to submit proposals within [a reasonable period] [*the enacting State indicates a certain amount of time*].

3. If no proposals in response to an invitation issued pursuant to paragraph 2 are received within [a reasonable period] [the amount of time specified in paragraph 2 above], the contracting authority may engage in negotiations with the original proponent.

4. If the contracting authority receives proposals in response to an invitation issued pursuant to paragraph 2, the contracting authority shall invite the proponents to negotiations in accordance with the provisions set forth in model provision 19. In the event that the contracting authority receives a sufficiently large number of proposals, which appear prima facie to meet its infrastructure needs, the contracting authority shall request the submission of proposals pursuant to model provisions 10 to 17, subject to any incentive or other benefit that may be given to the person who submitted the unsolicited proposal in accordance with model provision 22, paragraph 2.

5. Miscellaneous provisions

Model provision 24. Confidentiality

(*see recommendation 36 and chap. III, para. 118*)

The contracting authority shall treat proposals in such a manner as to avoid the disclosure of their content to competing bidders. Any discussions, communications and negotiations between the contracting authority and a bidder pursuant to model provisions 10, paragraph 3, 17, 18, 19 or 23, paragraphs 3 and 4, shall be confidential. Unless required by law or by a court order or permitted by the request for proposals, no party to the negotiations shall disclose to any other person any technical, price or other information in relation to discussions, communications and negotiations pursuant to the aforementioned provisions without the consent of the other party.

Model provision 25. Notice of contract award

(*see recommendation 37 and chap. III, para. 119*)

Except for concession contracts awarded pursuant to model provision 18, subparagraph *(c)*, the contracting authority shall cause a notice of the contract award to be published in accordance with [*the enacting State indicates the provisions of its laws on procurement proceedings that govern the publication of contract award notices*]. The notice shall identify the concessionaire and include a summary of the essential terms of the concession contract.

[307] The enacting State may wish to consider adopting a special procedure for handling unsolicited proposals falling under this model provision, which may be modelled, *mutatis mutandis*, on the request-for-proposals procedure set forth in article 48 of the Model Procurement Law.

Model provision 26. Record of selection and award proceedings

(*see recommendation 38 and chap. III, paras. 120–126*)

The contracting authority shall keep an appropriate record of information pertaining to the selection and award proceedings in accordance with [*the enacting State indicates the provisions of its laws on public procurement that govern record of procurement proceedings*].[308]

Model provision 27. Review procedures

(*see recommendation 39 and chap. III, paras. 127–131*)

A bidder that claims to have suffered, or that may suffer, loss or injury due to a breach of a duty imposed on the contracting authority by the law may seek review of the contracting authority's acts or failures to act in accordance with [*the enacting State indicates the provisions of its laws governing the review of decisions made in procurement proceedings*].[309]

III. Contents and implementation of the concession contract

Model provision 28. Contents and implementation of the concession contract

(*see recommendation 40 and chap. IV, paras. 1–11*)

The concession contract shall provide for such matters as the parties deem appropriate,[310] such as:

(a) The nature and scope of works to be performed and services to be provided by the concessionaire (*see chap. IV, para. 1*);

(b) The conditions for provision of those services and the extent of exclusivity, if any, of the concessionaire's rights under the concession contract (*see recommendation 5*);

(c) The assistance that the contracting authority may provide to the concessionaire in obtaining licences and permits to the extent necessary for the implementation of the infrastructure project;

(d) Any requirements relating to the establishment and minimum capital of a legal entity incorporated in accordance with model provision 30 (*see recommendations 42 and 43 and model provision 30*);

(e) The ownership of assets related to the project and the obligations of the parties, as appropriate, concerning the acquisition of the project site and any necessary easements, in accordance with model provisions 31 to 33 (*see recommendations 44 and 45 and model provisions 31 to 33*);

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[308] The content of such a record for the various types of project award contemplated in the model provisions, as well as the extent to which the information contained therein may be accessible to the public, are discussed in chapter III, "Selection of the concessionaire", paragraphs 120–126, of the *Legislative Guide*. The content of such a record for the various types of project award is further set out in article 11 of the Model Procurement Law. If the laws of the enacting State do not adequately address these matters, the enacting State should adopt legislation or regulations to that effect.

[309] Elements for the establishment of an adequate review system are discussed in chapter III, "Selection of the concessionaire", paragraphs 127–131, of the *Legislative Guide*. They are also contained in chapter VI of the Model Procurement Law. If the laws of the enacting State do not provide such an adequate review system, the enacting State should consider adopting legislation to that effect.

[310] Enacting States may wish to note that the inclusion in the concession contract of provisions dealing with some of the matters listed in this model provision is mandatory pursuant to other model provisions.

(f) The remuneration of the concessionaire, whether consisting of tariffs or fees for the use of the facility or the provision of services; the methods and formulas for the establishment or adjustment of any such tariffs or fees; and payments, if any, that may be made by the contracting authority or other public authority (*see recommendations 46 and 48*);

(g) Procedures for the review and approval of engineering designs, construction plans and specifications by the contracting authority, and the procedures for testing and final inspection, approval and acceptance of the infrastructure facility (*see recommendation 52*);

(h) The extent of the concessionaire's obligations to ensure, as appropriate, the modification of the service so as to meet the actual demand for the service, its continuity and its provision under essentially the same conditions for all users (*see recommendation 53 and model provision 38*);

(i) The contracting authority's or other public authority's right to monitor the works to be performed and services to be provided by the concessionaire and the conditions and extent to which the contracting authority or a regulatory agency may order variations in respect of the works and conditions of service or take such other reasonable actions as they may find appropriate to ensure that the infrastructure facility is properly operated and the services are provided in accordance with the applicable legal and contractual requirements (*see recommendations 52 and 54, subpara.* (*b*));

(j) The extent of the concessionaire's obligation to provide the contracting authority or a regulatory agency, as appropriate, with reports and other information on its operations (*see recommendation 54, subpara. (a)*);

(k) Mechanisms to deal with additional costs and other consequences that might result from any order issued by the contracting authority or another public authority in connection with subparagraphs *(h)* and *(i)* above, including any compensation to which the concessionaire might be entitled (see *chap. IV, paras. 73 to 76*);

(l) Any rights of the contracting authority to review and approve major contracts to be entered into by the concessionaire, in particular with the concessionaire's own shareholders or other affiliated persons (*see recommendation 56*);

(m) Guarantees of performance to be provided and insurance policies to be maintained by the concessionaire in connection with the implementation of the infrastructure project (*see recommendation 58, subparas.* (*a*) *and* (*b*));

(n) Remedies available in the event of default of either party (*see recommendation 58, subpara. (e)*);

(o) The extent to which either party may be exempt from liability for failure or delay in complying with any obligation under the concession contract owing to circumstances beyond its reasonable control (*see recommendation 58, subpara. (d)*);

(p) The duration of the concession contract and the rights and obligations of the parties upon its expiry or termination (*see recommendation 61*);

(q) The manner for calculating compensation pursuant to model provision 47 (*see recommendation 67*);

(r) The governing law and the mechanisms for the settlement of disputes that may arise between the contracting authority and the concessionaire (*see recommendation 69 and model provisions 29 and 49*);

(s) The rights and obligations of the parties with respect to confidential information (*see model provision 24*).

Model provision 29. Governing law

(*see recommendation 41 and chap. IV, paras. 5–8*)

The concession contract is governed by the law of [*the enacting State*] unless otherwise provided in the concession contract.[311]

Model provision 30. Organization of the concessionaire

(*see recommendations 42 and 43 and chap. IV, paras. 12–18*)

The contracting authority may require that the successful bidder establish a legal entity incorporated under the laws of [*the enacting State*], provided that a statement to that effect was made in the pre-selection documents or in the request for proposals, as appropriate. Any requirement relating to the minimum capital of such a legal entity and the procedures for obtaining the approval of the contracting authority to its statute and by-laws and significant changes therein shall be set forth in the concession contract consistent with the terms of the request for proposals.

Model provision 31. Ownership of assets[312]

(*see recommendation 44 and chap. IV, paras. 20–26*)

The concession contract shall specify, as appropriate, which assets are or shall be public property and which assets are or shall be the private property of the concessionaire. The concession contract shall in particular identify which assets belong to the following categories:

(a) Assets, if any, that the concessionaire is required to return or transfer to the contracting authority or to another entity indicated by the contracting authority in accordance with the terms of the concession contract;

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[311] Legal systems provide varying answers to the question as to whether the parties to a concession contract may choose as the governing law of the contract a law other than the laws of the host country. Furthermore, as discussed in the *Legislative Guide* (see chap. IV, "Construction and operation of infrastructure: legislative framework and project agreement", paras. 5–8), in some countries the concession contract may be subject to administrative law, while in others the concession contract may be governed by private law (see also *Legislative Guide*, chap. VII, "Other relevant areas of law", paras. 24–27). The governing law also includes legal rules of other fields of law that apply to the various issues that arise during the implementation of an infrastructure project (see generally *Legislative Guide*, chap. VII, "Other relevant areas of law", sect. B).

[312] Private sector participation in infrastructure projects may be devised in a variety of different forms, ranging from publicly owned and operated infrastructure to fully privatized projects (see *Legislative Guide*, "Introduction and background information on privately financed infrastructure projects", paras. 47–53). Those general policy options typically determine the legislative approach for ownership of project-related assets (see *Legislative Guide*, chap. IV, "Construction and operation of infrastructure: legislative framework and project agreement", paras. 20–26). Irrespective of the host country's general or sectoral policy, the ownership regime of the various assets involved should be clearly defined and based on sufficient legislative authority. Clarity in this respect is important, as it will directly affect the concessionaire's ability to create security interests in project assets for the purpose of raising financing for the project (*ibid*., paras. 52–61). Consistent with the flexible approach taken by various legal systems, the model provision does not contemplate an unqualified transfer of all assets to the contracting authority but allows a distinction between assets that must be transferred to the contracting authority, assets that may be purchased by the contracting authority, at its option, and assets that remain the private property of the concessionaire, upon expiry or termination of the concession contract or at any other time.

(b) Assets, if any, that the contracting authority, at its option, may purchase from the concessionaire; and

(c) Assets, if any, that the concessionaire may retain or dispose of upon expiry or termination of the concession contract.

Model provision 32. Acquisition of rights related to the project site

(*see recommendation 45 and chap. IV, paras. 27–29*)

1. The contracting authority or other public authority under the terms of the law and the concession contract shall make available to the concessionaire or, as appropriate, shall assist the concessionaire in obtaining such rights related to the project site, including title thereto, as may be necessary for the implementation of the project.

2. Any compulsory acquisition of land that may be required for the implementation of the project shall be carried out in accordance with (*the enacting State indicates the provisions of its laws that govern compulsory acquisition of private property by public authorities for reasons of public interest*).

Model provision 33. Easements[313]

(*see recommendation 45 and chap. IV, para. 30*)

Variant A

1. The contracting authority or other public authority under the terms of the law and the concession contract shall make available to the concessionaire or, as appropriate, shall assist the concessionaire to enjoy the right to enter upon, transit through or do work or fix installations upon property of third parties, as appropriate and required for the implementation of the project in accordance with [*the enacting State indicates the provisions of its laws that govern easements and other similar rights enjoyed by public utility companies and infrastructure operators under its laws*].

Variant B

1. The concessionaire shall have the right to enter upon, transit through or do work or fix installations upon property of third parties, as appropriate and required for the implementation of the project in accordance with [*the enacting State indicates the provisions of its laws that govern easements and other similar rights enjoyed by public utility companies and infrastructure operators under its laws*].

2. Any easements that may be required for the implementation of the project shall be created in accordance with [*the enacting State indicates the provisions of its laws that govern the creation of easements for reasons of public interest*].

[313] The right to transit on or through adjacent property for project-related purposes or to do work on such property may be acquired by the concessionaire directly or may be compulsorily acquired by a public authority simultaneously with the project site. A somewhat different alternative, which is reflected in variant B, might be for the law itself to empower public service providers to enter, pass through or do work or fix installations upon the property of third parties, as required for the construction, operation and maintenance of public infrastructure (see *Legislative Guide*, chap. IV, "Construction and operation of infrastructure: legislative framework and project agreement", paras. 30–32).

Model provision 34. Financial arrangements

(*see recommendations 46, 47 and 48 and chap. IV, paras. 33–51*)

1. The concessionaire shall have the right to charge, receive or collect tariffs or fees for the use of the facility or its services in accordance with the concession contract, which shall provide for methods and formulas for the establishment and adjustment of those tariffs or fees [*in accordance with the rules established by the competent regulatory agency*].[314]

2. The contracting authority shall have the power to agree to make direct payments to the concessionaire as a substitute for, or in addition to, tariffs or fees for the use of the facility or its services.

Model provision 35. Security interests

(*see recommendation 49 and chap. IV, paras. 52–61*)

1. Subject to any restriction that may be contained in the concession contract,[315] the concessionaire has the right to create security interests over any of its assets, rights or interests, including those relating to the infrastructure project, as required to secure any financing needed for the project, including, in particular, the following:

(a) Security over movable or immovable property owned by the concessionaire or its interests in project assets;

(b) A pledge of the proceeds of, and receivables owed to the concessionaire for, the use of the facility or the services it provides.

2. The shareholders of the concessionaire shall have the right to pledge or create any other security interest in their shares in the concessionaire.

3. No security under paragraph 1 may be created over public property or other property, assets or rights needed for the provision of a public service, where the creation of such security is prohibited by the law of [*the enacting State*].

Model provision 36. Assignment of the concession contract

(*see recommendation 50 and chap. IV, paras. 62 and 63*)

Except as otherwise provided in model provision 35, the rights and obligations of the concessionaire under the concession contract may not be assigned to third parties without the consent of the contracting authority. The concession contract shall set forth the conditions under which the contracting authority shall give its consent to an assignment of the rights and obligations of the concessionaire under the concession contract, including the acceptance by the new concessionaire of all obligations thereunder and evidence of

[314] Tolls, fees, prices or other charges accruing to the concessionaire, which are referred to in the *Legislative Guide* as "tariffs", may be the main (sometimes even the sole) source of revenue to recover the investment made in the project in the absence of subsidies or payments by the contracting authority or other public authorities (see chap. II, "Project risks and government support", paras. 30–60). The cost at which public services are provided is typically an element of the Government's infrastructure policy and a matter of immediate concern for large sections of the public. Thus, the regulatory framework for the provision of public services in many countries includes special tariff-control rules. Furthermore, statutory provisions or general rules of law in some legal systems establish parameters for pricing goods or services, for instance by requiring that charges meet certain standards of "reasonableness", "fairness" or "equity" (see chap. IV, "Construction and operation of infrastructure: legislative framework and project agreement", paras. 36–46).

[315] These restrictions may, in particular, concern the enforcement of the rights or interests relating to assets of the infrastructure project.

the new concessionaire's technical and financial capability as necessary for providing the service.

Model provision 37. Transfer of controlling interest[316] in the concessionaire

(*see recommendation 51 and chap. IV, paras. 64–68*)

Except as otherwise provided in the concession contract, a controlling interest in the concessionaire may not be transferred to third parties without the consent of the contracting authority. The concession contract shall set forth the conditions under which consent of the contracting authority shall be given.

Model provision 38. Operation of infrastructure

(*see recommendation 53 and chap. IV, paras. 80–93 (for para. 1) and recommendation 55 and chap. IV, paras. 96 and 97 (for para. 2)*)

1. The concession contract shall set forth, as appropriate, the extent of the concessionaire's obligations to ensure:

(a) The modification of the service so as to meet the demand for the service;

(b) The continuity of the service;

(c) The provision of the service under essentially the same conditions for all users;

(d) The non-discriminatory access, as appropriate, of other service providers to any public infrastructure network operated by the concessionaire.

2. The concessionaire shall have the right to issue and enforce rules governing the use of the facility, subject to the approval of the contracting authority or a regulatory body.

Model provision 39. Compensation for specific changes in legislation

(*see recommendation 58, subpara. (c), and chap. IV, paras. 122–125*)

The concession contract shall set forth the extent to which the concessionaire is entitled to compensation in the event that the cost of the concessionaire's performance of the concession contract has substantially increased or that the value that the concessionaire receives for such performance has substantially diminished, as compared with the costs and the value of performance originally foreseen, as a result of changes in legislation or regulations specifically applicable to the infrastructure facility or the services it provides.

Model provision 40. Revision of the concession contract

(*see recommendation 58, subpara. (c), and chap. IV, paras. 126–130*)

1. Without prejudice to model provision 39, the concession contract shall further set forth the extent to which the concessionaire is entitled to a revision of the concession contract with a view to providing compensation in the event that the cost of the concessionaire's performance of the concession contract has substantially increased or that the value that the

[316] The notion of "controlling interest" generally refers to the power to appoint the management of a corporation and influence or determine its business. Different criteria may be used in various legal systems or even in different bodies of law within the same legal system, ranging from formal criteria attributing a controlling interest to the ownership of a certain amount (typically more than 50 per cent) of the total combined voting power of all classes of stock of a corporation to more complex criteria that take into account the actual management structure of a corporation. Enacting States that do not have a statutory definition of "controlling interest" may need to define the term in regulations issued to implement the model provision.

concessionaire receives for such performance has substantially diminished, as compared with the costs and the value of performance originally foreseen, as a result of:

(a) Changes in economic or financial conditions; or

(b) Changes in legislation or regulations not specifically applicable to the infrastructure facility or the services it provides;

provided that the economic, financial, legislative or regulatory changes:

(a) Occur after the conclusion of the contract;

(b) Are beyond the control of the concessionaire; and

(c) Are of such a nature that the concessionaire could not reasonably be expected to have taken them into account at the time the concession contract was negotiated or to have avoided or overcome their consequences.

2. The concession contract shall establish procedures for revising the terms of the concession contract following the occurrence of any such changes.

Model provision 41. Takeover of an infrastructure project by the contracting authority

(*see recommendation 59 and chap. IV, paras. 143–146*)

Under the circumstances set forth in the concession contract, the contracting authority has the right to temporarily take over the operation of the facility for the purpose of ensuring the effective and uninterrupted delivery of the service in the event of serious failure by the concessionaire to perform its obligations and to rectify the breach within a reasonable period of time after having been given notice by the contracting authority to do so.

Model provision 42. Substitution of the concessionaire

(*see recommendation 60 and chap. IV, paras. 147–150*)

The contracting authority may agree with the entities extending financing for an infrastructure project and the concessionaire to provide for the substitution of the concessionaire by a new entity or person appointed to perform under the existing concession contract upon serious breach by the concessionaire or other events that could otherwise justify the termination of the concession contract or other similar circumstances.[317]

IV. Duration, extension and termination of the concession contract

1. Duration and extension of the concession contract

Model provision 43. Duration and extension of the concession contract

(*see recommendation 62 and chap. V, paras. 2–8*)

The duration of the concession shall be set forth in the concession contract. The contracting authority may not agree to extend its duration except as a result of the following circumstances:

[317] The substitution of the concessionaire by another entity, proposed by the lenders and accepted by the contracting authority under the terms agreed by them, is intended to give the parties an opportunity to avert the disruptive consequences of termination of the concession contract (see *Legislative Guide*, chap. IV, "Construction and operation of infrastructure: legislative framework and project agreement", paras. 147–150). The parties may wish first to resort to other practical measures, possibly in a successive fashion, such as temporary takeover of the project by the lenders or by a temporary administrator appointed by them, or enforcement of the lenders' security over the shares of the concessionaire company by selling those shares to a third party acceptable to the contracting authority.

(a) Completion delay or interruption of operation due to circumstances beyond either party's reasonable control;

(b) Project suspension brought about by acts of the contracting authority or other public authorities;

(c) Increase in costs arising from requirements of the contracting authority not originally foreseen in the concession contract, if the concessionaire would not be able to recover such costs without such extension; or

(d) [*Other circumstances, as specified by the enacting State*].[318]

2. Termination of the concession contract

Model provision 44. Termination of the concession contract by the contracting authority

(*see recommendation 63 and chap. V, paras. 14–27*)

The contracting authority may terminate the concession contract:

(a) In the event that it can no longer be reasonably expected that the concessionaire will be able or willing to perform its obligations, owing to insolvency, serious breach or otherwise;

(b) For compelling[319] reasons of public interest, subject to payment of compensation to the concessionaire, the terms of the compensation to be as agreed in the concession contract;

(c) [*Other circumstances that the enacting State might wish to add in the law*].

Model provision 45. Termination of the concession contract by the concessionaire

(*see recommendation 64 and chap. V, paras. 28–33*)

The concessionaire may not terminate the concession contract except under the following circumstances:

(a) In the event of serious breach by the contracting authority or other public authority of their obligations in connection with the concession contract;

(b) If the conditions for a revision of the concession contract under model provision 40, paragraph 1, are met, but the parties have failed to agree on a revision of the concession contract; or

(c) If the cost of the concessionaire's performance of the concession contract has substantially increased or the value that the concessionaire receives for such performance has substantially diminished as a result of acts or omissions of the contracting authority or other public authorities, such as those referred to in model provision 28, subparagraphs *(h)* and *(i)*, and the parties have failed to agree on a revision of the concession contract.

[318] The enacting State may wish to consider the possibility for the law to authorize a consensual extension of the concession contract pursuant to its terms, for reasons of public interest, as justified in the record to be kept by the contracting authority pursuant to model provision 26.

[319] Possible situations of a compelling reason of public interest are discussed in chapter V, "Duration, extension and termination of the project agreement", paragraph 27, of the *Legislative Guide*.

Model provision 46. Termination of the concession contract by either party

(*see recommendation 65 and chap. V, paras. 34 and 35*)

Either party shall have the right to terminate the concession contract in the event that the performance of its obligations is rendered impossible by circumstances beyond either party's reasonable control. The parties shall also have the right to terminate the concession contract by mutual consent.

3. Arrangements upon termination or expiry of the concession contract

Model provision 47. Compensation upon termination of the concession contract

(*see recommendation 67 and chap. V, paras. 43–49*)

The concession contract shall stipulate how compensation due to either party is calculated in the event of termination of the concession contract, providing, where appropriate, for compensation for the fair value of works performed under the concession contract, costs incurred or losses sustained by either party, including, as appropriate, lost profits.

Model provision 48. Wind-up and transfer measures

(*see recommendation 66 and chap. V, paras. 37–42 (for subpara. (a)) and recommendation 68 and chap. V, paras. 50–62 (for subparas. (b)-(d)*)

The concession contract shall provide, as appropriate, for:

(a) Mechanisms and procedures for the transfer of assets to the contracting authority;

(b) The compensation to which the concessionaire may be entitled in respect of assets transferred to the contracting authority or to a new concessionaire or purchased by the contracting authority;

(c) The transfer of technology required for the operation of the facility;

(d) The training of the contracting authority's personnel or of a successor concessionaire in the operation and maintenance of the facility;

(e) The provision, by the concessionaire, of continuing support services and resources, including the supply of spare parts, if required, for a reasonable period after the transfer of the facility to the contracting authority or to a successor concessionaire.

V. Settlement of disputes

Model provision 49. Disputes between the contracting authority and the concessionaire

(*see recommendation 69 and chap. VI, paras. 3–41*)

Any disputes between the contracting authority and the concessionaire shall be settled through the dispute settlement mechanisms agreed by the parties in the concession contract.[320]

[320] The enacting State may provide in its legislation dispute settlement mechanisms that are best suited to the needs of privately financed infrastructure projects.

Model provision 50. Disputes involving customers or users of the infrastructure facility

(*see recommendation 71 and chap. VI, paras. 43–45*)

Where the concessionaire provides services to the public or operates infrastructure facilities accessible to the public, the contracting authority may require the concessionaire to establish simplified and efficient mechanisms for handling claims submitted by its customers or users of the infrastructure facility.

Model provision 51. Other disputes

(*see recommendation 70 and chap. VI, para. 42*)

1. The concessionaire and its shareholders shall be free to choose the appropriate mechanisms for settling disputes among themselves.

2. The concessionaire shall be free to agree on the appropriate mechanisms for settling disputes between itself and its lenders, contractors, suppliers and other business partners.

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

In addition to the matters concerning the International Law Commission and international trade law, discussed in the sections above, the Sixth Committee also considered additional items and submitted its recommendations thereon to the General Assembly at its fifty-eighth session. On 9 and 23 December 2003,[321] the General Assembly adopted, without a vote, 16 resolutions[322] and 2 decisions.

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

Sixth Committee

The Sixth Committee considered this item at its 21st meeting, held on 4 November 2003.[323]

Consideration by the General Assembly

In its resolution 58/73, the General Assembly, taking note with appreciation of the report of the Secretary-General on the implementation of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law[324] and the guidelines and recommendations on future implementation of the Programme which were adopted by the Advisory Committee on the Programme and contained in Section III of the report, approved the guidelines and recommendations contained in section III of the report and authorized the Secretary-General to carry out

[321] General Assembly resolution 58/248 was adopted on 23 December 2003; all the other resolutions and the two decisions were adopted on 9 December 2003.

[322] Including the two resolutions under the agenda item on UNCITRAL and the one adopted in relation to the ILC.

[323] A/C.6/58/SR.21. See also the report of the Sixth Committee, A/58/511.

[324] A/58/446.

in 2004 and 2005 the activities specified in his report. The General Assembly decided to appoint twenty-five Member States, six from Africa, five from Asia, three from Eastern Europe, five from Latin America and the Caribbean and six from Western Europe and other States, as members of the Advisory Committee on the United Nations Programme of Assistance, for a period of four years beginning on 1 January 2004.[325]

(b) Convention on jurisdictional immunities of States and their property

Ad Hoc Committee on Jurisdictional Immunities of States and Their Property

Pursuant to General Assembly resolution 57/16 of 19 November 2002, the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property reconvened, at Headquarters, from 24 to 28 February 2003 in order to make a final attempt at consolidating areas of agreement and resolving outstanding issues, with a view to elaborating a generally acceptable instrument based on the draft articles adopted by the International Law Commission at its forty-third session[326] and also on the discussions of the open-ended working group of the Sixth Committee and the Ad Hoc Committee and their results,[327] as well as to recommend a form for the instrument.

At its 6th plenary meeting, on 28 February 2003, the Ad Hoc Committee adopted its report containing the text of the draft articles on jurisdictional immunities of States and their property[328] (annex I), together with understandings with regard to some of the provisions of the draft articles (annex II). At the same meeting, the Ad Hoc Committee decided to recommend that the General Assembly take a decision on the form of the draft articles. It also stated that, if and when the General Assembly decided to adopt the draft articles as a convention, the draft articles would need a preamble and final clauses, including a general saving provision concerning the relationship between the articles and other international agreements relating to the same subject.

Sixth Committee

The Sixth Committee considered this item at its 12th, 13th, 20th and 21st meetings, held on 21 and 23 October and 3 and 4 November 2003, respectively.[329]

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[325] The following States have been appointed members of the Advisory Committee on the Programme: Canada, Colombia, Cyprus, the Czech Republic, Ethiopia, France, Germany, Ghana, Iran (Islamic Republic of), Italy, Jamaica, Kenya, Lebanon, Malaysia, Mexico, Nigeria, Pakistan, Portugal, the Russian Federation, the Sudan, Trinidad and Tobago, Ukraine, the United Republic of Tanzania, the United States of America and Uruguay.

[326] Yearbook of the International Law Commission, 1991, vol. II, Part Two (United Nations publication, Sales No. E.93.V.9 (Part 2)), document A/46/10, chap. II, para. 28.

[327] See A/C.6/54/L.12 and A/C.6/55/L.12. See also *Official Records of the General Assembly, Fifty-fourth Session, Sixth Committee,* 30th meeting (A/C.6/54/SR.30), and corrigendum; *ibid*., *Fifty-fifth Session, Sixth Committee*, 30th and 31st meetings (A/C.6/55/SR.30 and 31), and corrigendum; *ibid*., *Fifty-seventh Session, Supplement No. 22* (A/57/22); and *ibid*., *Fifty-seventh Session, Sixth Committee*, 18th and 19th meetings (A/C.6/57/SR.18 and 19).

[328] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 22* (A/58/22).

[329] A/C.6/58/SR.12, 13, 20 and 21. See also the report of the Sixth Committee, A/58/512.

Consideration by the General Assembly

The General Assembly, by its resolution 58/74, stressing the importance of uniformity and clarity in the law applicable to jurisdictional immunities of States and their property, decided that the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property should be reconvened, with the mandate to formulate a preamble and final clauses, with a view to completing a convention on jurisdictional immunities of States and their property, which would contain the results already adopted by the Ad Hoc Committee. It also requested the Ad Hoc Committee to report to the General Assembly at its fifty-ninth session on the outcome of its work.

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

Sixth Committee

The Sixth Committee considered this item at its 22nd meeting, held on 5 November 2003.[330]

Consideration by the General Assembly

In its resolution 58/78, the General Assembly endorsed the recommendations and conclusions of the Committee on Relations with the Host Country contained in paragraph 52 of its report[331] and considered that the maintenance of appropriate conditions for the normal work of the delegations and the missions accredited to the United Nations and the observance of their privileges and immunities, which is an issue of great importance, are in the interest of the United Nations and all Member States, and requested the host country to continue to solve, through negotiations, problems that might arise and to take all measures necessary to prevent any interference with the functioning of missions. By the same resolution, the General Assembly welcomed the decision of the Committee to conduct a detailed review of the implementation of the Parking Programme for Diplomatic Vehicles,[332] as recommended by the Legal Counsel in his opinion on 24 September 2002,[333] with a view to addressing the problems experienced by some permanent missions during the first year of the Programme, and ensuring its proper implementation in a manner that is fair, non-discriminatory, effective and consistent with international law.

(d) International Criminal Court

Sixth Committee

The Sixth Committee considered this item at its 9th, 10th, 12th and 13th meetings, held on 20, 21 and 23 October 2003, respectively.[334]

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[330] A/C.6/58/SR.22. See also the report of the Sixth Committee, A/58/515.
[331] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 26* (A/58/26).
[332] A/AC.154/355, annex.
[333] A/AC.154/358, annex.
[334] A/C.6/58/SR.9, 10, 12 and 13. See also the report of the Sixth Committee, A/58/516.

Consideration by the General Assembly

With the adoption of resolution 58/79, the General Assembly called upon all States that were not yet parties to the Rome Statute of the International Criminal Court, 1998,[335] to consider ratifying it or acceding to it without delay, and encouraged efforts aimed at promoting awareness of the results of the Rome Conference,[336] the provisions of the Statute and the process leading to the establishment of the International Criminal Court. It further called upon all States to consider becoming parties to the Agreement on the Privileges and Immunities of the International Criminal Court, 2002,[337] without delay. The General Assembly also took note of the establishment of the Special Working Group on the Crime of Aggression by the Assembly of States Parties to the Rome Statute and of the Permanent Secretariat of the Assembly of States Parties. By the same resolution, the General Assembly recognized the need for an orderly and smooth transition of work from the Secretariat of the United Nations to the secretariat of the Assembly of States Parties and invited the Secretary-General to take steps to conclude a relationship agreement between the United Nations and the International Criminal Court and to submit the negotiated draft agreement to the General Assembly for approval.

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

Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

Pursuant to General Assembly resolution 57/24 of 19 November 2002, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization met, at Headquarters, from 7 to 16 April to continue to consider: all proposals concerning the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations; 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; proposals concerning the Trusteeship Council; ways and means of improving its working methods and enhancing its efficiency with a view to identifying widely acceptable measures for future implementation. In addition, the Special Committee was also invited to continue to identify new subjects for consideration in its future work with a view to contributing to the revitalization of the work of the United Nations and to keep on its agenda the question of the peaceful settlement of disputes between States.[338]

At its 244th meeting, on 16 April 2003, the Special Committee made recommendations to the General Assembly with regard to the items relating to 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 and to the *Repertory*

[335] United Nations *Treaty Series,* vol. 2187, p. 3.

[336] United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, held in Rome from 15 June to 17 July 1998.

[337] *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3–10 September 2002* (United Nations publication, Sales No. E.03.V.2 and corrigendum), part II.E.

[338] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 33* (A/58/33).

of Practice of United Nations Organs and *the Repertoire of the Practice of the Security Council*.[339]

Sixth Committee

The Sixth Committee considered this item at its 4th, 5th, 13th, 14th and 23rd meetings, held on 9, 10, 23 and 27 October and 6 November 2003, respectively.[340]

Consideration by the General Assembly

On 23 December 2003, by resolution 58/248, the General Assembly took note of the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Organization[341] and requested the Committee to continue its consideration: of all proposals concerning the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations; 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; proposals concerning the Trusteeship Council; and ways and means of improving its working methods and enhancing its efficiency. It also invited the Committee to continue to identify new subjects for consideration in its future work with a view to contributing to the revitalization of the work of the United Nations and to keep on its agenda the question of the peaceful settlement of disputes between States. By the same resolution, the General Assembly encouraged the Secretary-General in his continuous efforts to eliminate the backlog in the publication of the *Repertory of Practice of United Nations Organs* and of the *Repertoire of the Practice of the Security Council*, including by exploring options involving cooperation with academic institutions as a means to achieve this aim without prejudice to the continuation of their timely publication. It further commended the Secretary-General for his initiative to make *Repertory* studies available on the Internet and requested him to make every effort towards making available electronically all versions of the *Repertory of Practice of United Nations Organs* as early as possible.

Under the same agenda item, "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 adopted resolution 58/80, entitled "Implementation of the provisions of the Charter of the United Nations related to the assistance to third States affected by the application of sanctions". By said resolution, the General Assembly renewed its invitation to the Security Council to consider the establishment of further mechanisms or procedures, as appropriate, for consultations as early as possible under Article 50 of the Charter of the United Nations with third States which are or may be confronted with special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Council under Chapter VII of the Charter, with regard to a solution of those problems, including appropriate ways and means for increasing the effectiveness of its methods and procedures applied in the consideration of requests by the affected States for assistance. It also took note of the most recent report of the Secretary-General on this question[342] and

[339] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 33* (A/58/33).para. 14.
[340] A/C.6/58/SR.4, 5, 13, 14 and 23. See also the report of the Sixth Committee, A/58/517.
[341] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 33* (A/58/33).
[342] A/58/346.

requested him to pursue the implementation of resolutions 50/51, 51/208, 52/162, 53/107, 54/107, 55/157 and 56/87 and to ensure that the competent units within the Secretariat develop adequate capacity and appropriate modalities, technical procedures and guidelines to continue, on a regular basis, to collate and coordinate information about international assistance available to third States affected by the implementation of sanctions, to continue developing a possible methodology for assessing the adverse consequences actually incurred by third States and to explore innovative and practical measures of assistance to the affected third States.

(f) Measures to eliminate international terrorism

Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996

The seventh session of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 was convened in accordance with paragraphs 17 and 18 of General Assembly resolution 57/27 of 19 November 2002, and met at Headquarters from 31 March to 2 April 2003. Pursuant to resolution 57/27, the Committee was requested to continue the elaboration of a draft comprehensive convention on international terrorism, with appropriate time allocated to the continued consideration of outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism, and that it should keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. At its 29th meeting, on 2 April 2003, the Ad Hoc Committee, bearing in mind General Assembly resolution 57/27, decided to recommend that the Sixth Committee, at the fifty-eighth session of the General Assembly, consider establishing a working group, if appropriate, to continue its work.[343]

Sixth Committee

During the fifty-eighth session of the General Assembly, the Sixth Committee, at its 2nd meeting, on 6 October 2003, established a Working Group to continue the work of the Ad Hoc Committee. The Working Group held three meetings on 6, 8 and 10 October.[344] At its 3rd meeting, the Working Group decided to refer the consideration of its report to the Sixth Committee and, bearing in mind General Assembly resolution 57/27, to recommend to the Sixth Committee that work continue with the aim of finalizing the text of a draft comprehensive convention on international terrorism and the text of a draft international convention for the suppression of acts of nuclear terrorism, building upon the work already accomplished.

The Sixth Committee considered this item at its 6th to 9th and 20th to 22nd meetings, held on 15, 17 and 20 October and 3 to 5 November 2003, respectively.[345]

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[343] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 37* (A/58/37), para. 16.

[344] For the report of the Working Group, see A/C.6/58/L.10.

[345] A/C.6/58/SR.6–9 and 20–22. See also the report of the Sixth Committee, A/58/518.

Consideration by the General Assembly

With the adoption of resolution 58/81 on measures to eliminate international terrorism, the General Assembly, having examined the report of the Secretary-General,[346] the report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996[347] and the report of the Working Group of the Sixth Committee established pursuant to resolution 57/27,[348] condemned all acts and practices of terrorism as criminal and unjustifiable, wherever and by whomsoever committed. It also reiterated that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them and called upon all States to adopt further measures in accordance with the Charter of the United Nations and the relevant provisions of international law, including international standards of human rights, to prevent terrorism and to strengthen cooperation in combating terrorism. By the same resolution, the General Assembly urged all States that had not yet done so to consider, as a matter of priority, and in accordance with Security Council resolution 1373 (2001), becoming parties to the relevant conventions and protocols and to enact, as appropriate, the domestic legislation necessary to implement the provisions of those conventions and protocols, to ensure that the jurisdiction of their courts enables them to bring to trial the perpetrators of terrorist acts, and to cooperate with and provide support and assistance to other States and relevant international and regional institutions to that end. It also decided to reconvene the Ad Hoc Committee to continue the elaboration of a draft comprehensive convention on international terrorism, with appropriate time allocated to the continued consideration of outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism, that it should keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations, and that the work should continue, if necessary, during the fifty-ninth session of the General Assembly, within the framework of a working group of the Sixth Committee.

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

Ad Hoc Committee on the Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel

Pursuant to paragraph 8 of General Assembly resolution 57/28 of 19 November 2002, the Ad Hoc Committee on the Scope of Legal Protection Under the Convention on the Safety of United Nations and Associated Personnel was reconvened, at Headquarters, from 24 to 28 March 2003, to continue the discussion on measures to enhance the existing protective legal regime for United Nations and associated personnel, including addressing the application of the Convention on the Safety of United Nations and Associated Personnel,

[346] A/58/116 and Add.1.
[347] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 37* (A/58/37).
[348] A/C.6/58/L.10.

1994,[349] to all United Nations operations, taking into account the report of the Secretary-General[350] and the previous discussions in the Ad Hoc Committee.

At its 4th plenary meeting, on 28 March 2003, the Ad Hoc Committee recommended that the General Assembly: *(a)* renew its mandate for 2004; and *(b)* request the Secretary-General to provide a report, in advance or at the beginning of the next session of the Ad Hoc Committee elaborating on his report on the implementation of the short-term measures agreed in General Assembly resolution 57/28, as well as on any measures undertaken on his own initiative to achieve the goals of the Convention, taking into account the discussion in the Ad Hoc Committee as reflected in its present report and including an assessment of the overall effectiveness of such measures.[351]

Sixth Committee

During the fifty-eighth session of the General Assembly, the Sixth Committee, at its 1st meeting, on 29 September 2003, established a working group in order to continue the work of the Ad Hoc Committee. The Working Group held two meetings and a number of informal consultations from 13 to 17 October 2003 and recommended that the Ad Hoc Committee be reconvened with a mandate to expand the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel, 1994, including, *inter alia*, by means of a legal instrument.[352]

The Sixth Committee considered this item at its 13th, 20th and 21st meetings, held on 23 October and 3 and 4 November 2003, respectively.[353]

Consideration by the General Assembly

The General Assembly, by its resolution 58/82, recalled the report of the Secretary-General[354] on the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel, 1994, and the recommendations contained therein, and the further report of the Secretary-General[355] on this issue. Furthermore, having considered the report of the Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel,[356] and the report of the Working Group of the Sixth Committee,[357] it urged States to take all necessary measures, in accordance with their international obligations, to prevent crimes against United Nations and associated personnel from occurring and that States ensure that such crimes do not go unpunished and that the perpetrators are brought to justice. It also called upon all States to consider becoming parties to and to respect fully their obligations under the relevant international instruments, in particular the Convention on the Safety of United Nations and Associated Personnel, 1994. Furthermore, the General Assembly recommended that

[349] United Nations *Treaty Series,* vol. 2051, p. 363.
[350] A/55/637.
[351] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 52* (A/58/52), para. 44.
[352] A/C.6/58/L.16 and Corr.1.
[353] A/C.6/58/SR.13, 20 and 21. See also the report of the Sixth Committee, A/58/519.
[354] A/55/637.
[355] A/58/187.
[356] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 52* (A/58/52).
[357] A/C.6/58/L.16 and Corr.1.

the Secretary-General continue to seek the inclusion of, and that host countries include, key provisions of the Convention, including those regarding the prevention of attacks against members of the operation, the establishment of such attacks as crimes punishable by law and prosecution or extradition of offenders, in future as well as, if necessary, existing status-of-forces, status-of-mission and host country agreements negotiated between the United Nations and those countries, mindful of the importance of the timely conclusion of such agreements. By the same resolution, the General Assembly also recommended that, consistent with his existing authority, the Secretary-General advise the Security Council or the General Assembly, as appropriate, where in his assessment circumstances would support a declaration of exceptional risk for the purpose of article 1 *(c)* (ii) of the Convention. It also noted that he had prepared a standardized provision for incorporation into the agreements concluded between the United Nations and humanitarian non-governmental organizations or agencies for the purpose of clarifying the application of the Convention to persons deployed by those organizations or agencies. Moreover, the General Assembly also decided to reconvene the Ad Hoc Committee on the Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel, established under resolution 56/89 of 12 December 2001, with a mandate to expand the scope of legal protection under the Convention, including, *inter alia*, by means of a legal instrument and that work should continue during the fifty-ninth session of the General Assembly within the framework of a working group of the Sixth Committee.

(h) Observer status in the General Assembly for: the International Institute for Democracy and Electoral Assistance, the Eurasian Economic Community, the GUUAM and the East African Community

Sixth Committee

The Sixth Committee considered these four agenda items at its 2nd and 4th meetings, held on 6 and 9 October 2003, respectively.[358]

Consideration by the General Assembly

With the adoption of resolutions 58/83, 58/84, 58/85 and 58/86, the General Assembly granted observer status in the General Assembly to the following four organizations, respectively: the International Institute for Democracy and Electoral Assistance, the Eurasian Economic Community, the GUUAM and the East African Community.

(i) Administration of justice at the United Nations

Sixth Committee

The Sixth Committee considered this item at its 9th and 12th meetings, held on 20 and 21 October, respectively.[359]

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[358] A/C.6/58/SR.2 and 4. See also the reports of the Sixth Committee on these items, A/58/522, A/58/523, A/58/524 and A/58/525, respectively.

[359] A/C.6/58/SR.9 and 12. See also the report of the Sixth Committee, A/58/521.

Consideration by the General Assembly

The General Assembly, by its resolution 58/87, desiring to assist the United Nations Administrative Tribunal in carrying out its future work as effectively as possible, decided to amend article 3, paragraph 1, of the Statute of the Tribunal with effect from 1 January 2004, to read as follows:

> "The Tribunal shall be composed of seven members, no two of whom may be nationals of the same State. Members shall possess judicial or other relevant legal experience in the field of administrative law or its equivalent within the member's national jurisdiction. Only three members shall sit in any particular case."

(j) Progressive development of principles and norms of international law relating to the new international economic order

Sixth Committee

The Sixth Committee considered this item at its 4th and 21st meeting, held on 9 October and 4 November 2003.[360]

Consideration by the General Assembly

The General Assembly adopted decision 58/522, under the agenda item "Progressive development of principles and norms of international law relating to the new international economic order", in which it took note of the consideration of the agenda item and noted that the item could be considered in the future.

(k) International convention against the reproductive cloning of human beings

Sixth Committee

At the fifty-eighth session, the Sixth Committee, at its 1st meeting, on 29 September 2003, pursuant to General Assembly decision 57/512, convened a working group to continue the work undertaken during the fifty-seventh session to consider the elaboration of a mandate for the negotiation of an international convention against the reproductive cloning of human beings, including a list of the existing international instruments to be taken into consideration and a list of legal issues to be addressed in the convention. The Working Group held five meetings from 29 September to 3 October 2003. At its 5th meeting, on 3 October, the Working Group decided to refer its report to the Sixth Committee for consideration and recommended that the Committee continue the consideration of the elaboration of a negotiation mandate during the current session, taking into account the discussions in the Working Group.[361]

The Sixth Committee considered this item at its 10th to 12th, 19th and 23rd meetings, held on 20, 21 and 31 October and 6 November 2003, respectively.[362] During the debate, at its 23rd meeting, on 6 November, the representative of the Islamic Republic of Iran, on

[360] A/C.6/58/SR.4 and 21. See also the report of the Sixth Committee, A/58/510.
[361] For the report of the Working Group, see A/C.6/58/L.9, para. 11.
[362] A/C.6/58/SR.10–12, 19 and 23. See also the report of the Sixth Committee, A/58/520.

behalf of the States members of the Organization of the Islamic Conference, moved, in accordance with rule 116 of the Rules of Procedure of the General Assembly, to adjourn the debate on the item under discussion until the sixtieth session of the General Assembly (see A/C.6/58/SR.23). At the same meeting, the motion to adjourn the debate on the item until the sixtieth session was carried by a recorded vote of 80 votes to 79, with 15 abstentions. Accordingly, the Sixth Committee recommended to the General Assembly that the item entitled "International convention against the reproductive cloning of human beings" be included in the provisional agenda of the sixtieth session of the General Assembly. No action was therefore taken on other proposals before the Committee.

Consideration by the General Assembly

With the adoption of decision 58/523, the General Assembly, in connection with the consideration of the report of the Sixth Committee,[363] decided that the item entitled "International convention against the reproductive cloning of human beings" would be included in the provisional agenda of its fifty-ninth session. In doing so, it decided not to take action on the recommendation of the Sixth Committee, nor on a proposal submitted by Costa Rica in the plenary of the Assembly, contained in document A/58/L.37. No provision was made for meeting of the Ad Hoc Committee or the Working Group of the Sixth Committee in 2003.

9. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH

The United Nations Institute for Training and Research (UNITAR) provided various training programmes and capacity-building activities in two main fields: management of international affairs and economic and social development.[364] The first category included training programmes in multilateral diplomacy and international affairs management, peacekeeping and preventive diplomacy, international law, environmental law and a programme of Correspondence Instruction in Peacekeeping Operations. The second category included projects of capacity-building for sustainable development and programmes in the areas of chemicals and waste management, climate change, legal aspects of debt, financial management and negotiations and international trade. In 2003, under these programmes, individual courses included workshops on "Multilateral conference diplomacy and negotiation" (the Sudan), "Multilateral negotiation and diplomatic report writing" (Serbia and Montenegro), "International negotiation and mediation" (Sierra Leone) and training series in "International courts and tribunal", "Principles in international environmental law" and "International trade law, trade dispute settlement and commercial arbitration" (Geneva). Other activities included several regional workshops on legal aspects of debt, financial management and negotiation, symposiums on issues related to the World Trade Organization, projects and workshops on chemical and waste management and climate change and activities related to the building of a legal framework for the information society.

[363] A/58/520.

[364] For detailed information, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 14* (A/59/14). See also the Report of the Secretary-General (A/58/183).

In 2003, the UNITAR Hiroshima Office for Asia and the Pacific (HOAP) was officially established and is mandated to provide training to government officials, scholars and members of civil society in the region.

Consideration by the General Assembly

At its fifty-eighth session, the General Assembly adopted, on the recommendation of the Second Committee, on 23 December 2003, without a vote, resolution 58/223 on "United Nations Institute for Training and Research". The General Assembly took note of the report of the Secretary-General,[365] reaffirmed the relevance of the Institute in view of the growing importance of training within the United Nations and the training requirements of States and the relevance of training-related research activities undertaken by the Institute within its mandate and welcomed the establishment of the Institute's Hiroshima Office for Asia and the Pacific. It also requested the Board of Trustees of the Institute to continue to ensure fair and equitable geographical distribution and transparency in the preparation of the programmes and in the employment of experts and stressed that the courses should focus primarily on development issues and the management of international affairs and renewed its appeal to all governments, in particular those of developed countries, and to private institutions that had not yet contributed financially or otherwise to the Institute, to give it their generous financial and other support, and urged States that had interrupted their voluntary contributions to consider resuming them in view of the successful restructuring and revitalization of the Institute.

B. General review of the legal activities of intergovernmental organizations related to the United Nations

1. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(a) Constitutional and procedural questions

Membership of the Organization

Timor-Leste became Member State of the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 5 June 2003 and the United States resumed its membership with effect from 1 October 2003.

(b) International regulations

Entry into force of previously adopted instruments

During the period under review, no multilateral conventions or agreements adopted under the auspices of UNESCO entered into force.

[365] A/58/183.

Instruments adopted by the General Conference of UNESCO at its 32nd session (Paris, 29 September to 17 October 2003)

1. Conventions and Agreements

Convention for the Safeguarding of the Intangible Cultural Heritage,[366] adopted by the General Conference on 17 October 2003.

2. Recommendations

Recommendation on the Promotion and Use of Multilingualism and Universal Access to Cyberspace,[367] adopted by the General Conference on 15 October 2003.

3. Declarations

The following declarations were adopted in 2003:

Charter on the Preservation of Digital Heritage,[368] adopted by the General Conference on 15 October 2003;

International Declaration on Human Genetic Data,[369] adopted by the General Conference on 16 October 2003;

UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage,[370] adopted by the General Conference on 17 October 2003.

The text of all UNESCO standard-setting instruments, as well as the list of States parties to the conventions and agreements, can be found on UNESCO's website (www.unesco.org).

Proposals concerning the preparation of new instruments

1. Combating doping in sport

Having taking note of the report submitted by the Secretariat on the follow-up to the Round Table of Ministers and Senior Officials responsible for Physical Education and Sport (Paris, 9–10 January 2003), the General Conference decided that the question of combating doping in sport should be regulated by means of an international convention. The General Conference invited the Director-General to submit to it at its 33rd session a final report on the question, and a draft convention (32 C/Resolution 9).

2. Bioethics

Having examined the question of the possibility of elaborating universal norms on bioethics, the General Conference invited the Director-General to continue preparatory work on a declaration on universal norms on bioethics and to submit a draft declaration to it at its 33rd session (32 C/Resolution 24).

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[366] Doc. 32 C/26, annex III.
[367] Doc. 32 C/75, annex I.
[368] Doc. 32 C/28.
[369] Doc. 32 C/73, annex.
[370] Doc. 32 C/25.

3. Cultural diversity

The General Conference, having examined the question of the desirability of drawing up an international setting-instrument on cultural diversity, decided that the question of cultural diversity as regards the protection of the diversity of cultural contents and artistic expressions should be subject of an international convention. The General Conference invited the Director-General to submit to the General Conference at its 33rd session, a preliminary report setting out the situation to be regulated and the possible scope of the regulating action proposed, accompanied by the preliminary draft of a convention on the protection of the diversity of cultural contents and artistic expressions (32 C/Resolution 34).

(c) Examination of cases and questions concerning the exercise of human rights within UNESCO's fields of competence

The Committee on Conventions and Recommendations met in private sessions at UNESCO Headquarters from 1 to 3 April and from 10 to 12 September 2003 in order to examine communications which had been transmitted to it in accordance with decision 104 EX/3.3 of the Executive Board.

At its April 2003 session, the Committee examined 21 communications of which four were examined with a view to determining their admissibility or otherwise, nine were examined as to their substance, and eight were examined for the first time. One communication was declared inadmissible and three were removed from the list because they were considered as having been settled or did not, after examining their merits, appear to warrant further action. The examination of the remaining 17 communications was deferred. The Committee presented its report to the Executive Board at its 166th session.

At its September 2003 session, the Committee examined 22 communications of which nine were examined with a view to determining their admissibility, eight were examined as to their substance and five new communications were submitted to the Committee. One communication was removed from the list because it was considered as having been settled. The examination of the remaining 21 was deferred. The Committee presented its report to the Executive Board at its 167th session.

(d) Copyright activities

In 2003, UNESCO's activities in the field of copyright and related rights concentrated mainly on the following activities.

Information and public awareness activities

UNESCO ensures the permanent updating of its copyright web page at: http://www.unesco.org/culture/copyright.

e.Copyright Bulletin

UNESCO publishes an electronic version of its Copyright Bulletin (in Chinese, English, French and Spanish), as well as printed versions (quarterly, in Chinese and Russian). The Copyright Bulletin contains theoretical doctrines, articles, information on national laws

(new laws, revisions, updating), and information about UNESCO's activities in the field, (meetings reports, resumes of undertaken actions, etc.) participation of States in various conventions and new specialized books recently published in the world. During 2003 the e.Copyright Bulletin was mainly dedicated to the study of the nature and scope of limitations and exceptions to copyright and related rights with regard to general interest missions for the transmission of knowledge, problems of access to information and knowledge in the digital environment, and the challenges of collective management.

Arab version of the UNESCO basic Manual on copyright and neighbouring rights

UNESCO's basic Manual on copyright and neighbouring rights has been translated into Arabic and published by "King Faisal Centre for Research and Islamic Studies". The Manual is intended for specialists and students alike who deal with problems of copyright and neighbouring rights. This exhaustive tool will give to the Arab world a very real grasp of the law while helping specialists to be up to date and better equipt to tackle the more sensitive aspects of artistic production and activities of cultural life.

Supplement of the UNESCO basic Manual on copyright and neighbouring rights

With UNESCO's support, a supplement of the manual "Copyright and neighbouring rights" has been elaborated by Professor Delia Lispzyc. This updated work, entitled "New items on copyright and related rights", covers all the challenges of digital technology that copyright has faced these last ten years and the legal and jurisprudential response to such challenges at international, regional and national levels. The book should be published in 2004.

Collection of National Copyright Laws

The new version of the Collection of National Copyright Laws in the World, comprising about 100 national copyright and related rights legislation of UNESCO Member States has been published online. This unique tool, essential for professionals, students and researchers, endeavours to provide access to legal texts and is constantly being updated and completed.

Training and teaching activities

The teaching of copyright has been pursued by UNESCO Copyright Chairs. UNESCO has also organized training courses and cooperated with other organizations to publish jurisprudence.

Studies and analyses

The global study on the exceptions and limitations to copyright protection in the digital era, particularly in the field of scientific research, education and culture undertaken by UNESCO in the light of the ever-evolving digital environment, was finalised in 2003.

UNESCO has further undertaken a survey on the economic and legal environment of music and artistic production in Palestine, with the aim of making a diagnosis to promote and strengthen copyright (offer legal assistance in the elaboration of a copyright law, support in training specialists and in building collective management infrastructures).

2. INTERNATIONAL CIVIL AVIATION ORGANIZATION

(a) Conventions and agreements

On 4 November 2003, the Convention for the Unification of Certain Rules for International Carriage by Air,[371] done at Montreal on 28 May 1999, entered into force, having been ratified by 30 States. By the end of the year, the Convention had 34 parties.

(b) Other major legal developments

Work programme of the Legal Committee and legal meetings

Pursuant to a decision of the 170th Session of the Council, the General Work Programme of the Legal Committee was confirmed as follows:

1) Consideration, with regard to 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) 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;

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

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

6) United Nations Convention on the Law of the Sea, 1982,—Implications, if any, for the application of the Convention on International Civil Aviation, 1944, its annexes and other international air law instruments.

Settlement of differences

Regarding the settlement of differences between the United States and 15 European States (2000) relating to the European "Hushkits" Regulation No. 925/1999, the President of the Council continued to act as Conciliator, with the consent of the Parties, and further negotiations led to a settlement. Under the settlement, the relevant parts of the Belgian Royal Decree of 14 April 2002, which in the view of the United States had re-enacted certain features of the "Hushkits" Regulation, were declared to be obsolete. The settlement was presented to the Council during its 170th Session and the Council recorded the solution agreed between the Parties, namely the discontinuance of the proceedings.

[371] United Nations *Treaty Series*, vol. 2242, p. 309.

Assistance in the field of aviation war risk insurance

Pursuant to its decision on 27 May 2002 to approve in principle the recommendation of the Special Group on Aviation War Risk Insurance (SGWI) for the establishment of a global aviation war risk insurance scheme ("Globaltime"), the Council tasked the Council Group on Aviation War Risk Insurance (CGWI) to work with the secretariat (LEB) to consider proposals for finalization of the Participation Agreement. The Group held 2 meetings: CGW173 (Montreal, 14 January 2003) and CGWI/4 (Montreal, 23 January 2003).

In consideration of the outcome of those meetings and in line with resolution A3 3–20: Coordinated approach in providing assistance in the field of aviation war risk insurance, the Council, on 13 March 2003 during the 13th meeting of its 168th Session, approved in principle the recommendations of CGWI and entrusted a sub-group ("review group") of the SGWI (SGWI-RG) with the task of reviewing Globaltime in light of the conditions of participation set by certain States and making any adjustments thereto and to the revised draft Participation Agreement. Contracting States were advised of these developments through State letter LE 4/64—03/36, dated 28 March 2003.

Upon recommendation of SGWI-RG/1 which met in Montreal on 30 April and 1 May 2003, the Council, on 9 June during the 11th meeting of its 169th Session, approved the amended draft Participation Agreement, subject to any final adjustments to be approved by the Council, and decided to retain Globaltime on a contingency basis. Subject to effective participation by States representing at least 51 percent of ICAO contribution rates (resolution A33–26 being used as the basis for determining the provision of guarantees to the scheme), Globaltime will be activated when there is a further failure of the commercial insurance market as determined by the ICAO Council, in which event the Insurance Entity shall commence its operations, possibly at short notice. Details of the Council Decision were conveyed to all Contracting States through State letter LE 4/64—03/65, dated 30 June 2003. To date, Contracting States representing 46.25 percent of annual contribution rates have indicated their intention to participate in Globaltime, some of which (35.08 percent) will participate under certain conditions. Accordingly, the 51 percent threshold of intentions to participate has so far not been reached.

3. WORLD HEALTH ORGANIZATION

(a) Constitutional developments

In 2003, no new Member State joined the World Health Organization (WHO). Thus at the end of 2003, there were 192 Member States and two Associate Members of WHO.

As at 31 December 2003, the amendments to articles 24 and 25 of the WHO Constitution, adopted in 1998 by the fifty-first World Health Assembly to increase the membership of the Executive Board from thirty-two to thirty-four, had been accepted by 102 Member States; the amendment to article 7 of the WHO Constitution, adopted in 1965 by the eighteenth World Health Assembly to suspend certain rights of Members practising racial discrimination, had been accepted by 84 Member States; and 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 79 Member States. Acceptance by two-thirds of the Member States, i.e., by 128 Members, is required for the amendments to enter into force.

(b) Other normative developments and activities

WHO Framework Convention on Tobacco Control

On 1 March 2003, during the 6th session of the Intergovernmental Negotiating Body in Geneva and after nearly three years of negotiations, Member States of WHO agreed on a text of the WHO Framework Convention on Tobacco Control (FCTC). On 21 May 2003, the 56th World Health Assembly, by resolution WHA56.1, unanimously adopted the FCTC and called upon all States and regional economic integration organizations entitled to do so to consider signing and becoming a party to the Convention to ensure its speedy entry into force.

The FCTC seeks to limit the harm to health caused by tobacco products by addressing issues as diverse as: tobacco advertising, promotion and sponsorship; packaging and labelling; regulation and disclosure of contents of tobacco products; illicit trade in tobacco products; price and tax measures; elimination of sales to and by young persons; government support for tobacco manufacturing and agriculture; treatment of tobacco dependence; passive smoking and smoke-free areas; surveillance research and exchange of information; provision of support for economically viable alternative activities; and scientific, technical and legal cooperation.

The FCTC was opened for signature for a period of one year from 16 June 2003 to 22 June 2003 at WHO Headquarters in Geneva, and thereafter at the United Nations Headquarters in New York, from 30 June 2003 to 29 June 2004. By the end of 2003, the FCTC had attracted 90 signatures and five States had already become Contracting parties. The FCTC enters into force on the ninetieth day following the deposit of the fortieth instrument of ratification, acceptance, approval, accession, or formal confirmation. In 2003, WHO organized and supported a number of sub-regional awareness raising and capacity-building workshops to facilitate signature and ratification of, or accession to, the FCTC.

Article 24.3 of the FCTC provides that WHO functions as the interim Convention secretariat until such a time as a permanent secretariat is designated and established by the Conference of the Parties. The Health Assembly established, by its resolution WHA56.1, an open-ended intergovernmental working group to consider and prepare proposals on a number of issues identified in the FCTC, including the question of a permanent secretariat, for consideration and adoption, as appropriate, by the first session of the Conference of the Parties. Other such questions include: rules of procedure for the Conference of the Parties, including criteria for participation of observers at its sessions; financial rules for the Conference of the Parties and its subsidiary bodies, and financial provisions governing the functioning of the secretariat; a draft budget for the first financial period; and, a review of existing and potential sources and mechanisms of assistance to parties in meeting their obligations under the Convention. Furthermore, resolution WHA56.1 requested the Director-General to provisionally provide secretariat functions under the FCTC; to take appropriate steps to provide support to Member States, in particular developing countries and countries with economies in transition, in preparation for the entry into force of the Convention; to convene, as frequently as necessary, between 16 June 2003 and the first session of the Conference of the Parties, meetings of the open-ended intergovernmental working group; to continue to ensure that WHO plays a key role in providing technical advice, direction and support for global tobacco control; to keep the Health Assembly informed of progress made toward the entry into force of the Convention and of preparations under way for the first session of the Conference of the Parties. Finally, the resolution

calls upon the United Nations and invites other relevant international organizations to continue to provide support for strengthening national and international tobacco control programmes.

Other activities

By December 2003, 162 of WHO 192 Member States (84%) had reported to WHO on the implementation of the principles and aim of the International Code of Marketing of Breast-milk Substitutes, adopted by the World Health Assembly in 1981. Its implementation may include adoption of new—or revision or strengthening of existing—legislation, regulations, national codes, guidelines for health workers and distributors, agreements with manufacturers, and monitoring and reporting mechanisms. The global strategy for infant and young child feeding, endorsed by the Health Assembly by resolution WHA55.15 in May 2002, placed renewed emphasis on the International Code as one of the operational targets of the strategy. In 2003, three States, India, Malaysia and Pakistan, informed WHO of the adoption of new legislation in the implementation of the Code. Furthermore, WHO responded to requests for technical support from Australia, Bahrain, Cambodia, New Zealand, and Turkey.

During 2003, WHO continued to draft the Guidance document on Mental Health, Human Rights and Legislation, which underwent two systematic international reviews by over 200 experts. WHO established a network of consultants to support mental health legislative reform at country level and to facilitate training forums and workshops. To assist States with related legislative reforms, WHO organized an international training forum and a series of workshops at the regional, sub-regional and country levels.

The 56th World Health Assembly, by resolution WHA56.28 of 28 May 2003, decided to establish an intergovernmental working group open to all Member States and regional economic integration organizations, to review and recommend a draft revision of the International Health Regulations for consideration by the Health Assembly under article 21 of the WHO Constitution. The Health Assembly also requested the Director-General to complete the technical work required to facilitate reaching agreement on the revised International Health Regulations; to keep Member States informed about such technical work through the regional committees and other mechanisms; and to convene the intergovernmental working group at the appropriate time and on the agreement of the Executive Board at its 113th session. Pursuant to the foregoing request, the secretariat undertook to complete an initial proposed revision of the International Health Regulations.

In 2003, WHO also continued to administer the International Digest of Health Legislation and Recueil international de Législation sanitaire (available at http://www.who.int/idhl/), which contains a selection of national and international health legislation.

During 2003, 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.

4. INTERNATIONAL MONETARY FUND

(a) Membership issues

Accession to membership

No new members joined the International Monetary Fund (IMF) in 2003 and the total membership remained at 184 member States.

Status and obligations under article VIII or article XIV of the IMF Articles of Agreement

In 2003, three members—the Democratic Republic of the Congo, the Syrian Arab Republic, and Uzbekistan—formally accepted the obligations of article VIII, sections 2, 3, and 4, of the IMF Articles of Agreement. The total number of States that had accepted these obligations as at 31 December 2003 was 157.

Overdue financial obligations to IMF

With the clearance of Afghanistan's arrears in February 2003, by the end of December 2003, the number of members in protracted arrears (i.e., financial obligations that are overdue by six months or more) to IMF decreased from six to the following five: Iraq, Liberia, Somalia, the Sudan, and Zimbabwe.

Article XXVI, section 2*(a)*, of IMF Articles of Agreement provides that if "a member fails to fulfill any of its obligations under this Agreement, the Fund may declare the member ineligible to use the general resources of the Fund." Of the five IMF members with protracted arrears, declarations of ineligibility under this article remained in effect by the end of December 2003 with respect to Liberia, Somalia, the Sudan, and Zimbabwe.

Suspension of voting rights and compulsory withdrawal

1. Liberia

Liberia's voting and related rights were suspended effective 5 March 2003 in accordance with article XXVI, section 2(b) of the IMF Articles of Agreement. The suspension remained in effect throughout 2003.

2. Zimbabwe

Zimbabwe's voting and related rights were suspended effective 6 June 2003. The suspension for Zimbabwe remained in effect throughout 2003, and on 3 December 2003, the IMF Executive Board decided that Zimbabwe had persisted in its failure to fulfil its obligations under the IMF Articles of Agreement after the expiration of a reasonable period following the decision of suspension taken pursuant to article XXVI, section 2*(b)*, and indicated that it intended to initiate promptly the compulsory withdrawal procedure pursuant to article XXVI, section 2*(c)*.

(b) Representation issues

1. Central African Republic

As of mid-September 2003, the new Government of the Central African Republic had not been recognized by IMF members representing a majority of the votes in IMF, nor by the international community in general. A number of delegates representing the Central African Republic were invited to attend the 2003 IMF-World Bank Annual Meetings as Special Invitees.

2. Iraq

As of mid-September 2003, there was no internationally recognized government in Iraq. A number of members of Iraq's Governing Council were invited to attend the 2003 IMF-World Bank Annual Meetings as Special Invitees.

3. Liberia

As a consequence of the suspension of Liberia's voting and related rights (as noted above), the Governor and Alternate Governor for IMF appointed by Liberia ceased to hold office pursuant to paragraph 3*(a)* of schedule L of the IMF Articles of Agreement. Accordingly, Liberia was not represented at the 2003 IMF-World Bank Annual Meetings.

4. Somalia

In October 1992, the IMF found that there was no effective government for Somalia with which IMF could carry on its activities, and the review of Somalia's overdue financial obligations was postponed to a date to be determined by the Managing Director when in his judgement there would once again be a basis for evaluating Somalia's economic and financial situation and the stance of its economic policies and cooperation with IMF. Since then, the Executive Board has granted similar postponements, the most recent being on 18 August 2003. Somalia had no Governor or Alternate Governor in 2003 and was not represented at the 2003 IMF-World Bank Annual Meetings.

5. Zimbabwe

As a consequence of the suspension of Zimbabwe's voting and related rights, as discussed above, the Governor and Alternate Governor for IMF appointed by Zimbabwe ceased to hold office pursuant to paragraph 3*(a)* of schedule L of the IMF Articles of Agreement. Accordingly, Zimbabwe was not represented at the 2003 IMF-World Bank Annual Meetings.

(c) Crisis resolution

There is increasing recognition in both the official sector and private markets that allowing States with clearly unsustainable debts to restructure in a fashion that preserves economic activity and asset values is to the benefit of all concerned. IMF has been working

to improve the management and resolution of financial crises by examining possible approaches to strengthening the mechanisms for the restructuring of sovereign debt.

Sovereign Debt Restructuring Mechanism (SDRM)

The SDRM proposal, an initiative launched in late 2001, and discussed over the following 18 month period, culminated in a presentation to the International Monetary and Financial Committee (IMFC) in April 2003 of a blueprint for the establishment of a new statutory framework to facilitate sovereign debt restructuring by amending the IMF Articles of Agreement.[372] The principal feature of the SDRM consisted in allowing a sovereign debtor and a qualified majority of its creditors to reach an agreement that would then be made binding on all creditors that were subject to the restructuring, paying due regard to seniority among claims and the diversity of creditor interests. The SDRM was intended only to be used to restructure debt that was judged to be unsustainable and would apply only to sovereign debt governed by foreign law or subject to the jurisdiction of foreign courts; sovereign debt subject to domestic law and jurisdiction would be excluded. The SDRM proposal contemplated the establishment of an independent dispute resolution forum to verify claims, to ensure the integrity of the voting process, to adjudicate disputes that might arise following activation of the SDRM, and to certify the debt restructuring agreement. In its Communiqué of 12 April 2003, the IMFC welcomed the work of IMF in developing the SDRM proposal, but recognized that it was not feasible at the time to move forward to establish it.

Collective Action Clauses (CACs)

IMF's examination and promotion of the use of CACs is part of its effort to strengthen the framework for crises resolution by developing and promoting effective tools to help make sovereign debt restructuring more orderly and predictable. CACs are contractual provisions in bond contracts that enable the sovereign and a qualified majority of its bondholders to take decisions on issues of enforcement and restructuring that become binding on all bondholders within the same issuance. In its Communiqué of 12 April 2003, the IMFC welcomed the inclusion of CACs by several sovereign debt issuers, noted its desire for the inclusion of CACs in international bond issues to become standard market practice, and called on IMF to promote the voluntary inclusion of CACs in the context of its surveillance. In April 2003, IMF's Executive Board welcomed the proposals to continue several forms of outreach to encourage the use of CACs. In response, an increasing number of emerging market States took steps to include CACs in their international sovereign bonds issued under New York law (where CACs had not previously been the market standard).

(d) Surveillance

Strengthening the framework for provision of information to IMF

While IMF relies on voluntary cooperation to obtain information, recent instances of reporting problems have prompted efforts on a number of fronts to improve the provision

[372] For the text of the document entitled "Proposed Features of a Sovereign Debt Restructuring Mechanism", see http://www.imf.org.

of data by members. In December 2003, the IMF Executive Board discussed proposals for making improvements to the legal framework for the provision of information, set out in article VIII, section 5, of the IMF Articles of Agreement. Specifically, the Board decided to strengthen the effectiveness of article VIII, section 5, through, *inter alia*: (i) expanding the categories of information that member States are required to report under article VIII, section 5, and (ii) establishing a new framework of procedures to address cases in which members have breached their obligations under article VIII, section 5. The additional information reporting requirements for members will come into effect on 1 January 2005.

Staff Monitored Programs (SMPs)

In recent years SMPs have emerged as a response to requests from members for the monitoring of their economic conditions and policies beyond article IV surveillance and outside of an IMF supported arrangement. Following the discussion of SMPs in the context of the 2002 biennial surveillance review, the Executive Board of the IMF considered the policy on SMPs and in January 2003, discontinued signalling SMPs. The Executive Board concluded that the signalling of SMPs may be misconstrued as carrying the IMF Executive Board's seal of approval.

(e) Fund facilities

Access policy in the credit tranches and under the Extended Fund Facility (EFF)

In February 2003, the IMF Executive Board decided to leave unchanged the long standing access limits applying in the credit tranches and under the EFF—100 percent of quota annually and 300 percent of quota cumulatively.

Exceptional Access Policy

IMF has developed policies on exceptional access to IMF resources (i.e., access above the normal limits). In February 2003, the IMF Executive Board approved a new policy framework to ensure that exceptional access remained exceptional, which strengthened the procedures for decision-making on such proposals. Under the new policy, to justify exceptional access in capital account crises, four criteria (as a minimum) would need to be met: (i) an exceptionally large balance of payments pressure on the capital account resulting in the need for IMF finance that cannot be met within the normal limits; (ii) a sustainable debt burden when evaluated under reasonable assumptions; (iii) good prospects of regaining access to private capital markets; and (iv) strong program design and reasonable prospects for its implementation. In addition, the new policy involves strengthened procedures for early consultation and decision-making at the Executive Board level, as well as ex-post evaluation.

Expiry of Contingent Credit Lines (CCL)

As part of its response to financial markets crises in Asia and elsewhere in 1997–98, IMF introduced the CCL to provide a precautionary line of defence for members with "first class" policies that may nevertheless be vulnerable to financial markets crises. The

CCL was intended to provide assurances of IMF financial support in the event of financial market pressures. The CCL remained unused and, after concluding a review of the CCL in November 2003, the IMF Executive Board decided not to extend the CCL facility past its November 2003 sunset date.

Eligibility under the Poverty Reduction and Growth Facility (PRGF)

The PRGF is IMF's low interest lending facility for eligible low-income countries. In 2003, three members, Papua New Guinea, Timor-Leste and Uzbekistan, were added to the list of PRGF eligible countries, and three members were removed, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, and Zimbabwe.

(f) Procedural changes to IMF financial operations

In April 2003, the IMF Executive Board, in order to update and align certain aspects of IMF's financial procedures with industry best practice, approved a number of procedural changes to IMF financial operations, specifically: (i) the adoption of a two-day value date for operations and transactions between IMF and its members, including the payment of charges, and a two-day valuation rule for exchanges of currency; (ii) the receipt by IMF of unscheduled or late payments will be valued on the day of receipt; and (iii) the adherence of a financial transaction cut-off time of 5.30 p.m. each business day.

5. UNIVERSAL POSTAL UNION

General review of the legal activities of the Universal Postal Union

In 2003, the Universal Postal Union (UPU) Council of Administration undertook the following actions:

1. The Council of Administration approved the International Bureau's comments and observations on the five reports submitted by the United Nations Joint Inspection Unit (JIU) for action, especially on recommendations 1 and 2 of JIU/REP/2002/9 entitled, "Managing information in the United Nations system organizations: management information systems".

2. The Council of Administration adopted a resolution concerning the invitation of Advisory Group members to the 23rd Congress, scheduled for 2004, and approved a draft Congress resolution concerning participation of Advisory Group members in the 23rd Congress.

3. The Council of Administration approved Congress proposals to amend the General Regulations concerning the elimination of the position of Assistant Director General and the biennial report on the work of the Union.

4. The Council of Administration approved two Congress proposals concerning the definition of certain terms to be included in new articles in the Constitution and the Universal Postal Convention, 1964. It further approved the proposal to include explanations of certain terms as commentaries to the Acts and proposals to amend the General Regulations and the Universal Postal Convention concerning the consideration of proposals between Congresses, conditions for approval of proposals concerning the

Convention and Regulations and the procedure for submitting proposals to the Postal Operations Council concerning the preparation of new Regulations in the light of decisions taken by Congress.

5. The Council of Administration approved the draft Congress decision concerning the entry into force of the Acts of the 2004 Bucharest Congress.

6. The Council of Administration decided to recommend to Congress approval of UPU's accession to the Vienna Convention on the Law of Treaties between States and International Organizations and between International Organizations, 1986.

7. The Council of Administration approved modifications to the Staff Regulations of the International Bureau aimed at the modernization and simplification of these Regulations. It took note of the changes to the Staff Rules planned by the International Bureau concerning the introduction of fixed-term appointments.

8. The Council of Administration approved the principles on which the future terminal dues system could be based.

9. The Council of Administration endorsed a draft Congress resolution to create a specific body under the Council, tasked with carrying out Universal Postal Service activities.

10. The Council of Administration approved the draft recast of the Postal Payment Services Agreement and instructed the International Bureau to distribute it to Union member States to enable them to formulate their proposals for submission to Congress.

11. The Council of Administration approved the idea of describing the election procedure to the Postal Operations Council in a commentary to the General Regulations, instead of successive Congresses adopting resolutions on this matter.

12. The Council of Administration endorsed proposals concerning the participation of the media in the 23rd Congress.

13. The Council of Administration adopted a resolution proposed by Japan on Extraterritorial Offices of Exchange (ETOEs) (CA 2/2003).

14. The Council of Administration approved the drafting of UPU guidelines for cooperation with the private sector.

15. The Council of Administration acclaimed the intention of Timor-Leste to accede to the UPU (the accession of Timor-Leste became effective on 28 November 2003).

6. WORLD METEOROLOGICAL ORGANIZATION

Cooperation with the United Nations and other organizations

Agreements and working arrangements—2003

1. Agreement between the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO).

2. Memorandum of Understanding with the Economic and Social Commission for Asia and the Pacific (ESCAP).

3. Memorandum of Understanding with the Arab Organization for Agricultural Development (AOAD).

4. Memorandum of Understanding with the East African Community (EAC).

5. Memorandum of Understanding with the European Commission (EC).

6. Working Arrangement with the Permanent Inter-State Committee on Drought Control on the Sahel (CILSS) (EC-LV, 2003).

7. INTERNATIONAL MARITIME ORGANIZATION

(a) Membership

The Republic of Kiribati became a Member of the International Maritime Organization (IMO) in 2003. As at 31 December 2003, the membership of the Organization stood at 163.

(b) Review of legal activities

The Legal Committee (the Committee) held its 86th session from 28 April to 2 May 2003 and its 87th session from 13 to 17 October 2003.

The 2003 International Conference on the Establishment of a Supplementary Fund to the 1992 Fund Convention

The International Conference on the Establishment of a Supplementary Fund for Compensation for Oil Pollution Damage took place at the Headquarters of IMO from 12 to 16 May 2003. The Conference was convened by decision of the Council at its twenty-first extraordinary session, which was endorsed by the Assembly at its twenty-second regular session by resolution A.906(22).

As a result of its deliberations, the Conference adopted a treaty instrument, the text of which is contained in document LEG/CONF. 14/20, entitled "Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992".

The main objective of the Protocol is to ensure that victims of oil pollution damage are compensated in full for their loss or damage. The Protocol should also alleviate the difficulties faced by victims in cases where there is a risk that the amount of compensation available under the 1992 Civil Liability Convention and the Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (the 1992 Fund Convention), 1992, will be insufficient to pay established claims in full. The supplementary compensation regulated by the Protocol will be paid by the International Oil Pollution Compensation Supplementary Fund, 2003.

The Protocol was opened for signature at the Headquarters of the Organization on 31 July 2003 and will remain open for signature until 30 July 2004, and shall thereafter remain open for accession. It will enter into force three months following the date on which eight States have expressed their consent to be bound by it.

The Conference also adopted the following resolutions, the texts of which are contained in the attachment to the Final Act (LEG/CONF. 14/21) and also in document LEG/CONF. 14/22:

(1) Resolution on financing of the International Conference to adopt a draft protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992;

(2) Resolution on Establishment of the International Oil Pollution Compensation Supplementary Fund; and

(3) Resolution on review of the international compensation regime for oil pollution damage for possible improvement.

Draft convention on wreck removal (DWRC)

The Committee, at its 86th and 87th sessions worked on this item as a priority. The Committee based its consideration on a submission by the Netherlands, as lead country for inter-sessional consultations, which highlighted the major issues that required resolution by the Committee, namely: reporting requirements; exclusion of acts of terrorism; relationship to other liability instruments; safeguarding sovereign rights on the high seas and flag State consent.

With regard to reporting requirements, the Committee decided to delete the wording in square brackets in article 6, paragraph 1, and requested the Working Group to examine whether the obligation to report should be placed on the registered owner or whether it might be better for other parties, such as the operator or the manager of the ship, to assume this obligation. The Working Group was also directed to discuss whether to insert a time limit for reporting.

Concerning the exclusion of acts of terrorism, the Committee, after an initial consideration, decided that this issue required further consideration by the Working Group.

With regard to the relationship to other liability instruments, the Committee agreed in principle on the need to avoid double compensation for the location, marking and removal of wrecks and requested the Working Group to examine this further, taking into account that there may also be situations in which, although the matter might be within the scope of another liability convention, that convention might exclude the award of compensation.

Concerning safeguarding sovereign rights on the high seas, the Committee considered a proposal developed during the inter-sessional consultations. The Committee agreed that the proposed text reflected a general principle of treaty law, to the effect that States parties under the draft convention were not entitled to claim sovereign rights over any part of the high seas. However, given the diverse views expressed on the necessity to restate that principle in the DWRC, the Committee requested the Working Group to consider the matter further.

The Committee also considered a submission on the need to reconcile the DWRC with the United Nations Convention on the Law of the Sea (UNCLOS), 1982, particularly on the issue of flag State consent. In this connection, the co-sponsors proposed the addition of a new paragraph in article 10 to provide for flag State consent to the exercise of jurisdiction by a coastal State, where such jurisdiction is not provided for under other existing treaties.

Broad support was expressed in principle that the draft convention should include a provision on flag State consent to the effect that, by becoming a State party to the convention, a State would automatically give its consent (as a flag State) to the State party

whose interests are most directly threatened by the wreck to act under paragraphs 4 to 8 of article 10.

The Working Group met during the 86th and 87th sessions and the Chairman made an oral report to the Committee. The Committee agreed to the continuation of the inter-sessional Correspondence Group with the task of further refining the draft DWRC.

Review of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988,[373] *and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988*[374] *(SUA Convention and Protocol)*

The Committee, at its 86th and 87th sessions, continued its consideration of a draft protocol to the SUA Convention and Protocol submitted by the United States as lead country for an inter-sessional Correspondence Group.

Extensive consideration was given to a proposed draft article on new offences. The Committee supported the introduction in the *chapeau* of a terrorist motive as a condition for incrimination.

Several delegations questioned the notion of "transports" in several provisions of the draft as being too imprecise for the purposes of criminal prosecution which requires a high degree of precision. With respect to "environmental damage" there was a conflict of opinion within the Committee, with some delegations suggesting that environmental damage could be considered as part of the wider concept of damage to property. Other delegations insisted however that this notion should be maintained, so as to cover cases such as ecological terrorism, which exceeds the notion of damage to property.

The Committee unanimously reaffirmed its concerns about the safety of international shipping and the proliferation of weapons of mass destruction (WMD). The view was expressed, in particular, that the inclusion of this paragraph in the SUA treaties could result in undue restrictions on the concept of freedom of navigation. In this connection, there was a general recognition of the need to revise the treaties but, at the same time, to do this in a way that would attract a large number of ratifications. Some delegations which were ready to accept in principle the introduction of provisions on WMD suggested several modifications. Reference was made to the need to protect the master and crew who under normal circumstances would have no control over, and often be ignorant of the reasons for, the transport of substances carried on board, and who were themselves the subject of contractual obligations.

While there seemed to be general acceptance in the Committee on the need to include provisions concerning boarding in the draft protocol, it was clear that the present draft text would require substantial modification. It was also generally accepted that the principle of flag State jurisdiction must be respected to the utmost extent, recognizing that a boarding by another State on the high seas could only take place in exceptional circumstances.

In general there was support for adding a reference to human rights. However, further consideration was required. In particular, it was noted that the proposal required application of human rights law only under the law of the State in the territory of which

[373] United Nations *Treaty Series*, vol. 1678, p. 201.
[374] *Ibid.*

the person in custody is present, though in the draft protocol the issue might also arise in situations when a ship is boarded on the high seas.

The Committee briefly considered draft final clauses prepared by the secretariat and noted the need to take several decisions before deciding on a final text. In particular, a decision was needed on whether a tacit amendment process was appropriate for amending the annex in the draft protocol, and secondly on whether, if such a process was introduced, the process should be along the lines set out in the current draft or follow the formula used in other IMO conventions. The Committee noted that the tacit amendment process had been employed in IMO instruments for some time for amending technical matters, and, more recently, for amending limitation amounts in liability and compensation conventions.

Provision of financial security

1. Work of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers

The Committee noted that only six replies had been received to the two questionnaires on the monitoring of the implementation of resolutions A.930(22) and A.931(22) and related Guidelines and that only one reply had been received to the questionnaire on reporting of incidents of abandonment since 1 January 2003.

The Committee noted that information received would be compiled and submitted by the Joint Secretariat to the fifth session of the Joint Working Group, scheduled to take place from 12 to 14 January 2004, while the information on incidents of abandonment would be circulated in the form of composite periodic reports.

The Committee further noted that the Joint Working Group at its fifth session would continue its examination of the issue of financial security for crew members and seafarers and their dependants with regard to compensation in cases of death, personal injury and abandonment. The Joint Working Group would also monitor and evaluate the scale of the problem and make suitable recommendations to the IMO Legal Committee and the Governing Body of the International Labour Organization (ILO).

2. Follow-up on the resolutions adopted by the International Conference on the Revision of the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974

(i) *Resolution on Regional Economic Integration Organizations*

The Committee was satisfied with the information submitted by the secretariat in document LEG 87/6 and decided that it should be retained for use in future treaty instruments to be developed by the Organization.

(ii) *Circulation of questionnaire on bareboat charterer registration*

The Committee noted that numerous responses were being received to the questionnaire circulated by both the IMO secretariat and the Comité Maritime International (CMI), and that a report would be submitted for the consideration of the Committee at its eighty-eighth session.

Places of refuge

1. Technical Guidelines

The Committee considered a draft Assembly resolution on guidelines on places of refuge for ships in need of assistance. The Committee provided its guidance on which international instruments, including those addressing liability and compensation, should be included in the preambular paragraphs and appendix 1 to the annex to the draft Assembly resolution. In this connection, the Committee recommended that the appendix should only include conventions which are in force and that the draft resolution should allow for the appendix to be kept up to date as other conventions come into force. The secretariat was requested to draft an appropriate sentence for inclusion in the text.

The Committee submitted the draft resolution to the twenty-third session of the Assembly for adoption. The Assembly approved resolution A.949(23) containing guidelines on places of refuge for ships in need of assistance.

2. Consideration of legal issues relating to liability and compensation

The Committee noted a report by the CMI on the answers to its questionnaire on the liability issues relating to places of refuge.

The Committee considered a submission by the delegation of Spain questioning whether the current liability and compensation regime adequately addressed all situations that might arise in connection with places of refuge.

It was noted in this connection that the 1992 International Oil Pollution Compensation (IOPC) Fund Assembly had established an Inter-sessional Working Group to assess the adequacy of the international compensation system created by the 1992 Civil Liability and IOPC Fund conventions and that the questions raised during the session could be relevant to that Group's assessment. It was further noted that the questions could also be pertinent to the examination being undertaken by the CMI on the subject of places of refuge.

The Committee recognized that ultimately it would be responsible for reaching conclusions on whether the current liability and compensation regime was adequate to cover situations in which a ship in distress was granted or denied access to a place of refuge, and that this was reflected in the preamble to the draft Assembly resolution.

Treatment of persons rescued at sea

The Committee, at its eighty-seventh session, noted the information provided by the secretariat that no legal issue had yet been referred to it, and decided to remove this matter from its agenda.

Code of practice for the investigation of crimes of piracy and armed robbery at sea

The Committee, at its eighty-seventh session, noted that no submissions had been received and decided to remove this item from its agenda.

Measures to protect crews and passengers against crimes committed on vessels

The Committee noted an interim report by the CMI on its ongoing work to examine State practice on how crimes committed on vessels are handled in different jurisdictions. Preliminary indications were that many States did not consider the SUA Convention to apply to cases like the *Tajima*, where the crime was committed on the high seas and the alleged offender was not a citizen of the flag State. In these cases, the flag State would retain jurisdiction, though there might be concurrent jurisdiction with another State if the victim or alleged offender was a national of that State and the alleged offender was within that State's jurisdiction. Also, all States had universal jurisdiction over acts of piracy. It was noted that the CMI was undertaking further work on this subject, with the aim of having a final report for consideration at the Committee's eighty-eighth session.

Monitoring the implementation of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), 1996

The Committee noted a report by the delegation of the United Kingdom on the substantive progress made as a result of the Special Consultative Meeting of the HNS Correspondence Group that met in Ottawa from 3 to 5 June 2003. In particular, the Committee noted that the core work of the HNS Correspondence Group had been completed. The HNS Correspondence Group would nevertheless continue to monitor progress on the implementation of the HNS Convention and report to the Committee, as appropriate.

The Committee noted that the conclusions agreed by the Group provided valuable guidance on subjects such as insurance and insurance certificates, receivers, transhipments and reporting requirements.

Review of the status of conventions and other treaty instruments adopted as a result of the work of the Legal Committee

The Committee took note of the information provided by the secretariat on the status of conventions and other treaty instruments adopted as a result of the work of the Committee.

Matters arising from the ninetieth session of the Council

The Committee noted the information on the outcome of the ninetieth session of the Council in document LEG 87/13 and in particular the draft guidelines on access of news media to the proceedings of institutionalized Committees and of their subsidiary bodies contained in the annex to that document. The Committee decided to review the draft guidelines at its next session, with a view to responding to the request of the Council.

Technical co-operation: subprogramme for maritime legislation

The Committee noted the progress report on the implementation of the subprogramme from January to June 2003.

Report on the 2003 International Conference on the Establishment of a Supplementary Fund to the 1992 Fund Convention

The Committee noted the report on the outcome of the 2003 International Conference on the Establishment of a Supplementary Fund to the 1992 Fund Convention, including the three Conference Resolutions.

Designation of a Western European Particularly Sensitive Sea Area (WE PSSA)

The Committee considered a submission on legal implications of the proposal to designate a Western European PSSA and its associated protective measure. The Committee also noted the comments made by the Division for Ocean Affairs and the Law of the Sea of the United Nations (DOALOS) on the relationship of the PSSA designation and the UNCLOS, in particular article 211(6). The Committee noted that these comments were intended as a contribution to the debate and did not represent a conclusive opinion, as it was a matter for States to interpret the Convention.

Diverging views were expressed as to the validity of the WE PSSA, some agreeing that it exceeded the restrictive framework regulated by article 211(6) of UNCLOS, while others reaffirmed the validity of its designation.

Diverging views were also expressed with regard to the associated protective measure. In this connection, note was taken of the assurance given by some delegations to the effect that the 48 hours notification measure would not be used as a basis to prohibit legitimate use of the PSSA by shipping in accordance with the principle of freedom of navigation.

Several delegations noted the need for further study of the legal implications of the designation of the WE PSSA area, in particular in the light of the comments made by DOALOS. In this regard, it was noted that, while the Marine Environment Protection Committee had not referred the question to the Legal Committee, any delegation was free to bring questions of a legal nature to it, which would be dealt with under "Any other business".

(c) Amendments to treaties

2003 (chapter V) amendments to the International Convention for the Safety of Life at Sea (SOLAS Convention), 1974 [375]

The amendments were adopted by the Maritime Safety Committee on 5 June 2003 by resolution MSC. 142(77). At the time of their adoption, the Maritime Safety Committee determined that these amendments shall be deemed to have been accepted on 1 January 2006 and shall enter into force on 1 July 2006 unless, prior to 1 January 2006, 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 percent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As at 31 December 2003 no notification of objection had been received.

[375] United Nations *Treaty Series*, vol. 1566, p. 401.

2003 (annex B) amendments to the Protocol of 1988 relating to the International Convention on Load Lines, 1966[376]

The amendments were adopted by the Maritime Safety Committee on 5 June 2003 by resolution MSC. 143(77). At the time of their adoption, the Maritime Safety Committee determined that these amendments shall be deemed to have been accepted on 1 July 2004 and shall enter into force on 1 January 2005 unless, prior to 1 July 2004, more than one-third of the parties to the Protocol of 1988 relating to the International Convention on Load Lines, 1966, or parties the combined merchant fleets of which constitute more than 50 percent of the gross tonnage of the merchant fleets of all parties, have notified their objections to the amendments. As at 31 December 2003, no notification of objection had been received.

2003 amendments to the Guidelines on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers (resolution A.744(18) (under SOLAS 1974)

The amendments were adopted by the Maritime Safety Committee on 5 June 2003 under resolution MSC. 144(77). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 July 2004 and shall enter into force on 1 January 2005 unless, prior to 1 July 2004, more than one-third of the Contracting Governments to the SOLAS Convention or Contracting Governments the combined merchant fleets of which constitute more than 50 percent of the gross tonnage of the world's merchant fleet have notified their objections to the amendments. As at 31 December 2003, no notification of objection had been received.

2003 amendments to the annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (amendments to regulation 13G, addition of a new regulation 13H and consequential amendments to the Supplement to the International Oil Pollution Prevention (IOPP) Certificate of annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78))

The amendments were adopted by the Marine Environment Protection Committee on 4 December 2003 by resolution MEPC.l 11(50). At the time of their adoption, the Marine Environment Protection Committee determined that the amendments shall be deemed to have been accepted on 4 October 2004 and shall enter into force on 5 April 2005 unless, prior to 4 October 2004, not less than one-third of the parties to MARPOL 73/78 or parties the combined merchant fleets of which constitute not less than 50 percent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As at 31 December 2003, no notification of objection had been received.

2003 amendments to the Condition Assessment Scheme

The amendments were adopted by the Marine Environment Protection Committee on 5 December 2003 by resolution MEPC.l 12(50). At the time of their adoption, the Marine Environment Protection Committee determined that the amendments shall be deemed to have been accepted on 4 October 2004 and shall enter into force on 5 April 2005 unless,

[376] United Nations *Treaty Series*, vol. 640, p. 133.

prior to 4 October 2004 not less than 50 percent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As at 31 December 2003, no notification of objection had been received.

8. WORLD INTELLECTUAL PROPERTY ORGANIZATION

In 2003, the World Intellectual Property Organization (WIPO) concentrated on the implementation of substantive work programs through three sectors: cooperation with member States, the international registration of intellectual property rights, and intellectual property treaty formulation and normative development. WIPO also explored and promoted new intellectual property concepts, strategies and issues covering four areas, namely: genetic resources; traditional knowledge and folklore; small and medium-sized enterprises (SMEs) and intellectual property; and intellectual property enforcement issues and strategies.

(a) Cooperation for development activities

In 2003, WIPO's cooperation for development activities supported developing countries in optimizing their intellectual property systems for economic, social and cultural benefits. The main forms in which WIPO provided assistance to developing countries continued to be the development of human resources, the provision of legal advice and technical assistance for the automation of administrative procedures.

WIPO continued to provide legislative assistance to developing countries and least-developed countries (LDCs). Requests for delivery of legislative assistance to developing countries increased by 20 percent in 2003. WIPO prepared 19 draft laws, elaborated 42 comments on draft legislation and provided other forms of legislative advice in 3,231 cases.

Responding to the special needs of LDCs, particularly in assisting them in developing policies to effectively implement and use the intellectual property system to meet their development objectives, became an increasingly pressing task given the 2006 deadline for compliance with the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS).

(b) Norm-setting activities

One of the principal tasks of WIPO is to promote the harmonization of intellectual property laws, standards and practices among its member States. This is achieved through the progressive development of international approaches in the protection, administration and enforcement of intellectual property rights.

The establishment of 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 with patents, and one with trademarks, industrial designs and geographical indications—help member States centralize the discussions, coordinate efforts and establish priorities in these areas.

Standing Committee on the Law of Patents (SCP)

In 2003, discussions were devoted to the harmonization of substantive aspects of patent law, as set out in the draft substantive patent law treaty (SPLT) and related Regulations and Practice Guidelines. Adoption of such provisions would ensure a more uniform system for the consideration of patent applications by patent offices, including the grant of higher quality patents, as well as helping to reduce duplication of patent examination work.

The Trilateral Patent Offices—the European Patent Office (EPO), the Japan Patent Office (JPO) and the United States Patent and Trademark Office (USPTO)—as well as a number of non-governmental organizations (NGOs), have initiated discussions aimed at limiting the scope of the draft SPLT to a number of issues relating to the harmonization of the prior art basis. The SCP will continue its deliberations on this issue in 2004.

Standing Committee on Trademarks (SCT)

In 2003, the SCT made progress towards the harmonization of rules and principles of the law of trademarks, industrial designs and geographical indications and the modernization of the Trademark Law Treaty (TLT), 1994.[377] The SCT also discussed the possible introduction of provisions on trademark licenses into the TLT, and prepared a survey on trademark office practices. The SCT examined questions concerning the definition of geographical indications, and continued work on issues relating to conflicts between domain names and geographical indications, and between domain names and country names.

As regards the protection of geographical indications, the work of the SCT in 2003 focused on the promotion of a better understanding of the issues involved and of the characteristics of the existing systems of protection.

Standing Committee on Copyright and Related Rights (SCCR)

In 2003, the SCCR made substantial progress towards preparing the ground for a possible international instrument on the protection of broadcasting organizations. The Committee met twice, with discussions focused on economic rights, fixation, reproduction and distribution of fixations, re-broadcasting, simultaneous retransmission, making available of fixed broadcasts, deferred broadcasting and communication to the public. The delegates agreed that a consolidated text of treaty proposals from member States would be discussed at its 2004 session, as well as proposals on protection of non-original databases.

At the request of the General Assembly, the secretariat organized an *ad hoc* meeting of member States and other interested parties in November 2003 on issues relating to the protection of audiovisual performances and included a session focusing on personal experiences in performing and producing audiovisual works. It was decided that informal consultations with WIPO member States would be held in 2004 to decide on how to proceed.

Standing Committee on Information Technologies (SCIT)

In 2003, the Standing Committee on Information Technologies (SCIT) through its various meetings continued to serve as a forum to give policy guidance and technical advice

[377] United Nations *Treaty Series,*vol. 2037, p 35.

on the overall information technology strategy of WIPO, including WIPO standards and the documentation aspects of intellectual property.

(c) International registration activities

Patents

The use of the Patent Cooperation Treaty (PCT), 1970,[378] continued its growth throughout 2003. The number of international patent applications filed in 2003 using the PCT exceeded 110,000 for the third consecutive year. Applications from Japanese companies and inventors grew by over 20 percent, making it the second heaviest user of the system after the United States. The number of PCT Contracting States rose to 123.

Substantial work was undertaken throughout the year to ensure the implementation of the changes to the PCT Regulations that entered into force on 1 January 2004. In addition, internal procedures in the Office of the PCT were reviewed and updated, as were information and training materials in English, French, German and Spanish.

Filings of applications at the Receiving Office of the International Bureau (RO/IB) reached a new record with over 6,000 new applications filed in 2003.

Marks

During 2003, WIPO registered 21,847 new international trademark applications, bringing the total number of international registrations in force under the Madrid system to some 412,000. Since each international registration under this system includes roughly 12 Contracting parties in which the registration has effect, the number of international trademark registrations in force at the end of 2003 was equivalent to roughly 4.9 million national registrations. The number of renewals amounted to 6,637, a 10 percent increase over 2002.

Over the course of the year, membership of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol), 1989,[379] rose to 62, bringing the total membership of the Madrid Union to 74.

Industrial Designs

In 2003, 13,152 industrial designs, as contained in 2,474 international deposits, were registered under The Hague System for the International Deposit of Industrial Designs: a 37 percent decrease compared with 2002. However, the number of renewals increased by five percent to 3,463.

Following the deposit of the instruments of ratification of, or accession to, the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs,1999,[380] by Georgia, Kyrgyzstan, Liechtenstein and Spain, the Act entered into force on 23 December 2003. In addition, Belize and Gabon acceded to the Hague Act of

[378] United Nations *Treaty Series,* vol. 1160, p 231. For the text of the treaty as amended and modified, see www.wipo.org.

[379] WIPO Publication Number: 204.

[380] WIPO Publication Number: 269.

28 November 1960 to the Hague Agreement, bringing the total membership of the Hague Union to 36 countries.

Appellations of Origin

In 2003, the WIPO International Bureau recorded six new registrations for appellations of origin under the Lisbon system. To date 849 appellations of origin have been registered, of which 779 are still in force. Membership in the Lisbon system remained stable at 20 countries.

(d) Intellectual property and global issues

Genetic Resources, Traditional Knowledge and Folklore

The fifth session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) was held in 2003. The session continued to discuss intellectual property issues that arise in the context of: (i) access to genetic resources and benefit-sharing; (ii) protection of traditional knowledge, whether or not associated with those resources; and (iii) the protection of expressions of folklore. The work of the IGC was multifaceted, drawing together in one forum empirical surveys, policy debate, reports of national experience, exchange of experiences of local and indigenous communities, analysis of policy options and legal systems, the crafting of specific practical tools and discussion and coordination of capacity-building needs and initiatives in relation to intellectual property and genetic resources, traditional knowledge (TK) and traditional cultural expressions (TCEs).

Intellectual Property Enforcement Issues

The first session of the Advisory Committee on Enforcement (ACE) took place in Geneva from 11 to 13 June 2003. The Committee continued to focus on coordination with certain organizations and the private sector to combat counterfeiting and piracy, public education, technical assistance and exchange of information.

The Committee adopted a number of conclusions on issues pertaining to the enforcement of intellectual property rights stressing, in particular, the need for coordination, training and development of enforcement strategies.[381]

The WIPO Arbitration and Mediation Center

In 2003, the Center received some 1,100 new cases under the WIPO-initiated Uniform Domain Name Dispute Resolution Policy (UDRP), which is comparable with the figures for 2002. The end of the year saw some 10,000 domain names covered by WIPO cases under the UDRP.

This activity is a truly global service, with procedures in 11 languages, domain names in a variety of scripts, and parties from 118 countries. With the addition in 2003 of seven

[381] ACE/1/7 Rev.

more countries, 36 national domain name registration authorities have adopted WIPO-administered dispute resolution policies.

(e) New members and new accessions

In 2003, there were 52 adherences and several other treaty actions in respect of treaties administered by WIPO, 51 percent of which (accessions or ratifications) came from countries in transition to a market economy, with 35 percent from developing countries and 14 percent from developed countries.

The following figures show the new State adherences to the treaties, with the second figure in brackets being the total number of States parties to the corresponding treaty by the end of 2003:

- Paris Convention for the Protection of Industrial Property, 1883: two (166);
- Berne Convention for the Protection of Literary and Artistic Works, 1886: three (152);
- Patent Cooperation Treaty, 1970: five (123);
- Madrid Agreement Concerning the International Registration of Marks, 1891: two (54);
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 1989: six (62);
- Patent Law Treaty, 2000: two (7);
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, 1957: two (72);
- Locarno Agreement Establishing an International Classification for Industrial Designs, 1968: two (43);
- Strasbourg Agreement Concerning the International Patent Classification: one (54)
- WIPO Copyright Treaty, 1996: five (44);
- WIPO Performances and Phonograms Treaty, 1996: three (42);
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, 1977: three (58);
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961: five (76);
- Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, 1971: three (72);
- Hague Agreement concerning the International Deposit of Industrial Designs, 1925: four (29);
- Geneva Act of the Hague Agreement, 1999: four (11).

9. INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

(a) Membership

At its 26th session (19–20 February 2003), the Governing Council approved by resolution 129/XXVI the non-original membership in International Fund for Agricultural Development of Timor-Leste and decided to classify this State as member of List C (former Category III) in accordance with articles 3.2*(b)* and 13.1*(c)* of the Agreement Establishing IFAD and section 10 of the By-laws for the Conduct of the Business of IFAD.

(b) Cooperation agreements, memoranda of understanding and other agreements

At its 78th session (9–10 April 2003), the Executive Board authorized IFAD to establish a cooperation agreement with the Former Food and Agriculture Organization of the United Nations and other United Nations Staff Association (FFOA) (document EB 2003/78/R.41). The cooperation agreement was signed on 15 May 2003 and submitted to the Executive Board at its 79th session (10–11 September 2003) for information (document EB 2003/79/INF.3).

At its 79th session (10–11 September 2003), the Executive Board authorized IFAD to accede to the Strategic Partnership Agreement for Implementation of the Convention to Combat Desertification and Drought (UNCCD) in Central Asian Republics (document EB 2003/79/R.34). An addendum to the Memorandum of Understanding establishing the terms of adhesion to the Strategic Partnership was signed on 23 October 2003 and submitted to the Executive Board at its eightieth session (17–18 December 2003) for information (document EB 2003/80/INF.3).

At its eightieth session (17–18 December 2003), the Executive Board authorized IFAD to establish a cooperation agreement with the secretariat of the New Partnership for Africa's Development (NEPAD) (document EB 2003/80/R.47).

(c) Legal developments

At its 26th session (19–20 February 2003), the Governing Council approved by resolution 130/XXVI document GC 26/L.24, entitled "Enabling the Rural Poor to Overcome their Poverty: Report of the Consultation on the Sixth Replenishment of IFAD's Resources (2004–2006)", and thus authorized the replenishment of the resources of IFAD as set forth in said resolution. This document summarizes the conclusions on the Consultation on the Sixth Replenishment of IFAD's resources concerning the Fund's strategic priorities and approaches and the focus of its programme of work for 2004–2006. It further articulates the level of resources needed to reach, in partnership with others, agreed objectives in rural poverty reduction during the Sixth Replenishment Period.

At its 26th session (19–20 February 2003), the Governing Council approved the establishment in IFAD of a performance-based allocation system (PBAS). The IFAD PBAS would contribute to further systematization of IFAD's activities by promoting development of the national and local conditions for sustained rural poverty reduction. Such a system had been previously recommended by the Consultation on the Sixth Replenishment of IFAD's Resources (2004–2006) in its report to the Governing Council (document GC 26/

L.4). The structure and operation of the PBAS for IFAD were approved by the Executive Board at its 79th session (10–12 September 2003) (documents EB 2003/79/R.2/Rev.1 and EB 2003/79/C.R.P.3).

At its 78th session (9–10 April 2003), the Executive Board adopted the IFAD Evaluation Policy (document EB 2003/78/R.17/Rev.1), which takes into account the guidelines and provisions contained in the Governing Council's document GC 26/L.4. In accordance with the Evaluation Policy, the Office of Evaluation and Studies (OE) reports directly to the Executive Board, independently of IFAD management and, as has been the case sine 1994, of the President of IFAD.

At its 79th session (10–11 September 2003), IFAD's Grant Policy was introduced to the Executive Board (document EB 2003/79/R.30), in accordance with Governing Council document GC 26/L.4. At its eightieth session (17–18 December 2003), the Executive Board adopted IFAD Policy for Grant Financing (document EB 2003/80/R.5/Rev.1), based on the guidelines set in the previous document. The Policy takes into account the rise of the ceiling for the grant programme from 7.5 percent of the annual programme of work to 10 percent, starting from 2004.

At its 79th session (10–12 September 2003), the Executive Board reviewed document EB 2003/79/R.3, IFAD's Field Presence and In-Country Capacity, and authorized IFAD, supported by the Executive Board's Working Group on Field Presence, to submit to the December 2003 Executive Board a three year pilot programme to enhance in-country presence and capacity. That decision was the final step in a long process of reflection and discussion on the question of whether and how IFAD should enhance its presence in the field. Unlike most other development agencies and international financial institutions, the Fund never had formal representations in the borrowing countries before. The Executive Board adopted the Field Presence Pilot Programme at its eightieth session (17–18 December 2003) (document EB 2003/80/R.4).

10. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

(a) Agreements, memoranda of understanding and joint communiqués with States

1. Argentina

Memorandum of understanding between the United Nations Industrial Development Organization and the Under Secretariat for Mining of the Argentine Republic. Signed on 7 February 2003.

2. Burundi

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Minister for Commerce and Industry of the Republic of Burundi. Signed on 9 April 2003.

3. Congo

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Minister for Industrial Development, Small- and

Medium-Scale Enterprises and Craft Industry of the Republic of Congo. Signed on 4 December 2003.

4 Côte d'lvoire

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Minister for Industry and Development of the Private Sector of Cote d'lvoire. Signed on 4 December 2003.

5 Ghana

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Minister for Trade, Industry and Presidential Special Initiatives of the Republic of Ghana. Signed on 2 December 2003.

6. India

Memorandum of understanding between the United Nations Industrial Development Organization and the Ministry of Small-Scale Industries of the Government of the Republic of India. Signed on 6 February 2003.

7. Madagascar

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the President of the Republic of Madagascar. Signed on 1 December 2003.

8. Niger

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Minister for Commerce and Promotion of Private Sector of Niger. Signed on 3 December 2003.

9. Sierra Leone

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Vice-President of Sierra Leone. Signed on 2 December 2003.

10. Timor-Leste

Memorandum of understanding between the United Nations Industrial Development Organization and the Government of Timor-Leste on the establishment of a framework for cooperation on sustainable industrial development. Signed on 2 December 2003.

11. Togo

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Delegate Minister to the Prime Minister responsible for the Private Sector of the Republic of Togo. Signed on 3 December 2003.

12. Uganda

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the President of the Republic of Uganda. Signed on 3 December 2003.

13. United Republic of Tanzania

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Prime Minister of the United Republic of Tanzania, signed on 2 December 2003.

(b) Agreements with intergovernmental organizations

Central American Economic Integration Bank (BCIE)

Cooperation framework agreement between the United Nations Industrial Development Organization and the Central American Economic Integration Bank on "Alliance to improve the industrial capacity and productivity in Central America". Signed on 16 June 2003.

World Trade Organization (WTO)

Memorandum of understanding between the United Nations Industrial Development Organization and the World Trade Organization. Signed on 10 September 2003.

(c) Agreements with other entities

D-8 Grouping (D-8)

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Director of the D-8 Grouping. Signed on 8 July 2003.

Dubai Development and Investment Authority (DDIA)

Memorandum of understanding between the United Nations Industrial Development Organization and the Dubai Development and Investment Authority. Signed on 18 February and 3 March 2003.

Federation of Egyptian Industries (FEI)

Memorandum of understanding between the United Nations Industrial Development Organization and the Federation of Egyptian Industries. Signed on 22 July 2003.

International Organization for Standardization (ISO).

Memorandum of understanding between the United Nations Industrial Development Organization and the International Organization for Standardization. Signed on 2 December 2003.

11. INTERNATIONAL ATOMIC ENERGY AGENCY

(a) Privileges and immunities

In 2003, Albania, Benin and the Democratic Republic of the Congo accepted the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, 1959,[382] bringing the total number of States parties to 73.

(b) Legal instruments

Convention on the Physical Protection of Nuclear Material, 1979[383]

In 2003, Afghanistan, Algeria, Colombia, Costa Rica, Equatorial Guinea, Madagascar, Malta, Marshall Islands, Mozambique, New Zealand, Oman, Senegal, Seychelles, Swaziland, Tonga, Uganda, the United Arab Emirates and Uruguay adhered to the Convention, bringing the total number of States parties to 97.

Convention on Early Notification of a Nuclear Accident, 1986[384]

In 2003, Albania, Bolivia, Colombia and Kuwait adhered to the Convention, bringing the total number of States parties to 91.

Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986[385]

In 2003, Albania, Bolivia, Kuwait and Portugal adhered to the Convention, bringing the total number of States parties to 88.

Vienna Convention on Civil Liability for Nuclear Damage, 1963[386]

In 2003, the status of the Convention remained unchanged with 32 States parties.

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[382] INFCIRC/9/Rev.2.
[383] INFCIRC/274/Rev.1.
[384] INFCIRC/335.
[385] INFCIRC/336.
[386] INFCIRC/500.

Optional Protocol Concerning the Compulsory Settlement of Disputes to the Vienna Convention on Civil Liability for Nuclear Damage, 1963 [387]

In 2003, the status of the Optional Protocol remained unchanged with two States parties.

Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention, 1988[388]

In 2003, the status of the Protocol remained unchanged with 24 States parties.

Convention on Nuclear Safety, 1994[389]

In 2003, Uruguay adhered to the Convention, bringing the total number of States parties to 55.

Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 1997[390]

In 2003, Australia, Japan and the United States adhered to the Convention, bringing the total number of States parties to 33.

Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage, 1997[391]

In 2003, Belarus adhered to the Protocol, bringing the total number of parties to five. Pursuant to its article 21.1, the Protocol entered into force three months after the date of deposit of the fifth instrument of ratification, acceptance or approval, i.e., on 4 October 2003.

Convention on Supplementary Compensation for Nuclear Damage, 1997[392]

In 2003, the status of the Convention remained unchanged with 3 Contracting States and 13 Signatories.

African Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (AFRA)—Second Extension, 1990[393]

In 2003, Benin, the Central African Republic, Eritrea, Nigeria and Zambia accepted the Agreement, bringing the total number of States parties to 30.

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[387] INFCIRC/500/Add.3.
[388] INFCIRC/402.
[389] INFCIRC/449.
[390] INFCIRC/546.
[391] INFCIRC/566.
[392] INFCIRC/567.
[393] INFCIRC/377.

Third Agreement to Extend the 1987 Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (RCA), 2001[394]

In 2003, Australia, Singapore and Thailand accepted the Agreement, bringing the total number of States parties to 16.

Co-operation Agreement for the Promotion of Nuclear Science and Technology in Latin America and the Caribbean (ARCAL), 1998[395]

In 2003, the Dominican Republic signed the Agreement. By the end of the year, there were eight Contracting States and 19 Signatories.

Co-operative Agreement for Arab States in Asia for Research, Development and Training Related to Nuclear Science and Technology (ARASIA), 2002[396]

In 2003, Saudi Arabia accepted the Agreement, bringing the total number of States parties to six.

Revised Supplementary Agreement Concerning the Provision of Technical Assistance by the International Atomic Energy Agency (RSA).

In 2003, Armenia, Benin and Kuwait concluded the RSA Agreement. By the end of the year, there were 98 States which had concluded the RSA Agreement with the Agency.

(c) Legislative assistance activities

As part of its technical co-operation programme for 2003, the International Atomic Energy Agency (IAEA) provided legislative assistance to a number of member States from various regions through both bilateral meetings and regional workshops. Legislative assistance was given to 13 countries by means of written comments or advice on specific national legislation submitted to the Agency for review. Also, at the request of member States, trainings on issues related to nuclear legislation were provided to 14 fellows.

In addition, IAEA's legislative assistance activities in 2003 included the following:

(a) A Regional Workshop for French-speaking countries of the Africa region for the Development of a Legal Framework Governing the Safety of Radioactive Waste Management and the Safe Transport of Radioactive Material was held at IAEA Headquarters in Vienna, Austria, from 6 to 10 October 2003.

(b) A Regional Workshop for the countries of East Asia and the Pacific on the Effective Implementation of National Nuclear Energy Legislation was held in Bangkok, Thailand, from 27 to 31 October 2003.

(c) A Regional Workshop for the countries of Central and Eastern Europe on the Legal Aspects Relevant to Decommissioning Nuclear Facilities was held in Sacavem, Portugal, from 17 to 21 November 2003.

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[394] INFCIRC/167/Add.20.
[395] INFCIRC/582.
[396] INFCIRC/613/Add.1.

Furthermore, IAEA's *Handbook on Nuclear Legislation* which describes the overall character of nuclear law and the process by which it is developed and applied, was published in 2003. It is a tool to be used by legislators, government officials, technical experts, lawyers and users in general of nuclear technology in their work related to the development of nuclear legislation.

Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 1997[397]

The First Review Meeting pursuant to article 30 of the Convention was held at the Headquarters of the IAEA, being the secretariat under the Convention, from 3 to 14 November 2003.

Convention on the Physical Protection of Nuclear Material, 1979[398]

In 2003, 15 additional States became parties to the Convention, which reflects the importance given to the CPPNM as part of the international nuclear security regime.

The open-ended group of legal and technical experts convened by the Director General to prepare a draft amendment aimed at strengthening the CPPNM (the Group) completed the task for which it was established. The Group met six times in Vienna; its first meeting was held in December 2001 and its final meeting in March 2003. On 14 March 2003, the Group adopted by consensus its Final Report and agreed to submit it to the Director General. The Director General distributed the Final Report, through a note verbale, to all States parties to the CPPNM for their consideration.

The Final Report of the Group set out possible amendments to be made to the CPPNM. The text prepared by the Group identified possible amendments that, *inter alia*, reflect the extension of the scope of the CPPNM to cover the physical protection of nuclear material used for peaceful purposes in domestic use, storage and transport and the protection of nuclear material and nuclear facilities used for peaceful purposes against sabotage; reflect the importance of national responsibility for the establishment, implementation and maintenance of a physical protection regime; cover the Physical Protection Objectives and Fundamental Principles; establish the basis for co-operation in case of a credible threat of sabotage of nuclear material and nuclear facilities or in case of sabotage thereof; and establish new offences relating to sabotage, nuclear smuggling, and contributing to and organizing or directing the commission of an offence. The text prepared by the Group, does, however, contain, in brackets, a number of clauses on which it was not able to reach agreement.

In his opening statement to the 47th Regular Session of the IAEA General Conference, the Director General urged States parties to the CPPNM to work rapidly towards consensus on these remaining issues, in order to have a diplomatic conference adopt the proposed amendments at an early date. In this context, the General Conference, in resolution GC (47)/RES/8, welcomed the finalization of the work of the Group and urged member States to act on that basis with a view to achieving a well-defined amendment of the Convention as soon as possible.

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[397] United Nations *Treaty Series*, vol. 2153, p. 303.

[398] United Nations *Treaty Series*, vol. 1456, p. 101.

Safeguards Agreements

During 2003, Safeguards Agreements pursuant to the Treaty on the Non-proliferation of Nuclear Weapons (NPT), 1968, with Burkina Faso[399], Georgia[400] and the United Arab Emirates[401] entered into force. Safeguards Agreement with Cuba, Mauritania and Tajikistan were signed, and the IAEA Board of Governors approved the conclusion of a Safeguards Agreement with Seychelles. These agreements have not entered into force yet.

Through an Exchange of Letters between Panama and the Agency[402], it was confirmed that the Safeguards Agreement concluded between Panama and the Agency[403] pursuant to the Treaty on the Prohibition of Nuclear Weapons in Latin America and the Caribbean (the Tlatelolco Treaty),1967, satisfies the obligation of Panama under article III of the NPT. The agreement reflected in the Exchange of Letters was approved by the Board of Governors on 20 November 2003, and entered into force on that date.

In 2003, Protocols Additional to the Safeguards Agreement between IAEA and Burkina Faso[404], Chile[405], Cyprus[406], the Democratic Republic of the Congo[407], Georgia[408], Iceland[409], Jamaica[410], Kuwait[411], Madagascar[412] and Mongolia[413] entered into force. Protocols Additional to the Safeguards Agreement with IAEA were signed by Cuba, El Salvador, the Islamic Republic of Iran, Malta, Mauritania, Paraguay, Tajikistan and Togo but have not still entered into force. The IAEA Board of Governors approved Protocols Additional to the Safeguards Agreement for Gabon, Kazakhstan and Seychelles. Furthermore, the Agency received notification that Denmark, France, Ireland and Italy had fulfilled their internal requirements for the entry into force of their additional protocols. By the end of 2003, all 15 member States of the European Union (EU) had fulfilled such requirements.

By the end of 2003, Safeguards Agreements were in force in 148 States (and Taiwan, China) and 82 States had signed an Additional Protocol. Of the 82, 38 had entered into force.

12. WORLD TRADE ORGANIZATION

(a) Membership

Applications for World Trade Organization (WTO) membership are the subject of individual working parties. Terms and conditions related to market access (such as tariff

399 INFCIRC/618.
400 INFCIRC/617.
401 INFCIRC/622.
402 INFCIRC/316/Mod.1.
403 INFCIRC/316.
404 INFCIRC/618/Add.1.
405 INFCIRC/476/Add.1.
406 INFCIRC/189/Add.1.
407 INFCIRC/183/Add.1.
408 INFCIRC/617/Add.1.
409 INFCIRC/215/Add.1.
410 INFCIRC/265/Add.1.
411 INFCIRC/607/Add.1.
412 INFCIRC/200/Add.1.
413 INFCIRC/188/Add.1.

levels and commercial presence for foreign service suppliers) are the subject of bilateral negotiations. The following is a list of the 29 governments for which a WTO working party was established (as at 31 December 2003):

Algeria, Andorra, Azerbaijan, Bahamas, Belarus, Bhutan, Bosnia-Herzegovina, Cape Verde, Ethiopia, Kazakhstan, the Lao People's Democratic Republic, Lebanon, the Russian Federation, Samoa, Saudi Arabia, Serbia and Montenegro, Seychelles, the Sudan, Tajikistan, Tonga, Ukraine, Uzbekistan, Vanuatu, Vietnam and Yemen.

As of 31 December 2003, there were 146 members of the WTO, accounting for more than 90 percent of world trade. Many of the countries that remain outside the world trade system have requested accession to the WTO and are at various stages of a process that has become more complex due to WTO's more expansive coverage relative to its predecessor, the General Agreement on Tariff and Trade (GATT).

During 2003, the WTO received the following new members:

(1) Armenia by Protocol of Accession of 5 February 2003 (WT/L/506); Council decision WT/L/506;

(2) Former Yugoslav Republic of Macedonia by Protocol of Accession of 4 April 2003 (WT/L/494).

Cambodia

The accession of Cambodia was adopted by the Ministerial Conference in Cancun (WT/MIN(03)/18). Cambodia will become a full WTO member 30 days after it has notified the secretariat of ratification of its accession packages. In response to an official request, the General Council agreed to extend Cambodia's deadline for internal ratification to 30 September 2004 (WT/GC/M/85).

(b) Waivers under article IX of the WTO Agreement[414]

In 2003, a number of waivers were granted from obligations under the WTO agreements (listed below):

Member	Type	Decision of	Expiry	Document
Argentina	Introduction of Harmonized system 1996 changes into WTO Schedules of tariff concessions	24 July 2003	30 April 2004	WT/L/523
El Salvador	Introduction of Harmonized System 1996 changes into WTO Schedules of tariff concessions	24 July 2003	31 October 2003	WT/L/525
Israel	Introduction of Harmonized System 1996 changes into WTO Schedules of tariff concessions	24 July 2003	31 October 2003	WT/L/531
Malaysia	Introduction of Harmonized System 1996 changes into WTO Schedules of tariff concessions	24 and 25 July 2003	30 April 2004	WT/L/529

[414] United Nations *Treaty Series*, vol. 1867, p. 3.

Member	Type	Decision of	Expiry	Document
Morocco	Introduction of Harmonized System 1996 changes into WTO Schedules of tariff concessions	24 July 2003	31 October 2003	WT/L/530
Pakistan	Introduction of Harmonized System 1996 changes into WTO Schedules of tariff concessions	24 July 2003	30 April 2004	WT/L/528
Panama	Introduction of Harmonized System 1996 changes into WTO Schedules of tariff concessions	24 July 2003	30 April 2004	WT/L/524
Thailand	Introduction of Harmonized System 1996 changes into WTO Schedules of tariff concessions	24 July 2003	31 October 2003	WT/L/527
Venezuela	Introduction of Harmonized System 1996 changes into WTO Schedules of tariff concessions	24 July 2003	31 October 2003	WT/L/526
Israel	Introduction of Harmonized System 1996 changes into WTO schedules of tariff concessions	16 December 2003	30 April 2004	WT/L/554
Thailand	Introduction of Harmonized System 1996 changes into WTO schedules of tariff concessions	16 December 2003	31 October 2003	WT/L/555
Sri Lanka	Transposition of Schedules into the Harmonized System	24 July 2003	31 October 2003	WT/L/532
Australia, Brazil, Canada, Israel, Japan, Republic of Korea, Philippines, Sierra Leone, Thailand, United Arab Emirates, United States, Bulgaria,Croatia, Czech Republic, European Communities, Hungary, Mauritius, Mexico, Norway, Romania; Separate customs Territory of Taiwan, Penghu, Kinmen and Matsu, Slovenia, Switzerland, Venezuela, Mexico	Kimberley Process Certification Scheme for rough diamonds ———————————— Covered by paragraph 3 of the Decision	15 May 2003	31 December 2006	WT/L/518

(c) 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).[415] The DSB, which met 20 times during 2003, has the sole authority to establish dispute settlement panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of recommendations and rulings, and authorize suspension of concessions in the event of non-implementation of recommendations.

Appellate Body appointment and reappointments

On 7 November 2003, the DSB appointed Ms. Merit E. Janow of the United States to the seven-member Appellate Body for a four-year term, commencing 11 December 2003. Ms. Janow was appointed to fill the vacancy that arose with the completion in December 2003 of Mr. James Bacchus' (United States) second and final term on the Appellate Body. At the same time, the DSB appointed Messrs. Georges Michel Abi-Saab of Egypt, Arumugamangalam Venkatachalam Ganesan of India, and Yasuhei Taniguchi of Japan, to serve second four-year terms. Mr. Taniguchi's second term commenced on 11 December 2003, and the second terms of Messrs. Abi-Saab and Ganesan will commence on 1 June 2004.

Dispute settlement activities in 2003

In 2003, the DSB received 26 notifications from members of formal requests for consultations under the DSU. During this period, the DSB also established panels to deal with 19 new cases and adopted panel and/or Appellate Body reports in 15 cases, concerning eight distinct matters. In addition, mutually agreed solutions were notified in two cases. The following 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 covered period. The cases are listed in order of their DS number. Additional information on each of these cases can be found on the WTO's website at http://www.wto.org.

1. *European Communities—Measures affecting meat and meat products (hormones), complaints by the United States and Canada (WT/DS26 and WT/DS48)*

At the DSB meeting on 7 November 2003, the European Communities stated that following the entry into force of its new Directive (2003/74/EC) regarding the prohibition on the use in stockfarming of certain hormones, there was no legal basis for the continued imposition of retaliatory measures by Canada and the United States. According to the European Communities, one of the reasons cited by the Appellate Body in its ruling against it was its failure to carry out a risk assessment within the meaning of articles 5.1 and

[415] United Nations *Treaty Series*, vol. 1869, p. 401 (annex 2).

5.2 of the Sanitary and Phytosanitary (SPS) Agreement.[416] Having commissioned such an assessment to be undertaken on its behalf by an independent scientific committee whose findings indicated that the hormones in question posed a risk for consumers, the European Communities considered that it had fulfilled its WTO obligations and was entitled to demand the immediate lifting of the sanctions imposed by Canada and the United States in accordance with the provisions of article 22.8 of the DSU. The United States stated that they had carefully reviewed the new European Communities Directive and did not share the view that it implemented the recommendations and rulings of the DSB. In its view, the new measure lacked any scientific basis and as such could not be justified under the SPS Agreement. Canada said that whilst prepared to discuss this matter further with the European Communities, it doubted whether the new studies presented any new scientific basis for the ban of hormone-treated beef, and was also not in a position to accede to the request of the European Communities.

At the DSB meeting on 1 December 2003, the European Communities stated that: (i) in light of the disagreement between the Parties to the dispute with regard to the European Communities compliance with the DSB's recommendations, the matter should be referred to the WTO for a multilateral decision; (ii) this situation was similar to other cases, which had been resolved in the past through recourse to article 21.5 of the DSU; (iii) Canada and the United States should initiate multilateral procedures to determine whether or not the European Communities was in compliance; and (iv) the European Communities were ready to discuss this matter with Canada and the United States. Canada stated that, although at the 7 November DSB meeting, Canada had put forward a suggestion for bilateral discussions concerning the justification for the European Communities' position regarding its compliance with the WTO ruling, the European Communities had not responded to this suggestion and that it was up to the European Communities to establish that it had complied with the ruling. Canada declared itself open to discussion with the European Communities regarding its justification for its position. However, at this stage, Canada did not see any basis for removal of its retaliatory measures nor wished to take any other action. The United States stated that it failed to see how the revised European Communities' measure could be considered to implement the DSB's recommendations. With regard to the European Communities' suggestion that multilateral proceedings be established to determine whether or not the European Communities was in compliance with the WTO ruling, the United States was ready to discuss this matter along with other outstanding issues in relation to the European Communities ban on United States beef.

2. *Canada—Measures affecting the importation of milk and the exportation of dairy products, complaints by the United States and New Zealand (WT/DS103 and WT/DS113)*

On 17 January 2003, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body Report, which were circulated in this dispute following recourse to article 21.5 of the DSU for the second time.[417]

Upon requests by the Parties for further suspension of the arbitration proceedings under article 22.6 of the DSU (initiated pursuant to a request for arbitration by Canada) the proceedings were suspended until 9 May 2003, when Canada and the United States,

[416] United Nations *Treaty Series*, vol. 1867, p. 493 (annex 1A).

[417] For further details of these reports, see Annual Report 2003, p. 95.

and Canada and New Zealand informed the DSB that they had reached a mutually agreed solution under article 3.6 of the DSU in disputes WT/DS103 and WT/DS113.

3. *United States—Tax treatment for "Foreign Sales Corporations", complaint by the European Communities (WT/DS108)*

On 24 April 2003, the European Communities requested authorization to suspend concessions or other obligations under article 22.7 of the DSU and article 4.10 of the Subsidies and Countervailing Measures (SCM) Agreement.[418] At its meeting on 7 May 2003, the DSB granted the European Communities authorization to take appropriate countermeasures and to suspend concessions.

4. *United States—Anti-dumping Act of 1916, complaints by the European Communities and Japan (WT/DS136 and WT/DS162)*

As no legislation had been adopted to repeal the Anti-dumping Act of 1916 and to terminate the cases pending before the United States courts, on 19 September 2003, the European Communities requested the Arbitrators to reactivate the arbitration proceedings in dispute WT/DS136, which was resumed on the same day.

At the DSB meeting on 2 October 2003, the United States stated that legislation repealing the 1916 Act and terminating all pending cases had been introduced in both the United States Senate and the United States House of Representatives. The United States regretted that the European Communities had decided to request the resumption of the arbitration procedure in this dispute. Japan said that it remained gravely concerned about the lack of implementation by the United States and requested the United States to provide more detailed information in order to make it clear if and how the repealing bills introduced to the United States Congress were being addressed, and that it was still contemplating the possibility of reactivating the arbitration procedure.

At the DSB meeting on 1 December 2003, Japan stated that it was still contemplating the possibility of reactivating the arbitration procedure under article 22 of the DSU.

5. *European Communities—Anti-dumping duties on imports of cotton-type bed linen from India, recourse to article 21.5 of the DSU by India (WT/DS141)*

On 22 May 2002, the DSB agreed to refer this dispute, if possible, to the original panel pursuant to article 21.5 of the DSU. On 29 November 2002, the Panel circulated its report to the members, concluding that the European Communities had implemented the recommendation of the original panel and the Appellate Body, as adopted by the DSB, to bring its measure into conformity with its obligations under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement).[419]

On 8 January 2003, India notified the DSB of its decision to appeal the Panel report of 29 November 2002 and filed a Notice of Appeal with the Appellate Body. On 8 April 2003, the Appellate Body circulated its report to the members. The Appellate Body upheld the Panel's finding that India's claim under article 3.5 of the Anti-Dumping Agreement was not properly before the article 21.5 Panel. The Appellate Body reversed the Panel's finding that the European Communities did *not* act inconsistently with articles 3.1 and 3.2 of the

[418] United Nations *Treaty Series*, vol. 1869, p. 14 (annex 1A).

[419] United Nations *Treaty Series*, vol. 1868, p. 201 (annex 1A). For further details regarding this Panel Report and India's recourse to article 21.5 of the DSU, see Annual Report 2003, pp. 97–98.

Anti-Dumping Agreement. The Appellate Body found instead that in respect of import volumes attributable to exports or producers that were *not examined individually* in the investigation, the European Communities had failed to determine the "volume of dumped imports" on the basis of "positive evidence" and an "objective examination", as required by articles 3.1 and 3.2. The Appellate Body found that the Panel had properly discharged its duties under article 17.6 of the Anti-Dumping Agreement and article 11 of the DSU. The Appellate Body recommended that the DSB request the European Communities to bring its measure into conformity with its obligations under the Anti-Dumping Agreement.

On 24 April 2003, the DSB adopted the report of the Appellate Body and the corresponding Panel report, as modified by the Appellate Body report.

6. *United States—Section 110(5) of the US Copyright Act, complaint by the European Communities (WT/DS160)*

Following a series of status reports presented at DSB meetings throughout 2003 that stated that the United States and the European Communities were committed to finding a positive and mutually acceptable solution to this dispute, the United States and the European Communities, on 23 June 2003, informed the DSB of a mutually satisfactory temporary arrangement.

7. *European Communities—Protection of trademarks and geographical indications for agricultural products and foodstuffs, complaints by the United States and Australia (WT/DS174 and WT/DS290)*

On 4 April 2003, the United States sent an additional request for consultations concerning the protection of trademarks and geographical indications for agricultural products and foodstuffs in the European Communities in dispute WT/DS174. This request did not replace but rather supplemented the 1999 request. The measures concerned are European Communities Regulation 2081/92, as amended, and its related implementing and enforcement measures. According to the United States, the European Communities Regulation limits the geographical indications that the European Communities will protect and limits the access of nationals of other members to the European Communities geographical indications procedures and protections provided under the Regulation. The United States claimed that the European Communities Regulation appeared to be inconsistent with articles 2, 3, 4, 16, 22, 24, 63 and 65 of the TRIPS Agreement and articles I and III: 4 of GATT 1994.[420]

On 17 April 2003, Australia requested consultations with the European Communities concerning the protection of trademarks and the registration and protection of geographical indications for foodstuffs and agricultural products in the European Communities. The measures at issue include Council Regulation (EEC) No. 2081/92 of 14 July 1992 *on the protection of geographical indications and designations of origin for agricultural products and foodstuffs* and related measures. Australia claimed that the European Communities' measure appeared to be inconsistent with various European Communities' obligations pursuant to the TRIPS Agreement, articles I and III of GATT 1994, article 2 of the Technical Barriers to Trade (TBT) Agreement[421] and article XVI: 4 of the WTO Agreement.

On 18 August 2003, the United States and Australia separately requested the establishment of a panel. At its meeting on 29 August 2003, the DSB deferred the

[420] United Nations *Treaty Series*, vol. 1867, p. 154 (annex 1A).
[421] United Nations *Treaty Series*, vol. 1868, p. 120 (annex 1A).

establishment of the panels. Further to second requests to establish a panel from the United States and Australia, the DSB established a single panel at its meeting on 2 October 2003. Australia, Colombia, Guatemala, India, Mexico, New Zealand, Norway, Chinese Taipei and Turkey reserved their third-party rights. Subsequently, Argentina, Brazil, Canada and China also reserved their third-party rights.

8. *United States—Section 211 Omnibus Appropriations Act, complaint by the European Communities (WT/DS176)*

On 20 December 2002, the European Communities and the United States informed the DSB that they had mutually agreed to modify the reasonable period of time for the United States to implement the recommendations and rulings of the DSB, so as to expire on 30 June 2003. This time period was subsequently extended twice, until 31 December 2003 and 31 December 2004, respectively.

9. *United States—Anti-dumping measures on certain hot-rolled steel products from Japan, complaint by Japan (WT/DS184)*

At the DSB meeting on 7 November 2003, the United States stated that with respect to the United States anti-dumping statute, the administration was supporting the passage of specific amendments to the United States anti-dumping duty law in order to bring it into conformity with the DSB's recommendations and rulings. Japan said that the extended reasonable period of time for the implementation of the DSB's recommendations and rulings agreed to by the Parties was about to expire, yet the necessary statutory changes had not been introduced in the United States Congress. At its meeting on 10 December 2003, the DSB agreed to a request by the United States for an extension of the reasonable period of time for the implementation of the recommendations and rulings of the DSB.

10. *Chile—Measures affecting the transit and importation of swordfish, complaint by the European Communities (WT/DS193)*

On 12 November 2003, the Parties to the dispute informed the Chairman of the DSB that they had agreed to maintain the suspension of the process for the constitution of the panel.

11. *United States—Definitive safeguard measures on imports of circular welded carbon quality line pipe from Korea, complaint by the Republic of Korea (WT/DS202)*

At the DSB meeting on 18 March 2003, the United States informed the meeting that its safeguard measure on line pipe imports from the Republic of Korea had been terminated on 1 March 2003.

12. *United States—Anti-dumping and countervailing measures on steel plate from India, complaint by India (WT/DS206)*

On 17 January 2003, the Parties informed the DSB that they had mutually agreed to modify the reasonable period of time for implementation of the recommendations and rulings of the DSB so as to expire on 31 January 2003. On 14 February 2003, the Parties informed the DSB that they had agreed on certain procedures under article 21 and 22 of the DSU. Pursuant to these agreed procedures, if India requests the establishment of a 21.5 compliance panel, the United States will not oppose it. India agrees not to request the authorization to suspend concessions under article 22 until the adoption of the compliance reports (Panel and Appellate Body, if any) and the United States agrees not to assert that

India is precluded from doing so given that the request would be made outside the 30-day period.

13. *Chile—Price band system and safeguard measures relating to certain agricultural products, complaint by Argentina (WT/DS207)*

This dispute concerns two distinct matters: Argentina had claimed that: (i) Chile's price band system applicable to imports of wheat, wheat flour, and edible vegetable oils, was inconsistent with article II: l*(b)* of GATT 1994 and article 4.2 of the Agreement on Agriculture;[422] and (ii) Chile's provisional and definitive safeguard measures on imports of wheat, wheat flour and edible vegetable oils, as well as the extension of those measures, were inconsistent with article XIX of GATT 1994 and articles 2, 3, 4, 5, 6 and 12 of the Agreement on Safeguards.

On 6 December 2002, Chile informed the DSB that Chile and Argentina had been unable to agree on the length of the reasonable period of time for the implementation of the recommendations and rulings of the DSB and thus Chile requested that the determination of the reasonable period of time be the subject of binding arbitration in accordance with article 21.3*(c)* of the DSU.

On 17 March 2003, the Arbitrator circulated its award, in which he concluded that the "reasonable period of time" that should be extended to Chile to implement the recommendations and rulings of the DSB in the dispute was 14 months from the date of adoption of the Panel and Appellate Body reports by the DSB, and thus would run until 23 December 2003. At the DSB meeting on 2 October 2003, Chile stated that on 25 September 2003, Law No. 19.897 to establish a new price band system had been promulgated replacing Law No. 18.525. The new law would come into force on 16 December 2003, i.e., prior to the expiry of the reasonable period of time for compliance. At the DSB meeting on 1 December 2003, Chile said that it had already adopted a number of measures to comply with the DSB's recommendations. Argentina stated its view that the measures taken by Chile to comply with the recommendations did not constitute implementation in this case since the price band system would continue to be maintained and considered that it would be appropriate for the Parties to enter into negotiations on compensation before the expiry of the deadline for implementation. On 24 December 2003, Argentina and Chile informed the DSB that they had agreed on certain procedures under articles 21 and 22 of the DSU.

14. *United States—Countervailing measures concerning certain products from the European Communities, complaint by the European Communities (WT/DS212)*

On 10 November 2000, the European Communities requested consultations with the United States concerning the continued application by the United States of countervailing duties on a number of products. In particular, the European Communities claimed that the application of the "same person" methodology by the United States, and the continued imposition of duties based on it, were in breach of articles 10, 19 and 21 of the SCM Agreement, because there was no proper determination of a benefit to the producer of the goods under investigation, as required by article 1.1*(b)* of the SCM Agreement. On 8 August 2001, the European Communities requested the establishment of a panel in this dispute. The DSB established a panel on 10 September 2001.

On 31 July 2002, the Panel report was circulated to the members. The Panel concluded that where a privatization is at arm's length and for fair market value, the benefit from a

[422] United Nations *Treaty Series*, vol. 1867, p. 410 (annex 1A).

prior nonrecurring financial contribution bestowed upon the State-owned producer no longer accrues to the privatized producer. On 9 September 2002, the United States notified the DSB of its decision to appeal certain issues of law covered in the Panel report and certain legal interpretations developed by it. On 9 December 2002, the Appellate Body report was circulated to the members. The Appellate Body reversed the Panel's finding that an arm's length, fair market value privatization *necessarily* extinguishes the benefits from previously-bestowed financial contributions. Nevertheless, the Appellate Body found that in the investigations and reviews at issue, the administering authority had employed the "same person" methodology and thus had failed to determine the continued existence of a benefit before imposing or continuing to impose countervailing duties. The Appellate Body therefore recommended that the DSB request the United States to bring its measures and administrative practice (the "same person" methodology) into conformity with its obligations under the SCM Agreement.

On 8 January 2003, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report. On 10 April 2003, the Parties notified the DSB that they had agreed on 10 months as a reasonable period of time for implementation of the recommendations and rulings of the DSB (from 8 January 2003 to 8 November 2003).

At the DSB meeting on 7 November 2003, the United States presented its first status report, in which it stated that on 23 June 2003, the United States Department of Commerce (USDOC) published a notice announcing a modification of the manner in which the Department would analyse the question of whether a subsidized, government-owned company remained subsidized after it was "privatized". The USDOC had also issued final revised determinations for each of the 12 countervailing determinations that were at issue on 24 October 2003. As a result of these measures, the United States considered that it had brought its measures into full conformity with the recommendations and rulings of the DSB. At the same meeting, the European Communities expressed concerns regarding some aspects of the United States' implementation of the DSB's recommendations and rulings.

15. *United States—Continued Dumping and Subsidy Offset Act of 2000, joint complaint by Australia, Brazil, Chile, the European Communities, India, Indonesia, Japan, Republic of Korea and Thailand (WT/DS217), and Canada and Mexico (WT/DS234)*

This dispute concerns the amendment to the Tariff Act of 1930 signed into law by the President of the United States on 28 October 2000, entitled "Continued Dumping and Subsidy Offset Act of 2000", usually referred to as the Byrd Amendment.

On 18 October 2002, the United States notified the DSB of its decision to appeal to the Appellate Body certain issues of law covered in the Panel report and certain legal interpretations developed by it. On 16 January 2003, the Appellate Body circulated its report in which it upheld the Panel's finding that the United States Continued Dumping and Subsidy Offset Act of 2000 was a non-permissible specific action against dumping or a subsidy, contrary to article 18.1 of the Anti-Dumping Agreement and article 32.1 of the SCM Agreement. The Appellate Body reversed the Panel's finding that the Act of 2000 was inconsistent with article 5.4 of the Anti-Dumping Agreement and article 11.4 of the SCM Agreement and rejected the Panel's conclusion that the United States "may be regarded as not having acted in good faith" with respect to its obligations under those provisions.

The DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, at its meeting on 27 January 2003.

On 14 March 2003, the complainants requested arbitration under article 21.3*(c)* of the DSU to determine the reasonable period of time for implementation by the United States of the recommendations and rulings of the DSB. On 13 June 2003, the Arbitrator issued its award to the Parties and concluded that the "reasonable period of time" for the United States to implement the recommendations and rulings of the DSB was 11 months from the date of the adoption of the Panel and Appellate Body reports in the dispute by the DSB. The reasonable period of time expired on 27 December 2003.

16. *European Communities—Anti-dumping duties on malleable cast iron tube or pipe fittings from Brazil, complaint by Brazil (WT/DS219)*

This dispute concerns the European Communities' definitive anti-dumping duties imposed by Council Regulation (EC) No. 1784/2000 concerning imports of malleable cast iron tube or pipe fittings originating in Brazil. Brazil considered that the European Communities had infringed article VI of GATT 1994 and articles 1, 2, 3, 4, 5, 6, 9, 11, 12 and 15 of the Anti-Dumping Agreement. Further to a request by Brazil, the DSB established a panel at its meeting of 24 July 2001. Chile, Japan, Mexico and the United States reserved their third-party rights.

On 7 March 2003, the Panel circulated its report to the members. The Panel concluded that the European Communities had acted inconsistently with its obligations under: (i) article 2.4.2 of the Anti-Dumping Agreement in "zeroing" negative dumping margins in its dumping determination; and (ii) article 12.2 and 12.2.2 in that it was not directly discernible from the published provisional or definitive determination that the European Communities addressed or explained the lack of significance of certain injury factors listed in article 3.4.

The Panel ruled against Brazil on all other claims. On 23 April 2003, Brazil notified the DSB of its decision to appeal certain issues of law as well as certain legal interpretations developed by the Panel.

On 22 July 2003, the Appellate Body report was circulated to the members. Of the seven issues appealed by Brazil, the Appellate Body rejected Brazil's claims with respect to six of them. The Appellate Body upheld the Panel's findings that the European Communities did not act inconsistently with article VI: 2 of GATT 1994 or with articles 1, 2.2.2, 3.1, 3.2, 3.3, 3.4, or 3.5 of the Anti-Dumping Agreement. The Appellate Body also rejected Brazil's claim that the Panel, contrary to its obligation under article 17.6*(i)* of the Anti-Dumping Agreement, failed to assess properly the facts of the matter before it when admitting into evidence the document referred to as Exhibit EC-12. The Appellate Body reversed the Panel's finding with respect to one issue. The Appellate Body found, in contrast to the Panel, that the European Communities had acted inconsistently with articles 6.2 and 6.4 of the Anti-Dumping Agreement by failing to disclose to interested parties during the anti-dumping investigation certain information related to the evaluation of the state of the domestic industry, which was contained in document Exhibit EC-12.

On 18 August 2003, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report. On 1 October 2003, the European Communities and Brazil informed the DSB that they had agreed that the reasonable period of time for the European Communities to implement the DSB's recommendations and rulings would be seven months, i.e., until 19 March 2004.

17. *Canada—Export credits and loan guarantees for regional aircraft, complaint by Brazil (WT/DS222)*

The report of the Panel, recommending that Canada withdraw the disputed subsidies, was adopted by the DSB at its meeting on 19 February 2002. The matter was subsequently referred to arbitration in accordance with article 22.6 of the DSU and article 4.11 of the SCM Agreement.

On 17 February 2003, the Arbitrator circulated its award, in which he determined that the suspension of concessions by Brazil covering trade in a total amount of US$247,797,000 would constitute appropriate countermeasures within the meaning of article 4.10 of the SCM Agreement. On 6 March 2003, Brazil requested authorization to suspend concessions or other obligations under article 22.7 of the DSU and article 4.10 of the SCM Agreement. At its meeting on 18 March 2003, the DSB authorized the suspension of concessions.

18. *European Communities—Trade description of sardines, complaint by Peru (WT/DS231)*

On 14 April 2003, the Parties informed the DSB that they had reached an agreement to extend the reasonable period of time for implementation of the regulations and rulings of the DSB until 1 July 2003. On 25 July 2003, the European Communities and Peru informed the DSB that they had reached a mutually agreed solution pursuant to article 3.6 of the DSU.

19. *Argentina—Definitive safeguard measure on imports of preserved peaches, complaint by Chile (WT/DS238)*

This request, dated 6 September 2001, concerns a definitive safeguard measure which Argentina applied on imports of peaches preserved in water containing added sweetening matter, including syrup, preserved in any other form or in water. According to Chile, Argentina's definitive safeguard measure was inconsistent with articles 2, 3, 4, 5 and 12 of the Agreement on Safeguards,[423] and article XIX: 1 of GATT 1994. At the DSB meeting on 18 January 2002, a panel was established. The European Communities, Paraguay and the United States reserved their third-party rights.

On 14 February 2003, the Panel circulated its report to the members. The Panel concluded that the Argentine measure was imposed inconsistently with certain provisions of the Agreement on Safeguards and GATT 1994. In particular, the Panel concluded that:

(i) Argentina acted inconsistently with its obligations under article XIX :1 *(a)* of GATT 1994 by failing to demonstrate the existence of unforeseen developments as required;

(ii) Argentina acted inconsistently with its obligations under article XIX: 1*(a)* of GATT 1994 and articles 2.1 and 4.2*(a)* of the Agreement on Safeguards by failing to make a determination of an increase in imports, in absolute or relative terms, as required; and

(iii) Argentina acted inconsistently with its obligations under article XIX: 1*(a)* of GATT 1994 and articles 2.1, 4.1*(b)* and 4.2*(a)* of the Agreement on Safeguards because the competent authorities, in their determination of the existence of a threat of serious injury did not: *(a)* evaluate all of the relevant factors having a bearing on the situation of the domestic industry; *(b)* provide a reasoned and adequate explanation of how the facts supported their determination; and *(c)* find that serious injury was clearly imminent. The

[423] United Nations *Treaty Series*, vol. 1869, p. 154 (annex 1A).

Panel did not find that Argentina acted inconsistently with its obligations under articles 2.1 and 4.1*(b)* of the Agreement on Safeguards by basing a finding of the existence of a threat of serious injury on an allegation, conjecture or remote possibility. The Panel exercised judicial economy with respect to all other claims.

At its meeting on 15 April 2003, the DSB adopted the Panel report. On 27 June 2003, Argentina and Chile informed the DSB that they had agreed that the reasonable period of time to implement the DSB's recommendations would run until 31 December 2003.

20. *Argentina—Definitive anti-dumping duties on poultry from Brazil, complaint by Brazil (WT/DS241)*

This request, dated 25 February 2002, concerns definitive anti-dumping duties imposed by Argentina on imports of poultry from Brazil, classified under Mercosur tariff line 0207.11.00 and 0207.12.00.

At the DSB meeting on 17 April 2002, a panel was established. Canada, Chile, the European Communities, Guatemala, Paraguay and the United States reserved their third-party rights.

On 22 April 2003, the Panel circulated its report to the members. The Panel's report upheld (either fully or in part) 20 of the 41 claims brought by Brazil against Argentina's anti-dumping measure on imports of poultry from Brazil. The Panel rejected eight of Brazil's claims, and exercised judicial economy in respect of the remainder.

21. *United States—Rules of origin for textiles and apparel products, complaint by India (WT/DS243)*

This request, dated 7 May 2002, concerns United States rules of origin applicable to imports of textiles and apparel products as set out in section 334 of the Uruguay Round Agreements Act, section 405 of the Trade and Development Act of 2000 and the customs regulations implementing these provisions. The DSB established a panel at its meeting on 24 June 2002. Bangladesh, China, the European Communities, Pakistan and the Philippines reserved their third party rights.

On 20 June 2003, the Panel report was circulated to the members. The Panel found that:

(i) India had failed to establish that section 334 of the Uruguay Round Agreements Act was inconsistent with articles 2*(b)* or 2*(c)* of the Agreement on Rules of Origin;

(ii) India had failed to establish that section 405 of the Trade and Development Act was inconsistent with articles 2*(b)*, 2*(c)* or 2*(d)* of the Agreement on Rules of Origin; and

(iii) India had failed to establish that the customs regulations contained in 19 C.F.R. § 102.21 were inconsistent with articles 2*(b)*, 2*(c)* or 2*(d)* of the Agreement on Rules of Origin.

At its meeting on 21 July 2003, the DSB adopted the Panel report.

22. *United States—Sunset review of anti-dumping duties on corrosion-resistant carbon steel flat products from Japan, complaint by Japan (WT/DS244)*

This dispute concerns the final determinations of both the USDOC and the United States International Trade Commission (USITC) in the full sunset review of the anti-dumping duties imposed on imports of corrosion-resistant carbon steel flat products from Japan.

The DSB established a panel at its meeting on 22 May 2002. Brazil, Canada, Chile, the European Communities, India, the Republic of Korea, Norway and Venezuela reserved their third-party rights. On 5 August 2002, Venezuela withdrew as a third party from the panel proceedings.

On 14 August 2003, the Panel circulated its report to the members. The Panel rejected all of Japan's claims challenging various aspects of the United States laws and regulations regarding the conduct of "sunset" reviews of anti-dumping duties under United States law. The Panel found, *inter alia,* that the obligations pertaining to evidentiary standards for self-initiation and *de minimis* standards in investigations do not apply to sunset reviews. The Panel also rejected Japan's argument that the United States' *Sunset Policy Bulletin*—which, by its own terms, provides guidance on methodological or analytical issues not explicitly addressed by the United States statute and regulations—was a mandatory instrument that could be challenged as such in WTO dispute settlement. Rather, the Panel found that the *Bulletin* may be challenged only in respect of its application by the USDOC in a particular case. The Panel further found that the USDOC's determination of likelihood of continuation or recurrence of dumping in this particular case was not WTO-inconsistent. Accordingly, the Panel made no recommendation to the DSB.

On 15 September 2003, Japan notified its decision to appeal to the Appellate Body certain issues of law covered in the Panel report and certain legal interpretations developed by it. On 15 December 2003, the report of the Appellate Body was circulated to the members. It upheld three findings but reversed four of the Panel's legal findings. The Appellate Body reversed the Panel's findings that the *Bulletin* was not a mandatory legal instrument and thus was not a measure that was "challengeable", as such, under the Anti-Dumping Agreement or the WTO Agreement. However, the Appellate Body did not find any of the provisions of the *Bulletin* inconsistent with the Anti-Dumping Agreement or the WTO Agreement. Although its analysis of Japan's claims differed from that of the Panel in important respects, the Appellate Body did not find that the United States had acted inconsistently with its obligations under the Anti-Dumping Agreement or the WTO Agreement. In relation to certain of Japan's claims, the Appellate Body indicated that it did not have a sufficient factual basis to complete the analysis.

23. *Japan—Measures affecting the importation of apples, complaint by the United States (WT/DS245)*

This dispute concerns restrictions allegedly imposed by Japan on imports of apples from the United States. At its meeting on 3 June 2002, the DSB established a panel. Australia, Brazil, Chinese Taipei, the European Communities and New Zealand reserved their third-party rights.

The Panel circulated its report to the members on 15 July 2003. The Panel found that Japan's phytosanitary measure imposed on imports of apples from the United States was contrary to article 2.2 of the SPS Agreement and was not justified under article 5.7 of the SPS Agreement and that Japan's 1999 Pest Risk Assessment did not meet the requirements of article 5.1 of the SPS Agreement.

On 28 August 2003, Japan notified the DSB of its decision to appeal to the Appellate Body certain issues of law covered in the Panel report and certain legal interpretations developed by it. On 26 November 2003, the report of the Appellate Body was circulated. The Appellate Body rejected all four of Japan's claims on appeal and upheld the Panel's findings that Japan's phytosanitary measure at issue was inconsistent with Japan's obligations under

articles 2.2, 5.7, and 5.1 of the SPS Agreement. The Appellate Body also found that the Panel properly discharged its duties under article 11 of the DSU in the Panel's assessment of the facts of the case. The United States' sole claim on appeal challenged the authority of the Panel to make findings and draw conclusions with respect to apples other than "mature, symptomless" apple fruit. The Appellate Body rejected this claim, finding that the Panel did have the authority to make rulings covering all apple fruit that could possibly be exported from the United States to Japan, including apples other than "mature, symptomless" apples.

At its meeting on 10 December 2003, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report.

24. *European Communities—Conditions for the granting of tariff preferences to developing countries, complaint by India (WT/DS246)*

On 5 March 2002, India requested consultations with the European Communities concerning the conditions under which the European Communities accords tariff preferences to developing countries under the scheme of generalized tariff preferences formulated under Council Regulation (EC) No. 2501/2001 (GSP scheme), pursuant to article 4 of the DSU, article XXIII: 1 of GATT 1994, and paragraph 4*(b)* of the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of the Developing Countries (the Enabling Clause).[424]

Upon India's request, the DSB established a panel at its meeting on 27 January 2003. During the meeting, Brazil, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Paraguay, Peru, Sri Lanka, Venezuela, and the United States reserved their third-party rights. Subsequently, Bolivia, Mauritius, Nicaragua, Pakistan and Panama also reserved their third party rights. Upon India's request, the Director-General composed a Panel on 6 March 2003.

On 1 December 2003, the Panel report was circulated to the members. The Panel found that:

(i) India had demonstrated that the tariff preferences under the Special Arrangements to Combat Drug Production and Trafficking (Drug Arrangements) provided in the European Communities' GSP scheme were inconsistent with article I: 1 of GATT 1994;

(ii) the European Communities had failed to demonstrate that the Drug Arrangements were justified under paragraph 2*(a)* of the Enabling Clause, which requires that the GSP benefits be provided on a "non-discriminatory" basis; and

(iii) the European Communities had failed to demonstrate that the Drug Arrangements were justified under article XX*(b)* of GATT 1994 since the measure was not "necessary" for the protection of human life or health in the European Communities, nor was it in conformity with the chapeau of article XX. (One panelist presented a dissenting opinion that the Enabling Clause was not an exception to article I: 1 and that India had not made a claim under the Enabling Clause.)

[424] Decision of 28 November 1979 (L/4903).

25. *United States—Definitive safeguard measures on imports of certain steel products, complaints by the European Communities (WT/DS248), Japan (WT/DS249), the Republic of Korea (WT/DS251), China (WT/DS252), Switzerland (WT/DS253), Norway (WT/DS254), New Zealand (WT/DS258) and Brazil (WT/DS259)*

This dispute concerns definitive safeguard measures imposed by the United States, effective as of 20 March 2002, in the form of an increase in duties on imports of certain carbon flat-rolled steel, tin mill products, carbon and alloy hot-rolled bar, carbon and alloy cold-finished bar, carbon and alloy rebar, carbon and alloy welded pipe, carbon and alloy fittings, flanges, and tool joints, stainless steel bar, stainless steel rod, tin mill products, and stainless steel wire, as well as in the form of a tariff rate quota on imports of slabs.

Further to individual requests for the establishment of a panel submitted by the eight Complainants, the DSB, at its meetings between 3 and 24 June, established a single Panel, in accordance with article 9.1 of the DSU and pursuant to an agreement between the Parties to the dispute. Members that had reserved their third-party rights before the various Panels, namely Canada, Chinese Taipei, Cuba, Malaysia, Mexico, Thailand, Turkey and Venezuela, were also considered as third parties before the single Panel.

The Panel circulated its reports[425] to the members on 11 July 2003. The Panel concluded that all ten of the United States' safeguard measures at issue were inconsistent with at least one of the following WTO pre-requisites for the imposition of a safeguard measure: lack of demonstration of (i) unforeseen developments; (ii) increased imports; (iii) causation; and (iv) parallelism. The Panel therefore recommended that the DSB request the United States to bring the relevant safeguard measures into conformity with its obligations under the Agreement on Safeguards and GATT 1994.

On 11 August 2003, the United States notified its decision to appeal to the Appellate Body certain issues of law covered in the Panel report and certain legal interpretations developed by it. On 10 November 2003, the Appellate Body report was circulated to the members. The Appellate Body upheld all the Panel's conclusions on all ten products for unforeseen development, increased imports and parallelism, but it reversed the Panel on one set of conclusions relating to the decision-making process of the USITC when dealing with tin mill and stainless steel wire. It also decided that it was not necessary to examine the other claims on causation. Therefore, these ten measures were found to be inconsistent with article XIX of GATT 1994 and the Safeguards Agreement on other grounds. The Appellate Body neither upheld nor reversed the Panel's findings on the causal link between increased imports and serious injury for seven of the ten safeguard measures, as it was unnecessary to do so to resolve this dispute.

[425] Although all complaints made by the eight co-complainants were considered in a single panel process, the United States requested the issuance of eight separate panel reports, claiming that to do otherwise would prejudice its WTO rights, including its right to settle the matter with individual complainants. The complainants opposed this request, stating that to grant it would only delay the process. The Panel decided to issue its decisions in the form of "one document constituting eight Panel Reports". Thus, according to the Panel, for WTO purposes, this document is deemed to constitute eight separate reports, relating to each of the eight Complainants in this dispute. The document comprises a common cover page, a common descriptive part and a common set of findings. The document then contains conclusions and recommendations that are "particularized" for each of the Complainants, with a separate number (symbol) for each individual Complainant. In the Panel's view, this approach respected the rights of all Parties while ensuring the prompt and effective settlement of the dispute.

At its meeting on 10 December 2003, the DSB adopted the Appellate Body report and the Panel reports, as modified by the Appellate Body report. At the same meeting, the United States informed the members that, on 4 December 2003, the President of the United States had issued a proclamation that terminated all of the safeguard measures, pursuant to section 204 of the United States Trade Act of 1974, subject to this dispute.

26. *United States—Final countervailing duty determination with respect to certain softwood lumber from Canada, complaint by Canada (WT/DS257)*

This dispute concerns the final affirmative countervailing duty determination by the USDOC issued on 25 March 2002, with respect to certain softwood lumber from Canada. At its meeting on 1 October 2002, the DSB established a panel. The European Communities, India and Japan reserved their third-party rights.

On 29 August 2003, the Panel report was circulated to the members. The Panel upheld the USDOC's determination that the provision of "stumpage", or the right to harvest timber from Crown land, by the Canadian provinces, constituted a financial contribution by the Government, specifically in the form of the provision of a good. In addition, the Panel upheld the USDOC's finding that the provincial stumpage programs provided specific subsidies, within the meaning of article 2 of the SCM Agreement. However, the Panel found that the USDOC acted inconsistently with articles 14, 14(d), 10 and 32.1 of the SCM Agreement in determining the existence and amount of a benefit conferred, through the provincial stumpage programs, to the producers of the products under investigation. The Panel also found that the USDOC acted inconsistently with article 10 of the SCM Agreement and article VI: 3 of GATT 1994 by failing to analyze whether any subsidy was passed on by timber harvesters to unrelated sawmills and between sawmills and unrelated re-manufacturers. The Panel decided to apply judicial economy as regards other claims raised by Canada under article 19.4 of the SCM Agreement and article VI: 3 of GATT 1994 concerning the methodologies used to calculate the subsidy rate and its claims of violation of the procedural rules of evidence set forth in article 12 of the SCM Agreement.

On 2 October 2003, the United States notified the DSB of its decision to appeal to the Appellate Body certain issues of law covered in the Panel report and certain legal interpretations developed by it. However, on 3 October 2003, the United States withdrew its notice of appeal for scheduling reasons, although the withdrawal was conditional on the United States retaining the right to file a new notice of appeal within the time-frame permitted by the DSU. On 21 October 2003, the United States notified the DSB of its decision to re-file its appeal to the Appellate Body.

27. *Uruguay—Tax treatment on certain products, complaint by Chile (WT/DS261)*

On 18 June 2002, Chile requested consultations with Uruguay with regard to the tax treatment applied by the latter to certain products.

On 3 April 2003, Chile requested the DSB to establish a panel. Further to a second request by Chile, the DSB established a panel at its meeting on 19 May 2003. The European Communities, Mexico and the United States reserved their third-party rights. On 15 August 2003, the Chair of the Panel informed the DSB that both Parties had jointly requested the Panel to suspend its work for a period of 60 days, until 12 October 2003. Upon subsequent requests by the Parties, the Panel suspended its work until 10 January 2004 in order for the Parties to formalize a mutually agreed solution and to notify it to the DSB, in accordance with article 3.6 of the DSU.

Panels established by the DSB

Dispute	Complainant	Panel established
United States—Final dumping determination on softwood lumber from Canada (WT/DS264)	Canada	8 January 2003
European Communities—Export subsidies on sugar (WT/DS265), (WT/DS266) and (WT/DS283)	Australia, Brazil and Thailand	29 August 2003
United States—Subsidies on upland cotton (WT/DS267)	Brazil	18 March 2003
United States—Sunset reviews of anti-dumping measures on oil country tubular goods from Argentina (WT/DS268)	Argentina	19 May 2003
European Communities—Customs classification of frozen boneless chicken cuts (WT/DS269) and (WT/DS286)	Brazil and Thailand	7 and 21 November 2003
Australia—Certain measures affecting the importation of fresh fruit and vegetables (WT/DS270)	Philippines	29 August 2003
Republic of Korea—Measures affecting trade in commercial vessels (WT/DS273)	European Communities	21 July 2003
Canada—Measures relating to exports of wheat and treatment of imported grain (WT/DS276)	United States	31 March 2003
United States—Investigation of the International Trade Commission in softwood lumber from Canada (WT/DS277)	Canada	7 May 2003
United States—Countervailing duties on imports of steel plate from Mexico (WT/DS280)	Mexico	29 August 2003
United States—Anti-dumping measures on imports of cement from Mexico (WT/DS281)	Mexico	29 August 2003
United States—Anti-dumping measures on oil country tubular goods (OCTG) from Mexico (WT/DS282)	Mexico	29 August 2003
United States—Measures affecting cross-border supply of gambling and betting services (WT/DS285)	Antigua and Barbuda	21 July 2003
Australia—Quarantine regime for imports (WT/DS287)	European Communities	7 November 2003
European Communities—Measures affecting the approval and marketing of biotech products (WT/DS291), (WT/DS292) and (WT/DS293)	United States, Canada and Argentina	29 August 2003

Requests for consultations

Dispute	Complainant	Date of Request
Mexico—Certain measures preventing the importation of black beans from Nicaragua (WT/DS284)	Nicaragua	17 March 2003
South Africa—Definitive anti-dumping measures on blanketing from Turkey (WT/DS288)	Turkey	9 April 2003
Czech Republic—Additional duty on imports of pigmeat from Poland (WT/DS289)	Poland	16 April 2003

Dispute	Complainant	Date of Request
United States—Laws, regulations and methodology for calculating dumping margins ("Zeroing") (WT/DS294)	European Communities	12 June 2003
United States—Countervailing duty investigation on dynamic random access memory semiconductors (DRAMs) from Korea (WT/DS296)	Republic of Korea	30 June 2003
Croatia—Measure affecting imports of live animals and meat products (WT/DS297)	Hungary	9 July 2003
Mexico—Certain pricing measures for customs valuation and other purposes (WT/DS298)	Guatemala	22 July 2003
European Communities—Countervailing measures on dynamic random access memory chips from Korea (WT/DS299)	Republic of Korea	25 July 2003
Dominican Republic—Measures affecting the importation of cigarettes (WT/DS300)	Honduras	28 August 2003
European Communities—Measures affecting trade in commercial vessels (WT/DS301)	Republic of Korea	3 September 2003
Dominican Republic—Measures affecting the importation and internal sale of cigarettes (WT/DS302)	Honduras	8 October 2003
Ecuador—Definitive safeguard measure on imports of medium density fibreboard (WT/DS303)	Chile	24 November 2003
India—Anti-dumping measures on imports of certain products from the European Communities (WT/DS304)	European Communities	8 December 2003
Egypt—Measures affecting imports of textile and apparel products (WT/DS305)	United States	23 December 2003
India—Anti-dumping measure on batteries from Bangladesh (WT/DS306)	Bangladesh	28 January 2004

(d) Legal activities in the General Council

The following section lists the legal activities of the councils and committees of the WTO.

The General Council has held 6 meetings since the period covered by the previous survey. The minutes of these meetings and Special Sessions, which remain the record of the General Council's work, are contained in documents WT/GC/M/80–85. The General Council considered the following items at its meetings:

(1) Trade Negotiation Committee (TNC), (WT/GC/M/80, 81, 82 and 83)

The General Council considered the following:

- Reports of Committee of Trade Negotiation (WT/GC/M/80, 81, 82, 83);
- Report by the Chairman of the TNC (WT/GC/M/83);
- Negotiations on improvements and clarifications of the DSU—Extension of timeframe—Statement by the Chairman (WT/GC/M/81).

(2) Chairmanships of the WTO bodies under the TNC—Statement by the Chairman, (WT/GC/M/82 and 83).

(3) Committee on Budget, Finance and Administration, (WT/GC/M/80, 81, 82 and 83).

The General Council considered the following:

- Report of the Committee on Budget, Finance and Administration (WT/BFA/63 and 65);
- Recommendations of the Meetings Committee on Budget, Finance and Administration held on 11 July and 14 August 2003 (WT/BFA/67);
- Report by the Chairman of the Committee on the Committee's review of methodologies for future pay adjustments for WTO staff (WT/BFA/64).

(4) Work Programme on Special and Differential Treatment, (WT/GC/M/80 and 81).

The General Council considered the following:

- Report by the Chairman of the Special Session of the Committee on Agriculture (TN/AG/11);
- Report by the Chairman of the Special Session of the Dispute Settlement Body to the TNC (TN/DS/9);
- Report by the Chairman of the Special Session of the Council for Trade in Services (TN/S/12);
- Report of the Committee on Agriculture (G/AG/17);
- Report by the Chairman of the Committee on Sanitary and Phytosanitary Measures (G/SPS/27);
- Report by the Chairman of the Committee on Trade-Related Investment Measures (G/L/638);
- Report to the General Council concerning the review by the Safeguards Committee of the African Group's S&D proposal on article 9 of the Safeguards Agreement (G/SG/64);
- Report by the Chairman of the Negotiating Group on Rules (TN/RL/7-G/L/640) on proposals on special and differential treatment referred to the Group by the Chairman of the General Council.

(5) Work Programme on Small Economies, (WT/GC/M/80, 81, 83 and 84).

The General Council considered the following:

- Report by the Chairman of the Dedicated Sessions of the Committee on Trade and Development (WT/GC/M/80, 81, 83 and 84);
- Report of the Committee on Trade and Development in Dedicated Sessions to the General Council (WT/COMTD/SE/1).

(6) Working Group on the Relationship between Trade and Investment, (WT/GC/M/81).

The General Council considered the following:

- Report of the Working Group on the Relationship between Trade and Investment (WT/WGTI/7).

(7) Working Group on the Interaction between Trade and Competition Policy, (WT/GC/M/81) .

The General Council considered the following:

- Report of the Working Group on the Interaction between Trade and Competition Policy (WT/WGTCP/7).

(8) Working Group on Transparency in Government Procurement, (WT/GC/M/81).

The General Council considered the following:

- Report of the Working Group on Transparency in Government Procurement (WT/WGTGP/7).

(9) Council for Trade in Goods on Trade Facilitation, (WT/GC/M/81).

The General Council considered the following:

- Report of the Council for Trade in Goods on Trade Facilitation (G/L/637).

(10) Working Group on Trade, Debt and Finance, (WT/GC/M/81).

The General Council considered the following:

- Report of the Working Group on Trade, Debt and Finance (WT/WGTDF/2).

(11) Working Group on Trade and Transfer of Technology, (WT/GC/M/81).

The General Council considered the following:

- Report of the Working Group on Trade and Transfer of Technology (WT/WGTTT/5).

(12) Council for Trade-Related Aspects of Intellectual Property Rights, (WT/GC/M/81).

The General Council considered the following:

- Report by the Chairman on examination of scope and modalities for non-violation and situation complaints under Article XXIII of GATT 1994 (WT/GC/M/81), (IP/C/27 and Add.l.).

(13) Committee on Trade and Environment, (WT/GC/M/81).

The General Council considered the following:

- Report to the 5th Session of the Ministerial Conference in Cancún, pursuant to paragraphs 32 and 33 of the Doha Ministerial Declaration (WT/CTE/8).

(14) Work Programme on Electronic Commerce—Reports from subsidiary bodies and on the dedicated discussions on cross-cutting issues under the auspices of the General Council, (WT/GC/M/81).

The General Council considered the following:

- Council for Trade in Goods—Report to the General Council on the Work Programme on Electronic Commerce (G/L/635);
- Council for Trade in Services—Note by the Chairman of the Council for Trade in Services to the General Council (S/C/18);
- Council for Trade-Related Aspects of Intellectual Property Rights—Report to the General Council (IP/C/29);
- Committee on Trade and Development—Work on Electronic Commerce in the Committee on Trade and Development since the Doha Ministerial Conference (WT/COMTD/47);
- Report on the Dedicated Discussions under the auspices of the General Council on Cross-Cutting Issues related to Electronic Commerce (WT/GC/W/505 and Corr.l).

(15) Committee on Agriculture—Implementation-related issues, (WT/GC/M/81).
The General Council considered the following:

- Report by the Committee on Agriculture to the General Council (G/AG/16).

(16) Rules of Origin—Harmonization Work Programme—Statement by the Chairman, (WT/GC/M/81).

(17) Committee on Customs Valuation, (WT/GC/M/81).

The General Council considered the following:

- Report on the identification and assessment of practical means to address Members' concerns regarding accuracy of declared values pursuant to paragraph 8.3 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns (WT/GC/M/81).

(18) Implementation and adequacy of technical cooperation and capacity-building commitments in the Doha Ministerial Declaration, (WT/GC/M/81).

The General Council considered the following:

- Report by the Director-General pursuant to paragraph 41 of the Doha Ministerial Declaration (WT/MIN(03)/3).

(19) Issues affecting least-developed countries, (WT/GC/M/81).
The General Council considered the following:

- Report by the Director-General on implementation of the commitment by Ministers to facilitate and accelerate accession of least-developed countries (WT/MIN(03)/2).

(20) Updates to the 2002 Annual Reports, (WT/GC/M/81).

The General Council considered the following updates to the 2002 Annual Reports:

- General Council (WT/GC/W/504);
- Dispute Settlement Body (WT/DSB/34);
- Trade Policy Review Body (WT/TPR/134);
- Sectoral Councils (G/L/637, S/C/17/Rev.l and IP/C/27/Add.l);
- Committee on Trade and Development (WT/COMTD/46);
- Committee on Balance-of-Payments Restrictions (WT/BOP/R/70);
- Committee on Budget, Finance and Administration (WT/BFA/66);
- Committee on Regional Trade Agreements (WT/REG/12);
- Committee on Trade and Environment (WT/CTE/9);
- Committees under the Plurilateral Trade Agreements (WT/GC/70 and Add.l).

(21) Kimberley Process Certification Scheme for Rough Diamonds, (WT/GC/M/80).

The General Council considered the following requests and adopted the draft decision:

- Requests for a waiver from Australia, Brazil, Canada, Israel, Japan, Republic of Korea, Philippines, Sierra Leone, Thailand, the United Arab Emirates and the United States (G/C/W/431 and Corr.1 and 2);
- Draft decision (G/C/W/432/Rev.1).

(22) Marrakesh Ministerial Decision concerning the possible negative effects of the reform programme on least-developed and net food-importing developing countries, (WT/GC/M/80).

The General Council considered the following:

- Proposal for follow-up to the recommendation of the Inter-Agency Panel on examining the feasibility of the revolving fund operating as an ex-ante financing mechanism, by Bangladesh, Cuba, Egypt, Jordan, Kenya, and Sri Lanka on behalf of the WTO net food-importing countries and the least developed countries (G/AG/58 and Corr.1).

(23) Review of progress on the implementation issues referred to WTO bodies under the Decision of 14 November 2001 on Implementation-Related issues and Concerns—Review of progress on development-related issues of the Doha Work Programme, (WT/GC/M/80).

The General Council considered the following:

- Communication from India (WT/GC/W/494);
- Communication from Tanzania on behalf of the Informal Group of Developing Countries (WT/GC/W/495).

(24) Implementation and adequacy of technical cooperation and capacity-building commitments in the Doha Ministerial Declaration, (WT/GC/M/82).

The General Council considered the following:

– Report by the Director-General pursuant to paragraph 41 of the Doha Ministerial Declaration (WT/MIN(03)/3).

(25) Issues affecting least-developed countries, (WT/GC/M/82).

The General Council considered the following:

– Report by the Director-General pursuant to paragraph 43 of the Doha Ministerial Declaration (WT/MIN(03)/l).

(26) Implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, (WT/GC/M/82).

The General Council adopted the following draft decision:

– Draft Decision (IP/C/W/405).

(27) Preparations for the Fifth Session of the Ministerial Conference, (observer status for intergovernmental organizations), (WT/GC/M/81).

(28) Draft Ministerial Text—Statement by the Chairman of the TNC, (WT/GC/M/81 and 82).

The General Council considered the following:

– Report by the Chairman of the Trade Negotiations Committee to the General Council (TN/C/3).

(29) Attendance by intergovernmental organizations as observers at the Fifth Session of the Ministerial Conference, (WT/GC/M/80 and 82).

(30) Attendance of observers at the Fifth Session of the Ministerial Conference—Requests by the Governments of Niue, Cook Islands and Afghanistan, WT/GC/M/82).

The General Council invited, upon their request, the following States to attend the Fifth Session of the Ministerial Conference as observes:

– Niue (WT/L/534);
– Cook Islands (WT/L/535);
– Afghanistan (WT/L/538).

(31) Follow-up to the Cancun Ministerial Conference, (WT/MIN(03)/20), (WT/GC/M/84).

The General Council considered the following:

– Report by the Chairman and the Director-General (WT/GC/M/84).

(32) Chairmanship of the Committee on Trade and Development, (WT/GC/M/80).

(33) Poverty reduction: Sectoral initiative in favour of cotton—Joint proposal by Benin. Burkina Faso, Chad and Mali, (WT/GC/M/82).

(34) Trade in textiles and clothing—Developing members' concerns about potential reduction in market (quota) access in 2003, (WT/GC/M/81, 83 and 84).

The General Council considered the following:

- Communication from Bangladesh; Brazil; Costa Rica; Egypt; Guatemala; Hong Kong, China; India; Indonesia; Macao, China; Maldives; Pakistan; People's Republic of China; Sri Lanka; Thailand and Vietnam (WT/GC/W/503).

(35) Review of the exemption provided under paragraph 3 of GATT 1994, (WT/GC/M/83).

(36) Accession Matters—Iran (Islamic Republic of)—Request for Accession, (WT/GC/M/80, 81, 82, 83, 84 and 85).

The General Council considered the following:

- Communication from Iran (Islamic Republic of) (WT/ACC/IRN/1).

(37) Waivers under Article IX of the WTO Agreement, (WT/GC/M/81 and 84).

The General Council considered the following:

- Israel—Schedule XLII—Draft Waiver Decision (G/C/W/468);
- Sri Lanka—Establishment of a new schedule VI—Extension of Time-Limit –Draft Waiver Decision (G/C/W/469);
- Thailand—Introduction of harmonized system 1996 changes into WTO Schedules of tariff concessions—Schedule LXXIX—Draft Waiver Decision (G/C/W/470).

(For a list of the waivers granted during 2003, see the table above.)

(38) International Trade Centre UNCTAD/WTO, (WT/GC/M/81).

The General Council considered the following:

- Report of the Joint Advisory Group of the International Trade Centre UNCTAD/WTO (JAG) on its Thirty-sixth Session (ITC/AG(XXXVI)/195).

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. AGREEMENT ON INTERNATIONAL RAILWAYS IN THE ARAB MASHREQ. DONE AT BEIRUT, 14 APRIL 2003*

The Parties to the Agreement, conscious of the salient characteristics of railways with respect to construction and running costs, speed, safety, regularity, personal comfort and environmental conservation, and Affirming the importance and necessity of providing railway links between the countries of the region in accordance with a well-studied plan for the construction and development of an international railway network in order to meet future transport needs, protect the environment and facilitate the movement of goods and passengers and, as a result, increase the exchange of trade and tourism in the Arab Mashreq, which will greatly promote Arab regional integration, Have agreed as follows:

Article 1

Adoption of the International Railway Network

The Parties hereto adopt the international railway network described in Annex I to this Agreement (the "Arab Mashreq International Railway Network") in consideration of the fact that railways are of international importance in the Arab Mashreq and should therefore be accorded priority in the formulation of national plans for the construction, maintenance and development of the national railway networks of the Parties hereto, while ensuring that the alignment of routes and lines that do not currently exist are in conformity with feasibility studies to be carried out by the countries concerned.

Article 2

Orientation of the axes of the International Railway Network

The Arab Mashreq International Railway Network described in Annex I to this Agreement consists of the main axes having a north/south and east/west orientation and may include other axes and tracks to be added in the future, in conformity with the provisions of this Agreement.

* Adopted during the 22nd session of the Economic and Social Commission for Western Asia (ESCWA) held in Beirut from 14 to 17 April 2003. Doc E/ESCWA/TRANS/2002/1/Rev.2.

Article 3

TECHNICAL SPECIFICATIONS

Within a period of time as short as possible, all the railways currently in service described in Annex I shall be brought into conformity with the technical specifications for existing railways set forth in Annex II to this Agreement. New railways built after the entry into force of this Agreement shall be designed in accordance with the technical specifications defined in Annex II.

Article 4

SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. This Agreement shall be open for signature to members of the Economic and Social Commission for Western Asia (ESCWA) at United Nations House in Beirut from 14 to 17 April 2003, and thereafter at United Nations Headquarters in New York until 31 December 2004.

2. The members referred to in paragraph 1 of this article may become Parties to this Agreement by:

(a) Signature not subject to ratification, acceptance or approval (definitive signature);

(b) Signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) Accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of the requisite instrument with the depository.

4. States other than ESCWA members may accede to the Agreement upon approval by all ESCWA members Parties thereto, by depositing an instrument of accession with the depository. The Secretariat of the ESCWA Committee on Transport (the "Secretariat") shall distribute the applications for accession of non-ESCWA member States to the ESCWA members Parties to the Agreement for their approval. Once notifications approving the said application are received from all ESCWA members Parties to the Agreement, the application for accession shall be deemed approved.

Article 5

ENTRY INTO FORCE

1. The Agreement shall enter into force ninety (90) days after the date on which four (4) members of ESCWA have either signed it definitively or deposited an instrument of ratification, acceptance, approval or accession.

2. For each member of ESCWA referred to in article 4, paragraph 1, signing the Agreement definitively or depositing an instrument of ratification, acceptance or approval thereof or accession thereto after the date on which four (4) ESCWA members have either signed it definitively or deposited such an instrument, the Agreement shall enter into force ninety (90) days after the date of that member's definitive signature or deposit of the instrument of ratification, acceptance, approval or accession. For each State other than a

member of ESCWA depositing an instrument of accession, the Agreement shall enter into force ninety (90) days after the date of that State's deposit of that instrument.

Article 6

AMENDMENTS

1. After the entry into force of the Agreement, any party thereto may propose amendments to the Agreement, including its annexes.

2. Proposed amendments to the Agreement shall be submitted to the ESCWA Committee on Transport.

3. Amendments to the Agreement shall be considered adopted if approved by a two-thirds majority of the Parties thereto, present at a meeting convened for that purpose. Amendments to Annex I of the Agreement shall be considered adopted if approved by a two-thirds majority of the Parties thereto present at the meeting, including those directly concerned by the proposed amendment.

4. The ESCWA Committee on Transport shall, within a period of forty-five (45) days, inform the depositary of any amendment adopted pursuant to paragraph 3 of this article.

5. The depositary shall notify all Parties hereto of amendments thus adopted, which shall enter into force for all Parties three (3) months after the date of such notification unless objections from more than one third of the Parties are received by the depositary within that period of three (3) months.

6. No amendments may be made to the Agreement during the period specified in Article 7 below if, upon the withdrawal of one Party, the number of Parties to the Agreement becomes less than four (4) at the end of that period.

Article 7

WITHDRAWAL

Any Party may withdraw from this Agreement by written notification addressed to the depositary. Such withdrawal shall take effect twelve (12) months after the date of deposit of the notification unless revoked by the Party prior to the expiration of that period.

Article 8

TERMINATION

This Agreement shall cease to be in force if the number of Parties thereto is less than four (4) during any period of twelve (12) consecutive months.

Article 9

DISPUTE SETTLEMENT

1. Any dispute arising between two or more Parties to this Agreement which relates to its interpretation or application and which the Parties to the dispute have not been able to resolve by negotiation or other means of settlement shall be referred to arbitration if any Party so requests. In such a case, the dispute shall be submitted to an arbitral tribunal to which each of the Parties shall appoint one member and the members thus appointed shall agree on the appointment of a president of the arbitral tribunal from outside their number. If no agreement is reached concerning the appointment of the president of the arbitral tribunal within three (3) months from the request for arbitration, any Party may

request the Secretary-General of the United Nations, or whomever he delegates, to appoint a president of the tribunal, to which the dispute shall be referred for decision.

2. The Parties to the dispute shall be bound by the decision to form the arbitral tribunal pursuant to paragraph 1 of this article and by any and all awards handed down by the tribunal. The parties further undertake to defray the costs of arbitration.

Article 10

LIMITS OF APPLICATION OF THE AGREEMENT

Nothing in this Agreement shall be construed as preventing a Party hereto from taking any action that it considers necessary to its external or internal security or its interests, provided that such action is not contrary to the provisions of the Charter of the United Nations.

Article 11

DEPOSITARY

The Secretary-General of the United Nations shall be the depositary of the Agreement.

Article 12

ANNEXES

The annexes to the Agreement and the list of technical terms used therein are integral parts of the Agreement.

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

DONE AT BEIRUT, this fourteenth day of April 2003, in the Arabic, French and English languages, all of which are equally authentic.

Arabic,* French and English technical terms

English	**French**
Loading Gauge	Gabarit de chargement
Exit Signal	Signal de sortie
Tail Signal	Signal de Queue
Distance between Centers of Tracks	Queue Entraxe des voies
Level Crossing	Passage à niveau
Authorized Mass per Linear Metre	Masse authorisée par mètre linéaire
Authorized Mass per Axle	Masse authorisée par essieu
Mountain Railway	Ligne de montagne
Level Line	Ligne de Plaine
Platform	Quai

* For the Arabic terms, see the Arabic version of the current volume of the *Yearbook*.

Nominal Minimum Speed	Vitesse minimale de définition
Approach Track	Voie d'accès
Passing Siding	Voie de dépassement
Allocation Track	Voie d'affection
Secondary Track	Voie secondaire
Narrow Gauge Line	Voie étroite
Curved Track	Voie en courbe
Standard Gauge Line	Voie normale
Double Track	Voie double
Downgrade Track	Voie décline
Inbound Track	Voie d'arrivée
Reversible Track	Voie banalisée
Minimal Platform Length in Principal Stations	Longueur minimale des quais des gares principales
Track Mileage	Longueur de voie dévlopée
Minimal Useful Siding Length	Longueur utile minimale des voies d'évitement
Sleeper	Traverse
Concrete Sleeper	Longueur en béton
Wooden Sleeper	Traverse en bois
Intermediate Sleeper	Traverse intermédiaire
Wagon	Wagon
Silo Wagon	Wagon-Silo
Standard Wagon	Wagon Standard
Gantry Wagon	Wagon portique
Tank Wagon	Wagon reservoir
Carriage/Coach	Voiture à Voyageurs
Locomotive	Locomotive
Test Train for Bridge Testing	Train-type pour le calcul des ponts
Speed Restriction Board	Tableau de délimitation de vitesse
Station	Gare
Trailer	Remorque
Maximum Gradient	Déclivité maximale
Cant of Track	Variation de dévers
Cant of Rail	Variation du rail

For the definitions of these terms and those contained in the body of the Agreement and its annexes, one may refer to the International Union of Railways (UIC).

ANNEX I

The Arab Mashreq International Railway Network

A. North-South Axes

1. R05: Iraq-East Arabian Peninsula

Yaaroubia border point (Syrian Arab Republic/Iraq)- Rabieyyah border point (Iraq/Syrian Arab Republic)- Mosul- Baghdad-Samawah- Nasiriyah-Basrah- Umm Qasr-Kuwait- Nuwayseeb border point (Kuwait/Saudi Arabia)-Khafji border point (Saudi Arabia/Kuwait)- Abu Hadriyah- Dammam- Salwa-Batha'a border point (Saudi Arabia/United Arab Emirates)- Al Ghweifat border point (United Arab Emirates/Saudi Arabia)-Abu Dhabi- Dubai- Sharja-Fujairah- Kalba border point (United Arab Emirates/Oman)-Khatmat Malahaw border point (Oman/United Arab Emirates)- Sohar- Muscat- Thumrayt-Salalah.

2. R15: Middle Arabian Peninsula

Zarqa'- Al Azraq- Omari border point (Jordan/Saudi Arabia)- Hadithah border point (Saudi Arabia/Jordan)- Quoryat- Dawmat al-Jandal- Ha'il-Buraydah- Riyadh- Al Kharj-Harad- Batha'a.

3. R25: Syrian Arab Republic-Jordan-Saudi Arabia-Yemen

Midan Ikbis- Aleppo- Homs- Maheen- Damascus- Dara'a border point (Syrian Arab Republic/Jordan)- Jaber border point (Jordan/Syrian Arab Republic)- Amman- Ma'an- Al Mudawara border point (Jordan/Saudi Arabia)-Halat Ammar border point (Saudi Arabia/Jordan)- Tabuk- Medina- Yanbu-Rabigh- Jeddah- Darb- Al Tuwal border point (Saudi Arabia/Yemen)- Harad border point (Yemen/Saudi Arabia)- Hodeidah- Al Mukha- Bab al-Mandab.

4. R27: Homs-Rayyaq

Homs- Al Qusayr-Rayyaq.

5. R35: East Mediterranean

Lattakia- Tartous- Akkary- Dabbousieh border point (Syrian Arab Republic/Lebanon)-Abboudieh border point (Lebanon/Syrian Arab Republic)-Tripoli- Beirut- Tyr.

6. R45: Nile Valley

Tanta- Cairo- Qena- Aswan- Wadi Halfa.

B. East-West Axes

1. R10: Iraq-East Mediterranean

Khanaqin- Baghdad- Haklania- Qua'im border point (Iraq/Syrian Arab Republic)-Bou Kamal border point (Syrian Arab Republic/Iraq)- Deir Ez-Zor-Aleppo- Lattakia.

2. R20: Middle Syrian Arab Republic

Yaaroubiah border point (Syrian Arab Republic/Iraq)- Kamishli-Hasaka- Deir Ez-Zor- Tadmur- Maheen- Homs- Akkary.

3. R30: Damascus-Beirut

Damascus-Beirut

4. R40: West Iraq-Jordan

Haklania- Tarabil border point (Iraq/Jordan)- Karamah border point (Jordan/Iraq)- Safawy- Zarqa'- Amman.

5. R50: Mediterranean Southern Coast-Nile Delta

Gaza- Rafah border point (Occupied Palestinian Territories/Egypt)-Arish- Verdun Bridge- Ismailia- Tanta- Alexandria- Salloum.

6. R60: Ma'an-Verdun

Ma'an- Aqaba- Nuweiba- Nakhl- Verdun Bridge.

7. R70: Safaga-Al Kharja

Safaga- Qena- Al Kharja.

8. R80: Jubail-Jeddah

Jubail- Dammam- Riyadh- Mecca- Jeddah.

9. R82: Doha

Doha- Salwah.

10. R90: South Arabian Peninsula

Thumrayt- Mazyounah border point (Oman/Yemen)- Shahan border point (Yemen/Oman)- Gheizah- Mukalla- Aden- Bab al-Mandab.

ANNEX II

Schedule of Technical Specifications for rail network

Serial No.	Technical specifications	Existing lines	New lines	
			For passenger traffic only	For passenger and goods traffic
1	Track width	Standard (1 435 mm)	Standard (1 435 mm)	Standard (1 435 mm)
2	Vehicle loading gauge	UIC/B*	UIC/B*	UIC/B*
3	Minimum distance between track centres	4 m	4 m	4 m
4	Nominal minimum speed	120 km/h	120 km/h	120 km/h
5	Authorized mass per axle For locomotives (200 km/hr) For wagons (120 km/hr) (140 km/hr)	22.5 tonnes 20 tonnes 18 tonnes	-	22.5 tonnes 20 tonnes 18 tonnes
6	Authorized mass per linear metre	8 tonnes	-	8 tonnes
7	Test train (bridge design)	UIC 71	-	UIC 71
8	Minimum platform length in principal stations	250 m	250 m	250 m
9	Minimum useful siding length	500 m	-	500 m
10	Electrical voltage	-	In accordance with UIC and Trans-European Railway Network specifications	

* UIC specifications for loading gauges (set forth in figure I below).

Notes on the specifications given in the table, arranged in accordance with the table serial No.:

1. Track width

The standard track width chosen, namely, 1,435 mm, is used in most parts of the existing network in the region.

2. Vehicle loading gauges

This is the minimum loading gauge for international lines (see figure I for the UIC/B specifications). A great deal of investment will therefore be required in order to upgrade existing routes from UIC/B specifications to UIC/C1 specifications. However, with the specifications adopted in the Agreement, it will be possible to transport ISO containers 2.9 m high and 2.44 m wide on flat-container wagons with a loading height 1.18 m above rail level; loads 2.5 m wide and 2.6 m high on ordinary flat wagons (loading height of 1.246 m); and to transport semi-trailers on recess wagons.

3. Minimum Distance between track centres

This is the minimum distance between track centres for double-track main lines outside stations. An increase in that distance has a number of advantages, including decrease in the aerodynamic pressure when two trains pass each other, an advantage which increases in proportion to their speed, and some relief from the constraints imposed in the transport of out-of-gauge loads. It also increases the possibilities of using high-powered mechanized equipment for track maintenance.

4. Nominal minimum speed

This speed determines the geometrical characteristics of the section (radius of curves and cant), the safety installations (braking distances) and the braking coefficient of the rolling stock.

5. Authorized mass per axle

This is the authorized mass per axle that can be permitted on international main lines. It may be noted that the maximum mass per axle for locomotives, namely, 22.5 tonnes, is slightly higher than that for wagons, which is 20 tonnes. This is because the ratio of the number of locomotive axles to the total number of axles is usually very low, and the suspension of a locomotive causes less wear than that of a wagon.

6. Authorized mass per linear metre

This has been set at 8 tonnes per linear metre, in accordance with UIC specifications.[1]

7. Test train (bridge design)

This is the minimum "test train" on which bridge design for international main lines should be based, in accordance with UIC specifications.[2]

8. Minimum platform length in principal stations

The length of 250 m has been adopted, which is less than the 400 m chosen by UIC in order to accommodate a train consisting of a locomotive and 13 coaches 27.5 m long or a locomotive and 14 coaches 26.4 m long.

9. Minimum useful siding length

The length of 500 m has been adopted, which is less than the 750 m chosen by UIC to permit the movement of a train of a total weight of 5,000 tons.

10. Electrical voltage

The technical specifications to be used for electric locomotives in the future should conform to UIC and Trans-European Railway Network specifications.

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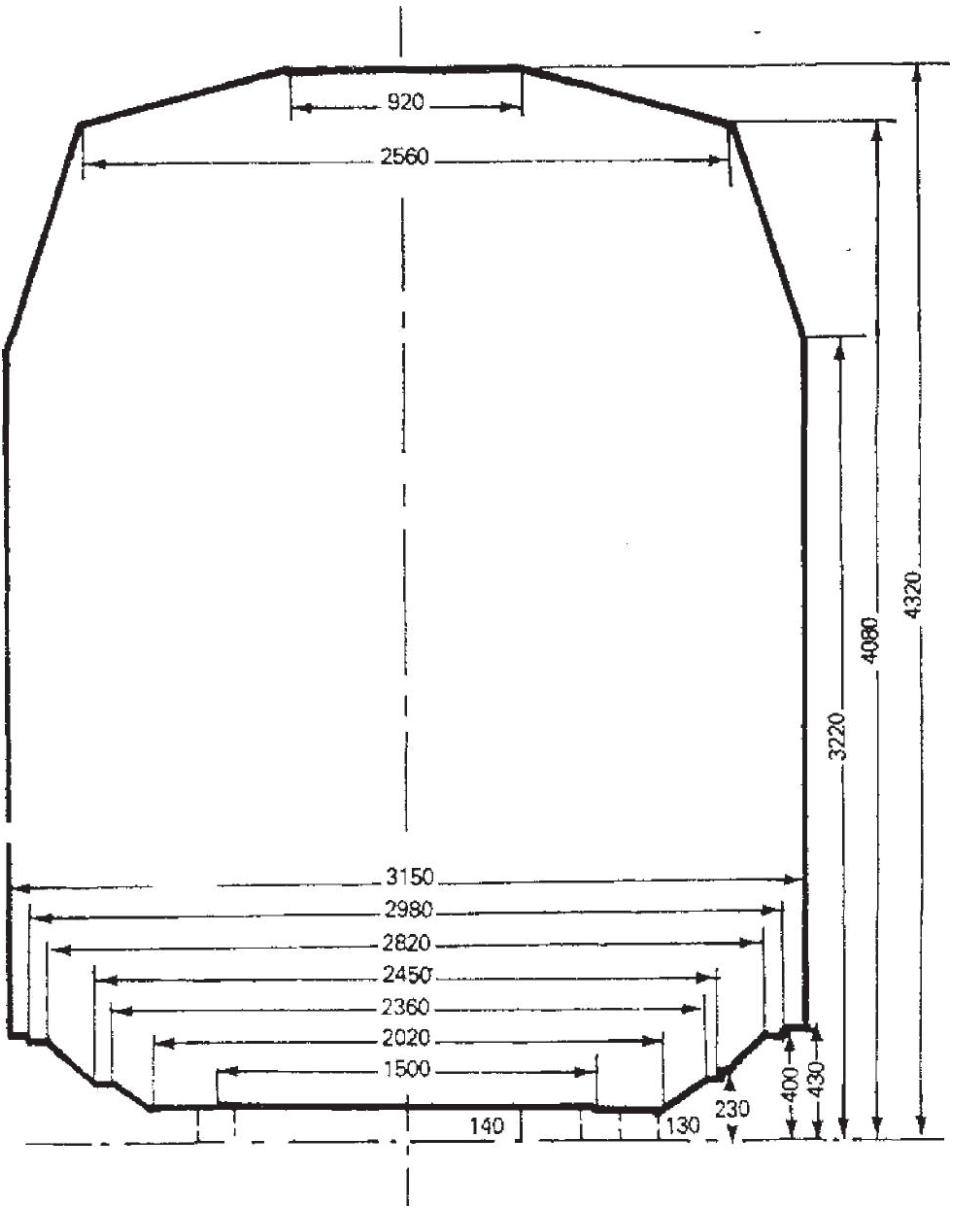
[1] Specification No. UIC Code 700 (0), 9th edition, of 1 July 1987, entitled "Classification of lines and resulting load limits for wagons".

[2] Specification No. UIC Code 702 (0), 2nd edition, of 1 January 1974, entitled "Loading diagram to be taken into consideration for the calculation of rail carrying structures on lines used by international services".

Figure I. UIC Loading gauge specifications UIC/B



2. PROTOCOL ON STRATEGIC ENVIRONMENTAL ASSESSMENT TO THE CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT. DONE AT KIEV, 21 MAY 2003*

The Parties to this Protocol,

Recognizing the importance of integrating environmental, including health, considerations into the preparation and adoption of plans and programmes and, to the extent appropriate, policies and legislation,

Committing themselves to promoting sustainable development and therefore basing themselves on the conclusions of the United Nations Conference on Environment and Development (Rio de Janeiro, Brazil, 1992), in particular principles 4 and 10 of the Rio Declaration on Environment and Development and Agenda 21, as well as the outcome of the third Ministerial Conference on Environment and Health (London, 1999) and the World Summit on Sustainable Development (Johannesburg, South Africa, 2002),

Bearing in mind the Convention on Environmental Impact Assessment in a Transboundary Context, done at Espoo, Finland, on 25 February 1991, and decision II/9 of its Parties at Sofia on 26 and 27 February 2001, in which it was decided to prepare a legally binding protocol on strategic environmental assessment,

Recognizing that strategic environmental assessment should have an important role in the preparation and adoption of plans, programmes, and, to the extent appropriate, policies and legislation, and that the wider application of the principles of environmental impact assessment to plans, programmes, policies and legislation will further strengthen the systematic analysis of their significant environmental effects,

Acknowledging the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25 June 1998, and taking note of the relevant paragraphs of the Lucca Declaration, adopted at the first meeting of its Parties,

Conscious, therefore, of the importance of providing for public participation in strategic environmental assessment,

Acknowledging the benefits to the health and well-being of present and future generations that will follow if the need to protect and improve people's health is taken into account as an integral part of strategic environmental assessment, and recognizing the work led by the World Health Organization in this respect,

Mindful of the need for and importance of enhancing international cooperation in assessing the transboundary environmental, including health, effects of proposed plans and programmes, and, to the extent appropriate, policies and legislation,

* Adopted by the Extraordinary Meeting of the Parties to the Convention of 25 February 1991 on Environmental Impact Assessment in a Transboundary Context, held in Kiev, from 21-23 May 2003. Doc ECE/MP.EIA/2003/2.

Have agreed as follows:

Article 1

OBJECTIVE

The objective of this Protocol is to provide for a high level of protection of the environment, including health, by:

(a) Ensuring that environmental, including health, considerations are thoroughly taken into account in the development of plans and programmes;

(b) Contributing to the consideration of environmental, including health, concerns in the preparation of policies and legislation;

(c) Establishing clear, transparent and effective procedures for strategic environmental assessment;

(d) Providing for public participation in strategic environmental assessment; and

(e) Integrating by these means environmental, including health, concerns into measures and instruments designed to further sustainable development.

Article 2

DEFINITIONS

For the purposes of this Protocol,

1. "Convention" means the Convention on Environmental Impact Assessment in a Transboundary Context.

2. "Party" means, unless the text indicates otherwise, a Contracting Party to this Protocol.

3. "Party of origin" means a Party or Parties to this Protocol within whose jurisdiction the preparation of a plan or programme is envisaged.

4. "Affected Party" means a Party or Parties to this Protocol likely to be affected by the transboundary environmental, including health, effects of a plan or programme.

5. "Plans and programmes" means plans and programmes and any modifications to them that are:

(a) Required by legislative, regulatory or administrative provisions; and

(b) Subject to preparation and/or adoption by an authority or prepared by an authority for adoption, through a formal procedure, by a parliament or a government.

6. "Strategic environmental assessment" means the evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying-out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme.

7. "Environmental, including health, effect" means any effect on the environment, including human health, flora, fauna, biodiversity, soil, climate, air, water, landscape, natural sites, material assets, cultural heritage and the interaction among these factors.

8. "The public" means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organizations or groups.

Article 3
General Provisions

1. Each Party shall take the necessary legislative, regulatory and other appropriate measures to implement the provisions of this Protocol within a clear, transparent framework.

2. Each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in matters covered by this Protocol.

3. Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental, including health, protection in the context of this Protocol.

4. The provisions of this Protocol shall not affect the right of a Party to maintain or introduce additional measures in relation to issues covered by this Protocol.

5. Each Party shall promote the objectives of this Protocol in relevant international decision-making processes and within the framework of relevant international organizations.

6. Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Protocol shall not be penalized, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings.

7. Within the scope of the relevant provisions of this Protocol, the public shall be able to exercise its rights without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

Article 4
Field of application concerning plans and programmes

1. Each Party shall ensure that a strategic environmental assessment is carried out for plans and programmes referred to in paragraphs 2, 3 and 4 which are likely to have significant environmental, including health, effects.

2. A strategic environmental assessment shall be carried out for plans and programmes which are prepared for agriculture, forestry, fisheries, energy, industry including mining, transport, regional development, waste management, water management, telecommunications, tourism, town and country planning or land use, and which set the framework for future development consent for projects listed in annex I and any other project listed in annex II that requires an environmental impact assessment under national legislation.

3. For plans and programmes other than those subject to paragraph 2 which set the framework for future development consent of projects, a strategic environmental assessment shall be carried out where a Party so determines according to article 5, paragraph 1.

4. For plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and for minor modifications to plans and programmes referred to in paragraph 2, a strategic environmental assessment shall be carried out only where a Party so determines according to article 5, paragraph 1.

5. The following plans and programmes are not subject to this Protocol:

(a) Plans and programmes whose sole purpose is to serve national defence or civil emergencies;

(b) Financial or budget plans and programmes.

Article 5

SCREENING

1. Each Party shall determine whether plans and programmes referred to in article 4, paragraphs 3 and 4, are likely to have significant environmental, including health, effects either through a case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose each Party shall in all cases take into account the criteria set out in annex III.

2. Each Party shall ensure that the environmental and health authorities referred to in article 9, paragraph 1, are consulted when applying the procedures referred to in paragraph 1 above.

3. To the extent appropriate, each Party shall endeavour to provide opportunities for the participation of the public concerned in the screening of plans and programmes under this article.

4. Each Party shall ensure timely public availability of the conclusions pursuant to paragraph 1, including the reasons for not requiring a strategic environmental assessment, whether by public notices or by other appropriate means, such as electronic media.

Article 6

SCOPING

1. Each Party shall establish arrangements for the determination of the relevant information to be included in the environmental report in accordance with article 7, paragraph 2.

2. Each Party shall ensure that the environmental and health authorities referred to in article 9, paragraph 1, are consulted when determining the relevant information to be included in the environmental report.

3. To the extent appropriate, each Party shall endeavour to provide opportunities for the participation of the public concerned when determining the relevant information to be included in the environmental report.

Article 7

ENVIRONMENTAL REPORT

1. For plans and programmes subject to strategic environmental assessment, each Party shall ensure that an environmental report is prepared.

2. The environmental report shall, in accordance with the determination under article 6, identify, describe and evaluate the likely significant environmental, including health, effects of implementing the plan or programme and its reasonable alternatives. The report shall contain such information specified in annex IV as may reasonably be required, taking into account:

(a) Current knowledge and methods of assessment;

(b) The contents and the level of detail of the plan or programme and its stage in the decision-making process;

(c) The interests of the public; and

(d) The information needs of the decision-making body.

3. Each Party shall ensure that environmental reports are of sufficient quality to meet the requirements of this Protocol.

Article 8

Public participation

1. Each Party shall ensure early, timely and effective opportunities for public participation, when all options are open, in the strategic environmental assessment of plans and programmes.

2. Each Party, using electronic media or other appropriate means, shall ensure the timely public availability of the draft plan or programme and the environmental report.

3. Each Party shall ensure that the public concerned, including relevant non-governmental organizations, is identified for the purposes of paragraphs 1 and 4.

4. Each Party shall ensure that the public referred to in paragraph 3 has the opportunity to express its opinion on the draft plan or programme and the environmental report within a reasonable time frame.

5. Each Party shall ensure that the detailed arrangements for informing the public and consulting the public concerned are determined and made publicly available. For this purpose, each Party shall take into account to the extent appropriate the elements listed in annex V.

Article 9

Consultation with environmental and health authorities

1. Each Party shall designate the authorities to be consulted which, by reason of their specific environmental or health responsibilities, are likely to be concerned by the environmental, including health, effects of the implementation of the plan or programme.

2. The draft plan or programme and the environmental report shall be made available to the authorities referred to in paragraph 1.

3. Each Party shall ensure that the authorities referred to in paragraph 1 are given, in an early, timely and effective manner, the opportunity to express their opinion on the draft plan or programme and the environmental report.

4. Each Party shall determine the detailed arrangements for informing and consulting the environmental and health authorities referred to in paragraph 1.

Article 10

Transboundary consultations

1. Where a Party of origin considers that the implementation of a plan or programme is likely to have significant transboundary environmental, including health, effects or where a Party likely to be significantly affected so requests, the Party of origin shall as early as possible before the adoption of the plan or programme notify the affected Party.

2. This notification shall contain, *inter alia*:

(a) The draft plan or programme and the environmental report including information on its possible transboundary environmental, including health, effects; and

(b) Information regarding the decision-making procedure, including an indication of a reasonable time schedule for the transmission of comments.

3. The affected Party shall, within the time specified in the notification, indicate to the Party of origin whether it wishes to enter into consultations before the adoption of the plan or programme and, if it so indicates, the Parties concerned shall enter into consultations concerning the likely transboundary environmental, including health, effects of implementing the plan or programme and the measures envisaged to prevent, reduce or mitigate adverse effects.

4. Where such consultations take place, the Parties concerned shall agree on detailed arrangements to ensure that the public concerned and the authorities referred to in article 9, paragraph 1, in the affected Party are informed and given an opportunity to forward their opinion on the draft plan or programme and the environmental report within a reasonable time frame.

Article 11

DECISION

1. Each Party shall ensure that when a plan or programme is adopted due account is taken of:

(a) The conclusions of the environmental report;

(b) The measures to prevent, reduce or mitigate the adverse effects identified in the environmental report; and

(c) The comments received in accordance with articles 8 to 10.

2. Each Party shall ensure that, when a plan or programme is adopted, the public, the authorities referred to in article 9, paragraph 1, and the Parties consulted according to article 10 are informed, and that the plan or programme is made available to them together with a statement summarizing how the environmental, including health, considerations have been integrated into it, how the comments received in accordance with articles 8 to 10 have been taken into account and the reasons for adopting it in the light of the reasonable alternatives considered.

Article 12

MONITORING

1. Each Party shall monitor the significant environmental, including health, effects of the implementation of the plans and programmes, adopted under article 11 in order, *inter alia*, to identify, at an early stage, unforeseen adverse effects and to be able to undertake appropriate remedial action.

2. The results of the monitoring undertaken shall be made available, in accordance with national legislation, to the authorities referred to in article 9, paragraph 1, and to the public.

Article 13

Policies and legislation

1. Each Party shall endeavour to ensure that environmental, including health, concerns are considered and integrated to the extent appropriate in the preparation of its proposals for policies and legislation that are likely to have significant effects on the environment, including health.

2. In applying paragraph 1, each Party shall consider the appropriate principles and elements of this Protocol.

3. Each Party shall determine, where appropriate, the practical arrangements for the consideration and integration of environmental, including health, concerns in accordance with paragraph 1, taking into account the need for transparency in decision-making.

4. Each Party shall report to the Meeting of the Parties to the Convention serving as the Meeting of the Parties to this Protocol on its application of this article.

Article 14

The meeting of the parties to the convention serving as the meeting of the parties to the protocol

1. The Meeting of the Parties to the Convention shall serve as the Meeting of the Parties to this Protocol. The first meeting of the Parties to the Convention serving as the Meeting of the Parties to this Protocol shall be convened not later than one year after the date of entry into force of this Protocol, and in conjunction with a meeting of the Parties to the Convention, if a meeting of the latter is scheduled within that period. Subsequent meetings of the Parties to the Convention serving as the Meeting of the Parties to this Protocol shall be held in conjunction with meetings of the Parties to the Convention, unless otherwise decided by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to this Protocol.

2. Parties to the Convention which are not Parties to this Protocol may participate as observers in the proceedings of any session of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to this Protocol. When the Meeting of the Parties to the Convention serves as the Meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by the Parties to this Protocol.

3. When the Meeting of the Parties to the Convention serves as the Meeting of the Parties to this Protocol, any member of the Bureau of the Meeting of the Parties representing a Party to the Convention that is not, at that time, a Party to this Protocol shall be replaced by another member to be elected by and from amongst the Parties to this Protocol.

4. The Meeting of the Parties to the Convention serving as the Meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and, for this purpose, shall:

(a) Review policies for and methodological approaches to strategic environmental assessment with a view to further improving the procedures provided for under this Protocol;

(b) Exchange information regarding experience gained in strategic environmental assessment and in the implementation of this Protocol;

(c) Seek, where appropriate, the services and cooperation of competent bodies having expertise pertinent to the achievement of the purposes of this Protocol;

(d) Establish such subsidiary bodies as it considers necessary for the implementation of this Protocol;

(e) Where necessary, consider and adopt proposals for amendments to this Protocol; and

(f) Consider and undertake any additional action, including action to be carried out jointly under this Protocol and the Convention, that may be required for the achievement of the purposes of this Protocol.

5. The rules of procedure of the Meeting of the Parties to the Convention shall be applied mutatis mutandis under this Protocol, except as may otherwise be decided by consensus by the Meeting of the Parties serving as the Meeting of the Parties to this Protocol.

6. At its first meeting, the Meeting of the Parties to the Convention serving as the Meeting of the Parties to this Protocol shall consider and adopt the modalities for applying the procedure for the review of compliance with the Convention to this Protocol.

7. Each Party shall, at intervals to be determined by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to this Protocol, report to the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol on measures that it has taken to implement the Protocol.

Article 15

RELATIONSHIP TO OTHER INTERNATIONAL AGREEMENTS

The relevant provisions of this Protocol shall apply without prejudice to the UNECE Conventions on Environmental Impact Assessment in a Transboundary Context and on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

Article 16

RIGHT TO VOTE

1. Except as provided for in paragraph 2 below, each Party to this Protocol shall have one vote.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 17

SECRETARIAT

The secretariat established by article 13 of the Convention shall serve as the secretariat of this Protocol and article 13, paragraphs *(a)* to (*c*), of the Convention on the functions of the secretariat shall apply mutatis mutandis to this Protocol.

Article 18

ANNEXES

The annexes to this Protocol shall constitute an integral part thereof.

Article 19

AMENDMENTS TO THE PROTOCOL

1. Any Party may propose amendments to this Protocol.

2. Subject to paragraph 3, the procedure for proposing, adopting and the entry into force of amendments to the Convention laid down in paragraphs 2 to 5 of article 14 of the Convention shall apply, mutatis mutandis, to amendments to this Protocol.

3. For the purpose of this Protocol, the three fourths of the Parties required for an amendment to enter into force for Parties having ratified, approved or accepted it, shall be calculated on the basis of the number of Parties at the time of the adoption of the amendment.

Article 20

SETTLEMENT OF DISPUTES

The provisions on the settlement of disputes of article 15 of the Convention shall apply mutatis mutandis to this Protocol.

Article 21

SIGNATURE

This Protocol shall be open for signature at Kiev (Ukraine) from 21 to 23 May 2003 and thereafter at United Nations Headquarters in New York until 31 December 2003, by States members of the Economic Commission for Europe as well as States having consultative status with the Economic Commission for Europe pursuant to paragraphs 8 and 11 of Economic and Social Council resolution 36 (IV) of 28 March 1947, and by regional economic integration organizations constituted by sovereign States members of the Economic Commission for Europe to which their member States have transferred competence over matters governed by this Protocol, including the competence to enter into treaties in respect of these matters.

Article 22

DEPOSITARY

The Secretary-General of the United Nations shall act as the Depositary of this Protocol.

Article 23

RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. This Protocol shall be subject to ratification, acceptance or approval by signatory States and regional economic integration organizations referred to in article 21.

2. This Protocol shall be open for accession as from 1 January 2004 by the States and regional economic integration organizations referred to in article 21.

3. Any other State, not referred to in paragraph 2 above, that is a Member of the United Nations may accede to the Protocol upon approval by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol.

4. Any regional economic integration organization referred to in article 21 which becomes a Party to this Protocol without any of its member States being a Party shall be bound by all the obligations under this Protocol. If one or more of such an organization's member States is a Party to this Protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Protocol. In such cases, the organization and its member States shall not be entitled to exercise rights under this Protocol concurrently.

5. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations referred to in article 21 shall declare the extent of their competence with respect to the matters governed by this Protocol. These organizations shall also inform the Depositary of any relevant modification to the extent of their competence.

Article 24

ENTRY INTO FORCE

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the sixteenth instrument of ratification, acceptance, approval or accession.

2. For the purposes of paragraph 1 above, any instrument deposited by a regional economic integration organization referred to in article 21 shall not be counted as additional to those deposited by States members of such an organization.

3. For each State or regional economic integration organization referred to in article 21 which ratifies, accepts or approves this Protocol or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, the Protocol shall enter into force on the ninetieth day after the date of deposit by such State or organization of its instrument of ratification, acceptance, approval or accession.

4. This Protocol shall apply to plans, programmes, policies and legislation for which the first formal preparatory act is subsequent to the date on which this Protocol enters into force. Where the Party under whose jurisdiction the preparation of a plan, programme, policy or legislation is envisaged is one for which paragraph 3 applies, this Protocol shall apply to plans, programmes, policies and legislation for which the first formal preparatory act is subsequent to the date on which this Protocol comes into force for that Party.

Article 25

WITHDRAWAL

At any time after four years from the date on which this Protocol has come into force with respect to a Party, that Party may withdraw from the Protocol by giving written notification to the Depositary. Any such withdrawal shall take effect on the ninetieth day after the date of its receipt by the Depositary. Any such withdrawal shall not affect the application of articles 5 to 9, 11 and 13 with respect to a strategic environmental assessment under this Protocol which has already been started, or the application of article 10 with respect to a notification or request which has already been made, before such withdrawal takes effect.

Article 26

AUTHENTIC TEXTS

The original of this Protocol, of which the English, French and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Kiev (Ukraine), this twenty-first day of May, two thousand and three.

ANNEX I

List of Projects as referred to in article 4, paragraph 2

1. Crude oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 metric tons or more of coal or bituminous shale per day.

2. Thermal power stations and other combustion installations with a heat output of 300 megawatts or more and nuclear power stations and other nuclear reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).

3. Installations solely designed for the production or enrichment of nuclear fuels, for the reprocessing of irradiated nuclear fuels or for the storage, disposal and processing of radioactive waste.

4. Major installations for the initial smelting of cast-iron and steel and for the production of non-ferrous metals.

5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20,000 metric tons of finished product; for friction material, with an annual production of more than 50 metric tons of finished product; and for other asbestos utilization of more than 200 metric tons per year.

6. Integrated chemical installations.

7. Construction of motorways, express roads[1] and lines for long-distance railway traffic and of airports[2] with a basic runway length of 2,100 metres or more.

8. Large-diameter oil and gas pipelines.

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[1] For the purposes of this Protocol:

— "Motorway" means a road specially designed and build for motor traffic, which does not serve properties bordering on it, and which:

(a) Is provided, except at special points or temporarily, with separate carriageways for the two directions of traffic, separated from each other by dividing strip not intended for traffic or, exceptionally, by other means;

(b) Does not cross at level with any road, railway or tramway track, or footpath; and

(c) Is specially sign posted as a motorway.

— "Express road" means a road reserved for motor traffic accessible only from interchanges or controlled junctions and on which, in particular, stopping and parking are prohibited on the running carriageway(s).

[2] For the purposes of this Protocol, "airport" means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (annex 14).

9. Trading ports and also inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 metric tons.

10. Waste-disposal installations for the incineration, chemical treatment or landfill of toxic and dangerous wastes.

11. Large dams and reservoirs.

12. Groundwater abstraction activities in cases where the annual volume of water to be abstracted amounts to 10 million cubic metres or more.

13. Pulp and paper manufacturing of 200 air-dried metric tons or more per day.

14. Major mining, on-site extraction and processing of metal ores or coal.

15. Offshore hydrocarbon production.

16. Major storage facilities for petroleum, petrochemical and chemical products.

17. Deforestation of large areas.

ANNEX II

Any other project referred to in article 4, paragraph 2

1. Projects for the restructuring of rural land holdings.

2. Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes.

3. Water management projects for agriculture, including irrigation and land drainage projects.

4. Intensive livestock installations (including poultry).

5. Initial afforestation and deforestation for the purposes of conversion to another type of land use.

6. Intensive fish farming.

7. Nuclear power stations and other nuclear reactors[3] including the dismantling or decommissioning of such power stations or reactors (except research installations for the production and conversion of fissionable and fertile materials whose maximum power does not exceed 1 kilowatt continuous thermal load), as far as not included in annex I.

8. Construction of overhead electrical power lines with a voltage of 220 kilovolts or more and a length of 15 kilometres or more and other projects for the transmission of electrical energy by overhead cables.

9. Industrial installations for the production of electricity, steam and hot water.

10. Industrial installations for carrying gas, steam and hot water.

11. Surface storage of fossil fuels and natural gas.

12. Underground storage of combustible gases.

13. Industrial briquetting of coal and lignite.

14. Installations for hydroelectric energy production.

15. Installations for the harnessing of wind power for energy production (wind farms).

[3] For the purpose of this Protocol, nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanentely from the istallation site.

16. Installations, as far as not included in annex I, designed:
- For the production or enrichment of nuclear fuel;
- For the processing of irradiated nuclear fuel;
- For the final disposal of irradiated nuclear fuel;
- Solely for the final disposal of radioactive waste;
- Solely for the storage (planned for more than 10 years) of irradiated nuclear fuels in a different site than the production site; or
- For the processing and storage of radioactive waste.

17. Quarries, open cast mining and peat extraction, as far as not included in annex I.

18. Underground mining, as far as not included in annex I.

19. Extraction of minerals by marine or fluvial dredging.

20. Deep drillings (in particular geothermal drilling, drilling for the storage of nuclear waste material, drilling for water supplies), with the exception of drillings for investigating the stability of the soil.

21. Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.

22. Integrated works for the initial smelting of cast iron and steel, as far as not included in annex I.

23. Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting.

24. Installations for the processing of ferrous metals (hot-rolling mills, smitheries with hammers, application of protective fused metal coats).

25. Ferrous metal foundries.

26. Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes, as far as not included in annex I.

27. Installations for the smelting, including the alloyage, of non-ferrous metals excluding precious metals, including recovered products (refining, foundry casting, etc.), as far as not included in annex I.

28. Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process.

29. Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines.

30. Shipyards.

31. Installations for the construction and repair of aircraft.

32. Manufacture of railway equipment.

33. Swaging by explosives.

34. Installations for the roasting and sintering of metallic ores.

35. Coke ovens (dry coal distillation).

36. Installations for the manufacture of cement.

37. Installations for the manufacture of glass including glass fibre.

38. Installations for smelting mineral substances including the production of mineral fibres.

39. Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.

40. Installations for the production of chemicals or treatment of intermediate products, as far as not included in annex I.

41. Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides.

42. Installations for the storage of petroleum, petrochemical, or chemical products, as far as not included in annex I.

43. Manufacture of vegetable and animal oils and fats.

44. Packing and canning of animal and vegetable products.

45. Manufacture of dairy products.

46. Brewing and malting.

47. Confectionery and syrup manufacture.

48. Installations for the slaughter of animals.

49. Industrial starch manufacturing installations.

50. Fish-meal and fish-oil factories.

51. Sugar factories.

52. Industrial plants for the production of pulp, paper and board, as far as not included in annex I.

53. Plants for the pre treatment or dyeing of fibres or textiles.

54. Plants for the tanning of hides and skins.

55. Cellulose-processing and production installations.

56. Manufacture and treatment of elastomer-based products.

57. Installations for the manufacture of artificial mineral fibres.

58. Installations for the recovery or destruction of explosive substances.

59. Installations for the production of asbestos and the manufacture of asbestos products, as far as not included in annex I.

60. Knackers' yards.

61. Test benches for engines, turbines or reactors.

62. Permanent racing and test tracks for motorized vehicles.

63. Pipelines for transport of gas or oil, as far as not included in annex I.

64. Pipelines for transport of chemicals with a diameter of more than 800 mm and a length of more than 40 km.

65. Construction of railways and intermodal transhipment facilities, and of intermodal terminals, as far as not included in annex I.

66. Construction of tramways, elevated and underground railways, suspended lines or similar lines of a particular type used exclusively or mainly for passenger transport.

67. Construction of roads, including realignment and/or widening of any existing road, as far as not included in annex I.

68. Construction of harbours and port installations, including fishing harbours, as far as not included in annex I.

69. Construction of inland waterways and ports for inland-waterway traffic, as far as not included in annex I.

70. Trading ports, piers for loading and unloading connected to land and outside ports, as far as not included in annex I.

71. Canalization and flood-relief works.

72. Construction of airports[4] and airfields, as far as not included in annex I.

73. Waste-disposal installations (including landfill), as far as not included in annex I.

74. Installations for the incineration or chemical treatment of non-hazardous waste.

75. Storage of scrap iron, including scrap vehicles.

76. Sludge deposition sites.

77. Groundwater abstraction or artificial groundwater recharge, as far as not included in annex I.

78. Works for the transfer of water resources between river basins.

79. Waste-water treatment plants.

80. Dams and other installations designed for the holding-back or for the long-term or permanent storage of water, as far as not included in annex I.

81. Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works.

82. Installations of long-distance aqueducts.

83. Ski runs, ski lifts and cable cars and associated developments.

84. Marinas.

85. Holiday villages and hotel complexes outside urban areas and associated developments.

86. Permanent campsites and caravan sites.

87. Theme parks.

88. Industrial estate development projects.

89. Urban development projects, including the construction of shopping centres and car parks.

90. Reclamation of land from the sea.

[4] For the purposes of this Protocol, "airport" means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (annex 14).

ANNEX III

Criteria for determining of the likely significant environmental including health effects referred to in article 5, paragraph 1

1. The relevance of the plan or programme to the integration of environmental, including health, considerations in particular with a view to promoting sustainable development.

2. The degree to which the plan or programme sets a framework for projects and other activities, either with regard to location, nature, size and operating conditions or by allocating resources.

3. The degree to which the plan or programme influences other plans and programmes including those in a hierarchy.

4. Environmental, including health, problems relevant to the plan or programme.

5. The nature of the environmental, including health, effects such as probability, duration, frequency, reversibility, magnitude and extent (such as geographical area or size of population likely to be affected).

6. The risks to the environment, including health.

7. The transboundary nature of effects.

8. The degree to which the plan or programme will affect valuable or vulnerable areas including landscapes with a recognized national or international protection status.

ANNEX IV

Information referred to in article 7, paragraph 2

1. The contents and the main objectives of the plan or programme and its link with other plans or programmes.

2. The relevant aspects of the current state of the environment, including health, and the likely evolution thereof should the plan or programme not be implemented.

3. The characteristics of the environment, including health, in areas likely to be significantly affected.

4. The environmental, including health, problems which are relevant to the plan or programme.

5. The environmental, including health, objectives established at international, national and other levels which are relevant to the plan or programme, and the ways in which these objectives and other environmental, including health, considerations have been taken into account during its preparation.

6. The likely significant environmental, including health, effects[5] as defined in article 2, paragraph 7.

7. Measures to prevent, reduce or mitigate any significant adverse effects on the environment, including health, which may result from the implementation of the plan or programme.

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[5] These effects should include secondary, cumulative, synergistic, short-, medium-, and long-term, permanent and temporary, positive and negative effects.

8. An outline of the reasons for selecting the alternatives dealt with and a description of how the assessment was undertaken including difficulties encountered in providing the information to be included such as technical deficiencies or lack of knowledge.

9. Measures envisaged for monitoring environmental, including health, effects of the implementation of the plan or programme.

10. The likely significant transboundary environmental, including health, effects.

11. A non-technical summary of the information provided.

ANNEX V

Information referred to in article 8, paragraph 5

1. The proposed plan or programme and its nature.

2. The authority responsible for its adoption.

3. The envisaged procedure, including:

(a) The commencement of the procedure;

(b) The opportunities for the public to participate;

(c) The time and venue of any envisaged public hearing;

(d) The authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;

(e) The authority to which comments or questions can be submitted and the time schedule for the transmittal of comments or questions; and

(f) What environmental, including health, information relevant to the proposed plan or programme is available.

4. Whether the plan or programme is likely to be subject to a transboundary assessment procedure.

3. PROTOCOL ON POLLUTANT RELEASE AND TRANSFER REGISTERS. DONE AT KIEV, 21 MAY 2003*

The Parties to this Protocol,

Recalling article 5, paragraph 9, and article 10, paragraph 2, of the 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention),

Recognizing that pollutant release and transfer registers provide an important mechanism to increase corporate accountability, reduce pollution and promote sustainable development, as stated in the Lucca Declaration adopted at the first meeting of the Parties to the Aarhus Convention,

Having regard to principle 10 of the 1992 Rio Declaration on Environment and Development,

* Adopted by the Extraordinary Meeting of the Parties to the Aarhus Convention of 25 June 1998 on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, held in Kiev from 21-23 May 2003. Doc MP.PP/2003/1.

Having regard also to the principles and commitments agreed to at the 1992 United Nations Conference on Environment and Development, in particular the provisions in chapter 19 of Agenda 21,

Taking note of the Programme for the Further Implementation of Agenda 21, adopted by the General Assembly of the United Nations at its nineteenth special session, 1997, in which it called for, *inter alia*, enhanced national capacities and capabilities for information collection, processing and dissemination, to facilitate public access to information on global environmental issues through appropriate means,

Having regard to the Plan of Implementation of the 2002 World Summit on Sustainable Development, which encourages the development of coherent, integrated information on chemicals, such as through national pollutant release and transfer registers,

Taking into account the work of the Intergovernmental Forum on Chemical Safety, in particular the 2000 Bahia Declaration on Chemical Safety, the Priorities for Action Beyond 2000 and the Pollutant Release and Transfer Register/Emission Inventory Action Plan,

Taking into account also the activities undertaken within the framework of the Inter-Organization Programme for the Sound Management of Chemicals,

Taking into account furthermore the work of the Organisation for Economic Co-operation and Development, in particular its Council Recommendation on Implementing Pollutant Release and Transfer Registers, in which the Council calls upon member countries to establish and make publicly available national pollutant release and transfer registers,

Wishing to provide a mechanism contributing to the ability of every person of present and future generations to live in an environment adequate to his or her health and well-being, by ensuring the development of publicly accessible environmental information systems,

Wishing also to ensure that the development of such systems takes into account principles contributing to sustainable development such as the precautionary approach set forth in principle 15 of the 1992 Rio Declaration on Environment and Development,

Recognizing the link between adequate environmental information systems and the exercise of the rights contained in the Aarhus Convention,

Noting the need for cooperation with other international initiatives concerning pollutants and waste, including the 2001 Stockholm Convention on Persistent Organic Pollutants and the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal,

Recognizing that the objectives of an integrated approach to minimizing pollution and the amount of waste resulting from the operation of industrial installations and other sources are to achieve a high level of protection for the environment as a whole, to move towards sustainable and environmentally sound development and to protect the health of present and future generations,

Convinced of the value of pollutant release and transfer registers as a cost-effective tool for encouraging improvements in environmental performance, for providing public access to information on pollutants released into and transferred in and through communities, and for use by Governments in tracking trends, demonstrating progress in pollution reduction, monitoring compliance with certain international agreements, setting priorities and evaluating progress achieved through environmental policies and programmes,

Believing that pollutant release and transfer registers can bring tangible benefits to industry through the improved management of pollutants,

Noting the opportunities for using data from pollutant release and transfer registers, combined with health, environmental, demographic, economic or other types of relevant information, for the purpose of gaining a better understanding of potential problems, identifying 'hot spots', taking preventive and mitigating measures, and setting environmental management priorities,

Recognizing the importance of protecting the privacy of identified or identifiable natural persons in the processing of information reported to pollutant release and transfer registers in accordance with applicable international standards relating to data protection,

Recognizing also the importance of developing internationally compatible national pollutant release and transfer register systems to increase the comparability of data,

Noting that many member States of the United Nations Economic Commission for Europe, the European Community and the Parties to the North American Free Trade Agreement are acting to collect data on pollutant releases and transfers from various sources and to make these data publicly accessible, and recognizing especially in this area the long and valuable experience in certain countries,

Taking into account the different approaches in existing emission registers and the need to avoid duplication, and recognizing therefore that a certain degree of flexibility is needed,

Urging the progressive development of national pollutant release and transfer registers,

Urging also the establishment of links between national pollutant release and transfer registers and information systems on other releases of public concern,

Have agreed as follows:

Article 1
Objective

The objective of this Protocol is to enhance public access to information through the establishment of coherent, integrated, nationwide pollutant release and transfer registers (PRTRs) in accordance with the provisions of this Protocol, which could facilitate public participation in environmental decision-making as well as contribute to the prevention and reduction of pollution of the environment.

Article 2
Definitions

For the purposes of this Protocol,

1. "Party" means, unless the text indicates otherwise, a State or a regional economic integration organization referred to in article 24 which has consented to be bound by this Protocol and for which the Protocol is in force;

2. "Convention" means the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25 June 1998;

3. "The public" means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;

4. "Facility" means one or more installations on the same site, or on adjoining sites, that are owned or operated by the same natural or legal person;

5. "Competent authority" means the national authority or authorities, or any other competent body or bodies, designated by a Party to manage a national pollutant release and transfer register system;

6. "Pollutant" means a substance or a group of substances that may be harmful to the environment or to human health on account of its properties and of its introduction into the environment;

7. "Release" means any introduction of pollutants into the environment as a result of any human activity, whether deliberate or accidental, routine or non-routine, including spilling, emitting, discharging, injecting, disposing or dumping, or through sewer systems without final waste-water treatment;

8. "Off-site transfer" means the movement beyond the boundaries of the facility of either pollutants or waste destined for disposal or recovery and of pollutants in waste water destined for waste-water treatment;

9. "Diffuse sources" means the many smaller or scattered sources from which pollutants may be released to land, air or water, whose combined impact on those media may be significant and for which it is impractical to collect reports from each individual source;

10. The terms "national" and "nationwide" shall, with respect to the obligations under the Protocol on Parties that are regional economic integration organizations, be construed as applying to the region in question unless otherwise indicated;

11. "Waste" means substances or objects which are:

(a) Disposed of or recovered;

(b) Intended to be disposed of or recovered; or

(c) Required by the provisions of national law to be disposed of or recovered;

12. "Hazardous waste" means waste that is defined as hazardous by the provisions of national law;

13. "Other waste" means waste that is not hazardous waste;

14. "Waste water" means used water containing substances or objects that is subject to regulation by national law.

Article 3

General provisions

1. Each Party shall take the necessary legislative, regulatory and other measures, and appropriate enforcement measures, to implement the provisions of this Protocol.

2. The provisions of this Protocol shall not affect the right of a Party to maintain or introduce a more extensive or more publicly accessible pollutant release and transfer register than required by this Protocol.

3. Each Party shall take the necessary measures to require that employees of a facility and members of the public who report a violation by a facility of national laws implementing

this Protocol to public authorities are not penalized, persecuted or harassed by that facility or public authorities for their actions in reporting the violation.

4. In the implementation of this Protocol, each Party shall be guided by the precautionary approach as set forth in principle 15 of the 1992 Rio Declaration on Environment and Development.

5. To reduce duplicative reporting, pollutant release and transfer register systems may be integrated to the degree practicable with existing information sources such as reporting mechanisms under licences or operating permits.

6. Parties shall strive to achieve convergence among national pollutant release and transfer registers.

Article 4

Core elements of a pollutant release and transfer register system

In accordance with this Protocol, each Party shall establish and maintain a publicly accessible national pollutant release and transfer register that:

(a) Is facility-specific with respect to reporting on point sources;

(b) Accommodates reporting on diffuse sources;

(c) Is pollutant-specific or waste-specific, as appropriate;

(d) Is multimedia, distinguishing among releases to air, land and water;

(e) Includes information on transfers;

(f) Is based on mandatory reporting on a periodic basis;

(g) Includes standardized and timely data, a limited number of standardized reporting thresholds and limited provisions, if any, for confidentiality;

(h) Is coherent and designed to be user-friendly and publicly accessible, including in electronic form;

(i) Allows for public participation in its development and modification; and

(j) Is a structured, computerized database or several linked databases maintained by the competent authority.

Article 5

Design and structure

1. Each Party shall ensure that the data held on the register referred to in article 4 are presented in both aggregated and non-aggregated forms, so that releases and transfers can be searched and identified according to:

(a) Facility and its geographical location;

(b) Activity;

(c) Owner or operator, and, as appropriate, company;

(d) Pollutant or waste, as appropriate;

(e) Each of the environmental media into which the pollutant is released; and

(f) As specified in article 7, paragraph 5, the destination of the transfer and, where appropriate, the disposal or recovery operation for waste.

2. Each Party shall also ensure that the data can be searched and identified according to those diffuse sources which have been included in the register.

3. Each Party shall design its register taking into account the possibility of its future expansion and ensuring that the reporting data from at least the ten previous reporting years are publicly accessible.

4. The register shall be designed for maximum ease of public access through electronic means, such as the Internet. The design shall allow that, under normal operating conditions, the information on the register is continuously and immediately available through electronic means.

5. Each Party should provide links in its register to its relevant existing, publicly accessible databases on subject matters related to environmental protection.

6. Each Party shall provide links in its register to the pollutant release and transfer registers of other Parties to the Protocol and, where feasible, to those of other countries.

Article 6

SCOPE OF THE REGISTER

1. Each Party shall ensure that its register includes the information on:

(a) Releases of pollutants required to be reported under article 7, paragraph 2;

(b) Off-site transfers required to be reported under article 7, paragraph 2; and

(c) Releases of pollutants from diffuse sources required under article 7, paragraph 4.

2. Having assessed the experience gained from the development of national pollutant release and transfer registers and the implementation of this Protocol, and taking into account relevant international processes, the Meeting of the Parties shall review the reporting requirements under this Protocol and shall consider the following issues in its further development:

(a) Revision of the activities specified in annex I;

(b) Revision of the pollutants specified in annex II;

(c) Revision of the thresholds in annexes I and II; and

(d) Inclusion of other relevant aspects such as information on on-site transfers, storage, the specification of reporting requirements for diffuse sources or the development of criteria for including pollutants under this Protocol.

Article 7

REPORTING REQUIREMENTS

1. Each Party shall either:

(a) Require the owner or the operator of each individual facility within its jurisdiction that undertakes one or more of the activities specified in annex I above the applicable capacity threshold specified in annex I, column 1, and:

(i) Releases any pollutant specified in annex II in quantities exceeding the applicable thresholds specified in annex II, column 1;

(ii) Transfers off-site any pollutant specified in annex II in quantities exceeding the applicable threshold specified in annex II, column 2, where the Party has

opted for pollutant-specific reporting of transfers pursuant to paragraph 5 *(d)*;

(iii) Transfers off-site hazardous waste exceeding 2 tons per year or other waste exceeding 2,000 tons per year, where the Party has opted for waste-specific reporting of transfers pursuant to paragraph 5 *(d)*; or

(iv) Transfers off-site any pollutant specified in annex II in waste water destined for waste-water treatment in quantities exceeding the applicable threshold specified in annex II, column 1*b*;

to undertake the obligation imposed on that owner or operator pursuant to paragraph 2; or

(b) Require the owner or the operator of each individual facility within its jurisdiction that undertakes one or more of the activities specified in annex I at or above the employee threshold specified in annex I, column 2, and manufactures, processes or uses any pollutant specified in annex II in quantities exceeding the applicable threshold specified in annex II, column 3, to undertake the obligation imposed on that owner or operator pursuant to paragraph 2.

2. Each Party shall require the owner or operator of a facility referred to in paragraph 1 to submit the information specified in paragraphs 5 and 6, and in accordance with the requirements therein, with respect to those pollutants and wastes for which thresholds were exceeded.

3. In order to achieve the objective of this Protocol, a Party may decide with respect to a particular pollutant to apply either a release threshold or a manufacture, process or use threshold, provided that this increases the relevant information on releases or transfers available in its register.

4. Each Party shall ensure that its competent authority collects, or shall designate one or more public authorities or competent bodies to collect, the information on releases of pollutants from diffuse sources specified in paragraphs 7 and 8, for inclusion in its register.

5. Each Party shall require the owners or operators of the facilities required to report under paragraph 2 to complete and submit to its competent authority, the following information on a facility-specific basis:

(a) The name, street address, geographical location and the activity or activities of the reporting facility, and the name of the owner or operator, and, as appropriate, company;

(b) The name and numerical identifier of each pollutant required to be reported pursuant to paragraph 2;

(c) The amount of each pollutant required to be reported pursuant to paragraph 2 released from the facility to the environment in the reporting year, both in aggregate and according to whether the release is to air, to water or to land, including by underground injection;

(d) Either:

(i) The amount of each pollutant required to be reported pursuant to paragraph 2 that is transferred off-site in the reporting year, distinguishing between the amounts transferred for disposal and for recovery, and the name and address of the facility receiving the transfer; or

(ii) The amount of waste required to be reported pursuant to paragraph 2 transferred off-site in the reporting year, distinguishing between hazardous waste and other waste, for any operations of recovery or disposal, indicating respectively with 'R' or 'D' whether the waste is destined for recovery or disposal pursuant to annex III and, for transboundary movements of hazardous waste, the name and address of the recoverer or disposer of the waste and the actual recovery or disposal site receiving the transfer;

(e) The amount of each pollutant in waste water required to be reported pursuant to paragraph 2 transferred off-site in the reporting year; and

(f) The type of methodology used to derive the information referred to in subparagraphs *(c)* to *(e)*, according to article 9, paragraph 2, indicating whether the information is based on measurement, calculation or estimation.

6. The information referred to in paragraph 5 *(c)* to *(e)* shall include information on releases and transfers resulting from routine activities and from extraordinary events.

7. Each Party shall present on its register, in an adequate spatial disaggregation, the information on releases of pollutants from diffuse sources for which that Party determines that data are being collected by the relevant authorities and can be practicably included. Where the Party determines that no such data exist, it shall take measures to initiate reporting on releases of relevant pollutants from one or more diffuse sources in accordance with its national priorities.

8. The information referred to in paragraph 7 shall include information on the type of methodology used to derive the information.

Article 8

REPORTING CYCLE

1. Each Party shall ensure that the information required to be incorporated in its register is publicly available, compiled and presented on the register by calendar year. The reporting year is the calendar year to which that information relates. For each Party, the first reporting year is the calendar year after the Protocol enters into force for that Party. The reporting required under article 7 shall be annual. However, the second reporting year may be the second calendar year following the first reporting year.

2. Each Party that is not a regional economic integration organization shall ensure that the information is incorporated into its register within fifteen months from the end of each reporting year. However, the information for the first reporting year shall be incorporated into its register within two years from the end of that reporting year.

3. Each Party that is a regional economic integration organization shall ensure that the information for a particular reporting year is incorporated into its register six months after the Parties that are not regional economic integration organizations are required to do so.

Article 9

DATA COLLECTION AND RECORD-KEEPING

1. Each Party shall require the owners or operators of the facilities subject to the reporting requirements of article 7 to collect the data needed to determine, in accordance with paragraph 2 below and with appropriate frequency, the facility's releases and

off-site transfers subject to reporting under article 7 and to keep available for the competent authorities the records of the data from which the reported information was derived for a period of five years, starting from the end of the reporting year concerned. These records shall also describe the methodology used for data gathering.

2. Each Party shall require the owners or operators of the facilities subject to reporting under article 7 to use the best available information, which may include monitoring data, emission factors, mass balance equations, indirect monitoring or other calculations, engineering judgments and other methods. Where appropriate, this should be done in accordance with internationally approved methodologies.

Article 10

Quality assessment

1. Each Party shall require the owners or operators of the facilities subject to the reporting requirements of article 7, paragraph 1, to assure the quality of the information that they report.

2. Each Party shall ensure that the data contained in its register are subject to quality assessment by the competent authority, in particular as to their completeness, consistency and credibility, taking into account any guidelines that may be developed by the Meeting of the Parties.

Article 11

Public access to information

1. Each Party shall ensure public access to information contained in its pollutant release and transfer register, without an interest having to be stated, and according to the provisions of this Protocol, primarily by ensuring that its register provides for direct electronic access through public telecommunications networks.

2. Where the information contained in its register is not easily publicly accessible by direct electronic means, each Party shall ensure that its competent authority upon request provides that information by any other effective means, as soon as possible and at the latest within one month after the request has been submitted.

3. Subject to paragraph 4, each Party shall ensure that access to information contained in its register is free of charge.

4. Each Party may allow its competent authority to make a charge for reproducing and mailing the specific information referred to in paragraph 2, but such charge shall not exceed a reasonable amount.

5. Where the information contained in its register is not easily publicly accessible by direct electronic means, each Party shall facilitate electronic access to its register in publicly accessible locations, for example in public libraries, offices of local authorities or other appropriate places.

Article 12

Confidentiality

1. Each Party may authorize the competent authority to keep information held on the register confidential where public disclosure of that information would adversely affect:

(a) International relations, national defence or public security;

(b) The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;

(c) The confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest;

(d) Intellectual property rights; or

(e) The confidentiality of personal data and/or files relating to a natural person if that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for in national law.

The aforementioned grounds for confidentiality shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information relates to releases into the environment.

2. Within the framework of paragraph 1 *(c)*, any information on releases which is relevant for the protection of the environment shall be considered for disclosure according to national law.

3. Whenever information is kept confidential according to paragraph 1, the register shall indicate what type of information has been withheld, through, for example, providing generic chemical information if possible, and for what reason it has been withheld.

Article 13

PUBLIC PARTICIPATION IN THE DEVELOPMENT OF NATIONAL POLLUTANT RELEASE AND TRANSFER REGISTERS

1. Each Party shall ensure appropriate opportunities for public participation in the development of its national pollutant release and transfer register, within the framework of its national law.

2. For the purpose of paragraph 1, each Party shall provide the opportunity for free public access to the information on the proposed measures concerning the development of its national pollutant release and transfer register and for the submission of any comments, information, analyses or opinions that are relevant to the decision-making process, and the relevant authority shall take due account of such public input.

3. Each Party shall ensure that, when a decision to establish or significantly change its register has been taken, information on the decision and the considerations on which it is based are made publicly available in a timely manner.

Article 14

ACCESS TO JUSTICE

1. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 11, paragraph 2, has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that paragraph has access to a review procedure before a court of law or another independent and impartial body established by law.

2. The requirements in paragraph 1 are without prejudice to the respective rights and obligations of Parties under existing treaties applicable between them dealing with the subject matter of this article.

Article 15

CAPACITY-BUILDING

1. Each Party shall promote public awareness of its pollutant release and transfer register, and shall ensure that assistance and guidance are provided in accessing its register and in understanding and using the information contained in it.

2. Each Party should provide adequate capacity-building for and guidance to the responsible authorities and bodies to assist them in carrying out their duties under this Protocol.

Article 16

INTERNATIONAL COOPERATION

1. The Parties shall, as appropriate, cooperate and assist each other:

(a) In international actions in support of the objectives of this Protocol;

(b) On the basis of mutual agreement between the Parties concerned, in implementing national systems in pursuance of this Protocol;

(c) In sharing information under this Protocol on releases and transfers within border areas; and

(d) In sharing information under this Protocol concerning transfers among Parties.

2. The Parties shall encourage cooperation among each other and with relevant international organizations, as appropriate, to promote:

(a) Public awareness at the international level;

(b) The transfer of technology; and

(c) The provision of technical assistance to Parties that are developing countries and Parties with economies in transition in matters relating to this Protocol.

Article 17

MEETING OF THE PARTIES

1. A Meeting of the Parties is hereby established. Its first session shall be convened no later than two years after the entry into force of this Protocol. Thereafter, ordinary sessions of the Meeting of the Parties shall be held sequentially with or parallel to ordinary meetings of the Parties to the Convention, unless otherwise decided by the Parties to this Protocol. The Meeting of the Parties shall hold an extraordinary session if it so decides in the course of an ordinary session or at the written request of any Party provided that, within six months of it being communicated by the Executive Secretary of the Economic Commission for Europe to all Parties, the said request is supported by at least one third of these Parties.

2. The Meeting of the Parties shall keep under continuous review the implementation and development of this Protocol on the basis of regular reporting by the Parties and, with this purpose in mind, shall:

(a) Review the development of pollutant release and transfer registers, and promote their progressive strengthening and convergence;

(b) Establish guidelines facilitating reporting by the Parties to it, bearing in mind the need to avoid duplication of effort in this regard;

(c) Establish a programme of work;

(d) Consider and, where appropriate, adopt measures to strengthen international cooperation in accordance with article 16;

(e) Establish such subsidiary bodies as it deems necessary;

(f) Consider and adopt proposals for such amendments to this Protocol and its annexes as are deemed necessary for the purposes of this Protocol, in accordance with the provisions of article 20;

(g) At its first session, consider and by consensus adopt rules of procedure for its sessions and those of its subsidiary bodies, taking into account any rules of procedure adopted by the Meeting of the Parties to the Convention;

(h) Consider establishing financial arrangements by consensus and technical assistance mechanisms to facilitate the implementation of this Protocol;

(i) Seek, where appropriate, the services of other relevant international bodies in the achievement of the objectives of this Protocol; and

(j) Consider and take any additional action that may be required to further the objectives of this Protocol, such as the adoption of guidelines and recommendations which promote its implementation.

3. The Meeting of the Parties shall facilitate the exchange of information on the experience gained in reporting transfers using the pollutant-specific and waste-specific approaches, and shall review that experience in order to investigate the possibility of convergence between the two approaches, taking into account the public interest in information in accordance with article 1 and the overall effectiveness of national pollutant release and transfer registers.

4. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State or regional economic integration organization entitled under article 24 to sign this Protocol but which is not a Party to it, and any intergovernmental organization qualified in the fields to which the Protocol relates, shall be entitled to participate as observers in the sessions of the Meeting of the Parties. Their admission and participation shall be subject to the rules of procedure adopted by the Meeting of the Parties.

5. Any non-governmental organization qualified in the fields to which this Protocol relates which has informed the Executive Secretary of the Economic Commission for Europe of its wish to be represented at a session of the Meeting of the Parties shall be entitled to participate as an observer unless one third of the Parties present at the session raise objections. Their admission and participation shall be subject to the rules of procedure adopted by the Meeting of the Parties.

Article 18

RIGHT TO VOTE

1. Except as provided for in paragraph 2, each Party to this Protocol shall have one vote.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 19
Annexes

Annexes to this Protocol shall form an integral part thereof and, unless expressly provided otherwise, a reference to this Protocol constitutes at the same time a reference to any annexes thereto.

Article 20
Amendments

1. Any Party may propose amendments to this Protocol.

2. Proposals for amendments to this Protocol shall be considered at a session of the Meeting of the Parties.

3. Any proposed amendment to this Protocol shall be submitted in writing to the secretariat, which shall communicate it at least six months before the session at which it is proposed for adoption to all Parties, to other States and regional economic integration organizations that have consented to be bound by the Protocol and for which it has not yet entered into force and to Signatories.

4. The Parties shall make every effort to reach agreement on any proposed amendment to this Protocol by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the session.

5. For the purposes of this article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

6. Any amendment to this Protocol adopted in accordance with paragraph 4 shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties, to other States and regional economic integration organizations that have consented to be bound by the Protocol and for which it has not yet entered into force and to Signatories.

7. An amendment, other than one to an annex, shall enter into force for those Parties having ratified, accepted or approved it on the ninetieth day after the date of receipt by the Depositary of the instruments of ratification, acceptance or approval by at least three fourths of those which were Parties at the time of its adoption. Thereafter it shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, acceptance or approval of the amendment.

8. In the case of an amendment to an annex, a Party that does not accept such an amendment shall so notify the Depositary in writing within twelve months from the date of its circulation by the Depositary. The Depositary shall without delay inform all Parties of any such notification received. A Party may at any time withdraw a notification of non-acceptance, whereupon the amendment to an annex shall enter into force for that Party.

9. On the expiry of twelve months from the date of its circulation by the Depositary as provided for in paragraph 6, an amendment to an annex shall enter into force for those Parties which have not submitted a notification to the Depositary in accordance with paragraph 8, provided that, at that time, not more than one third of those which were Parties at the time of the adoption of the amendment have submitted such a notification.

10. If an amendment to an annex is directly related to an amendment to this Protocol, it shall not enter into force until such time as the amendment to this Protocol enters into force.

Article 21

SECRETARIAT

The Executive Secretary of the Economic Commission for Europe shall carry out the following secretariat functions for this Protocol:

(a) The preparation and servicing of the sessions of the Meeting of the Parties;

(b) The transmission to the Parties of reports and other information received in accordance with the provisions of this Protocol;

(c) The reporting to the Meeting of the Parties on the activities of the secretariat; and

(d) Such other functions as may be determined by the Meeting of the Parties on the basis of available resources.

Article 22

REVIEW OF COMPLIANCE

At its first session, the Meeting of the Parties shall by consensus establish cooperative procedures and institutional arrangements of a non-judicial, non-adversarial and consultative nature to assess and promote compliance with the provisions of this Protocol and to address cases of non-compliance. In establishing these procedures and arrangements, the Meeting of the Parties shall consider, *inter alia*, whether to allow for information to be received from members of the public on matters related to this Protocol.

Article 23

SETTLEMENT OF DISPUTES

1. If a dispute arises between two or more Parties about the interpretation or application of this Protocol, they shall seek a solution by negotiation or by any other peaceful means of dispute settlement acceptable to the parties to the dispute.

2. When signing, ratifying, accepting, approving or acceding to this Protocol, or at any time thereafter, a State may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

(a) Submission of the dispute to the International Court of Justice;

(b) Arbitration in accordance with the procedure set out in annex IV.

A regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedures referred to in subparagraph *(b)*.

3. If the parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2, the dispute may be submitted only to the International Court of Justice, unless the parties to the dispute agree otherwise.

Article 24

SIGNATURE

This Protocol shall be open for signature at Kiev (Ukraine) from 21 to 23 May 2003 on the occasion of the fifth Ministerial Conference "Environment for Europe," and thereafter at United Nations Headquarters in New York until 31 December 2003, by all States which are members of the United Nations and by regional economic integration organizations constituted by sovereign States members of the United Nations to which their member States have transferred competence over matters governed by this Protocol, including the competence to enter into treaties in respect of these matters.

Article 25

DEPOSITARY

The Secretary-General of the United Nations shall act as the Depositary of this Protocol.

Article 26

RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. This Protocol shall be subject to ratification, acceptance or approval by signatory States and regional economic integration organizations referred to in article 24.

2. This Protocol shall be open for accession as from 1 January 2004 by the States and regional economic integration organizations referred to in article 24.

3. Any regional economic integration organization referred to in article 24 which becomes a Party without any of its member States being a Party shall be bound by all the obligations under this Protocol. If one or more member States of such an organization is a Party, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Protocol. In such cases, the organization and the member States shall not be entitled to exercise rights under this Protocol concurrently.

4. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations referred to in article 24 shall declare the extent of their competence with respect to the matters governed by this Protocol. These organizations shall also inform the Depositary of any substantial modifications to the extent of their competence.

Article 27

ENTRY INTO FORCE

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the sixteenth instrument of ratification, acceptance, approval or accession.

2. For the purposes of paragraph 1, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by the States members of such an organization.

3. For each State or regional economic integration organization which ratifies, accepts or approves this Protocol or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, the Protocol shall enter into force on the

ninetieth day after the date of deposit by such State or organization of its instrument of ratification, acceptance, approval or accession.

Article 28

RESERVATIONS

No reservations may be made to this Protocol.

Article 29

WITHDRAWAL

At any time after three years from the date on which this Protocol has come into force with respect to a Party, that Party may withdraw from the Protocol by giving written notification to the Depositary. Any such withdrawal shall take effect on the ninetieth day after the date of its receipt by the Depositary.

Article 30

AUTHENTIC TEXTS

The original of this Protocol, of which the English, French and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

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

DONE at Kiev, this twenty-first day of May, two thousand and three.

ANNEX I

Activities

No.	Activity	Capacity threshold (column 1)	Employee threshold (column 2)
1.	**Energy sector**		
(a)	Mineral oil and gas refineries	*	10 employees
(b)	Installations for gasification and liquefaction	*	
(c)	Thermal power stations and other combustion installations	With a heat input of 50 megawatts (MW)	
(d)	Coke ovens	*	
(e)	Coal rolling mills	With a capacity of 1 ton per hour	
(f)	Installations for the manufacture of coal products and solid smokeless fuel	*	
2.	**Production and processing of metals**		
(a)	Metal ore (including sulphide ore) roasting or sintering installations	*	10 employees
(b)	Installations for the production of pig iron or steel (primary or secondary melting) including continuous casting	With a capacity of 2.5 tons per hour	
(c)	Installations for the processing of ferrous metals:		
	(i) Hot-rolling mills	With a capacity of 20 tons of crude steel per hour	
	(ii) Smitheries with hammers	With an energy of 50 kilojoules per hammer, where the calorific power used exceeds 20 MW	
	(iii) Application of protective fused metal coats	With an input of 2 tons of crude steel per hour	
(d)	Ferrous metal foundries	With a production capacity of 20 tons per day	
(e)	Installations:	*	
	(i) For the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes		

No.	Activity	Capacity threshold (column 1)	Employee threshold (column 2)
	(ii) For the smelting, including the alloying, of non-ferrous metals, including recovered products (refining, foundry casting, etc.)	With a melting capacity of 4 tons per day for lead and cadmium or 20 tons per day for all other metals	10 employees
(f)	Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process	Where the volume of the treatment vats equals 30 m^3	
3.	**Mineral industry**		
(a)	Underground mining and related operations	*	10 employees
(b)	Opencast mining	Where the surface of the area being mined equals 25 hectares	
(c)	Installations for the production of: (i) Cement clinker in rotary kilns (ii) Lime in rotary kilns (iii) Cement clinker or lime in other furnaces	 With a production capacity of 500 tons per day With a production capacity exceeding 50 tons per day With a production capacity of 50 tons per day	
(d)	Installations for the production of asbestos and the manufacture of asbestos-based products	*	
(e)	Installations for the manufacture of glass, including glass fibre	With a melting capacity of 20 tons per day	
(f)	Installations for melting mineral substances, including the production of mineral fibres	With a melting capacity of 20 tons per day	
(g)	Installations for the manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain	With a production capacity of 75 tons per day, or with a kiln capacity of 4 m^3 and with a setting density per kiln of 300 kg/m^3	
4.	**Chemical industry**		
(a)	Chemical installations for the production on an industrial scale of basic organic chemicals, such as: (i) Simple hydrocarbons (linear or cyclic, saturated or unsaturated, aliphatic or aromatic)	*	10 employees

No.	Activity	Capacity threshold (column 1)	Employee threshold (column 2)
	(ii) Oxygen-containing hydrocarbons such as alcohols, aldehydes, ketones, carboxylic acids, esters, acetates, ethers, peroxides, epoxy resins (iii) Sulphurous hydrocarbons (iv) Nitrogenous hydrocarbons such as amines, amides, nitrous compounds, nitro compounds or nitrate compounds, nitriles, cyanates, isocyanates (v) Phosphorus-containing hydrocarbons (vi) Halogenic hydrocarbons (vii) Organometallic compounds (viii) Basic plastic materials (polymers, synthetic fibres and cellulose-based fibres) (ix) Synthetic rubbers (x) Dyes and pigments (xi) Surface-active agents and surfactants	*	10 employees
(b)	Chemical installations for the production on an industrial scale of basic inorganic chemicals, such as: (i) Gases, such as ammonia, chlorine or hydrogen chloride, fluorine or hydrogen fluoride, carbon oxides, sulphur compounds, nitrogen oxides, hydrogen, sulphur dioxide, carbonyl chloride (ii) Acids, such as chromic acid, hydrofluoric acid, phosphoric acid, nitric acid, hydrochloric acid, sulphuric acid, oleum, sulphurous acids (iii) Bases, such as ammonium hydroxide, potassium hydroxide, sodium hydroxide (iv) Salts, such as ammonium chloride, potassium chlorate, potassium carbonate, sodium carbonate, perborate, silver nitrate (v) Non-metals, metal oxides or other inorganic compounds such as calcium carbide, silicon, silicon carbide	*	
(c)	Chemical installations for the production on an industrial scale of phosphorous-, nitrogen- or potassium-based fertilizers (simple or compound fertilizers)	*	
(d)	Chemical installations for the production on an industrial scale of basic plant health products and of biocides	*	

No.	Activity	Capacity threshold (column 1)	Employee threshold (column 2)
(e)	Installations using a chemical or biological process for the production on an industrial scale of basic pharmaceutical products	*	
(f)	Installations for the production on an industrial scale of explosives and pyrotechnic products	*	
5.	**Waste and waste-water management**		
(a)	Installations for the incineration, pyrolysis, recovery, chemical treatment or landfilling of hazardous waste	Receiving 10 tons per day	10 employees
(b)	Installations for the incineration of municipal waste	With a capacity of 3 tons per hour	
(c)	Installations for the disposal of non-hazardous waste	With a capacity of 50 tons per day	
(d)	Landfills (excluding landfills of inert waste)	Receiving 10 tons per day or with a total capacity of 25,000 tons	
(e)	Installations for the disposal or recycling of animal carcasses and animal waste	With a treatment capacity of 10 tons per day	
(f)	Municipal waste-water treatment plants	With a capacity of 100,000 population equivalents	
(g)	Independently operated industrial waste-water treatment plants which serve one or more activities of this annex	With a capacity of 10,000 m^3 per day	
6.	**Paper and wood production and processing**		
(a)	Industrial plants for the production of pulp from timber or similar fibrous materials	*	10 employees
(b)	Industrial plants for the production of paper and board and other primary wood products (such as chipboard, fibreboard and plywood)	With a production capacity of 20 tons per day	
(c)	Industrial plants for the preservation of wood and wood products with chemicals	With a production capacity of 50 m^3 per day	
7.	**Intensive livestock production and aquaculture**		
(a)	Installations for the intensive rearing of poultry or pigs	(i) With 40,000 places for poultry (ii) With 2,000 places for production pigs (over 30 kg)	10 employees

No.	Activity	Capacity threshold (column 1)	Employee threshold (column 2)
		(iii) With 750 places for sows	10 employees
(b)	Intensive aquaculture	1,000 tons of fish and shellfish per year	
8.	**Animal and vegetable products from the food and beverage sector**		
(a)	Slaughterhouses	With a carcass production capacity of 50 tons per day	10 employees
(b)	Treatment and processing intended for the production of food and beverage products from:		
	(i) Animal raw materials (other than milk)	With a finished product production capacity of 75 tons per day	
	(ii) Vegetable raw materials	With a finished product production capacity of 300 tons per day (average value on a quarterly basis)	
(c)	Treatment and processing of milk	With a capacity to receive 200 tons of milk per day (average value on an annual basis)	
9.	**Other activities**		
(a)	Plants for the pretreatment (operations such as washing, bleaching, mercerization) or dyeing of fibres or textiles	With a treatment capacity of 10 tons per day	10 employees
(b)	Plants for the tanning of hides and skins	With a treatment capacity of 12 tons of finished product per day	
(c)	Installations for the surface treatment of substances, objects or products using organic solvents, in particular for dressing, printing, coating, degreasing, waterproofing, sizing, painting, cleaning or impregnating	With a consumption capacity of 150 kg per hour or 200 tons per year	
(d)	Installations for the production of carbon (hard-burnt coal) or electrographite by means of incineration or graphitization	*	
(e)	Installations for the building of, and painting or removal of paint from ships	With a capacity for ships 100 m long	

Explanatory notes:

Column 1 contains the capacity thresholds referred to article 7, paragraph 1 *(a)*.

An asterisk (*) indicates that no capacity threshold is applicable (all facilities are subject to reporting).

Column 2 contains the employee threshold referred to in article 7, paragraph 1 *(b)*.

"10 employees" means the equivalent of 10 full-time employees.

ANNEX II

Pollutants

No.	CAS number	Pollutant	Threshold for releases (column 1)			Threshold for off-site transfers of pollutants (column 2)	Manufacture, process or use threshold (column 3)
			to air (column 1a)	to water (column 1b)	to land (column 1c)		
			kg/year	kg/year	kg/year	kg/year	kg/year
1	74–82–8	Methane (CH_4)	100 000	-	-	-	*
2	630–08–0	Carbon monoxide (CO)	500 000	-	-	-	*
3	124–38–9	Carbon dioxide (CO_2)	100 million	-	-	-	*
4		Hydro-fluorocarbons (HFCs)	100	-	-	-	*
5	10024–97–2	Nitrous oxide (N_2O)	10 000	-	-	-	*
6	7664–41–7	Ammonia (NH_3)	10 000	-	-	-	10 000
7		Non-methane volatile organic compounds (NMVOC)	100 000	-	-	-	*
8		Nitrogen oxides (NO_x/NO_2)	100 000	-	-	-	*
9		Perfluorocarbons (PFCs)	100	-	-	-	*
10	2551–62–4	Sulphur hexafluoride (SF_6)	50	-	-	-	*
11		Sulphur oxides (SO_x/SO_2)	150 000	-	-	-	*
12		Total nitrogen	-	50 000	50 000	10 000	10 000
13		Total phosphorus	-	5 000	5 000	10 000	10 000
14		Hydrochlorofluorocarbons (HCFCs)	1	-	-	100	10 000
15		Chlorofluorocarbons (CFCs)	1	-	-	100	10 000
16		Halons	1	-	-	100	10 000
17	7440–38–2	Arsenic and compounds (as As)	20	5	5	50	50
18	7440–43–9	Cadmium and compounds (as Cd)	10	5	5	5	5

No.	CAS number	Pollutant	Threshold for releases (column 1)			Threshold for off-site transfers of pollutants (column 2)	Manufacture, process or use threshold (column 3)
			to air (column 1a)	to water (column 1b)	to land (column 1c)		
			kg/year	kg/year	kg/year	kg/year	kg/year
19	7440–47–3	Chromium and compounds (as Cr)	100	50	50	200	10 000
20	7440–50–8	Copper and compounds (as Cu)	100	50	50	500	10 000
21	7439–97–6	Mercury and compounds (as Hg)	10	1	1	5	5
22	7440–02–0	Nickel and compounds (as Ni)	50	20	20	500	10 000
23	7439–92–1	Lead and compounds (as Pb)	200	20	20	50	50
24	7440–66–6	Zinc and compounds (as Zn)	200	100	100	1 000	10 000
25	15972–60–8	Alachlor	-	1	1	5	10 000
26	309–00–2	Aldrin	1	1	1	1	1
27	1912–24–9	Atrazine	-	1	1	5	10 000
28	57–74–9	Chlordane	1	1	1	1	1
29	143–50–0	Chlordecone	1	1	1	1	1
30	470–90–6	Chlorfenvinphos	-	1	1	5	10 000
31	85535–84–8	Chloro-alkanes, C_{10}-C_{13}	-	1	1	10	10 000
32	2921–88–2	Chlorpyrifos	-	1	1	5	10 000
33	50–29–3	DDT	1	1	1	1	1
34	107–06–2	1,2-dichloroethane (EDC)	1 000	10	10	100	10 000
35	75–09–2	Dichloromethane (DCM)	1 000	10	10	100	10 000
36	60–57–1	Dieldrin	1	1	1	1	1
37	330–54–1	Diuron	-	1	1	5	10 000
38	115–29–7	Endosulphan	-	1	1	5	10 000
39	72–20–8	Endrin	1	1	1	1	1
40		Halogenated organic compounds (as AOX)	-	1 000	1 000	1 000	10 000
41	76–44–8	Heptachlor	1	1	1	1	1
42	118–74–1	Hexachlorobenzene (HCB)	10	1	1	1	5

No.	CAS number	Pollutant	Threshold for releases (column 1)			Threshold for off-site transfers of pollutants (column 2)	Manufacture, process or use threshold (column 3)
			to air (column 1a)	to water (column 1b)	to land (column 1c)		
			kg/year	kg/year	kg/year	kg/year	kg/year
43	87–68–3	Hexachlorobutadiene (HCBD)	-	1	1	5	10 000
44	608–73–1	1,2,3,4,5, 6-hexachlorocyclohexane (HCH)	10	1	1	1	10
45	58–89–9	Lindane	1	1	1	1	1
46	2385–85–5	Mirex	1	1	1	1	1
47		PCDD +PCDF (dioxins +furans) (as Teq)	0.001	0.001	0.001	0.001	0.001
48	608–93–5	Pentachlorobenzene	1	1	1	5	50
49	87–86–5	Pentachlorophenol (PCP)	10	1	1	5	10 000
50	1336–36–3	Polychlorinated biphenyls (PCBs)	0.1	0.1	0.1	1	50
51	122–34–9	Simazine	-	1	1	5	10 000
52	127–18–4	Tetrachloroethylene (PER)	2 000	-	-	1 000	10 000
53	56–23–5	Tetrachloromethane (TCM)	100	-	-	1 000	10 000
54	12002–48–1	Trichlorobenzenes (TCBs)	10	-	-	1 000	10 000
55	71–55–6	1,1,1-trichloroethane	100	-	-	1 000	10 000
56	79–34–5	1,1,2,2-tetrachloroethane	50	-	-	1 000	10 000
57	79–01–6	Trichloroethylene	2 000	-	-	1 000	10 000
58	67–66–3	Trichloromethane	500	-	-	1 000	10 000
59	8001–35–2	Toxaphene	1	1	1	1	1
60	75–01–4	Vinyl chloride	1 000	10	10	100	10 000
61	120–12–7	Anthracene	50	1	1	50	50
62	71–43–2	Benzene	1 000	200 (as BTEX) a/	200 (as BTEX) a/	2 000 (as BTEX) a/	10 000
63		Brominated diphenylethers (PBDE)	-	1	1	5	10 000
64		Nonylphenol ethoxylates (NP/NPEs) and related substances	-	1	1	5	10 000

No.	CAS number	Pollutant	Threshold for releases (column 1)			Threshold for off-site transfers of pollutants (column 2)	Manufacture, process or use threshold (column 3)
			to air (column 1a)	to water (column 1b)	to land (column 1c)		
			kg/year	kg/year	kg/year	kg/year	kg/year
65	100–41–4	Ethyl benzene	-	200 (as BTEX)[a/]	200 (as BTEX)[a/]	2 000 (as BTEX)[a/]	10 000
66	75–21–8	Ethylene oxide	1 000	10	10	100	10 000
67	34123–59–6	Isoproturon	-	1	1	5	10 000
68	91–20–3	Naphthalene	100	10	10	100	10 000
69		Organotin compounds (as total Sn)	-	50	50	50	10 000
70	117–81–7	Di-(2-ethyl hexyl) phthalate (DEHP)	10	1	1	100	10 000
71	108–95–2	Phenols (as total C)	-	20	20	200	10 000
72		Polycyclic aromatic hydrocarbons (PAHs)[b/]	50	5	5	50	50
73	108–88–3	Toluene	-	200 (as BTEX)[a/]	200 (as BTEX)[a/]	2 000 (as BTEX)[a/]	10 000
74		Tributyltin and compounds	-	1	1	5	10 000
75		Triphenyltin and compounds	-	1	1	5	10 000
76		Total organic carbon (TOC) (as total C or COD/3)	-	50 000	-	-	**
77	1582–09–8	Trifluralin	-	1	1	5	10 000
78	1330–20–7	Xylenes	-	200 (as BTEX)[a/]	200 (as BTEX)[a/]	2 000 (as BTEX)[a/]	10 000
79		Chlorides (as total Cl)	-	2 million	2 million	2 million	10 000[c/]
80		Chlorine and inorganic compounds (as HCl)	10 000	-	-	-	10 000
81	1332–21–4	Asbestos	1	1	1	10	10 000
82		Cyanides (as total CN)	-	50	50	500	10 000
83		Fluorides (as total F)	-	2 000	2 000	10 000	10 000[c/]
84		Fluorine and inorganic compounds (as HF)	5 000	-	-	-	10 000

No.	CAS number	Pollutant	Threshold for releases (column 1)			Threshold for off-site transfers of pollutants (column 2)	Manufacture, process or use threshold (column 3)
			to air (column 1a)	to water (column 1b)	to land (column 1c)		
			kg/year	kg/year	kg/year	kg/year	kg/year
85	74–90–8	Hydrogen cyanide (HCN)	200	-	-	-	10 000
86		Particulate matter (PM_{10})	50 000	-	-	-	*

Explanatory notes:

The CAS number of the pollutant means the precise identifier in Chemical Abstracts Service.

Column 1 contains the thresholds referred to in article 7, paragraph 1 *(a)*(i) and (iv). If the threshold in a given sub-column (air, water or land) is exceeded, reporting of releases or, for pollutants in waste water destined for waste-water treatment, transfers to the environmental medium referred to in that sub-column is required with respect to the facility in question, for those Parties which have opted for a system of reporting pursuant to article 7, paragraph 1 *(a)*.

Column 2 contains the thresholds referred to in article 7, paragraph 1 *(a)*(ii). If the threshold in this column is exceeded for a given pollutant, reporting of the off-site transfer of that pollutant is required with respect to the facility in question, for those Parties which have opted for a system of reporting pursuant to article 7, paragraph 1 *(a)*(ii).

Column 3 contains the thresholds referred to in article 7, paragraph (1)*(b)*. If the threshold in this column is exceeded for a given pollutant, reporting of the releases and off-site transfers of that pollutant is required with respect to the facility in question, for those Parties which have opted for a system of reporting pursuant to article 7, paragraph 1 *(b)*.

A hyphen (-) indicates that the parameter in question does not trigger a reporting requirement.

An asterisk (*) indicates that, for this pollutant, the release threshold in column (1)*(a)* is to be used rather than a manufacture, process or use threshold.

A double asterisk (**) indicates that, for this pollutant, the release threshold in column (1)*(b)* is to be used rather than a manufacture, process or use threshold.

Footnotes:

a/ Single pollutants are to be reported if the threshold for BTEX (the sum parameter of benzene, toluene, ethyl benzene, xylene) is exceeded.

b/ Polycyclic aromatic hydrocarbons (PAHs) are to be measured as benzo*(a)*pyrene (50–32–8), benzo*(b)*fluoranthene (205–99–2), benzo(k)fluoranthene (207–08–9), indeno(1,2,3-cd)pyrene (193–39–5) (derived from the Protocol on Persistent Organic Pollutants to the Convention on Long-range Transboundary Air Pollution).

c/ As inorganic compounds.

ANNEX III

Part A
Disposal Operations ('D')

– Deposit into or onto land (e.g. landfill)

– Land treatment (e.g. biodegradation of liquid or sludgy discards in soils)

– Deep injection (e.g. injection of pumpable discards into wells, salt domes or naturally occurring repositories)

– Surface impoundment (e.g. placement of liquid or sludge discards into pits, ponds or lagoons)

– Specially engineered landfill (e.g. placement into lined discrete cells which are capped and isolated from one another and the environment)

– Release into a water body except seas/oceans

– Release into seas/oceans including sea–bed insertion

– Biological treatment not specified elsewhere in this annex which results in final compounds or mixtures which are discarded by means of any of the operations specified in this part

– Physico–chemical treatment not specified elsewhere in this annex which results in final compounds or mixtures which are discarded by means of any of the operations specified in this part (e.g. evaporation, drying, calcination, neutralization, precipitation)

– Incineration on land

– Incineration at sea

– Permanent storage (e.g. emplacement of containers in a mine)

– Blending or mixing prior to submission to any of the operations specified in this part

– Repackaging prior to submission to any of the operations specified in this part

– Storage pending any of the operations specified in this part

Part B
Recovery Operations ('R')

– Use as a fuel (other than in direct incineration) or other means to generate energy

– Solvent reclamation/regeneration

– Recycling/reclamation of organic substances which are not used as solvents

– Recycling/reclamation of metals and metal compounds

– Recycling/reclamation of other inorganic materials

– Regeneration of acids or bases

– Recovery of components used for pollution abatement

– Recovery of components from catalysts

– Used oil re–refining or other reuses of previously used oil

– Land treatment resulting in benefit to agriculture or ecological improvement

– Uses of residual materials obtained from any of the recovery operations specified above in this part

– Exchange of wastes for submission to any of the recovery operations specified above in this part

– Accumulation of material intended for any operation specified in this part

ANNEX IV

Arbitration

1. In the event of a dispute being submitted for arbitration pursuant to article 23, paragraph 2, of this Protocol, a party or parties shall notify the other party or parties to the dispute by diplomatic means as well as the secretariat of the subject matter of arbitration and indicate, in particular, the articles of this Protocol whose interpretation or application is at issue. The secretariat shall forward the information received to all Parties to this Protocol.

2. The arbitral tribunal shall consist of three members. Both the claimant party or parties and the other party or parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the president of the arbitral tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

3. If the president of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Executive Secretary of the Economic Commission for Europe shall, at the request of either party to the dispute, designate the president within a further two-month period.

4. If one of the parties to the dispute does not appoint an arbitrator within two months of the notification referred to in paragraph 1, the other party may so inform the Executive Secretary of the Economic Commission for Europe, who shall designate the president of the arbitral tribunal within a further two-month period. Upon designation, the president of the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. If it fails to do so within that period, the president shall so inform the Executive Secretary of the Economic Commission for Europe, who shall make this appointment within a further two-month period.

5. The arbitral tribunal shall render its decision in accordance with international law and the provisions of this Protocol.

6. Any arbitral tribunal constituted under the provisions set out in this annex shall draw up its own rules of procedure.

7. The decisions of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.

8. The tribunal may take all appropriate measures to establish the facts.

9. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

(a) Provide it with all relevant documents, facilities and information;

(b) Enable it, where necessary, to call witnesses or experts and receive their evidence.

10. The parties and the arbitrators shall protect the confidentiality of any information that they receive in confidence during the proceedings of the arbitral tribunal.

11. The arbitral tribunal may, at the request of one of the parties, recommend interim measures of protection.

12. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to render its final decision. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

13. The arbitral tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.

14. Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.

15. Any Party to this Protocol which has an interest of a legal nature in the subject matter of the dispute, and which may be affected by a decision in the case, may intervene in the proceedings with the consent of the tribunal.

16. The arbitral tribunal shall render its award within five months of the date on which it is established, unless it finds it necessary to extend the time limit for a period which should not exceed five months.

17. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon all parties to the dispute. The award will be transmitted by the arbitral tribunal to the parties to the dispute and to the secretariat. The secretariat will forward the information received to all Parties to this Protocol.

18. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.

4. PROTOCOL ON CIVIL LIABILITY AND COMPENSATION FOR DAMAGE CAUSED BY THE TRANSBOUNDARY EFFECTS OF INDUSTRIAL ACCIDENTS ON TRANSBOUNDARY WATERS TO THE 1992 CONVENTION ON THE PROTECTION AND USE OF TRANSBOUNDARY WATERCOURSES AND INTERNATIONAL LAKES AND TO THE 1992 CONVENTION ON THE TRANSBOUNDARY EFFECTS OF INDUSTRIAL ACCIDENTS. DONE AT KIEV, 21 MAY 2003*

The Parties to the Protocol,

Recalling the relevant provisions of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, in particular its article 7, and of the Convention on the Transboundary Effects of Industrial Accidents, in particular its article 13,

* Adopted by the Extraordinary Meeting of the Parties to the Convention of 17 March 1992 on the protection and use of Transboundary Watercourses and International Lakes and the Convention of 17 March 1992 on the Transboundary Effects of Industrial Accidents, held in Kiev from 21-23 May 2003. Doc ECE/MP.WAT/11 - ECE/CP.TEIA/9.

Having in mind the relevant provisions of principles 13 and 16 of the Rio Declaration on Environment and Development,

Taking into account the polluter pays principle as a general principle of international environmental law, accepted also by the Parties to the above-mentioned Conventions,

Taking note of the UNECE Code of Conduct on Accidental Pollution of Transboundary Inland Waters,

Aware of the risk of damage to human health, property and the environment caused by the transboundary effects of industrial accidents,

Convinced of the need to provide for third-party liability and environmental liability in order to ensure that adequate and prompt compensation is available,

Acknowledging the desirability to review the Protocol at a later stage to broaden its scope of application as appropriate,

Have agreed as follows:

Article 1

OBJECTIVE

The objective of the present Protocol is to provide for a comprehensive regime for civil liability and for adequate and prompt compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters.

Article 2

DEFINITIONS

1. The definitions of terms contained in the Conventions apply to the present Protocol, unless expressly provided otherwise in the present Protocol.

2. For the purposes of the present Protocol:

(a) "The Conventions" means the Convention on the Protection and Use of Transboundary Watercourses and International Lakes and the Convention on the Transboundary Effects of Industrial Accidents, done at Helsinki on 17 March 1992;

(b) "Protocol" means the present Protocol;

(c) "Party" means a Contracting Party to the Protocol;

(d) "Damage" means:

(i) Loss of life or personal injury;

(ii) Loss of, or damage to, property other than property held by the person liable in accordance with the Protocol;

(iii) Loss of income directly deriving from an impairment of a legally protected interest in any use of the transboundary waters for economic purposes, incurred as a result of impairment of the transboundary waters, taking into account savings and costs;

(iv) The cost of measures of reinstatement of the impaired transboundary waters, limited to the costs of measures actually taken or to be undertaken;

(v) The cost of response measures, including any loss or damage caused by such measures, to the extent that the damage was caused by the transboundary effects of an industrial accident on transboundary waters;

(e) "Industrial accident" means an event resulting from an uncontrolled development in the course of a hazardous activity:

(i) In an installation, including tailing dams, for example during manufacture, use, storage, handling or disposal;

(ii) During transportation on the site of a hazardous activity; or

(iii) During off-site transportation via pipelines;

(f) "Hazardous activity" means any activity in which one or more hazardous substances are present or may be present in quantities at or in excess of the threshold quantities listed in annex I and which is capable of causing transboundary effects on transboundary waters and their water uses in the event of an industrial accident;

(g) "Measures of reinstatement" means any reasonable measures aiming to reinstate or restore damaged or destroyed components of transboundary waters to the conditions that would have existed had the industrial accident not occurred, or, where this is not possible, to introduce, where appropriate, the equivalent of these components into the transboundary waters. Domestic law may indicate who will be entitled to take such measures;

(h) "Response measures" means any reasonable measures taken by any person, including public authorities, following an industrial accident, to prevent, minimize or mitigate possible loss or damage or to arrange for environmental clean-up. Domestic law may indicate who will be entitled to take such measures;

(i) "Unit of account" means the special drawing right as defined by the International Monetary Fund.

Article 3

Scope of application

1. The Protocol shall apply to damage caused by the transboundary effects of an industrial accident on transboundary waters.

2. The Protocol shall apply only to damage suffered in a Party other than the Party where the industrial accident has occurred.

Article 4

Strict liability

1. The operator shall be liable for the damage caused by an industrial accident.

2. No liability in accordance with this article shall attach to the operator, if he or she proves that, despite there being in place appropriate safety measures, the damage was:

(a) The result of an act of armed conflict, hostilities, civil war or insurrection;

(b) The result of a natural phenomenon of exceptional, inevitable, unforeseeable and irresistible character;

(c) Wholly the result of compliance with a compulsory measure of a public authority of the Party where the industrial accident has occurred; or

(d) Wholly the result of the wrongful intentional conduct of a third party.

3. If the person who has suffered the damage or a person for whom he or she is responsible under domestic law has by his or her own fault caused the damage or

contributed to it, the compensation may be reduced or disallowed having regard to all the circumstances.

4. If two or more operators are liable according to this article, the claimant shall have the right to seek full compensation for the damage from any or all of the operators liable. However, the operator who proves that only part of the damage was caused by an industrial accident shall be liable for that part of the damage only.

Article 5

Fault-based liability

Without prejudice to article 4, and in accordance with the relevant rules of applicable domestic law including laws on the liability of servants and agents, any person shall be liable for damage caused or contributed to by his or her wrongful intentional, reckless or negligent acts or omissions.

Article 6

Response measures

1. Subject to any requirement of applicable domestic law and other relevant provisions of the Conventions, the operator shall take, following an industrial accident, all reasonable response measures.

2. Notwithstanding any other provision in the Protocol, any person other than the operator acting for the sole purpose of taking response measures, provided that this person acted reasonably and in accordance with applicable domestic law, is not thereby subject to liability under the Protocol.

Article 7

Right of recourse

1. Any person liable under the Protocol shall be entitled to a right of recourse in accordance with the rules of procedure of the competent court or arbitral tribunal established under article 14 against any other person also liable under the Protocol.

2. Nothing in the Protocol shall prejudice any right of recourse to which the person liable might be entitled either as expressly provided for in contractual arrangements or pursuant to the law of the competent court.

Article 8

Implementation

1. The Parties shall adopt any legislative, regulatory and administrative measures that may be necessary to implement the Protocol.

2. In order to promote transparency, the Parties shall inform the secretariat, as defined in article 22, of any such measures taken to implement the Protocol.

3. The provisions of the Protocol and measures adopted under paragraph 1 shall be applied among the Parties without discrimination based on nationality, domicile or residence.

4. The Parties shall provide for close cooperation in order to promote the implementation of the Protocol according to their obligations under international law.

5. Without prejudice to existing international obligations, the Parties shall provide for access to information and access to justice accordingly, with due regard to the legitimate interest of the person holding the information, in order to promote the objective of the Protocol.

Article 9

FINANCIAL LIMITS

1. The liability under article 4 is limited to the amounts specified in part one of annex II. Such limits shall not include any interests or costs awarded by the competent court.

2. The limits of liability specified in part one of annex II shall be reviewed by the Meeting of the Parties on a regular basis taking into account the risks of hazardous activities as well as the nature, quantity and properties of the hazardous substances that are present or may be present in such activities.

3. There shall be no financial limit on liability under article 5.

Article 10

TIME LIMIT OF LIABILITY

1. Claims for compensation under the Protocol shall not be admissible unless they are brought within fifteen years from the date of the industrial accident.

2. Claims for compensation under the Protocol shall not be admissible unless they are brought within three years from the date that the claimant knew or ought reasonably to have known of the damage and of the person liable, provided that the time limits established pursuant to paragraph 1 are not exceeded.

3. Where the industrial accident consists of a series of occurrences having the same origin, time limits established pursuant to this article shall run from the date of the last of such occurrences. Where the industrial accident consists of a continuous occurrence, such time limits shall run from the end of that continuous occurrence.

Article 11

FINANCIAL SECURITY

1. The operator shall ensure that liability under article 4 for amounts not less than the minimum limits for financial securities specified in part two of annex II is and shall remain covered by financial security such as insurance, bonds or other financial guarantees including financial mechanisms providing compensation in the event of insolvency. In addition, Parties may fulfil their obligation under this paragraph with respect to State-owned operators by a declaration of self-insurance.

2. The minimum limits for financial securities specified in part two of annex II shall be reviewed by the Meeting of the Parties on a regular basis taking into account the risks of hazardous activities as well as the nature, quantity and properties of the hazardous substances that are present or may be present in such activities.

3. Any claim under the Protocol may be asserted directly against any person providing financial cover under paragraph 1. The insurer or the person providing the financial cover shall have the right to require the person liable under article 4 to be joined in

the proceedings. Insurers and persons providing financial cover may invoke the defences that the person liable under article 4 would be entitled to invoke. Nothing in this paragraph shall prevent the use of deductibles or co-payments as between the insurer and the insured, but the failure of the insured to pay any deductible or co-payment shall not be a defence against the person who has suffered the damage.

4. Notwithstanding paragraph 3, a Party shall by written notification to the Depositary at the time of signature, ratification, approval of or accession to the Protocol, indicate if it does not provide for a right to bring a direct action pursuant to paragraph 3. The secretariat shall maintain a record of the Parties that have given notification pursuant to this paragraph.

Article 12

INTERNATIONAL RESPONSIBILITY OF STATES

The Protocol shall not affect the rights and obligations of the Parties under the rules of general international law with respect to the international responsibility of States.

PROCEDURES

Article 13

COMPETENT COURTS

1. Claims for compensation under the Protocol may be brought in the courts of a Party only where:

(a) The damage was suffered;

(b) The industrial accident occurred; or

(c) The defendant has his or her habitual residence, or, if the defendant is a company or other legal person or an association of natural or legal persons, where it has its principal place of business, its statutory seat or central administration.

2. Each Party shall ensure that its courts possess the necessary competence to entertain such claims for compensation.

Article 14

ARBITRATION

In the event of a dispute between persons claiming for damage pursuant to the Protocol and persons liable under the Protocol, and where agreed by both or all parties, the dispute may be submitted to final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment.

Article 15

LIS PENDENS—RELATED ACTIONS

1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Parties, any court other than the court first seized shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established.

2. Where the jurisdiction of the court first seized is established, any court other than the court first seized shall decline jurisdiction in favour of that court.

3. Where related actions are pending in the courts of different Parties, any court other than the court first seized may stay its proceedings.

4. Where these actions are pending at first instance, any court other than the court first seized may also, on the application of one of the parties, decline jurisdiction if the court first seized has jurisdiction over the actions in question and its law permits the consolidation thereof.

5. For the purposes of this article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 16

Applicable law

1. Subject to paragraph 2, all matters of substance or procedure regarding claims before the competent court which are not specifically regulated in the Protocol shall be governed by the law of that court, including any rules of such law relating to conflict of laws.

2. At the request of the person who has suffered the damage, all matters of substance regarding claims before the competent court shall be governed by the law of the Party where the industrial accident has occurred, as if the damage had been suffered in that Party.

Article 17

Relationship between the Protocol and the applicable domestic law

The Protocol is without prejudice to any rights of persons who have suffered damage or to any measures for the protection or reinstatement of the environment that may be provided under applicable domestic law.

Article 18

Mutual recognition and enforcement of judgements and arbitral awards

1. Any judgement of a court having jurisdiction in accordance with article 13 or any arbitral award which is enforceable in the State of origin of the judgement and is no longer subject to ordinary forms of review shall be recognized in any Party as soon as the formalities required in that Party have been completed, except:

(a) Where the judgement or arbitral award was obtained by fraud;

(b) Where the defendant was not given reasonable notice and a fair opportunity to present his or her case;

(c) Where the judgement or arbitral award is irreconcilable with an earlier judgement or arbitral award validly pronounced in another Party with regard to the same cause of action and the same parties; or

(d) Where the judgement or arbitral award is contrary to the public policy of the Party in which its recognition is sought.

2. A judgement or arbitral award recognized under paragraph 1 shall be enforceable in each Party as soon as the formalities required in that Party have been completed. The formalities shall not permit the merits of the case to be reopened.

3. The provisions of paragraphs 1 and 2 shall not apply between Parties to an agreement or arrangement in force on the mutual recognition and enforcement of judgements or arbitral awards under which the judgement or arbitral award would be recognizable and enforceable.

Article 19

Relationship between the Protocol and bilateral, multilateral or regional liability agreements

Whenever the provisions of the Protocol and the provisions of a bilateral, multilateral or regional agreement apply to liability and compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters, the Protocol shall not apply provided the other agreement is in force for the Parties concerned and had been opened for signature when the Protocol was opened for signature, even if the agreement was amended afterwards.

Article 20

Relationship between the Protocol and the rules of the European Community on jurisdiction, recognition and enforcement of judgements

1. The courts of Parties which are members of the European Community shall apply the relevant Community rules instead of article 13, whenever the defendant is domiciled in a member State of the European Community, or the parties have attributed jurisdiction to a court of a member State of the European Community and one or more of the parties is domiciled in a member State of the European Community.

2. In their mutual relations, Parties which are members of the European Community shall apply the relevant Community rules instead of articles 15 and 18.

FINAL CLAUSES

Article 21

Meeting of the Parties

1. A Meeting of the Parties is hereby established.

2. The first meeting of the Parties shall be convened no later than eighteen months after the date of the entry into force of the Protocol and, if possible, in conjunction with a meeting of the governing body of one of the Conventions. Thereafter, ordinary meetings shall be held at dates to be determined by the Meeting of the Parties to the Protocol and, as appropriate, in conjunction with a meeting of the governing body of one of the Conventions. Extraordinary meetings of the Parties shall be held at such other times as may be deemed necessary by the Meeting of the Parties, or at the written request of any Party, provided that, within six months of such a request being communicated to them by the secretariat, it is supported by at least one third of the Parties.

3. The Parties, at their first meeting, shall adopt by consensus rules of procedure for their meetings and consider any necessary financial provisions.

4. The functions of the Meeting of the Parties shall be:

(a) To review the implementation of and compliance with the Protocol including relevant case law provided by the Parties;

(b) To consider and adopt, if necessary, proposals for amendment of the Protocol or any annexes and for any new annexes;

(c) To consider and undertake any additional action that may be required for the purposes of the Protocol.

Article 22

SECRETARIAT

The Executive Secretary of the Economic Commission for Europe shall carry out the following secretariat functions for the Protocol:

(a) The convening and preparing of meetings of the Parties;

(b) The transmission to the Parties of reports and other information received in accordance with the provisions of the Protocol;

(c) The performance of such other functions as may be determined by the Meeting of the Parties on the basis of available resources.

Article 23

ANNEXES

Annexes to the Protocol shall constitute an integral part thereof.

Article 24

AMENDMENTS TO THE PROTOCOL

1. Any Party may propose amendments to the Protocol.

2. Proposals for amendments to the Protocol shall be considered at a meeting of the Parties.

3. Any proposed amendment to the Protocol shall be submitted in writing to the secretariat, which shall communicate it at least six months before the meeting at which it is proposed for adoption to all Parties, to other States and regional economic integration organizations that have consented to be bound by the Protocol and for which it has not yet entered into force and to Signatories.

4. The Parties shall make every effort to reach agreement on any proposed amendment to the Protocol by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.

5. For the purposes of this article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

6. Any amendment to the Protocol adopted in accordance with paragraph 4 shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties, to other States and regional economic integration organizations that have consented to be bound by the Protocol and for which it has not yet entered into force and to Signatories.

7. An amendment, other than one to annex I or II, shall enter into force for those Parties having ratified, accepted or approved it on the ninetieth day after the date of receipt by the Depositary of the instruments of ratification, acceptance or approval by at least three fourths of those which were Parties on the date of its adoption. Thereafter it shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, acceptance or approval of the amendment.

8. In the case of an amendment to annex I or II, a Party that does not accept such an amendment shall so notify the Depositary in writing within twelve months from the date of its circulation by the Depositary. The Depositary shall without delay inform all Parties of any such notification received. A Party may at any time withdraw a previous notification of non-acceptance, whereupon the amendment to annex I or II shall enter into force for that Party.

9. On the expiry of twelve months from the date of its circulation by the Depositary as provided for in paragraph 6, an amendment to annex I or II shall enter into force for those Parties which have not submitted a notification to the Depositary in accordance with paragraph 8, provided that, at that time, not more than one third of those which were Parties on the date of the adoption of the amendment have submitted such a notification.

10. If an amendment to an annex is directly related to an amendment to the Protocol not referring to annex I, II or III, it shall not enter into force until such time as the amendment to the Protocol enters into force.

Article 25

RIGHT TO VOTE

1. Except as provided for in paragraph 2, each Party shall have one vote.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 26

SETTLEMENT OF DISPUTES

1. If a dispute arises between two or more Parties about the interpretation or application of the Protocol, they shall seek a solution by negotiation or by any other means of dispute settlement acceptable to the parties to the dispute.

2. When signing, ratifying, accepting, approving or acceding to the Protocol, or at any time thereafter, a Party may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

(a) Submission of the dispute to the International Court of Justice;

(b) Arbitration in accordance with the procedure set out in annex III.

3. If the parties to the dispute have accepted both means of dispute settlements referred to in paragraph 2, the dispute may be submitted only to the International Court of Justice, unless the parties to the dispute agree otherwise.

Article 27

SIGNATURE

1. The Protocol shall be open for signature at Kiev (Ukraine) from 21 to 23 May 2003 and thereafter at United Nations Headquarters in New York until 31 December 2003 by States members of the Economic Commission for Europe, as well as States having consultative status with the Economic Commission for Europe pursuant to paragraph 8 of Economic and Social Council resolution 36 (IV) of 28 March 1947, and by regional economic integration organizations constituted by sovereign States members of the Economic Commission for Europe to which their member States have transferred competence in respect of matters governed by the Protocol, including the competence to enter into treaties in respect of these matters.

2. Upon signature, a regional economic integration organization shall make a declaration specifying the matters governed by the Protocol in respect of which competence has been transferred to that organization by its member States, the nature and extent of that competence, including the competence to enter into treaties in respect of these matters.

Article 28

RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. The Protocol shall be subject to ratification, acceptance or approval by the signatory States and regional economic integration organizations referred to in article 27, provided that the States and organizations concerned are Parties to one or both of the Conventions.

2. The Protocol shall be open for accession by the States and organizations referred to in article 27, provided that the States and organizations concerned are Parties to one or both of the Conventions.

3. Any other State, not referred to in paragraph 2, that is Member of the United Nations may accede to the Protocol upon approval by the Meeting of the Parties. In its instrument of accession, such a State shall make a declaration stating that approval for its accession to the Protocol had been obtained from the Meeting of the Parties and shall specify the date on which approval was received.

4. Any organization referred to in article 27 which becomes a Party to the Protocol without any of its member States being a Party shall be bound by all the obligations under the Protocol. If one or more of such organization's member States is a Party to the Protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Protocol. In such cases, the organization and the member States shall not be entitled to exercise rights under the Protocol concurrently.

5. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations referred to in article 27 shall declare the extent of their competence with respect to the matters governed by the Protocol. These organizations shall also inform the Depositary of any substantial modification to the extent of their competence.

Article 29

ENTRY INTO FORCE

1. The Protocol shall enter into force on the ninetieth day after the date of deposit of the sixteenth instrument of ratification, acceptance, approval or accession.

2. Article 2, paragraph 2 *(e)* (iii), shall take effect when thresholds, limits of liability and minimum limits of financial securities for pipelines are set in annexes I and II in accordance with article 24, paragraphs 8 and 9.

3. For the purposes of paragraph 1, any instrument deposited by an organization referred to in article 27 shall not be counted as additional to those deposited by States members of such an organization.

4. For each State or organization referred to in article 27 which ratifies, accepts or approves the Protocol or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, the Protocol shall enter into force on the ninetieth day after the date of deposit by such State or organization of its instrument of ratification, acceptance, approval or accession.

Article 30

RESERVATIONS

No reservation may be made to the Protocol.

Article 31

WITHDRAWAL

1. At any time after three years from the date on which the 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 effect one year from the date of its receipt by the Depositary, or on such later date as may be specified in the notification.

Article 32

DEPOSITARY

The Secretary-General of the United Nations shall act as the Depositary of the Protocol.

Article 33

AUTHENTIC TEXTS

The original of the Protocol, of which the English, French and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed the Protocol.

DONE at Kiev, this twenty-first day of May, two thousand and three.

ANNEX I

Hazardous substances and their threshold quantities for the purpose of defining hazardous activities

1. The threshold quantities set out below relate to each hazardous activity or group of hazardous activities.

2. Where a substance or preparation named in part two also falls within a category in part one, the threshold quantity set out in part two shall be used.

Part One Categories of substances and preparations not specifically named in Part Two

Category	Threshold quantity (tons)
I. Very toxic	20
II. Toxic	200
III. Dangerous for the environment	200

Part Two Named Substances

Substance	Threshold quantity (tons)
Petroleum products: *(a)* Gasolines and naphthas, *(b)* Kerosenes (including jet fuels), *(c)* Gas oils (including diesel fuels, home heating oils and gas oil blending streams)	25,000

Notes on the indicative criteria for the categories of substances and preparations given in part one

In the absence of other appropriate criteria, such as the European Union classification criteria for substances and preparations, Parties may use the following criteria when classifying substances or preparations for the purposes of part one of this annex.

I. Very Toxic

Substances with properties corresponding to those in table 1 or table 2, and which, owing to their physical and chemical properties, are capable of creating industrial accident hazards:

Table 1

LD_{50} (oral) mg/kg body weight $LD_{50} \leq 25$	LD_{50} (dermal) mg/kg body weight $LD_{50} \leq 50$
LD_{50} oral in rats LD_{50} dermal in rats or rabbits	

Table 2

Discriminating dose mg/kg body weight < 5
where the acute oral toxicity in animals of the substance has been determined using the fixed-dose procedure

II. Toxic

Substances with properties corresponding to those in table 3 or 4 and having physical and chemical properties capable of creating industrial accident hazards:

Table 3

LD_{50} (oral) mg/kg body weight $25 < LD_{50} \leq 200$	LD_{50} (dermal) mg/kg body weight $50 < LD_{50} \leq 400$
LD_{50} oral in rats LD_{50} dermal in rats or rabbits	

Table 4

Discriminating dose mg/kg body weight = 5
where the acute oral toxicity in animals of the substance has been determined using the fixed-dose procedure

III. Dangerous for the environment

Substances showing the values for acute toxicity to the aquatic environment corresponding to table 5:

Table 5

LC_{50} mg/l $LC_{50} \leq 10$	EC_{50} mg/l $EC_{50} \leq 10$	IC_{50} mg/l $IC_{50} \leq 10$
LC_{50} fish (96 hours) EC_{50} daphnia (48 hours) IC_{50} algae (72 hours)		
where the substance is not readily degradable, or the log Pow > 3.0 (unless the experimentally determined BCF < 100)		

List of abbreviations

Pow	-	partition coefficient octanol/water
BCF	-	bioconcentration factor
LD	-	lethal dose
LC	-	lethal concentration
EC	-	effective concentration
IC	-	inhibiting concentration

ANNEX II

Limits of Liability and minimum limits of Financial Securities

Part One Limits of Liability

1. For the purposes of defining the limits of liability under article 4, pursuant to article 9, the hazardous activities are grouped in three different categories, according to their hazard potential.

2. These categories are as follows:

Category A: Hazardous activities in which one or more hazardous substances falling into categories specified in part one of annex I are or may be present in quantities not exceeding four times the threshold quantities specified in annex I;

Category B: Hazardous activities in which one or more hazardous substances falling into categories specified in part one of annex I are or may be present in quantities exceeding four times the threshold quantities specified in annex I;

Category C: Hazardous activities in which one or more hazardous substances named in part two of annex I are or may be present in quantities at or in excess of the threshold quantity specified in annex I.

3. The limits of liability for the three categories of hazardous activities are as follows:

Category A hazardous activities . . . . . 10 million units of account;

Category B hazardous activities . . . . . 40 million units of account;

Category C hazardous activities . . . . . 40 million units of account.

Part Two Minimum Limits of Financial Securities

4. For the purposes of defining the minimum limits of financial securities under article 11, the hazardous activities are grouped in three different categories, according to their hazard potential.

5. These categories are as follows:

Category A: Hazardous activities in which one or more hazardous substances falling into categories specified in part one of annex I are or may be present in quantities not exceeding four times the threshold quantities specified in annex I;

Category B: Hazardous activities in which one or more hazardous substances falling into categories specified in part one of annex I are or may be present in quantities exceeding four times the threshold quantities specified in annex I;

Category C: Hazardous activities in which one or more hazardous substances named in part two of annex I are or may be present in quantities at or in excess of the threshold quantity specified in annex I.

6. The minimum limits of financial securities for the three categories of hazardous activities are as follows:

Category A hazardous activities . . . . . 2.5 million units of account;

Category B hazardous activities . . . . . 10 million units of account;

Category C hazardous activities . . . . . 10 million units of account.

ANNEX III

Arbitration

1. In the event of a dispute being submitted for arbitration pursuant to article 26, paragraph 2, a party or parties shall notify the secretariat of the subject matter of arbitration and indicate, in particular, the articles of the Protocol whose interpretation or application is at issue. The secretariat shall forward the information received to all Parties to the Protocol.

2. The arbitral tribunal shall consist of three members. Both the claimant party or parties and the other party or parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the president of the arbitral tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

3. If the president of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Executive Secretary of the Economic Commission for Europe shall, at the request of either party to the dispute, designate the president within a further two-month period.

4. If one of the parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other party may so inform the Executive Secretary of the Economic Commission for Europe, who shall designate the president of the arbitral tribunal within a further two-month period. Upon designation, the president of the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. If it fails to do so within that period, the president shall so inform the Executive Secretary of the Economic Commission for Europe, who shall make this appointment within a further two-month period.

5. The arbitral tribunal shall render its decision in accordance with international law and the provisions of the Protocol.

6. Any arbitral tribunal constituted under the provisions set out in this annex shall draw up its own rules of procedure.

7. The decisions of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.

8. The tribunal may take all appropriate measures to establish the facts.

9. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

(a) Provide it with all relevant documents, facilities and information;

(b) Enable it, where necessary, to call witnesses or experts and receive their evidence.

10. The parties and the arbitrators shall protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

11. The arbitral tribunal may, at the request of one of the parties, recommend interim measures of protection.

12. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings

and to render its final decision. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings.

13. The arbitral tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.

14. Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.

15. Any Party to the Protocol which has an interest of a legal nature in the subject matter of the dispute, and which may be affected by a decision in the case, may intervene in the proceedings with the consent of the tribunal.

16. The arbitral tribunal shall render its award within five months of the date on which it is established, unless it finds it necessary to extend the time limit for a period which should not exceed five months.

17. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon all parties to the dispute. The award will be transmitted by the arbitral tribunal to the parties to the dispute and to the secretariat. The secretariat will forward the information received to all Parties to the Protocol.

18. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.

5. UNITED NATIONS CONVENTION AGAINST CORRUPTION. DONE AT NEW YORK, 31 OCTOBER 2003*

Preamble

The States Parties to this Convention,

Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law,

Concerned also about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering,

Concerned further about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States,

Convinced that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential,

Convinced also that a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively,

* General Assembly resolution 58/4 of 31 October 2003.

Convinced further that the availability of technical assistance can play an important role in enhancing the ability of States, including by strengthening capacity and by institution-building, to prevent and combat corruption effectively,

Convinced that the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law,

Determined to prevent, detect and deter in a more effective manner international transfers of illicitly acquired assets and to strengthen international cooperation in asset recovery,

Acknowledging the fundamental principles of due process of law in criminal proceedings and in civil or administrative proceedings to adjudicate property rights,

Bearing in mind that the prevention and eradication of corruption is a responsibility of all States and that they must cooperate with one another, with the support and involvement of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, if their efforts in this area are to be effective,

Bearing also in mind the principles of proper management of public affairs and public property, fairness, responsibility and equality before the law and the need to safeguard integrity and to foster a culture of rejection of corruption,

Commending the work of the Commission on Crime Prevention and Criminal Justice and the United Nations Office on Drugs and Crime in preventing and combating corruption,

Recalling the work carried out by other international and regional organizations in this field, including the activities of the African Union, the Council of Europe, the Customs Cooperation Council (also known as the World Customs Organization), the European Union, the League of Arab States, the Organisation for Economic Cooperation and Development and the Organization of American States,

Taking note with appreciation of multilateral instruments to prevent and combat corruption, including, *inter alia*, the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996, the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997, the 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, the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999, the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999, and the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State and Government of the African Union on 12 July 2003,

Welcoming the entry into force on 29 September 2003 of the United Nations Convention against Transnational Organized Crime,

Have agreed as follows:

CHAPTER I

GENERAL PROVISIONS

Article 1

Statement of purpose

The purposes of this Convention are:

(a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;

(b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;

(c) To promote integrity, accountability and proper management of public affairs and public property.

Article 2

Use of terms

For the purposes of this Convention:

(a) "Public official" shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a "public official" in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, "public official" may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;

(b) "Foreign public official" shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise;

(c) "Official of a public international organization" shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization;

(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 23 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.

Article 3
Scope of application

1. This Convention shall apply, in accordance with its terms, to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with this Convention.

2. For the purposes of implementing this Convention, it shall not be necessary, except as otherwise stated herein, for the offences set forth in it to result in damage or harm to state property.

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 shall entitle 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.

CHAPTER II

PREVENTIVE MEASURES

Article 5
Preventive anti-corruption policies and practices

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

Article 6

PREVENTIVE ANTI-CORRUPTION BODY OR BODIES

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

Article 7

PUBLIC SECTOR

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in

accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

Article 8

CODES OF CONDUCT FOR PUBLIC OFFICIALS

1. In order to fight corruption, each State Party shall promote, *inter alia*, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, *inter alia*, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

Article 9

PUBLIC PROCUREMENT AND MANAGEMENT OF PUBLIC FINANCES

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, *inter alia*, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, *inter alia*:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, *inter alia*:

(a) Procedures for the adoption of the national budget;

(b) Timely reporting on revenue and expenditure;

(c) A system of accounting and auditing standards and related oversight;

(d) Effective and efficient systems of risk management and internal control; and

(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

Article 10
Public reporting

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, *inter alia*:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

Article 11

MEASURES RELATING TO THE JUDICIARY AND PROSECUTION SERVICES

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

Article 12

PRIVATE SECTOR

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, *inter alia*:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

(a) The establishment of off-the-books accounts;

(b) The making of off-the-books or inadequately identified transactions;

(c) The recording of non-existent expenditure;

(d) The entry of liabilities with incorrect identification of their objects;

(e) The use of false documents; and

(f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

Article 13
Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information;

(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or ordre public or of public health or morals.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any

incidents that may be considered to constitute an offence established in accordance with this Convention.

Article 14

MEASURES TO PREVENT MONEY-LAUNDERING

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value 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 and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

(b) Without prejudice to article 46 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 cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

(b) To maintain such information throughout the payment chain; and

(c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

4. 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.

5. 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.

CHAPTER III

CRIMINALIZATION AND LAW ENFORCEMENT

Article 15

Bribery of national public officials

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.

Article 16

Bribery of foreign public officials and officials of public international organizations

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, 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, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, 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.

Article 17

Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

Article 18

Trading in influence

Each State Party shall consider adopting 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 or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

Article 19

ABUSE OF FUNCTIONS

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

Article 20

ILLICIT ENRICHMENT

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

Article 21

BRIBERY IN THE PRIVATE SECTOR

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

Article 22

EMBEZZLEMENT OF PROPERTY IN THE PRIVATE SECTOR

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course

of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

Article 23

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 property, 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 at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(c) For the purposes of subparagraph *(b)* above, 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.

Article 24

CONCEALMENT

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

Article 25

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 established in accordance with 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 established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

Article 26

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 the offences established in accordance with 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 27

PARTICIPATION AND ATTEMPT

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

Article 28

Knowledge, intent and purpose as elements of an offence

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

Article 29

Statute of limitations

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 established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

Article 30

Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with 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.

4. In the case of offences established in accordance with 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.

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused

of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(b) Holding office in an enterprise owned in whole or in part by the State.

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

9. 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.

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

Article 31

Freezing, seizure and confiscation

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with 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 established in accordance with this Convention.

2. Each State Party shall take 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. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

4. If such 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.

5. If such 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.

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with

which such 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.

7. For the purpose of this article and article 55 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 seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

9. The provisions of this article shall not be so construed as to prejudice the rights of *bona fide* third parties.

10. 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 32

Protection of witnesses, experts and victims

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with 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 witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video 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.

5. Each State Party shall, subject to its domestic law, enable the 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 33

Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who

reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

Article 34

CONSEQUENCES OF ACTS OF CORRUPTION

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

Article 35

COMPENSATION FOR DAMAGE

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

Article 36

SPECIALIZED AUTHORITIES

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

Article 37

COOPERATION WITH LAW ENFORCEMENT AUTHORITIES

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

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 established in accordance with 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 established in accordance with this Convention.

4. Protection of such persons shall be, *mutatis mutandis*, as provided for in article 32 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 38

Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

Article 39

Cooperation between national authorities and the private sector

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

Article 40

Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

Article 41

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 established in accordance with this Convention.

Article 42

JURISDICTION

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with 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; or

(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 one of those established in accordance with article 23, 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 23, paragraph 1 *(a)*(i) or (ii) or *(b)*(i), of this Convention within its territory; or

(d) The offence is committed against the State Party.

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with 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 take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with 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 any 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 shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

CHAPTER IV

INTERNATIONAL COOPERATION

Article 43

INTERNATIONAL COOPERATION

1. States Parties shall cooperate in criminal matters in accordance with articles 44 to 50 of this Convention. Where appropriate and consistent with their domestic legal system, States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.

2. In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties.

Article 44
Extradition

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present 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. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

4. 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. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

5. 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.

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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 11 of this article.

13. 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 State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

14. 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.

15. 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.

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

17. 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.

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 45

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 established in accordance with this Convention in order that they may complete their sentences there.

Article 46

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.

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 26 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;

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

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 those 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. *(a)* A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a *de minimis* nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

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 requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in 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 47

TRANSFER OF CRIMINAL PROCEEDINGS

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with 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 48

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. States Parties shall, in particular, take 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, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(e) 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;

(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 States Parties may consider this Convention to be 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 offences covered by this Convention committed through the use of modern technology.

Article 49

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 50

Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

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 or funds to continue intact or be removed or replaced in whole or in part.

CHAPTER V
ASSET RECOVERY

Article 51
General provision

The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

Article 52
Prevention and detection of transfers of proceeds of crime

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

3. In the context of paragraph 2 *(a)* of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

Article 53

Measures for direct recovery of property

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

Article 54

Mechanisms for recovery of property through international cooperation in confiscation

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1*(a)* of this article;

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1*(a)* of this article; and

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

Article 55

INTERNATIONAL COOPERATION FOR PURPOSES OF CONFISCATION

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, 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 articles 31, paragraph 1, and 54, paragraph 1*(a)*, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, 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 established in accordance with 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 31, 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 46 of this Convention are applicable, *mutatis mutandis*, to this article. In addition to the information specified in article 46, 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, including, to the extent possible, the location and, where relevant, the estimated value of the property 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, a statement specifying the measures taken by the requesting State Party to provide adequate notification to *bona fide* third parties and to ensure due process and a statement that the confiscation order is final;

(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 and, where available, a legally admissible copy of an order on which the request is based.

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 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 also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a *de minimis* value.

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

9. The provisions of this article shall not be construed as prejudicing the rights of *bona fide* third parties.

Article 56

Special cooperation

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

Article 57

RETURN AND DISPOSAL OF ASSETS

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of *bona fide* third parties.

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

Article 58

FINANCIAL INTELLIGENCE UNIT

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

Article 59

Bilateral and multilateral agreements and arrangements

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

CHAPTER VI

TECHNICAL ASSISTANCE AND INFORMATION EXCHANGE

Article 60

Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption. Such training programmes could deal, *inter alia*, with the following areas:

(a) Effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods;

(b) Building capacity in the development and planning of strategic anti-corruption policy;

(c) Training competent authorities in the preparation of requests for mutual legal assistance that meet the requirements of this Convention;

(d) Evaluation and strengthening of institutions, public service management and the management of public finances, including public procurement, and the private sector;

(e) Preventing and combating the transfer of proceeds of offences established in accordance with this Convention and recovering such proceeds;

(f) Detecting and freezing of the transfer of proceeds of offences established in accordance with this Convention;

(g) Surveillance of the movement of proceeds of offences established in accordance with this Convention and of the methods used to transfer, conceal or disguise such proceeds;

(h) Appropriate and efficient legal and administrative mechanisms and methods for facilitating the return of proceeds of offences established in accordance with this Convention;

(i) Methods used in protecting victims and witnesses who cooperate with judicial authorities; and

(j) Training in national and international regulations and in languages.

2. States Parties shall, according to their capacity, consider affording one another the widest measure of technical assistance, especially for the benefit of developing countries, in their respective plans and programmes to combat corruption, including material support and training in the areas referred to in paragraph 1 of this article, and training and assistance and the mutual exchange of relevant experience and specialized knowledge, which will facilitate international cooperation between States Parties in the areas of extradition and mutual legal assistance.

3. States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities in international and regional organizations and in the framework of relevant bilateral and multilateral agreements or arrangements.

4. States Parties shall consider assisting one another, upon request, in conducting evaluations, studies and research relating to the types, causes, effects and costs of corruption in their respective countries, with a view to developing, with the participation of competent authorities and society, strategies and action plans to combat corruption.

5. In order to facilitate the recovery of proceeds of offences established in accordance with this Convention, States Parties may cooperate in providing each other with the names of experts who could assist in achieving that objective.

6. States Parties shall consider using subregional, regional and international conferences and seminars to promote cooperation and technical assistance and to stimulate discussion on problems of mutual concern, including the special problems and needs of developing countries and countries with economies in transition.

7. States Parties shall consider establishing voluntary mechanisms with a view to contributing financially to the efforts of developing countries and countries with economies in transition to apply this Convention through technical assistance programmes and projects.

8. Each State Party shall consider making voluntary contributions to the United Nations Office on Drugs and Crime for the purpose of fostering, through the Office, programmes and projects in developing countries with a view to implementing this Convention.

Article 61

Collection, exchange and analysis of information on corruption

1. Each State Party shall consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed.

2. States Parties shall consider developing and sharing with each other and through international and regional organizations statistics, analytical expertise concerning corruption and information with a view to developing, insofar as possible, common definitions, standards and methodologies, as well as information on best practices to prevent and combat corruption.

3. Each State Party shall consider monitoring its policies and actual measures to combat corruption and making assessments of their effectiveness and efficiency.

Article 62

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 corruption 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 corruption;

(b) To enhance financial and material assistance to support the efforts of developing countries to prevent and fight corruption 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 that 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 corruption.

CHAPTER VII

MECHANISMS FOR IMPLEMENTATION

Article 63
Conference of the States Parties to the Convention

1. A Conference of the States Parties to the Convention is hereby established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation.

2. The Secretary-General of the United Nations shall convene the Conference of the States Parties not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the Conference of the States Parties shall be held in accordance with the rules of procedure adopted by the Conference.

3. The Conference of the States Parties shall adopt rules of procedure and rules governing the functioning of the activities set forth in this article, including rules concerning the admission and participation of observers, and the payment of expenses incurred in carrying out those activities.

4. The Conference of the States Parties shall agree upon activities, procedures and methods of work to achieve the objectives set forth in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles 60 and 62 and chapters II to V 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 corruption and on successful practices for preventing and combating it and for the return of proceeds of crime, through, *inter alia*, the publication of relevant information as mentioned in this article;

(c) Cooperating with relevant international and regional organizations and mechanisms and non-governmental organizations;

(d) Making appropriate use of relevant information produced by other international and regional mechanisms for combating and preventing corruption in order to avoid unnecessary duplication of work;

(e) Reviewing periodically the implementation of this Convention by its States Parties;

(f) Making recommendations to improve this Convention and its implementation;

(g) Taking note of the technical assistance requirements of States Parties with regard to the implementation of this Convention and recommending any action it may deem necessary in that respect.

5. For the purpose of paragraph 4 of this article, the Conference of the States 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 States Parties.

6. Each State Party shall provide the Conference of the States Parties with information on its programmes, plans and practices, as well as on legislative and administrative measures to implement this Convention, as required by the Conference of the States Parties. The Conference of the States Parties shall examine the most effective way of receiving and acting upon information, including, *inter alia*, information received from States Parties and from competent international organizations. Inputs received from relevant non-governmental organizations duly accredited in accordance with procedures to be decided upon by the Conference of the States Parties may also be considered.

7. Pursuant to paragraphs 4 to 6 of this article, the Conference of the States Parties shall establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

Article 64

SECRETARIAT

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the States Parties to the Convention.

2. The secretariat shall:

(a) Assist the Conference of the States Parties in carrying out the activities set forth in article 63 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the States Parties;

(b) Upon request, assist States Parties in providing information to the Conference of the States Parties as envisaged in article 63, paragraphs 5 and 6, of this Convention; and

(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

CHAPTER VIII

FINAL PROVISIONS

Article 65

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. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating corruption.

Article 66

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 67

Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from 9 to 11 December 2003 in Merida, Mexico, and thereafter at United Nations Headquarters in New York until 9 December 2005.

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 68

ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth 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 thirtieth 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 or on the date this Convention enters into force pursuant to paragraph 1 of this article, whichever is later.

Article 69

AMENDMENT

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and transmit it to the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the States Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the States 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 States 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 70

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.

Article 71

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 ON EXPLOSIVE REMNANTS OF WAR TO THE CONVENTION ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO BE EXCESSIVELY INJURIOUS OR TO HAVE INDISCRIMINATE EFFECTS (PROTOCOL V). DONE AT GENEVA, 28 NOVEMBER 2003*

The High Contracting Parties,

Recognising the serious post-conflict humanitarian problems caused by explosive remnants of war,

Conscious of the need to conclude a Protocol on post-conflict remedial measures of a generic nature in order to minimise the risks and effects of explosive remnants of war,

And willing to address generic preventive measures, through voluntary best practices specified in a Technical Annex for improving the reliability of munitions, and therefore minimising the occurrence of explosive remnants of war,

* Adopted by the Meeting of States Parties to the Convention on Prohibitions or Restrictions on the use of Certain Conventional Weapons which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, held in Geneva on 25 November 2003. Doc CCW/MSP/2003/2.

Have agreed as follows:

Article 1

General provision and scope of application

1. In conformity with the Charter of the United Nations and of the rules of the international law of armed conflict applicable to them, High Contracting Parties agree to comply with the obligations specified in this Protocol, both individually and in co-operation with other High Contracting Parties, to minimise the risks and effects of explosive remnants of war in post-conflict situations.

2. This Protocol shall apply to explosive remnants of war on the land territory including internal waters of High Contracting Parties.

3. This Protocol shall apply to situations resulting from conflicts referred to in Article 1, paragraphs 1 to 6, of the Convention, as amended on 21 December 2001.

4. Articles 3, 4, 5 and 8 of this Protocol apply to explosive remnants of war other than existing explosive remnants of war as defined in Article 2, paragraph 5 of this Protocol.

Article 2

Definitions

For the purpose of this Protocol,

1. *Explosive ordnance* means conventional munitions containing explosives, with the exception of mines, booby traps and other devices as defined in Protocol II of this Convention as amended on 3 May 1996.

2. *Unexploded ordnance* means explosive ordnance that has been primed, fused, armed, or otherwise prepared for use and used in an armed conflict. It may have been fired, dropped, launched or projected and should have exploded but failed to do so.

3. *Abandoned explosive ordnance* means explosive ordnance that has not been used during an armed conflict, that has been left behind or dumped by a party to an armed conflict, and which is no longer under control of the party that left it behind or dumped it. Abandoned explosive ordnance may or may not have been primed, fused, armed or otherwise prepared for use.

4. *Explosive remnants of war* means unexploded ordnance and abandoned explosive ordnance.

5. *Existing explosive remnants of war* means unexploded ordnance and abandoned explosive ordnance that existed prior to the entry into force of this Protocol for the High Contracting Party on whose territory it exists.

Article 3

Clearance, removal or destruction of explosive remnants of war

1. Each High Contracting Party and party to an armed conflict shall bear the responsibilities set out in this Article with respect to all explosive remnants of war in territory under its control. In cases where a user of explosive ordnance which has become explosive remnants of war, does not exercise control of the territory, the user shall, after the cessation of active hostilities, provide where feasible, *inter alia* technical, financial, material or human resources assistance, bilaterally or through a mutually agreed third party,

including *inter alia* through the United Nations system or other relevant organisations, to facilitate the marking and clearance, removal or destruction of such explosive remnants of war.

2. After the cessation of active hostilities and as soon as feasible, each High Contracting Party and party to an armed conflict shall mark and clear, remove or destroy explosive remnants of war in affected territories under its control. Areas affected by explosive remnants of war which are assessed pursuant to paragraph 3 of this Article as posing a serious humanitarian risk shall be accorded priority status for clearance, removal or destruction.

3. After the cessation of active hostilities and as soon as feasible, each High Contracting Party and party to an armed conflict shall take the following measures in affected territories under its control, to reduce the risks posed by explosive remnants of war:

(a) survey and assess the threat posed by explosive remnants of war;

(b) assess and prioritise needs and practicability in terms of marking and clearance, removal or destruction;

(c) mark and clear, remove or destroy explosive remnants of war;

(d) take steps to mobilise resources to carry out these activities.

4. In conducting the above activities High Contracting Parties and parties to an armed conflict shall take into account international standards, including the International Mine Action Standards.

5. High Contracting Parties shall co-operate, where appropriate, both among themselves and with other states, relevant regional and international organisations and non-governmental organisations on the provision of *inter alia* technical, financial, material and human resources assistance including, in appropriate circumstances, the undertaking of joint operations necessary to fulfil the provisions of this Article.

Article 4

Recording, retaining and transmission of information

1. High Contracting Parties and parties to an armed conflict shall to the maximum extent possible and as far as practicable record and retain information on the use of explosive ordnance or abandonment of explosive ordnance, to facilitate the rapid marking and clearance, removal or destruction of explosive remnants of war, risk education and the provision of relevant information to the party in control of the territory and to civilian populations in that territory.

2. High Contracting Parties and parties to an armed conflict which have used or abandoned explosive ordnance which may have become explosive remnants of war shall, without delay after the cessation of active hostilities and as far as practicable, subject to these parties' legitimate security interests, make available such information to the party or parties in control of the affected area, bilaterally or through a mutually agreed third party including *inter alia* the United Nations or, upon request, to other relevant organisations which the party providing the information is satisfied are or will be undertaking risk education and the marking and clearance, removal or destruction of explosive remnants of war in the affected area.

3. In recording, retaining and transmitting such information, the High Contracting Parties should have regard to Part 1 of the Technical Annex.

Article 5

OTHER PRECAUTIONS FOR THE PROTECTION OF THE CIVILIAN POPULATION, INDIVIDUAL CIVILIANS AND CIVILIAN OBJECTS FROM THE RISKS AND EFFECTS OF EXPLOSIVE REMNANTS OF WAR

1. High Contracting Parties and parties to an armed conflict shall take all feasible precautions in the territory under their control affected by explosive remnants of war to protect the civilian population, individual civilians and civilian objects from the risks and effects of explosive remnants of war. Feasible precautions are those precautions which are practicable or practicably possible, taking into account all circumstances ruling at the time, including humanitarian and military considerations. These precautions may include warnings, risk education to the civilian population, marking, fencing and monitoring of territory affected by explosive remnants of war, as set out in Part 2 of the Technical Annex.

Article 6

PROVISIONS FOR THE PROTECTION OF HUMANITARIAN MISSIONS AND ORGANISATIONS FROM THE EFFECTS OF EXPLOSIVE REMNANTS OF WAR

1. Each High Contracting Party and party to an armed conflict shall:

(a) Protect, as far as feasible, from the effects of explosive remnants of war, humanitarian missions and organisations that are or will be operating in the area under the control of the High Contracting Party or party to an armed conflict and with that party's consent.

(b) Upon request by such a humanitarian mission or organisation, provide, as far as feasible, information on the location of all explosive remnants of war that it is aware of in territory where the requesting humanitarian mission or organisation will operate or is operating.

2. The provisions of this Article are without prejudice to existing International Humanitarian Law or other international instruments as applicable or decisions by the Security Council of the United Nations which provide for a higher level of protection.

Article 7

ASSISTANCE WITH RESPECT TO EXISTING EXPLOSIVE REMNANTS OF WAR

1. Each High Contracting Party has the right to seek and receive assistance, where appropriate, from other High Contracting Parties, from states non-party and relevant international organisations and institutions in dealing with the problems posed by existing explosive remnants of war.

2. Each High Contracting Party in a position to do so shall provide assistance in dealing with the problems posed by existing explosive remnants of war, as necessary and feasible. In so doing, High Contracting Parties shall also take into account the humanitarian objectives of this Protocol, as well as international standards including the International Mine Action Standards.

Article 8

Co-operation and assistance

1. Each High Contracting Party in a position to do so shall provide assistance for the marking and clearance, removal or destruction of explosive remnants of war, and for risk education to civilian populations and related activities *inter alia* through the United Nations system, other relevant international, regional or national organisations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organisations, or on a bilateral basis.

2. Each High Contracting Party in a position to do so shall provide assistance for the care and rehabilitation and social and economic reintegration of victims of explosive remnants of war. Such assistance may be provided *inter alia* through the United Nations system, relevant international, regional or national organisations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organisations, or on a bilateral basis.

3. Each High Contracting Party in a position to do so shall contribute to trust funds within the United Nations system, as well as other relevant trust funds, to facilitate the provision of assistance under this Protocol.

4. Each High Contracting Party shall have the right to participate in the fullest possible exchange of equipment, material and scientific and technological information other than weapons related technology, necessary for the implementation of this Protocol. High Contracting Parties undertake to facilitate such exchanges in accordance with national legislation and shall not impose undue restrictions on the provision of clearance equipment and related technological information for humanitarian purposes.

5. Each High Contracting Party undertakes to provide information to the relevant databases on mine action established within the United Nations system, especially information concerning various means and technologies of clearance of explosive remnants of war, lists of experts, expert agencies or national points of contact on clearance of explosive remnants of war and, on a voluntary basis, technical information on relevant types of explosive ordnance.

6. High Contracting Parties may submit requests for assistance substantiated by relevant information to the United Nations, to other appropriate bodies or to other states. These requests may be submitted to the Secretary-General of the United Nations, who shall transmit them to all High Contracting Parties and to relevant international organisations and non-governmental organisations.

7. In the case of requests to the United Nations, the Secretary-General of the United Nations, within the resources available to the Secretary-General of the United Nations, may take appropriate steps to assess the situation and in co-operation with the requesting High Contracting Party and other High Contracting Parties with responsibility as set out in Article 3 above, recommend the appropriate provision of assistance. The Secretary-General may also report to High Contracting Parties on any such assessment as well as on the type and scope of assistance required, including possible contributions from the trust funds established within the United Nations system.

Article 9

GENERIC PREVENTIVE MEASURES

1. Bearing in mind the different situations and capacities, each High Contracting Party is encouraged to take generic preventive measures aimed at minimising the occurrence of explosive remnants of war, including, but not limited to, those referred to in part 3 of the Technical Annex.

2. Each High Contracting Party may, on a voluntary basis, exchange information related to efforts to promote and establish best practices in respect of paragraph 1 of this Article.

Article 10

CONSULTATIONS OF HIGH CONTRACTING PARTIES

1. The High Contracting Parties undertake to consult and co-operate with each other on all issues related to the operation of this Protocol. For this purpose, a Conference of High Contracting Parties shall be held as agreed to by a majority, but no less than eighteen High Contracting Parties.

2. The work of the conferences of High Contracting Parties shall include:

(a) review of the status and operation of this Protocol;

(b) consideration of matters pertaining to national implementation of this Protocol, including national reporting or updating on an annual basis.

(c) preparation for review conferences.

3. The costs of the Conference of High Contracting Parties shall be borne by the High Contracting Parties and States not parties participating in the Conference, in accordance with the United Nations scale of assessment adjusted appropriately.

Article 11

COMPLIANCE

1. Each High Contracting Party shall require that its armed forces and relevant agencies or departments issue appropriate instructions and operating procedures and that its personnel receive training consistent with the relevant provisions of this Protocol.

2. The High Contracting Parties undertake to consult each other and to co-operate with each other bilaterally, through the Secretary-General of the United Nations or through other appropriate international procedures, to resolve any problems that may arise with regard to the interpretation and application of the provisions of this Protocol.

TECHNICAL ANNEX

This Technical Annex contains suggested best practice for achieving the objectives contained in Articles 4, 5 and 9 of this Protocol. This Technical Annex will be implemented by High Contracting Parties on a voluntary basis.

1. Recording, storage and release of information for Unexploded Ordnance (UXO) and Abandoned Explosive Ordnance (AXO)

(a) Recording of information: Regarding explosive ordnance which may have become UXO a State should endeavour to record the following information as accurately as possible:

(i) the location of areas targeted using explosive ordnance;

(ii) the approximate number of explosive ordnance used in the areas under (i);

(iii) the type and nature of explosive ordnance used in areas under (i);

(iv) the general location of known and probable UXO;

Where a State has been obliged to abandon explosive ordnance in the course of operations, it should endeavour to leave AXO in a safe and secure manner and record information on this ordnance as follows:

(v) the location of AXO;

(vi) the approximate amount of AXO at each specific site;

(vii) the types of AXO at each specific site.

(b) Storage of information: Where a State has recorded information in accordance with paragraph *(a)*, it should be stored in such a manner as to allow for its retrieval and subsequent release in accordance with paragraph *(c)*.

(c) Release of information: Information recorded and stored by a State in accordance with paragraphs *(a)* and *(b)* should, taking into account the security interests and other obligations of the State providing the information, be released in accordance with the following provisions:

(i) Content:

On UXO the released information should contain details on:

(1) the general location of known and probable UXO;

(2) the types and approximate number of explosive ordnance used in the targeted areas;

(3) the method of identifying the explosive ordnance including colour, size and shape and other relevant markings;

(4) the method for safe disposal of the explosive ordnance.

On AXO the released information should contain details on:

(5) the location of the AXO;

(6) the approximate number of AXO at each specific site;

(7) the types of AXO at each specific site;

(8) the method of identifying the AXO, including colour, size and shape;

(9) information on type and methods of packing for AXO;

(10) state of readiness;

(11) the location and nature of any booby traps known to be present in the area of AXO.

(ii) Recipient: The information should be released to the party or parties in control of the affected territory and to those persons or institutions that the releasing State is satisfied are, or will be, involved in UXO or AXO clearance in the affected area, in the education of the civilian population on the risks of UXO or AXO.

(iii) Mechanism: A State should, where feasible, make use of those mechanisms established internationally or locally for the release of information, such as through UNMAS, IMSMA, and other expert agencies, as considered appropriate by the releasing State.

(iv) Timing: The information should be released as soon as possible, taking into account such matters as any ongoing military and humanitarian operations in the affected areas, the availability and reliability of information and relevant security issues.

2. Warnings, risk education, marking, fencing and monitoring

Key terms

(a) Warnings are the punctual provision of cautionary information to the civilian population, intended to minimise risks caused by explosive remnants of war in affected territories.

(b) Risk education to the civilian population should consist of risk education programmes to facilitate information exchange between affected communities, government authorities and humanitarian organisations so that affected communities are informed about the threat from explosive remnants of war. Risk education programmes are usually a long term activity.

Best practice elements of warnings and risk education

(c) All programmes of warnings and risk education should, where possible, take into account prevailing national and international standards, including the International Mine Action Standards.

(d) Warnings and risk education should be provided to the affected civilian population which comprises civilians living in or around areas containing explosive remnants of war and civilians who transit such areas.

(e) Warnings should be given, as soon as possible, depending on the context and the information available. A risk education programme should replace a warnings programme as soon as possible. Warnings and risk education always should be provided to the affected communities at the earliest possible time.

(f) Parties to a conflict should employ third parties such as international organisations and non-governmental organisations when they do not have the resources and skills to deliver efficient risk education.

(g) Parties to a conflict should, if possible, provide additional resources for warnings and risk education. Such items might include: provision of logistical support, production of risk education materials, financial support and general cartographic information.

Marking, fencing, and monitoring of an explosive remnants of war affected area

(h) When possible, at any time during the course of a conflict and thereafter, where explosive remnants of war exist the parties to a conflict should, at the earliest possible time and to the maximum extent possible, ensure that areas containing explosive remnants of war are marked, fenced and monitored so as to ensure the effective exclusion of civilians, in accordance with the following provisions.

(i) Warning signs based on methods of marking recognised by the affected community should be utilised in the marking of suspected hazardous areas. Signs and other hazardous area boundary markers should as far as possible be visible, legible, durable and resistant

to environmental effects and should clearly identify which side of the marked boundary is considered to be within the explosive remnants of war affected area and which side is considered to be safe.

(j) An appropriate structure should be put in place with responsibility for the monitoring and maintenance of permanent and temporary marking systems, integrated with national and local risk education programmes.

3. Generic preventive measures

States producing or procuring explosive ordnance should to the extent possible and as appropriate endeavour to ensure that the following measures are implemented and respected during the life-cycle of explosive ordnance.

(a) Munitions manufacturing management

(i) Production processes should be designed to achieve the greatest reliability of munitions.

(ii) Production processes should be subject to certified quality control measures.

(iii) During the production of explosive ordnance, certified quality assurance standards that are internationally recognised should be applied.

(iv) Acceptance testing should be conducted through live-fire testing over a range of conditions or through other validated procedures.

(v) High reliability standards should be required in the course of explosive ordnance transactions and transfers.

(b) Munitions management

In order to ensure the best possible long-term reliability of explosive ordnance, States are encouraged to apply best practice norms and operating procedures with respect to its storage, transport, field storage, and handling in accordance with the following guidance.

(i) Explosive ordnance, where necessary, should be stored in secure facilities or appropriate containers that protect the explosive ordnance and its components in a controlled atmosphere, if necessary.

(ii) A State should transport explosive ordnance to and from production facilities, storage facilities and the field in a manner that minimises damage to the explosive ordnance.

(iii) Appropriate containers and controlled environments, where necessary, should be used by a State when stockpiling and transporting explosive ordnance.

(iv) The risk of explosions in stockpiles should be minimised by the use of appropriate stockpile arrangements.

(v) States should apply appropriate explosive ordnance logging, tracking and testing procedures, which should include information on the date of manufacture of each number, lot or batch of explosive ordnance, and information on where the explosive ordnance has been, under what conditions it has been stored, and to what environmental factors it has been exposed.

(vi) Periodically, stockpiled explosive ordnance should undergo, where appropriate, live-firing testing to ensure that munitions function as desired.

(vii) Sub-assemblies of stockpiled explosive ordnance should, where appropriate, undergo laboratory testing to ensure that munitions function as desired.

(viii) Where necessary, appropriate action, including adjustment to the expected shelf-life of ordnance, should be taken as a result of information acquired by logging, tracking and testing procedures, in order to maintain the reliability of stockpiled explosive ordnance.

(c) Training

The proper training of all personnel involved in the handling, transporting and use of explosive ordnance is an important factor in seeking to ensure its reliable operation as intended. States should therefore adopt and maintain suitable training programmes to ensure that personnel are properly trained with regard to the munitions with which they will be required to deal.

(d) Transfer

A State planning to transfer explosive ordnance to another State that did not previously possess that type of explosive ordnance should endeavour to ensure that the receiving State has the capability to store, maintain and use that explosive ordnance correctly.

(e) Future production

A State should examine ways and means of improving the reliability of explosive ordnance that it intends to produce or procure, with a view to achieving the highest possible reliability.

B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations

1. INTERNATIONAL MARITIME ORGANIZATION

Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992. Done at London, 16 May 2003*

The Contracting States to the Present Protocol,

Bearing in mind the International Convention on Civil Liability for Oil Pollution Damage, 1992 (hereinafter "the 1992 Liability Convention"),

Having considered the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (hereinafter "the 1992 Fund Convention"),

Affirming the importance of maintaining the viability of the international oil pollution liability and compensation system,

Noting that the maximum compensation afforded by the 1992 Fund Convention might be insufficient to meet compensation needs in certain circumstances in some Contracting States to that Convention,

Recognizing that a number of Contracting States to the 1992 Liability and 1992 Fund Conventions consider it necessary as a matter of urgency to make available additional

* Adopted by the International Conference on the Establishment of a Supplementary Fund for Compensation for Oil Pollution Damage: 12—16 May 2003, LEG/CONF.14/20.

funds for compensation through the creation of a supplementary scheme to which States may accede if they so wish,

Believing that the supplementary scheme should seek to ensure that victims of oil pollution damage are compensated in full for their loss or damage and should also alleviate the difficulties faced by victims in cases where there is a risk that the amount of compensation available under the 1992 Liability and 1992 Fund Conventions will be insufficient to pay established claims in full and that as a consequence the International Oil Pollution Compensation Fund, 1992, has decided provisionally that it will pay only a proportion of any established claim,

Considering that accession to the supplementary scheme will be open only to Contracting States to the 1992 Fund Convention,

Have agreed as follows:

GENERAL PROVISIONS

Article 1

For the purposes of this Protocol:

1. "1992 Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1992;

2. "1992 Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992;

3. "1992 Fund" means the International Oil Pollution Compensation Fund, 1992, established under the 1992 Fund Convention;

4. "Contracting State" means a Contracting State to this Protocol, unless stated otherwise;

5. When provisions of the 1992 Fund Convention are incorporated by reference into this Protocol, "Fund" in that Convention means "Supplementary Fund", unless stated otherwise;

6. "Ship", "Person", "Owner", "Oil", "Pollution Damage", "Preventive Measures" and "Incident" have the same meaning as in article I of the 1992 Liability Convention;

7. "Contributing Oil", "Unit of Account", "Ton", "Guarantor" and "Terminal installation" have the same meaning as in article 1 of the 1992 Fund Convention, unless stated otherwise;

8. "Established claim" means a claim which has been recognised by the 1992 Fund or been accepted as admissible by decision of a competent court binding upon the 1992 Fund not subject to ordinary forms of review and which would have been fully compensated if the limit set out in article 4, paragraph 4, of the 1992 Fund Convention had not been applied to that incident;

9. "Assembly" means the Assembly of the International Oil Pollution Compensation Supplementary Fund, 2003, unless otherwise indicated;

10. "Organization" means the International Maritime Organization;

11. "Secretary-General" means the Secretary-General of the Organization.

Article 2

1. An International Supplementary Fund for compensation for pollution damage, to be named "The International Oil Pollution Compensation Supplementary Fund, 2003" (hereinafter "the Supplementary Fund"), is hereby established.

2. The Supplementary Fund shall in each Contracting State be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each Contracting State shall recognize the Director of the Supplementary Fund as the legal representative of the Supplementary Fund.

Article 3

This Protocol shall apply exclusively:

(a) to pollution damage caused:

(i) in the territory, including the territorial sea, of a Contracting State, and

(ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

(b) to preventive measures, wherever taken, to prevent or minimize such damage.

SUPPLEMENTARY COMPENSATION

Article 4

1. The Supplementary Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for an established claim for such damage under the terms of the 1992 Fund Convention, because the total damage exceeds, or there is a risk that it will exceed, the applicable limit of compensation laid down in article 4, paragraph 4, of the 1992 Fund Convention in respect of any one incident.

2. *(a)* The aggregate amount of compensation payable by the Supplementary Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount together with the amount of compensation actually paid under the 1992 Liability Convention and the 1992 Fund Convention within the scope of application of this Protocol shall not exceed 750 million units of account.

(b) The amount of 750 million units of account mentioned in paragraph 2*(a)* shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date determined by the Assembly of the 1992 Fund for conversion of the maximum amount payable under the 1992 Liability and 1992 Fund Conventions.

3. Where the amount of established claims against the Supplementary Fund exceeds the aggregate amount of compensation payable under paragraph 2, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Protocol

shall be the same for all claimants. The Supplementary Fund shall pay compensation in respect of established claims as defined in article 1, paragraph 8, and only in respect of such claims.

Article 5

The Supplementary Fund shall pay compensation when the Assembly of the 1992 Fund has considered that the total amount of the established claims exceeds, or there is a risk that the total amount of established claims will exceed the aggregate amount of compensation available under article 4, paragraph 4, of the 1992 Fund Convention and that as a consequence the Assembly of the 1992 Fund has decided provisionally or finally that payments will only be made for a proportion of any established claim. The Assembly of the Supplementary Fund shall then decide whether and to what extent the Supplementary Fund shall pay the proportion of any established claim not paid under the 1992 Liability Convention and the 1992 Fund Convention.

Article 6

1 Subject to article 15, paragraphs 2 and 3, rights to compensation against the Supplementary Fund shall be extinguished only if they are extinguished against the 1992 Fund under article 6 of the 1992 Fund Convention.

2. A claim made against the 1992 Fund shall be regarded as a claim made by the same claimant against the Supplementary Fund.

Article 7

1. The provisions of article 7, paragraphs 1, 2, 4, 5 and 6, of the 1992 Fund Convention shall apply to actions for compensation brought against the Supplementary Fund in accordance with article 4, paragraph 1, of this Protocol.

2. Where an action for compensation for pollution damage has been brought before a court competent under article IX of the 1992 Liability Convention against the owner of a ship or his guarantor, such court shall have exclusive jurisdictional competence over any action against the Supplementary Fund for compensation under the provisions of article 4 of this Protocol in respect of the same damage. However, where an action for compensation for pollution damage under the 1992 Liability Convention has been brought before a court in a Contracting State to the 1992 Liability Convention but not to this Protocol, any action against the Supplementary Fund under article 4 of this Protocol shall at the option of the claimant be brought either before a court of the State where the Supplementary Fund has its headquarters or before any court of a Contracting State to this Protocol competent under article IX of the 1992 Liability Convention.

3. Notwithstanding paragraph 1, where an action for compensation for pollution damage against the 1992 Fund has been brought before a court in a Contracting State to the 1992 Fund Convention but not to this Protocol, any related action against the Supplementary Fund shall, at the option of the claimant, be brought either before a court of the State where the Supplementary Fund has its headquarters or before any court of a Contracting State competent under paragraph 1.

Article 8

1. Subject to any decision concerning the distribution referred to in article 4, paragraph 3 of this Protocol, any judgment given against the Supplementary Fund by a

court having jurisdiction in accordance with article 7 of this Protocol, shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each Contracting State on the same conditions as are prescribed in article X of the 1992 Liability Convention.

2. A Contracting State may apply other rules for the recognition and enforcement of judgments, provided that their effect is to ensure that judgments are recognised and enforced at least to the same extent as under paragraph 1.

Article 9

1. The Supplementary Fund shall, in respect of any amount of compensation for pollution damage paid by the Supplementary Fund in accordance with article 4, paragraph 1, of this Protocol, acquire by subrogation the rights that the person so compensated may enjoy under the 1992 Liability Convention against the owner or his guarantor.

2. The Supplementary Fund shall acquire by subrogation the rights that the person compensated by it may enjoy under the 1992 Fund Convention against the 1992 Fund.

3. Nothing in this Protocol shall prejudice any right of recourse or subrogation of the Supplementary Fund against persons other than those referred to in the preceding paragraphs. In any event the right of the Supplementary Fund to subrogation against such person shall not be less favourable than that of an insurer of the person to whom compensation has been paid.

4. Without prejudice to any other rights of subrogation or recourse against the Supplementary Fund which may exist, a Contracting State or agency thereof which has paid compensation for pollution damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Protocol.

CONTRIBUTIONS

Article 10

1. Annual contributions to the Supplementary Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in article 11, paragraph 2*(a)* or *(b)*, has received in total quantities exceeding 150,000 tons:

(a) in the ports or terminal installations in the territory of that State contributing oil carried by sea to such ports or terminal installations; and

(b) in any installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil shall only be taken into account by virtue of this sub-paragraph on first receipt in a Contracting State after its discharge in that non-Contracting State.

2. The provisions of article 10, paragraph 2, of the 1992 Fund Convention shall apply in respect of the obligation to pay contributions to the Supplementary Fund.

Article 11

1. With a view to assessing the amount of annual contributions due, if any, and taking account of the necessity to maintain sufficient liquid funds, the Assembly shall for each calendar year make an estimate in the form of a budget of:

(i) Expenditure

(a) costs and expenses of the administration of the Supplementary Fund in the relevant year and any deficit from operations in preceding years;

(b) payments to be made by the Supplementary Fund in the relevant year for the satisfaction of claims against the Supplementary Fund due under article 4, including repayments on loans previously taken by the Supplementary Fund for the satisfaction of such claims;

(ii) Income

(a) surplus funds from operations in preceding years, including any interest;

(b) annual contributions, if required to balance the budget;

(c) any other income.

2. The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision, the Director of the Supplementary Fund shall, in respect of each Contracting State, calculate for each person referred to in article 10, the amount of that person's annual contribution:

(a) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)*(a)* on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such person during the preceding calendar year; and

(b) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)*(b)* on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that State was a Contracting State to this Protocol at the date of the incident.

3. The sums referred to in paragraph 2 shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Contracting States in the relevant year.

4. The annual contribution shall be due on the date to be laid down in the Internal Regulations of the Supplementary Fund. The Assembly may decide on a different date of payment.

5. The Assembly may decide, under conditions to be laid down in the Financial Regulations of the Supplementary Fund, to make transfers between funds received in accordance with paragraph 2*(a)* and funds received in accordance with paragraph 2*(b)*.

Article 12

1. The provisions of article 13 of the 1992 Fund Convention shall apply to contributions to the Supplementary Fund.

2. A Contracting State itself may assume the obligation to pay contributions to the Supplementary Fund in accordance with the procedure set out in article 14 of the 1992 Fund Convention.

Article 13

1. Contracting States shall communicate to the Director of the Supplementary Fund information on oil receipts in accordance with article 15 of the 1992 Fund Convention provided, however, that communications made to the Director of the 1992 Fund under article 15, paragraph 2, of the 1992 Fund Convention shall be deemed to have been made also under this Protocol.

2. Where a Contracting State does not fulfil its obligations to submit the communication referred to in paragraph 1 and this results in a financial loss for the Supplementary Fund, that Contracting State shall be liable to compensate the Supplementary Fund for such loss. The Assembly shall, on the recommendation of the Director of the Supplementary Fund, decide whether such compensation shall be payable by that Contracting State.

Article 14

1. Notwithstanding article 10, for the purposes of this Protocol there shall be deemed to be a minimum receipt of 1 million tons of contributing oil in each Contracting State.

2. When the aggregate quantity of contributing oil received in a Contracting State is less than 1 million tons, the Contracting State shall assume the obligations that would be incumbent under this Protocol on any person who would be liable to contribute to the Supplementary Fund in respect of oil received within the territory of that State in so far as no liable person exists for the aggregated quantity of oil received.

Article 15

1. If in a Contracting State there is no person meeting the conditions of article 10, that Contracting State shall for the purposes of this Protocol inform the Director of the Supplementary Fund thereof.

2. No compensation shall be paid by the Supplementary Fund for pollution damage in the territory, territorial sea or exclusive economic zone or area determined in accordance with article 3*(a)*(ii), of this Protocol, of a Contracting State in respect of a given incident or for preventive measures, wherever taken, to prevent or minimize such damage, until the obligations to communicate to the Director of the Supplementary Fund according to article 13, paragraph 1 and paragraph 1 of this article have been complied with in respect of that Contracting State for all years prior to the occurrence of that incident. The Assembly shall determine in the Internal Regulations the circumstances under which a Contracting State shall be considered as having failed to comply with its obligations.

3. Where compensation has been denied temporarily in accordance with paragraph 2, compensation shall be denied permanently in respect of that incident if the obligations to communicate to the Director of the Supplementary Fund under article 13, paragraph 1 and paragraph 1 of this article, have not been complied with within one year after the Director of the Supplementary Fund has notified the Contracting State of its failure to report.

4. Any payments of contributions due to the Supplementary Fund shall be set off against compensation due to the debtor, or the debtor's agents.

ORGANIZATION AND ADMINISTRATION

Article 16

1. The Supplementary Fund shall have an Assembly and a Secretariat headed by a Director.

2. Articles 17 to 20 and 28 to 33 of the 1992 Fund Convention shall apply to the Assembly, Secretariat and Director of the Supplementary Fund.

3. Article 34 of the 1992 Fund Convention shall apply to the Supplementary Fund.

Article 17

1. The Secretariat of the 1992 Fund, headed by the Director of the 1992 Fund, may also function as the Secretariat and the Director of the Supplementary Fund.

2. If, in accordance with paragraph 1, the Secretariat and the Director of the 1992 Fund also perform the function of Secretariat and Director of the Supplementary Fund, the Supplementary Fund shall be represented, in cases of conflict of interests between the 1992 Fund and the Supplementary Fund, by the Chairman of the Assembly.

3. The Director of the Supplementary Fund, and the staff and experts appointed by the Director of the Supplementary Fund, performing their duties under this Protocol and the 1992 Fund Convention, shall not be regarded as contravening the provisions of article 30 of the 1992 Fund Convention as applied by article 16, paragraph 2, of this Protocol in so far as they discharge their duties in accordance with this article.

4. The Assembly shall endeavour not to take decisions which are incompatible with decisions taken by the Assembly of the 1992 Fund. If differences of opinion with respect to common administrative issues arise, the Assembly shall try to reach a consensus with the Assembly of the 1992 Fund, in a spirit of mutual co-operation and with the common aims of both organizations in mind.

5. The Supplementary Fund shall reimburse the 1992 Fund all costs and expenses arising from administrative services performed by the 1992 Fund on behalf of the Supplementary Fund.

Article 18

Transitional provisions

1. Subject to paragraph 4, the aggregate amount of the annual contributions payable in respect of contributing oil received in a single Contracting State during a calendar year shall not exceed 20% of the total amount of annual contributions pursuant to this Protocol in respect of that calendar year.

2. If the application of the provisions in article 11, paragraphs 2 and 3, would result in the aggregate amount of the contributions payable by contributors in a single Contracting State in respect of a given calendar year exceeding 20% of the total annual contributions, the contributions payable by all contributors in that State shall be reduced *pro rata* so that their aggregate contributions equal 20% of the total annual contributions to the Supplementary Fund in respect of that year.

3. If the contributions payable by persons in a given Contracting State shall be reduced pursuant to paragraph 2, the contributions payable by persons in all other Contracting States shall be increased *pro rata* so as to ensure that the total amount of contributions payable by

all persons liable to contribute to the Supplementary Fund in respect of the calendar year in question will reach the total amount of contributions decided by the Assembly.

4. The provisions in paragraphs 1 to 3 shall operate until the total quantity of contributing oil received in all Contracting States in a calendar year, including the quantities referred to in article 14, paragraph 1, has reached 1,000 million tons or until a period of 10 years after the date of entry into force of this Protocol has elapsed, whichever occurs earlier.

FINAL CLAUSES

Article 19

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at London from 31 July 2003 to 30 July 2004.

2. States may express their consent to be bound by this Protocol by:

(a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or

(c) accession.

3. Only Contracting States to the 1992 Fund Convention may become Contracting States to this Protocol.

4. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General.

Article 20

Information on contributing oil

Before this Protocol comes into force for a State, that State shall, when signing this Protocol in accordance with article 19, paragraph 2*(a)*, or when depositing an instrument referred to in article 19, paragraph 4 of this Protocol, and annually thereafter at a date to be determined by the Secretary-General, communicate to the Secretary-General the name and address of any person who in respect of that State would be liable to contribute to the Supplementary Fund pursuant to article 10 as well as data on the relevant quantities of contributing oil received by any such person in the territory of that State during the preceding calendar year.

Article 21

Entry into force

1. This Protocol shall enter into force three months following the date on which the following requirements are fulfilled:

(a) at least eight States have signed the Protocol without reservation as to ratification, acceptance or approval, or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General; and

(b) the Secretary-General has received information from the Director of the 1992 Fund that those persons who would be liable to contribute pursuant to article 10 have received during the preceding calendar year a total quantity of at least 450 million tons of contributing oil, including the quantities referred to in article 14, paragraph 1.

2. For each State which signs this Protocol without reservation as to ratification, acceptance or approval, or which ratifies, accepts, approves or accedes to this Protocol, after the conditions in paragraph 1 for entry into force have been met, the Protocol shall enter into force three months following the date of the deposit by such State of the appropriate instrument.

3. Notwithstanding paragraphs 1 and 2, this Protocol shall not enter into force in respect of any State until the 1992 Fund Convention enters into force for that State.

Article 22

First session of the Assembly

The Secretary-General shall convene the first session of the Assembly. This session shall take place as soon as possible after the entry into force of this Protocol and, in any case, not more than thirty days after such entry into force.

Article 23

Revision and amendment

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.

2. The Organization shall convene a Conference of Contracting States for the purpose of revising or amending this Protocol at the request of not less than one third of all Contracting States.

Article 24

Amendment of compensation limit

1. Upon the request of at least one quarter of the Contracting States, any proposal to amend the limit of the amount of compensation laid down in article 4, paragraph 2 *(a)*, shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization for consideration at a date at least six months after the date of its circulation.

3. All Contracting States to this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

4. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States shall be present at the time of voting.

5. When acting on a proposal to amend the limit, the Legal Committee shall take into account the experience of incidents and in particular the amount of damage resulting therefrom and changes in the monetary values.

6. *(a)* No amendments of the limit under this article may be considered before the date of entry into force of this Protocol nor less than three years from the date of entry into force of a previous amendment under this article.

(b) The limit may not be increased so as to exceed an amount which corresponds to the limit laid down in this Protocol increased by six per cent per year calculated on a compound basis from the date when this Protocol is opened for signature to the date on which the Legal Committee's decision comes into force.

(c) The limit may not be increased so as to exceed an amount which corresponds to the limit laid down in this Protocol multiplied by three.

7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of twelve months after the date of notification, unless within that period not less than one quarter of the States that were Contracting States at the time of the adoption of the amendment by the Legal Committee have communicated to the Organization that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force twelve months after its acceptance.

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with article 26, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10. When an amendment has been adopted by the Legal Committee but the twelve-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article 25
Protocols to the 1992 Fund Convention

1. If the limits laid down in the 1992 Fund Convention have been increased by a Protocol thereto, the limit laid down in article 4, paragraph 2*(a)*, may be increased by the same amount by means of the procedure set out in article 24. The provisions of article 24, paragraph 6, shall not apply in such cases.

2. If the procedure referred to in paragraph 1 has been applied, any subsequent amendment of the limit laid down in article 4, paragraph 2, by application of the procedure in article 24 shall, for the purpose of article 24, paragraphs 6*(b)* and *(c)*, be calculated on the basis of the new limit as increased in accordance with paragraph 1.

Article 26
Denunciation

1. This Protocol may be denounced by any Contracting State at any time after the date on which it enters into force for that Contracting State.

2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General.

3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

4. Denunciation of the 1992 Fund Convention shall be deemed to be a denunciation of this Protocol. Such denunciation shall take effect on the date on which denunciation of the Protocol of 1992 to amend the 1971 Fund Convention takes effect according to article 34 of that Protocol.

5. Notwithstanding a denunciation of the present Protocol by a Contracting State pursuant to this article, any provisions of this Protocol relating to the obligations to make contributions to the Supplementary Fund with respect to an incident referred to in article 11, paragraph 2*(b)*, and occurring before the denunciation takes effect, shall continue to apply.

Article 27
Extraordinary sessions of the Assembly

1. Any Contracting State may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions for the remaining Contracting States, request the Director of the Supplementary Fund to convene an extraordinary session of the Assembly. The Director of the Supplementary Fund shall convene the Assembly to meet not later than sixty days after receipt of the request.

2. The Director of the Supplementary Fund may take the initiative to convene an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if the Director of the Supplementary Fund considers that such denunciation will result in a significant increase in the level of contributions of the remaining Contracting States.

3. If the Assembly at an extraordinary session convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions for the remaining Contracting States, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Protocol with effect from the same date.

Article 28
Termination

1. This Protocol shall cease to be in force on the date when the number of Contracting States falls below seven or the total quantity of contributing oil received in the remaining Contracting States, including the quantities referred to in article 14, paragraph 1, falls below 350 million tons, whichever occurs earlier.

2. States which are bound by this Protocol on the day before the date it ceases to be in force shall enable the Supplementary Fund to exercise its functions as described in article 29 and shall, for that purpose only, remain bound by this Protocol.

Article 29

WINDING UP OF THE SUPPLEMENTARY FUND

1. If this Protocol ceases to be in force, the Supplementary Fund shall nevertheless:

(a) meet its obligations in respect of any incident occurring before the Protocol ceased to be in force;

(b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under paragraph 1*(a)*, including expenses for the administration of the Supplementary Fund necessary for this purpose.

2. The Assembly shall take all appropriate measures to complete the winding up of the Supplementary Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Supplementary Fund.

3. For the purposes of this article the Supplementary Fund shall remain a legal person.

Article 30

DEPOSITARY

1. This Protocol and any amendments accepted under article 24 shall be deposited with the Secretary-General.

2. The Secretary-General shall:

(a) inform all States which have signed or acceded to this Protocol of:

(i) each new signature or deposit of an instrument together with the date thereof;

(ii) the date of entry into force of this Protocol;

(iii) any proposal to amend the limit of the amount of compensation which has been made in accordance with article 24, paragraph 1;

(iv) any amendment which has been adopted in accordance with article 24, paragraph 4;

(v) any amendment deemed to have been accepted under article 24, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that article;

(vi) the deposit of an instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;

(vii) any communication called for by any article in this Protocol;

(b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to the Protocol.

3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 31

LANGUAGES

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this sixteenth day of May, two thousand and three.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments for that purpose, have signed this Protocol.

2. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Convention for the Safeguarding of the Intangible Cultural Heritage 2003. Done at Paris, 17 October 2003*

Referring to existing international human rights instruments, in particular to the Universal Declaration on Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights of 1966, and the International Covenant on Civil and Political Rights of 1966,

Considering the importance of the intangible cultural heritage as a mainspring of cultural diversity and a guarantee of sustainable development, as underscored in the UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore of 1989, in the UNESCO Universal Declaration on Cultural Diversity of 2001, and in the Istanbul Declaration of 2002 adopted by the Third Round Table of Ministers of Culture,

Considering the deep-seated interdependence between the intangible cultural heritage and the tangible cultural and natural heritage,

Recognizing that the processes of globalization and social transformation, alongside the conditions they create for renewed dialogue among communities, also give rise, as does the phenomenon of intolerance, to grave threats of deterioration, disappearance and destruction of the intangible cultural heritage, in particular owing to a lack of resources for safeguarding such heritage,

Being aware of the universal will and the common concern to safeguard the intangible cultural heritage of humanity,

Recognizing that communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and re-creation of the intangible cultural heritage, thus helping to enrich cultural diversity and human creativity,

Noting the far-reaching impact of the activities of UNESCO in establishing normative instruments for the protection of the cultural heritage, in particular the Convention for the Protection of the World Cultural and Natural Heritage of 1972,

Noting further that no binding multilateral instrument as yet exists for the safeguarding of the intangible cultural heritage,

Considering that existing international agreements, recommendations and resolutions concerning the cultural and natural heritage need to be effectively enriched and supplemented by means of new provisions relating to the intangible cultural heritage,

* Adopted at the 32nd session of the General Conference of the United Nations Educational, Scientific and Cultural Organization, which took place from 29 September to 17 October 2003, at Paris. Doc MISC/2003/CLT/CH/14.

Considering the need to build greater awareness, especially among the younger generations, of the importance of the intangible cultural heritage and of its safeguarding,

Considering that the international community should contribute, together with the States Parties to this Convention, to the safeguarding of such heritage in a spirit of cooperation and mutual assistance,

Recalling UNESCO's programmes relating to the intangible cultural heritage, in particular the Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity,

Considering the invaluable role of the intangible cultural heritage as a factor in bringing human beings closer together and ensuring exchange and understanding among them,

Adopts this Convention on this seventeenth day of October 2003.

I. GENERAL PROVISIONS

Article 1
Purposes of the Convention

The purposes of this Convention are:

(a) to safeguard the intangible cultural heritage;

(b) to ensure respect for the intangible cultural heritage of the communities, groups and individuals concerned;

(c) to raise awareness at the local, national and international levels of the importance of the intangible cultural heritage, and of ensuring mutual appreciation thereof;

(d) to provide for international cooperation and assistance.

Article 2
Definitions

For the purposes of this Convention,

1. The "intangible cultural heritage" means the practices, representations, expressions, knowledge, skills—as well as the instruments, objects, artefacts and cultural spaces associated therewith—that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development.

2. The "intangible cultural heritage," as defined in paragraph 1 above, is manifested *inter alia* in the following domains:

(a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage;

(b) performing arts;

(c) social practices, rituals and festive events;

(d) knowledge and practices concerning nature and the universe;

(e) traditional craftsmanship.

3. "Safeguarding" means measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.

4. "States Parties" means States which are bound by this Convention and among which this Convention is in force.

5. This Convention applies *mutatis mutandis* to the territories referred to in Article 33 which become Parties to this Convention in accordance with the conditions set out in that Article. To that extent the expression "States Parties" also refers to such territories.

Article 3

Relationship to other international instruments

Nothing in this Convention may be interpreted as:

(a) altering the status or diminishing the level of protection under the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage of World Heritage properties with which an item of the intangible cultural heritage is directly associated; or

(b) affecting the rights and obligations of States Parties deriving from any international instrument relating to intellectual property rights or to the use of biological and ecological resources to which they are parties.

II. ORGANS OF THE CONVENTION

Article 4

General Assembly of the States Parties

1. A General Assembly of the States Parties is hereby established, hereinafter referred to as "the General Assembly". The General Assembly is the sovereign body of this Convention.

2. The General Assembly shall meet in ordinary session every two years. It may meet in extraordinary session if it so decides or at the request either of the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage or of at least one-third of the States Parties.

3. The General Assembly shall adopt its own Rules of Procedure.

Article 5

Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage

1. An Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, hereinafter referred to as "the Committee", is hereby established within UNESCO. It shall be composed of representatives of 18 States Parties, elected by the States Parties

meeting in General Assembly, once this Convention enters into force in accordance with Article 34.

2. The number of States Members of the Committee shall be increased to 24 once the number of the States Parties to the Convention reaches 50.

Article 6

ELECTION AND TERMS OF OFFICE OF STATES MEMBERS OF THE COMMITTEE

1. The election of States Members of the Committee shall obey the principles of equitable geographical representation and rotation.

2. States Members of the Committee shall be elected for a term of four years by States Parties to the Convention meeting in General Assembly.

3. However, the term of office of half of the States Members of the Committee elected at the first election is limited to two years. These States shall be chosen by lot at the first election.

4. Every two years, the General Assembly shall renew half of the States Members of the Committee.

5. It shall also elect as many States Members of the Committee as required to fill vacancies.

6. A State Member of the Committee may not be elected for two consecutive terms.

7. States Members of the Committee shall choose as their representatives persons who are qualified in the various fields of the intangible cultural heritage.

Article 7

FUNCTIONS OF THE COMMITTEE

Without prejudice to other prerogatives granted to it by this Convention, the functions of the Committee shall be to:

(a) promote the objectives of the Convention, and to encourage and monitor the implementation thereof;

(b) provide guidance on best practices and make recommendations on measures for the safeguarding of the intangible cultural heritage;

(c) prepare and submit to the General Assembly for approval a draft plan for the use of the resources of the Fund, in accordance with Article 25;

(d) seek means of increasing its resources, and to take the necessary measures to this end, in accordance with Article 25;

(e) prepare and submit to the General Assembly for approval operational directives for the implementation of this Convention;

(f) examine, in accordance with Article 29, the reports submitted by States Parties, and to summarize them for the General Assembly;

(g) examine requests submitted by States Parties, and to decide thereon, in accordance with objective selection criteria to be established by the Committee and approved by the General Assembly for:

(i) inscription on the lists and proposals mentioned under Articles 16, 17 and 18;

(ii) the granting of international assistance in accordance with Article 22.

Article 8

WORKING METHODS OF THE COMMITTEE

1. The Committee shall be answerable to the General Assembly. It shall report to it on all its activities and decisions.

2. The Committee shall adopt its own Rules of Procedure by a two-thirds majority of its Members.

3. The Committee may establish, on a temporary basis, whatever *ad hoc* consultative bodies it deems necessary to carry out its task.

4. The Committee may invite to its meetings any public or private bodies, as well as private persons, with recognized competence in the various fields of the intangible cultural heritage, in order to consult them on specific matters.

Article 9

ACCREDITATION OF ADVISORY ORGANIZATIONS

1. The Committee shall propose to the General Assembly the accreditation of non-governmental organizations with recognized competence in the field of the intangible cultural heritage to act in an advisory capacity to the Committee.

2. The Committee shall also propose to the General Assembly the criteria for and modalities of such accreditation.

Article 10

THE SECRETARIAT

1. The Committee shall be assisted by the UNESCO Secretariat.

2. The Secretariat shall prepare the documentation of the General Assembly and of the Committee, as well as the draft agenda of their meetings, and shall ensure the implementation of their decisions.

III. SAFEGUARDING OF THE INTANGIBLE CULTURAL HERITAGE AT THE NATIONAL LEVEL

Article 11

ROLE OF STATES PARTIES

Each State Party shall:

(a) take the necessary measures to ensure the safeguarding of the intangible cultural heritage present in its territory;

(b) among the safeguarding measures referred to in Article 2, paragraph 3, identify and define the various elements of the intangible cultural heritage present in its territory, with the participation of communities, groups and relevant non-governmental organizations.

Article 12

INVENTORIES

1. To ensure identification with a view to safeguarding, each State Party shall draw up, in a manner geared to its own situation, one or more inventories of the intangible cultural heritage present in its territory. These inventories shall be regularly updated.

2. When each State Party periodically submits its report to the Committee, in accordance with Article 29, it shall provide relevant information on such inventories.

Article 13

OTHER MEASURES FOR SAFEGUARDING

To ensure the safeguarding, development and promotion of the intangible cultural heritage present in its territory, each State Party shall endeavour to:

(a) adopt a general policy aimed at promoting the function of the intangible cultural heritage in society, and at integrating the safeguarding of such heritage into planning programmes;

(b) designate or establish one or more competent bodies for the safeguarding of the intangible cultural heritage present in its territory;

(c) foster scientific, technical and artistic studies, as well as research methodologies, with a view to effective safeguarding of the intangible cultural heritage, in particular the intangible cultural heritage in danger;

(d) adopt appropriate legal, technical, administrative and financial measures aimed at:

(i) fostering the creation or strengthening of institutions for training in the management of the intangible cultural heritage and the transmission of such heritage through forums and spaces intended for the performance or expression thereof;

(ii) ensuring access to the intangible cultural heritage while respecting customary practices governing access to specific aspects of such heritage;

(iii) establishing documentation institutions for the intangible cultural heritage and facilitating access to them.

Article 14

EDUCATION, AWARENESS-RAISING AND CAPACITY-BUILDING

Each State Party shall endeavour, by all appropriate means, to:

(a) ensure recognition of, respect for, and enhancement of the intangible cultural heritage in society, in particular through:

(i) educational, awareness-raising and information programmes, aimed at the general public, in particular young people;

(ii) specific educational and training programmes within the communities and groups concerned;

(iii) capacity-building activities for the safeguarding of the intangible cultural heritage, in particular management and scientific research; and

(iv) non-formal means of transmitting knowledge;

(b) keep the public informed of the dangers threatening such heritage, and of the activities carried out in pursuance of this Convention;

(c) promote education for the protection of natural spaces and places of memory whose existence is necessary for expressing the intangible cultural heritage.

Article 15

PARTICIPATION OF COMMUNITIES, GROUPS AND INDIVIDUALS

Within the framework of its safeguarding activities of the intangible cultural heritage, each State Party shall endeavour to ensure the widest possible participation of communities, groups and, where appropriate, individuals that create, maintain and transmit such heritage, and to involve them actively in its management.

IV. SAFEGUARDING OF THE INTANGIBLE CULTURAL HERITAGE AT THE INTERNATIONAL LEVEL

Article 16

REPRESENTATIVE LIST OF THE INTANGIBLE CULTURAL HERITAGE OF HUMANITY

1. In order to ensure better visibility of the intangible cultural heritage and awareness of its significance, and to encourage dialogue which respects cultural diversity, the Committee, upon the proposal of the States Parties concerned, shall establish, keep up to date and publish a Representative List of the Intangible Cultural Heritage of Humanity.

2. The Committee shall draw up and submit to the General Assembly for approval the criteria for the establishment, updating and publication of this Representative List.

Article 17

LIST OF INTANGIBLE CULTURAL HERITAGE IN NEED OF URGENT SAFEGUARDING

1. With a view to taking appropriate safeguarding measures, the Committee shall establish, keep up to date and publish a List of Intangible Cultural Heritage in Need of Urgent Safeguarding, and shall inscribe such heritage on the List at the request of the State Party concerned.

2. The Committee shall draw up and submit to the General Assembly for approval the criteria for the establishment, updating and publication of this List.

3. In cases of extreme urgency—the objective criteria of which shall be approved by the General Assembly upon the proposal of the Committee—the Committee may inscribe an item of the heritage concerned on the List mentioned in paragraph 1, in consultation with the State Party concerned.

Article 18

PROGRAMMES, PROJECTS AND ACTIVITIES FOR THE SAFEGUARDING OF THE INTANGIBLE CULTURAL HERITAGE

1. On the basis of proposals submitted by States Parties, and in accordance with criteria to be defined by the Committee and approved by the General Assembly, the Committee shall periodically select and promote national, subregional and regional

programmes, projects and activities for the safeguarding of the heritage which it considers best reflect the principles and objectives of this Convention, taking into account the special needs of developing countries.

2. To this end, it shall receive, examine and approve requests for international assistance from States Parties for the preparation of such proposals.

3. The Committee shall accompany the implementation of such projects, programmes and activities by disseminating best practices using means to be determined by it.

V. INTERNATIONAL COOPERATION AND ASSISTANCE

Article 19

Cooperation

1. For the purposes of this Convention, international cooperation includes, *inter alia*, the exchange of information and experience, joint initiatives, and the establishment of a mechanism of assistance to States Parties in their efforts to safeguard the intangible cultural heritage.

2. Without prejudice to the provisions of their national legislation and customary law and practices, the States Parties recognize that the safeguarding of intangible cultural heritage is of general interest to humanity, and to that end undertake to cooperate at the bilateral, subregional, regional and international levels.

Article 20

Purposes of international assistance

International assistance may be granted for the following purposes:

(a) the safeguarding of the heritage inscribed on the List of Intangible Cultural Heritage in Need of Urgent Safeguarding;

(b) the preparation of inventories in the sense of Articles 11 and 12;

(c) support for programmes, projects and activities carried out at the national, subregional and regional levels aimed at the safeguarding of the intangible cultural heritage;

(d) any other purpose the Committee may deem necessary.

Article 21

Forms of international assistance

The assistance granted by the Committee to a State Party shall be governed by the operational directives foreseen in Article 7 and by the agreement referred to in Article 24, and may take the following forms:

(a) studies concerning various aspects of safeguarding;

(b) the provision of experts and practitioners;

(c) the training of all necessary staff;

(d) the elaboration of standard-setting and other measures;

(e) the creation and operation of infrastructures;

(f) the supply of equipment and know-how;

(g) other forms of financial and technical assistance, including, where appropriate, the granting of low-interest loans and donations.

Article 22

CONDITIONS GOVERNING INTERNATIONAL ASSISTANCE

1. The Committee shall establish the procedure for examining requests for international assistance, and shall specify what information shall be included in the requests, such as the measures envisaged and the interventions required, together with an assessment of their cost.

2. In emergencies, requests for assistance shall be examined by the Committee as a matter of priority.

3. In order to reach a decision, the Committee shall undertake such studies and consultations as it deems necessary.

Article 23

REQUESTS FOR INTERNATIONAL ASSISTANCE

1. Each State Party may submit to the Committee a request for international assistance for the safeguarding of the intangible cultural heritage present in its territory.

2. Such a request may also be jointly submitted by two or more States Parties.

3. The request shall include the information stipulated in Article 22, paragraph 1, together with the necessary documentation.

Article 24

ROLE OF BENEFICIARY STATES PARTIES

1. In conformity with the provisions of this Convention, the international assistance granted shall be regulated by means of an agreement between the beneficiary State Party and the Committee.

2. As a general rule, the beneficiary State Party shall, within the limits of its resources, share the cost of the safeguarding measures for which international assistance is provided.

3. The beneficiary State Party shall submit to the Committee a report on the use made of the assistance provided for the safeguarding of the intangible cultural heritage.

VI. INTANGIBLE CULTURAL HERITAGE FUND

Article 25

NATURE AND RESOURCES OF THE FUND

1. A "Fund for the Safeguarding of the Intangible Cultural Heritage", hereinafter referred to as "the Fund", is hereby established.

2. The Fund shall consist of funds-in-trust established in accordance with the Financial Regulations of UNESCO.

3. The resources of the Fund shall consist of:

(a) contributions made by States Parties;

(b) funds appropriated for this purpose by the General Conference of UNESCO;

(c) contributions, gifts or bequests which may be made by:

(i) other States;

(ii) organizations and programmes of the United Nations system, particularly the United Nations Development Programme, as well as other international organizations;

(iii) public or private bodies or individuals;

(d) any interest due on the resources of the Fund;

(e) funds raised through collections, and receipts from events organized for the benefit of the Fund;

(f) any other resources authorized by the Fund's regulations, to be drawn up by the Committee.

4. The use of resources by the Committee shall be decided on the basis of guidelines laid down by the General Assembly.

5. The Committee may accept contributions and other forms of assistance for general and specific purposes relating to specific projects, provided that those projects have been approved by the Committee.

6. No political, economic or other conditions which are incompatible with the objectives of this Convention may be attached to contributions made to the Fund.

Article 26

CONTRIBUTIONS OF STATES PARTIES TO THE FUND

1. Without prejudice to any supplementary voluntary contribution, the States Parties to this Convention undertake to pay into the Fund, at least every two years, a contribution, the amount of which, in the form of a uniform percentage applicable to all States, shall be determined by the General Assembly. This decision of the General Assembly shall be taken by a majority of the States Parties present and voting which have not made the declaration referred to in paragraph 2 of this Article. In no case shall the contribution of the State Party exceed 1% of its contribution to the regular budget of UNESCO.

2. However, each State referred to in Article 32 or in Article 33 of this Convention may declare, at the time of the deposit of its instruments of ratification, acceptance, approval or accession, that it shall not be bound by the provisions of paragraph 1 of this Article.

3. A State Party to this Convention which has made the declaration referred to in paragraph 2 of this Article shall endeavour to withdraw the said declaration by notifying the Director-General of UNESCO. However, the withdrawal of the declaration shall not take effect in regard to the contribution due by the State until the date on which the subsequent session of the General Assembly opens.

4. In order to enable the Committee to plan its operations effectively, the contributions of States Parties to this Convention which have made the declaration referred to in paragraph 2 of this Article shall be paid on a regular basis, at least every two years, and should be as close as possible to the contributions they would have owed if they had been bound by the provisions of paragraph 1 of this Article.

5. Any State Party to this Convention which is in arrears with the payment of its compulsory or voluntary contribution for the current year and the calendar year

immediately preceding it shall not be eligible as a Member of the Committee; this provision shall not apply to the first election. The term of office of any such State which is already a Member of the Committee shall come to an end at the time of the elections provided for in Article 6 of this Convention.

Article 27

VOLUNTARY SUPPLEMENTARY CONTRIBUTIONSTO THE FUND

States Parties wishing to provide voluntary contributions in addition to those foreseen under Article 26 shall inform the Committee, as soon as possible, so as to enable it to plan its operations accordingly.

Article 28

INTERNATIONAL FUND-RAISING CAMPAIGNS

The States Parties shall, insofar as is possible, lend their support to international fund-raising campaigns organized for the benefit of the Fund under the auspices of UNESCO.

VII. REPORTS

Article 29

REPORTS BY THE STATES PARTIES

The States Parties shall submit to the Committee, observing the forms and periodicity to be defined by the Committee, reports on the legislative, regulatory and other measures taken for the implementation of this Convention.

Article 30

REPORTS BY THE COMMITTEE

1. On the basis of its activities and the reports by States Parties referred to in Article 29, the Committee shall submit a report to the General Assembly at each of its sessions.

2. The report shall be brought to the attention of the General Conference of UNESCO.

VIII. TRANSITIONAL CLAUSE

Article 31

RELATIONSHIP TO THE PROCLAMATION OF MASTERPIECES OF THE ORAL AND INTANGIBLE HERITAGE OF HUMANITY

1. The Committee shall incorporate in the Representative List of the Intangible Cultural Heritage of Humanity the items proclaimed "Masterpieces of the Oral and Intangible Heritage of Humanity" before the entry into force of this Convention.

2. The incorporation of these items in the Representative List of the Intangible Cultural Heritage of Humanity shall in no way prejudge the criteria for future inscriptions decided upon in accordance with Article 16, paragraph 2.

3. No further Proclamation will be made after the entry into force of this Convention.

IX. FINAL CLAUSES

Article 32

Ratification, acceptance or approval

1. This Convention shall be subject to ratification, acceptance or approval by States Members of UNESCO in accordance with their respective constitutional procedures.

2. The instruments of ratification, acceptance or approval shall be deposited with the Director-General of UNESCO.

Article 33

Accession

1. This Convention shall be open to accession by all States not Members of UNESCO that are invited by the General Conference of UNESCO to accede to it.

2. This Convention shall also be open to accession by territories which enjoy full internal self-government recognized as such by the United Nations, but have not attained full independence in accordance with General Assembly resolution 1514 (XV), and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of such matters.

3. The instrument of accession shall be deposited with the Director-General of UNESCO.

Article 34

Entry into force

This Convention shall enter into force three months after the date of the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, but only with respect to those States that have deposited their respective instruments of ratification, acceptance, approval, or accession on or before that date. It shall enter into force with respect to any other State Party three months after the deposit of its instrument of ratification, acceptance, approval or accession.

Article 35

Federal or non-unitary constitutional systems

The following provisions shall apply to States Parties which have a federal or non-unitary constitutional system:

(a) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those States Parties which are not federal States;

(b) with regard to the provisions of this Convention, the implementation of which comes under the jurisdiction of individual constituent States, countries, provinces or cantons which are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such States, countries, provinces or cantons of the said provisions, with its recommendation for their adoption.

Article 36

DENUNCIATION

1. Each State Party may denounce this Convention.

2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of UNESCO.

3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation. It shall in no way affect the financial obligations of the denouncing State Party until the date on which the withdrawal takes effect.

Article 37

DEPOSITARY FUNCTIONS

The Director-General of UNESCO, as the Depositary of this Convention, shall inform the States Members of the Organization, the States not Members of the Organization referred to in Article 33, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance, approval or accession provided for in Articles 32 and 33, and of the denunciations provided for in Article 36.

Article 38

AMENDMENTS

1. A State Party may, by written communication addressed to the Director-General, propose amendments to this Convention. The Director-General shall circulate such communication to all States Parties. If, within six months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Director-General shall present such proposal to the next session of the General Assembly for discussion and possible adoption.

2. Amendments shall be adopted by a two-thirds majority of States Parties present and voting.

3. Once adopted, amendments to this Convention shall be submitted for ratification, acceptance, approval or accession to the States Parties.

4. Amendments shall enter into force, but solely with respect to the States Parties that have ratified, accepted, approved or acceded to them, three months after the deposit of the instruments referred to in paragraph 3 of this Article by two-thirds of the States Parties. Thereafter, for each State Party that ratifies, accepts, approves or accedes to an amendment, the said amendment shall enter into force three months after the date of deposit by that State Party of its instrument of ratification, acceptance, approval or accession.

5. The procedure set out in paragraphs 3 and 4 shall not apply to amendments to Article 5 concerning the number of States Members of the Committee. These amendments shall enter into force at the time they are adopted.

6. A State which becomes a Party to this Convention after the entry into force of amendments in conformity with paragraph 4 of this Article shall, failing an expression of different intention, be considered:

(a) as a Party to this Convention as so amended; and

(b) as a Party to the unamended Convention in relation to any State Party not bound by the amendments.

Article 39

AUTHORITATIVE TEXTS

This Convention has been drawn up in Arabic, Chinese, English, French, Russian and Spanish, the six texts being equally authoritative.

Article 40

REGISTRATION

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of UNESCO.

DONE at Paris, this third day of November 2003, in two authentic copies bearing the signature of the President of the 32nd session of the General Conference and of the Director-General of UNESCO. These two copies shall be deposited in the archives of UNESCO. Certified true copies shall be delivered to all the States referred to in Articles 32 and 33, as well as to the United Nations.

3. WORLD HEALTH ORGANIZATION

WHO Framework Convention on Tobacco Control. Done at Geneva, 21 May 2003*

PREAMBLE

The Parties to this Convention,

Determined to give priority to their right to protect public health,

Recognizing that the spread of the tobacco epidemic is a global problem with serious consequences for public health that calls for the widest possible international cooperation and the participation of all countries in an effective, appropriate and comprehensive international response,

Reflecting the concern of the international community about the devastating worldwide health, social, economic and environmental consequences of tobacco consumption and exposure to tobacco smoke,

Seriously concerned about the increase in the worldwide consumption and production of cigarettes and other tobacco products, particularly in developing countries, as well as about the burden this places on families, on the poor, and on national health systems,

Recognizing that scientific evidence has unequivocally established that tobacco consumption and exposure to tobacco smoke cause death, disease and disability, and that there is a time lag between the exposure to smoking and the other uses of tobacco products and the onset of tobacco-related diseases,

Recognizing also that cigarettes and some other products containing tobacco are highly engineered so as to create and maintain dependence, and that many of the compounds they contain and the smoke they produce are pharmacologically active, toxic, mutagenic and

* Adopted at the 56th World Health Assembly, which took place from 19 to 28 May 2003, at Geneva. Doc Depositary notification C.N.574.2003.TREATIES-1 of 13 June 2003.

carcinogenic, and that tobacco dependence is separately classified as a disorder in major international classifications of diseases,

Acknowledging that there is clear scientific evidence that prenatal exposure to tobacco smoke causes adverse health and developmental conditions for children,

Deeply concerned about the escalation in smoking and other forms of tobacco consumption by children and adolescents worldwide, particularly smoking at increasingly early ages,

Alarmed by the increase in smoking and other forms of tobacco consumption by women and young girls worldwide and keeping in mind the need for full participation of women at all levels of policy-making and implementation and the need for gender-specific tobacco control strategies,

Deeply concerned about the high levels of smoking and other forms of tobacco consumption by indigenous peoples,

Seriously concerned about the impact of all forms of advertising, promotion and sponsorship aimed at encouraging the use of tobacco products,

Recognizing that cooperative action is necessary to eliminate all forms of illicit trade in cigarettes and other tobacco products, including smuggling, illicit manufacturing and counterfeiting,

Acknowledging that tobacco control at all levels and particularly in developing countries and in countries with economies in transition requires sufficient financial and technical resources commensurate with the current and projected need for tobacco control activities,

Recognizing the need to develop appropriate mechanisms to address the long-term social and economic implications of successful tobacco demand reduction strategies,

Mindful of the social and economic difficulties that tobacco control programmes may engender in the medium and long term in some developing countries and countries with economies in transition, and recognizing their need for technical and financial assistance in the context of nationally developed strategies for sustainable development,

Conscious of the valuable work being conducted by many States on tobacco control and commending the leadership of the World Health Organization as well as the efforts of other organizations and bodies of the United Nations system and other international and regional intergovernmental organizations in developing measures on tobacco control,

Emphasizing the special contribution of nongovernmental organizations and other members of civil society not affiliated with the tobacco industry, including health professional bodies, women's, youth, environmental and consumer groups, and academic and health care institutions, to tobacco control efforts nationally and internationally and the vital importance of their participation in national and international tobacco control efforts,

Recognizing the need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts and the need to be informed of activities of the tobacco industry that have a negative impact on tobacco control efforts,

Recalling Article 12 of the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly on 16 December 1966, which

states that it is the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,

Recalling also the preamble to the Constitution of the World Health Organization, which states that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition,

Determined to promote measures of tobacco control based on current and relevant scientific, technical and economic considerations,

Recalling that the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly on 18 December 1979, provides that States Parties to that Convention shall take appropriate measures to eliminate discrimination against women in the field of health care,

Recalling further that the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989, provides that States Parties to that Convention recognize the right of the child to the enjoyment of the highest attainable standard of health,

Have agreed, as follows:

PART I: INTRODUCTION

Article 1

Use of terms

For the purposes of this Convention:

(a) "illicit trade" means any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase including any practice or conduct intended to facilitate such activity;

(b) "regional economic integration organization" means an organization that is composed of several sovereign states, and to which its Member States have transferred competence over a range of matters, including the authority to make decisions binding on its Member States in respect of those matters;

(c) "tobacco advertising and promotion" means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;

(d) "tobacco control" means a range of supply, demand and harm reduction strategies that aim to improve the health of a population by eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke;

(e) "tobacco industry" means tobacco manufacturers, wholesale distributors and importers of tobacco products;

(f) "tobacco products" means products entirely or partly made of the leaf tobacco as raw material which are manufactured to be used for smoking, sucking, chewing or snuffing;

(g) "tobacco sponsorship" means any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;

Article 2

Relationship between this Convention and other agreements and legal instruments

1. In order to better protect human health, Parties are encouraged to implement measures beyond those required by this Convention and its protocols, and nothing in these instruments shall prevent a Party from imposing stricter requirements that are consistent with their provisions and are in accordance with international law.

2. The provisions of the Convention and its protocols shall in no way affect the right of Parties to enter into bilateral or multilateral agreements, including regional or subregional agreements, on issues relevant or additional to the Convention and its protocols, provided that such agreements are compatible with their obligations under the Convention and its protocols. The Parties concerned shall communicate such agreements to the Conference of the Parties through the Secretariat.

PART II: OBJECTIVE, GUIDING PRINCIPLES AND GENERAL OBLIGATIONS

Article 3

Objective

The objective of this Convention and its protocols is to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke.

Article 4

Guiding principles

To achieve the objective of this Convention and its protocols and to implement its provisions, the Parties shall be guided, *inter alia*, by the principles set out below:

1. Every person should be informed of the health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke and effective legislative, executive, administrative or other measures should be contemplated at the appropriate governmental level to protect all persons from exposure to tobacco smoke.

2. Strong political commitment is necessary to develop and support, at the national, regional and international levels, comprehensive multisectoral measures and coordinated responses, taking into consideration:

(a) the need to take measures to protect all persons from exposure to tobacco smoke;

(b) the need to take measures to prevent the initiation, to promote and support cessation, and to decrease the consumption of tobacco products in any form;

(c) the need to take measures to promote the participation of indigenous individuals and communities in the development, implementation and evaluation of tobacco control programmes that are socially and culturally appropriate to their needs and perspectives; and

(d) the need to take measures to address gender-specific risks when developing tobacco control strategies.

3. International cooperation, particularly transfer of technology, knowledge and financial assistance and provision of related expertise, to establish and implement effective tobacco control programmes, taking into consideration local culture, as well as social, economic, political and legal factors, is an important part of the Convention.

4. Comprehensive multisectoral measures and responses to reduce consumption of all tobacco products at the national, regional and international levels are essential so as to prevent, in accordance with public health principles, the incidence of diseases, premature disability and mortality due to tobacco consumption and exposure to tobacco smoke.

5. Issues relating to liability, as determined by each Party within its jurisdiction, are an important part of comprehensive tobacco control.

6. The importance of technical and financial assistance to aid the economic transition of tobacco growers and workers whose livelihoods are seriously affected as a consequence of tobacco control programmes in developing country Parties, as well as Parties with economies in transition, should be recognized and addressed in the context of nationally developed strategies for sustainable development.

7. The participation of civil society is essential in achieving the objective of the Convention and its protocols.

Article 5

General obligations

1. Each Party shall develop, implement, periodically update and review comprehensive multisectoral national tobacco control strategies, plans and programmes in accordance with this Convention and the protocols to which it is a Party.

2. Towards this end, each Party shall, in accordance with its capabilities:

(a) establish or reinforce and finance a national coordinating mechanism or focal points for tobacco control; and

(b) adopt and implement effective legislative, executive, administrative and/or other measures and cooperate, as appropriate, with other Parties in developing appropriate policies for preventing and reducing tobacco consumption, nicotine addiction and exposure to tobacco smoke.

3. In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.

4. The Parties shall cooperate in the formulation of proposed measures, procedures and guidelines for the implementation of the Convention and the protocols to which they are Parties.

5. The Parties shall cooperate, as appropriate, with competent international and regional intergovernmental organizations and other bodies to achieve the objectives of the Convention and the protocols to which they are Parties.

6. The Parties shall, within means and resources at their disposal, cooperate to raise financial resources for effective implementation of the Convention through bilateral and multilateral funding mechanisms.

PART III: MEASURES RELATING TO THE REDUCTION OF DEMAND FOR TOBACCO

Article 6

Price and tax measures to reduce the demand for tobacco

1. The Parties recognize that price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons.

2. Without prejudice to the sovereign right of the Parties to determine and establish their taxation policies, each Party should take account of its national health objectives concerning tobacco control and adopt or maintain, as appropriate, measures which may include:

(a) implementing tax policies and, where appropriate, price policies, on tobacco products so as to contribute to the health objectives aimed at reducing tobacco consumption; and

(b) prohibiting or restricting, as appropriate, sales to and/or importations by international travellers of tax- and duty-free tobacco products.

3. The Parties shall provide rates of taxation for tobacco products and trends in tobacco consumption in their periodic reports to the Conference of the Parties, in accordance with Article 21.

Article 7

Non-price measures to reduce the demand for tobacco

The Parties recognize that comprehensive non-price measures are an effective and important means of reducing tobacco consumption. Each Party shall adopt and implement effective legislative, executive, administrative or other measures necessary to implement its obligations pursuant to Articles 8 to 13 and shall cooperate, as appropriate, with each other directly or through competent international bodies with a view to their implementation. The Conference of the Parties shall propose appropriate guidelines for the implementation of the provisions of these Articles.

Article 8

Protection from exposure to tobacco smoke

1. Parties recognize that scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease and disability.

2. Each Party shall adopt and implement in areas of existing national jurisdiction as determined by national law and actively promote at other jurisdictional levels the adoption and implementation of effective legislative, executive, administrative and/or other measures, providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and, as appropriate, other public places.

Article 9

REGULATION OF THE CONTENTS OF TOBACCO PRODUCTS

The Conference of the Parties, in consultation with competent international bodies, shall propose guidelines for testing and measuring the contents and emissions of tobacco products, and for the regulation of these contents and emissions. Each Party shall, where approved by competent national authorities, adopt and implement effective legislative, executive and administrative or other measures for such testing and measuring, and for such regulation.

Article 10

REGULATION OF TOBACCO PRODUCT DISCLOSURES

Each Party shall, in accordance with its national law, adopt and implement effective legislative, executive, administrative or other measures requiring manufacturers and importers of tobacco products to disclose to governmental authorities information about the contents and emissions of tobacco products. Each Party shall further adopt and implement effective measures for public disclosure of information about the toxic constituents of the tobacco products and the emissions that they may produce.

Article 11

PACKAGING AND LABELLING OF TOBACCO PRODUCTS

1. Each Party shall, within a period of three years after entry into force of this Convention for that Party, adopt and implement, in accordance with its national law, effective measures to ensure that:

(a) tobacco product packaging and labelling do not promote a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions, including any term, descriptor, trademark, figurative or any other sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products. These may include terms such as "low tar", "light", "ultra-light", or "mild"; and

(b) each unit packet and package of tobacco products and any outside packaging and labelling of such products also carry health warnings describing the harmful effects of tobacco use, and may include other appropriate messages. These warnings and messages:

(i) shall be approved by the competent national authority,

(ii) shall be rotating,

(iii) shall be large, clear, visible and legible,

(iv) should be 50% or more of the principal display areas but shall be no less than 30% of the principal display areas,

(v) may be in the form of or include pictures or pictograms.

2. Each unit packet and package of tobacco products and any outside packaging and labelling of such products shall, in addition to the warnings specified in paragraph 1*(b)* of this Article, contain information on relevant constituents and emissions of tobacco products as defined by national authorities.

3. Each Party shall require that the warnings and other textual information specified in paragraphs 1*(b)* and paragraph 2 of this Article will appear on each unit packet and

package of tobacco products and any outside packaging and labelling of such products in its principal language or languages.

4. For the purposes of this Article, the term "outside packaging and labelling" in relation to tobacco products applies to any packaging and labelling used in the retail sale of the product.

Article 12

Education, communication, training and public awareness

Each Party shall promote and strengthen public awareness of tobacco control issues, using all available communication tools, as appropriate. Towards this end, each Party shall adopt and implement effective legislative, executive, administrative or other measures to promote:

(a) broad access to effective and comprehensive educational and public awareness programmes on the health risks including the addictive characteristics of tobacco consumption and exposure to tobacco smoke;

(b) public awareness about the health risks of tobacco consumption and exposure to tobacco smoke, and about the benefits of the cessation of tobacco use and tobacco-free lifestyles as specified in Article 14.2;

(c) public access, in accordance with national law, to a wide range of information on the tobacco industry as relevant to the objective of this Convention;

(d) effective and appropriate training or sensitization and awareness programmes on tobacco control addressed to persons such as health workers, community workers, social workers, media professionals, educators, decision-makers, administrators and other concerned persons;

(e) awareness and participation of public and private agencies and nongovernmental organizations not affiliated with the tobacco industry in developing and implementing intersectoral programmes and strategies for tobacco control; and

(f) public awareness of and access to information regarding the adverse health, economic, and environmental consequences of tobacco production and consumption.

Article 13

Tobacco advertising, promotion and sponsorship

1. Parties recognize that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products.

2. Each Party shall, in accordance with its constitution or constitutional principles, undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship. This shall include, subject to the legal environment and technical means available to that Party, a comprehensive ban on cross-border advertising, promotion and sponsorship originating from its territory. In this respect, within the period of five years after entry into force of this Convention for that Party, each Party shall undertake appropriate legislative, executive, administrative and/or other measures and report accordingly in conformity with Article 21.

3. A Party that is not in a position to undertake a comprehensive ban due to its constitution or constitutional principles shall apply restrictions on all tobacco advertising,

promotion and sponsorship. This shall include, subject to the legal environment and technical means available to that Party, restrictions or a comprehensive ban on advertising, promotion and sponsorship originating from its territory with cross-border effects. In this respect, each Party shall undertake appropriate legislative, executive, administrative and/or other measures and report accordingly in conformity with Article 21.

4. As a minimum, and in accordance with its constitution or constitutional principles, each Party shall:

(a) prohibit all forms of tobacco advertising, promotion and sponsorship that promote a tobacco product by any means that are false, misleading or deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions;

(b) require that health or other appropriate warnings or messages accompany all tobacco advertising and, as appropriate, promotion and sponsorship;

(c) restrict the use of direct or indirect incentives that encourage the purchase of tobacco products by the public;

(d) require, if it does not have a comprehensive ban, the disclosure to relevant governmental authorities of expenditures by the tobacco industry on advertising, promotion and sponsorship not yet prohibited. Those authorities may decide to make those figures available, subject to national law, to the public and to the Conference of the Parties, pursuant to Article 21;

(e) undertake a comprehensive ban or, in the case of a Party that is not in a position to undertake a comprehensive ban due to its constitution or constitutional principles, restrict tobacco advertising, promotion and sponsorship on radio, television, print media and, as appropriate, other media, such as the Internet, within a period of five years; and

(f) prohibit, or in the case of a Party that is not in a position to prohibit due to its constitution or constitutional principles restrict, tobacco sponsorship of international events, activities and/or participants therein.

5. Parties are encouraged to implement measures beyond the obligations set out in paragraph 4.

6. Parties shall cooperate in the development of technologies and other means necessary to facilitate the elimination of cross-border advertising.

7. Parties which have a ban on certain forms of tobacco advertising, promotion and sponsorship have the sovereign right to ban those forms of cross-border tobacco advertising, promotion and sponsorship entering their territory and to impose equal penalties as those applicable to domestic advertising, promotion and sponsorship originating from their territory in accordance with their national law. This paragraph does not endorse or approve of any particular penalty.

8. Parties shall consider the elaboration of a protocol setting out appropriate measures that require international collaboration for a comprehensive ban on cross-border advertising, promotion and sponsorship.

Article 14

DEMAND REDUCTION MEASURES CONCERNING TOBACCO DEPENDENCE AND CESSATION

1. Each Party shall develop and disseminate appropriate, comprehensive and integrated guidelines based on scientific evidence and best practices, taking into account national circumstances and priorities, and shall take effective measures to promote cessation of tobacco use and adequate treatment for tobacco dependence.

2. Towards this end, each Party shall endeavour to:

(a) design and implement effective programmes aimed at promoting the cessation of tobacco use, in such locations as educational institutions, health care facilities, workplaces and sporting environments;

(b) include diagnosis and treatment of tobacco dependence and counselling services on cessation of tobacco use in national health and education programmes, plans and strategies, with the participation of health workers, community workers and social workers as appropriate;

(c) establish in health care facilities and rehabilitation centres programmes for diagnosing, counselling, preventing and treating tobacco dependence; and

(d) collaborate with other Parties to facilitate accessibility and affordability for treatment of tobacco dependence including pharmaceutical products pursuant to Article 22. Such products and their constituents may include medicines, products used to administer medicines and diagnostics when appropriate.

PART IV: MEASURES RELATING TO THE REDUCTION OF THE SUPPLY OF TOBACCO

Article 15

ILLICIT TRADE IN TOBACCO PRODUCTS

1. The Parties recognize that the elimination of all forms of illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting, and the development and implementation of related national law, in addition to subregional, regional and global agreements, are essential components of tobacco control.

2. Each Party shall adopt and implement effective legislative, executive, administrative or other measures to ensure that all unit packets and packages of tobacco products and any outside packaging of such products are marked to assist Parties in determining the origin of tobacco products, and in accordance with national law and relevant bilateral or multilateral agreements, assist Parties in determining the point of diversion and monitor, document and control the movement of tobacco products and their legal status. In addition, each Party shall:

(a) require that unit packets and packages of tobacco products for retail and wholesale use that are sold on its domestic market carry the statement: "Sales only allowed in (insert name of the country, subnational, regional or federal unit)" or carry any other effective marking indicating the final destination or which would assist authorities in determining whether the product is legally for sale on the domestic market; and

(b) consider, as appropriate, developing a practical tracking and tracing regime that would further secure the distribution system and assist in the investigation of illicit trade.

3. Each Party shall require that the packaging information or marking specified in paragraph 2 of this Article shall be presented in legible form and/or appear in its principal language or languages.

4. With a view to eliminating illicit trade in tobacco products, each Party shall:

(a) monitor and collect data on cross-border trade in tobacco products, including illicit trade, and exchange information among customs, tax and other authorities, as appropriate, and in accordance with national law and relevant applicable bilateral or multilateral agreements;

(b) enact or strengthen legislation, with appropriate penalties and remedies, against illicit trade in tobacco products, including counterfeit and contraband cigarettes;

(c) take appropriate steps to ensure that all confiscated manufacturing equipment, counterfeit and contraband cigarettes and other tobacco products are destroyed, using environmentally-friendly methods where feasible, or disposed of in accordance with national law;

(d) adopt and implement measures to monitor, document and control the storage and distribution of tobacco products held or moving under suspension of taxes or duties within its jurisdiction; and

(e) adopt measures as appropriate to enable the confiscation of proceeds derived from the illicit trade in tobacco products.

5. Information collected pursuant to subparagraphs 4*(a)* and 4*(d)* of this Article shall, as appropriate, be provided in aggregate form by the Parties in their periodic reports to the Conference of the Parties, in accordance with Article 21.

6. The Parties shall, as appropriate and in accordance with national law, promote cooperation between national agencies, as well as relevant regional and international intergovernmental organizations as it relates to investigations, prosecutions and proceedings, with a view to eliminating illicit trade in tobacco products. Special emphasis shall be placed on cooperation at regional and subregional levels to combat illicit trade of tobacco products.

7. Each Party shall endeavour to adopt and implement further measures including licensing, where appropriate, to control or regulate the production and distribution of tobacco products in order to prevent illicit trade.

Article 16

Sales to and by minors

1. Each Party shall adopt and implement effective legislative, executive, administrative or other measures at the appropriate government level to prohibit the sales of tobacco products to persons under the age set by domestic law, national law or eighteen. These measures may include:

(a) requiring that all sellers of tobacco products place a clear and prominent indicator inside their point of sale about the prohibition of tobacco sales to minors and, in case of doubt, request that each tobacco purchaser provide appropriate evidence of having reached full legal age;

(b) banning the sale of tobacco products in any manner by which they are directly accessible, such as store shelves;

(c) prohibiting the manufacture and sale of sweets, snacks, toys or any other objects in the form of tobacco products which appeal to minors; and

(d) ensuring that tobacco vending machines under its jurisdiction are not accessible to minors and do not promote the sale of tobacco products to minors.

2. Each Party shall prohibit or promote the prohibition of the distribution of free tobacco products to the public and especially minors.

3. Each Party shall endeavour to prohibit the sale of cigarettes individually or in small packets which increase the affordability of such products to minors.

4. The Parties recognize that in order to increase their effectiveness, measures to prevent tobacco product sales to minors should, where appropriate, be implemented in conjunction with other provisions contained in this Convention.

5. When signing, ratifying, accepting, approving or acceding to the Convention or at any time thereafter, a Party may, by means of a binding written declaration, indicate its commitment to prohibit the introduction of tobacco vending machines within its jurisdiction or, as appropriate, to a total ban on tobacco vending machines. The declaration made pursuant to this Article shall be circulated by the Depositary to all Parties to the Convention.

6. Each Party shall adopt and implement effective legislative, executive, administrative or other measures, including penalties against sellers and distributors, in order to ensure compliance with the obligations contained in paragraphs 1–5 of this Article.

7. Each Party should, as appropriate, adopt and implement effective legislative, executive, administrative or other measures to prohibit the sales of tobacco products by persons under the age set by domestic law, national law or eighteen.

Article 17

Provision of support for economically viable alternative activities

Parties shall, in cooperation with each other and with competent international and regional intergovernmental organizations, promote, as appropriate, economically viable alternatives for tobacco workers, growers and, as the case may be, individual sellers.

PART V: PROTECTION OF THE ENVIRONMENT

Article 18

Protection of the environment and the health of persons

In carrying out their obligations under this Convention, the Parties agree to have due regard to the protection of the environment and the health of persons in relation to the environment in respect of tobacco cultivation and manufacture within their respective territories.

PART VI: QUESTIONS RELATED TO LIABILITY

Article 19
Liability

1. For the purpose of tobacco control, the Parties shall consider taking legislative action or promoting their existing laws, where necessary, to deal with criminal and civil liability, including compensation where appropriate.

2. Parties shall cooperate with each other in exchanging information through the Conference of the Parties in accordance with Article 21 including:

(a) information on the health effects of the consumption of tobacco products and exposure to tobacco smoke in accordance with Article 20.3*(a)*; and

(b) information on legislation and regulations in force as well as pertinent jurisprudence.

3. The Parties shall, as appropriate and mutually agreed, within the limits of national legislation, policies, legal practices and applicable existing treaty arrangements, afford one another assistance in legal proceedings relating to civil and criminal liability consistent with this Convention.

4. The Convention shall in no way affect or limit any rights of access of the Parties to each other's courts where such rights exist.

5. The Conference of the Parties may consider, if possible, at an early stage, taking account of the work being done in relevant international fora, issues related to liability including appropriate international approaches to these issues and appropriate means to support, upon request, the Parties in their legislative and other activities in accordance with this Article.

PART VII: SCIENTIFIC AND TECHNICAL COOPERATION AND COMMUNICATION OF INFORMATION

Article 20
Research, surveillance and exchange of information

1. The Parties undertake to develop and promote national research and to coordinate research programmes at the regional and international levels in the field of tobacco control. Towards this end, each Party shall:

(a) initiate and cooperate in, directly or through competent international and regional intergovernmental organizations and other bodies, the conduct of research and scientific assessments, and in so doing promote and encourage research that addresses the determinants and consequences of tobacco consumption and exposure to tobacco smoke as well as research for identification of alternative crops; and

(b) promote and strengthen, with the support of competent international and regional intergovernmental organizations and other bodies, training and support for all those engaged in tobacco control activities, including research, implementation and evaluation.

2. The Parties shall establish, as appropriate, programmes for national, regional and global surveillance of the magnitude, patterns, determinants and consequences

of tobacco consumption and exposure to tobacco smoke. Towards this end, the Parties should integrate tobacco surveillance programmes into national, regional and global health surveillance programmes so that data are comparable and can be analysed at the regional and international levels, as appropriate.

3. Parties recognize the importance of financial and technical assistance from international and regional intergovernmental organizations and other bodies. Each Party shall endeavour to:

(a) establish progressively a national system for the epidemiological surveillance of tobacco consumption and related social, economic and health indicators;

(b) cooperate with competent international and regional intergovernmental organizations and other bodies, including governmental and nongovernmental agencies, in regional and global tobacco surveillance and exchange of information on the indicators specified in paragraph 3*(a)* of this Article; and

(c) cooperate with the World Health Organization in the development of general guidelines or procedures for defining the collection, analysis and dissemination of tobacco-related surveillance data.

4. The Parties shall, subject to national law, promote and facilitate the exchange of publicly available scientific, technical, socioeconomic, commercial and legal information, as well as information regarding practices of the tobacco industry and the cultivation of tobacco, which is relevant to this Convention, and in so doing shall take into account and address the special needs of developing country Parties and Parties with economies in transition. Each Party shall endeavour to:

(a) progressively establish and maintain an updated database of laws and regulations on tobacco control and, as appropriate, information about their enforcement, as well as pertinent jurisprudence, and cooperate in the development of programmes for regional and global tobacco control;

(b) progressively establish and maintain updated data from national surveillance programmes in accordance with paragraph 3*(a)* of this Article; and

(c) cooperate with competent international organizations to progressively establish and maintain a global system to regularly collect and disseminate information on tobacco production, manufacture and the activities of the tobacco industry which have an impact on the Convention or national tobacco control activities.

5. Parties should cooperate in regional and international intergovernmental organizations and financial and development institutions of which they are members, to promote and encourage provision of technical and financial resources to the Secretariat to assist developing country Parties and Parties with economies in transition to meet their commitments on research, surveillance and exchange of information.

Article 21

Reporting and exchange of information

1. Each Party shall submit to the Conference of the Parties, through the Secretariat, periodic reports on its implementation of this Convention, which should include the following:

(a) information on legislative, executive, administrative or other measures taken to implement the Convention;

(b) information, as appropriate, on any constraints or barriers encountered in its implementation of the Convention, and on the measures taken to overcome these barriers;

(c) information, as appropriate, on financial and technical assistance provided or received for tobacco control activities;

(d) information on surveillance and research as specified in Article 20; and

(e) information specified in Articles 6.3, 13.2, 13.3, 13.4*(d)*, 15.5 and 19.2.

2. The frequency and format of such reports by all Parties shall be determined by the Conference of the Parties. Each Party shall make its initial report within two years of the entry into force of the Convention for that Party.

3. The Conference of the Parties, pursuant to Articles 22 and 26, shall consider arrangements to assist developing country Parties and Parties with economies in transition, at their request, in meeting their obligations under this Article.

4. The reporting and exchange of information under the Convention shall be subject to national law regarding confidentiality and privacy. The Parties shall protect, as mutually agreed, any confidential information that is exchanged.

Article 22

COOPERATION IN THE SCIENTIFIC, TECHNICAL, AND LEGAL FIELDS AND PROVISION OF RELATED EXPERTISE

1. The Parties shall cooperate directly or through competent international bodies to strengthen their capacity to fulfill the obligations arising from this Convention, taking into account the needs of developing country Parties and Parties with economies in transition. Such cooperation shall promote the transfer of technical, scientific and legal expertise and technology, as mutually agreed, to establish and strengthen national tobacco control strategies, plans and programmes aiming at, *inter alia*:

(a) facilitation of the development, transfer and acquisition of technology, knowledge, skills, capacity and expertise related to tobacco control;

(b) provision of technical, scientific, legal and other expertise to establish and strengthen national tobacco control strategies, plans and programmes, aiming at implementation of the Convention through, *inter alia*:

(i) assisting, upon request, in the development of a strong legislative foundation as well as technical programmes, including those on prevention of initiation, promotion of cessation and protection from exposure to tobacco smoke;

(ii) assisting, as appropriate, tobacco workers in the development of appropriate economically and legally viable alternative livelihoods in an economically viable manner; and

(iii) assisting, as appropriate, tobacco growers in shifting agricultural production to alternative crops in an economically viable manner;

(c) support for appropriate training or sensitization programmes for appropriate personnel in accordance with Article 12;

(d) provision, as appropriate, of the necessary material, equipment and supplies, as well as logistical support, for tobacco control strategies, plans and programmes;

(e) identification of methods for tobacco control, including comprehensive treatment of nicotine addiction; and

(f) promotion, as appropriate, of research to increase the affordability of comprehensive treatment of nicotine addiction.

2. The Conference of the Parties shall promote and facilitate transfer of technical, scientific and legal expertise and technology with the financial support secured in accordance with Article 26.

PART VIII: INSTITUTIONAL ARRANGEMENTS AND FINANCIAL RESOURCES

Article 23

Conference of the Parties

1. A Conference of the Parties is hereby established. The first session of the Conference shall be convened by the World Health Organization not later than one year after the entry into force of this Convention. The Conference will determine the venue and timing of subsequent regular sessions at its first session.

2. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the Secretariat of the Convention, it is supported by at least one-third of the Parties.

3. The Conference of the Parties shall adopt by consensus its Rules of Procedure at its first session.

4. The Conference of the Parties shall by consensus adopt financial rules for itself as well as governing the funding of any subsidiary bodies it may establish as well as financial provisions governing the functioning of the Secretariat. At each ordinary session, it shall adopt a budget for the financial period until the next ordinary session.

5. The Conference of the Parties shall keep under regular review the implementation of the Convention and take the decisions necessary to promote its effective implementation and may adopt protocols, annexes and amendments to the Convention, in accordance with Articles 28, 29 and 33. Towards this end, it shall:

(a) promote and facilitate the exchange of information pursuant to Articles 20 and 21;

(b) promote and guide the development and periodic refinement of comparable methodologies for research and the collection of data, in addition to those provided for in Article 20, relevant to the implementation of the Convention;

(c) promote, as appropriate, the development, implementation and evaluation of strategies, plans, and programmes, as well as policies, legislation and other measures;

(d) consider reports submitted by the Parties in accordance with Article 21 and adopt regular reports on the implementation of the Convention;

(e) promote and facilitate the mobilization of financial resources for the implementation of the Convention in accordance with Article 26;

(f) establish such subsidiary bodies as are necessary to achieve the objective of the Convention;

(g) request, where appropriate, the services and cooperation of, and information provided by, competent and relevant organizations and bodies of the United Nations system and other international and regional intergovernmental organizations and nongovernmental organizations and bodies as a means of strengthening the implementation of the Convention; and

(h) consider other action, as appropriate, for the achievement of the objective of the Convention in the light of experience gained in its implementation.

6. The Conference of the Parties shall establish the criteria for the participation of observers at its proceedings.

Article 24

SECRETARIAT

1. The Conference of the Parties shall designate a permanent secretariat and make arrangements for its functioning. The Conference of the Parties shall endeavour to do so at its first session.

2. Until such time as a permanent secretariat is designated and established, secretariat functions under this Convention shall be provided by the World Health Organization.

3. Secretariat functions shall be:

(a) to make arrangements for sessions of the Conference of the Parties and any subsidiary bodies and to provide them with services as required;

(b) to transmit reports received by it pursuant to the Convention;

(c) to provide support to the Parties, particularly developing country Parties and Parties with economies in transition, on request, in the compilation and communication of information required in accordance with the provisions of the Convention;

(d) to prepare reports on its activities under the Convention under the guidance of the Conference of the Parties and submit them to the Conference of the Parties;

(e) to ensure, under the guidance of the Conference of the Parties, the necessary coordination with the competent international and regional intergovernmental organizations and other bodies;

(f) to enter, under the guidance of the Conference of the Parties, into such administrative or contractual arrangements as may be required for the effective discharge of its functions; and

(g) to perform other secretariat functions specified by the Convention and by any of its protocols and such other functions as may be determined by the Conference of the Parties.

Article 25
Relations between the Conference of the Parties and intergovernmental organizations

In order to provide technical and financial cooperation for achieving the objective of this Convention, the Conference of the Parties may request the cooperation of competent international and regional intergovernmental organizations including financial and development institutions.

Article 26
Financial resources

1. The Parties recognize the important role that financial resources play in achieving the objective of this Convention.

2. Each Party shall provide financial support in respect of its national activities intended to achieve the objective of the Convention, in accordance with its national plans, priorities and programmes.

3. Parties shall promote, as appropriate, the utilization of bilateral, regional, subregional and other multilateral channels to provide funding for the development and strengthening of multisectoral comprehensive tobacco control programmes of developing country Parties and Parties with economies in transition. Accordingly, economically viable alternatives to tobacco production, including crop diversification should be addressed and supported in the context of nationally developed strategies of sustainable development.

4. Parties represented in relevant regional and international intergovernmental organizations, and financial and development institutions shall encourage these entities to provide financial assistance for developing country Parties and for Parties with economies in transition to assist them in meeting their obligations under the Convention, without limiting the rights of participation within these organizations.

5. The Parties agree that:

(a) to assist Parties in meeting their obligations under the Convention, all relevant potential and existing resources, financial, technical, or otherwise, both public and private that are available for tobacco control activities, should be mobilized and utilized for the benefit of all Parties, especially developing countries and countries with economies in transition;

(b) the Secretariat shall advise developing country Parties and Parties with economies in transition, upon request, on available sources of funding to facilitate the implementation of their obligations under the Convention;

(c) the Conference of the Parties in its first session shall review existing and potential sources and mechanisms of assistance based on a study conducted by the Secretariat and other relevant information, and consider their adequacy; and

(d) the results of this review shall be taken into account by the Conference of the Parties in determining the necessity to enhance existing mechanisms or to establish a voluntary global fund or other appropriate financial mechanisms to channel additional financial resources, as needed, to developing country Parties and Parties with economies in transition to assist them in meeting the objectives of the Convention.

PART IX: SETTLEMENT OF DISPUTES

Article 27

Settlement of disputes

1. In the event of a dispute between two or more Parties concerning the interpretation or application of this Convention, the Parties concerned shall seek through diplomatic channels a settlement of the dispute through negotiation or any other peaceful means of their own choice, including good offices, mediation, or conciliation. Failure to reach agreement by good offices, mediation or conciliation shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it.

2. When ratifying, accepting, approving, formally confirming or acceding to the Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1 of this Article, it accepts, as compulsory, *ad hoc* arbitration in accordance with procedures to be adopted by consensus by the Conference of the Parties.

3. The provisions of this Article shall apply with respect to any protocol as between the parties to the protocol, unless otherwise provided therein.

PART X: DEVELOPMENT OF THE CONVENTION

Article 28

Amendments to this Convention

1. Any Party may propose amendments to this Convention. Such amendments will be considered by the Conference of the Parties.

2. Amendments to the Convention shall be adopted by the Conference of the Parties. The text of any proposed amendment to the Convention shall be communicated to the Parties by the Secretariat at least six months before the session at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the signatories of the Convention and, for information, to the Depositary.

3. The Parties shall make every effort to reach agreement by consensus on any proposed amendment to the Convention. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-quarters majority vote of the Parties present and voting at the session. For purposes of this Article, Parties present and voting means Parties present and casting an affirmative or negative vote. Any adopted amendment shall be communicated by the Secretariat to the Depositary, who shall circulate it to all Parties for acceptance.

4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 of this Article shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least two-thirds of the Parties to the Convention.

5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

Article 29

ADOPTION AND AMENDMENT OF ANNEXES TO THIS CONVENTION

1. Annexes to this Convention and amendments thereto shall be proposed, adopted and shall enter into force in accordance with the procedure set forth in Article 28.

2. Annexes to the Convention shall form an integral part thereof and, unless otherwise expressly provided, a reference to the Convention constitutes at the same time a reference to any annexes thereto.

3. Annexes shall be restricted to lists, forms and any other descriptive material relating to procedural, scientific, technical or administrative matters.

PART XI: FINAL PROVISIONS

Article 30

RESERVATIONS

No reservations may be made to this Convention.

Article 31

WITHDRAWAL

1. At any time after two years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from any protocol to which it is a Party.

Article 32

RIGHT TO VOTE

1. Each Party to this Convention shall have one vote, except as provided for in paragraph 2 of this Article.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their Member States that are Parties to the Convention. Such an organization shall not exercise its right to vote if any of its Member States exercises its right, and *vice versa*.

Article 33

PROTOCOLS

1. Any Party may propose protocols. Such proposals will be considered by the Conference of the Parties.

2. The Conference of the Parties may adopt protocols to this Convention. In adopting these protocols every effort shall be made to reach consensus. If all efforts at consensus have been exhausted, and no agreement reached, the protocol shall as a last resort be adopted

by a three-quarters majority vote of the Parties present and voting at the session. For the purposes of this Article, Parties present and voting means Parties present and casting an affirmative or negative vote.

3. The text of any proposed protocol shall be communicated to the Parties by the Secretariat at least six months before the session at which it is proposed for adoption.

4. Only Parties to the Convention may be parties to a protocol.

5. Any protocol to the Convention shall be binding only on the parties to the protocol in question. Only Parties to a protocol may take decisions on matters exclusively relating to the protocol in question.

6. The requirements for entry into force of any protocol shall be established by that instrument.

Article 34

SIGNATURE

This Convention shall be open for signature by all Members of the World Health Organization and by any States that are not Members of the World Health Organization but are members of the United Nations and by regional economic integration organizations at the World Health Organization Headquarters in Geneva from 16 June 2003 to 22 June 2003, and thereafter at United Nations Headquarters in New York, from 30 June 2003 to 29 June 2004.

Article 35

RATIFICATION, ACCEPTANCE, APPROVAL, FORMAL CONFIRMATION OR ACCESSION

1. This Convention shall be subject to ratification, acceptance, approval or accession by States and to formal confirmation or accession by regional economic integration organizations. It shall be open for accession from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval, formal confirmation or accession shall be deposited with the Depositary.

2. Any regional economic integration organization which becomes a Party to the Convention without any of its Member States being a Party shall be bound by all the obligations under the Convention. In the case of those organizations, one or more of whose Member States is a Party to the Convention, the organization and its Member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the Member States shall not be entitled to exercise rights under the Convention concurrently.

3. Regional economic integration organizations shall, in their instruments relating to formal confirmation or in their instruments of accession, declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

Article 36

ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day following the date of deposit of the fortieth instrument of ratification, acceptance, approval, formal confirmation or accession with the Depositary.

2. For each State that ratifies, accepts or approves the Convention or accedes thereto after the conditions set out in paragraph 1 of this Article for entry into force have been fulfilled, the Convention shall enter into force on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

3. For each regional economic integration organization depositing an instrument of formal confirmation or an instrument of accession after the conditions set out in paragraph 1 of this Article for entry into force have been fulfilled, the Convention shall enter into force on the ninetieth day following the date of its depositing of the instrument of formal confirmation or of accession.

4. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States Members of the organization.

Article 37

DEPOSITARY

The Secretary-General of the United Nations shall be the Depositary of this Convention and amendments thereto and of protocols and annexes adopted in accordance with Articles 28, 29 and 33.

Article 38

AUTHENTIC TEXTS

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

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

DONE at GENEVA this twenty-first day of May two thousand and three.

Chapter V[1]

DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Decisions of the United Nations Administrative Tribunal[2]

1. Judgement No. 1102 (21 July 2003): Hijaz v. Commissioner-General of the United Nations Relief Works Agency for Palestine Refugees in the Near East[3]

Terms of employment—Resignation—Abandonment of post—Settlement negotiations

On 27 January 1998, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) sent the Applicant a letter of appointment for the Grade 16 post of Personnel Officer (I) at the UNRWA International Personnel Section in Gaza. The offer was for a one-year appointment, but according to the letter the contract

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[1] In view of the large number of judgements which were rendered in 2003 by administrative tribunals of the United Nations and related intergovernmental organizations, only those judgements which are of general interest and/or set out a significant point of United Nations administrative law have been summarized in the present edition of the *Yearbook*. For the integral text of the complete series of judgements rendered by the tribunals, namely, Judgements Nos. 1101 to 1163 of the United Nations Administrative Tribunal, Judgements Nos. 2168 to 2270 of the Administrative Tribunal of the International Labour Organization, Decisions Nos. 292 to 308 of the World Bank Administrative Tribunal, and Judgements Nos. 2003–1 to 2003–2 of the International Monetary Fund Administrative Tribunal, see, respectively, documents AT/DEC/1101 to AT/DEC/1163; *Judgements of the Administrative Tribunal of the International Labour Organization: 94th and 95th Ordinary Sessions; World Bank Administrative Tribunal Reports, 2003;* and *International Monetary Fund Administrative Tribunal Reports, Judgements Nos. 2003–1 to 2003–2.*

[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 applications brought in such respect by staff members of the International Tribunal for the Law of the Sea and the International Seabed Authority.

[3] Kevin Haugh, Vice-President, presiding; and Omer Yousif Bireedo and Jacqueline R. Scott, Members.

would be extended for another year, subject to satisfactory performance. The letter advised the Applicant that his appointment was subject to the Area Staff Regulations and Rules. On 3 February, the Applicant accepted the offer and, on 1 March, he entered the service of UNRWA. On 19 March, however, the Applicant signed a fixed-term "Category X" letter of appointment, with effect from 1 March, which contained significantly different provisions. On 12 July, the Applicant was given an overall rating of "[a] very good performance" in his Performance Evaluation Report (PER).

On 24 July 1998, the International Criminal Tribunal for Rwanda (ICTR) advised UNRWA that it would be interested in the Applicant's services under a fixed-term appointment for an initial period of one year, on the understanding that UNRWA would release him on secondment. On 6 August, the Applicant advised ICTR that it was not UNRWA's policy to release staff members on secondment, but that he was "willing to resign" in order to take up the appointment. On 20 October, the Applicant indicated to the Deputy Commissioner-General that although he had received an offer of employment from ICTR, he would prefer to stay with UNRWA in a professional post. The Applicant requested his assistance in this regard.

On 14 January 1999, the Commissioner-General approved the restructuring of the Human Resources Division, which resulted in the abolition of the Applicant's post. On 27 January, the Applicant was advised that his fixed-term appointment would not be extended beyond its expiration on 28 February. On 31 January, the Applicant requested review of this decision.

On 4 February 1999, the Applicant advised UNRWA that ICTR had again made him an offer of employment. He requested to be released on secondment and asked for three days of annual leave. The Director of Administration and Finance, Gaza, responded on 7 February, accepting his "resignation . . . as . . . requested" but noting that secondment could not be approved because the Applicant's post was being deleted. On 8 February, the Applicant replied that he had not submitted a resignation, and requested administrative review of the decisions to terminate his appointment and to deny his request for secondment.

On 12 February 1999, the Applicant joined ICTR. On 15 February, the Director of Administration and Finance, Gaza, wrote to the Applicant, confirming "acceptance of [his] resignation" and noting that this was "definitively in [his] best interest as compared to abandonment of post." On 6 April, the Applicant lodged an appeal with the Joint Appeals Board (JAB).

On 14 July 1999, the Applicant was offered three months' base salary in lieu of provisional redundancy and a termination indemnity, on the condition that his appeal was withdrawn. The Applicant rejected this offer.

In its report of 23 July 2000, the JAB found that the decision to consider the Applicant's request for secondment as a resignation was not well-founded. Further, it found that, in deleting the Applicant's post, UNRWA had failed to follow the provisions of Personnel Directive A/9. However, the JAB was of the opinion that in arranging to travel to Tanzania while still working for UNRWA, the Applicant had acted hastily and that he should have reported back for duty after his annual leave to prove that he did not intend to abandon his post. The JAB ultimately concluded that despite its irregularities, the Administration's decision had been taken without prejudice and recommended that the case be rejected. It noted, however, that it felt that the Applicant be compensated under staff rule 109.11. On 5 September, the Applicant was informed that the Commissioner-General had accepted

the Board's recommendation that the appeal should be dismissed. He was advised that, in abandoning his post, he had abandoned any entitlement to compensation he might have had, and that the settlement he had since refused had been at least equal to the amount he might have received under rule 109.11 had he not abandoned his post. UNRWA had thus determined that no compensation should be paid. On 11 April 2001, the Applicant filed his application with the Tribunal.

In its consideration of the case, the Tribunal held that the terms of the Applicant's appointment were indisputably those offered to him by the Agency in its letter of 27 January 1998, as those terms were the only ones in existence on 1 March when the Applicant entered into service. That letter had provided that, subject to satisfactory performance, the Applicant's appointment would be extended for a second year. As his performance had at all times been satisfactory, "the Applicant effectively acquired the right to a two-year term of employment commencing on 1 March 1998 and expiring on 28 February 2000, unless otherwise lawfully terminated." The Tribunal took note of the fact that the terms of the "Category X" letter of appointment were disadvantageous to the Applicant when compared with the those contained in the letter of 27 January, and registered its "significant doubts as to the legality or efficacy of what may have been a unilateral alteration of the original terms on which the Applicant was appointed," the Tribunal being "far from satisfied that the Applicant had voluntarily and effectively renounced or surrendered the valuable rights that he had acquired when he accepted the original offer of employment."

With respect to the decision to treat the Applicant's departure for ICTR as resignation of his position, the Tribunal accepted that UNRWA had categorized the departure as such in good faith and in what it believed to be the Applicant's best interests. Whilst the Tribunal was satisfied that the use of the term resignation had not been legally justified, it held that "it did no wrong or injustice to the Applicant, nor does it give rise to grounds that would justify an award of damages or other compensation."

However, having determined that the Applicant had, in effect, a two-year contract, the Tribunal held that UNRWA's letter of 27 January 1999 had not accurately addressed the Applicant's legal situation, as it had stated erroneously that his contract was due to expire on 28 February 1999. As that letter had spurred the Applicant into seeking employment with ICTR, the Tribunal found that the Respondent could not reasonably argue that he was in breach of his contractual obligations or guilty of abandonment of post. Indeed, the Tribunal stated its opinion that "the Applicant made an eminently sensible and proper decision in again seeking leave to take up the ICTR position on secondment, and knowing that this would be declined, in taking it notwithstanding that approval for secondment would not be forthcoming [he] did no more than fulfil his duty to mitigate his loss." Accordingly, the Tribunal rejected the Respondent's submission that the Applicant had constructively resigned, abandoned his post or otherwise breached his contract with UNRWA.

The Tribunal took note of the Respondent's settlement offer but deemed the sum offered to be insufficient compensation "for the harm inflicted on the Applicant arising from the confusion created by the terms of his employment and the error made by the Administration as to when the contract, as per the terms of the original offer of appointment, expired." As a result, the Tribunal awarded the Applicant compensation of seven months' net base salary.

The Tribunal took the opportunity to address the matter of settlement which it stated "should always be welcomed and never discouraged," having benefits for both the parties

and the United Nation's internal justice system. That said, the Tribunal declared that "for the future, it proposes to consider that settlement proposals falling short of unqualified admissions of fact are to be presumed to have been made without prejudice and should not be disclosed to JABs. . . or other such bodies or to the Tribunal, save with the expressed agreement of both parties."

2. Judgement No. 1103 (21 July 2003): Dilleyta v. Secretary-General of the United Nations[4]

Discretion of the Secretary-General in disciplinary cases—Scrutiny of the Tribunal—Effect of a prima facie *case—Burden of proof in claiming prejudice*

The Applicant entered the service of UNICEF at the GS-6 level on 1 March 1989. His contract was subsequently extended and, on 1 January 1993, he was promoted to the National Officer category. At the time of the events which gave rise to his application, he held the position of Communication Officer.

On 29 March 1999, the Applicant was informed that the preliminary findings of an audit being conducted in the UNICEF office in Djibouti suggested his involvement in serious irregularities. He was placed on suspension with pay pending the completion of the investigation.

According to the subsequent Audit Report, the Applicant had certified an invoice for 320,000 Djibouti francs (DF) for catering services obtained from a local bakery for the celebration of the Day of the Child, which took place on 22 November 1998. As the procurement action exceeded US$500, it required a purchase order: such an order was not found and, thus, the matter was investigated. The investigators met with the owner of the bakery who indicated that the invoice was false and produced a copy of the bakery's original invoice in the amount of DF38,000. The cancelled cheque had been "de-crossed" by the Applicant and endorsed to a UNICEF driver for cash. The driver admitted having cashed the cheque and indicated that he had paid the bakery DF38,000, paid another supplier for drinks, and had kept the rest of the money.

The Audit Report related another incident regarding two invoices which the Applicant had certified for payment on 26 January 1995. The first invoice, for DF330,000, was printed on Ministry of Health letterhead, but did not show the name and title of the government official requesting payment and bore neither a stamp nor a legible signature. The second invoice, for DF215,000, appeared to be computer-generated and indicated only the names of two alleged suppliers. A hand-written note requesting that the cheques be made payable "to bearer" and signed by the Applicant was found and, upon review of the cancelled cheques, it was noted that both had been cashed by the Applicant's wife.

On 9 June 1999, the Applicant was provided with a copy of the Audit Report and formally charged with:

(i) misappropriation of resources, acting recklessly in certifying payments, making false certifications and wilfully disregarding supply procedures; and

(ii) violation of procedures when instructing that two cheques, which constituted payment for services UNICEF had committed to fund and the Applicant had certified, be issued to bearer.

[4] Mayer Gabay, First Vice-President, presiding; Kevin Haugh, Second Vice-President; and Spyridon Flogaitis, Member.

The Applicant was informed that his actions represented a clear violation of the highest standards of integrity expected of international civil servants and that it constituted serious misconduct. On 11 July, the Applicant responded to the charges, asserting his innocence and requesting that his suspension with pay be lifted.

On 23 November 1999, the Applicant was informed that the Executive Director, UNICEF, had decided to summarily dismiss him. On 12 January 2000, he requested administrative review of this decision and, on 31 May, he was informed that his request had been referred to an *ad hoc* Joint Disciplinary Committee (JDC).

In its report of 10 January 2001, the JDC concluded that the Applicant "was responsible for a reckless certification, a false certification and a wilful disregard of supply procedures." The JDC noted that between 1995 and 1999, "the UNICEF Office appeared to be operating under frequently absent and poor management, with a lack of control, structure and planning that clearly impacted on the performance of the entire Office. . . . The responsibility for leaving [the Applicant] in charge, for poor management, and the lack of oversight and accountability for basic UNICEF functions surely extends upward and to others." Having concluded that misconduct charges were appropriate for both the 1995 and 1999 incidents and that due process had been regarded, the JDC nonetheless questioned whether separation from service, with or without notice or compensation in lieu of notice, was an appropriate disciplinary measure given the Applicant's length of service and the possible aggravating circumstance of the office situation, which had been beyond his responsibility. The JDC recommended that the Executive Director consider whether these aggravating circumstances contributed to the Applicant's misconduct, thus justifying a less severe disciplinary measure than summary dismissal. On 9 March, the Applicant was informed that the Executive Director, UNICEF, had decided to maintain his summary dismissal. On 10 June, the Applicant filed his application with the Tribunal.

In its consideration of the case, the Tribunal recalled its longstanding jurisprudence that the Secretary-General has broad discretion with regard to disciplinary matters, which includes the determination of what constitutes "serious misconduct" under the Staff Regulations and Rules and the proper punishment for such conduct. The Tribunal noted, however, that it has competence to review the Secretary-General's exercise of these discretionary powers. The Tribunal cited the test of scrutiny it developed in Judgement No. 941, *Kiwanuka* (1999).

The Tribunal concurred with the JDC that the Applicant's actions constituted misconduct rather than unsatisfactory performance, which it defined as "conduct ordinarily characterized as arising out of innate incapacity or inefficiency." The Tribunal accepted that the Respondent had established a *prima facie* case of misconduct before the JDC, but rejected the Respondent's contention that this shifted the burden of proof to the Applicant.

The Tribunal found that the Applicant had failed to present any convincing explanation for his actions which, in any event, could not be excused by time constraints or by lack of knowledge of the Financial Rules as "[c]ommon sense and integrity would suggest avoiding such actions." It found that the decision to summarily dismiss the Applicant was a proper exercise of the Executive Director's authority and did not violate the Applicant's rights. The Tribunal rejected the Applicant's contention that there was cultural bias implicit in the charges, stating that "whilst the environment in which the UNICEF Djibouti Office was operating indeed left something to be desired," the Applicant had failed to discharge his burden of proof and establish any bias against him.

Accordingly, the application was rejected in its entirety.

3. Judgement No. 1113 (24 July 2003): Janssen v. Secretary-General of the United Nations[5]

Discretion of the Secretary-General in promotion matters—Non-promotion—Procedural violations—Equal pay for equal work—Additional compensation for moral injury and delays

The Applicant entered the service of the United Nations Conference on Trade and Development (UNCTAD), at the G-3 level on 10 September 1973. His contract was subsequently extended and, on 1 June 1979, he received a permanent appointment. At the time of the events which gave rise to his application, he held the P-2 level position of Chief, Governmental Publications Unit, Acquisitions and Cataloguing Section, Conference Services Division (CSD)/Library, United Nations Office at Geneva.

On 25 January 1985, the classification of the post of Chief, Governmental Publications Unit, had been approved at the P-3 level, but budget approval was never received. The Applicant made a lateral move to the post at the P-2 level on 1 September 1989. On 14 July 1992, he was informed that although the post had been classified at the P-3 level, it remained budgeted at the P-2 level and that no P-3 post in the Library was available against which a special post allowance could be paid.

On 3 August 1995, the Applicant requested that "the administrative decision approving the P-3 level . . . be retroactively implemented as per 1 September 1989." On 12 April 1996, the Applicant asked the Personnel Service, United Nations Office at Geneva, for a reply to his letter of 3 August, "to enable [him], if necessary, to lodge an appeal." On 15 July, the Chief, Personnel Service, advised the Director, CSD, that an urgent solution to this problem should be identified, in order to avoid Joint Appeals Board (JAB) and/or Tribunal procedures. In his response of 27 August, the Director, CSD, advised that the Applicant's post had been abolished as of 1 January 1996 and that the Applicant had "stopped exercising his former functions."

On 14 October 1996, the Chief, Personnel Service, requested a new job description for the post, as well as for five others which had also been classified at a level higher than their budgetary level.

On 12 February 1997, the Chief, Personnel Service, urged the Office of Human Resources Management to accommodate the Applicant without further delay. The Assistant Secretary-General for Human Resources Management subsequently advised the Director, CSD, that "[a]cceptable solutions are available to provide a post for [the Applicant] at the appropriate level and such arrangements should be enacted as soon as possible." On 21 November, however, the Director, CSD, requested assistance in commencing the administrative procedures required to terminate the Applicant's contract as no solution had been found. On 19 December, the Chief, Personnel Service, replied that as the Applicant was not prepared to accept an agreed termination, a "suitable placement" had to be found for him.

On 11 August 1998, the Applicant requested permission to submit his case directly to the Tribunal. On 16 September, his request was refused on the ground that there were factual issues yet to be established in his case. Accordingly, his request was treated as one for administrative review.

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[5] Julio Barboza, President; Mayer Gabay, Vice-President; and Brigitte Stern, Member.

Effective 1 January 1999, the Applicant was promoted to the P-3 level with the functional title of Librarian. On 28 January, he lodged an appeal with the JAB.

In its report of 22 August 2000, the JAB concluded that "on the basis of the principle of equal pay for equal work the Respondent was under an obligation to regularize the. . . discrepancy between the level of classification and budget of the [Applicant's] post." The JAB recommended that he be paid "the difference in salary, allowances and other entitlements at the P-3 level, at the appropriate step, and the lower grade post he occupied, from 1 September 1989 until his promotion to the P-3 level on 31 December 1998." On 4 June 2001, the Applicant was informed that the Secretary-General had not accepted the Board's recommendation for compensation, but that he had agreed that the Administration was obligated to find a solution to the discrepancy between the level of the Applicant's functions and the budgetary level of the post in a timely manner and that, as a timely solution had not been found, the Secretary-General had decided to compensate the Applicant in the amount of three months' net base salary. On 23 July, the Applicant filed his application with the Tribunal.

In its consideration of the case, the Tribunal recalled that the broad discretionary power of the Secretary-General to promote qualified staff is governed by the strict application of procedural rules and regulations, and has been limited in cases of abuse of authority, procedural or substantive errors or irregularities or violations of due process rights. The Tribunal concluded that the Applicant was unquestionably entitled to equal pay for equal work and had sustained injury based on the commission by the Respondent of serious procedural mistakes. It found that the Respondent's decision not to promote the Applicant had violated the latter's basic rights. The Tribunal awarded the Applicant the difference in salary, allowances and other entitlements between his actual level and grade and the appropriate grade, i.e., at the P-3 level, from 1 September 1989 until 31 December 1998 as well as the actual equivalent of the loss of pension rights as of September 1989. In addition, the Tribunal awarded the Applicant compensation of six months' net base salary for the delays and moral injury he had suffered due to the Respondent's failure to properly implement the classification of his post.

4. Judgement No. 1122 (24 July 2003): Lopes Braga v. Secretary-General of the United Nations[6]

Non-promotion—Rights of due process—Prejudice and discrimination

The Applicant entered the service of the International Trade Centre (ITC) at the L-3 level on 3 September 1978. His contract was subsequently extended and, on 1 January 1991, he received a permanent appointment. At the time of the events which gave rise to his application, he held the P-4 position of Trade Promotion Officer.

On 30 December 1997, the Applicant applied for the L-5 level post of Senior Adviser on the Institutional Aspects of Trade Promotion. On 20 July 1998, he was informed that his application had not been retained. On 6 November 1998, the Applicant applied for the P-5 level post of Chief, Office for Asia-Pacific, Latin America and the Caribbean (OAPLAC). According to the vacancy announcement, the position required an "undergraduate degree preferably at the advanced level." On 29 January 1999, he applied for the P-5 level post of Chief, Trade Research and Business Intelligence, Division of Product and Market

[6] Mayer Gabay, First Vice-President; and Spyridon Flogaitis and Jacqueline R. Scott, Members.

Development, Market Analysis Section (MAS). No interviews were conducted and another staff member was assigned to the post as Officer-in-Charge for one month.

On 9 March 1999, the Review Panel short-listed five candidates, including the Applicant, for the post of Chief, OAPLAC. At its 19 March meeting, the Review Panel made recommendations for both the OAPLAC and MAS positions: for the OAPLAC post, the Panel recommended a candidate who did not possess an undergraduate degree; for the MAS post, it endorsed the staff member who had been appointed as Officer-in-Charge. The Joint Appointments and Promotion Board endorsed the Review Panel's recommendations on 24 March and, on 26 March, the Applicant was informed that his applications had not been retained.

On 24 May 1999, the Applicant requested administrative review of these decisions, alleging that a "pattern of discrimination" existed against him. Thereafter, the Applicant applied for the L-5 level post of Senior Adviser on Multilateral Trading System, Functional Advisory Services Section, Division of Trade Support Services. On 9 December 1999, he was informed that his application had not been retained.

On 9 August 2000, the Applicant lodged an appeal with the Joint Appeals Board (JAB). In its report of 17 May 2001, the JAB found that any claims regarding the decision not to promote the Applicant to the post of Senior Adviser on the Institutional Aspects of Trade Promotion were time-barred and that the decision not to promote the Applicant to the post of Senior Adviser on Multilateral Trading System had not been the subject of a request for administrative review. The JAB found that the appeal regarding the remaining two administrative decisions was receivable but "[o]n the basis of the evidence and information available to it, [it was] unable to conclude that the [Applicant] was not properly and fairly considered." On 20 June 2001, the Applicant was informed that the Secretary-General accepted the JAB's findings and conclusions. On 5 December, he filed his application with the Tribunal.

In its consideration of the case, the Tribunal agreed with the JAB's conclusion that the Applicant's claims relating to the post of Senior Advisor on Multilateral Trading System were not receivable as he had not requested administrative review of the decision and, therefore, a constitutive element of the claim was lacking.

On the merits of the case, the Tribunal noted that its task was to determine whether the Respondent's decisions were a proper exercise of his discretion in matters of appointment and promotion or whether the decisions had been vitiated by prejudice or other extraneous factors, including procedural irregularities, which amounted to the Applicant being denied full and fair consideration for the posts.

Insofar as the position of Chief, OAPLAC, was concerned, the Applicant asserted that the procedures employed in filling the post were flawed and that the successful candidate did not possess an undergraduate degree, which was listed in the vacancy announcement as a requirement of the position. The Tribunal found that "the Respondent's failure to follow its own procedures; i.e., to apply objective criteria of evaluation in a consistent manner, was a violation of the Applicant's right to be fully and fairly considered for the post and irreparably harmed [him]." It rejected the Respondent's assertion that academic qualifications were only one factor in the decision-making process, finding that "[b]y advertising the post. . . as one that required an undergraduate degree, the Respondent made the degree a pre-requisite to selection for the post and cannot now be heard to argue that the possession of the degree was but one factor in its determination. To allow otherwise harms

not only the Applicant, who was misled and not fairly considered by objective criteria for the position, but also harms all those putative applicants who did not apply because they did not possess an undergraduate degree." The Tribunal concluded that the Respondent's failure to adhere to his own rules represented a procedural irregularity amounting to a violation of the Applicant's rights of due process. Accordingly, the Tribunal awarded the Applicant compensation in the amount of six months' net base salary "for the violation of his due process rights stemming from procedural irregularities engaged in by the Respondent."

Insofar as the MAS position was concerned, the Tribunal found the Respondent's decision to temporarily fill the post with a staff member and then to permanently fill the post with the same staff member was within the purview of his authority. It held that the Applicant had "provided no evidence to support his allegation that he suffered unfair competition."

Finally, the Tribunal found that the Applicant had failed to discharge his burden of proof regarding his claims that the Respondent's decisions were motivated by prejudice, discrimination or other improper motive.

5. Judgement No. 1123 (25 July 2003): Alok v. Secretary-General of the United Nations[7]

Distinction between poor performance and misconduct—Discretion of the Secretary-General in disciplinary cases—Proportionality of sanctions—Due process

The Applicant entered the service of the United Nations Population Fund (UNFPA) at the P-5 level on 7 March 1990. His contract was subsequently extended and, on 7 March 1994, he received a permanent appointment. At the time of the events which gave rise to his application, the Applicant held the D-1 position of UNFPA Representative, Nepal.

In 1997, the Applicant experienced severe neurological problems. In early 1998, he was diagnosed as suffering from Complex Partial Seizure, thyroid deficiency and pituitary dysfunction. As a result, he sought medical treatment in New York and India. In 1998 and 1999, he repeatedly requested transfer to New York to enable him to obtain higher quality medical services than were available in Nepal, but his requests were refused. He then requested early separation. UNFPA made a formal offer of such on 30 September 1999, but the agreement was never concluded.

On 8 October 1999, a group of the Applicant's subordinates wrote to the Chief, Office of Oversight and Evaluation, UNFPA, accusing the Applicant of breaching financial regulations and rules, and of failing to comply with the procurement guidelines applicable to local construction projects. On 10 November, a special audit team was constituted "to perform auditing and forensic work on the procurement activities, including construction works and other procurement activities" undertaken by the UNFPA Office in Nepal. On 3 December, the team interviewed the Applicant and he was that same day placed on special leave with full pay, pending a full investigation. On 18 December, the Applicant was provided with a copy of the special audit team's report, which concluded that his actions "constitute[d] conclusive evidence of serious misconduct that. . . resulted in significant financial loss to the Organization and widespread morale issues in the office." The report further informed him that he was being suspended without pay.

[7] Kevin Haugh, Vice-President; and Omer Yousif Bireedo and Jacqueline R. Scott, Members.

On 10 April 2000, the Applicant was presented with a number of charges and informed that they constituted serious misconduct. The applicable sanction for such misconduct ranged from separation from service to summary dismissal, in addition to recovery of losses suffered by UNFPA. The Applicant submitted a detailed response to the charges on 25 April, reiterating previous complaints that his rights of due process had been systematically violated.

The case was referred to an Ad Hoc Disciplinary Committee (AHDC), which submitted its report on 9 May 2000. It found the Applicant guilty of a number of counts of gross negligence as well as of one count each of negligence and of committing an "injudicious act." However, the AHDC accepted that his medical condition in early 1998 and the lack of credibility of the statements made, and evidence provided, by his subordinates were mitigating factors. It recommended that he be separated from service with compensation in lieu of notice and that his period of suspension without pay be converted to suspension with pay. The AHDC also recommended "that stricter adherence to due process be observed by the Administration in future disciplinary cases to ensure that sufficient and credible evidence is obtained from all parties involved before severe administrative steps are taken." On 13 June, the Applicant was informed that the Officer-in-Charge of United Nations Development Programme (UNDP) at Headquarters had decided to separate him from service without notice or compensation in lieu thereof. In view of the mitigating circumstances, the Applicant's suspension without pay was converted to suspension with pay. On 16 March 2001, the Applicant filed his application with the Tribunal.

In its consideration of the case, the Tribunal recognized "a temporal correlation between the declining state of the Applicant's health, including the progression of his neurological symptom, and his inability and failure to perform his duties in an appropriate fashion." It criticized both the AHDC and the Respondent for failing to investigate the extent to which the Applicant's declining performance and his failure to perform his duties might have been attributable to his deteriorating health or to his long absences from his office for medical reasons. The Tribunal characterized this failure as "an extraordinary omission." In the view of the Tribunal, the Applicant's illness should have been considered not only in the context of mitigation but also "in relation to what should have been the pivotal question of whether or not the facts found ought to have been categorized as inadequate performance as a result of illness, rather than as misconduct."

The Tribunal differentiated between poor performance and misconduct, which it defined as "conduct that is either wilful or reckless or irresponsible and which deserves punishment, rather than conduct arising from innate inefficiency or incapacity." It found that if the AHDC and the Respondent had given proper consideration to the extent to which the Applicant's shortcomings might have been attributable to his illness, such shortcomings might have been categorized as performance failures rather than as misconduct. The Tribunal held that even if the Applicant was guilty of misconduct, the sanction imposed was disproportionate in the circumstances of the case.

The Tribunal recalled that it will not interfere with a disciplinary decision unless it is satisfied that it is so disproportionate or unwarranted as to amount to an injustice, but found that the dismissal of the Applicant, given his previously unblemished record and the extent to which his health was compromised, did, in fact, amount to an injustice and an abuse of the Respondent's discretion.

As the Respondent's separation offer had been shelved pending the outcome of the investigation, and as the Tribunal was satisfied that the manner in which the conclusion of misconduct had been reached by the Respondent was erroneous, the Tribunal ordered that the Applicant should receive the offered retirement package, and that his record should be amended to show retirement on the basis of health grounds rather than dismissal.

Finally, the Tribunal registered its concern about "the nature and extent of the lack of supervision, direction and guidance provided by UNFPA Headquarters to the Nepal office and the Applicant" and pointed out that immediate attention was required to rectify the situation.

6. Judgement No. 1131 (25 July 2003): Saavedra v. Secretary-General of the International Civil Aviation Organization[8]

Discretion of the Secretary-General in post-descriptions/promotions—Competence of the Tribunal

The Applicant entered the service of the International Civil Aviation Organization (ICAO), as a Travel Assistant at the G-7 level on 14 September 1981. At the time of the events which gave rise to her application, she had been transferred with her post to the Technical Assistance Bureau, Management Support Office (MGS).

On 28 August 1986, the Applicant requested that her post be re-evaluated and enclosed a list of the duties she performed. The Chief, MGS, endorsed her request the same day. Effective 15 July 1988, the Secretary-General approved the upgrading of the post to the P-2 level and agreed that the Applicant should be appointed at that level.

On 21 March 1996, as part of a larger exercise, a draft post description for the post encumbered by the Applicant was prepared and signed by the Applicant and the Director of the Bureau. The version signed by the Secretary-General on 20 March 1997 contained a number of revisions and, as the Applicant did not agree with those revisions, she refused to sign it. On 21 March, the Applicant requested a personal up-grade to the P-3 level, and on 26 March, she requested that the Secretary-General review her case. On 25 April, the Secretary-General confirmed that the post description he had signed on 20 March was the relevant one. The Applicant lodged an appeal with the Advisory Joint Appeals Board (AJAB) the same day.

In its report of 15 March 2001, the AJAB concluded that the approved Post Description signed by the Secretary-General on 20 March 1997 did not reflect an accurate description of the work performed by the Applicant and that, accordingly, it contained an error in substance. The AJAB recommended that the Applicant be awarded a special post allowance from 20 March 1997 until the date of her retirement as compensation for having been required to work under an inaccurate post description, plus the lesser of her costs or US$2,500. On 10 July 2001, the Secretary-General informed the Applicant that he had rejected the appeal. On 4 October, she filed her application with the Tribunal.

In its consideration of the case, the Tribunal affirmed that neither the AJAB nor the Tribunal itself can substitute its judgement for that of the Administration, which has a large measure of discretion with respect to post classification and job descriptions. The Tribunal noted that its only competence in such matters is to assure that there has been no violation of due process of law, arbitrariness, discrimination or other improper motivation.

[8] Julio Barboza, President; and Omer Yousif Bireedo and Brigitte Stern, Members.

The Tribunal was satisfied that the ultimate responsibility for the issuance of post descriptions belonged to the Secretary-General of ICAO and that it fell within his discretion to accept suggested revisions of the draft description. It found the procedure of revision of the post description entirely regular and not vitiated by improper motivation and concluded that the only valid description of the Applicant's post was that issued by the Secretary-General, whether or not it was to her liking or signed by her. The Tribunal was not persuaded that there had been an error in substance and found that the differences between the descriptions, in particular with regard to supervision of the Applicant's work, were too slight to have any legal significance. The Tribunal expressed its belief that the Applicant's real grievance was not the case before it but rather her belief that, in light of the approved post description, the post had less chance of being reclassified at the P-3 level. The Tribunal pointed out that even with the text the Applicant preferred, reclassification was not certain but depended on the discretion of the Secretary-General and that neither the AJAB nor the Tribunal could substitute its judgement for that of the Secretary-General in this matter.

Accordingly, the application was rejected in its entirety.

7. Judgement No. 1133 (25 July 2003): West v. Secretary-General of the United Nations[9]

Role of Tribunal in medical cases—Sick leave credit for injury or illness incurred while in service—Due process

The Applicant entered the service of the United Nations at the P-2 level on 20 July 1990. Effective 1 July 1992, he received a permanent appointment. At the time of the events which gave rise to his application, he held the P-3 position of Auditor in the Audit and Management Consulting Division, Office of Internal Oversight Services. Whilst on mission in Belize in February 1991, the Applicant was injured in a car accident. The doctor who examined him after the accident reported that he had "sustained multiple contusions, specially to the right shoulder, upper back, rib cage and neck."

The Applicant took 24 days of sick leave immediately following the accident and an additional 6.5 days of sick leave during the remainder of 1991. He thereafter submitted a claim for compensation under Appendix D of the Organization's staff rules (Appendix D) to the Advisory Board on Compensation Claims (ABCC), which recommended on 3 June that his injuries "be considered as attributable to the performance of official duties on behalf of the United Nations." The Secretary-General adopted the ABCC's recommendation the following day.

Between 1991 and 1998, the Applicant underwent physical therapy and chiropractic treatment. He took numerous days of sick leave and provided certificates for his absences. Two of these certificates, dated 29 July 1994 and 7 March 1995, respectively noted the reasons for his absences and treatments as "lower back problems" and "lumbar sprain/strain." On 11 January 1999, the Applicant went on extended sick leave. On 30 June 1999, the Applicant advised the ABCC that his extended sick leave was due to the continuous worsening of his back condition, which had resulted from the 1991 accident. The Applicant requested special sick leave credit in accordance with article 18*(a)* of Appendix D.

On 2 July, the ABCC asked the Medical Services Division (MSD) to advise whether the 1999 sick leave could be considered as being directly related to the Applicant's

[9] Kevin Haugh, Vice-President, presiding; and Spyridon Flogaitis and Jacqueline R. Scott, Members.

service-incurred injuries. MSD responded on 6 August that the sick leave period was "secondary to illness related to the accident." On 1 September, the Applicant was informed that, effective 19 April 1999, he had exhausted his 195 days of fully-paid sick leave and that, in order to maintain full-pay status, his annual leave would have to be combined with his sick leave at half-pay.

On 30 September, the ABCC recommended that the Applicant's request for special sick leave credit be granted (half days only), for a number of days to be determined by MSD. MSD subsequently determined that as the Applicant had taken no sick leave related to the injury between 1995 and January 1999, it could not conclude that the back condition was solely the result of the car accident and it recommended a special sick leave credit for half of the total sick leave period requested by the Applicant.

On 24 November 1999, the Applicant was informed that MSD had determined that he was incapacitated for further service and had recommended to the United Nations Joint Staff Pension Board that he be considered for a disability benefit. On 17 February 2000, MSD wrote to the Applicant requesting updated medical reports. On 18 February, the Applicant was informed that since he had exhausted his sick leave with half-pay as of 31 January 2000, and in accordance with the provisions of ST/AI/1999/12 of 8 November 1999, his salary would be withheld as of February 2000. The Applicant was also to be placed on special leave without pay (SLWOP) pending the outcome of his claim from the ABCC. On 29 February, the Applicant contested this decision, claiming that under the applicable provisions, he should be placed on special leave with half-pay. In response, he was advised that "the decision to withhold [his] salary temporarily was meant to encourage [him] to respond to MSD's letter." The Applicant objected that he had received the letters of 17 and 18 February almost simultaneously.

The Applicant was subsequently placed on special leave with half-pay, as he had requested. On 23 March 2000, the ABCC considered the Applicant's claim for special sick leave credit. It found that there was no medical evidence that the Applicant had suffered chronic pain between 1992 and 1999, and that the sick leave he had taken after 1991 could have been related to a non-service-incurred condition. The ABCC nevertheless recommended that he be granted special sick leave credit for the 30.5 days he had taken in 1991, which it accepted as being directly related to his service-incurred injuries. The Secretary-General adopted this recommendation on 25 April.

On 4 May 2000, the Staff Pension Committee decided not to award the Applicant a disability benefit. On 30 June, MSD determined that the Applicant was fit to return to work. The same day, the Applicant wrote to the Secretary-General, disputing this determination and requesting that a medical board be convened. On 19 July, the Applicant was informed that since he had exhausted all paid leave entitlements, he would be placed on SLWOP as of 24 July if he had not returned to work by that date. If the Medical Board determined that he was incapacitated for active duty, however, he would be retroactively reinstated on half-pay status while his case was re-considered by the Staff Pension Committee. The Applicant did not report for duty on 24 July, and he was consequently placed on SLWOP.

On 1 December 2000, the Applicant was informed that the Medical Board had been convened on 14 November and had unanimously decided that he was not totally disabled. The Board had found no medical cause for his symptoms and had suggested that he be encouraged to return to work as soon as possible. The Applicant was asked to return to work by no later than 18 December and he reported for duty on that date.

On 30 May 2001, the Applicant filed his application with the Tribunal.

On 29 November 2002, the Applicant was informed that the Staff Pension Committee had determined that he was incapacitated for further service and therefore entitled to a disability benefit. He was separated from service on 6 December.

In its consideration of the case, the Tribunal recalled that, having no medical competence, it will not seek to substitute its judgement for that of the administrative bodies charged with making medical decisions but that it can determine whether sufficient evidence exists to support the conclusions reached by those bodies. If sufficient evidence is determined not to exist, the Tribunal will find that it is obligated to set aside any decisions made.

The Tribunal found that the file did not support either the conclusion of the ABCC that there was no medical evidence that the Applicant had suffered chronic pain between 1992 and 1999, or the contention of the Respondent that the Applicant's lower back pain was not attributable to his accident. The Tribunal found that in every medical report, other than the initial one prepared immediately after the accident, injury of some sort was indicated to the Applicant's lumbar or lumbarsacral area, i.e., the lower back. The Tribunal found that the ABCC had relied on an inaccurate factual premise, i.e., that the Applicant "ha[d] no sick leave record related to the 1991 accident for several years until January 1999," when in fact he had had many days of sick leave from 1992 through 1999, at least some of which had been certified for treatment of lower-back or lumbar pain. The Tribunal further found no evidentiary support for the ABCC's conclusion that the cause of the Applicant's back symptoms was the "result of a combination of factors including his underlying psychiatric condition."

The Tribunal held that the Respondent's decision to deny special sick leave credit to the Applicant for the requested period was not supported by the evidence and amounted to an abuse of discretion. Further, it held that the Respondent had failed to follow its own procedures and had, therefore, denied the Applicant's right to due process when it improperly placed him on SLWOP. The Tribunal also condemned the Respondent's inappropriate use of the medical review process "to browbeat the Applicant and to deny him benefits to which he was entitled."

In consequence, the Tribunal ordered the Respondent to credit the Applicant with sick leave credit for the period 11 January 1999 to 4 May 2000 and with the 62.5 days of annual leave he had been forced to use when his sick leave was denied. It awarded the Applicant full pay and entitlements for the period from 22 July to 18 December 2000 as well as US$ 15,000 in compensation for the Respondent's violations of due process and abuse of discretion.

8. Judgement No. 1135 (25 July 2003): Sirois v. Secretary-General of the United Nations[10]

Non-renewal of fixed-term contract—Discretion of the Secretary-General in such matters may be vitiated—Scrutiny of the Tribunal—Due process—Time limits

The Applicant entered the service of the International Criminal Tribunal for Rwanda (ICTR) on a one-year fixed-term appointment as a Legal Translator/Interpreter at the P-4 level in September 1995.

[10] Mayer Gabay, Vice-President, presiding; and Omer Yousif Bireedo and Brigitte Stern, Members.

On 17 July 1996, the Director of Investigations prepared the Applicant's Performance Evaluation Report (PER), giving him 8 "B" and 3 "C" ratings on a scale from "A" to "E," with "A" being the highest. On 12 August, the Chief of Personnel, ICTR, indicated to the Office of Human Resources Management (OHRM) that the Tribunal did not wish to renew the Applicant's contract. The Director of Investigations advised the Chief of Administration on 27 August that this must have been a "misunderstanding," as the Office of the Prosecutor wanted the appointment renewed. On 5 September, the Deputy Prosecutor submitted the Applicant's PER to the Registrar, ICTR, and to OHRM, stating that "I insist that [the Applicant's] contract be extended."

At the request of the Chief of Administration, on 10 September 1996, the Chief of Language Services evaluated the Applicant's performance. He was critical of the Applicant's work as well as of his demeanour, and stated that the Applicant had an attitude problem. On 12 September, the Prosecutor advised the Registrar that the Director of Investigations and the Deputy Prosecutor had indicated that the Applicant's work was excellent, and urged her to petition for a renewal. The Prosecutor noted that, as she had not studied his file, she was not in a position to "comment on any shortcomings," but that "such negative considerations should be carefully weighed against his good work and our pressing needs."

The Registrar responded on 17 September, stating that "the decision not to renew [the Applicant's] contract was. . . made by me as Registrar. . . . I would have wished. . . to discuss with you what is on file and what I. . . personally know about the staff member so that you could have a fuller appreciation of the reasons why I found it difficult to justify retaining [the Applicant's] services." The following day, the Prosecutor replied that she maintained her support of the request for renewal remarking that "[t]his decision must ultimately be founded on the basis of the facts reflected in the file, which is why I did not see the need to discuss with you any matter within your personal knowledge about this staff member."

On 18 September 1996, OHRM advised that "in view of the [Applicant's] fully satisfactory service. . . [he] should be given an opportunity to continue serving the Organization." The Chief of Administration reiterated his opposition to an extension, but OHRM replied that a two-month extension should be given to allow for the completion of a proper PER, as the evaluation provided by the Chief of Language Services would not suffice. On 19 September, the Applicant signed his PER, indicating that he intended to rebut it.

On 1 October 1996, the Applicant was formally notified that his appointment would be extended for two months and that the Officer-in-Charge of Administration had been instructed to prepare a new PER for him. On 27 November, the Applicant separated from service upon the expiration of this extension.

On 5 September 1997, the Applicant requested administrative review of the decision not to renew his fixed-term appointment and the Administration's failure to commence the PER rebuttal procedure. On 8 January 1998, he lodged an appeal with the Joint Appeals Board (JAB) on these points.

In its report of 10 December 1999, the JAB concluded that the Applicant had no right to, or expectation of, renewal and that the facts of the case "offered explanations for non-renewal other than the Registrar's impropriety." As a result, the JAB was not persuaded that the decision had been motivated by prejudice or other extraneous factors. However, it determined that the Registrar and the Chief of Language Services had acted improperly in placing detrimental documents in the Applicant's personnel file without giving him

appropriate notice of such. Accordingly, the JAB recommended that ICTR be compelled to "search its files and remove all documents detrimental to the [Applicant] that were filed without notice to [him]." The JAB rejected certain other matters as being time-barred.

On 18 May 2000, the Applicant was informed that the Secretary-General was in agreement with the JAB's conclusions and recommendation and that ICTR would be requested to remove from all files, including that of the Applicant, material detrimental to him which had been filed or kept without his having been notified of such. On 22 December, the Applicant filed his application with the Tribunal regarding the decision not to renew his fixed-term appointment.

On 4 January 2001, the Rebuttal Panel issued its report on the Applicant's case. It concluded that ICTR had disregarded ST/AI/240 in accepting a PER prepared by someone other than the Applicant's supervisor and in failing to respect the time limits provided for hearing a rebuttal. The Panel recommended that three "B" ratings be raised to "A." On 11 April 2002, the newly appointed Registrar advised the Applicant that he supported the conclusions of the Panel and "sincerely regret[ted] the protracted delay."

In its consideration of the principal substantive matter before it, i.e., the non-renewal of the Applicant's contract, the Tribunal found that the Registrar did not have the necessary authority to make the decision, as authority with respect to personnel matters was not delegated to the Registrar until October 1997, more than a year after the impugned decision was taken. The Tribunal recalled that a staff member who holds a fixed-term contract is not, in general, entitled to expect an extension of his or her contract, as the Administration has the discretionary authority not to renew or extend it. The Tribunal cited Judgements No. 885, *Handelsman* (1998) and No. 1003, *Shasha'a* (2001) in reiterating that the Administration need not justify its decision but, where it does provide such reasoning, it must be supported by the facts.

The Tribunal found that the Registrar had "not only alleged poor performance by the Applicant but [had gone] further and fabricated evidence for his supposed shortcomings." It accepted the Applicant's submission on this issue, finding that "since the Prosecutor [had] wanted objective evidence if she were to agree to the non-renewal of the Applicant's contract, the Registrar, since he had no such facts in the file, had some prepared by the Chief, Language Services." The Tribunal expressed "with the utmost firmness" its condemnation for this course of events, and held that the Applicant was entitled to compensation for both this violation of his right to due process and for "the serious professional, moral and material damage he [had] suffered as a result of the malicious attitudes and arbitrary decisions of the Administration which [had given] rise to violations of his terms of service." The Tribunal concluded that the action by the Registrar was null and void, having been taken *ultra vires* and in a particularly arbitrary manner. Being satisfied that the Applicant would have otherwise been renewed, the Tribunal ordered that the Applicant should be restored to the situation he would have thereby enjoyed.

The Tribunal disagreed with the decision of the JAB that certain of the Applicant's pleas were time-barred, finding that "the circumstances of the present case are sufficiently unusual and exceptional to justify not insisting on unduly strict compliance with the time limits as that would risk depriving United Nations staff members of their rights." It proceeded to consider those pleas, upholding the Applicant's contention that his entry date had been 25 rather than 28 September 1995, and agreeing that he was entitled to home leave and "extended installation grant on the same basis used for other ICTR employees." The

Tribunal was not, however, persuaded by the Applicant's challenge that his recruitment level had been too low.

The Tribunal found that the Applicant's case had "brought to light extremely serious malfunctions in the entire process of the review, by the JAB, of administrative decision-making: these facts are sufficient grounds in themselves for considering that the Applicant was not accorded due process." It also criticised the JAB for including in its report certain defamatory passages which it was ordering removed from the Applicant's file.

In sum, the Tribunal, finding that reinstatement was not practical under the circumstances, ordered the Administration to pay the Applicant compensation in the amount of two years' salary, allowances and other entitlements, including home leave. The Tribunal further ordered that the Applicant be paid for his days of work from 25 to 27 September 1995, an extended installation grant under the same conditions as those applicable to the other staff of ICTR during the same period, and US$5,000 as compensation for the insertion of a defamatory document into his file for publication in the JAB report. The Tribunal further ordered that "all defamatory and forged documents that may be in the Applicant's personnel file be withdrawn and that all favourable items that had been removed from the file be returned to it, and orders the Administration to send written confirmation to the Applicant that it has carried out that task, giving a specific list of the documents concerned, within six months."

9. Judgement No. 1145 (17 November 2003): Tabari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East[11]

Jurisdiction of the Tribunal—Receivability—Role of the Joint Appeals Board and Tribunal

The Applicant entered the service of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), at the Grade 10, step 1 level on 1 June 1989 at the Lebanon Field Office. On 1 September 2000 the Applicant was promoted to the post of Administrative Officer, Grade 14, in the Department of Education.

On 11 March 1999, the Commissioner-General advised the Area staff members in the Lebanon Field that he had approved a revised salary scale and dependency allowance with effect from 1 March 1999. He explained that, due to a large budget deficit and ongoing austerity measures, Area staff salaries would be increased by varying percentages. On 16 March, the Chairman of the Area Staff Union wrote to the Administration, expressing dissatisfaction with the salary scale. On 1 November, the Agency met with the Inter Staff Union Conference to discuss possible amendment of the Agency's Area staff pay policy.

On 21 February 2000, the Applicant and seven colleagues wrote to the Director of UNRWA Affairs, Lebanon, seeking to appeal against "the current pay policy and results of the last salary surveys." In his response of 24 February, the Deputy Director of UNRWA Affairs, Lebanon, stated that these matters could not be usefully discussed at Field level and suggested that they ask the Area Staff Union to raise these matters with the Inter Staff Union Conference. On 1 March 2000, however, the Applicant and his colleagues submitted an appeal to the Joint Appeals Board (JAB) against the staff salary survey results and pay policy implemented by UNRWA.

[11] Kevin Haugh, Vice-President, presiding; and Spyridon Flogaitis and Jacqueline R. Scott, Members.

In its report of 22 February 2001, the JAB concluded that the appeal was not receivable as the impugned action did not constitute non-observance of the Applicant's letter of appointment within the meaning of Area staff regulation 11.1 (A). On 31 March, the Applicant was informed that the Commissioner-General agreed with the Board's determination and had dismissed the appeal. On 14 February 2002, the Applicant filed his application with the Tribunal.

In its consideration of the case, the Tribunal recalled that, under article 1 of its Statute, it is "competent to hear and pass judgement upon applications alleging non-observance of contracts of staff members" or "terms of appointment of such staff members." Article 3 of the Statute provides that in the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the decision of the Tribunal.

The Tribunal commented that, "[u]nlike a Staff Association or a Staff Union, neither a JAB nor the Tribunal is a vehicle available to a staff member to be used to lobby management or to seek to persuade management to effect what the staff member would perceive to be improvements in his working conditions or the terms of his employment, unless that staff member seeks to establish that the matter of which he complains arises from the non-observance of the terms of his appointment or that it arises from the infringement or denial of some employment right." As the Tribunal found that the Applicant had failed to establish that the impugned decision breached any rights enjoyed by him as a staff member or amounted to the non-observance of the terms of his appointment, the application was rejected, in its entirety, on jurisdictional grounds.

10. Judgement No. 1151 (17 November 2003): Galindo v. Secretary-General of the United Nations[12]

Discretion of the Secretary-General in disciplinary cases—Tribunal scrutiny of disciplinary matters—Proportionality of sanctions—Burden of proof in claiming prejudice—Due process

The Applicant entered the service of the United Nations Interim Force in Lebanon (UNIFIL) at the FS-3 level on 15 June 1976. His contract was subsequently extended and, in March 1985, he received a permanent appointment. At the time of the events which gave rise to his application, he held the P-4 position of Chief, Personnel Unit, United Nations Conference on Trade and Development (UNCTAD).

According to an incident report dated 10 April 2001, "[o]n 9 April 2001, the [Applicant] was observed on CCTV cameras, at the [NATO Stabilization Force (SFOR)] PX store in Zagreb, taking a toothpaste off the shelf, walking to an isolated area of the store, removing the toothpaste from the packet, putting the tube of toothpaste in his pocket, returning the empty toothpaste packet to the shelf, and then going to the cash register, where his wife paid for other items. He left the store without paying for the toothpaste that he had concealed in his pocket." The report stated that, upon questioning by the PX Detective and SFOR Military Police, the Applicant admitted, orally and in writing, that he had removed the tube of toothpaste from the PX store without paying for it.

On 24 April 2001, following a preliminary investigation, a report was sent to the Assistant Secretary-General for Human Resources Management. On 30 April, the Applicant

[12] Mayer Gabay, Vice-President, presiding; and Brigitte Stern and Jacqueline R. Scott, Members.

was advised of the allegations against him and provided with a copy of the incident report and related documentation.

On 9 July 2001, the case was referred to the Joint Disciplinary Committee (JDC). In its report dated 14 January 2002, the JDC noted that whilst the Applicant had admitted having stolen a tube of toothpaste on 9 April 2001, he claimed to be unaware of another act of theft alleged to have occurred on 10 March 2001. The JDC was of the opinion, however, that he "was clearly involved in the former incident, and most likely also in the latter" and remarked that "the value of the stolen item was a subsidiary element[, as] what really matters is the theft per se and the prejudice caused to the Organization." It considered the Applicant's claim of stress but "made it clear that if stress and emotional problems were to be recognized, these arguments would not exonerate the staff member from his responsibilities but could only constitute mitigating factors."

The JDC found overall "a lack of honesty and integrity of the staff member, aggravated by [his] official position as Chief of Personnel of UNCTAD." The JDC determined that the Applicant had failed to comply with his obligations under the Charter of the United Nations and the Staff Regulations and Staff Rules, and to observe the standards of conduct expected of an international civil servant. It concluded that he had engaged in unsatisfactory conduct for which disciplinary measures could be imposed. The JDC recommended that he be separated from service with compensation in lieu of notice on the grounds of serious misconduct incompatible with the basic requirements to be met by a United Nations staff member. On 6 March 2002, the Applicant was informed that "[o]ut of clemency and pursuant to his discretionary authority to impose appropriate disciplinary measures," the Secretary-General had decided to demote the Applicant to the P-3 level pursuant to staff rule 110.3 (a) (vi), with no possibility of promotion, and to reassign him to an environment where he could not exercise decision-making or managerial responsibilities. On 6 June, the Applicant filed his application with the Tribunal.

In its consideration of the case, the Tribunal found it "difficult to believe" that a long-term employee with a responsible and reasonably high-level position would consciously endanger or destroy his career by stealing a tube of toothpaste. The Tribunal pointed out that such an offence "would normally warrant little more than an admonition, a slap on the wrist or a referral for psychiatric assistance." It found it reasonable to assume that the Applicant's behaviour had been the result of a temporary mental lapse or aberration to which the Respondent had overreacted in imposing "an excessive and disproportionate penalty." The Tribunal held that the penalty imposed upon him warranted reduction.

The Tribunal recalled that whilst it "assiduously guards the Secretary-General's power to discipline staff," it has also consistently held that the exercise of that power is not without limitation. It found that the Applicant had discharged his burden with respect to proving prejudice against him, and agreed that his rights of due process were violated when the JDC failed to permit him the right to rebut and comment on relevant information it had received.

The Tribunal for such reasons held that the penalty imposed on the Applicant was disproportionate and ordered that the Applicant be granted priority consideration for any position for which he applied and was qualified. As compensation, the Tribunal ordered that, until such time as the Applicant was promoted, he should receive, on a monthly basis, an amount equivalent to the reduction in remuneration which had resulted from his demotion.

11. Judgement No. 1156 (19 November 2003): Federchenko v. Secretary-General of the United Nations[13]

Non-promotion—Discretion of the Secretary-General in promotion matters—Assessment of compensation for procedural violations

The Applicant initially entered the service of the Organization at the P-2 level on 3 November 1978. After a break in service, he re-entered service at the P-4 level on 5 April 1986. His contract was subsequently extended and, on 1 December 1991, he received a permanent appointment. At the time of the events which gave rise to his application, he held the P-4 position of Editor, Editorial and Official Records Division, Department of Conference Services, United Nations Office at Geneva.

On 2 April 1992, the Applicant expressed his interest in the P-5 level post of Chief, Official Records Editing Section, United Nations Office at Geneva. The job description indicated that "university education, with preferably a graduate degree in languages and substantial previous relevant experience with documentation" was required. On 17 March 1993, the Applicant was informed that he, along with other candidates, had been recommended for the post. On 22 May 1995, the Applicant requested information on the status of his application. On 26 May, a second vacancy announcement for the post was issued, with a notation indicating that the functions of the post were being discharged by a staff member on a temporary basis. The announcement did not indicate the competencies and skills required to fill the post.

On 16 March 1998, a third vacancy announcement for the post was issued. An "[a]dvanced university degree or equivalent qualification from a university or institution of equivalent status" was listed as a requirement. On 16 November, the Applicant was notified that the Department had recommended another candidate and, on 3 December, the Appointment and Promotions Board (APB) endorsed that recommendation. In its report to the Secretary-General, the APB stated that it "did not take into account the reference made by the Departmental Panel to the fact that [the other candidate] had acted as Officer-in-Charge of the Section since this would be tantamount to giving unfair advantage to her candidacy." On 28 December, the promotion of the other candidate was approved and, on 5 January 1999, the Applicant was informed accordingly. On 8 February, the Applicant requested administrative review of this decision and, on 8 April, he lodged an appeal with the Joint Appeals Board (JAB).

In its report dated 31 July 2001, the JAB concluded that "the Secretary-General's discretionary authority in promotion matters had been abused in the present case, because the promotion exercise for the P-5 post . . . had been delayed for more than six and [a] half years apparently without legitimate organizational or administrative reasons, [which] hurt the fundamental need of the Organization to fill the P-5 post within a reasonable time and frustrated the reasonable expectation of the [Applicant] to see the Administration proceed with the promotion exercise with due diligence and in good faith." As a result, the JAB recommended that the Applicant be paid three months' net base salary as compensation for the damage caused by the undue delay in the promotion exercise. On 7 December, the Applicant was advised that the Secretary-General had decided to accept the JAB's conclusions and recommendation, and to compensate him accordingly. On 30 April 2002, the Applicant filed his application with the Tribunal.

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[13] Julio Barboza, President; Kevin Haugh, Second Vice-President; and Mr. Spyridon Flogaitis, Member.

Prior to its consideration of the case, the Tribunal recalled its practise of restricting itself in promotion cases to examining whether the decision was tainted by any element of arbitrariness, citing its jurisprudence that "[w]hen the Respondent properly exercises his discretion regarding a promotion, the Tribunal will not interfere with the decision made." (Judgement No. 1056, Katz (2002), as cited in Judgement No. 1085, Wu (2002).) The Tribunal took note of the fact that the APB had not taken the successful candidate's tenure as Officer-in-Charge into consideration and found that the selection decision was not tainted by improper factors.

However, the Tribunal concurred with the JAB's conclusion that the Administration had not followed the proper procedures in the promotion exercise, not only because the process lasted six and a half years, but also based on an examination of the selection process. The Tribunal recalled that part of this process was also the subject of Judgement No. 974, Robbins (2000), in which it determined that there were procedural irregularities in connection with the first two vacancy announcements for the post, and found that "[the] lapse of over two years without a published result in the promotion process constitute[d] undue delay and unfair treatment."

The Tribunal drew attention to that fact that it has "repeatedly expressed its dissatisfaction with practices followed by the Administration which lead to procedural irregularities in the selection process, even when ultimately [it] refrained from intervening in the substantive decision" and held that "procedures, especially in matters where the Organization's employees' career and personal work satisfaction are involved, must be thoroughly respected in order to avoid injury—substantive or moral—to its staff members. Decisions ought to be taken in a timely manner and with the necessary care, so as not to create any suspicion that procedures are tailor made." Accordingly, the Tribunal found that the Applicant was entitled to greater compensation than had been paid and awarded him additional compensation of seven months' net base salary.

12. Judgement No. 1157 (20 November 2003): Andronov v. Secretary-General of the United Nations[14]

Definition of "administrative decision" and "implied administrative decision"—Time limits for filing of applications—Inappropriate interference by Administration in Applicant's personal life

The Applicant initially entered the service of the Organization on 30 August 1968. After a lengthy break in service, he re-entered the Organization's service on 9 January 1983 as a Senior Research Officer with the Joint Inspection Unit, at the P-5 level. On 1 December 1991, he was granted a permanent appointment.

On 20 October 1994, the Applicant filed for divorce in the Russian Federation. On 7 March 1995, he provided the Administration at the United Nations Office at Geneva with a copy of the court's decision, dated 15 February and, on 14 March, a Personnel Action form was issued, changing his status to "divorced" and ending his entitlement to salary and post adjustment at the dependency rate.

Also on 14 March 1995, the Personnel Service, United Nations Office at Geneva, advised the Applicant that his ex-wife had claimed to have received no financial support from him since October 1994. The Applicant was reminded that failure to honour legally binding

[14] Julio Barboza, President; Mayer Gabay, Vice-President; and Spyridon Flogaitis, Member.

family support obligations violated the standard of conduct required of international civil servants. The Applicant was asked to provide evidence that the sum paid to him at the dependency rate had been used for its declared purpose. The Applicant responded, confirming that he had been transferring the dependency allowance to his ex-wife's bank account.

On 14 April 1995, the Applicant's divorce became final and binding in accordance with the relevant Russian law, upon its registration in the "Register of the Acts of Civil Status."

On 2 June 1995, the Applicant requested that his ex-wife's *carte de légitimation* be cancelled. He reiterated this request on 19 June, and several times thereafter.

On 26 September 1995, the Senior Legal Adviser, United Nations Office at Geneva, advised the Chief, Strategic Planning for Human Resources Management, that "as far as the legal consequences for alimony and matrimonial property are concerned, I advised [the Applicant's ex-wife] that she might wish to obtain a decision from a Swiss Court, since the Moscow Court decision remains silent on these questions." On 29 March 1996, the Applicant submitted a decision dated 25 January 1996 rendered by a French court which confirmed the validity of his Russian divorce decree. On 17 May, however, the Senior Legal Adviser informed the Applicant that his ex-wife had initiated legal action in the Swiss courts. Although this action was successful in the lower instance, on 13 November 1998 the Geneva appeals court overturned this decision.

On 6 July 1999, the Applicant responded to a request from the Senior Legal Adviser that he provide evidence of his financial support of his ex-wife, asserting that the statements made by the Senior Legal Adviser amounted to harassment. The same day, the Chief, Personnel Service, advised the Applicant that the Administration considered the case closed. On 8 July, she likewise informed the Senior Legal Adviser that the Administration's further involvement in the case would be inappropriate.

On 6 and 21 March 2000, the Applicant requested copies of several documents contained in his official status file.

On 18 May 2000, the Applicant requested the agreement of the Secretary-General to bring a direct appeal to the Tribunal but on 5 July his request was denied. On 25 July, he lodged an appeal with the Joint Appeals Board (JAB).

In its report of 20 July 2001, the JAB found that "the alleged administrative decisions against which the [Applicant had] complained consist[ed] of a series of communications sent by the Administration either to inform [him] or other concerned staff members, or to ask [him] for comments or clarifications." The JAB concluded that the appeal was not admissible as there was no administrative decision which the Applicant could have contested. Accordingly, the JAB recommended that the appeal be rejected. On 9 November, the Applicant was informed that the Secretary-General agreed with the JAB's conclusions. On 11 February 2002, the Applicant filed his application with the Tribunal, appealing the Respondent's decision accepting the unanimous recommendation of the JAB, to reject his appeal on the grounds of lack of an administrative decision.

In its Judgement, the Tribunal expressed its belief "that the legal and judicial system of the United Nations must be interpreted as a comprehensive system, without lacunae and failures, so that the final objective, which is the protection of staff members against alleged

non-observance of their contracts of employment, is guaranteed." Thus, the Tribunal established that "in cases where the Administration believes that there is no specific administrative decision to be challenged in proceedings before the JAB, the rules should be interpreted by the Administration so as to ensure that legal and judicial protection are provided."

The Tribunal defined an administrative decision as "a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order." The Tribunal distinguished this "from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences." It pointed out that such decisions need not necessarily be in writing, as unwritten decisions are "commonly referred to, within administrative law systems, as implied administrative decisions."

In its consideration of the case, the Tribunal found many implied administrative decisions, including with respect to the Administration's failure not to cancel the Applicant's ex-wife's *carte de légitimation* for an unreasonably long period of time, and its decision to provide her with legal advice on how to utilize the judicial system to her benefit in her marital dispute with the Applicant.

The Tribunal accepted the Applicant's contention that documents had been placed in his official status file which reflected adversely on his character, reputation and conduct, constituting "adverse material" within the terms of administrative instruction ST/AI/292 of 15 July 1982. The Tribunal found that the placement of such documents in his file without their being shown to the Applicant or his comments being obtained constituted another challengeable administrative decision. The Tribunal rejected the Respondent's contention that, even if there were an appealable administrative decision, the Applicant had failed to challenge the decision in a timely manner. It recalled that "the countdown for the deadlines of appeals begins only when the contested decisions and their relevant details are known to the Applicant." The Tribunal further expressed its opinion that where "a decision is not made in writing and is unknown to the staff member concerned, the point of time for starting the process is from the time the staff member knew or should have known of the said decision." As the Applicant was not aware of the adverse material in his file until March 2000 and as he initiated an appeal process in May 2000, the Tribunal was satisfied that he had acted within the prescribed time-limits.

Having found the case receivable, the Tribunal decided not to remand the matter to the JAB for consideration on the merits, as the file contained sufficient written documentation to substantiate the Applicant's claims. The Tribunal was satisfied that there was "ample written proof that the Administration [had] interfered in [his] personal affairs and in so doing violated its obligation not to get involved in the private maters of its employees," citing, specifically, various actions of the Senior Legal Officer. Accordingly, the Tribunal ordered that the Applicant be awarded compensation in an amount equivalent to three months' net base salary.

13. Judgement No. 1163 (21 November 2003): Seaforth v. Secretary-General of the United Nations[15]

Discretion of the Secretary-General in personnel matters—Non-renewal of fixed-term contract—Nature of 200 Series appointments—Burden of proof in claiming discrimination or countervailing circumstances

The Applicant entered the service of the United Nations Centre for Human Settlements (UNCHS), Nairobi, at the L-3 level on 4 January 1983. His contract was subsequently extended several times. At the time of the events which gave rise to his application, he held an L-4 position under the 200 Series of the staff rules.

In 1998, a Revitalization Team was appointed to evaluate possibilities for reorganizing UNCHS. The Team made a series of recommendations including a proposal to downsize the number of staff and discontinue a pattern of misuse of 200 Series posts for the performance of core functions. On 20 November 1998, the Applicant was advised that his appointment would not be extended beyond its expiry date of 31 December. Thereafter, his contract was renewed for a period of three months until 31 March 1999, when he separated from service. On 27 April, the Applicant requested payment of a "separation package comparable to that of staff on permanent appointment" on the basis of his 15 years of service and his above-average performance. On 3 May, his request was denied.

On 30 June 1999, the Applicant requested administrative review of the decisions not to renew his appointment and not to grant him a termination indemnity. On 5 October, he lodged an appeal with the Joint Appeals Board (JAB).

In its report of 21 February 2001, the JAB found the Applicant had "voluntarily and knowingly entered into [a] long sequence of 200 Series contracts" and could not now protest the conditions of his service. The JAB also concluded that the Applicant's contention that he had a reasonable expectancy of renewal of his contract or conversion to a 100 Series contract was without legal basis, and that he had failed to substantiate his claim that he was treated arbitrarily or that his separation was the result of an unfair process. In consequence, the JAB concluded that the Applicant had neither a claim for compensation nor for indemnity payment, and recommended that the appeal be rejected in its entirety. On 22 March 2001, the Applicant was informed that the Secretary-General accepted the JAB's finding and conclusion. On 28 February 2002, he filed his application with the Tribunal.

In its consideration of the case, the Tribunal noted that, unlike the rules of the 100 Series, the rules of the 200 Series do not provide for career appointments but merely for the granting of temporary appointments. The Tribunal recalled its longstanding jurisprudence that there is no legal expectancy to renewal of a fixed-term contract, even where the employee has demonstrated efficient or exceptional performance and/or has enjoyed a lengthy term of service, but that, where there are countervailing circumstances, which may include, e.g., abuse of discretion or a promise or agreement to renew, a reasonable expectancy of renewal may be created.

Thus, as a project personnel staff member subject to the rules of the 200 Series, barring any countervailing circumstances the Applicant was found to be subject to separation from service upon the expiration of his 200 Series contract without prior notice and without regard to his performance or attributes. The Tribunal reviewed the Applicant's contentions and employment record to determine whether any countervailing circumstances existed

[15] Julio Barboza, President; and Omer Yousif Bireedo and Jacqueline R. Scott, Members.

but found that the various factors upon which he relied (length of service, frequent renewal of contract, "very good" performance evaluations as well as various recommendations and assurances) did not, individually or together, satisfy the countervailing circumstance test as established by the Tribunal in Judgement No. 885, *Handelsman* (1998).

With respect to the Applicant's claims that the Respondent abused the staff rules by employing him under the 200 Series while assigning him core functions and that the Respondent had an obligation to convert his post to a 100 Series post, the Tribunal concluded that "[t]he fact remains that the Applicant had a 200 Series appointment, not a 100 Series appointment, and thus he was subject to the rules of the 200 Series. Thus, the Applicant is not entitled to claim status or benefits provided under the rules of the 100 Series, nor was he entitled to a conversion of his 200 Series contract to a 100 Series contract." Similarly, the Tribunal rejected the Applicant's claims for a separation package comparable to that provided to staff on permanent appointment; a termination indemnity pursuant to staff rule 209.5; or, the benefits provided to individuals whose contracts were terminated pursuant to an "agreed termination," on the respective bases that he was not the holder of a permanent appointment; had not had his contract terminated; and, did not separate from employment subject to an "agreed termination."

Insofar as the Applicant's contention that the Respondent had abolished his post was concerned, the Tribunal found no evidence that the post was abolished. It reiterated that, when a staff member's service is subject to a fixed-term contract, failure to renew the contract is not an abolition of post, and remarked that "in theory, every 200 Series post is created with the expectation that it will end at some point, either when the project it supports is finished or when the funding for such project no longer exists."

Finally, the Tribunal found that the Applicant had failed to provide evidence that the Respondent had acted discriminatorily towards him or that any decisions made by the Respondent were discriminatory or an abuse of discretion.

Accordingly, the Tribunal rejected the application in its entirety.

B. Decisions of the Administrative Tribunal of the International Labour Organization

1. Judgment No. 2183 (3 February 2003): In re Diaz-Nootenboom v. European Organization for Nuclear Research[16]

Appointment—Contract of employment—De facto employment—Social insurance coverage of staff members by Organization

The Complainant challenged, *inter alia,* the decision of the European Organization for Nuclear Research (CERN) to terminate her contract of service, and CERN's alleged failure to provide her with social insurance coverage. The Complainant worked for CERN between 1965 and 1972, and for the ISOLDE Collaboration (ISOLDE) between 1982 and 1985. ISOLDE is a group which comprises several external scientific institutes as well as CERN itself, and which uses CERN's facilities. Due to changes in the rules for payment of staff, CERN in 1985 offered the Complainant a one-year contract as an unpaid associate with CERN, in light of a signed registration form indicating that the Complainant was

[16] Michel Gentot, President; and Jean-François Egli and Seydou Ba, Judges.

a paid employee of the Spanish Industry and Energy Ministry's nuclear energy institute (JEN).

The Complainant accepted and worked under this periodically renewed contract for fifteen years. The Complainant's salary was paid by ISOLDE, but refunded to ISOLDE by CERN, which considered it an operating expense and periodically adjusted the amount in a similar manner to that of CERN staff members. In 1998, the Complainant's work began to deteriorate because of illness and she was placed on sick leave in May 2000. On 1 September 2000, the Complainant requested, *inter alia,* that CERN treat her retroactively as an established CERN staff member from 15 October 1985.

CERN rejected this request, stating that the Complainant had falsely claimed to be an employee of JEN. CERN denied that ISOLDE's payments to her were sufficient to establish that she had been considered a CERN staff member. On 27 October 2000, the Head of CERN's Human Resources Division informed the Complainant that her contract was to be "terminated" effective 30 November 2000. The Complainant lodged claims against CERN with the Joint Advisory Appeals Board (Board) with respect to, *inter alia,* her termination and prior status. The Board held that the Complainant's claims regarding her 1982–85 status were time-barred.

The Board found, however, that the Complainant had had an employment relationship with CERN and that her situation from 1985 forward had been illegal. The Board recommended that the Complainant's request for a contract extension be rejected as certain conditions for the granting of a further unpaid associate's contract had not been satisfied. The Board nevertheless also recommended that the Complainant's *de facto* employer be legally identified, as it owed the Complainant social insurance coverage for the period of 1985 to 2000. CERN thereafter rejected all of the Complainant's claims in such respects.

In reviewing the case, the Tribunal agreed with CERN that the Complainant's status since 1985 had been illegal, but held that she was not responsible for the arrangement since her CERN supervisor had devised it. The Tribunal stated that international organizations must take responsibility for their employees' decisions, even if they subsequently condemn those decisions. The Tribunal concluded that there was no justification for the ending of the Complainant's employment relationship with CERN. The Tribunal ordered on such grounds that CERN pay the Complainant through 30 September 2001. The Tribunal, however, rejected the Complainant's claim for moral damages on the ground that there were factual doubts with respect to her allegation of false statements made by CERN regarding the authorship of the false registration form submitted by the Complainant when obtaining the CERN contract.

The Tribunal rejected the Complainant's claim for social insurance coverage, as the Complainant's signed contract did not provide for such payments and could not be re-designed by the Tribunal.

2. Judgment No. 2185 (3 February 2003): In re Moreno de Gómez (No. 3) v. United Nations Educational, Scientific and Cultural Organization[17]

Set-off by Organization against Tribunal judgments

The Complainant challenged the decision of the United Nations Educational, Scientific and Cultural Organization (UNESCO) to deduct sums allegedly owed to her by order of the Tribunal in two previous judgments. Such withheld sums were equivalent

[17] Jean-François Egli, Presiding Judge; and Seydou Ba and Hildegard Rondón de Sansó, Judges.

to the redemption value of outstanding loans taken out earlier by the Complainant from UNESCO's Staff Savings and Loan Service.

The Tribunal stated that an organization bears the onus in establishing that it has executed its obligations under Tribunal judgments. The Tribunal noted that set-off is a mechanism by which obligations are extinguished, and that a debtor may thereby declare that he or she is setting off a claim against his or her debt, even where the claim is disputed. The Tribunal further noted the general rule that in the context of a judgment's execution, the debtor's set-off can be recognized only if his or her claim is a liquid one, meaning that there is no dispute as to its existence, amount and due status. The Tribunal stated that the debt to be extinguished must not require actual payment, as this would preclude a set-off. The Tribunal held that since the Complainant had contested such matters, UNESCO's desired set-off could not be accepted by the Tribunal in the context of the Complainant's application for execution.

The Tribunal noted that the execution of a judgment, in the broad sense of the term, involves a determination as to how the judgment is to be interpreted. The Tribunal stated that the previous judgments in the Complainant's favour could not be interpreted as excluding the possibility of an overall set-off of the type normally due upon the expiry of a contract. The Tribunal noted that if it had expressly ruled on this issue in its earlier judgments in the Complainant's case, it would have acknowledged UNESCO's right to effect the set-off, subject to the above-mentioned conditions. The Tribunal stated, however, that a judgment ordering the payment of a sum of money cannot be rendered inoperative by a set-off unless the acceptance of the claim or Tribunal judgment which the debtor intends to set off carries the same guarantees as those afforded by judicial proceedings, including the ability to appeal finally to the Tribunal. The Tribunal found that UNESCO's deduction had not been decided upon in such a way that the Complainant could construe it as a decision against which she could appeal. The Tribunal further held that it could not rule on set-off claims when an application of execution was before it.

The Tribunal for such reasons referred the matter to UNESCO for its investigation and a decision respecting due process. The Tribunal stated that if UNESCO were to decide that the Complainant owed an amount equal to that of the judgment awards withheld by UNESCO, UNESCO could consider itself retroactively released from its obligations under the judgments. The Tribunal further stated that if UNESCO found it had not been released from its debt, it would be required to pay interest and penalties.

The Tribunal ordered a partial award of costs to be paid to the Complainant, and dismissed all of her other claims.

3. Judgment No. 2190 (3 February 2003): In re Zawide v. World Health Organization[18]

Investigation of on-duty accidents—Compensation for on-duty accidents—Medical assessment of injured staff member—Waiver of immunity in respect of individual staff member—Reassignment location—Relationship of Organization to national authorities—Relationship of Tribunal to Organization—Intervention in proceedings—Privileges and Immunities

The Complainant, a World Health Organization (WHO) staff member, challenged decisions taken by the WHO with respect to a February 1997 road accident in Namibia in

[18] Michel Gentot, President; and Seydou Ba and James K. Hugessen, Judges.

which two people were killed and the Complainant was severely injured. The Complainant claimed that the WHO had failed: (i) to investigate the accident; (ii) to convene a medical board to review his assessed loss of function; and (iii) to reassign him to a duty station where suitable medical care was available.

The Namibian authorities investigated the accident and in June 1997 informed the WHO that they had decided not to prosecute the driver of the vehicle, who was a WHO staff member. In September 1999, however, the Namibian authorities summoned the driver to court on a charge of culpable homicide. The WHO advised the authorities on 7 October 1999 that the driver was immune from legal process pursuant to the Convention on the Privileges and Immunities of the Specialized Agencies, but that a request for a waiver of immunity could be submitted to the WHO Director-General. In November 2000, the Namibian Ministry of Foreign Affairs informed the WHO that the decision to prosecute the driver had been maintained. The WHO reiterated its position.

Meanwhile, on 6 October 2000, the Complainant filed an internal appeal with the Headquarters Board of Appeal (Board) raising the above-mentioned claims. The Board recommended that the WHO: (i) pursue an investigation with the Namibian authorities so as to allow the Director-General to decide on the question of whether to waive the driver's immunity; (ii) provide a full explanation and relevant updates to the victims' families; and (iii) compensate the Complainant for its failure to convene a medical board within a reasonable time, its refusal to conduct an internal investigation into the accident, and its failure to treat the Complainant with due consideration and respect. On 3 July 2001, the WHO's Director-General rejected most of the Complainant's claims, but acknowledged the inordinate time taken to convene the medical board. On this basis, the WHO provided compensation, legal fees and travel costs to the Complainant.

In reviewing the Complainant's claim that the WHO had failed to conduct an investigation, the Tribunal noted that the Namibian authorities had conducted a judicial inquiry and had initially decided not to prosecute the driver. The Tribunal accepted the WHO's position that it was not in a position to decide on a waiver of the driver's immunity, as the WHO had not yet received relevant documentation from the Namibian authorities. The Tribunal found that the driver was covered by the WHO's immunity, and noted that the Organization has a discretion to assess, in the context of its relations with a Member State, whether it is appropriate to lift a staff member's immunity from legal process. The Tribunal further noted that such relations fall outside the jurisdiction of the Tribunal. The Tribunal rejected the Complainant's claims with respect to the possible disciplining of the driver by the WHO, as such proceedings were likewise to be undertaken at the WHO's discretion.

The Tribunal nevertheless held that the WHO's failure to open an independent investigation into the accident was not excused by the inquiry undertaken by the Namibian authorities. On this ground, the Tribunal awarded compensation and costs to the Complainant. The Tribunal, however, rejected the Complainant's claim regarding the calling of a medical board, as the Tribunal found no bad faith or reluctance in this respect on the WHO's part. The Tribunal likewise rejected the Complainant's request for reassignment, as his duty stations during the relevant period had provided the sophisticated medical support systems that were required for him.

The Tribunal rejected the Complainant's request for an order that disciplinary investigations be undertaken against both the Director of the Joint Medical Service, who had allegedly refused to appear before the Board, and the WHO's counsel. The Tribunal

stated that it had no jurisdiction to issue injunctions against international organizations, or to cast judgment on the means of defence used on their behalf in the context of internal appeals proceedings or litigation.

The Tribunal found non-receivable an application for intervention brought by the widow of a WHO staff member who had been killed in the accident. The Tribunal held that the intervener's situation was different in law and fact from that of the Complainant, and that the solution adopted by the Tribunal in the Complainant's case was not apt to affect the intervener's rights.

4. Judgment No. 2193 (3 February 2003): In re Alvarez-Orgaz v. United Nations Educational, Scientific and Cultural Organization[19]

Definition of "spouse"—Dependency benefits—Rights of homosexual couples—Human rights—Civil solidarity pacts

The Complainant challenged the decision of the United Nations Educational, Scientific and Cultural Organization (UNESCO) to deny him dependency benefits with respect to his male partner, with whom the Complainant had entered into a *pacte civil de solidarité* (Pact) in Paris on 30 March 2000.

On 6 June 2000, UNESCO's Office of Human Resources Management rejected the Complainant's request for a change of status with respect to dependency entitlements, on the ground that the Pact was not recognized by the United Nations common system as a formal marriage that could create any entitlement to such benefits or allowances. On 27 June 2000, the Complainant filed a formal protest, but received no reply from UNESCO's Director-General. On 31 July 2000, the Complainant filed an appeal with the Appeals Board (Board), and on 14 September 2000 filed a detailed appeal with the Board. On 4 December 2000, the Board recommended (with one member dissenting) that the Director-General allow the Complainant's claim. The Director-General did not endorse the recommendation, and on 28 June 2001 informed the Complainant that his claim was rejected.

In reviewing the case, the Tribunal noted that it could review an allegation of discrimination only when such a claim was based on precise and proven facts establishing that discrimination had occurred. The Tribunal shared UNESCO's view that the 1954 Headquarters Agreement between the French government and UNESCO could not be interpreted as obliging UNESCO to apply all statutory and regulatory provisions of the host country. The Tribunal noted that the term "spouse" was not defined by the UNESCO staff rules, and found a link in its case law between the word "spouse" and the institution of marriage, in whatever form that might take. The Tribunal further found that the Pact did not constitute a marriage under French law, as documents evidencing the latter drew a clear distinction between married spouses and partners under a Pact.

The Tribunal held on such grounds that neither the letter nor the spirit of the relevant texts or Tribunal case law enabled partners under a Pact to be considered spouses under UNESCO's staff rules. The Tribunal held that UNESCO had not discriminated against the Complainant, and stated also that it could not compel the Director-General to make an exception in the Complainant's favor, as such an option was within the Director-General's sole discretion. The Tribunal for such reasons dismissed the complaint.

[19] Jean-François Egli, Presiding Judge; and Seydou Ba, James K. Hugessen, Flerida Ruth P. Romero, Hildegard Rondón de Sansó, Judges.

In dissent, Mr. Justice Hugessen (Hugessen) agreed that a Pact partnership did not constitute a formal or *de facto* marriage. Hugessen asserted, however, that international conventions, the Universal Declaration of Human Rights, and the Tribunal's case law supported the view that the principle of non-discrimination is a fundamental principle of law that must prevail over discriminatory staff rules and regulations. Hugessen urged the use of a "similarly situated" test as developed in past cases by the Tribunal, so as to compare an alleged victim of unequal treatment with an individual not subject to the impugned rule. Hugessen concluded per this test that a finding that homosexual couples are not "similarly situated" to married or unmarried heterosexual couples rests at best on an assumption that is a fruit of stereotyping. Hugessen asserted that homosexual couples are dissimilarly situated to heterosexual couples only in that they have a different sexual orientation. Hugessen stated that such a distinction cannot be a sound or rational basis for differential treatment.

Hugessen identified in the Tribunal's case law two lines of applicable analysis for cases of alleged discrimination. The first was whether either the purpose or effect of a rule is discriminatory based on irrelevant personal characteristics. The second was whether the discriminatory rule put an affected staff member at a severe disadvantage, as seen from the point of view of the staff member rather than that of the Organization. Hugessen further proposed an inquiry as to whether there are nevertheless sound administrative reasons for the difference in treatment, or whether such treatment is a fair, reasonable and logical outcome of circumstantial differences. Hugessen urged that an inquiry into such matters focus on impact (i.e., the discriminatory effects and their severity on the complainant) rather than on constituent elements (i.e., the grounds of the distinction).

Hugessen asserted that sexual orientation constitutes an irrelevant personal characteristic, and that homosexuals are a highly vulnerable minority deserving of human rights protection. Hugessen likewise found that homosexual couples would be burdened and disadvantaged by differential treatment in respect of dependency benefits. Hugessen stated that the purpose of dependency benefits is to provide a benefit to people who are in a loving and caring relationship characterized by voluntariness, permanency, legal enforceability and mutual dependency and assistance. Hugessen found the failure of international organizations to legislate the removal of discriminatory provisions from its staff rules to be no obstacle to the Tribunal's identification of and refusal to apply such provisions. Hugessen further found there to be no possible administrative justification for the differential treatment of the Complainant, and asserted that UNESCO should be required to provide evidence in support of its differential treatment, rather than to have the Complainant be required to prove facts supporting the alleged discrimination.

Also in dissent, Judge Rondón de Sansó (Rondón de Sansó) asserted that internal organizational regulations cannot substitute for national legislation governing a country's institutions. Rondón de Sansó found that a Pact partnership is not a mere private contract, but rather a contract entered into with nationally recognized authorities. Rondón de Sansó found it impossible on such grounds to accept that the Headquarters Agreement could provide a basis for UNESCO's refusal to recognize a contract stemming from national legislation and involving public policy.

Rondón de Sansó further asserted that the term "spouse" should not be interpreted narrowly, but rather as broadly as possible. Rondón de Sansó stated that it is a rule of contemporary international law that the progressive nature of any interpretation to which the law refers is to be considered. Rondón de Sansó opined that a "spouse" should be defined as a stable partner bound to the staff member in a permanent relationship expressly

authorized and provided for by specific legislation. Rondón de Sansó asserted that the denial of spousal status to such an individual would disregard the validity of the official document evidencing the relationship as well as of the law establishing the legal relationship. Rondón de Sansó concurred with Hugessen's analysis with respect to non-discrimination and the asserted violation of human rights.

5. Judgment No. 2211 (3 February 2003): In re Müller-Engelmann (Nos. 14 and 15) v. European Patent Organisation[20]

Abuse of process—Award of costs against Complainant

The Complainant in her fourteenth and fifteenth complaints challenged the decisions of the European Patent Organisation (EPO): (i) not to reimburse her for alleged damages arising from her exclusion from the EPO's security and pension schemes; and (ii) refusing her moral damages and costs arising from an earlier appeal. The Tribunal joined the complaints as they raised identical issues.

The Tribunal found the Complainant's claims to be obviously duplicitous and their continuation a rare, flagrant and vexatious abuse of the Tribunal's process. The Tribunal noted that the Complainant had earlier been admonished for her litigiousness, and stated that the time had come for more serious measures to be taken. The Tribunal therefore ordered the Complainant to pay costs to the EPO. The Tribunal stated that the making of such an award had been foreseen in an earlier judgment (No. 1884) which had affirmed the Tribunal's inherent power to exact costs from a complainant as part of the Tribunal's necessary power to control its own process. The Tribunal noted in support of its decision the dozens of still-pending cases which the Complainant had brought against the EPO.

The Tribunal stated that it would not impose costs on every persistent litigant, as some disputes are at least arguable. The Tribunal affirmed, however, that where a litigant, like the Complainant, had found success before the Tribunal but had refused to accept the limits of such success, he or she could expect to suffer cost consequences. The Tribunal noted that this first award against the Complainant was nominal, but that this would not necessarily be the case in the future. The Tribunal permitted the EPO to recover the sum by withholding it from any amount due to the Complainant then or in the future.

[20] Michel Gentot, President; James K. Hugessen, Vice President; and Flerida Ruth P. Romero, Judge.

C. Decisions of the World Bank Administrative Tribunal [21]

1. Decision No. 304 (12 December 2003): D v. International Finance Corporation[22]

Misconduct—Investigations—Due process—Proportionality of sanctions—Scope of review in disciplinary cases—Abuse of position—Engagement in unauthorized business activities—Conflict of interest—Pornography—Administrative leave—Hearsay

The Applicant joined the International Finance Corporation (IFC or the Bank) in 1991 and was rated as an excellent performer. Between 1993 and 1996, the Applicant served as Investment Officer for two Bank loans to a company whose Managing Director was one Mr. S, whose family had known the Applicant's since the 1920's. Soon after the second loan was approved, the Applicant loaned US$50,000 to Mr. S so that he could deal with a personal emergency. The loan was undocumented, and was alleged to have been set at a 10% interest rate. While Mr. S's company timely repaid both Bank loans, Mr. S did not repay his loan to the Applicant. In 2000–01, the Applicant granted Mr. S more time to do so.

In early 2001, the Bank's newly formed Department of Institutional Integrity (INT) received word from a Bank staff member in Tanzania that the Applicant had received kickbacks. Two senior INT investigators then reviewed the Applicant's email account without informing the Applicant. Having discovered the Applicant's financial relationship with Mr. S, as well as his dealings for private companies and handling of pornographic materials, the investigators travelled to Tanzania, where they questioned at least three IFC clients and interviewed Mr. S. The investigators determined that credible evidence existed to support a charge of the Applicant's having taken money from Mr. S via the loan, but that the evidence did not support the kickback allegations. The Applicant thereafter received a Notice of Alleged Misconduct stating that an investigation was being conducted, citing the allegedly violated rules, and outlining the investigation process.

The investigators then interviewed the Applicant, and on 13 September 2001, the Applicant was placed on administrative leave and escorted from the Bank by a security guard and a Human Resources representative. The investigators thereafter conducted further interviews and provided a draft investigation report to the Applicant. The Applicant responded to this draft, and on 3 December 2001 the investigators issued their final investigation report to the Vice President for Human Resources. The investigators found that the Applicant had committed misconduct by lending money to Mr. S, taking a *de facto* interest in the IFC investment in Mr. S's companies, involving himself in outside business activities without authorization, handling pornographic and obscene materials on IFC computers, and coordinating his testimony with Mr. S.

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[21] 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 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 designed or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan.

[22] Francisco Orrego Vicuña, President; Bola A. Ajibola and Elizabeth Evatt, Vice Presidents; and Robert A. Gorman, Jan Paulsson, Sarah Christie and Florentino P. Feliciano, Judges.

The Vice President thereafter informed the Applicant by memorandum that she had concluded that he had abused his position for financial gain, engaged in unauthorized outside business activities, and engaged in unauthorized use of Bank computers to receive, review and forward pornographic and obscene materials over the Internet. The Vice President stated that she had decided to terminate his employment immediately based on the first finding alone. The Vice President declined to impose further sanctions with respect to the two remaining violations.

The Bank's Appeals Committee thereafter concluded that the Vice President had abused her discretion by automatically terminating the Applicant, because while the Applicant had created an appearance of impropriety and a potential conflict of interest, there existed little or no evidence of abuse of position. The Appeals Committee also found due process violations, and recommended reconsideration of the termination and payment of damages. The Managing Director, who received the recommendations due to the Vice President's involvement in the case, did not accept these recommendations.

In considering the case, the Tribunal noted that its scope of review in disciplinary cases is broader than that with respect to purely managerial or organizational acts, and involves an examination of: (i) the existence of the facts; (ii) whether they legally amount to misconduct; (iii) whether the sanction imposed is provided for in the law of the Bank; (iv) whether the sanction is not significantly disproportionate to the offence; and (v) whether the requirements of due process were observed.

The Tribunal found that the Bank had rested its claim of misconduct warranting discharge on the mere making of a personal loan, and not upon the charging or collection of interest. The Tribunal concluded that there had been no showing under staff rule 8.01, para. 3.01*(d)*, of an abuse of position for financial gain such as a kickback, and that even if interest was to be paid, the Bank had not established that such gain would derive from an abuse of the Applicant's position as an Investment Officer overseeing the loans to Mr. S's company. The Tribunal further held that the Applicant could not be held on the basis of the loan to have engaged in the misconduct described in staff rule 3.01, para. 4.05, i.e., accepting remuneration from entities and/or persons in connection with an appointment with the World Bank Group.

The Tribunal endorsed the Bank's "zero tolerance" policy of severe discipline for abuse of position. The Tribunal found that the Applicant had committed a serious error in judgment by making the loan, and had violated a different provision, staff rule 8.01, para. 3.01(*b*), by failing to observe generally applicable norms of prudent professional conduct. The Tribunal, however, found no actual conflict of interest, and concluded that disciplinary measures substantially less severe than termination would have been appropriate. The Tribunal further determined that the Applicant's dealings with private businesses related to his family's businesses, were a technical violation at most, and warranted a proportionately modest disciplinary measure. The Tribunal found that the Applicant's regret and pledge not to deal with pornographic materials was sufficient to resolve that count of misconduct.

The Tribunal concluded that it could not uphold the Bank's contention that the Applicant's termination for violating staff rule 8.01, para. 3.01(*d*), had been mandatory under the staff rules. The Tribunal found that the Applicant's mandatory termination constituted a retroactive application of a 1997 amendment to the relevant disciplinary rule, i.e., staff rule 8.01, para. 4.01. The Tribunal further found that the Applicant had not violated staff rule 8.01, para. 3.01(*d*), at all.

The Tribunal held that the Bank had also erred in imposing disciplinary measures against the Applicant under staff rule 8.01, para. 4.03, with respect to the Applicant's violation of staff rule 8.01, para. 3.01(*b*), in that the Bank had failed to exercise its discretion by not taking account of the particular facts of the case, the frequency of the offending conduct, and most significantly the Applicant's situation. The Tribunal on this basis found termination to have been disproportionate to the Applicant's offences given their nature as well as the Applicant's positive employment history.

With respect to the Applicant's claims of denial of due process, the Tribunal concluded that the Bank had unreasonably applied its "reason to suspect" standard when beginning the investigation. The Tribunal established that the "reason to suspect" test will ordinarily require some objective corroboration except when an accusation is of a most grave and exigent nature. The Tribunal found the initial accusations against the Applicant to have been triple-hearsay, and that the Bank's scrutiny of the Applicant's email had therefore been precipitate.

The Tribunal held that the Bank did not abuse its discretion by not informing the Applicant of the preliminary inquiry, given the Bank's fears of potential evidence-tampering. The Tribunal nevertheless found that the Bank should have weighed against this concern the Applicant's reasonable interest in nipping in the bud the further spread of serious and unfounded rumours directed against him. The Tribunal determined that a staff member who is the subject of a preliminary inquiry should be informed of that fact at the earliest reasonable moment, taking into account justified concerns regarding tampering, collusion and the like. With respect to the Applicant's placement on administrative leave, the Tribunal found the circumstances of the Applicant's escort from the premises to have been unreasonable.

For such reasons, the Tribunal ordered the rescission of the termination, the payment of compensation, correction of the Applicant's personnel file, and the offer and negotiation of a mutually agreed separation package.

2. Decision No. 306 (12 December 2003): Elder v. International Bank for Reconstruction and Development[23]

Pensions and pension systems—Pension eligibility requirements—Non-Regular Staff—Détournement de pouvoir—*Validity of general rules*—Ex gratia *payments and legal obligations on part of Bank*

The Applicant challenged the decision of the International Bank for Reconstruction and Development (IBRD or the Bank) to deny him pension credit for past service as a Non-Regular Staff (NRS) due to a disqualifying break in service. Such credit had been extended in 2002 to qualifying staff members as an extension of the Bank's 1998 Human Resources Policy Reform (Reform).

The Applicant joined the Bank in 1989 as a Short-Term Consultant, and in 1990 accepted a Long-Term Consultancy that was subsequently extended until June 1996. He then obtained Short-Term Consultancies until June 1997, when he was again appointed to a Long-Term Consultancy. In 1998, he began to participate prospectively in the Staff Retirement Plan (SRP) upon the implementation of the Reform.

[23] Francisco Orrego Vicuña, President; Bola A. Ajibola and Elizabeth Evatt, Vice Presidents; and Robert A. Gorman, Jan Paulsson, Sarah Christie and Florentino P. Feliciano, Judges.

In 2002, the Bank's Executive Directors approved Schedule F to the SRP, which conferred past pension credit on NRS staff in continuous service with a pensionable appointment lasting until 1 January 2002, except for any service occurring before a break in eligible service of more than 120 consecutive calendar days prior to that date. Qualifying appointments included a Long-Term Consultancy but not a Short-Term Consultancy. The Bank on this basis concluded that the Applicant was not eligible for past pension credit due to the timing of his 1996–97 Short-Term Consultancies. As a result, his 2,125 days of service as a Long-Term Consultant from 1990–96 were disregarded, as was his 1997–98 Long-Term service, which did not last more than the required threshold of 730 days.

The Tribunal in considering the case determined that the 120-day disqualifying period and exclusion of prior service were not *per se* wrong, and that the Bank did not act in an arbitrary manner or commit a *détournement de pouvoir* in establishing reasonable limits and conditions on benefits allowed under its rules. The Tribunal found the length of the disqualifying period to be justified by business needs, and to have responded to the views expressed by the Bank's Staff Association. The Tribunal noted that all pension plans normally require continuous service and restrict the ability to "buy back" time when restoring pension service. The Tribunal held that it was not within its competence to consider whether an alternative plan would have been more effective, and that it could decide only whether the plan could be lawfully applied to the staff member in the light of his or her rights. The Tribunal found the Applicant's disqualifying changes in appointment type to have been related to the Bank's legitimate business needs and his employment interests at the time.

The Tribunal held that the Bank is not obliged to develop individualized exceptions to the rules, as these could be unfair in themselves, or could otherwise adversely and unfairly affect pension funds belonging to others. The Tribunal stated that the merit of general rules lies precisely in granting the same treatment to all staff members falling within the same category. The Tribunal further concluded that while the Bank had made *ex gratia* payouts from the administrative budget (as opposed to the SRP funds) to five pension-ineligible staff members, no exceptions had been made to the application of the Bank's rules.

For such reasons, the Tribunal dismissed the application.

3. Decision No. 300 (19 July 2003): Kwakwa v. International Finance Corporation[24]

Misconduct—Abuse of position—Investigations—Due process—Scope of review in disciplinary cases—Proportionality of sanctions

The Applicant challenged his termination for misconduct from the position of Acting Resident Representative of the International Finance Corporation (IFC or the Bank) in Accra, Ghana.

On 28 June 1994, the Applicant's United Kingdom bank account was credited with a payment of US$50,000 from one Mr. Armen Kassardjian, a businessman in Accra who had applied for two IFC loans. The Applicant served as lead Investment Officer and issuer of the final-decision memorandum in respect of these loans. The Applicant claimed that five days before the deposit was made, he had encountered Mr. Kassardjian on a flight and had

[24] Francisco Orrego Vicuña, President; and Robert A. Gorman and Jan Paulsson, Judges.

agreed that Mr. Kassardjian would remit US$50,000 to the Applicant in immediate return for an equal value of Ghanaian Cedis which Mr. Kassardjian required.

The Applicant further claimed that all written records of the agreement were lost, and that Mr. Kassardjian had actively avoided him and frustrated his attempts to provide him with Cedis. A Bank investigator later determined that the Applicant was financially unable to complete such an exchange of currency. In 1994 and 1995, meanwhile, the IFC loans were disbursed to Mr. Kassardjian, who became delinquent in repaying them. In 1996, the Applicant forwarded a check for US$49,750 to Mr. Kassardjian, who did not seek to cash the check until October 2000, after the Applicant was under investigation.

On 9 December 1999, the Applicant was called to the Bank's Country Office in Accra and informed that he was under investigation. He was advised that before he answered any questions he was entitled to be advised in writing of the allegations against him. The Applicant thereupon read a memorandum stating that he had been accused of "accepting remuneration from an IFC client while in the service of the IFC," and also that he had committed "abuse of [his] position in the Bank for financial gain." The Applicant denied all wrongdoing, but later noted the payment from Mr. Kassardjian, which he claimed was a private transaction and not remuneration. The Applicant's employment was ultimately terminated on the grounds that he had accepted outside remuneration and abused his position.

In considering the case, the Tribunal noted its earlier holdings, for example in *Courtney (No. 2),* Decision No. 153 [1996] at para. 29, that its scope of review in connection with disciplinary cases is broader than with respect to decisions of a purely managerial or organizational nature, so that the Tribunal may review the merits of the Bank's decision. The Tribunal further cited *Arefeen,* Decision No. 244 [2001] at para. 42, in noting that the threshold of proof in disciplinary decisions leading to dismissal must be higher than a mere balance of probabilities.

The Tribunal rejected the Applicant's contentions that his transaction with Mr. Kassardjian was not illegal under Ghanaian law and that he was entitled under the terms of his IFC employment to engage in independent business. The Tribunal summarily rejected the Applicant's claim of ignorance as to the relevant rules of employment, and emphatically rejected his explanation that he had not made money on the transaction. The Tribunal found that the Applicant had faced a risk of currency depreciation and that his seeking to avoid loss in such a case was plainly a form of seeking gain. The Tribunal concluded that the Applicant's termination was wholly justified.

The Tribunal considered the Applicant's claim of a disproportionate sanction to have been misconceived, and stated that termination was wholly justified for financial improprieties of the kind that had been demonstrated in the case. The Tribunal stated that such misconduct went to the heart of the ethical foundations of the IFC's work. The Tribunal stated that if the Applicant's currency operations had been his only misconduct, it might have been necessary to assess the magnitude of the offence in light of all of the circumstances, such as their legality under local law and the Applicant's length and quality of service. The Tribunal concluded, however, that such an issue was irrelevant in the circumstances of the case.

With respect to the Applicant's claim of denial of due process, the Tribunal stated that the Bank is not to be held to the full panoply of due process requirements that apply in the administration of criminal law. The Tribunal summarized its due process requirements for

the framing of misconduct investigations as being that: (i) affected staff members must be apprised of the charges being investigated with reasonable clarity; (ii) they must be given a reasonably full account of the allegations and evidence brought against them; and (iii) they must be given a reasonable opportunity to respond and explain. The Tribunal stated that the staff rules do not provide an automatic right to depose, confront or cross-examine persons who have been asked to contribute to the investigation. The Tribunal rejected all of the Applicant's allegations with respect to the investigation and disciplinary processes.

For such reasons, the Tribunal dismissed the application.

4. Decision No. 301 (19 July 2003): Lavelle v. International Bank for Reconstruction and Development[25]

Pensions and pension systems—Pension eligibility requirements—Non-Regular Staff—General rules—Differentiation among Bank staff—Parallelism—Fairness and legitimate expectation—Contractual rights—Confidentiality of pleadings

The Applicant challenged the decision of the International Bank for Reconstruction and Development (IBRD or the Bank) to deny him pension credit for past service as a Non-Regular Staff (NRS) due to a disqualifying break in service. Such credit had been extended in 2002 to qualifying staff members as an extension of the Bank's 1998 Human Resources Policy Reform (1998 Reform).

The Applicant joined the Bank as a Long-Term Consultant in 1988. He accepted a Fixed-Term appointment and began participation in the Staff Retirement Plan (SRP) in 1990. He became a Regular staff member in 1991. When the 2002 provision of past pension credit came into effect as Schedule F to the SRP, the Applicant was denied credit because his 1988–90 service amounted to 511 days and was therefore not in excess of the 730-day (i.e., two-year) threshold required by the terms of Schedule F.

The Tribunal dismissed on both jurisdictional grounds and the merits the Applicant's claim that the Bank had misled the Tribunal in two prior cases with respect to the views of the Bank's Executive Directors concerning the 1998 Reform and the granting of past pension credit for NRS. The Tribunal rejected on the basis of confidentiality the Applicant's request that the pleadings in those cases be produced.

The Tribunal found nothing to be wrong with the Bank's decision to grant benefits pursuant to certain criteria, such as the number of years served. The Tribunal stated that such is the normal approach taken in any pension system or in respect of other employment benefits. The Tribunal held that the two-year threshold established by Schedule F was not arbitrary or unlawful. The Tribunal also rejected the Applicant's contention that the 2002 plan had introduced discrimination among NRS who had previously formed an undifferentiated group. The Tribunal noted its holding in *Crevier,* Decision No. 205 [1999] at para. 25, that discrimination takes place where staff who are in basically similar situations are treated differently. The Tribunal stated that different NRS found themselves in different career-related circumstances, and so were not in the same situation with respect to past pension eligibility. The Tribunal further concluded that eligibility determinations based on the examination of individual career histories would be an administrative nightmare and would pose a much greater risk of arbitrary differentiation between staff members.

The Tribunal noted that the Bank could have adopted the approach taken by the International Monetary Fund and extended past pension credit to all NRS. The Tribunal,

[25] Francisco Orrego Vicuña, President; and Robert A. Gorman and Jan Paulsson, Judges.

however, reiterated its earlier determination in *Crevier,* Decision No. 205 [1999] at paras. 35–36, that the Bank's policy of parallelism cannot be followed blindly when circumstances do not justify doing so.

The Tribunal rejected the Applicant's claim that he had been deprived of compensation for services rendered, as the NRS pension benefit was unavailable at the time the Applicant rendered the services. The Tribunal further found that the Bank had not failed under the Principles of Staff Employment either to develop and maintain compensation conducive to high standards of performance, or to provide adequately for retirement. The Tribunal determined that while it might be mathematically true that the Applicant's existing pension would be higher if his NRS service were recognized, the 2002 provision had no bearing on his pension entitlement since it did not alter his existing rights.

While the Tribunal cautioned that it does not necessarily follow the standards of national law, it found that several English cases had summarized the applicable standard for a "fairness" analysis. The Tribunal noted that "fairness" under English law is not loosely defined but is governed by strict standards, i.e., whether a lawful promise or practice has induced a "legitimate expectation" and reliance with respect to a substantive rather than simply procedural benefit. The Tribunal cited in this respect *R v. IRC, ex parte MFK Underwriting Agencies Ltd,* [1990] 1 WLR 1545, at 1569–70, *Kruse v. Johnson,* [1898] 2 QB 91, [1895–99] All ER Rep 105, and *R v. North and East Devon Health Authority, ex parte Coughlan* [2000] 3 All ER 850, 871–2, paras. 57 and 65. The Tribunal stated that the English courts' reasoning was the same as that applied by the Tribunal in the seminal case of *Prescott,* Decision No. 253 [2001], in which the Tribunal found a violation by the Bank with respect to its failure to consider the applicant for regularization. The Tribunal held that the Bank's past pension credit policy did not frustrate any legitimate expectation by the Applicant, involve the Applicant's contractual rights, or constitute an abuse of discretion.

For such reasons, the Tribunal dismissed the application.

D. Decisions of the Administrative Tribunal of the International Monetary Fund

Judgment No. 2003–2 (30 September 2003): J v. International Monetary Fund[26]

Standard of review in disability cases—Fund procedures for determining whether staff member is disabled—Due process in proceedings concerning eligibility for disability pension—Relationship of Tribunal to Fund's Staff Retirement Plan Administration Committee—Nature of Administration Committee decisions—Nature of Fund retirement pensions

The Applicant challenged the decision of the Staff Retirement Plan (SRP) Administration Committee (Committee) to deny her application for disability retirement from the International Monetary Fund (the Fund) on the ground that the Applicant had failed to establish total and permanent incapacity to perform any duty that the Fund might reasonably ask her to perform. Duly authorized representatives of the Staff Association were permitted to communicate their views on the case as *amicus curiae.*

[26] Stephen M. Schwebel, President; and Nisuke Ando and Michel Gentot, Judges.

The Applicant joined the Fund in 1995 as a Verbatim Reporting Officer, for which she was required almost exclusively to use stenographic and computer keyboards. In September 1999, the Applicant suffered a repetitive-use injury for which she was evaluated by numerous medical professionals over the following years. The Applicant was also treated for related psychological problems. No precise diagnosis for her condition was reached, however. Meanwhile, the Applicant was placed on workers' compensation leave following her injury, and briefly attempted to return to work in February 2000. In May and June 2000, it was determined that the Applicant was unable to resume her functions and she was advised to apply for a disability pension since no other suitable position was available. The Applicant was informed that she could receive mandatory separation benefits only if she first pursued a disability retirement under the SRP.

On 8 June 2000, the Applicant filed a request for disability retirement with the Committee. The Committee's Medical Advisor determined that the Applicant's performance incapacity was not permanent assuming appropriate accommodations were made. A vocational rehabilitation specialist thereafter concluded that the Applicant would be restricted only to menial tasks and thus hard to place. The Medical Advisor subsequently opined that, in light of an independent psychiatric evaluation, the Applicant suffered from a psychophysiologic reaction to her work originating from her desire for more challenging and interesting tasks. The Medical Advisor concluded that the Applicant was not totally or permanently incapacitated from performing tasks which the Fund might reasonably ask of her. The Applicant disputed this conclusion. Meanwhile, the Fund's Human Resources (HR) Department stated that no suitable positions could be found for the Applicant. On 22 February 2001, however, the Committee denied the Applicant's request without providing any supporting reasons. On 18 May 2001, the Fund informed the Applicant that she would be given a medical separation effective 4 March 2002. The Applicant was also notified about means of appealing the Committee's denial.

After the Applicant filed an application with the Committee for review of the decision, the Committee engaged three physicians to examine the Applicant. The physicians differed as to whether the Applicant was disabled, but concurred that she could perform certain types of tasks. The Medical Advisor's final report to the Committee following their evaluation did not cite the Applicant's rebutting evidence and assertions, and found no total or permanent incapacity. The Fund's HR Department reiterated that no suitable positions could be found for the Applicant. After considering the evidence and relevant arguments, the Committee unanimously decided to sustain its original decision, and on 17 May 2002 provided its Decision on Review to the Applicant. The Applicant thereafter raised a number of claims with the Tribunal.

In reviewing the case, the Tribunal found that the Applicant had not attempted to exhaust her remedies in the Grievance Committee with respect to her medical separation, and had unreservedly accepted the ensuing financial benefits. The Tribunal stated that it would thus limit its review to the Applicant's challenge to the Committee's denial of her application for disability retirement. The Tribunal noted that it would use the term "standard of review" when referring to its proper role in reviewing a contested administrative act. The Tribunal further stated that its authority to make both findings of fact and conclusions of law, and therefore to review *de novo* the legality of an administrative act of the Fund, stems from the Tribunal's unique role as the sole judicial actor within the Fund's dispute resolution system. The Tribunal further noted that a decision of the Committee falls under its direct review, as its original decision constitutes the challenged administrative act.

The Tribunal found that a Committee decision was different from an act of managerial discretion because: (i) the Committee's decision is "quasi-judicial" and thus necessarily predicated upon a construction of the SRP's terms; and (ii) the Committee is vested with the authority to take decisions on behalf the SRP without review by the Managing Director and subject to direct appeal to the Tribunal following a decision on reconsideration by the Committee. The Tribunal stated that its standard of review in such a case would involve three questions: *(a)* whether the Committee had correctly interpreted the requirements of the SRP and soundly applied them to the facts of the case, or whether the Committee's decision was instead based on an error of law or fact; *(b)* whether the Committee's decision had been taken in accordance with fair and reasonable procedures; and *(c)* whether the Committee's decision had been in any respect arbitrary, capricious, discriminatory or improperly motivated.

The Tribunal concluded that in view of the Applicant's highly specialized but limited training and experience, it would not be reasonable to expect the Fund to ask her to perform the duties of certain identified positions, as these would require a significantly different background from that of the Applicant. The Tribunal noted that under the Fund's internal law a medical separation could not determine entitlement to a disability pension. The Tribunal nevertheless took the view that the factual circumstances surrounding a separation may be given weight in reviewing the soundness of the Committee's decision on an application for disability retirement. The Tribunal held on the facts that the Applicant was totally incapacitated on the ground that there was no genuine prospect that she could perform any duty which the Fund might reasonably call upon her to undertake. The Tribunal found that the Applicant's condition was permanent, but noted that in the event of partial recuperation, the disability pension could be proportionately reduced under the terms of the SRP.

The Tribunal noted that a retirement pension (for disability or otherwise) is not a mere "benefit" conferred by the Fund upon staff, but a joint insurance scheme to which both the Fund and staff members contribute. The Tribunal stated that the Applicant's stake in the outcome of the decision-making process regarding pension eligibility deserves a high level of procedural protection, and that it is in the interests of both the Fund and all SRP participants that the decision process be fair and reasonable. The Tribunal in this respect held that the Committee's initial decision was a lapse in due process since it did not provide reasons for the decision and had denied the Applicant an opportunity to respond meaningfully. The Tribunal found that the Applicant's lack of opportunity to respond to evidence before the Committee raised questions of due process, but decided that there was no need to rule upon this issue in light of its finding in the Applicant's favour on substantive grounds.

The Tribunal nevertheless recommended that: (i) the Committee enable applicants to submit observations upon medical reports and opinions in a timely manner; (ii) Committee members be entitled to view medical reports and opinions submitted to or rendered by the Medical Advisor; (iii) the Medical Advisor be replaced by a Board of Medical Advisors, as was the case at the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO); (iv) the Medical Advisor or Board's advice be confined to medical questions and not extend to ultimate conclusions as to incapacity, as such determinations should be the function of the Committee; and (v) applicants should be permitted to comment on statements by Fund officers regarding

their capacity to perform any duty which the Fund might reasonably call upon them to perform.

For such reasons, the Tribunal ordered that the Committee's denial be rescinded and that the Applicant be granted a disability pension. The Tribunal did not award separate compensation as it had found it unnecessary to adjudge the Applicant's claim of procedural unfairness. The Tribunal, however, awarded the Applicant costs as it found her claim to have been well-founded.

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)

PRIVILEGES AND IMMUNITIES

1. Special Court for Sierra Leone—Legislative authority for the issuance of *laissez-passer*—Discretion of the Secretariat—Article VII of the Convention on the Privileges and Immunities of the United Nations, 1946—Definition of "official" of the United Nations—General Assembly resolution 76(I) of 7 December 1946—Privileges and immunities of members of the International Court of Justice—General Assembly resolution 90(I) of 11 December 1946—Independent judicial institution established by bilateral agreement

Letter to the Registrar of the Special Court for Sierra Leone

I am writing in response to your facsimile of 6 June 2003 wherein on behalf of the judges of the Special Court for Sierra Leone you inquire about any developments with regard to the Special Court's request to obtain United Nations *laissez-passer* to facilitate the judges' official travels. [. . .]

With reference to the Special Court's request and, in the light of the above statement, I believe that it is necessary to address in detail the issue of where the Secretariat of the United Nations derives the authority to issue United Nations *laissez-passer* and whether the Secretariat has any discretion in this regard.

As I pointed out in my letter to you, dated 25 June 2002, in the case of the United Nations, the issuance of United Nations *laissez-passer* is regulated by article VII of the Convention on the Privileges and Immunities of the United Nations[1] ("General Convention"). Section 24 of article VII of the General Convention provides that the United Nations may issue United Nations *laissez-passer* to its officials. As I further explained in the letter, the question of who constitutes an "official" is regulated by General Assembly resolution 76(I) of 7 December 1946, which states the following:

> ". . . the categories of officials to which the provisions of articles V and VII (the General Convention) shall apply should include all members of the staff of the United Nations, with the exception of those who are recruited locally and assigned to hourly rates."

In the case of the International Court of Justice, which pursuant to Article 92 of the Charter is the principal judicial organ of the United Nations and therefore distinct from other principal organs of the United Nations, including the Secretariat (Article 7), the

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

General Assembly adopted resolution 90(I) of 11 December 1946 defining the privileges and immunities of members of the International Court of Justice, officials of the Registry, assessors, the agents and counsel of the parties and of witnesses and experts. Paragraph 6 *(a)* of that resolution provides that:

> "*(a)* The authorities of Members should recognize and accept United Nations *laissez-passer*, issued by the International Court of Justice to the members of the Court, the Registrar and the officials of the, Court, as valid travel documents. . ."

Thus, the legislative authority for the issuance of a *laissez-passer* to the judges of the International Court of Justice and officials of the Registry is different from that of officials of the United Nations.

In the case of judges 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 ("The International Tribunal for the Former Yugoslavia") and 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 Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 ("The International Tribunal for Rwanda"), which have been established by the Security Council as its subsidiary organs, the Council decided by resolutions 1329 (2000) of 30 November 2000 and 1431 (2002) amending respectively their Statutes that the terms and conditions of service of their judges shall be those of the judges of the International Court of Justice (article 13 *bis*, paragraph 3, of the Statute of the International Tribunal for the Former Yugoslavia; article 12 *bis*, paragraph 3, of the Statute of the International Tribunal for Rwanda).

It follows from the foregoing that the issuance of United Nations *laissez-passer* is strictly regulated by the instruments and decisions referred to above adopted by the principal organs of the United Nations and the Secretariat does not have much discretion in this regard.

The Special Court for Sierra Leone was established as a *sui generis* treaty-based organ. The appointment of judges of the Special Court for Sierra Leone is regulated by the agreement concluded between the United Nations and the Government of Sierra Leone[2] and the Statute of the Court, which forms an integral part thereof (articles 1 and 2 of the agreement, article 13 of the Statute). The latter provides that of the eight judges of the Special Court, five are appointed by the Secretary-General of the United Nations and three by the Government of Sierra Leone. The judges of the Special Court enjoy the privileges and immunities specified in the agreement (article 12), which are the privileges and immunities of diplomatic agents, and the expenses of the Special Court are borne by voluntary contributions.

The Special Court for Sierra Leone is, therefore, an independent judicial institution established by a bilateral agreement. The judges of the Special Court are not officials of the United Nations and their status is not regulated by decisions of either the General Assembly or the Security Council. I regret, therefore, to inform you in response to your inquiry that under the circumstances, the Secretariat of the United Nations does not presently have any authority to issue United Nations *laissez-passer* to the judges of the Special Court.

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[2] For the text of the Agreement and the Statute of the Special Court, see United Nations *Treaty Series*, vol. 2178, p. 137.

Since, according to your facsimile, the judges may appeal on this matter directly to the Secretary-General, I shall bring this response to his attention.

20 June 2003

2. United Nations Assistance Mission in Afghanistan (UNAMA)—Searches of United Nations vehicles—"Search" of or "interference" with property or an asset of the United Nations—Cooperation with the appropriate authorities—Article II, section 3, and article V, section 21, of the Convention on the Privileges and Immunities of the United Nations, 1946—*Mutatis mutandis* application of the Convention on the Privileges and Immunities of the Specialized Agencies, 1947—Effects of armed conflict on treaties

Note to the Under-Secretary-General of the Department of Peacekeeping Operations, United Nations

1. I refer to the Code Cable (N°. . . .) of 9 July 2003 to me, which was copied to you, regarding the procedures that have been followed by Coalition forces with regard to the stopping and searching of vehicles at checkpoints.

2. It appears that those procedures are as follows:

- vehicles are required to stop at checkpoints;
- all the occupants may then be required to exit the vehicle;
- the occupants of the vehicle may then be required to produce identification;
- the inside of the vehicle may then be physically searched;
- the outside of the vehicle may also be subjected to a visual inspection.

These procedures are applied to all vehicles. No exception is made for United Nations vehicles.

3. It appears that Coalition forces are now willing to review the application of these procedures to United Nations vehicles and to adopt new, modified procedures that would take into account the privileges and immunities of the United Nations and ensure minimal interference with United Nations operations.

4. UNAMA seek our advice regarding the application in this connection of the relevant provisions of the Convention on the Privileges and Immunities of the United Nations[3] and of the Convention on the Privileges and Immunities of the Specialized Agencies.[4] Our advice is as follows.

5. Article II, section 3, of the Convention on the Privileges and Immunities of the United Nations (the "General Convention") provides:

> "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."

6. A vehicle belonging to the United Nations is clearly "property" or an "asset" of the Organization. This is so whether or not that vehicle carries United Nations markings.

[3] United Nations *Treaty Series*, vol. 1, p. 15.
[4] United Nations *Treaty Series*, vol. 33, p. 261.

Section 3 of the Convention therefore applies to make any such vehicle immune from "search".

7. As regards what constitutes a "search", the United Nations has consistently maintained that section 3 of the General Convention bars national authorities from verifying the contents of United Nations property. Accordingly, in the case of United Nations supplies contained in sacks, envelopes or containers, national authorities are precluded from opening those sacks, envelopes or containers in order to verify their contents. Similarly, in the case of a vehicle, they are barred from opening the vehicle to inspect within, as, for example, by opening the doors of the passenger compartment, lifting the bonnet (hood) or opening the boot (trunk).

8. Once Coalition forces have ascertained that a vehicle is indeed a United Nations vehicle—either by verifying its external markings or by being given sight of a document that confirms its status—the General Convention would therefore bar them from conducting a physical search of its interior.

9. If the General Convention bars a search of the inside of a United Nations vehicle for the purpose of ascertaining and identifying its contents, it applies equally whether the purpose of that search is to examine contents that are chattels or contents that are people. Equally, if national authorities are precluded from opening a vehicle to inspect the contents within, they are also barred from insisting that the vehicle be opened and its contents placed outside for inspection. Otherwise, the protection afforded by the Convention would be circumvented and its purpose defeated.

10. Subject to what is said below, it must therefore be concluded that article II, section 3, of the General Convention bars Coalition forces from insisting that the occupants of a United Nations vehicle exit that vehicle.

11. The above conclusions are not affected in any way by the fact that the security situation in Afghanistan is difficult. The Convention does not contain anything to the effect that the privileges and immunities for which it provides are subject to abridgement or qualification in times of internal unrest or even in times of armed conflict. Indeed, it has been the consistent position of the Organization that the General Convention applies in such circumstances just as much as it does in times of peace and that the privileges and immunities for which it provides may not be qualified or overridden by any demands of military expediency or security.

12. This having been said, it must be recalled that article V, section 21, of the General Convention places an obligation upon the United Nations to "co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges and immunities mentioned in th[at] Article".

13. We would assume that checkpoints operated or supervised by Coalition forces are established pursuant to police regulations or regulations that are of a closely kindred nature. We would likewise assume that those regulations require persons arriving at, or passing through, such checkpoints to produce proof of their identity at the request of those operating a checkpoint.

14. In accordance with article V, section 21, of the General Convention, the United Nations should cooperate with a view to securing the observance of these regulations by requiring occupants of its vehicles to show proof of their identity, upon request, to the

members of Coalition forces operating such checkpoints. This applies both to occupants who are officials of the United Nations and to passengers who are not staff members.

15. In normal daytime conditions and in the case of normal passenger vehicles, it should not be necessary, in order to comply with such requests, that the occupants of a vehicle exit that vehicle. However, we would envisage that, in certain conditions and in the case of certain kinds of vehicle, it might conceivably be necessary for at least certain occupants of a vehicle to exit that vehicle in order to comply meaningfully with a request to identify themselves.

16. Moreover, it would be our view that the immunity from "search" and from "any other form of interference" which United Nations vehicles enjoy under article II, section 3, of the General Convention does not serve to preclude them from being made the subject of an external visual inspection, including for magnetic explosive devices—provided that it is conducted in an expeditious and non-intrusive manner. This is all the more the case in as much as it appears that the purpose of such an inspection, at least in part, is to ensure the safety of staff members occupying the vehicle. A rapid and non-intrusive visual inspection would not constitute a "search" of, nor amount to an "interference" with, property or an asset of the United Nations, within the meaning of article II, section 3, of the General Convention.

17. In conclusion, then, consistently with the provisions of the General Convention:

- United Nations vehicles may be required to stop at lawful checkpoints;
- occupants may not be required to exit the vehicle, except if and in so far as it may be impossible in the conditions prevailing for them to identify themselves to those lawfully operating the checkpoint;
- occupants of the vehicle may properly be required to produce identification;
- the inside of the vehicle may not be physically searched;
- a visual inspection may be conducted of the outside of the vehicle, including its underside.

18. These conclusions hold for United Nations vehicles, whether or not they carry United Nations markings. They also hold in respect of passengers who are not staff members of the Organization.

19. The relevant provisions of the Convention on the Privileges and Immunities of the Specialized Agencies—article II, section 5, and article VI, section 23—are identical, *mutatis mutandis,* to those of the General Convention. The above conclusions therefore apply equally to vehicles belonging to the specialized agencies.

11 July 2003

3. Inclusion of dependents in United Nations *laissez-passers* (UNLP) for United Nations High Commissioner for Refugees (UNHCR) local staff members in case of medical evacuation—United Nations Family Certificate for identification purposes—Guide on the issuance of United Nations travel documents

Memorandum to the Chief, Legal Affairs Section, Executive Office, United Nations High Commissioner for Refugees

Subject: Inclusion of dependents in United Nations laissez-passers for UNHCR local staff members in case of medical evacuation

1. This is in response to your memorandum of 25 July 2003 concerning the above matter.

2. The question whether or not adequate medical facilities are available in [Member State] is an issue we cannot comment on. According to your memorandum, this occasionally leads to situations where medical evacuations are the only option for treatment of medical emergencies. From a legal point of view, the inclusion of family members in the UNLPs as accompanying the bearer for official travel into and out of [Member State] would be acceptable and justified under these emergency medical circumstances. Although this follows neither directly from the Convention on the Privileges and Immunities of the United Nations[5] nor from the Guide on the issuance of UN travel documents (PAH/INF.78/2), it is the position of this Office that local staff members who are officially evacuated for medical emergencies can have their dependents travel with them under such emergency circumstances. Dependents can, therefore, be included in UNLPs *but only for such purposes.* It is, furthermore, our understanding that a dependent having to leave [the Member State] within the framework of a medical evacuation can do so if accompanied by a UNLP bearer and if travel for the purpose of an official medical evacuation has been authorized.

3. However, we would like to point out that UNLPs are issued for use only in connection with official travel, i.e. travel authorized by the United Nations or a specialized agency. Visas may only be entered therein for such purposes. UNLPs may not be used to travel abroad for private purposes. Therefore, local UNHCR staff members and their dependents may use their UNLPs to leave [Member State] only, if their travel has been authorized by UNHCR. We agree with the UNHCR policy to require the return of the UNLPs to UNHCR once the official travel has been completed.

4. Finally, we would like to advise that, according to the Guide on the issuance of United Nations travel documents, a United Nations Family Certificate can serve as a document that identifies the bearer as being a family member of the United Nations Official named therein. It is not a legal travel document, although it is sometimes accepted for visa purposes. Some countries have preferred to grant visas on the Family Certificate rather than on a national passport. A Family Certificate may be issued to the dependents of a United Nations staff member provided that the family member has been authorized by the Administration to travel separately from the staff member. In our views these certificates could be considered for the purposes described in your memorandum.

11 August 2003

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

4. Status of the Military Armistice Commission in Korea *vis-à-vis* the United Nations—Privileges and immunities of its members—"Unified Command" and "United Nations Command"—Security Council resolution 84 (1950) of 7 July 1950—Armistice Agreement of 27 July 1950

Note to the Assistant Secretary-General and Deputy to the Under-Secretary-General of the Office of Legal Affairs, United Nations

1. This is in response to your request for advice with respect to the status of the Military Armistice Commission *vis-à-vis* the United Nations, and whether its members enjoy privileges and immunities.

2. The Military Armistice Commission was established in accordance with paragraph 19 of the Armistice Agreement, which was signed on 27 July 1953, by the Commander in Chief, United Nations Command, on the one hand, and by the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers on the other. On 28 August 1953, the General Assembly in resolution 711 A (VII) "noted with approval" the conclusion of the Armistice Agreement.[6]

3. Although the Armistice Agreement was signed by the Commander in Chief, "United Nations Command", the United Nations is not a party to the Armistice Agreement. The "United Nations Command" is also referred to as the "Unified Command", and this latter terminology is used in the Security Council resolution 84 (1950) of 7 July 1950 which established "the Unified Command". Security Council resolution 84 (1950) recommended that all Members providing military forces and other assistance to the Republic of Korea "make such forces and other assistance available to a unified command under the United States of America", and requested the United States to "designate the commander of such forces". In its first report to the Security Council on the operation of the Command the United States informed the Council that on 25 July 1950 "upon the recommendation of the Security Council, the Unified Command was established and General Douglas MacArthur was designated" Commander-in-Chief of the Military Forces assisting the Republic of Korea (S/1626, p. 4). In his General Order No. 1 on the establishment of the Command, General MacArthur referred to it as the "United Nations Command".

4. As such, the Security Council did not establish the United Nations/Unified Command as a subsidiary organ of the Council, but rather recommended that States providing military assistance to the Republic of Korea form a "unified command" under the United States. Accordingly, the Military Armistice Commission established pursuant to the Armistice Agreement is not a United Nations body.

5. The Military Armistice Agreement does not address the question of the privileges and immunities enjoyed by the members of the Armistice Commission. It simply states that "the Commanders of the opposing sides shall". . . "afford full protection and all possible assistance and co-operation to the Military Armistice Commission. . . in the carrying out of their functions and responsibilities" as assigned in the Armistice Agreement. The Armistice Agreement does, however, provide for privileges and immunities with respect to "all members and other personnel of the Neutral Nations Supervisory Commission and of the Neutral Nations Reparation Commission" (paragraph 13 (j)). [. . .]

5 December 2003

[6] For the text of the Agreement, see the *Yearbook of the United Nations*, 1953.

PROCEDURAL AND INSTITUTIONAL ISSUES

5(*a*). Breach of Article 19 of the Charter of the United Nations—Arrears in payment of a Member State's financial contributions to the Organization and the right to vote in the General Assembly–Invalid ballots

Letter to the President of the General Assembly of the United Nations

In the afternoon of 29 January 2003, you sought my oral advice on a question that had arisen that same day during the 80th Plenary meeting of the General Assembly.

The situation that was described to me was as follows.

At the opening of the 80th Plenary meeting, you had informed representatives that certain Member States had made the necessary payments to reduce their arrears below the amount specified in Article 19 of the Charter of the United Nations. The General Assembly had taken note of that information. The Assembly had then proceeded, in good faith, to conduct three rounds of balloting on the assumption that the information that you had conveyed to it was correct. Unfortunately, it was not. The information that the Secretariat had given to you and which you had transmitted to representatives was erroneous. One of the States that had been the subject of the announcement that you had made to the Assembly had not in fact made the necessary payment to reduce its arrears below the amount specified in Article 19 of the Charter. This had come to your attention while the votes that had been cast in the third round of balloting were being counted.

You sought my advice as to how to proceed.

The advice that I offered was that you should inform the General Assembly that the three rounds of balloting that had taken place were invalid. In consequence, the candidates who were announced as having obtained absolute majorities could no longer be considered to have obtained those majorities. The elections should commence anew.

The reason why I offered you this advice was as follows.

When it proceeded to conduct the three rounds of balloting that took place on Wednesday, the General Assembly had, albeit unwittingly, committed a violation of the Charter of the United Nations.

Article 19 of the Charter provides as follows:

> "A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member."

As the situation was described to me, a certain State was in arrears in the payment of its financial contributions by an amount that equalled or exceeded the amount of contributions due from it for the preceding two full years.

In accordance with Article 19 of the Charter of the United Nations, that State therefore had no vote. It consequently should not have been permitted to vote in any of the three rounds of balloting that had taken place. The State concerned was, however, erroneously allowed to vote.

The three rounds of balloting that had taken place were therefore conducted in violation of the Charter. It necessarily followed that those ballots were invalid.

In offering this advice, I was naturally mindful of the fact that it is of the utmost importance that proceedings of General Assembly be conducted strictly in accordance with the Charter and that their integrity be safeguarded and maintained. For the ballots that had taken place to have been considered in any way as valid would have set a most unfortunate precedent.

30 January 2003

5(*b*). Breach of Article 19 of the Charter of the United Nations—Error by the Secretariat—Retroactive validation of the election process by applying the last sentence of Article 19 of the Charter of the United Nations—Retroactive suspension of rule 160 of the rules of procedure of the General Assembly—Prerogative of the General Assembly to make final decision

Letter to the President of the General Assembly of the United Nations

The General Committee has asked that I review a suggestion to cure the invalidity that currently affects the three rounds of balloting for permanent judges of the ICTR that were held on 29 January 2003. That suggestion was motivated by the undeniable fact that the error was the fault of the Secretariat. Accordingly, it was suggested that there was a need for flexibility to respect the sovereignty of Member States, which had voted in good faith.

Let me first note that I stand by the advice that I gave to the President on Wednesday. That advice has been circulated to you all.

The suggestion to retroactively cure the invalidity in the election process is based on a proposal to apply the last sentence of Article 19 of the Charter of the United Nations. That sentence reads as follows: "The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member."

From a legal point of view, the difficulty with this suggestion is that the Charter itself permits such a waiver only in one defined circumstance, specifically, when "the failure [of the Member] to pay is due to conditions beyond the control of the Member".

If the suggestion made were to be accepted, the General Assembly would have to state, in an explicit decision, that it was acting in accordance with Article 19 and so make it clear that its decision was taken on the ground that it was satisfied that the failure of the State concerned to make the payment required to bring its arrears below the amount specified in the first sentence of Article 19 was "due to conditions beyond the control of [that] Member". The conclusion that this ground applied in the specific case in hand would, moreover, have to be limited to the specific date in question, since the suggestion, as I understand it, is to retroactively validate only the three ballots that took place on Wednesday, 29 January 2003.

The General Assembly has decided to confer upon the Committee on Contributions the responsibility of advising it on the action to be taken with regard to the application of Article 19 of the Charter: see rule 160 of the rules of procedure of the General Assembly.[7]

[7] A/520/Rev.15.

In the present case, if the suggestion were accepted, the General Assembly would have to retroactively suspend the application of rule 160.

In the very limited time available, we have made a quick examination of the way in which Article 19 of the Charter and rule 160 of the rules of procedure of the General Assembly have been applied in practice.

The information set out below indicates that the General Assembly has on occasions waived the strict requirements of rule 160 and has permitted a State to vote in advance of, or without, any consideration of its case by the Committee on Contributions.

> "In 1968 Haiti was explicitly authorized, after it had invoked the factual requirements of Art. 19, clause 2, to participate in voting until the Committee on Contributions had given its opinion. A similar authorization was accorded to Yemen in 1971 when, as indicated by the representative of that country, a remittance in the necessary amount had already been dispatched but had not yet reached the UN. A similar procedure was adopted in 1973 when the GA, in the opening meeting of the 28th session on September 18, 1973, authorized Bolivia, the Central African Republic, Guinea, and Paraguay to participate in voting after assurances had been given that the amount due had already been dispatched. Out of these states, Bolivia and later the Central African Republic contended at the same time that the delay was related to circumstances beyond their control."[8]

In all these cases, the waiver was granted prospectively, before any voting took place. In no case that we have been able to identify has the General Assembly retroactively made a decision to grant a waiver under Article 19.

In view of the above, I, as a lawyer and as Legal Counsel of the United Nations, could not advocate the course of action that has been suggested.

At the same time, I would note that the matter is properly before the General Assembly which has the power to take a final decision in the matter.

31 January 2003

6. Regional group system within the United Nations—Conditions for admission to a regional group—Consensus—General Assembly resolution 1192 (XII) of 12 December 1957

Letter to the Acting Chief Counsel, O.I.P.C., Interpol

I am writing in response to your e-mail in which you point out that [Member State], which is currently classified within Interpol as a country belonging to the Asian region, has requested to be transferred to the European region. You further note that the Executive Committee of Interpol has asked you to review the situation of [Member State] within the United Nations system and has specifically asked you to provide information on the reasoning adopted by United Nations bodies to accept the shift of [Member State] to the Western European Group and the conditions under which [Member State] was accepted to this Group. You ask for our assistance in preparing a response to this inquiry.

[8] B. Simma and others, eds., *The Charter of the United Nations*: *a commentary,* second edition, (New York, Oxford University Press, 2002), vol. I, p. 370-371.

In response to your inquiry please be advised as follows.

The regional group system is not mentioned or envisaged in the United Nations Charter. However, it has become an essential part of the whole working structure of the United Nations. The regional group system was established in the late fifties through the process of transformation of the system of unofficial and informal caucuses, based on loose geographical and political affinities, which had emerged following the founding of the United Nations, into a new arrangement. It was first reflected in indirect form in General Assembly resolution 1192 (XII) of 12 December 1957 concerning the composition of the General Committee of the General Assembly. The concept of regional groups has subsequently been endorsed in various decisions of the General Assembly, the Security Council, the Economic and Social Council and their subsidiary bodies as the accepted mechanism for distribution of elected places according to the principle of equitable geographical distribution and as the forum for consultations and negotiations on important issues.

It should be observed that although the General Assembly and other United Nations bodies have endorsed in their numerous decisions the new political arrangement which provided for a special role to be played by regional groups in the work of the Organization, none of these decisions has ever defined the concept of a regional group or the criteria for membership of any regional group. Even the use of the term "regional" does not provide sufficient guidance in this regard, because some regional groups, for example, the Western European and Other States Group (WEOG), the Eastern European Group, and to some extent the Asian Group are built on a composite relationship of geography and political affinity. While it is not stated in any of the aforementioned decisions in writing, it is understood that admission to a regional group is based on consensus.

Following the adoption by the General Assembly of resolution 1192 (XII), [Member State] was not invited to join any regional group and this awkward situation which became a matter of growing criticism within and outside of the Organization, has continued until June 2000. It is noteworthy that a press statement issued by the Secretary-General in this regard on 12 May 1999, stated the following:

> "[The Member State] could do much more for the United Nations were it not for a significant obstacle: its status as the only Member State that is not a member of a regional group, which is the basis of participation in many United Nations bodies and activities. I said last year that this anomaly should be rectified, and I hope it will be soon."

On 14 June 2000, the Secretary-General was informed by the then Chairman of the WEOG that [Member State] is now a member of the WEOG and will, therefore, be a participant in all the meetings of the WEOG at Headquarters.

As discussions within regional groups are conducted in private and the United Nations Secretariat is not privy to these discussions, I am not in a position to inform you as to whether [Member State] was invited to the WEOG under any specific conditions. You should, if you so wish, make inquiries about this from members of the WEOG.

4 March 2003

7. Request by a territory for membership in the World Tourism Organization (WTO)—Sovereignty—Associate Membership—Article 6 of the Statutes of the WTO—Required approval and declaration of the member State assuming responsibility for the entity's external relations—Approval by the WTO General Assembly

Memorandum to the Special Representative to the United Nations, World Tourism Organization

1. This is with reference to your facsimile of 5 May 2003 seeking our advice on the application of the [territory] to become a member of the World Tourism Organisation. Our comments are as follows.

2. By a letter of 24 April 2003 addressed to the Secretary General of the World Tourism Organization, the [territory], represented by the Government of [territory] expressed the interest to "pursue a State membership in the World Tourism Organization, separate from the State membership of the member State." The [territory] requested "due consideration within the rules and regulation for WTO State membership".

3. WTO has three categories of membership, spelled out in article 4 of the WTO Statutes: Full Members (article 5), Associate Members (article 6) and Affiliate Members (article 7). Currently, WTO has 139 Full Members, seven Associate Members and some 350 Affiliate Members, representing regional and local promotion boards, tourism trade associations, educational institutions and private sector companies, including airlines, hotel groups and tour operators.

4. In order to become a Full Member, article 5 section 1 requires the applicant to be a sovereign State. The [territory] is not a sovereign State. Only the [Member State] is a sovereign State, which already is a Full Member of WTO. Therefore, the [territory] may be eligible only for Associate Membership under article 6 of the WTO Statutes. Article 6, section 1, reads: "Associate membership of the Organization shall be open to all territories or groups of territories not responsible for their external relations."

5. Article 6 subsequently distinguishes in its sections 2 and 3 between "territories or groups of territories whose national tourism organizations are Full Members of IUOTO (International Union of Official Travel Organizations) at the time of adoption of these Statutes (. . .)" and those, where this is not the case. The former group has a "right to become Associate Member of the Organization without requirement of vote (. . .)". The WTO statutes were adopted on 27 September 1970. [The Member State] did not exist as a sovereign State then, which renders article 6, section 2, inapplicable.

6. The accession procedure for the [territory] to become an Associate Member of WTO is therefore governed by article 6, section 3, of the WTO Statutes, which reads: "territories or groups of territories may become Associate Members of the Organization if their candidature has the prior approval of the Member State which assumes responsibility for their external relations and declares on their behalf that such territories or groups of territories adopt the Statutes of the Organization and accept the obligations of membership. Such candidatures must be approved by the Assembly by a majority of two-thirds of the Full Members present and voting provided that said majority is a majority of the Full Members of the Organization."

7. Thus, in order to become an Associate Member of WTO the [territory] would require prior approval of [Member State], the Member State assuming responsibility for the [territory's] external relations. [The Member State] would have to declare on the [territory's] behalf that the [territory] adopts the Statutes of the Organization and accepts the obligations of membership. Subsequently, the [territory's] candidatures must be approved by the WTO General Assembly, the Organization's principal organ, by a majority of two-thirds of the Full Members present and voting provided that said majority is a majority of the Full Members of the Organization.

12 May 2003

8. Question of representation of a Member State in United Nations organs—Accreditation—Acceptance of credentials and recognition of sovereign government—Rule 39 of the provisional rules of procedure of the Security Council—Rules 27 and 29 of the rules of procedure of the General Assembly—Security Council resolution 1483 (2003) of 22 May 2003—General Assembly resolution 396 (V) of 14 December 1950—Designation of a Permanent Representative to the United Nations in contrast to a Chargé d'Affaires

Note to the Secretary-General of the United Nations

1. In the light of the stated intention of the Governing Council of Iraq to send a delegation consisting of [names] to the 22 July meeting of the Security Council, we understand that it is the intention of the President of the Security Council, after consultation with the members of the Council, to invite these persons to the 22 July meeting. It is also reported that the Governing Council intends to send representatives to assume the Iraqi seat in the United Nations and to designate a Chargé d'Affaires to the Permanent Mission of Iraq to the United Nations. Our comments are as follows.

2. The question of Iraq's representation in the United Nations is a sensitive political and legal matter which will ultimately be decided by the General Assembly in the light of any relevant Security Council resolutions. It should be noted, in this regard, that, pursuant to General Assembly resolution 396 (V) of 14 December 1950, the attitude adopted by the General Assembly on questions of representation "should be taken into account in other organs of the United Nations and in the specialized agencies". Accordingly, as has invariably been the case since 1950, the General Assembly's decisions on representation are followed by the organizations of the United Nations system.

3. With respect to the participation of representatives of the Governing Council in the 22 July meeting of the Security Council, pursuant to rule 39 of its provisional rules of procedure, "the Security Council may invite members of the Secretariat or other persons, whom it considers competent for the purpose, to supply it with information or to give other assistance in examining matters within its competence". Accordingly, if it so wishes, the Council could invite [the persons concerned] under rule 39. While such persons clearly could not sit behind the nameplate "Iraq", there should be no objection to their sitting behind a nameplate "Governing Council of Iraq" or personalized nameplates. We understand that the Security Council has opted for personalized nameplates.

4. If the Governing Council seeks to assume Iraq's seat in the General Assembly, however, this presents a different and far more complicated scenario. Iraq is and remains

a Member State of the United Nations and, under Article 9 of the Charter, is a member of the General Assembly. Pursuant to the established practice of the General Assembly and rule 29 of the rules of procedure of the General Assembly, the previously accredited representatives of Iraq would continue until such time as the General Assembly, on the recommendation of the Credentials Committee, decides otherwise.

5. In accordance with rule 27 of the rules of procedure of the General Assembly, "credentials shall be issued either by the Head of the State or Government or by the Minister for Foreign Affairs". In the absence of a sovereign government in Iraq, there is no recognized authority to issue such credentials. To the extent that the Authority is recognized in Security Council resolution 1483 (2003) as an occupying power, it would be inconsistent with such occupation to have representatives assume the sovereign Iraqi seat in United Nations organs. Moreover, General Assembly acceptance of credentials issued by the Governing Council or Interim Ministers it has appointed would confer recognition by the Assembly on the Governing Council as a sovereign Iraqi government. This may have implications on the implementation of resolution 1483 (2003) which assumes that the occupation ends upon the establishment of an internationally recognized representative government.

6. Thus, in order to avoid a political and legal crisis, every effort should be made, including through contacts between the Special Representative of the Secretary-General and the Governing Council, to ensure that the Governing Council does not attempt to claim the Iraqi seat in the General Assembly. Even if credentials issued by the Governing Council were deemed receivable, such an attempt would probably be subject to challenge necessitating the convening of the Credentials Committee which, as a technical body governed by rule 27, would in turn be compelled to reject any credentials which are not issued by a sovereign Iraqi government.

7. In order to avoid continuing the previously accredited representatives of the former Iraqi regime in the fifty-eighth session of the General Assembly, the General Assembly, on the recommendation of the Credentials Committee, could defer any decision on the credentials of Iraq, on the understanding that, pending the establishment of an internationally recognized government in Iraq, no one would occupy the seat of that country.

8. The rules of procedure of the General Assembly do not contain a rule similar to rule 39 of the provisional rules of procedure of the Security Council. It would be for the General Assembly, at an appropriate time if it so wishes, to adopt a formula to invite representatives of the Governing Council or the Iraqi Interim Administration to attend or participate in its work. Given the unique situation in Iraq, there are no precedents to be cited in this regard. The General Assembly would also have to determine whether such formula would include the right to make statements, the right to circulate documents and/or the right to receive documents. It would not be appropriate, however, for such formula to include the right to vote, sponsor or co-sponsor proposals or other attributes of sovereignty.

9. We understand that the Governing Council intends to designate a Chargé d'Affaires to the Permanent Mission of Iraq to the United Nations. The initial powers of the Governing Council are reported to include the right to "name Iraqi nationals to serve as representatives to international organizations and conferences". While the designation of a Permanent Representative would require a presentation to the Secretary General of credentials issued by a Head of State, Head of Government or Minister for Foreign

Affairs of a sovereign Iraqi government, the designation of a Chargé d'Affaires does not. Accordingly, in the event, the Secretary-General would not be required to receive or accept any documents purporting to be credentials.

17 July 2003

9. Application of rule 129 of the rules of procedure of the General Assembly—Voting procedures—Separate votes on parts of resolution—Adoption of resolution by consensus or without a vote—Implied legal question

Letter to the Chairman of the Third Committee of the General Assembly, United Nations

I wish to refer to the Bureau of the Third Committee's facsimile of 20 October 2003 requesting "an interpretation of rule 129 of the rules of procedure of the General Assembly." As the Bureau has declined to put forth a specific legal question, we must rely on our understanding that the question before us relates to the query recently discussed in the informal consultations of the Bureau, namely whether rule 129 requires a vote on the resolution as a whole if parts of that resolution have been voted on separately. The Bureau is of course free to correct that understanding.

Rule 129 provides that "a representative may move that parts of a proposal or of an amendment should be voted on separately. If objection is made to the request for division, the motion for division shall be voted upon. Permission to speak on the motion for division shall be given only to two speakers in favour and two speakers against. If the motion for division is carried, those parts of the proposal or of the amendment which are approved shall then be put to the vote as a whole. If all operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole".

The rules of procedure of the General Assembly do not make reference to decision-making by consensus or adoption without a vote. As such, a strict reading of any decision-making rule would presuppose voting on all proposals. Similarly, a strict reading of rule 129 would imply that whenever a part or parts of a proposal are voted upon separately, those parts of the proposal which are approved shall then be put to the vote as a whole.

As Member States are aware, however, it is the long-established practice of the General Assembly and its Main Committees to strive for consensus whenever possible. This means that, in the absence of an objection or a specific request for a vote, draft resolutions and decisions are adopted without a vote. Similarly, in respect of the interpretation and application of rule 129, the practice has emerged that in the absence of an objection or a specific request for a vote on the proposal as a whole, the proposal may be adopted without a vote even though a part or parts of that proposal have been voted on separately.

Thus, when the Chairman announces that, in the absence of any objection, may he take it that the Committee wishes to adopt the proposal without a vote, any delegation may block a consensus by lodging an objection or by specifically requesting a vote on the proposal as a whole. It is for the objecting delegation to formulate the grounds for its objection which, in any event, has the same effect as requesting a vote on the proposal as a whole.

23 October 2003

OTHER ISSUES RELATING TO UNITED NATIONS PEACE OPERATIONS

10. United Nations Organization Mission in the Democratic Republic of the Congo (MONUC)—Cross border operations in the internal waters of another Member State—Delimitation and demarcation of lake boundaries—Territorial limitations of MONUC's mandate—Consent by the Member State concerned—Authorization by the Security Council to use force within the Member State concerned—Use of force to ensure security and freedom of movement of personnel and to protect civilians under imminent threat of physical violence—Security Council resolutions 1291 (2000) of 24 February 2000 and 1445 (2002) of 4 December 2002—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. Kinshasa, 4 May 2000 (Status of Forces Agreement)

Note to the Director of the Africa Division,
Department of Peacekeeping Operations, United Nations

MONUC cross border operations on Lake [name]

1. I wish to refer to the communication of 13 February 2003 on the above-mentioned subject to the Legal Counsel from the Special Representative of the Secretary-General (SRSG) for MONUC and to your follow-up on this matter of 19 February 2003. According to this communication,

> "MONUC is planning the deployment of an armed Riverine Unit in Lake [name] which would have for main tasks to protect MONUC logistic traffic between the port of [name] in [State] and the Democratic Republic of [the] Congo (DRC) ports and possibly to monitor ceasefire violations. To carry out these tasks, the armed Riverine Unit may have to operate inside the internal waters of [the DRC's] neighbouring States."

2. The SRSG in his communication raises, *inter alia,* two questions concerning this proposal. The first is a request for information relating to, "the legal regime applicable for Lake [name], including accurate and detailed internal waters delimitation for each of the concerned States if available". Secondly, the SRSG has asked whether MONUC would be able, from a legal point of view, to deploy the armed Riverine Unit within the internal waters of the DRC and [State] on Lake [name].

3. As far as the first question is concerned, the Department of Peacekeeping Operations (DPKO) could contact the Cartographic Section in the Department of Public Information with a view to obtaining precise information on the demarcation of Lake [name]. However, as a practical way of facilitating its operations, MONUC could also approach each of the States bordering on Lake [name] (i.e. the riparian States) requesting maps and other information from them in order to facilitate MONUC's movements.

4. The second question relates to whether MONUC can deploy the armed Riverine Unit within the internal waters of the DRC and [State]. However, the attached communication does not elaborate on the concept of this Riverine Unit or who the Unit would consist of. There is also a very general description of its functions, which include activities to "protect MONUC logistic traffic" and to "monitor ceasefire violations." While the SRSG's communication does not clearly indicate how this Unit will fit into MONUC's concept of operations and specifically what its functions will be, his proposal does raise

important issues with respect to MONUC's area of operations and mandate as outlined in relevant Security Council resolutions.

5. In the first instance, MONUC, pursuant to relevant Security Council resolutions including resolution 1445 (2002) of 4 December 2002 enjoys full access throughout the territory of the DRC in order to fulfil its mandated tasks which would *ipso facto* include access to the DRC's internal waters. Thus, consistent with the above resolutions, the Riverine Unit would enjoy freedom of movement throughout the DRC's internal waters.

6. MONUC still has to elaborate on who would make up the Riverine Unit but it would appear that they are proposing that armed military members of MONUC's military component assist the Unit. This would imply that, if necessary, force could be used to protect the Unit's activities on DRC internal waters and if necessary ensure its freedom of movement. In this connection, we would point out that paragraph 8 of Security Council resolution 1291 (2000) of 24 February 2000 provides that:

> "*Acting* under Chapter VII of the Charter of the United Nations, *decides* that MONUC may take the necessary action, in the areas of deployment of its infantry battalions and as it deems it within its capabilities, to protect United Nations and co-located JMC [Joint Military Commission] personnel, facilities, installations and equipment, ensure the security and freedom of movement of its personnel, and protect civilians under imminent threat of physical violence."

Furthermore, the Status of Forces Agreement (SOFA)[9] with the Government of the DRC provides, *inter alia,* for freedom of movement throughout the DRC which includes the right to use port facilities and internal waters (articles 12 and 14) and the right of military members of MONUC to carry arms whilst on duty in accordance with their orders (article 39). Taking the above into account, we are of the view that there is a legal basis for armed members of MONUC to accompany the Riverine Unit within the ports and internal waters of the DRC provided its activities fall within MONUC's mandated tasks.

7. However, the SRSG points out that the activities of the Riverine Unit will extend beyond the DRC to the internal waters and ports of [State] and thus beyond MONUC's current mandated area of operations. As far as we are aware, the Security Council has not extended MONUC's area of operations to include any part of [State]. Thus, members of MONUC's military component could potentially be using force to protect the Riverine Unit in an area where MONUC does not, as far as we are aware, have any authority or responsibility.

8. As you are aware, this Office is, in conjunction with DPKO currently negotiating an agreement with the Government of [State] for a liaison office in that country in order to provide logistical and other support service to MONUC. The draft does allow for the presence of members of MONUC's military component (paragraph 5*(d)*) and also provides in paragraph 6 (ii) for freedom of movement throughout [State] including allowing MONUC to use canals, internal waters and port facilities and provides that, "United Nations military personnel, United Nations civilian police personnel and United Nations security officers designated by the SRSG may possess and carry arms while on duty in accordance with their orders." (Paragraph 9). But we wish to emphasise that this draft agreement still needs to be finalised and the above-mentioned provisions are still in draft form.

[9] United Nations *Treaty Series*, vol. 2106, p. 357.

9. Even if this agreement were to be concluded, as the Security Council has not extended MONUC's area of operation into [State], any activities of the Riverine Unit in that country would have to be in consultation and require the consent of the Government of [State], especially if it includes activities of MONUC's military component. Finally any authorisation to use force within the boundaries of [State] in order to protect the activities of the Riverine Unit and secure its freedom of movement would have to be granted by the Security Council.

21 February 2003

11. United Nations Mission in Ethiopia and Eritrea (UNMEE)—Liability for acts of staff members—Responsibility of staff members to comply with local laws and to honour their private legal obligations (ST/AI/2000/12)—Privileges and immunities of staff members for the performance of official functions—Detention of staff members for criminal offences—Jurisdiction in criminal proceedings over members of United Nations peacekeeping operations—Exclusive jurisdiction of the respective participating States—Articles 42 and 47 of the model Status of Forces Agreement (A/45/594)

Note to the Assistant Secretary-General, Office of Operations, Department of Peacekeeping Operations, United Nations

A. *Introduction*

1. I wish to refer to your Note of 4 August 2003 attaching an UNMEE Code Cable dated 26 July 2003 concerning two car accidents involving two members of UNMEE, which occurred while both were off-duty. The Code Cable also attaches a letter from the [State A] Commissioner, dated 18 July 2003 in which he objects to the fact that UNMEE did not assume responsibility for either accident and that UNMEE allegedly facilitated the departure of one of those involved from [State A]. The Commissioner requests a "clear and official explanation from the head of the mission" on this matter.

Our views are as follows:

B. *First car accident*

2. According to the Code Cable, an UNMEE staff member rented a private vehicle and drove with [name] to [place] on Sunday 9 March 2003. He was off duty at the time and the vehicle he rented was not a United Nations vehicle.

3. While driving to [place], the staff member collided with an oncoming truck killing [name] and injuring himself. The truck driver appears to have been injured as well. A government official who witnessed the accident assisted the truck driver, and the official and his friends removed the staff member and his girlfriend from the car. The truck driver also alerted the traffic police who assisted with the rescue. Both the staff member and his girlfriend were sent to the hospital where she was reported dead on arrival. The following day a team of investigators from UNMEE Security arrived in [place] to conduct an investigation and to obtain information from the local police and medical personnel. The staff member was flown back to [place] and from there to [State B] to receive medical treatment from where he was released from hospital on 17 March 2003. He remained on leave until his contract came to an end. He never returned to [State A].

4. Based upon the information provided by UNMEE, we agree from a legal point of view that this is a private act by a staff member for which the Organization does not incur

liability. Therefore, it is not the responsibility of the United Nations to address claims that arise from this incident. Were legal proceedings to be instituted against UNMEE, it should assert its privileges and immunities pursuant to the model Status of Forces Agreement (model SOFA) (A/45/594), which applies *mutatis mutandis* to the activities of UNMEE in [State A] pursuant to resolution 1320 (2000).

5. However, the United Nations has an interest in ensuring that staff members respect local laws and honour their private legal obligations. In this connection we note that the person concerned was a United Nations staff member at the time of the motor vehicle accident in question and that he is now apparently in retirement. As a United Nations staff member, he had a responsibility under Administrative Instruction ST/AI/2000/12 to comply with local laws and to honour his private legal obligations. Since, presumably, the staff member went to [State A] solely in connection with his assignment to UNMEE, we believe that it would be appropriate for the United Nations to contact the staff member and advise him to address this matter and to fulfil any related legal obligations. He should be reminded that as a United Nations staff member, he was required under ST/AI/2000/12 to fulfil his obligations with respect to this accident and that the Organization expects him to do so.

6. It is also important to note that section 6 of the above-mentioned Administrative Instruction provides that upon separation from service, deductions from all final entitlements including repatriation grant may be made under the staff rules to pay the staff member's legally established obligations.

7. In the event that the United Nations' efforts to have the staff member address this matter are unsuccessful, or in parallel with such efforts, UNMEE should also seek to determine whether there exists automobile insurance for rented vehicles which would respond to the claims against him.

8. Finally, we note from paragraph 7 of the Code Cable that the Government has threatened to detain those members of UNMEE who assisted the staff member in his departure from [State A]. However, our understanding, as mentioned above was that the staff member was evacuated for emergency medical treatment and that members of UNMEE assisting in the evacuation were performing their official functions.

9. The Government should therefore be informed that pursuant to paragraph 46 of the model SOFA, all members of UNMEE including locally recruited personnel are "immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity." UNMEE should accordingly assert the privileges and immunities of its members for purposes of their official functions.

C. *Second case: Alleged damage to a taxi by a soldier*

10. The second case concerns three soldiers who on 8 September 2002, took a taxi from the center of [place] to their barracks. The taxi driver alleges that upon their arrival at the barracks the front-seat passenger hit the front windscreen causing damage, which he reported to the local authorities.

11. It appears that the Government sent various letters of demand to UNMEE. Two reports issued on the matter were unable to come to a conclusion on liability, which was also the view of the Contingent with whom this matter was taken up.

12. Unfortunately, therefore, insufficient information has been provided for the Office of Legal Affairs to advise in this matter.

D. *Detention of members of UNMEE for criminal offences*

13. The Special Representative of the Secretary-General, in paragraph 7 of his Code Cable, raises the issue of the detention of members of UNMEE for criminal offences they may have committed in [State A]. Again this is a matter dealt with in the model SOFA. Paragraphs 42 and 47 provide as follows:

> "42. Subject to the provisions of paragraphs 24 and 26, officials of the Government may take into custody any member of the United Nations peacekeeping operation:
>
> *(a)* When so requested by the Special Representative/Commander; or
>
> *(b)* When such a member of the United Nations peacekeeping operation 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 the United Nations peacekeeping operation, whereafter the provisions of paragraph 47 shall apply *mutatis mutandis*."
>
> "47. Should the Government consider that any member of the United Nations peacekeeping operation has committed a criminal offence, it shall promptly inform the Special Representative/Commander and present to him any evidence available to it. Subject to the provisions of paragraph 24:
>
> *(a)* If the accused person is a member of the civilian component or a civilian member of the military component, the Special Representative/Commander 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 53 of the present Agreement.
>
> *(b)* Military members of the military component of the United Nations peacekeeping operation 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 [host country/territory]."

14. Thus, pursuant to the model SOFA the Government is in a position to initially detain and if necessary prosecute a member of UNMEE's civilian component such as a United Nations official or police monitor or a civilian member of the military component such as a military observer. However, such legal measures should be in accordance with the above-mentioned provisions of the model SOFA and any prosecution done by the Government should be in agreement with the Special Representative.

22 August 2003

12. United Nations Mission in Liberia (UNMIL)—Authorization by the Security Council to use armed force in situations other than self-defence—Interpretation of Security Council resolution 1509 (2003) of 19 September 2003—Ordinary and natural meaning given to terms when they are read in the context of a resolution as a whole and in light of its object and purpose—History and circumstances of the adoption of a resolution

Note to the Under-Secretary-General
of the Department of Peacekeeping Operations, United Nations

I refer to your Note dated 8 October 2003 forwarding a copy of a letter that you have received from the Permanent Representative of [State] seeking written confirmation that

the Security Council, by its resolution 1509 (2003) of 19 September 2003, has authorized UNMIL to use armed force for purposes or in situations other than self-defence.

In the penultimate paragraph of the preamble of its resolution 1509 (2003), the Security Council "*[d]etermin[ed]* that the situation in Liberia continues to constitute a threat to international peace and security in the region, to stability in the West Africa subregion, and to the peace process for Liberia". In the final preambular paragraph of that same resolution, the Security Council stated that, in adopting the resolution, it was "*[a]cting* under Chapter VII of the Charter of the United Nations". The Security Council has therefore determined that the situation in Liberia falls within the scope of Chapter VII of the Charter and has decided, in resolution 1509 (2003), to exercise its powers under that Chapter.

The powers of the Security Council under Chapter VII of the Charter include the power to establish a United Nations operation. They also include the power to authorize that operation to use armed force for purposes or in situations other than self-defence. Whether the Security Council has in fact exercised that power and granted such authorization depends on the content of the resolution that it has adopted.

As the Permanent Representative of the [State] notes in his letter, resolution 1509 (2003) does not expressly authorize UNMIL to use "all necessary means" to fulfil any of the elements of its mandate set out in paragraph 3 of that resolution. Nor does it expressly authorize UNMIL "to take the necessary measures" to fulfil any of the elements of that mandate. Had such express wording appeared in the resolution, it would, of course, have been beyond all doubt that the Security Council had made use of its powers under Chapter VII of the Charter to authorize UNMIL to use armed force (other than in situations of self-defence).

However, it does not follow from the fact that no such express wording appears in the resolution that the Security Council has not exercised that power and granted such authorization. Whether it has done so depends upon the interpretation of the resolution, specifically, on the ordinary and natural meaning which is to be given to its terms when they are read in the context of the resolution as a whole and in the light of its object and purpose, and against the background of the discussions leading to, and the circumstances of, its adoption, in particular the report that the Secretary-General submitted pursuant to resolution 1497(2003).

Applying these tests, it is evident that the Security Council fully intended, in adopting resolution 1509 (2003), to authorize UNMIL to use armed force, otherwise than in self-defence.

This is clear from the wording of the resolution itself. So, for example, UNMIL would simply not be in a position meaningfully to discharge that element of its mandate which is set out in operative paragraph 3 *(j)* of the resolution if it were not able to resort to armed force, if need be.

It is also clear from the history and circumstances of the adoption of the resolution. Thus, the Secretary-General, in the report that he submitted pursuant to resolution 1497 (2003), proposed a concept of operations for UNMIL that was explicitly structured on the assumption that it should have "a robust mandate" which would enable it to take "a robust approach" and pre-empt potentially destabilizing events (S/2003/875, paragraph 57). The Security Council, in the eighteenth preambular paragraph of its resolution 1509 (2003), "*[w]elcom[ed]* the Secretary-General's report. . . and its recommendations". Moreover,

article IV of the Comprehensive Peace Agreement[10] sets out the request of the parties to the United Nations to "deploy a United Nations Chapter VII force" in Liberia to support the transitional Government and assist in the implementation of the Agreement. Resolution 1509 (2003), establishing UNMIL, represents the United Nations' response to that request.

This being so, we would advise that you write back to the Permanent Representative of [State] confirming that it is the considered view of the Secretariat that the Security Council, by its resolution 1509 (2003) of 19 September 2003, has authorized UNMIL to use armed force for purposes or in situations other than self-defence.

13 October 2003

OTHER ISSUES RELATING TO SPECIAL COURTS AND TRIBUNALS

13. Special Court for Sierra Leone—Consent for disclosure of confidential documents—*Mutatis mutandis* application of rule 70 (B) of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda (ICTR)—Article 14 of the Statute of the Special Court for Sierra Leone

Letter to the Prosecutor of the Special Court for Sierra Leone

I wish to refer to your letter dated 5 December 2002 to the Acting Special Representative of the Secretary-General for the United Nations Mission in Sierra Leone (UNAMSIL), requesting "access to investigative reports, documents, and other materials relating to the abduction of UNAMSIL personnel and seizure of UNAMSIL equipment during May 2000" including a request for copies of Boards of Inquiry (BOI) reports relating to these incidents.

Further to your request, we are forwarding to you copies of relevant documents from the United Nations Security Coordinator (UNSECOORD) and the Department of Peacekeeping Operations (DPKO), including pertinent BOI reports. However, we wish to point out that these documents are being made available to you in your capacity as Prosecutor of the Special Court for Sierra Leone pursuant to rule 70 B of the Rules of Procedure of the International Criminal Tribunal for Rwanda,[11] which apply *mutatis mutandis* to the conduct of legal proceedings before the Special Court under article 14 of its Statute (which rule is included in the draft Rules of Procedure and Evidence of the Court). Rule 70 B provides as follows:

> "If the Prosecutor is in possession of information which has been provided to him on a confidential basis and which has been used solely for the purpose of generating new evidence, that initial information and its origin shall not be disclosed by the Prosecutor without the consent of the person or entity providing the initial information and shall in any event not be given in evidence without prior disclosure to the accused."

As these documents are being provided to you on a confidential basis, you and your Office may not disclose them without the prior consent of the United Nations. Accordingly, when you do revert to the United Nations with a request to disclose a certain document, including using it in evidence, the United Nations is entitled to deny or grant your request.

[10] S/2003/850.

[11] ICTR/3/Rev., 6 July 2002.

The United Nations is also free to grant permission subject to any conditions it deems appropriate.

The above-mentioned procedure has been used with great success to facilitate the transmittal of documents to the Prosecutors of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda (ICTY/ICTR) under rule 70 B of their Rules of Procedure and Evidence. Accordingly, it is our understanding that the same working practice that has developed in the ICTY/ICTR under rule 70 B of their respective Rules of Procedure and Evidence will apply with respect to the transmittal of documents to the Special Court.

14 March 2003

14. Special Court for Sierra Leone—Cooperation of third States—Powers to enforce compliance by States under Chapter VII of the Charter of the United Nations—Powers of the *ad hoc* tribunals for the former Yugoslavia and for Rwanda—Bilateral agreements

Letter to the President of the Special Court for Sierra Leone

The Secretary-General has asked me to respond to your letter dated 10 June 2003 in which you seek his guidance on how the Special Court for Sierra Leone ("the Special Court") can effectively secure the assistance and cooperation of third States.

You suggest that the difficulties encountered by the Special Court in securing third State cooperation could be effectively addressed through a Security Council resolution endowing the Special Court with broad Chapter VII powers to enforce compliance by States with its orders and requests. In addition to granting the Special Court Chapter VII powers for purposes of requesting the surrender of indictees from outside the Special Court's jurisdiction, you recommend that such a resolution should also grant the Special Court the authority to secure from States cooperation in other areas, such as allowing indictees to travel to their territory, getting States to detain indictees and to provide them with medical treatment.

In this connection you mention that third States have complied with arrest warrants issued by the *ad hoc* tribunal for the former Yugoslavia (ICTY), which is "endowed with powers under Chapter VII—powers which the Special Court does not possess."

In response, I wish to point out that the ICTY and the international *ad hoc* tribunal for Rwanda (ICTR) were established as subsidiary organs of the Security Council under Chapter VII resolutions and endowed with powers for the purpose only of enforcing cooperation, "in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law" and more specifically, for the identification and location of persons, taking testimony, service of documents and the surrender or transfer of accused to the international tribunals (articles 29 and 28 of the ICTY and ICTR Statutes, respectively).

Your suggestion by contrast, to endow the Special Court with Chapter VII powers to enforce the cooperation of States in matters such as the transfer of a body of an indictee, providing medical facilities and detaining indictees in third States is all embracing and exceeds by far the purposes for which Chapter VII powers have been endowed and exercised in the practice of the two United Nations based tribunals which have been interpreted narrowly.

Furthermore, members of the Security Council with whom the Secretariat has consulted informally have expressed their unwillingness to act upon this request. Some of them are of the view that the use of Chapter VII powers would not solve the specific challenges facing the Special Court and that the most effective and expeditious way of addressing these matters is through bilateral cooperation with the States concerned either through the Special Court itself or with the assistance of the Government of Sierra Leone.

You will recall, for example, that at the Special Court's request, the Secretary-General raised the transfer of [name] to [State] with its Foreign Minister and it was agreed that for this to take place an agreement on this matter would have to be concluded with the Special Court and ratified by Parliament in [State].

We would therefore strongly urge the Special Court in this case as well as in the others mentioned in your letter to work directly with the governments concerned either informally or more formally through the negotiation of bilateral agreements in order to obtain compliance with the Special Court's requests.

14 July 2003

SANCTIONS

15. Paragraph 17 of Security Council resolution 1478 (2003) of 6 May 2003 (measures imposed against Liberia)—Obligation of all States to prevent the import into their territory of certain items originating from Liberia—Date of effect of said obligation—Definition of "import"—Interpretation of a term in its ordinary and natural meaning when read in its context and in light of the object and purpose of the resolution concerned—National legislation

Letter to the Chairman of the Security Council Committee established pursuant to resolution 1343 (2001) concerning Liberia

I refer to a letter dated 11 September 2003 from the Acting Chairman of the Security Council Committee established pursuant to resolution 1343 (2001) concerning Liberia (the "Committee"), in which, on behalf of the Committee, he sought the views of this Office on a matter relating to the application of the measures that were imposed by the Security Council in paragraph 17 of its resolution 1478 (2003) of 6 May 2003. I also refer to the attachments to that letter, specifically: a letter dated 30 July 2003 from the Permanent Representative of [State A] to the United Nations, transmitting a letter from the Marketing Director of [Corporation] dated 28 July 2003, in which the Marketing Director described a situation that he said had arisen with regard to one of the Corporation's shipments and in which he sought the assistance of the Committee in resolving that situation; a letter dated 15 August 2003 addressed by you, on behalf of the Committee, to the Permanent Representative of [State B] to the United Nations, seeking confirmation of certain facts stated in the Marketing Director's letter; a letter dated 15 August 2003 addressed by you, on behalf of the Committee, to the Marketing Director of the Corporation, requesting certain documentation relating to the situation described in his letter; and his reply dated 18 August 2003, together with its accompanying documentation.

In his two communications, the Marketing Director of the Corporation states the situation to be as follows. On 17 December 2002, the Corporation concluded a contract

with a [State C] company for the sale of a quantity of plywood, apparently being a "timber product originating in Liberia" in the sense of resolution 1478 (2003). Pursuant to that contract, the Corporation shipped the quantity of plywood concerned from Liberia on 23 May 2003. The vessel carrying that consignment arrived in the port of [name], [State B], on 25 June 2003. The necessary documents for making an entry of the consignment were lodged with the [State B's] customs authorities on 8 July 2003. Those authorities declined to clear the consignment on the ground that doing so would involve a violation by [State B] of its obligations pursuant to paragraph 17 of Security Council resolution 1478 (2003).

It appears from the Acting Chairman's letter and its attachments that the Committee has sought confirmation of these facts from the Permanent Representative of [State B] to the United Nations, but that no response had been received to that request as of the date of the Acting Chairman's letter. We understand that a response to that letter is still awaited.

On the assumption that the facts are as they are described by the Marketing Director of the Corporation in his two letters, the Acting Chairman, on behalf of the Committee, sought our advice as to the relationship of those events to an actual or potential violation of the measures imposed by the Security Council in paragraph 17 of its resolution 1478 (2003), more specifically, whether [State B] was on 8 July 2003, and remains today, under an obligation pursuant to paragraph 17 of that resolution to deny customs clearance to the consignment concerned.

The following advice is given on the assumption that the facts are as stated in the communications from the Marketing Director of the Corporation attached to the Acting Chairman's letter.

Pursuant to paragraph 17 of Security Council resolution 1478 (2003) of 6 May 2003, all States are under an obligation to take the necessary measures to prevent "the import into their territories of all round logs and timber products originating in Liberia." In accordance with paragraph 17 *(b)* of resolution 1478 (2003), that obligation came into force at 00:01 hours Eastern Daylight Time on Monday, 7 July 2003. All States therefore came under an obligation at that time to take the necessary measures to prevent the import into their territories of items of the description contained in paragraph 17 *(a)*.

In the nature of things, this obligation, being one of prevention, could apply only in respect of imports which might be sought or attempted at or after the time and date specified in paragraph 17 *(b)* of resolution 1478 (2003). It could not apply to imports which had already taken place by that time. The question here therefore is whether the consignment of plywood that had been shipped by the Corporation was imported into [State B] before the time and date specified in paragraph 17 *(b)* or whether, on the other hand, its import had yet to take place or, having begun, had yet to be completed. If the former, [State B] would not, on 8 July 2003, have been under any obligation by virtue of resolution 1478 (2003) to refuse to accept entry of, or to deny clearance to, the consignment; nor would it be under any obligation now to continue to refuse such entry or deny such clearance. If the latter, it would.

In order to determine when an "import" takes place, it is necessary to consider what constitutes an "import" of goods for the purposes of paragraph 17 of resolution 1478 (2003). That resolution does not contain any definition of that term; nor is a definition of it to be found in any of the other resolutions of the Security Council imposing measures in respect of Liberia; nor is it defined in any other of the resolutions that the Security Council has adopted to date imposing measures under Chapter VII of the Charter. This being so, it

is necessary to seek its meaning by giving to it the ordinary and natural meaning which it bears when it is read in the context, and in the light of the object and purpose, of the resolution in which it appears.

One sense which the term "import" bears in general usage is the introduction of goods from abroad into free circulation within a State's economic system. This corresponds, in the field of customs law and practice, with the notion of introduction of goods "into home use". It is clear, however, from the text of resolution 1478 (2003) that the term "import", as it is used in paragraph 17, bears a wider sense. Thus, paragraph 18 of that resolution supposes that the purpose of the measures imposed by paragraph 17 is to put an end to all "exports" from Liberia of round logs and timber products originating in that State by removing such items entirely from the field of commerce. To ensure that this objective is achieved, States would have to take the necessary steps to prevent such items not only from being introduced into free circulation in their national markets, but, more generally, from being introduced into their territories as items of trade.

It is apparent, then, that the term "import", as it is used in paragraph 17 of resolution 1478 (2003), should not be understood as being limited to the introduction of goods into home use. Rather, it bears a wider and more general sense, signifying the introduction of goods into the territory of a State where those goods are then entered for any form of customs procedure—be it for clearance for home use or whether it be for processing for home use, for inward processing, for temporary admission with a view to re-exportation, for warehousing, for transit, for transshipment or for carriage of goods coastwise—or where steps are otherwise then taken towards making them available as items of commerce, as, for example, where their admission to a free zone is sought.

This being so, there would seem be a range of points in time that could be identified as being that when an "import" is to be considered to take place for the purposes of paragraph 17 of resolution 1478 (2003): namely, when an item is introduced into a State's territory at a port or place of entry; when, after having been so introduced, it is presented to that State's customs authorities; and, in so far as it may be different, when, after having been introduced into a State's territory, the item is entered for a particular customs procedure. There is nothing in resolution 1478 (2003) which would dictate that one or other of those points in time be treated as the moment at which an "import" takes place. All of them would seem to be consistent with the notion of "import" employed in that resolution. It is therefore for States, in taking steps to implement the measures that the Security Council has imposed, to determine which of those points in time is to be considered as the moment of "import" for those purposes. In doing so, States will presumably designate that which best accords with the principles, standards, practices and concepts which form part of their existing national customs law.

In the light of the foregoing, it is the view of this Office that whether the consignment of plywood shipped by the Corporation falls within the scope of the prohibition set out in paragraph 17 of resolution 1478 (2003) must depend on the moment at which that consignment is considered to be "imported" under [State B] law.

19 September 2003

TREATY LAW

16. Functions of the Secretary-General as depositary as distinct from his administrative responsibilities as chief administrative officer of the Organization—ST/SGB/1998/3 (Organization of the Secretariat of the Economic Commission for Europe)—Requests to the Secretary-General, as depositary, by a treaty-based body

Letter to the Executive Secretary,
United Nations Economic Commission for Europe

I refer to your letter of 19 December 2002 informing the Secretary-General that the Executive Committee of the 1998 Agreement Concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts Which Can be Fitted and/or be Used on Wheeled Vehicles (1998 Agreement)[12] requested by resolution that the Secretary-General of the United Nations discharge the notification functions of the 1998 Agreement for both the Compendium of Candidate Global Technical Regulations ("the Compendium") and the Registry of Global Technical Regulations ("the Registry") created under that Agreement. The resolution further states that the above functions should be performed by the Treaty Section of the Office of Legal Affairs.

I have been asked to respond to the letter. [. . .]

I recall that this issue had been the subject of extensive previous correspondence between the Transport Division of the Secretariat of the Economic Commission for Europe (ECE) and the Office of Legal Affairs. I have written to your predecessor on this matter. My office has continued to take the same view since the time of the negotiation of the 1998 Agreement.

At the outset, I note that the manner in which this matter has been addressed by the Executive Committee is wholly inappropriate. The Executive Committee is a body established under article 3 of the 1998 Agreement, constituted by representatives of Contracting parties and is, *inter alia,* responsible for the implementation of the 1998 Agreement and to fulfil such other functions as may be appropriate under the 1998 Agreement. As such, it may therefore, where appropriate, submit requests to the Secretary-General in his capacity as depositary on behalf of the Contracting parties, provided such requests are in accordance with the 1998 Agreement and relate to the responsibilities of the Secretary-General as depositary of the 1998 Agreement.

I emphasize again that the creation and maintenance of both the Compendium, which consists of existing national or regional regulations selected as candidates for global harmonization, and the Registry established under the 1998 Agreement, constitute administrative functions related to the implementation of the 1998 Agreement and do not constitute depositary functions. The Secretary-General may only undertake such administrative responsibilities in his capacity as the chief administrative officer of the Organization and not as the depositary. Administrative functions are allocated by the Secretary-General through organizational bulletins (see below).

I recall that the ECE subsidiary body, in the framework of which the 1998 Agreement was negotiated (*Working Party on the Construction of Vehicles* or "WP. 29"), considered, at its 115th session, that "With respect to the suggestions provided by the United Nations

[12] United Nations *Treaty Series*, vol. 2119, p. 129.

Office of Legal Affairs, the representatives of the [States] explained that [. . .] the delegation of certain administrative responsibilities from the United Nations Secretary-General to the ECE Executive Secretary, in particular with respect to the Compendium of Candidate Technical Regulations, should be solved by an internal arrangement within the United Nations, without change to the text of the Agreement" (TRANS/WP.29/638). The foregoing suggests that members of the Working Party themselves concluded at the time that the matter at issue is an internal matter which needs to be resolved by the Secretary-General in the light of his responsibilities under the Charter of the United Nations and consistent with applicable laws and practice through an internal arrangement within the Secretariat. This was the position that was reflected in my letter to your predecessor of 9 June 2000.

I also draw your attention to the distribution of tasks and resources in the Secretary-General's bulletin ST/SGB/1998/3, entitled "Organization of the Secretariat of the Economic Commission for Europe". Section 9.2*(c)* of this bulletin provides that some of the core functions of the ECE Transport Division are "elaborating, harmonizing, administering, updating and promoting international legal instruments in the field of transport".

Unfortunately, instead of the matter being resolved through an internal arrangement within the United Nations Secretariat, as suggested by me and as acknowledged by the Working Party mentioned above, it continues to be raised with the Contracting parties to the 1998 Agreement, at times, at the encouragement of the Transport Division of the ECE (see TRANS/WP.29/703).

I suggest that this matter be resolved on the basis of my letter to your predecessor, namely that the administrative functions (as distinct from the depositary functions) be performed by the Secretariat of ECE, as prescribed in section 9.2 *(c)* of the bulletin just quoted. If you do not agree, the matter will have to be resolved through the intervention of the Secretary-General and, if necessary, appropriate amendment of existing rules.

31 January 2003

17*(a)*. International Cocoa Agreement, 2001—Commodity Agreements—Treaty-making power of intergovernmental organizations—Shared and exclusive competence of the European Community and its member States—"Mixed agreements"—The European Commission becoming a party to an agreement on behalf of its member States—Distribution of voting rights

Letter to the Officer in Charge of the International Cocoa Organization

1. I refer to your letter of 19 March 2003, regarding the capacity of the European Commission (EC) to approve the International Cocoa Agreement, 2001,[13] (the Agreement) on behalf of the member States of the European Union (EU). Since your letter raised complex issues of the competencies of the EC and its member States, the preparation of the response entailed an examination of the law and practice both by the Treaty Section and the Office of the Legal Counsel.

[13] United Nations *Treaty Series*, vol. 2229, p. 2.

2. I note that this matter was first raised with the Treaty Section of the Office of Legal Affairs by the Principal Administrator, DG E II-Development Cooperation/Commodities Administrator, in early October 2002.

3. On 2 October 2002, the Treaty Section advised the Principal Administrator that, if the EC became a party to the Agreement, it could exercise the votes of its EU member States that were also party to the Agreement in accordance with article 4, paragraph 2, of the Agreement. The Treaty Section also advised that an intergovernmental organization could exercise only the relevant rights of its member States which have demonstrated their consent to be bound by the Agreement.

4. The Principal Administrator said in response that the Treaty Section's position did not "come as a surprise to us [EC]" and that "I [the Principal Administrator] fundamentally agree with your legal approach—this is why we deem it necessary to amend the Agreement as soon as possible."

5. Two distinct questions are at issue: the EC's ability to represent its member States, and its ability to undertake on their behalf the legal function of approving the Agreement.

6. On the first issue there is no dispute. The EC has, for some time, represented its member States at international negotiations, in concluding and adopting treaties and applying them. The second issue raises a number of legal aspects pertaining to the treaty-making power of intergovernmental organizations, the practice of the EC in concluding commodity agreements and the question of voting rights.

(a) *Treaty-making power of intergovernmental organizations*

7. Article 4, paragraph 1, of the Agreement provides that: "Any reference in this Agreement to a "Government" or "Governments" shall be construed as including the European Union and any intergovernmental organization having responsibility in respect of the negotiation, conclusion and application of international agreements, in particular commodity agreements. . .". The Agreement does not require the participation of some or all of the member States of the EC as a condition for its participation (as is required under the United Nations Convention on the Law of the Sea, 1982,[14] or the Protocol to the Agreement on the Importation of Educational, Scientific and Cultural Materials, 1950[15]), nor does it allow the EC to replace its individual member States and participate on their behalf. The Agreement is, in fact, silent on the relationship between the EC and its member States and their separate participation in the Agreement. In the absence of a clear provision to that effect, the general principles of treaty-making power of international organizations shall apply. Accordingly, any intergovernmental organization participating in an international agreement does so in its own capacity and on behalf of the organization as a whole, rather than on behalf of each and all of its individual member States.

8. Furthermore, there is no suggestion in the final clauses (article 54 (Signature) and article 55 (Ratification, acceptance approval)) of the Agreement that an intergovernmental organization could express consent to be bound by the Agreement on behalf of all its member States, or otherwise sign, ratify, accede to or approve the Agreement on their behalf.

[14] United Nations *Treaty Series*, vol. 1833, p. 3.
[15] United Nations *Treaty Series*, vol. 1259, p. 3.

9. In your letter you refer to the Statement adopted by the International Cocoa Council at its Sixty-Seventh Session[16] regarding the competence of the EC under the Agreement. We note, however, that the Statement merely acknowledges the decision of the Council of the EU of 18 November 2002 "by which the International Cocoa Agreement, 2001, was approved *on behalf of the European Community* and by which the President of the EU Council was authorized to designate the person empowered to sign the agreement and deposit the instrument of approval *on behalf of the European Community*". There is no reference in the Statement to approval on behalf of the *member States of the EU*. We should add that even if there had been one, we would still maintain that the Council has no power to amend or otherwise modify the provisions of the Agreement (article 7 on the Powers and functions of the Council, and article 64 on Amendment).

(b) *The EC practice in the field of commodity agreements*

10. In seeking to become a party to the Agreement *on behalf of its member States,* the European Community relies on its "exclusive competence", under Community law, in all matters governed by the Agreement. It is suggested that the sole participation of the European Community would operate not only to exclude the concurrent participation of its member States, but to actually replace them, and in so doing assume their rights and obligations, including funding and voting rights.

11. We do not dispute that in commercial and trade-related matters member States of the European Community have transferred to the European Community their powers and competences in the field of external relations, including negotiation and conclusion of international agreements. The exclusive competence of the European Community in all such matters, and notably commodity agreements, however, has long been recognized and yet, with few exceptions, all commodity agreements were signed both by the European Community and its member States (a practice, we recall, which was allowed by the European Court of Justice in its 1979 Opinion[17] on the draft International Agreement on Natural Rubber and the 1994 World Trade Organization Opinion[18]).

12. While maintaining the principle of exclusive competence in the field of commodity agreements, both the European Community and its member States have recognized that in practice, the *implementation* of these agreements is only partially exclusive, and in some respects falls within the shared competence of the Community and its member States. The major part of the commodity agreements, and notably, the International Wheat Agreement, 1986 (Wheat Trade Convention),[19] the International Agreement on the Jute and Jute Products, 1989,[20] the International Cocoa Agreement, 1993,[21] the International Tropical Timber Agreement, 1994,[22] the International Natural Rubber Agreement, 1995,[23] the Food Aid Convention, 1995[24] and the International Coffee Agreement, 2001,[25] were thus

[16] The Council held its Sixty-Seventh Session from 11-14 March 2003.
[17] European Court of Justice, Opinion 1/78.
[18] European Court of Justice, Opinion 3/94.
[19] United Nations *Treaty Series*, vol. 1429, p. 71.
[20] United Nations *Treaty Series*, vol. 1605, p. 211.
[21] United Nations *Treaty Series*, vol. 1766, p. 3.
[22] United Nations *Treaty Series*, vol. 1955, p. 81.
[23] United Nations *Treaty Series*, vol. 1964, p. 449.
[24] United Nations *Treaty Series*, vol. 1882, p. 195.
[25] United Nations *Treaty Series*, vol. 2161, p. 308.

signed in a mixed form (known as "mixed agreements") by both the EC and its member States. Following a two-decade practice of "mixed agreements" in the field of commodity agreements, it can hardly be argued that on the basis of its exclusive competence alone, the EC should now replace its member States and be allowed to sign the Agreement on their behalf.

13. The practice of "mixed agreements" prevails also in other fields, and notably environmental, where the EC competence in external relations is recognized. In none of these agreements has the EC signed on behalf of its member States, and despite the acknowledged competence of the EC in the environmental field, member States of the EU continue to become parties in their own right. (See, United Nations Framework Convention on Climate Change, 1992,[26] Montreal Protocol on Substances that Deplete the Ozone Layer, 1987,[27] and Convention on Biological Diversity, 1992.[28])

(c) *Voting rights*

14. The question of calculating the voting rights of the Community in relation to those attributed to its member States is governed by article 4 paragraph 2, of the Agreement. Accordingly, "In the case of voting on matters within their competence, such intergovernmental organizations shall vote with a number of votes equal to the total number of votes attributable to their member States in accordance with article 10. In such cases, *the member States of such intergovernmental organizations shall not exercise their individual voting rights".* Article 4 paragraph 2, *in fine,* thus presupposes the concurrent participation of some or all of the member States, and ensures that in the event of a vote, the Community should not have more votes than the total number of the participating member States.

15. Pursuant to article 10, paragraph 1, of the Agreement, voting rights are distributed among importing and exporting members of the Agreement. Under article 4, paragraph 2, thereof, an intergovernmental organization could only exercise the votes equal to the total number of votes attributable to its members. The Agreement is silent on whether it is intended that such an organization shall exercise the voting rights of *all* its members, or of only those who are parties to the Agreement. An indication that all along the intention has been to grant the EC only those rights accessory to its participating members, can be found in annex B of the Agreement on the "Imports of cocoa calculated for the purposes of article 58 (Entry into force)". Annex B sets forth all import percentages for purposes of calculation of entry into force in accordance with article 58, paragraph 1. The EC is not listed as holding any percentage of the imports, while its member States are each allotted an import percentage. The same applies, in our view, to the calculation of voting rights based, as they are, on import percentage. Accordingly, the EC could be allotted only those voting rights which are equal to the total number of votes attributable to its *participating* member States. As a sole participant, the EC would not be entitled under the Agreement and its annex, as presently formulated, to any import percentage necessary for the entry into force and voting rights.

16. In order for the EC to become a party on behalf of its member States and be allotted their import percentages and voting rights, two options may be envisaged: an amendment of the Agreement once it enters into force, and a submission of full powers

[26] United Nations *Treaty Series*, vol. 1771, p. 107.
[27] United Nations *Treaty Series*, vol. 1522, p. 3.
[28] United Nations *Treaty Series*, vol. 1760, p. 79.

conveying to the depositary the intention of member States of the EU to empower the EC to participate in the Agreement on behalf of its member States.

17. With regard to the entry into force of the Agreement, you will recall that since 1972 there have been six consecutive Cocoa Agreements; none of which have definitively entered into force. Each of these agreements has entered into force provisionally in accordance with its provisions. The current Agreement is also capable of being brought into force either definitively or provisionally, in accordance with article 58 paragraph 3. Once the Agreement enters into force it could be amended to address these concerns. Pending its entry into force, however, you may also wish to consider the possibility of reconvening the negotiating group of States with a view to revising the text. This Office stands ready to assist you with such an exercise.

18. Member States of the EU can also empower the EC to conclude the Agreement on their behalf by means of full powers. As of yet, none of the States concerned have informed the depositary of their intention to provide such full powers to the EC, or of any change in their status under the Agreement. Unless they convey their authority to the EC, there will be no restrictions constraining the depositary from accepting an instrument of ratification or accession from an individual EU member State at any time.

19. Mindful of the implications that our opinion may have for this and future agreements to which the EC or any other intergovernmental organization may become parties, we should underscore that the Secretary-General is guided in the discharge of his depositary functions by the provisions of each Agreement deposited with him, the Vienna Convention on the Law of Treaties, 1969,[29] and by the substantial practice developed over the years. In the instant case, neither the final clauses of the Agreement, nor the Vienna Convention or the practice relating to the treaty-making power of intergovernmental organizations, and notably that of the EC, support the conclusion that the EC could become a party to the Cocoa Agreement on behalf of all EU States without the appropriate authority being conveyed to it by its member States.

7 May 2003

17*(b)*. International Cocoa Agreement, 2001—Internal decision of the Council of the European Union and the role of the depositary— Intention to be bound by a treaty on the international plane—Treaty-making power of intergovernmental organizations—The European Commission becoming a party to an agreement on behalf of its member States

Letter to the Officer in Charge of the International Cocoa Organization

This is with reference to your letter of 13 May 2003 regarding the capacity of the European Commission (EC) to approve the International Cocoa Agreement, 2001,[30] on behalf of the member States of the European Union (EU), In your letter you propose that I make a determination that "the decision of the Council of the EU sufficiently expressed the will of the EU member States for the EC to participate in the International Cocoa Agreement, 2001, on behalf of the member States", or that in the alternative, I cooperate

[29] United Nations *Treaty Series*, vol. 1155, p. 331.
[30] United Nations *Treaty Series*, vol. 2229, p. 2.

with the EC with a view to finding a solution to the question of its participation in the Agreement.

At the outset I wish to note that it is not for the depositary to make a determination on the nature and effect of an internal decision of the Council of EU, or on whether it sufficiently expresses the will of its member States. In my letter of 7 May 2003 I made a reference to the statement of the Council only to conclude that the decision pertained to the approval of the Agreement on behalf of the *European Community* and not its member States, and that even if it had meant "approval on behalf of its member States" it would not have changed our position, which is based on the interpretation of the International Cocoa Agreement, 2001,[31] the Vienna Convention on the Law of Treaties, 1969,[32] precedent and the practice of treaty-making power of intergovernmental organizations, including, in particular, that of the European Community. I confirm that each member State of the EU must convey its intention to be bound by the International Cocoa Agreement, 2001, on the international plane, either through the deposit of a formal instrument or through the submission of full powers authorizing the European Community to undertake the requisite treaty action.

While it would not be appropriate for me to make a determination with regard to interpreting a decision of the Council of the EU, my Office stands ready to discuss an effective approach with representatives of the EC at their convenience.

20 May 2003

17 *(c)*. International Cocoa Agreement, 2001—Treaty-making power of intergovernmental organizations—The European Commission becoming a party to an agreement on behalf of its member States—Right to represent another State—Distribution of voting rights—Provisions of the treaty concerned—Impartiality of the depositary—Full powers

Letter to the Legal Advisor for External relations of the European Commission

Thank you very much for your e-mailed letter of 29 May 2003, and the accompanying annex. In your letter, you have raised the question as to whether in accordance with the provisions of the International Cocoa Agreement, 2001, the European Community can, in light of its new internal policy, become party to the International Cocoa Agreement, 2001,[33] on behalf of all member States of the European Union (EU) and in so doing cast collectively the votes of the EU, who are not party to the Cocoa Agreement as was allegedly done in the International Coffee Agreement, 2001, (ICA, 2001).[34] I have carefully reviewed this question, and I fully appreciate the policy considerations of the European Community.

This case is similar to the situation where two States are linked by a treaty that provides that one of them shall represent the other in certain fields of international interaction. The question that arises is the extent to which the Secretary-General, as depositary, is to accept instruments emanating from the Government of one such State seeking to bind the other State by virtue of the union treaty.

[31] United Nations *Treaty Series*, vol. 2229, p. 2.
[32] United Nations *Treaty Series*, vol. 1155, p. 331.
[33] United Nations *Treaty Series*, vol. 2229, p. 2.
[34] United Nations *Treaty Series*, vol. 2161, p. 308.

Although there is little likelihood that a State would attempt to act on behalf of another without a proper legal basis, it would seem dangerous to treat as binding on a State an act that it has not itself explicitly accepted. Accordingly, the Secretary-General's practice is to request confirmation from the other State, that it recognizes as valid the action taken on its behalf by the "representing" State.

In the case of [State A] and [State B], the Secretary-General has accepted a general statement from [State B] confirming [State A's] authority to act on its behalf in commodity and customs matters. However in cases of doubt, the Secretary-General would, of course, request specific confirmation. A similar approach could be applied in the case of the International Cocoa Agreement, 2001.

The annexes to the International Cocoa Agreement, 2001, clearly suggest that voting rights are allocated to States on an individual basis. It is noted also that the European Community is not listed in these annexes. Furthermore, article 11, paragraph 2, provides the procedure by which any party to the Cocoa Agreement can authorize any other party ". . . to represent its interests and to cast its votes. . ." at any meeting. The fact that such notification must be made in writing further suggests that votes under the International Cocoa Agreement, 2001, are allocated to States as set forth in the annexes, in their individual capacity.

With regard to the precedent that is claimed in relation to the ICA, 2001, it is noted that the depositary was never formally consulted in that matter. It is also noted that, all but five EU members are currently party to the ICA, 2001. One of the remaining five is a Signatory, and the depositary has been advised of the intention of another to become a party shortly. This seems to suggest that even the member States of the EU do not subscribe to the view that the European Community can represent their collective interests to the exclusion of their individual interests.

Once a State is a party to the ICA, 2001, or to the International Cocoa Agreement, 2001, for that matter, it can allocate the rights and obligations that flow from that State's participation as it determines.

However, with regard to both Agreements, it must be stressed that any interim solution, which is designed to accommodate the European Community's internal policy concerns, should be determined in accordance with the provisions of the treaty in question. If such interim solution relates to the administration of the final clauses of the agreement such as participation, entry into force, amendment etc., the Secretary-General, as depositary, must be consulted. The depositary is obliged to take into account the rights and obligations of the other parties.

The Secretary-General, as depositary of over 500 multilateral treaties, cannot set a precedent unsupported by either treaty provision or his practice. This would certainly create an unmanageable precedent for other treaties in his custody. As you would appreciate, where ambiguous provisions exist, precedents adopted without considering their wider implications, could become difficult to deal with. Similarly, an interpretation that is adopted should not lightly assume the secession of the rights of a State or usurp the rights of any party to a treaty. I, as the Secretary-General's representative, must ensure absolute impartiality in the discharge of the Secretary-General's functions.

I would suggest that the European Community could circulate a declaration to all EU countries requesting confirmation from the Ministers for Foreign Affairs that the EC has become party to the International Cocoa Agreement, 2001, on their behalf and that it was

authorized to exercise their rights in the context of that Agreement. This declaration could then be deposited with the Secretary-General. However, the depositary would not be able to agree with an interpretation of article 4, paragraph 2, which would have the effect of allocating the votes of the individual member States of the EU, which are not party to the Agreement, to the European Community.

In the alternative, the Community could seek to have the International Cocoa Agreement, 2001, amended to reflect its concerns once it had been brought into force provisionally or definitively.

As you are aware, the Secretary-General, as depositary, is not in a position to review the internal decisions of the European Community. Equally, it must be noted that the Community's internal decisions and the decisions of the European Court of Justice cannot modify the provisions of a treaty to which non-European Community States are party.

30 May 2003

MISCELLANEOUS

18. The Secretary-General's participation in events commemorating the Korean War—Establishment of the United Nations Command/Unified Command—Legal arrangements between the United Nations and the United Nations Command—Enforcement operation authorized by the Security Council under national command and control—Armistice Agreement of 27 July 1953—Security Council resolutions 83 (1950) of 27 June 1950 and 84 (1950) of 7 July 1950—General Assembly resolutions 711 (VII) of 28 August 1953 and 3390 (XXX) of 18 November 1975

Note to the Director of Asia and the Pacific Division, Office of the Assistant Secretary-General, Department of Political Affairs, United Nations

1. This is with reference to your routing slip of 1 April 2003 requesting our advice on an invitation addressed to the Secretary-General from [name] of the "United Nations Command", to attend ceremonies in the Member State commemorating the 50th Anniversary of the Armistice Agreement.[35] Our views were also sought on any "legal arrangements" which may exist between the United Nations Secretariat and the "United Nations Command". As the two questions are interrelated, our views on both are set out below.

2. The question of the Secretary-General's participation in events commemorating the Korean War was raised with this Office recently in connection with invitations received from two private associations. In both cases, we expressed the view that while the Secretary-General's participation in any of these events is a question of policy, it is not legally objectionable, given the legal status of the "United Nations Command" and its relationship to the United Nations. This, we maintain, is all the more so in the present case, where the invitation emanates, as it does, from the United Nations Command.

3. The Korean operation was the first enforcement action authorized by the Security Council under national command and control. In its resolution 83 (1950) of 27 June 1950, the Security Council "*determined* that the armed attack upon the Republic of Korea by

[35] For the text of the Agreement, see the *Yearbook of the United Nations*, 1953.

forces from North Korea constituted a breach of the peace", and "*recommended* that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area". In its subsequent resolution 84 (1950) of 7 July 1950, the Council recommended that all Members providing military forces and other assistance make them available to a unified command under the United States of America, and requested the United States to designate the commander of the Force. In Security Council resolution 85 (1950) of 31 July 1950, it further extended the mandate of the Force to provide relief and support to the civilian population of Korea.

4. While the terminology of those early resolutions was different than the one currently used in similar cases, it is clear that the Council had made a determination under Article 39 of the United Nations Charter that there existed a "threat to the peace, breach of the peace, or act of aggression", and that on that basis "recommended" that Members provide the necessary assistance to repel the aggression, thus authorizing an enforcement action under the United States command. The Korean operation is, therefore, no different than other enforcement actions later authorized by the Council, and notably the Unified Task Force (UNITAF) in Somalia, Desert Storm in Iraq, and Operation Turquoise in Rwanda. As an authorized operation, it was not conducted under United Nations command and control (notwithstanding its name); it did not constitute a United Nations subsidiary organ, and was not funded by the United Nations budget. Established by the United States pursuant to a Security Council authorization, it could only be dissolved by that State.

5. That being said, both the Security Council and the General Assembly were politically and otherwise involved in many aspects of the operation. In its resolution 84 (1950), the Security Council authorized the Unified Command to use, at its discretion, the United Nations flag in the course of the operation, and the name "United Nations Command"—while largely a misnomer—was used by United Nations organs interchangeably with the Unified Command. More importantly, perhaps, the United States has submitted periodic reports to the Security Council, at its request, on the activities of the Unified Command. For its part, the General Assembly in its resolution 483 (V) of 12 December 1950, requested the Secretary-General to make arrangements with the Unified Command "for the design and award. . . of distinguishing ribbon or other insignia for personnel which has participated in Korea in the defence of the Principles of the Charter of the United Nations", and in its resolution 977 (X) of 15 December 1955, decided to establish a United Nations Memorial Cemetery in Korea for the men "who served with forces which fought under the United Nations Command".

6. The United Nations was not a party to the Armistice Agreement signed on 27 July 1953 between the Commander in Chief, United Nations Command, on the one hand, and the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's volunteers, on the other. Nevertheless, on occasion, both the General Assembly and the Security Council have expressed their views on the Agreement, its continued significance and conditions for its eventual replacement. In its resolution 711 (VII) of 28 August 1953, the General Assembly noted with approval the Armistice Agreement concluded in Korea on 27 July 1953. In its resolution 3390 (XXX) of 18 November 1975–the last on the question of Korea—the General Assembly expressed the view that the Armistice Agreement remains indispensable to the maintenance of peace and security in the area. It urged all the parties directly concerned to engage in talks so that the United Nations Command may be dissolved concurrently with arrangements for maintaining the

Armistice Agreement, and expressed the hope that such alternative arrangements would be made in order that the United Nations Command may be dissolved on 1 January 1976. No alternative arrangements, however, were made and the United Nations Command has, as of yet, not been dissolved. As recently as 1996, Members of the Council issued a Presidential Statement in which they stressed that "the Armistice Agreement shall remain in force until it is replaced by a new peace mechanism" (S/PRST/1996/42 of 15 October 1996).

7. While no "legal arrangements", as such, exist between the United Nations Command and the United Nations Secretariat or any other United Nations organ, the United Nations Command was established under the authorization of the Security Council and has operated throughout the years with the continuous political support of both United Nations organs. For all of the legal, political and practical links maintained over the years with the United Nations Command, we continue to hold the view that it would not be legally objectionable for the Secretary-General or his representative to participate in the commemoration of the 50th Anniversary of the Armistice Agreement organized in the Member State by the United Nations Command.

22 April 2003

19. Loss of diplomatic status of foreign missions *vis-à-vis* an occupying power—Obligation of an occupying power towards neutral citizens in an occupied territory—Status of United Nations personnel and related agencies in an occupied territory—Right of expulsion for reasons of public order and safety—Security Council resolution 1483 (2003) of 22 May 2003

Note to the Under-Secretary-General of the Department of Political Affairs, United Nations

Draft Coalition Provisional Authority (CPA) Order on the Status of Foreign Missions in Iraq

1. This refers to the code cable of 8 June 2003, requesting our views on the possible implications, if any, of the draft CPA Order on the Status of Foreign Missions in Iraq on the proposed Exchange of Letters (SOMA) between the United Nations and the Provisional Authority. We note that the status of foreign Missions in Iraq is regulated in a number of instruments attached to the code cable, none of which, however, is in the form of an Order. They include an internal communication of 4 June 2003 from the Office of General Counsel to the Administrator of the CPA, a "Circular notice to all Foreign Government Offices in Iraq" and a "Memorandum for Commander of Coalition Forces" dated 5 June 2003 from the Administrator of the CPA. Our review of the Order on the status of foreign Missions in Iraq and its implications on the SOMA has been conducted on the basis of these communications.

2. Under the CPA Circular Notice and its related communications, diplomatic personnel in Iraq accredited to the previous Iraqi Government have lost their diplomatic status *vis-à-vis* the CPA. The premises of foreign Missions are no longer inviolable, and their personnel have been stripped of their diplomatic privileges and immunities. The CPA has declared that it is not in a position to confer diplomatic status upon individuals and premises, with the result that pending the establishment of a sovereign Iraqi Government, the status of former diplomatic staff is akin to that of neutral citizens in an occupied territory, and the obligation to protect them does not extend beyond the general obligation

of an Occupying Power to restore and ensure, as far as possible, law, public order and safety in an occupied territory. In the circumstances, diplomatic staff who remain in Iraq or re-enter it, are doing so at their own risk, and the CPA reserves the right to expel them from the territory if reasons of public order and safety so warrant.

3. The status of the Special Representative of the Secretary-General's (SRSG) Office, United Nations personnel and personnel of Specialized Agencies in Iraq is, however, fundamentally different from that of foreign Missions. While some of the United Nations and related Agencies may have operated in Iraq prior to the occupation, their current presence in Iraq is mandated by Security Council resolution 1483 (2003) of 22 May 2003, and the status to which they are entitled derives from the Charter of the United Nations, the Convention on the Privileges and Immunities of the United Nations,[36] or the Convention on the Privileges and Immunities of the Specialized Agencies,[37] as well as the customary principles and practices of peacekeeping and similar United Nations operations. Once a SOMA is concluded it will provide a legal framework for the status and activities of the Office of the SRSG and United Nations related and specialized agencies in Iraq.

4. The loss of diplomatic status of foreign Missions in Iraq has no bearing, therefore, on the status of the SRSG's Office and its personnel, or the personnel and premises of other United Nations related or specialized agencies. In that latter respect, we note that the specialized agencies now operating in Iraq have expressed their agreement to be included in the SOMA, without prejudice to any subsequent agreement that they may wish to conclude separately with the CPA.

11 June 2003

20. General Assembly resolution 55/5 B of 23 December 2000 (scale of assessments for the apportionment of the expenses of the United Nations)—Conversion rates—Committee on Contributions—Rule 160 of the rules of procedure of the General Assembly—Authority to interpret a General Assembly resolution

Letter to the Chairman of the Committee on Contributions, United Nations

I am writing in response to your letter of 16 June 2003 in which you refer to paragraph 2 of General Assembly resolution 55/5 B of 23 December 2000 concerning the scale of assessments for the apportionment of the expenses of the United Nations and on behalf of the Committee on Contributions request our advice on the proper interpretation of the resolution.

You point out in the letter that in considering the possible use of conversion rates other than market exchange rates for conversion of income data for a number of Member States, the Committee is finding difficulty in reaching agreement on all the cases that it has considered. You further note that in that context, the view has been expressed in the Committee that, if no agreement is reached by the Committee on using a conversion rate other than the market exchange rate for a particular Member State, the provisions of resolution 55/5 B require that the Committee on Contributions should use the relevant market exchange rates for that Member State in advising the General Assembly on the scale of assessments pursuant to its mandate in rule 160 of the rules of procedure of the General Assembly.

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

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

The question posed in your request relates to an interpretation of the relevant General Assembly resolution, namely resolution 55/5 B. In this regard, I would like to point out at the outset, that an authoritative interpretation of General Assembly resolutions concerning the scale of assessments for the apportionment of the expenses of the Organization among Member States can be made only by the General Assembly itself, or by the Committee on Contributions within the competence given to it by the General Assembly. Consequently, the views provided by me in this letter represent my understanding as to the appropriate interpretation of the resolution in question.

By paragraph 2 of resolution 55/5 B, the General Assembly decided that "the elements of the scale of assessments contained in paragraph 1 above will be fixed until 2006, subject to the provisions of resolution C below, in particular paragraph 2 of that resolution, and without prejudice to rule 160 of the rules of procedure of the General Assembly".

In paragraph 1 of resolution 55/5 B, the General Assembly determined the elements and criteria on which the scale of assessments should be based. Subparagraph 1 (c), which is directly related to the question raised in your letter, states that in the case of conversion rates, the criterion should be the following:

> "*(c)* Conversion rates based on market exchange rates, except, where that would cause excessive fluctuations and distortions in the income of some Member States, when price-adjusted rates of exchange or other appropriate conversion rates should be employed, taking due account of General Assembly resolution 46/221 B of 21 December 1991."

Rule 160 of the rules of procedure of the General Assembly, which is also of relevance because it defines the authority of the Committee on Contributions and is expressly mentioned in paragraph 2 of resolution 55/5 B, provides that the Committee on Contributions shall advise the General Assembly concerning the apportionment of the expenses of the Organization among Member States and that the scale of assessments, when once fixed by the General Assembly, shall not be subject to a general revision for at least three years unless it is clear that there have been substantial changes in relative capacity to pay.

It is our understanding that pursuant to rule 160 of the rules of procedure of the General Assembly, any changes in the scale of assessments that had been fixed by the General Assembly should constitute rare exceptions that are justified by extreme circumstances recognized and accepted by the Committee on Contributions. Paragraph 2 and subparagraph 1 *(c)* of resolution 55/5 B should therefore be interpreted in the light of this general principle laid down in rule 160 of the rules of procedure of the Assembly.

It follows from the above that conversion rates should be based on market exchange rates unless the Committee on Contributions determines that in the case of a particular Member State this would cause excessive fluctuations and distortions in the income of the Member State concerned and that, therefore, another conversion rate should be employed under the circumstances. Should the Committee be unable to come to such a determination and therefore fail to agree on a different conversion rate, in advising the General Assembly the Committee, pursuant to its mandate as stipulated in rule 160 of the rules of procedure of the General Assembly, is obliged to use in the case of the Member State concerned the relevant market exchange rate.

17 June 2003

B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations

UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

1. Tax exemption on salaries and emoluments of United Nations Industrial Development Organization officials—Definition of "officials of the United Nations"—Discrimination based on nationality or permanent residency—Discrimination between member States—Rationale of immunity from taxation—The Conventions on the Privileges and Immunities of the United Nations and of the specialized agencies—Article 27 of the Vienna Convention on the Law of Treaties, 1969 (Internal law and observance of treaties)—Customary law

Note verbale re: United Nations Industrial Development Organization officials tax exemption on salaries and emoluments

The Secretariat of the United Nations Industrial Development Organization (UNIDO) presents its compliments to the Federal Ministry of Foreign Affairs of [State] and has the honour to refer to its note verbale No. [. . .], dated 14 May 2003, communicating the adoption by the Government of two presidential decrees—Nos. [. . .] and [. . .]—which the Tax Office of the Ministry of Economy and Finance considers applicable to international organizations, with the exception of seat agreements agreed between [State] and the organization. The note verbale states that the presidential decrees contain provisions that will make officials of UNIDO who are [State's] citizens and foreigners permanently residents of [State] subject to an annual declaration of income and to pay the relevant taxes that have not been subject to taxation at source. It is further stated that it would be the intention of the Tax Office to start a systematic check shortly.

By the present note, the secretariat of UNIDO would like to express the view, as it did in the past, that UNIDO is not in a position to accept the Government's decision to tax the income earned by its officials who are citizens of [State] or foreigners permanently residents in [State]. Such measures run counter to the international obligations of [State] in regard to UNIDO.

(a) *Rules applicable to the [UNIDO Center] and its officials*

The Convention on the Privileges and Immunities of the Specialized Agencies[38] to which the Government of [State] acceded on [year] and which is applicable to the [UNIDO Center] in accordance with article 21, paragraph 2 (a), of the Constitution, applies to the [UNIDO Center] and its officials. Article 21, paragraph 2 (a), of the Constitution of UNIDO reads as follows:

> "2. The legal capacity, privileges and immunities referred to in paragraph 1 shall:
>
> *(a)* In the territory of any member that has acceded to the Convention on the Privileges and Immunities of the Specialized Agencies in respect of the Organization, be as defined in the standard clauses of that Convention as modified by an annex thereto approved by the Board;"

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

Also, article VI, section 19(b), of the Convention on the Privileges and Immunities of the Specialized Agencies states that:

"Officials of the specialized agencies shall:

(b) Enjoy the same exemptions from taxation in respect of the salaries and emoluments paid to them by the specialized agencies and on the same conditions as are enjoyed by officials of the United Nations;"

Regarding the Convention on the Privileges and Immunities of the United Nations[39] it may further be observed that there is a well established practice of the United Nations Secretariat in connection with the unacceptability of reservations to article V, section 18*(b)*, of that Convention—which corresponds to article VI, section 19*(b)*, of the Convention on the Privileges and Immunities of the Specialized Agencies. The Legal Counsel of the United Nations has invariably recognized that the Convention on the Privileges and Immunities of the United Nations provides for a procedure for the definition of the term "officials of the United Nations" and by the definition established by that procedure no distinction is established among the officials of the United Nations as to nationality or residence. All members of the staff of the United Nations are officials of that Organization and enjoy the same privileges and immunities provided for in the Convention; the exception being the staff recruited locally and assigned to hourly rates. These arguments are equally applicable to UNIDO's staff with respect to the Convention on the Privileges and Immunities of the Specialized Agencies.

The secretariat wishes to observe that UNIDO has consistently opposed the view that a distinction as to nationality or citizenship can be made to restrict the privileges and immunities of UNIDO's officials. Thus, when [State] ratified UNIDO's Constitution it attempted to make a reservation to article V of the Convention on the Privileges and Immunities of the United Nations with a view to taking into account the tax-free emoluments paid by UNIDO to [State] nationals or permanent residents of [State] for the purpose of calculating the tax to be levied on income from other sources. However, the Government clarified on [date] in a note verbale to the Secretary-General of the United Nations, as depositary of UNIDO's Constitution, that the purpose of the declaration was " . . . not that of making a reservation to the Constitution of UNIDO nor to article V of the 1946 Convention on the Privileges and Immunities of the United Nations, as it does not aim at excluding the application of that article nor at submitting its application to a condition." Also, concerning the Convention on the Privileges and Immunities of the Specialized Agencies, UNIDO has been unable to accept to curtail the exemption from taxation of UNIDO's officials whatever their nationality or place of residence, an opinion officially conveyed to the Government [in 1985] and [1987].

It is worth mentioning that section 46 of the Convention on the Privileges and Immunities of the Specialized Agencies provides as follows:

"It is understood that, when an instrument of accession of a subsequent notification is deposited on behalf of any State, this State will be in a position under its own law to give effect to the terms of this Convention, as modified by the final texts of any annexes relating to the agencies covered by such accession or notifications."

The secretariat holds that under international law the argument that presidential decrees will prevail over the international obligations of [State] cannot be maintained. The

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

Vienna Convention on the Law of Treaties, 1969,[40] codified this principle under article 27 which provides the long-standing principle of customary international law that a State cannot justify its failure to perform its obligations under a treaty because of any provision in its municipal law.

The eventual implementation of the presidential decrees referred to in the note verbale of the Government to UNIDO's officials would be susceptible of causing a double discrimination. First, discrimination between officials of UNIDO based on their nationality or residence. Secondly, it would give the host State a direct financial advantage thereby creating discrimination between member States.

It is pertinent to recall that the rationale of immunity from taxation in respect of the salaries and emoluments paid by UNIDO is to attain equality in the salary treatment for officials of equal rank throughout the entire organization, without the need for continuous adjustment which would be necessary if changes and variations in national tax legislation had to be taken into account.

(b) *Rules applicable to the [UNIDO Services] and its officials*

Pursuant to the exchange of letters dated [1990] between the Director-General of UNIDO and the Permanent Representative of [State] to UNIDO, the parties agreed in particular to the following:

> "2. Taking into account Article 21.2*(c)* of the Constitution of UNIDO it is confirmed that the Convention on the Privileges and Immunities of the United Nations (1946) applies to the Service in [State] and its personnel."

The agreement was entered into "... pending the conclusion of a detailed agreement on basic terms and conditions governing the legal status of UNIDO's Office in [State]. . .". The Ministry of Foreign Affairs is aware that no further agreement has been concluded in relation to the said Office.

Accordingly, the following provision of the Convention on the Privileges and Immunities of the United Nations applies to the salaries and emoluments of UNIDO's officials in the offices of [. . .] and [. . .]:

> *"Article V*
> *Officials*
>
> *Section 18.* Officials of the United Nations shall:
> *(b)* be exempt from taxation on the salaries and emoluments paid to them by the United Nations;"

Consequently, UNIDO is not in a position to accept that its officials who are [State] citizens and foreigners permanently resident in [State] might be taxed by the Government on incomes and emoluments paid by the organization.

The secretariat of UNIDO would appreciate it if the Government were not to insist on the implementation of presidential decrees Nos. [. . .] and [. . .] but were to apply the exemptions from taxation in respect of the salaries and emoluments of UNIDO's officials providing services in the [UNIDO Center] and the [UNIDO Services] in [city] and [city] as established for in the Convention of the Privileges and Immunities of the Specialized Agencies and the Convention of the Privileges and Immunities of the United Nations.

[40] United Nations *Treaty Series*, vol. 1155, p. 331.

The secretariat of the United Nations Industrial Development Organization avails itself of this opportunity to renew to the Ministry of Foreign Affairs of [State] the assurances of its highest consideration.

23 June 2003

2. Validity of service agreement signed "under protest" —National expert v. national officer

Interoffice memorandum re: Validity of service agreement with [a] national expert of [State]

1. This is with reference to your e-mail dated 17 June 2003 concerning the validity of the service agreement between the United Nations Industrial Development Organization (UNIDO) and [name] as a national expert. [Name] signed this contract on [date] and attached a covering letter in which he mentioned that he was *"signing the service agreement* ***under protest****"* (emphasis added).

2. I note that the service agreement and the letter were signed on the same date, [date]. The service agreement was signed in a normal fashion without any comments on the contract itself.

3. Regarding his covering letter it seems that [name] wants to be a "national officer" instead of a "national expert", i.e., an employee of UNIDO rather than a consultant for UNIDO. The question is whether his statement *"I am signing the service agreement* ***under protest****"* (emphasis added) does make the service agreement itself invalid.

4. The letter does not state that he wants to rescind the agreement, which he could do under its paragraph 5 with one month's written notice.

5. To the contrary, in accordance with the letter, he assumes that the agreement is valid because he states that he "will strive [his] very best to do an excellent job and live up to your expectations."

6. The letter, therefore, does not have the legal effect of invalidating the signed service agreement.

7. Nevertheless, it states that "I am sure you will understand my concerns as noted above and take appropriate action". This needs to be replied to in writing by the organization explaining why the type of service agreement offered to [name] is deemed to be the appropriate one by the organization also in order to avoid any dispute with the contractor (see paragraph 13 of the Service Agreement).

3. Arbitration clauses in cooperation agreements between organizations of the United Nations system (including related organizations)—Obligations *vis-à-vis* member States

Interoffice memorandum (signed by the Chief, Legal Affairs Unit, UNIDO) re: Final Draft Memorandum of Understanding between UNIDO and an organization of the UN system

After receipt of your e-mail in the afternoon of 12 August 2003, I contacted the Legal Office of [international organization] on 13 August to hear their position and arguments on the proposed arbitration clause. In fact, they had received a copy of my memorandum and had already, on their own, contacted the United Nations Office of Legal Affairs in New York

through the Senior Legal Liaison Officer at United Nations, Geneva, to obtain the United Nations legal position on the point that I had made that no arbitration clause was used in cooperation agreements between United Nations organizations. It should be recalled that the [international organization] is a related organization just like the International Atomic Energy Agency and not a specialized agency proper. By Friday 15 August 2003, they had received the opinion from the Office of Legal Affairs, New York, which together with their views they communicated to me in the afternoon by e-mail, after which we discussed the matter over the phone.

The United Nations[Office of Legal Affairs] legal opinion in fact confirmed my view that no binding arbitration clause is used between United Nations system organizations as far as cooperation agreements of a general nature were concerned since it is assumed that the organizations will always be able to resolve their differences in an amicable manner. The opinion added that if services of the United Nations and financial aspects were involved in such agreements, they sometimes went to the General Assembly to have it approved or [they] included an article in the agreement stating that the matter will be subject to supplementary arrangements. In the case of joint implementation of projects, provisions are included in the general cooperation agreement stating that special arrangements will define the modalities of participation and financial matters.

In the light of this legal opinion the [international organization] Legal Office felt that:

(a) Their position did not materially depart from the United Nations practice since the proposed arbitration clause did not only cover the memorandum of understanding but also any exchanges of letters or other implementation agreements that subsequently might be adopted between the [international organization] and UNIDO, and which might contain additional financial obligations for the parties. In that context, the situation was different from that of a cooperation agreement cast in very general terms;

(b) The [international organization] secretariat had some kind of obligation *vis-à-vis* their member States to insert such an arbitration clause in their agreements. While it was highly unlikely that any party would ever have recourse to it, as a result of the above arguments they would like to retain the arbitration clause.

In my opinion, the clause proposed by UNIDO is fully sufficient and it would be my preference not to have the arbitration clause in accordance with United Nations system practice. Regarding the arguments put forward by [international organization], the more relevant one to me is the second one, i.e., their apparent commitment to their members to protect the organization's interests by arbitration clauses in their agreements. A departure from that practice in the case of the memorandum of understanding with UNIDO would seem to require from them an explanation to their members, which could be based on the argument that no arbitration clauses are used between United Nations system organizations in cooperation agreements.

In the light of the above considerations, I believe that a decision needs to be obtained from the Director-General whether to accept the arbitration clause as proposed by the [international organization]. In case of a positive decision, however, it should be clearly remembered that this would be an exception for the [international organization] without relevance for the practice among United Nations system organizations and for future cooperation agreements that UNIDO might conclude with other United Nations organizations.

4. Independence and reporting of the Legal Advisor of an agency of the United Nations system—Structure and role of the Legal Office—Specialized agencies v. subsidiary organs of the United Nations

Interoffice memorandum re: Certain aspects regarding the Legal Adviser/Legal Office

1. Further to our conversation of 20 December 2002 and to my memorandum to you dated 11 December 2002, I wish to provide you with the following additional comments regarding the functions/structure and location of the legal adviser/legal office in an agency of the United Nations system. [. . .]

Functions and structure of the Legal Office

(a) *Independence and reporting of the Legal Adviser*

2. As set out in my memorandum dated 9 December 2002 [. . .], the central role of the legal adviser in the United Nations and the 16 specialized agencies of the United Nations system is to provide legal advice to the secretariat and the governing bodies and thereby to contribute to the rule of law by independently interpreting the legal framework of the organization. Legal advice is provided directly to those who ask for it and not through other officials, who could in that case dilute the integrity of legal advice and assume the role of legal advisers themselves. The independence of the legal adviser is an essential element in the discharge of his/her functions. This is true regardless of the actual location of the legal office in the structure of each organization (see paragraph 14 below).

3. It is in that sense that the Legal Adviser reports directly to the Director-General, i.e., that he is not under the instruction of another official who has not been appointed as legal adviser. Reporting to the Director-General does not, therefore, technically mean that all legal advice goes to him.

4. To illustrate this aspect I am attaching for sake of example the organizational charts[41]of the United Nations, the International Atomic Energy Agency (IAEA), the World Health Organization (WHO), the Food and Agriculture Organization (FAO), the International Civil Aviation Organization (IACO), and the International Fund for Agricultural Development (IFAD) which [. . .] show the existence of a legal office. In all cases the direct line to the Office of the Secretary-General/Director-General/President demonstrates what I said in the preceding paragraphs. The organizational charts show that the principle of independence of the legal adviser is common to the entire United Nations system.

5. Regarding the intended restructuring as far as the Legal Office is concerned, it may be useful to seek the views and comments of the Legal Counsel of the United Nations, who is the most prominent among the legal advisers of the United Nations system.

6. . . .

(b) *Structure and role of the Legal Office*

7. The practice in the United Nations and the specialized agencies has been unfailingly to have an *independent unified legal service* headed by one legal adviser and not several legal advisers dispersed in different offices of the organization. The reason is that an international organization needs to be consistent in its legal practices and relations and in

[41] The attachments are not reproduced herein.

the interpretation of its rules. Otherwise it will be open to legal challenge and criticism from contractors, staff members, governments and other entities. The necessary consistency in the legal area is ensured by the legal adviser who reviews the drafts prepared by his office.

8. It should be noted that apart from the professional experience and thorough knowledge of international and administrative law and the working of the Organization shared among the legal adviser and the lawyers working with him or her and on which all legal advice is necessarily based, the Legal Office is also the depository of the centrally collected relevant legal documentation that is indispensable for researching precedents in given cases. Presently, the Legal Library comprises approximately 1,000 chronological and subject files as well as an extended collection of other legal documents and literature.

9. It should also be clearly understood that the role of the legal service in any organization is to independently assist the secretariat and its divisions, branches and sections in the day-to-day administration of their mandates and programmes through the provision of legal services. In accordance with its terms of reference, the role of any legal service is advisory. It does not administer. In other words, in accordance with their terms of reference, the day-to-day administration of the work pursuant to the applicable rules is the job of the respective branches and units. For example, the financial services administer the financial regulations and rules, the human resources management branch the staff regulations and rules, and procurement section the financial rules concerning procurement. The administration of these rules is therefore the professional responsibility of the respective staff under the supervision and guidance, as required, of their directors who are responsible for the proper functioning of their services. The legal service comes in when there is a question with legal implications that cannot be solved by the institutional knowledge of the service involved.

(c) *The United Nations Development Programme (UNDP)*

10. It appears likely that some elements of the structure of UNDP have played a role in the recommendations to the Director-General prior to the issuance of UNIDO/DGB(M).91.

11. In this connection, it is necessary to recall that UNIDO, pursuant to the political will of its founders, is an independent specialized agency with its own legal personality, 169 member States, an elected head, and its own budget, like the United Nations and the 15 other specialized agencies. Careful account should therefore be taken of the fact that what is relevant to UNIDO in questions of structure is the practice of the United Nations Secretariat and the specialized agencies, and not the practices at [. . .] a subsidiary organ of the United Nations and not a specialized agency. It stands to reason and conforms to established practice that the sole model, and source of precedent for a specialized agency, are organizations of similar legal structure and not a subsidiary organ of the United Nations that is not an independent intergovernmental organization.

12. [. . .]

Location of the Legal Office

14. As is evident from the organizational charts of selected specialized and related agencies, the established practice in the United Nations and the specialized and related agencies point to the legal office being entirely on its own. For example, in the United Nations, the Legal Office is a separate office, in IAEA it is now again a separate office reporting to the Director-General after having been n office in the Department of Management. In

WHO, the Legal Office is a separate office, reporting to the Director-General. In FAO, the Office of the Director-General is surrounded by a cluster of independent offices fulfilling a variety of functions, among them the Legal Office, the Office of the Inspector-General, the Special Advisers to the Director-General, the Office of Programme Budget and Evaluation. Likewise, in ICAO and IFAD the Legal Offices are separate offices, with direct reporting lines to the Secretary General and the President, respectively.

Conclusion

15. In all organizations of the United Nations system, the legal adviser provides independent legal advice directly to those who request it and who, in the exercise of his/her mandate, does not receive instructions from another official. As a rule, the legal office is a separate and independent office reporting directly to the head of the organization. The possible locations of the legal office vary in different organizations. A brief survey indicates that:

(a) the most frequent situation is that the legal office is a separate entity (for example, United Nations, IAEA, WHO, FAO, ICAO, IFAD) with a reporting line to the Director-General/Secretary-General/President;

(b) until recently, in IAEA, the Legal Office was an office in the Department of Management, with a direct reporting line to the Director-General.

Part Three

JUDICIAL DECISIONS ON QUESTIONS RELATING TO THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter VII

DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

A. International Tribunal for the Law of the Sea

The International Tribunal for the Law of the Sea is an independent permanent tribunal established by the United Nations Convention on the Law of the Sea, 1982.[1]

PENDING CASES, JUDGEMENTS AND ORDERS IN 2003

Case no. 7 (pending case)—Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community)

By a request of the Parties, the President of the Special Chamber extended the time limit for making preliminary objections until 1 January 2006, by Order dated 16 December 2003.

Case no. 12—Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore) Request for provisional measures

Land reclamation—Request for provisional measures under article 290 paragraph 5, UNCLOS—Article 283 obligation to exchange views—Existence of an agreement under article 281 to seek settlement of the dispute by peaceful means—Assessment of the urgency of the need for provisional measures under article 290—Existence of a claim to an area of territorial sea not per se *a sufficient basis for provisional measures—Protection of rights arising from duty of cooperation in prevention of pollution*

On 5 September 2003, Malaysia filed a Request for the prescription of provisional measures against Singapore under article 290, paragraph 5, of the United Nations Convention on the Law of the Sea (UNCLOS), 1982, pending the constitution of an arbitral tribunal under annex VII to the Convention, in a dispute concerning land reclamation by Singapore in and around the Straits of Johor.

Malaysia sought the prescription of the following provisional measures:

1. that Singapore should, pending the decision of the arbitral tribunal, suspend all current land reclamation activities in the vicinity of the maritime boundary between the two States or of areas claimed as territorial waters by Malaysia (and specifically around Pulau Tekong and Tuas);

2. to the extent it has not already done so, provide Malaysia with full information as to the current and projected works, including in particular their proposed extent, their

[1] As at 31 December 2003, there were 145 parties to the Convention. For the text of the Convention and the Statute of the Tribunal, see United Nations *Treaty Series*, vol. 1833, p. 3.

method of construction, the origin and kind of materials used, and designs for coastal protection and remediation (if any);

3. afford Malaysia a full opportunity to comment upon the works and their potential impacts having regard, *inter alia*, to the information provided; and

4. agree to negotiate with Malaysia concerning any remaining unresolved issues.

Singapore requested that the Tribunal:

1. dismiss Malaysia's request for provisional measures; and

2. order Malaysia to bear the costs incurred by Singapore in these proceedings.

The Order of 8 October 2003

The Tribunal first addressed the issue of whether the annex VII arbitral tribunal would *prima facie* have jurisdiction over the dispute. With respect to the obligation to exchange views set out in article 283 of UNCLOS, the Tribunal considered that the obligation had been satisfied as Malaysia was not obliged to continue with an exchange of views after had it concluded that this exchange could not yield a positive result. Singapore then argued that, by agreeing to meet on 13 and 14 August 2003 the parties had, for the purposes of article 281, agreed to seek settlement of the dispute by a peaceful means (namely negotiation) and Malaysia was therefore unable to seek provisional measures. The Tribunal noted that the meeting took place after the institution of arbitral proceedings and that Malaysia had expressly stated that such meetings would be without prejudice to its right to proceed with the arbitration pursuant to annex VII to UNCLOS or to request the Tribunal to prescribe provisional measures. Article 281 was therefore not applicable. The Tribunal found that the annex VII arbitral tribunal would *prima facie* have jurisdiction over the dispute. The Tribunal also found that the case was admissible under ITLOS Rules.

The Tribunal noted that, under article 290, paragraph 5, of UNCLOS, the Tribunal is competent to prescribe provisional measures prior to the constitution of the annex VII arbitral tribunal if the urgency of the situation so requires. Singapore contended that, as the annex VII arbitral tribunal was to be constituted by no later than 9 October 2003, there was no need to prescribe provisional measures given the short period of time remaining before that date. The Tribunal noted that there is nothing in article 290 of the Convention to suggest that the measures prescribed by the Tribunal must be confined to that period and further considered that the urgency of the situation must be assessed by taking into account the period during which the annex VII arbitral tribunal is not yet in a position to modify, revoke or affirm the provisional measures.

With respect to the request for provisional measures relating to the land reclamation works in the sector of Tuas, the Tribunal considered that the existence of a claim to an area of territorial sea is not, *per se*, a sufficient basis for the prescription of provisional measures.

The Tribunal found that Malaysia had not shown that there was a situation of urgency or that there was a risk that its rights with respect to an area of its territorial sea would suffer irreversible damage pending consideration of the merits of the case by the annex VII arbitral tribunal. Accordingly, the Tribunal did not consider it appropriate to prescribe provisional measures with respect to the land reclamation by Singapore in the sector of Tuas.

The Tribunal went on to consider Malaysia's Request for the remaining provisional measures. It was noted that during the oral proceedings, Singapore, in response to the measures requested by Malaysia, reiterated its offer to share the information requested by Malaysia with respect to the reclamation works, stated that it would provide Malaysia with a full opportunity to comment on the reclamation works and their potential impact, and declared that it was ready and willing to enter into negotiations. The Tribunal placed on record these assurances given by Singapore.

With respect to the infilling work in Area D at Pulau Tekong, which was of primary concern to Malaysia, the Tribunal noted the commitment made by Singapore at the hearing not to undertake any irreversible action to construct the stone revetment around Area D pending the completion of a study, jointly sponsored and funded by both States, to be undertaken by independent experts.

The Tribunal stated that the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under Part XII of UNCLOS and general international law, and that there are rights which arise therefrom which the Tribunal may consider appropriate to preserve under article 290 of UNCLOS (citing *The MOX Plant Case*, Order of 3 December 2001).[2] The Tribunal further stated that the record of the case showed that there was insufficient cooperation between the parties up to the submission of the Statement of Claim by Malaysia on 4 July 2003.

The Tribunal considered that, given the possible implications of land reclamation on the marine environment in and around the Straits of Johor, prudence and caution required Malaysia and Singapore to establish mechanisms for exchanging information on and assessing the risks or effects of the land reclamation works and devising ways to deal with them.

For these reasons, the Tribunal, unanimously, prescribed the following provisional measures under article 290, paragraph 5, of UNCLOS, pending a decision by the annex VII arbitral tribunal:

> "Malaysia and Singapore shall cooperate and shall, for this purpose, enter into consultations forthwith in order to:
>
> *(a)* establish promptly a group of independent experts with the mandate
>
> (i) to conduct a study, on terms of reference to be agreed by Malaysia and Singapore, to determine, within a period not exceeding one year from the date of this Order, the effects of Singapore's land reclamation and to propose, as appropriate, measures to deal with any adverse effects of such land reclamation;
>
> (ii) to prepare, as soon as possible, an interim report on the subject of infilling works in Area D at Pulau Tekong;
>
> *(b)* exchange, on a regular basis, information on, and assess risks or effects of, Singapore's land reclamation works;

[2] Arbitral tribunal constituted pursuant to article 287, and article 1 of annex VII, of UNCLOS for the dispute concerning the MOX Plant, international movements of radioactive materials, and the protection of the marine environment of the Irish sea (*Ireland v. United Kingdom*). The Order is available on the web-site http:www.pca-cpa.org. The International Bureau of the Permanent Court of Arbitration is serving as registry in the proceedings.

(c) implement the commitments noted in this Order and avoid any action incompatible with their effective implementation, and, without prejudice to their positions on any issue before the annex VII arbitral tribunal, consult with a view to reaching a prompt agreement on such temporary measures with respect to Area D at Pulau Tekong, including suspension or adjustment, as may be found necessary to ensure that the infilling operations pending completion of the study referred to in subparagraph *(a)*(i) with respect to that area do not prejudice Singapore's ability to implement the commitments referred to in paragraphs 85 to 87.

Unanimously,

Directs Singapore not to conduct its land reclamation in ways that might cause irreparable prejudice to the rights of Malaysia or serious harm to the marine environment, taking especially into account the reports of the group of independent experts.

Unanimously,

Decides that Malaysia and Singapore shall each submit the initial report referred to in article 95, paragraph 1, of the Rules of the Tribunal, not later than 9 January 2004 to this Tribunal and to the annex VII arbitral tribunal, unless the arbitral tribunal decides otherwise.

Unanimously,

Decides that each party shall bear its own costs."

President Nelson and Judge Anderson appended a declaration to the Order of the Tribunal.

Judges *ad hoc* Hossain and Oxman appended a joint declaration to the Order.

Judges Chandrasekhara Rao, Ndiaye, Jesus, Cot and Lucky appended separate opinions to the Order of the Tribunal.

B. International Criminal Court

The International Criminal Court is an independent permanent court established by the Rome Statute of the International Criminal Court, 1998.[3]

PENDING CASES, JUDGEMENTS AND ORDERS IN 2003

In December 2003, the first referral from a State party was made to the Prosecutor. The President of Uganda referred the situation concerning the Lord's Resistance Army to the Prosecutor. No other referrals were made to the Prosecutor by either States parties or the Security Council. There were no decisions made by the Prosecutor to initiate any investigations. There were no pending cases or judgments delivered in 2003.

[3] As at 31 December 2003, there were 92 parties to the Rome Statute. For the text of the Statute, see United Nations *Treaty Series*, vol. 2187, p. 3.

C. International Criminal Tribunal for the former Yugoslavia

The International Criminal Tribunal for the former Yugoslavia is a subsidiary body of the United Nations Security Council. The Tribunal was established by Security Council resolution 827 (1993), adopted on 25 May 1993.[4]

1. JUDGEMENTS

(a) Judgements delivered by the Appeals Chamber in 2003[5]

1. *Prosecutor v. Zdravko Mucíc, Hazim Delić and Esad Landžo*, Case No. IT-96–21-*Abis*, Judgement on Sentence Appeal, 8 April 2003.
2. *Prosecutor v. Milorad Krnojelac*, Case No. IT-97–25-A, Judgement, 17 September 2003.
3. *Prosecutor v. Drago Josipovic,* Case No. IT-95–16-R2, Decision on Motion for Review, 7 March 2003.

(b) Judgements delivered by the Trial Chambers in 2003

1. *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-S, Sentencing Judgement, 18 December 2003.
2. *Prosecutor v. Biljana Plavšić,* Case No. IT-00-39&40/1-S, Sentencing Judgement, 27 February 2003.
3. *Prosecutor v. Dragan Obrenović*, Case No. IT-02-60/2-S, Sentencing Judgement, 10 December 2003.
4. *Prosecutor v. Predrag Banović*, Case No. IT-02-65/1-S, Sentencing Judgement, 28 October 2003.
5. *Prosecutor v. Mladen Naletilic and Vinko Martinovic*, Case No. IT-98-34-T, Judgement, 31 March 2003.
6. *Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1-S, Sentencing Judgement, 2 December 2003.
7. *Prosecutor v. Blagoje Simić, Miroslav Tadíc and Simo Zarić*, Case No. IT-95-9-T, Judgement, 17 October 2003.
8. *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Judgement, 31 July 2003.
9. *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Judgement and Opinion, 5 December 2003.

2. PENDING CASES

(a) Pending appeals in the Appeals Chamber as at 31 December 2003[6]

1. *Prosecutor v. Tihomir Blaškić*, Case No. IT-95–14-T, Judgement, 3 March 2000.
2. *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-T, Judgement, 26 February 2001.

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[4] The Statute of the Tribunal is annexed to the report of the Secretary-General pursuant to Security Council resolution 808 (1993) (S/25704 and Add.1).

[5] The list does not include decisions or orders made disposing of interlocutory appeals.

[6] The list does not include pending interlocutory appeals.

3. *Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlađo Radić, Zoran Žigić and Dragoljub Prcać*, Case No. IT-98-30/1-T, Judgement, 2 November 2001.
4. *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-T, Judgement, 29 November 2002.
5. *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Judgement, 2 August 2001.
6. *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-T, Judgement, 31 March 2003.
7. *Prosecutor v. Momir Nikolić*, Case No. IT-02–60/1-S, Sentencing Judgement, 2 December 2003.
8. *Prosecutor v. Blagoje Simić, Miroslav Tadić and Simo Zarić*, Case No. IT-95-9-T, Judgement, 17 October 2003.
9. *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Judgement, 31 July 2003.
10. *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Judgement and Opinion, 5 December 2003.

(b) Pending cases before the Trial Chambers as at 31 December 2003

Accused in the custody of the International Criminal Tribunal for the former Yugoslavia

1. *Prosecutor v. Zeljko Mejakic, Momcilo Gruban, Dusan Fustar, Predrag Banovic and Dusko Knezevic*, Case No. IT-02-65.
2. *Prosecutor v. Ranko Češić*, Case No. IT-95-10/1.
3. *Prosecutor v. Milan Martic*, Case No. IT-95-11.
4. *Prosecutor v. Ivica Rajić, a.k.a. Viktor Andrić,* Case No. IT-95-12.
5. *Prosecutor v. Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin*, Case No. IT-95-13/1.
7. *Prosecutor v. Savo Todović and Mitar Rašević*, Case No. IT-97-25/1.
8. *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60.
9. *Prosecutor v. Radoslav Brđjanin*, Case No. IT-99-36.
10. *Prosecutor v. Milan Milutinović, Nikola Šainović and Dragoljub Ojdanić*, Case No. IT-99-37.
11. *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39&40.
12. *Prosecutor v. Paško Ljubičić*, Case No. IT-00-41.
13. *Prosecutor v. Pavle Strugar,* Case No. IT-01-42.
14. *Prosecutor v. Miodrag Jokić*, Case No. IT-01-42/1.
15. *Prosecutor v. Vladimir Kovačević*, Case No. IT-01-42/2.
16. *Prosecutor v. Rahim Ademi*, Case No. IT-01-46.
17. *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47.
18. *Prosecutor v. Sefer Halilović*, Case No. IT-01-48.
19. *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54.

20. *Prosecutor v. Darko Mrđa*, Case No. IT-02-59.
21. *Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61.
22. *Prosecutor v. Radovan Stanković*, Case No. IT-96-23/2.

Accused who remain at large[7]

1. *Prosecutor v. Goran Borovnica*, Case No. IT-95-3.
2. *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Case No. IT-95-5/18.
3. *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17.
4. *Prosecutor v. Zeljko Raznjatovic (also known as "Arkan")*, Case No. IT-97-27.
5. *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1.
6. *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1.
7. *Prosecutor v. Ante Gotovina*, Case No. IT-01-45.
8. *Prosecutor v. Vujadin Popović*, Case No. IT-02-57.
9. *Prosecutor v. Ljubiša Beara*, Case No. IT-02-58.
10. *Prosecutor v. Ljubomir Borovčanin*, Case No. IT-02-64.
11. *Prosecutor v. Gojko Janković and Dragan Zelenović,* Case No. IT-96-23/2.
12. Prosecutor v. *Estojan Župljanin,* Case No. IT-99-36.
13. Prosecutor v. *Nebojša Pavković*, *Vladimir Kazarević, Vlastimir Dardjevic and Streten Lukić*, Case o. IT-03-70.

D. International Criminal Tribunal for Rwanda

The International Criminal Tribunal for Rwanda is a subsidiary body of the United Nations Security Council. The Tribunal was established by Security Council resolution 955 (1994), adopted on 8 November 1994.[8]

1. JUDGEMENTS

Judgements delivered by the Trial Chambers in 2003

1. *Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44A, Judgement and Sentence, 1 December 2003.
2. *Prosecutor v. Eliezer Niyitegeka*, Case No. ICTR-96-14-T, Judgement and Sentence, 16 May 2003.
3. *Prosecutor v. Gérard Ntakirutimana*, Case No. 1: ICTR-96-10; 2: ICTR-96-17-T, Judgement and Sentence, 21 February 2003.
4. *Prosecutor v. Elizaphan Ntakirutimana*, Case No. 1: ICTR-96-10; 2: ICTR-96-17-T, Judgement and Sentence, 21 February 2003.
5. *Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Judgement and Sentence, 15 May 2003.

[7] This list does not include accused who are named in indictments under seal.
[8] The Statute of the Tribunal is contained in the annex to the resolution.

6. *Prosecutor v. Jean Bosco Barayagwiza, Ferdinand Nahimana, Hassan Ngeze,* Case No. ICTR-99-52-T, Judgement and Sentence, 3 December 2003.

2. PENDING CASES

(a) Pending appeals in the Appeals Chamber as at 31 December 2003

1. *Prosecutor v. Jean Bosco Barayagwiza, Ferdinand Nahimana, Hassan Ngeze,* Case No. ICTR-99-52-A, Judgement and Sentence, 3 December 2003.

(b) Pending cases before the Trial Chambers as at 31 December 2003

Accused in the custody of the International Criminal Tribunal for Rwanda

1. *Prosecutor v. Joseph Kanyabashi*, Case No. ICTR-96-15.
2. *Prosecutor v. Elie Ndayambaje*, Case No. ICTR-96-8.
3. *Prosecutor v. Sylvain Nsabimana*, Case No. ICTR-97-29.
4. *Prosecutor v. Arsène Shalom Ntahobali*, Case No. ICTR-97-21.
5. *Prosecutor v. Alphonse Nteziryayo*, Case No. ICTR-97-29.
6. *Prosecutor v. Pauline Nyirmasuhuko*, Case No. ICTR-97-21.
7. *Prosecutor v. Théoneste Bagosora*, Case No. ICTR-96-7.
8. *Prosecutor v. Gratien Kabiligi,* Case No. ICTR-97-34.
9. *Prosecutor v. Anatole Nsengiyumva*, Case No. ICTR-96-12.
10. *Prosecutor v. Aloys Ntabakuze*, Case No. ICTR-97-30.
11. *Prosecutor v. Augustine Bizimungu,* Case No. ICTR-2000-56.
12. *Prosecutor v. Augustin Ndindiliyimana,* Case No. ICTR-2000-56.
13. *Prosecutor v. François-Xavier Nzuwonemeye*, Case No. ICTR-2000-56.
14. *Prosecutor v. Innocent Sagahutu*, Case No. ICTR-2000-56.
15. *Prosecutor v. Casimir Bizimungu,* Case No. 1: ICTR-99-45; S: ICTR-99-50.
16. *Prosecutor v. Justin Mugenzi,* Case No. 1: ICTR-99-47; 2: ICTR-99-50.
17. *Prosecutor v. Jérôme Bicamumpaka,* Case No. 1: ICTR-99-49; 2: ICTR-99-50.
18. *Prosecutor v. Prosper Mugiraneza,* Case No. 1: ICTR-99-48; 2: ICTR-99-50.
19. *Prosecutor v. Edouard Karemera,* Case No. ICTR-98-44.
20. *Prosecutor v. Mathieu Ngirumpatse*, Case No. ICTR-98-44.
21. *Prosecutor v. Joseph Nzirorera*, Case No. ICTR-98-44.
22. *Prosecutor v. François Karera,* Case No. ICTR-01-74.
23. *Prosecutor v. Jean Mpambara*, Case No. ICTR-01-65.
24. *Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55.
25. *Prosecutor v. André Rwamakuba,* Case No. ICTR-98-44C.
26. *Prosecutor v. Athanase Seromba*, Case No. ICTR-2001-66.

27. *Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-01-73-I.
28. *Prosecutor v. Paul Bisengimana*, Case No. ICTR-00-60.
29. *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54.
30. *Prosecutor v. Vincent Rutaganira*, Case No. ICTR-95-1C-I.
31. *Prosecutor v. Sylvestre Gacumbitsi*, Case No. ICTR-01-64.
32. *Prosecutor v. Samuel Imanishimwe*, Case No. ICTR-97-36.
33. *Prosecutor v. Mikaeli Muhimana*, Case No. ICTR-95-1-I.
34. *Prosecutor v. Emmanuel Ndindabahizi*, Case No. ICTR-01-71-I.
35. *Prosecutor v. Aloys Simba*, Case No. ICTR-01-76.
36. *Prosecutor v. Simon Bikindi*, Case No. ICTR-01-72-I.
37. *Prosecutor v. Jean Baptiste Gatete,* Case No. ICTR-2000-61-I.
38. *Prosecutor v. Idelphonse Hategekimana,* Case No. ICTR-2000-55.
39. *Prosecutor v. Gaspard Kanyarukiga,* Case No. ICTR-2002-78-I.
40. *Prosecutor v. Yussuf Munyakazi,* Case No. ICTR-97-36A-I.
41. *Prosecutor v. Simeon Nchamihigo,* Case No. ICTR-01-63.
42. *Prosecutor v. Hormisdas Nsengimana,* Case No. ICTR-2001-69-I.
43. *Prosecutor v. Joseph Nzabirinda,* Case No. ICTR-01-77-I.
44. *Prosecutor v. Tharcisse Renzaho,* Case No. ICTR-97-31-DP.
45. *Prosecutor v. Juvénal Rugambarara,* Case No. ICTR-00-59-I.
46. *Prosecutor v. Emmanuel Rukundo, Case No.* ICTR-01-70-I.

Accused who remain at large[9]

1. *Prosecutor v. Augustin Bizimana,* Case No. ICTR-98-44.
2. *Prosecutor v. Félicien Kabuga,* Case No. ICTR-97-22.
3. *Prosecutor v. Protais Mpiranya,* Case No. ICTR-2000-56.
4. *Prosecutor v. Aloys Ndimbati,* Case No. ICTR-95-1.
5. *Prosecutor v. Idelphonse Nizeyimana,* Case No. ICTR.2000-55.
6. *Prosecutor v. Ladislas Ntaganzwa,* Case No. ICTR-96-9.
7. *Prosecutor v. Callixte Nzabonimana,* Case No. ICTR-98-44.
8. *Prosecutor v. Charles Ryandikayo,* Case No. ICTR-95-1.
9. *Prosecutor v. Charles Sikubwabo,* Case No. ICTR-95-1D.
10. *Prosecutor v. Fulgence Kayishema,* Case No. ICTR-01-67.
11. *Prosecutor v. Bernard Munyagishari,* Case No. ICTR-97-26
12. *Prosecutor v. Pheneas Munyarugarama,* Case No. ICTR-02-79.
13. *Prosecutor v. Gregoire Ndahimana,* Case No. ICTR-01-68.
14. *Prosecutor v. Augustin Ngirabatware,* Case No. ICTR-99-54.
15. *Prosecutor v. Jean Bosco Uwinkindi,* Case No. ICTR-01-75.

[9] This list does not include accused who are named in indictments under seal.

E. Special Court for Sierra Leone

The Special Court for Sierra Leone is an independent court established by the Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone, 2002.[10]

1. JUDGEMENTS

(a) Judgements delivered by the Appeals Chamber in 2003[11]

1. *Prosecutor v. Sam Hinga Norman*, Case No. SCSL-2003–08-PT, Decision on the Defence Preliminary Motion on Lack of Jurisdiction: Command Responsibility, 15 October 2003.
2. *Prosecutor v. Sam Hinga Norman*, Case No. SCSL-2003–08-PT, Decision on Application by the University of Toronto International Human Rights Clinic for Leave to File *Amicus Curiae* Brief, 1 November 2003.
3. *Prosecutor v. Morris Kallon*, Case No. SCSL-2003–07-PT, Decision on Application by the Redress Trust, Lawyers Committee for Human Rights and the International Commission of Jurists for Leave to File *Amicus Curiae* Brief and to Present Oral Submissions, 1 November 2003.
4. *Prosecutor v. Sam Hinga Norman, Prosecutor v Morris Kallon, Prosecutor v Augustine Gbao,* Case Nos. SCSL-2003–08-PT, SCSL-2003–07-PT & SCSL-2003–09-PT, Decision on the Applications for a Stay of Proceedings and Denial of Right to Appeal, 4 November 2003.
5. *Prosecutor v. Sam Hinga Norman*, Case No. SCSL-2003–08-PT, Decision on Appeal by the Truth and Reconciliation Commission for Sierra Leone ("TRC" or "The Commission") and Chief Samuel Hinga Norman JP Against the Decision of His Lordship, Mr Justice Bankole Thompson Delivered on 30 October 2003 to Deny the TRC's Request to hold a Public Hearing with Chief Samuel Hinga Norman JP, 28 November 2003.

(b) Judgements delivered by the Trial Chamber in 2003

No judgements were delivered by the Trial Chamber in 2003.

2. PENDING CASES

(a) Pending appeals in the Appeals Chamber as at 31 December 2003[12]

1. *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-2003-01-PT.
2. *Prosecutor v. Morris Kallon*, Case No. SCSL-2003-07-PT

[10] For the text of the Agreement and the Statute of the Special Court, see United Nations *Treaty Series*, vol. 2178, p. 137.

[11] This list includes decisions and orders made in respect of preliminary motions, interlocutory appeals and other motions determined by the Appeals Chamber.

[12] This list includes the cases in which there were pending preliminary motions, interlocutory appeals and other motions to be determined by the Appeals Chamber.

3. *Prosecutor v. Sam Hinga Norman*, Case No. SCSL-2003-08-PT.
4. *Prosecutor v. Augustine Gbao*, Case No. SCSL-2003-09-PT.
5. *Prosecutor v. Brima Bazzy Kamara*, Case No. SCSL-2003-10-PT.
6. *Prosecutor v. Moinina Fofana*, Case No. SCSL-2003-11-PT.
7. *Prosecutor v. Allieu Kondewa*, Case No. SCSL-2003-12-PT.
8. *Prosecutor v. Santigie Borbor Kanu*, Case No. SCSL-2003-13-PT.

(b) Pending cases before the Trial Chamber as at 31 December 2003

Accused in the custody of the Special Court for Sierra Leone [13]

1. *Prosecutor v. Issa Sesay*, Case No. SCSL-2003-05-PT.
2. *Prosecutor v. Alex Tamba Brima*, Case No. SCSL-2003-06-PT.
3. *Prosecutor v. Morris Kallon*, Case No. SCSL-2003-07-PT.
4. *Prosecutor v. Sam Hinga Norman*, Case No. SCSL-2003–08-PT.
5. *Prosecutor v. Augustine Gbao*, Case No. SCSL-2003-09-PT.
6. *Prosecutor v. Brima Bazzy Kamara*, Case No. SCSL-2003-10-PT.
7. *Prosecutor v. Moinina Fofana*, Case No. SCSL-2003-11-PT.
8. *Prosecutor v. Allieu Kondewa*, Case No. SCSL-2003-12-PT.
9. *Prosecutor v. Santigie Borbor Kanu*, Case No. SCSL-2003-13-PT.

Accused who remain at large [14]

1. *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-2003-01-PT.
2. *Prosecutor v. Jonny Paul Koroma,* Case No. SCSL-2003-03-I.

[13] The case, *Prosecutor v Foday Saybana Sankoh*, Case No. SCSL-2003-02-PT, was terminated upon the endorsement by the Trial Chamber of the withdrawal of the Indictment on 8 December 2003 following the death of the Accused.

[14] The case, *Prosecutor v Sam Bockarie*, Case No. SCSL-2003–04-PT, was terminated upon the endorsement by the Trial Chamber of the withdrawal of the Indictment on 8 December 2003 following the death of the Accused. The Accused was at large at the time of his death.

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

Italy

THE SUPREME COURT OF CASSATION

Civil Cassation, Combined Civil Divisions,*
23 January 2004, No. 1237

Food and Agriculture Organization of the United Nations (FAO)—Question of immunity from jurisdiction of the organization—Headquarters Agreement (Agreement between the Government of the Italian Republic and the Food and Agriculture Organization of the United Nations regarding the Headquarters of the Food and Agriculture Organization of the United Nations)—Convention on the Privileges and Immunities of Specialized Agencies, 1947

The Supreme Court of Cassation, Combined Civil Divisions, pronounced the following decision:

In the appeal brought by:

Giuliana Carretti, who elects domicile at 11 Viale dell'Università, Rome, at the law firm of attorney Francesco Fabbri, who is representing her and defending her interests by virtue of a power of attorney appearing in the margin of the appeal—Appellant

Versus

The Food and Agriculture Organization of the United Nations (FAO), in the person of its legal representative *pro tempore*, domiciled at 12 Via dei Portoghesi, Rome, at the Office of the State Attorney General, which is representing and defending it as stipulated by law—Respondent

Against decision No. 1613 of the Court of Appeal of Rome, deposited on 20 September 2001;

Having heard the Rapporteur's summary of the case given in public hearing on 6 November 2003 by Dr. Erminio Ravagnani, Counsellor;

Having heard Attorney Francesco Fabbri;

Having heard the public prosecutor's office in the person of Dr. Antonio Martone, Deputy General Prosecutor, who argued for the rejection of the appeal.

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* Dr. Vittorio Carbone, Acting First President; Dr. Giovanni Olla, Division President; Dr. Erminio Ravagnani, Rapporteur and Counsellor; and Counsellors Dr. Enrico Altieri, Dr. Michele Varrone, Dr. Ugo Vitrone, Dr. Roberto Michaele Triola and Dr. Giuseppe Marziale.

The facts

Ms. Giuliana Carretti brought an action before the Rome Labour Tribunal, petitioning, as her principal plea, that the termination of her employment, of which she was notified on 21 April 1993, by the Food and Agriculture Organization of the United Nations (FAO) should be reversed and that FAO should be ordered to pay her the remuneration due her and to pay the related contributions into the United Nations pension fund. She petitioned, as a subordinate plea, that FAO should be ordered to pay certain sums on various scores as well as compensation for material loss and moral damage.

The Rome Tribunal declared that Italian judges lacked jurisdiction.

Ms. Carretti filed an appeal, which was contested by the opposing party.

The Court of Appeal rejected the appeal, on the following grounds:

> Considering that the principal object of the dispute is the petition that the termination of employment should be held to be unlawful, with a consequent petition for compensation for damages and the payment of the omitted contributions, while the subordinate object is the petition for payment, on various scores, of certain sums of money and compensation of injury, including moral damage, Italian judges must be held to be without jurisdiction, since a decision on the dispute, even though it would extend to claims of a material nature, would nonetheless presuppose an evaluation of the conduct of the employer and would thus bear upon the public law structure or the realization of the aims of the international organization. However, the employment relationship of FAO staff members is governed by an extensive and autonomous set of regulations covering a wide variety of matters, including disputes concerning administrative decisions, for which jurisdiction is accorded to the Administrative Tribunal of the International Labour Organization (ILO). Moreover, the question of constitutional lawfulness raised by Ms. Carretti is clearly unfounded, since, under the Convention on Privileges and Immunities of Specialized Agencies of 21 November 1947 (Act No. 1740 of 24 July 1951), a FAO staff member is effectively guaranteed the right to bring an action against FAO for the protection of his or her rights before that Tribunal, and a possible interference in the rights of citizens constituting a violation of constitutional guarantees does not arise. Nor do the unsuccessful outcome of the proceedings brought before that tribunal, the alleged non-recognition of the proceedings by Ms. Carretti, which is belied by the facts as alleged and verified, or the shortness of the time limits for bringing an action appear to be relevant.

Against that decision Ms. Carretti filed an appeal for review of that decision, arguing that there were ample, clear grounds for overturning it.

FAO submitted a counter-appeal.

The law

The Appellant, alleging violation and misapplication of article 382 of the Code of Civil Procedure and other legal rules relating to the jurisdiction of Italian judges with reference to the international instruments rendered enforceable by Act No. 1740 of 24 July 1951 and Act No. 11 of 9 January 1951, and articles 3, 11 and 24 of the Constitution with reference to the legal rules relating to the ILO Tribunal, and further alleging defects in the statement of grounds, contends that the jurisdiction of Italian judges should have been upheld at least with respect to the subordinate pleas, inasmuch as they concerned claims

of an exclusively material nature. She contends, in fact, that her action is limited to the claim for purely material remuneration or relief, upon a finding of unlawful conduct on the part of her employer, without, however, putting forward a "request for the reversal of a prejudicial act of an alleged administrative nature". Moreover, she argues that excluding the jurisdiction of Italian judges would allow the non-appealable decisions of the ILO Tribunal to have an inadmissible effect on the rights claimed by Ms. Carretti under articles 36 and 38 of the Constitution, while the provision for the lapse of the action before that Tribunal and the Convention rendered enforceable by Act No. 1740 of 24 July 1951, as well as the Headquarters Agreement rendered enforceable by Act No. 11 of 9 January 1951, as interpreted by the Court of Appeal, should have led to the conclusion that the question of lawfulness raised in relation to the above-mentioned articles of the Constitution was not manifestly unfounded.

The appeal is unfounded.

The Combined Civil Divisions have already had occasion to hold that disputes brought against FAO concerning employment relationships in Italy involving Italian citizens employed by the organization are outside the jurisdiction of Italian judges (see decision Cass. SU No. 5942 of 18 May 1992); that the waiver of jurisdiction applies to any judgement that would entail rulings bearing upon the public law structure or the realization of the aims of the international organization (Cass. SU No. 1150 of 7 November 2000); and that the waiver extends to any petition that a termination of employment should be found unlawful with consequent claims for reinstatement and compensation for damage (Cass. SU No. 531 of 3 August 2000; No. 331 of 12 June 1999; No. 120 of 12 March 1999; No. 12771 of 28 November 1991).

No valid reasons are apparent, and none were presented, for departing from that jurisprudence. Moreover, the Appellant herself, while offering extensive arguments in support of her contentions, stresses the material aspect of the dispute, presenting it, inaccurately, as her only point at issue, thus seeming to support the position expressed in the jurisprudence whereby Italian judges do not have jurisdiction with respect to a petition for a termination of employment to be declared unlawful, with the consequent claims for reinstatement and compensation, whereas they do have jurisdiction with respect to a claim for payment of disputed amounts of remuneration, since such a claim has to do with purely material aspects of the relationship and does not require a ruling on the public law powers of the international organization (Cass. SU No. 120 of 12 March 1999). Clearly, that is not the case here, in view of the content of the principal plea.

As the Court held in its judgement No. 5942 of 1992 and reiterates here, the immunity of FAO from the jurisdiction of Italian judges, that is, judges of the Host Country, is based on article VIII, section 16, of the Agreement between the Government of the Italian Republic and the Food and Agriculture Organization of the United Nations regarding the Headquarters of the Food and Agriculture Organizations of the United Nations (known as the "Headquarters Agreement") signed at Washington on 31 October 1950 and rendered enforceable in Italy by Act No. 11 of 9 January 1951, which provides that "FAO and its property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process. . .".

The treaty origin of the legal text means that attention can be directed not only to the literal wording of the provision itself but also to the spontaneous conduct of the parties in applying it, here in particular the exchange of notes between FAO and the Permanent

Diplomatic Representation of Italy to FAO concerning "the modes of settlement of disputes adopted by the Organization as provided in Article IX, Section 31 *(a)*, of the Convention on the Privileges and Immunities of Specialized Agencies" approved by the General Assembly of the United Nations on 21 November 1947 and rendered enforceable in Italy by Act No. 1740 of 24 July 1951. In giving effect to the obligation under article IX, section 31 *(a)*, of the Convention, FAO declared, and Italy recognized, that none of the institutional purposes of FAO could be achieved if the organization were not to have its own staff, in employment relationships governed by its own staff regulations. With respect to the settlement of disputes arising out of such employment relationships the organization accepted the jurisdiction of the Administrative Tribunal of the International Labour Organization (ILO), with seat in Geneva, to hear complaints of staff members concerning their terms of appointment. Therefore, staff members may, after having exhausted the internal appeal procedure, lodge complaints with the said independent Tribunal.

Interpretation of the Headquarters Agreement on the basis of a literal reading and an evaluation of the subsequent conduct of the parties, and also in the light of the effect given by the organization to the obligation provided for in article IX, section 31 *(a)*, of the Convention on Privileges and Immunities of Specialized Agencies, which was rendered enforceable in Italy by Act No. 1740 of 1951, leads to the conclusion that the organization enjoys immunity from the jurisdiction of Italian judges not only in disputes over its property but also in disputes concerning employment relationships with its staff, whereas the courts of the Italian Republic have jurisdiction, as provided in applicable laws, over acts done and transactions taking place in the headquarters seat in respect of relationships to which FAO is not a party, since the principle of extraterritoriality does not mean that legal acts done within the confines of the headquarters seat cannot be considered to have been done within the territory of the Italian Republic or can be considered to be outside the jurisdiction of Italian judges.

Such an interpretation, finally, leads to the conclusion that the regulations that govern the employment relationship of FAO staff in an exhaustive and autonomous manner, including the regulations governing administrative disputes, which establish the jurisdiction of the ILO Administrative Tribunal, can in no way be considered constitutionally unlawful in relation to articles 3, 11 and 24 of the Constitution. In fact, FAO has set up a jurisdictional system that not only centres around judges—the ILO Administrative Tribunal—clearly endowed with the "third party" impartiality called for by international law, but is also exempt from the procedural limitations that undermine the subjective positions recognized in substantive law and, moreover, is devoid of the tendency to place unreasonable obstacles before the complainant with respect to the protection of the right claimed. That the judges are outside our legal system is not relevant, because limitations on sovereignty are provided for in the Italian Constitution (article 11) and are therefore lawful, even if their effects interfere with the rights of citizens, provided that—as is the case here, in which the time limits for bringing an action are comparable to those validly imposed by domestic law—the interference does not result in a violation of constitutional guarantees. In the present case, therefore, Italian judges must be held to lack jurisdiction.

The costs are to be borne by the losing party and paid as indicated in the dispositive part of the decision.

On these grounds the Court rejects the appeal, declares that Italian judges lack jurisdiction and orders the Appellant to pay the judicial costs of €3,100.00 (three thousand

one hundred euros), of which €3,000.00 (three thousand euros) correspond to fees, in addition to costs debited in advance.

So decided in Rome on 6 November 2003.

Deposited with the Clerk of the Court's Office on 23 January 2004.

Canada

High Court

Province of Quebec, District of Montreal,* 20 November 2003,
No. 500–05–061028–005 and No. 500–05–063492–019

Analysis of the scope and goal of immunity of an international organization and its staff—Question of whether the International Civil Aviation Staff Association enjoys immunity from jurisdiction accorded to the International Civil Aviation Association (ICAO)—Immunity from jurisdiction of senior officials of ICAO—Question of waiver of immunity by ICAO by not providing adequate provision of appropriate modes of settlement of disputes arising out of contracts or other disputes under article 33 of the Headquarters Agreement—The Vienna Convention on Diplomatic Relations, 1961—The Convention on the Privileges and Immunities of the United Nations, 1946—Headquarters Agreement between the Government of Canada and ICAO—The concepts of absolute immunity and functional immunity

Gérald René Trempe, Applicant, Against the ICAO Staff Association and Wayne Dixon, Respondents, and, the Attorney-General of Canada, Intervener

Gérald René Trempe, Applicant, Against Dirk Jan Goossen, the ICAO Council and Jesus Ocampo, Respondents, and the Attorney-General of Canada, Intervener

Judgement

1. In the present case the Applicant has filed two actions for damages for non-renewal of his employment contract with the International Civil Aviation Association (ICAO) in December 1992.

2. In the first (500–05–061028–005), dated 1 November 2000, the Applicant requested that the ICAO Staff Association and its President, Wayne Dixon, pay him $300,000 in monetary, moral and punitive damages. He claimed that the Association and its President had not adequately represented him in his dealings with ICAO. His pleas read as follows:

To RECEIVE the present application;

To REJECT any attempt by the Respondents to have the case declared inadmissible;

To ORDER the co-Respondent STA to pay the Applicant the sum of $120,000 in monetary damage, plus interest at the official rate and the additional compensation provided for under the law as from the issuance of the writ;

To ORDER the co-Respondents jointly and severally to pay him $120,000 in moral injury, plus interest at the official rate and the additional compensation provided for under the law as from the issuance of the writ;

* The Honourable Claude Tellier, j.c.s., Presiding.

To ORDER the co-Respondents jointly and severally to pay the Applicant the sum of $60,000 in punitive damages, plus interest at the official rate and the additional compensation provided for under the law as from the date of the judgement;

To RESERVE all remedies for the applicant against any natural or artificial person who might be included or added to the present action or who might be prosecuted separately;

To ORDER that part of the judgement be enforced notwithstanding any appeal;

PLUS costs.

3. In the second (005–05–063492–019) dated 1 March 2001, the Applicant requested the sum of $14,000,000 in monetary, moral and punitive damages. He claimed that the Respondents—the ICAO Council, Dirk Jan Goossen and Jesus Ocampo—had told him that the reason he was not being renewed was that his post had been abolished whereas, in fact, he was actually being dismissed. His amended pleas read as follows:

To RECIEVE the present application;

To REJECT any request by the Respondents to have the case declared inadmissible;

To CONDUCT a judicial review of the constitutionality and compatibility of articles 19 (3), 20 *(a)*, 21 (1) and 24 of the Headquarters Agreement with the Constitution and the Canadian Charter of Rights and Freedoms;

To DECLARE the provisions of articles 19 (3), 20 *(a)*, 21 (1) and 24 of the Headquarters Agreement wholly or partly inoperative;

To RULE that the right to justice takes precedence over rules regarding the immunity of ICAO;

To ORDER the Respondents jointly and severally to pay the Applicant the sum of $1,000,000 in present and future monetary damages, subject to review, plus interest at the official rate and the additional compensation provided for under the law as from the issuance of the writ;

To ORDER the Respondents jointly and severally to pay the Applicant the sum of $12,000,000 in non-monetary damages, of which $3,000,000 in general damages and $5,000,000 in additional damages, plus interest at the official rate and the additional compensation provided for under the law as from the issuance of the writ;

To ORDER the Respondents jointly and severally to pay the Applicant the sum of $1,000,000 in punitive damages, plus interest at the official rate and the additional compensation provided for under the law as from the date of the judgement;

To ORDER that part of the judgement be enforced notwithstanding any appeal;

PLUS costs.

(emphasis added by the Court)

4. Just when the case was up for a default judgement, the Attorney-General of Canada, acting at the request of ICAO, intervened in the two cases requesting that the cases be ruled inadmissible on the grounds that ICAO and its staff have been accorded immunity under national and international law. In short, the Attorney-General filed a request that the Court declare that it did not have jurisdiction.

5. The two requests were considered simultaneously and the present judgement will cover both requests.

6. Before going on to discuss the arguments raised by each party, the Court believes it is appropriate to go over the relevant points raised in the written proceedings. It should be noted that, when considering a request regarding inadmissibility, the Court does not hear any witnesses, for it must take the facts cited in the written proceedings as having been proved.

7. When considering a request that a case be judged inadmissible, the issue before the Court is as follows: Assuming that the Applicant can prove all the facts cited in the introductory pleadings, is he entitled to a judgement based on the pleadings? Conversely, it is often said that one must ask oneself whether the submission is doomed to fail.

8. Consequently it seems necessary to recall the principal facts outlined in the written pleadings before trying to apply to these facts the rules of law invoked.

9. According to the Applicant's amended pleas, in his second submission, we learn that he worked for ICAO from 27 June 1990 until 30 December 1992.

10. When he was appointed, a written contract was drawn up dated 3 July 1990 (it was produced as document P-1). The provisions of the contract included the following:

- The appointment was for the period from 27 June 1990 to 12 October 1990;
- The first assignment was "Distribution clerk";
- Calculation of vacation and sick days;
- The appointment could be cancelled on one month's notice or payment of one month's salary;
- The provisions of the ICAO Service Code applicable to permanent staff members were not applicable to that short-term contract.

The contract was subsequently extended for 1991 and 1992.

11. Document P-2 shows that Respondent Goossens, who at the time was deputy director of personnel, recommended to the Secretary General that the conditions of service of temporary staff should be amended so that the latter could be covered by all the provisions of the ICAO Service Code. The recommendation was apparently adopted on 11 December 1990.

12. In a service note dated 25 January 1991, Respondent Goossen informed the staff of the Secretary General's decision and the employment contracts of non-permanent staff were amended accordingly (see P-4).

13. On 6 November 1992, the ICAO Secretary General informed the Applicant that his one-year contract dated 30 December 1991 would expire on 30 December 1992 and that the Organization would not offer him a further appointment (see P-5).

14. The Applicant alleges in paragraph 17 of his amended pleas that, after receiving the notice of 6 November 1992, he met with Respondent Goossen on 13 November 1992, and was told that his contract was not being renewed because the number of staff had to be reduced and the post was being abolished.

15. In paragraph 19, the Applicant alleges that he went to ICAO on 5 January 1993 and found that someone was sitting in his office and that a vacancy notice had been issued in the post.

16. He tried to contact the Secretary General but the latter was on vacation until 20 January 1993. On that day he finally spoke to the Secretary General to explain the

situation to him and inform him that he planned to file an appeal in accordance with the Service Code for he believed that the reason his contract had not been renewed was not because his post had been abolished but because he had, in fact, been dismissed.

17. This allegation was corroborated by the letter dated 27 January 1993 from the Secretary General to the Applicant (see P-6):

> This is in response to your letter of 20 January 1993 in which you appeal to me to review the decision taken and conveyed to you on 6 November 1992.
>
> The very nature of a temporary appointment is that it does not carry any expectancy of renewal and expires automatically without further notice.
>
> At the time, C/PER spoke with you on 13 November 1992, it was intended to keep the post vacant. However, later on it was decided to fill the post again and a temporary Distribution Clerk was recruited because the supervisors did not express an interest to rehire you.
>
> Although the terms of your temporary appointment dated 30 December 1991 (see paragraph 9 of the letter of temporary appointment of 3 July 1990) exclude the Staff Regulations and Rules concerning the appeals procedure, *I would have been prepared to consider a request from you to allow you to do so if such a request had been submitted to me within the prescribed time limit laid down in Staff Rule* 111.1, paragraph 5, i.e. *within one month of the time you received notification of the decision in writing on 6 November 1992. Since you did not meet this deadline, I am not prepared to consider your request.*
>
> (emphasis added by the Court)

18. The Applicant replied to the Secretary General on 9 February 1993 (see P-7) stating the following:

> I am grateful to you to have let me know your decision relating to the appeal under Staff Regulations and Rules.
>
> I would like to draw your attention on the point that the misrepresentation of the facts by C/PER concerning the non-requirement of my post for 1993, as reported in my letter of 20 January 1993, explains why I did not appeal to you in due time.
>
> I do not want to be considered as a victim neither as a fautive employee. But it has to be mentioned that the opportunity to justify myself about the unfair supervisor's report has never been given to me.
>
> It implies, for the one hand, that my legitimate employee's right to defend myself against the arbitrary has been denied and on the other hand, my application for a future post vacancy may not be favorably considered.
>
> For these reasons, I request you to authorize me to address directly to the United Nations Administrative Tribunal.

19. In that letter, he requested permission to appeal directly to the United Nations Administrative Tribunal (UNAT). The Secretary General asked Respondent Goossen to comment on the request. Goossen sent the Secretary General a lengthy report recommending that no appeal be filed with UNAT because, he claimed, there were no exceptional circumstances (see P-8).

20. On 18 February 1993, the Secretary General rejected the Applicant's request for permission to appeal directly to UNAT.

21. On 27 April 1994, the appeals board submitted a recommendation to the Secretary General urging him to waive the time limits in that case so as to enable the Applicant to proceed with his appeal (see P-11). The Secretary General did not accept the recommendation and again rejected the Applicant's request (see P-12).

22. It appears from P-12 that on 19 August 1994, the Applicant submitted an appeal directly to UNAT requesting that it order:

"(1) The rescinding of the Secretary General decision [not to renew his appointment beyond 31 December 1992];

(2) [His] reinstatement as a staff member of the International Civil Aviation Organization;

(3) Payment of [his] salary and allowances with interest covering the period from 1st January 1993 up to the end of this litigation during which time [he has] been compelled to remain unemployed;

(4) Payment to UN Joint Staff Pension Fund by ICAO on [his] behalf of the appropriate contributions with interest covering the period 1st January 1993 till the end of this litigation;

(5) Exemplary damages for moral and material injury resulting from misuse of administrative practices and the time limits setting as a trap and a means to catch [him] out, in the range of $65,000 to $95,000;

(6) Appropriate compensation to cover the cost of filing this appeal, in the range of $1,000 to $1,500.

[or]

(i) Payment of the amount equivalent to three years net base salary;

(ii) Exemplary damages for moral and material injury resulting from misuse of administrative practices and the time limits setting as a trap and a means to catch [him] out, in the range of $65,000 to $95,000;

(iii) Appropriate compensation to cover the cost of filing this appeal, in the range of $1,000 to $1,500."

23. After considering the evidence and making several comments, the Tribunal stated on page 7 of its decision, dated 7 November 1995:

IV. The Applicant requests the Tribunal to rescind the Secretary General's decision not to waive the time-limit. In the opinion of the Tribunal, the Secretary General enjoys discretionary power to determine whether "exceptional circumstances" exist that would justify a waiver of the time-limit laid down in staff rule 111.1.7. In earlier rulings, the Tribunal has held (Judgement No. 527, Han (1992)) that only a decision by the Secretary General tainted by errors of law or fact, arbitrariness or discrimination would prompt the Tribunal to censure the decision; moreover, it would be for the Applicant to show that the decision was tainted by one of those defects. That has not happened in this case.

V. *If the Chief of the Personnel Branch—and this has not been confirmed—gave inaccurate information to the Applicant, that was wrong. Nevertheless, in the circumstances, the Secretary General was within his rights in concluding that there was no justification for waiving the time-limit.*

(emphasis added by the Court)

24. The first application—the pleas of which are cited above—was filed on 1 November 2000. This application was directed against the ICAO Staff Association and Wayne Dixon who was president of the Association at the time the Applicant's employment terminated.

25. The Attorney-General was authorized to intervene in that first case by a judgement of 23 March 2001.

26. On 21 June 2001, the Attorney-General, acting at the request of the Association, filed a request that the case be declared inadmissible, citing the immunity of the Association and of its president Wayne Dixon. In short, the Attorney-General filed a request that the Court declare itself to have no jurisdiction to hear the case.

27. The second application was filed on 1 March 2001. Initially the respondents cited were:

- Dirk Jan Goossen;
- the ICAO Council and
- Jesus Ocampo

28. On 28 June 2001, this Court issued a judgement authorizing the Attorney-General to intervene in that second case.

29. On 12 July 2001, the Attorney-General filed a request that the case be declared inadmissible, citing the same grounds as those cited in the first case.

30. In short, the Attorney-General in her request, cited the fact that ICAO is an international organization and, as such, enjoys privileges and immunities both under Canadian law and under international law that remove it from the jurisdiction of this Court. The same would apply to the officials cited as respondents. The Court will come back to these issues.

31. Following that intervention and the filing of the request that the case be declared inadmissible, the Applicant amended his original application. The new one is dated 15 September 2003.

32. In it, he made the following changes:

(a) It is no longer the ICAO Council that is cited as Respondent but the International Civil Aviation Organization;

(b) Jesus Ocampo is no longer cited as a Respondent;

(c) There are new paragraphs containing additional information and arguments but they do not provide any major new facts to the debate;

(d) As regards the claims, the clarifications do not provide any facts to change the current judicial debate.

33. Following is a summary in chronological order of the facts and proceedings that the Court considers relevant to the discussion of the requests submitted by the Attorney-General.

34. In this connection, the Court wishes to recall the procedural context of the present hearing:

- There are two preliminary requests which have been combined for the hearing;
- At this stage in the proceedings, only the issues raised by the Attorney-General can be discussed and decided;

– On no account can the Court consider—still less decide on—the merits of the cases filed by the Applicant;

– In his presentation and pleadings the Applicant raises the issue of constitutionality of certain provisions of the Headquarters Agreement with the Canadian Charter of Rights and Freedoms. That issue will be considered once the Court has dealt with the issue of immunity raised by the Attorney-General.

Issues in dispute

35. Before listing the issues in dispute the Court wishes to make one thing clear. The issue before it is simply the request by the Attorney-General of Canada that the Court reject the Applicant's cases on the grounds of inadmissibility.

36. The Attorney-General points out that ICAO and its staff have immunity and therefore do not come within the jurisdiction of Canadian courts.

37. The Court will start by considering and taking a decision on the issue of immunity; it will therefore have to refrain from considering any other issue, including the merits of the proceedings instituted by the Applicant. It will then turn to the constitutional issue raised by the Applicant. Here again it declares that it has no jurisdiction to engage in judicial review of decisions taken by the Secretary General or by UNAT.

38. Having said that, the Court will now discuss the issues raised.

39. It will start by considering the concept of immunity. The latter is a legal concept that is recognized under both national legislation and international law.

40. There are numerous examples of immunity under national legislation: immunity is granted, *inter alia*, to members of parliament, to judges, to Crown prosecutors and to members of disciplinary committees of professional bodies referred to in the Professions Code.

41. No one in any of the positions listed above can be prosecuted for actions taken in the performance of their duties.

42. The same concepts can be found at the international level, but the context and content are different.

43. Under Canadian law, the issue of immunity is governed by the Act respecting the privileges and immunities of foreign missions and international organizations (the Act), which was adopted on 5 December 1991 (L.C.C. c. F-29.4). It supersedes earlier legislation.

44. This Act governs all Canada's external relations. Article 3 covers both diplomatic missions and consular posts and article 5 lists the rules applicable to Canada's relations with international organizations.

45. One significant feature of this Act is that, instead of having all the applicable rules listed in the Act itself, appended to it are three schedules which contain the full text of three international treaties which are thereby incorporated into Canadian law. They are the following:

(a) The Vienna Convention on Diplomatic Relations of 18 April 1961 (Schedule I);

(b) The Vienna Convention on Consular Relations adopted on 24 April 1963 (Schedule II);

(c) The Convention on the Privileges and Immunities of the United Nations adopted by the United Nations General Assembly on 13 February 1946 (Schedule III).

46. This method of incorporating international instruments into domestic law has important consequences. As a general rule, it is not within the competence of national courts to interpret and implement international treaties and conventions. That is not, however, the case when the full text of a treaty is incorporated into the body of national legislation. That is what we have done with all the articles of the Vienna Convention which are referred to in article 3 of the Act.

47. The Court will now look at the provisions of article 5 of the Act, which refer to the Convention on the Privileges and Immunities of the United Nations, contained in Schedule III of the Act:

> 5. (1) The Governor in Council may, by order, provide that:
>
> *(a)* an international organization shall have the *legal capacities* of a *body corporate*;
>
> *(b)* an *international organization shall*, to the extent specified in the order, *have the privileges and immunities set out in Articles II and III of the Convention on the Privileges and Immunities of the United Nations, set out in Schedule III*;
>
> *(c)* representatives of a foreign State that is a member of or participates in an international organization shall, to the extent specified in the order, have the privileges and immunities set out in Article IV of the Convention on the Privileges and Immunities of the United Nations;
>
> *(d)* representatives of a foreign State that is a member of an international organization headquartered in Canada, and members of their families forming part of their households, shall, to the extent specified in the order, have privileges and immunities comparable to the privileges and immunities accorded to diplomatic representatives, and members of their families forming part of their households, in Canada under the Vienna Convention on Diplomatic Relations;
>
> (. . .)
>
> *(f)* such *senior officials of an international organization* as may be designated by the Governor in Council, and, in the case of an international organization headquartered in Canada, members of their families forming part of their households, *shall, to the extent specified in the order, have privileges and immunities comparable to the privileges and immunities accorded to diplomatic agents,* and members of their families forming part of their households, *under the Vienna Convention on Diplomatic Relations*;
>
> *(g)* such other officials of an international organization as may be designated by the Governor in Council shall, to the extent specified in the order, have the privileges and immunities set out in section 18 of article V of the Convention on the Privileges and Immunities of the United Nations;
>
> (emphasis added by the Court)

48. In light of the references to article 5 of the Act and to articles II, III and IV of the Convention on the Privileges and Immunities of the United Nations, the Court will look at the following provisions of the articles of the Convention:

> Section 2. The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in

so far 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.

Section 3. 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.

(. . .)

Section 11. *Representatives of Members to the principal and subsidiary organs of the United Nations* and to conferences convened by the United Nations, *shall*, while exercising their functions and during their journey to and from the place of meeting, *enjoy the following privileges and immunities*:

(a) immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, *immunity from legal process of every kind*;

(b) inviolability for all papers and documents

(. . .)

Section 12. In order to secure, for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, *complete freedom of speech and independence in the discharge of their duties, the immunity from legal process* in respect of words spoken or written and *all acts done by them in discharging their duties* shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members;

(. . .)

Section 14. Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but *in order to safeguard the independent exercise of their functions in connection with the United Nations*. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

(emphasis added by the Court)

49. Finally, the Court will cite articles 29 and 31 of the Vienna Convention on Diplomatic Relations, reproduced in Annex l:

Article 29

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

Article 31

1. A diplomatic agent shall enjoy *immunity from the criminal jurisdiction* of the receiving State. *He shall also enjoy immunity from its civil and administrative jurisdiction*, except in the case of:

(a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent *is not obliged to give evidence as a witness*.

3. *No measures of execution may be taken in respect of a diplomatic agent* except in the cases coming under subparagraphs *(a)*, *(b)* and *(c)* of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

(emphasis added by the Court)

50. For the purpose of interpreting these provisions, the Court deems it useful to cite the preamble to the Vienna Convention which reads as follows:

VIENNA CONVENTION ON DIPLOMATIC RELATIONS

The States Parties to the present Convention,

Recalling that *peoples of all nations* from ancient times *have recognized the status of diplomatic agents*,

Having in mind the purposes and principles of the Charter of the United Nations concerning *the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations*,

Believing that an *international convention* on *diplomatic* intercourse, *privileges and immunities would contribute to the development of friendly relations among nations*, irrespective of their differing constitutional and social systems,

Realizing that the purpose of such privileges and immunities is not to benefit individuals but *to ensure the efficient performance of the functions of diplomatic missions as representing States*,

Affirming that *the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention*,

(emphasis added by the Court)

51. The above texts contain the legislative provisions adopted by Parliament and are therefore part of Canadian legislation. This Act enables the Government to adopt decrees to update *recognition of the international organizations* and *accord them the applicable immunities and privileges*. This was done in the case of ICAO by signing a Headquarters Agreement, the most recent of which was dated 4 and 9 October 1990.

52. In article 2 of this Agreement the Government of Canada *recognizes* ICAO as an *international organization possessing juridical personality* and the capacity to contract, to acquire and dispose of property and to institute legal proceedings.

53. Pursuant to article 3 and following articles of the Agreement, ICAO is accorded *immunity for its property and assets, its premises and archives and exemption from taxes*.

54. Article 17 and the subsequent articles deal with the immunities accorded to ICAO staff members. In that connection, the Court will cite the following articles:

Article 17

PURPOSE OF PRIVILEGES AND IMMUNITIES

(1) *Privileges and immunities are accorded to Permanent Representatives, Representatives, administrative staff*, service staff and private servants of members of the mission, not for the personal benefit of the individuals themselves, *but in order to safeguard the independent exercise of their functions* in connection with the Organization. Consequently, a Member State not only has the right, but is under a duty to waive the immunity of such persons in any case where, in the opinion of the Member State, the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded. (. . .)

Article 19

SENIOR OFFICIALS

(1) *The President of the Council and the Secretary General* of the Organization *shall be accorded*, in respect of themselves and members of their families forming part of their households, *the same privileges and immunities*, subject to corresponding conditions and obligations, *as are enjoyed by diplomatic agents in Canada*.

(2) The *Deputy Secretary General, the Assistant Secretaries General*, and officers of equivalent rank shall be accorded, in respect of themselves and members of their families forming part of their households, *the same privileges and immunities*, subject to corresponding conditions and obligations, *as are enjoyed by diplomatic agents and their families in Canada*.

(3) In addition, *officials belonging to senior categories designated by the Secretary General and accepted* by the Government of Canada *shall be accorded, in respect of themselves* and members of their families forming part of their households, the privileges and immunities, subject to corresponding conditions and obligations, as are grated to diplomatic agents.

Article 20

OTHER OFFICIALS

Except insofar as in any particular case any privilege or immunity is waived by the Secretary General of the Organization, officials who are not covered by article 19 shall:

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

Article 21

PURPOSE OF PRIVILEGES AND IMMUNITIES

(1) *Privileges and immunities* under articles 19 and 20 *are accorded to officials in the interests of the Organization* and not for the personal benefit of the individuals themselves. The Secretary General of the Organization shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Organization. In the case of the President of the Council and the Secretary General of the Organization, the Council of the Organization shall have the right to waive the immunity.

(2) Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of Canada. They also have a duty not to interfere in the international affairs of Canada.

(emphasis added by the Court)

55. Finally, article 33, which is invoked in particular by the Applicant, reads as follows:

Article 33

OTHER DISPUTES

The Organization shall make adequate provision for *appropriate modes of settlement* of:

(a) Disputes arising out of contracts or other disputes to which the Organization is a party;

(b) Disputes involving any officials of the Organization if their immunity has not been waived in accordance with article 21.

(emphasis added by the Court)

Discussion

56. The various texts cited above call for a general comment. It is clear from these texts that Canada recognizes—as does the international community—the need to encourage Canada's participation in the programmes and activities sponsored by the United Nations and related international organizations and Canada's relations with other States.

57. These international activities must be based on the freedom of thought and of action of States and must be protected from any undue influence or interference by any one State.

58. This goal of freedom and independence of action cannot be achieved without recognizing the concept of immunity, that is to say, that an international organization or State must not be subjected to another State, to its domestic legislation and its courts in the pursuit of its goals. Immunity is the basis of all international and diplomatic activity. Immunity is the sum of the privileges that a State grants to another State or to an international organization to help it achieve its goals. In granting immunity to another State or organization, a State thereby gives up part of its sovereignty.

59. The Vienna Convention does not give a definition of the term immunity as such but uses a variety of terms. For example, the premises of a diplomatic mission are inviolable, and communications and the diplomatic bag are protected. A diplomatic agent is inviolable and cannot be arrested or put in prison; nor can such an agent prosecuted in criminal or even civil jurisdiction, save in certain limited cases.

60. It is clear from these texts that there are two types of immunity—absolute immunity and immunity in respect of functions. The first, as the term would suggest, is absolute, that is to say there are no exceptions; it must be respected and applied no matter what the circumstances. Functional immunity can be described as relative, that is to say, it applies only to the extent that the action in question has been committed by the person in the performance of their duties.

61. The first and easiest issue to be decided concerns the status of ICAO as an international organization according to the Headquarters Agreement. In principle, ICAO enjoys almost absolute immunity and therefore it cannot be prosecuted in any Canadian court for any reason. The only exception would be if an international organization were to be involved in a commercial activity and had not provided for modes of settling disputes in accordance with the provisions of article 33 of the above-mentioned Headquarters Agreement.

62. This conclusion is clearly demonstrated by articles 2 and 3 of the Headquarters Agreement which read as follows:

Article 2

LEGAL PERSONALITY

The Organization shall possess juridical personality. It shall have the legal capacities of a body corporate, including the capacity:

(a) To contract;

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

(c) To institute legal proceedings.

Article 3

IMMUNITY OF PROPERTY AND ASSETS

(1) The Organization, its property and its assets, wherever located and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign States.

(2) For the purpose of this article, and articles 4 and 6, the word "assets" shall also include funds administered by the Organization in furtherance of its constitutional functions.

63. The first conclusion to be drawn in this case is that ICAO is accorded immunity under the Headquarters Agreement and that this immunity is absolute.

64. The other articles of the Headquarters Agreement merely spell out the various aspects of this immunity.

65. The Court will now turn to the issue of whether the ICAO Staff Association has immunity and is therefore sheltered from civil proceedings in Canadian court.

66. It would seem that the Association has no legal personality under Canadian law and is but by-product of ICAO. . . From the plentiful documents submitted to the Court it seems that the ICAO Council adopted a Service Code which provides for the regulation of working relations between ICAO and its staff (see P-2). The preamble to that Code reads as follows:

> 1. The ICAO Service Code consists of *Staff Regulations embodying the conditions of service and the basic rights, duties and obligations of members of the Secretariat of ICAO, as approved by the ICAO Council.* The Secretary General, as the Chief Executive Officer, shall enforce these regulations, and shall lay down and enforce such staff rules consistent therewith as he considers necessary.
>
> 2. Toward the realization of the concept of a truly international civil service, the Organization shall cooperate to the fullest extent practicable with other international organizations, particularly the United Nations, and with the International Civil Service Commission, in the establishment of uniform and progressive personnel standards and practices.
>
> (emphasis added by the Court)

67. Article 8 of the Code deals with relations with members of the Association and states that:

> 8.1 It shall be the policy of the Organization *to recognize an association or associations of staff members as a proper and desirable means of representing the interests of the staff*. The Council, in deciding whether to recognize any group as a representative association of staff members, will take into account the following:
>
> 1) whether the group represents a sufficiently substantial number of staff members or a sufficiently distinct category of staff members to justify its recognition as a representative association;
>
> 2) whether its charter or constitution and the statement of its objectives are not in conflict with the interests of the Organization.
>
> 8.2 A recognized association may have direct dealings with the Secretary General, but shall not have the right of presenting its views to the Assembly, the Council or any of their subordinate bodies. Notwithstanding this provision, a recognized association may make application through the Secretary General to present its views to the Finance Committee.
>
> (emphasis added by the Court)

68. It seems that the Code contains the constitution of the Association which was recognized as such by ICAO. The Association is therefore an internal structure and just a by-product of ICAO; it does not have juridical personality as might be the case with a committee entrusted with budgetary, financial or other responsibilities. In other words, it has no juridical personality other than that of ICAO and is entirely dependent on the latter for its existence. Accordingly, the Court concludes that the Association is covered by the privileges and immunities accorded to ICAO and is not subject to the jurisdiction of this Court.

69. The Court will now turn to the issue of Respondent Goossen himself. The Attorney-General produced a certificate (R-7) attesting to the fact that Respondent Goossen was considered a senior official of ICAO and, as such, was covered by immunity in the performance of his duties.

70. The Court has no choice but to conclude that Respondent Goossen is covered by the immunity provided for under the Headquarters Agreement and that, accordingly, he cannot be prosecuted in a civil court in Canada.

71. The Court must conclude the same as regards Respondent Wayne Dixon in respect of whom a certificate (R-4) was produced in the other case.

72. Since these two officials are being prosecuted for actions carried out in the performance of their duties they cannot be prosecuted in this Court.

73. The Court must now turn to another issue. While recognizing the existence of immunities accorded to ICAO and its officials, the Applicant submits that the immunity should be waived in this case because ICAO did not make proper arrangements to ensure the settlement of his claim. He bases this argument on article 33 of the Headquarters Agreement which was cited above.

74. The Court cannot accept this argument for the following reason. In adopting the Service Code, ICAO provided modalities for settling any grievance a staff member might have regarding his conditions of work, including dismissal. Initially, the Code governed the conditions of work of permanent staff members. Then it was decided that the Code applied also to fixed-term employees and the Applicant accepted the authority of the provisions of the Code. So much so that he took advantage of it and submitted a request to the Secretary General for review of his dismissal. The Secretary General replied that he would have been prepared to consider his request, but did not do so because it was not submitted within the required time limit.

75. The Applicant then filed an appeal directly with the United Nations Administrative Tribunal which held a hearing and rejected the appeal. It is true that UNAT wondered whether the Applicant was given the correct information regarding the reason for the non-renewal of his contract, but it felt that the Secretary General had had the opportunity to make a sound decision and therefore refused to intervene in the exercise of that discretion.

76. Were those two decisions—that of the Secretary General and that of UNAT—fair? Can it not be said that, given the circumstances, they were too rigid with respect to the issue of time limits? Was the Applicant denied, as is his claim, the right to a hearing? This issue can be discussed but it is not up to this Court to intervene and to review the decisions. This Court does not have jurisdiction over the matter. It has the authority to monitor and oversee the courts and political bodies of Quebec but it does not have the authority to do so in the case of international organizations.

77. In short, the Applicant says that he was unfairly dismissed by ICAO. He exercised the right which he thought he had, pursuant to the internal regulations of an organization which enjoys immunity under Canadian law, to appeal. He accepted the authority of this means of settlement. The appeal did not have the result he had hoped for. This Court has no authority to consider appeals regarding these issues.

78. Both parties submitted extensive documentation on the matters raised for purposes of consideration of these two requests. The Court looked at it but does not feel there is any need to refer to it *in extenso*. It will merely cite the following.

79. In the case *Miller v. Canada*,[1] Judge Bastarache of the Supreme Court of Canada wrote on page 425:

[1] [2001] Recueils des arrêts de la Cour Suprême du Canada 407.

> The majority judges considered the argument carefully. The Appellant did not institute proceedings against ICAO in the Supreme Court. It is clear from the *Headquarters Agreement, the ICAO staff rules, the Service Code* and the previous judgements that, *had he done so, his case would have been rejected. ICAO has complete immunity from prosecution under the international agreements it has signed with Canada*, thus complaints *must be filed in accordance with the administrative procedures set forth in the Service Code and staff rules*. In fact, Miller did file a claim against ICAO in accordance with the administrative procedures. He waited six years and at the time the appeal was heard he was still waiting for a decision. This action on the other hand has been instituted against third parties who, according to him, are responsible for his health problems.
>
> (emphasis added by the Court)

80. On page 428 the judge continued by saying:

> To begin with, the decision refers to the State Immunity Act, but the latter does not apply in this case. *However, if ICAO had been a party to this action or if there had been an inquiry into ICAO's actions, its use of the building or the way in which it paid or treated its employees, that argument would have been convincing. Clearly there are instances where consideration of the facts* occurring during the time someone is employed *may lead to interference in the sovereign actions of an international organization.* That is not, however, true in this case. As I have said several times, Miller's claim does not stem from his working relationship with ICAO. The Organization's administrative procedures are therefore not applicable here.
>
> (emphasis added by the Court)

81. In 1997, in *Procureur général du Canada v. Lavigne et al*,[2] the Quebec Court of Appeals reaffirmed the immunity of ICAO. On page 405 we find that:

> In accordance with the international agreements that are binding on both the Attorney General of Quebec and the Applicant, ICAO is covered by the privileges and immunities set forth in articles II and III of the Convention on the Privileges and Immunities of the United Nations, to which Canada is a signatory. *Accordingly*, *its property and assets, wherever located and by whomsoever held, enjoy immunity from suit and every form of judicial process and are exempt from all excise duties and taxes* and from all import prohibitions and restrictions. *Its staff are also immune from prosecution in any court*. The Government of Quebec is itself bound by agreement, even if it were not necessary at the legal level, to respect all these privileges and immunities in its territory.
>
> (. . .)
>
> *ICAO enjoys absolute immunity*. This immunity does not apply to any particular court, to the court of Quebec or the Supreme Court. *It applies to the entire Canadian legal system*. ICAO is not subject—*and cannot be constrained by law—to the jurisdiction ratione materiae or ratione personae of any Canadian court; the same holds true for ICAO staff having diplomatic status*.
>
> (emphasis added by the Court)

[2] [1997] Recueil de Jurisprudence du Québec 405.

82. The Supreme Court of Canada had already issued a judgement on the matter in the case *Etats-Unis d'Amerique v. Alliance de la Fonction publique du Canada et al*.[3] This is what Judge Laforest wrote on pages 80, 88 and 89:

> Although an employment contract is primarily commercial in nature, the management and operation of a military base are definitely activities of a sovereign State. *The activities of embassies and extra-coastal military posts are the best examples of activities carried out by a State that should be covered by immunity from jurisdiction*. In the case in point, because of the lease and the CSF, the United States is entitled to operate the Argentia base as it sees fit. In practice, the *operation of a protected military post*, particularly one from which one can access sensitive information pertaining to security, *cannot be subject to the supervision of a foreign court*.
>
> There are two aspects to the "activity" of the Argentia base. It is both commercial and sovereign. It is now necessary to consider whether accreditation procedures "relate" to the commercial aspect of that activity.
>
> (. . .)
>
> Although *employment contracts* at the Argentia base may "relate" (in the broad sense of the word) to accreditation procedures, insofar as they are a prerequisite for the accreditation request, *they are not at the heart of the dispute*. The request seeks to replace the private contractual relationship between employees and employer by the legal regime pertaining to collective labour agreements which, by definition, governs the administration of the base. *Clearly, the request for accreditation relates directly to the attributes of sovereignty of a foreign State which must continue to have immunity with regard to these procedures*.
>
> (emphasis added by the Court)

83. The Court also took note of a judgement of the Court of Appeals for the District of Columbia in *Mendaro v. World Bank*.[4] We see on page 7:

> *The strong foundation in international law for the privileges and immunities* accorded to international organizations *denotes the fundamental importance of these immunities to the growing efforts to achieve coordinated international action* through multinational organizations with specific missions. It is well established under international law that "an international organization is entitled to such privileges and such immunity from the jurisdiction of a member State as are necessary for the fulfillment of the purposes of the organization, including immunity from legal process, from financial controls, taxes and duties". The premises, archives, and communications of international organizations are shielded from interference by member States, and international agreements often grant limited immunities to the officials of international organizations. *One of the most important protections granted to international organizations is immunity from suits by employees of the organization in actions arising out of the employment relationship. Courts of several nationalities have traditionally recognized this immunity, and it is now an accepted doctrine of customary international law*.
>
> (. . .)

[3] [1992] 2 Recueils des arrêts de la Cour Suprême du Canada 30.
[4] [1983] U.S. App. LEXIS 16532.

> Like the other immunities accorded international organizations, *the purpose of immunity from employee actions is rooted in the need to protect international organizations from unilateral control by a member nation over the activities* of the international organization within its territory. The sheer difficulty of administering multiple employment practices in each area in which an organization operates suggests that *the purposes of an organization could be greatly hampered if it could be subjected to suit by its employees worldwide*. But beyond economies of administration, the very structure of an international organization, which ordinarily consists of an administrative body created by the joint action of several participating nations, requires that the *organization remain independent from the international policies of its individual members*. Consequently, the charters of many international financial institutions contain express provisions designed to guarantee the neutral operation of the organization despite the political policies of the member nations or the individual backgrounds of the organizations' officers, and most large international organizations have established administrative tribunals with exclusive authority to deal with employee grievances.
>
> (emphasis added by the Court)

84. In another judgement, *Broadbent v. Organization of American States*,[5] by the same court, we see on page 13:

> *We hold that the relationship of an international organization* with its internal administrative staff *is non-commercial*, and, absent waiver, activities defining or arising out of that relationship *may not be the basis of an action against the organization regardless of whether international organizations enjoy absolute or restrictive immunity.*
>
> (. . .)
>
> The employment disputes between the appellants and OAS were disputes concerning the internal administrative staff of the Organization. *The internal administration of the OAS is a non-commercial activity shielded by the doctrine of immunity*. There was no waiver, and accordingly the appellant's action had to be dismissed.
>
> (emphasis added by the Court)

85. The Court cannot disregard *Rhita El Ansari v. Gouvernement du Royaume du Maroc et al*,[6] a recent judgement by the Quebec Court of Appeals. In this case, the Applicant was suing her employer, the Government of Morocco, for terminating her employment at its consulate in Montreal.

86. The Court of Appeals overturned the decision of the High Court which had recognized that the Moroccan Government had immunity from prosecution in Canadian civil courts. In the opinion of the Court of Appeals, the case was a commercial matter which did involve immunity. On page 9, the Court of Appeals wrote:

> WHEREAS the foreign State does not enjoy immunity from jurisdiction for actions relating to its commercial activities, under article 5 of the State Immunity Act;

[5] [1980] U.S. App. LEXIS 21563.

[6] Judgement of 1 October 2003, not yet entered, C.A.M. 500–09–012573–028.

WHEREAS a simple employment contract is generally considered to be a commercial activity (Re: Canada Labour Code, (1992) 2 R.C.S 50), unless the duties performed by the employee include aspects that involve the sovereignty of the foreign State and the proceedings involved relate thereto;

WHEREAS a case based on an employment contract falls within the jurisdiction of the Quebec authorities if the worker is domiciled or resident in Quebec;

WHEREAS article 3118 of the Civil Code of Quebec on the law applicable to employment contracts (. . .)

87. This Court is of the opinion that there is a clear distinction between this case and the one decided by the Quebec Court of Appeals. In this case, there is, on the one hand, the Headquarters Agreement and, on the other the Service Code; this does not appear to be so in the case involving Morocco.

88. It is on this basis that the Court concludes that all the Respondents have immunity under above-mentioned legislative texts.

89. One final issue remains. The applicant has raised the issue of constitutionality.

90. He claims that he did not have an opportunity to be heard on the merits of his complaint against ICAO. Judging from the documents submitted it appears that the appeal he filed in accordance with ICAO's internal procedures was rejected on the grounds that it was time-barred and that no consideration was given to the merits of his appeal.

91. The Applicant claims that since he was not given a hearing by an independent and impartial court, his fundamental rights were infringed. He cites article 7 of the Canadian Charter of Rights and Freedoms which states:

7. [Life, liberty and security of person] Everyone has the right to life, liberty and *security* of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

(emphasis added by the Court)

92. Interpreting this article 7, the Applicant alleges that the provisions of the Headquarters Agreement threaten his security, particularly his psychological security which is affected by the fact that he has not been given a hearing in accordance with the principles of basic justice.

93. The Court is of the opinion that this argument has no justification. The issue raised appears to have been decided by the Supreme Court of Canada in *J.G. v. N.B. (Min. de la Sante)*.[7] On page 77, Chief Judge Lamer writes:

Determining the limits of protection of the psychological integrity of the individual from State interference is not an exact science. Chief Judge Dickson in the Morgentaler judgement says that security of the person could be limited by serious psychological stress caused by the State. Chief Judge Dickson was trying to express, in qualitative terms, the type of State interference that might constitute an infringement of that right. *Clearly the right to security of person does not protect an individual from the normal stress and anxiety that a reasonably sensitive person would feel as a result of Government action*. If that right were to be interpreted very broadly countless Government initiatives could be contested on the grounds that they violated the right

[7] [1999] 3 Canada Law Reports- Supreme Court of Canada 46.

> to security of person; that would result in considerable broadening of judicial control and a consequent trivialization of the constitutional protection of rights. Nor would infringements of a fundamental freedom safeguarded under article 2 of the Charter necessarily lead to restriction of the security of person.
>
> (emphasis added by the Court)

94. These remarks apply to the present case. Since the Constitutional argument has no justification there is no reason to consider the constitutional arguments.

95. Ordinarily, in rejecting the two cases the Court would order the Applicant to pay the costs. That is the rule as stated in article 477 of the Code of Civil Procedure, the first paragraph of which reads as follows:

> 477. The losing party must pay all costs, including the costs of the stenographer, unless by decision giving reasons the court reduces or compensates them or orders otherwise.

96. In the present case the Applicant, who is not represented by counsel, instituted two proceedings—one against the ICAO Staff Association for $300,000 and the other against ICAO for $14,000,000; altogether that comes to $14,300,000, which is the amount of damages the Applicant claims to have suffered as a result of being dismissed from his post where his annual salary was $18,000. Without saying anything about the amount of the damages sought, these figures appear, on first sight, to be ridiculous because they are obviously excessive.

97. Costs are determined according to the tariff of fees for lawyers. According to article 42 of the tariff, in addition to the basic fees plus expenses, there is an additional fee of 1 per cent of the amount sought in excess of $100,000. A recent judgement of the Court of Appeals confirmed that article 42 is applicable when a case is rejected on grounds of inadmissibility.[8] If the Applicant were to be ordered to pay costs in full, he would have to pay more than $140,000 and this, under the circumstances, seems equally ridiculous. Accordingly, the Court is of the opinion that this is a case which calls for reduction or even outright cancellation of costs. Its reasoning is as follows.

98. Firstly, as has already been pointed out, the Applicant did not have the help of a lawyer who could have advised him, *inter alia*, regarding the issue of the amount he could claim.

99. Secondly, the circumstances surrounding the Applicant's dismissal are unusual to say the least. In November 1992, he was informed that his contract would not be renewed beyond 1 January 1993. The official reason given was that his post was being abolished. Since he had a one-year contract and his post was being abolished he could not file an appeal at that point.

100. It was not until early January 1993 that he found out that his post had not been abolished. At that point he had reason to believe that he had been dismissed and that under the Service Code he could ask for the decision to be reviewed. According to the procedure outlined in the Service Code he contacted the Secretary General as soon as the latter returned from vacation on 20 January 1993.

101. The Secretary General replied, in a letter dated that same day, that he would have been prepared to consider the request but that he could not do so because he felt

[8] *Bélec v. Dube* [1996] Revue de Droit Judiciaire 454.

that the request should have been submitted within 30 days of receipt of the notice dated 6 November. Consequently, he considered that the Applicant had not observed the time limits. At the same time, he conceded in that reply that, had he observed the time limits, the Applicant would have been able to get a hearing in accordance with the Service Code.

102. Subsequently the Secretary General did not heed the recommendation of the appeals board which recommended that the time limit be waived and that the appeal be considered on its merits.

103. The Secretary General also refused to give the Applicant permission to file an appeal directly with UNAT.

104. The Applicant then filed an appeal with UNAT and the latter, while upholding the Secretary General's decision, added that: "*If the Chief of the Personnel Branch*—and this has not been confirmed—*gave inaccurate information to the Applicant, that was wrong*."

105. It is clear from all of the above that, ordinarily, the Applicant would have been entitled to a hearing on the merits, but that his appeal was rejected on the grounds that it was submitted late; judging from the facts of the case, this contention seems debatable to say the least. How could the Applicant have filed an appeal before the beginning of January 1993, which is when it became apparent that his post had not been abolished but that he had been dismissed? To put it mildly, all this seems debatable and far from clear.

106. As was stated earlier, it is not up to this Court to make a ruling on decisions taken by the Secretary General and UNAT, but these facts can, nonetheless, be taken into account for purposes of the adjudication of costs.

107. While the Applicant may have acted recklessly in filing the appeals, the appeals were by no means frivolous for, from his point of view, he had been unjustly treated and a citizen is always entitled to appeal to the courts.

108. Indeed, the decision in this case has been based on form rather than on substance. The Applicant has not been heard as regards the substance of the matter and has not had an opportunity to make himself heard, whence his feeling of having been unjustly treated. Had he been given an opportunity to speak and to put forward his point of view, the outcome might not have been any different but he would at least have had the satisfaction of having been heard.

109. Filing an appeal which proves, for complex legal reasons, to be ill-founded is not so reckless an action as to not deserve careful consideration of the consequences in terms of costs.

110. In the present case, the Applicant took on an international organization which asked the Canadian Government to adopt its cause. The Attorney-General intervened and in so doing used public funds against a citizen who was without resources. This was a very unequal struggle and that fact must be taken into consideration.

111. For all the above reasons the Court, in exercise of its discretion, is of the view that, given the circumstances, although the two actions are being dismissed the Applicant should not be required to pay any costs.

ACCORDINGLY, the Court

GRANTS the Attorney General's request that case No. 500–05–061028–005 be declared inadmissible and therefore dismisses the action brought by the Applicant Gérald René

Trempe, against the Staff Association of the International Civil Aviation Organization and Wayne Dixon;

GRANTS the Attorney General's request that case No. 500–05–063492–019 be declared inadmissible and therefore dismisses the action brought by the Applicant, Gérald René Trempe, against the International Civil Aviation Organization and Dirk Jan Goossen;

ORDERS that this Judgement be placed in both files;

WITHOUT COSTS.

(*Signed*) Claude TELLIER j.c.s.

Mr. Gérald René TREMPE
Not represented by counsel

Mr. René LEBLANC
Mr. Bernard LETARTE
D'AURAY, AUBRY, LEBLANC & Ass.,
Attorneys for the Intervener
the Attorney-General of Canada

Date of hearing: 17 October 2003

Part Four

BIBLIOGRAPHY

A. INTERNATIONAL ORGANIZATIONS AND INTERNATIONAL LAW IN GENERAL

1. *General*

Bederman, David J. *The spirit of international law* (Athens, Ga: University of Georgia Press, 2002). xvi, 274 p.
Bibliography: p. 227–256. Includes bibliographical references.

Benda-Beckmann, Keebet von. Globalisation and legal pluralism. *International law Forum du droit international* 4(1) February 2002: 19–25.

Bernhardt, Rudolf. „Verfassungen" und „Verfassungs-gerichtsbarkeit" internationaler Organisationen. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 281–290.
Includes bibliographical references.

Diehl, Paul F., Charlotte Ku, and Daniel Zamora. The dynamics of international law: the interaction of normative and operating systems. *International organization* 57(1) winter 2003: 43–75.
Bibliography: p. 73–75. Includes bibliographical references.

Fox, James R. *Dictionary of international and comparative law.* 3rd ed. (Dobbs Ferry, N.Y.: Oceana Publications, 2003). 369 p.

Gardiner, Richard K. *International law* (Harlow, England; New York: Pearson Education Ltd: Longman, 2003). xlii, 517 p.
Includes bibliographical references and index.

Gónzales Campos, Julio D. *Curso de derecho internacional público.* 3rd ed., rev. (Madrid: Civitas, 2003). 1035 p.
Includes bibliographical references.

Man's inhumanity to man: essays on international law in honour of Antonio Cassese. Edited by Lal Chand Vohrah . . . [et al.] (The Hague, New York: Kluwer Law International, 2003). xxviii, 1032 p.
Includes bibliographical references and index.

"The New York University-University of Virginia Conference on exploring the limits of international law." *Virginia journal of international law* 44(1) fall 2003:1–340.
Includes bibliographical references.

Noortmann, Math. Globalisation, global governance and non-state actors: researching beyond the state. *International law Forum du droit international* 4(1) February 2002: 36–40.
Includes bibliographical references.

Rethinking international organizations: pathology and promise. Edited by Dennis Dijkzeul and Yves Beigbeder (New York: Berghahn Books, 2003). xiv, 350 p.
Includes bibliographical references and index.

Slomanson, William R. *Fundamental perspectives on international law*. 4th ed. (London; Belmont, Calif.: Wadsworth, 2003). xix, 640 p.
Includes bibliographical references and index.

2. *Particular questions*

Amerasinghe, C. F. Dispute settlement by international organizations. *Indian journal of international law* 43(3) July-September 2003: 409–444.

Includes bibliographical references.

Anghie, Antony and B. S. Chimni. Third World approaches to international law and individual responsibility in internal conflicts. *Chinese journal of international law* 2(1) 2003: 77–103.

Includes bibliographical references.

Armstead, J. Holmes. Order, stability and political reality. In: *Secession and international law: conflict avoidance: regional appraisals*. Edited by Julie Dahlitz (New York; Geneva: UN; The Hague: T.M.C. Asser Press, 2003). p. 39–46.

Includes bibliographical references.

Banifatemi, Y. La lutte contre le financement du terrorisme international. *Annuaire français de droit international*, vol. XLVIII (2002): 103–128.

Includes bibliographical references.

Boswell, Nancy. The impact of international law on domestic governance. *Proceedings (American Society of International Law, Meeting)*, 97th (2003): 133–137.

Includes bibliographical references.

Brownlie, Ian. *Principles of public international law.* 6th ed. (Oxford; New York: Oxford University Press, 2003). xlii, 742 p.

Includes bibliographical references and index.

Buchanan, Allen. Reforming the international law of humanitarian intervention. In: *Humanitarian intervention: ethical, legal, and political dilemmas*. Edited by J.L. Holzgrefe and Robert O. Keohane (New York: Cambridge University Press, 2003). p. 130–173.

Includes bibliographical references.

Byers, Michael and Simon Chesterman. Changing the rules about rules? Unilateral humanitarian intervention and the future of international law. In: *Humanitarian intervention: ethical, legal, and political dilemmas*. Edited by J.L. Holzgrefe and Robert O. Keohane (New York: Cambridge University Press, 2003). p. 177–203.

Includes bibliographical references.

Caplan, Lee M. State immunity, human rights, and *Jus Cogens*: a critique of the normative hierarchy theory. *American journal of international law* 97(4) October 2003: 741–781.

Includes bibliographical references.

Castellino, Joshua and Steve Allen; with special contribution on indigenous peoples from Jérémie Gilbert. *Title to territory in international law: a temporal analysis* (Aldershot, Hants, England: Burlington, VT, USA: Ashgate, 2003). xvi, 265 p.

Bibliography: p. 239–256. Includes bibliographical references and index.

DiMento, Joseph F. *The global environment and international law* (Austin, Texas: University of Texas Press, 2003). xiv, 248 p.

Bibliography: p. 201–236. Includes bibliographical references and index.

Dugard, John. A legal basis for secession: relevant principles and rules. In: *Secession and international law: conflict avoidance: regional appraisals*. Edited by Julie Dahlitz (New York; Geneva: UN; The Hague: T.M.C. Asser Press, 2003). p. 89–96.
Includes bibliographical references.

Dupuy, P.-M. L'unité de l'ordre juridique international. Cours général de droit international public (2000). *Recueil des cours* (Hague Academy of International Law), vol. 297 (2002): 9-490.
Includes bibliographical references.

Eckstein, Gabriel and Yoram Eckstein. A hydrogeological approach to transboundary ground water resources and international law. *American University international law review* 19(2) 2003: 201–258.
Includes bibliographical references.

Estreicher, Samuel. Rethinking the binding effect of customary international law. *Virginia journal of international law* 44(1) fall 2003:5–17.
Includes bibliographical references.

Farer, Tom J. The prospect for international law and order in the wake of Iraq. *American journal of international law* 97(3) July 2003: 621–628.
Includes bibliographical references.

Francioni, Francesco and Federico Lenzerini. The destruction of the Buddhas of Bamiyan and international law. *European journal of international law* 14(4) 2003: 619–651.
Includes bibliographical references.

Franck, Thomas M. Interpretation and change in the law of humanitarian intervention. In: *Humanitarian intervention: ethical, legal, and political dilemmas*. Edited by J.L. Holzgrefe and Robert O. Keohane (New York: Cambridge University Press, 2003). p. 204–231.
Includes bibliographical references

French, Duncan Adrian. The interaction of community and international law: similar, but different, or just different? *Finnish yearbook of international law*, vol. XII (2001): 331–353.
Includes bibliographical references.

Frowein, Jochen Abraham [et al.], *Verhandeln für den Frieden = Negotiating for peace : Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). xiii, 866 p.
Includes bibliographical references.

Gamble, John King, Emily A. Allen and Nicole L. Dirling. International law and globalization: allies, antagonists, or irrelevance? *Syracuse journal of international law and commerce* 30(1) Winter 2003: 1–21.
Includes bibliographical references.

Gardner, Richard N. Neither Bush nor the "Jurisprudes". *American journal of international law* 97(3) July 2003: 585–590.
Includes bibliographical references.

Gunn, T. Jeremy. The complexity of religion and the definition of "religion" in international law. *Harvard human rights journal,* vol. 16, spring 2003: 189–215.
Includes bibliographical references.

Hafner, Gerhard, Accountability of international organizations. *Proceedings (American Society of International Law, Meeting)*, 97th (2003): 236–240.
Includes bibliographical references.

Hazard, Geoffrey C. Judicial redress for historical crimes: procedure. *International law Forum du droit international* 5(1) February 2003: 36–46.
Includes bibliographical references.

Hokema, Grit. *Immunität von Staatsoberhäuptern* (Frankfurt am Main: Lang, 2002). 298 p.
Bibliography: p. 275–298. Includes bibliographical references.

Holder, William E. International organizations: accountability and responsibility. *Proceedings (American Society of International Law, Meeting)*, 97th (2003): 231–236.
Includes bibliographical references.

International dispute settlement. Edited by Mary Ellen O'Connell (Aldershot, Hants, England; Burlington, Vt: Ashgate/Darmouth, 2003). xxx, 521 p.
Includes bibliographical references and name index.

International law and indigenous peoples. Edited by S. James Anaya (Aldershot: Ashgate, 2003). xxi, 483 p.
Includes bibliographical references and index.

Jennings, R. The work of the international bar. In: *Man's inhumanity to man: essays on international law in honour of Antonio Cassese*. Edited by Lal Chand Vohrah . . . [et al.] (The Hague, New York: Kluwer Law International, 2003). p. 443–466.
Includes bibliographical references.

Joyner, Daniel H. Bridging the gap between international law and foreign policymaking. *Denver journal of international law and policy* 31(3) summer 2003: 437–459.
Includes bibliographical references.

King, Faiza Patel and Olivia Swaak-Goldman. The applicability of international humanitarian law to the "War against terrorism". Hague yearbook of international law/*Annuaire de La Haye de droit international*, vol. 15 (2002):39–49.
Includes bibliographical references.

Koch, Charles H. Envisioning a global legal culture. *Michigan journal of international law* 25(1) fall 2003:1–76.
Includes bibliographical references.

Kolb, Robert. Théorie du *ius cogens* international. *Revue belge de droit international* XXXVI(1) 2003:5–55.
Includes bibliographical references.

Kovacs, Peter. Developments and limits in international jurisprudence. *Denver journal of international law and policy* 31(3) summer 2003: 461–489.
Includes bibliographical references.

Kumm, Mattias. International law in national courts: the international rule of law and the limits of the internationalist model. *Virginia journal of international law* 44(1) fall 2003:19–32.
Includes bibliographical references.

Lagrange, Evelyne. *La représentation institutionnelle dans l'ordre international : une contribution à la théorie de la personnalité morale des organisations internationales* (The Hague; London; New York: Kluwer Law International, 2002) xiii, 608 p.

Bibliography: p. 555–599. Includes bibliographical references.

Langille, Benjamin. It's "Instant custom": how the Bush doctrine became law after the terrorist attacks of September 11, 2001. *Boston College international and comparative law review* XXVI(1) winter 2003: 145–156.

Includes bibliographical references.

May, R. and M. Wierda. Is there a hierarchy of crimes in international law? In: *Man's inhumanity to man: essays on international law in honour of Antonio Cassese*. Edited by Lal Chand Vohrah . . . [et al.] (The Hague, New York: Kluwer Law International, 2003). p. 511–532.

Includes bibliographical references.

Mendes, Errol and Ozay Mehmet. Global governance, economy and law: waiting for justice. (London; New York: Routledge, 2003). xii, 260 p.

Bibliography: p. 244–249. Includes bibliographical references and index.

Miller, Russell, A. Self-determination in international law and the demise of democracy? *Columbia journal of transnational law* 41(3) 2003: 601–648.

Includes bibliographical references.

Müllerson, Rein. Sovereignty and secession: then and now, here and there. In: *Secession and international law: conflict avoidance: regional appraisals*. Edited by Julie Dahlitz (New York; Geneva: UN; The Hague: T.M.C. Asser Press, 2003). p. 125–164.

Includes bibliographical references.

Murphy, Sean D. Contemporary practice of the United States relating to international law. *American journal of international law* 97(1) January 2003: 179–208.

Includes bibliographical references.

_____. Contemporary practice of the United States relating to international law. *American journal of international law* 97(2) April 2003: 419–445.

Includes bibliographical references.

_____. Contemporary practice of the United States relating to international law. *American journal of international law* 97(3) July 2003: 681–711.

Includes bibliographical references.

_____. Contemporary practice of the United States relating to international law. *American journal of international law* 97(4) October 2003: 962–991.

Includes bibliographical references.

Nieto-Navia, R. International peremptory norms (*Jus Cogens*) and international humanitarian law. In: *Man's inhumanity to man: essays on international law in honour of Antonio Cassese*. Edited by Lal Chand Vohrah . . . [et al.] (The Hague, New York: Kluwer Law International, 2003). p. 595–640.

Includes bibliographical references.

Nnamdi Opara, Victor. Sovereign and diplomatic immunity as customary international law: beyond R. v. Bow Street Metropolitan stipendiary magistrate and others, *Ex parte* Pinochet Ugarte. *Wisconsin international law journal* 21(2) spring 2003: 255–197.

Orakhelashvili, Alexander. State immunity and international public order. *German yearbook of international law*, vol. 45 (2002): 227–267.

Includes bibliographical references.

_____. The concept of international judicial jurisdiction: a reappraisal. *The law and practice of international courts and tribunals* 2(3) 2003: p. 501–550.

Includes bibliographical references.

Order and justice in international relations. Edited by Rosemary Foot, John Lewis Gaddis and Andrew Hurell (New York: Oxford University Press, 2003). xiv, 313 p.

Includes bibliographical references and index.

Orrego Vicuña, Francisco. Regulatory authority and legitimate expectations: balancing the rights of the state and the individual under international law in a global society. *International law Forum du droit international* 5(3) August 2003: 188–197.

Includes bibliographical references.

Overy, Richard. The Nuremberg trials: international law in the making. In: *From Nuremberg to The Hague: the future of international criminal justice.* Edited by Philippe Sands (Cambridge, England; New York: Cambridge University Press, 2003). p. 1–29.

Includes bibliographical references.

Parisi, Francesco and Nita Ghei. The role of reciprocity in international law. *Cornell international law journal* 36(1) spring 2003: 93–123.

Includes bibliographical references.

Paust, Jordan. *International law as law of the United States.* 2nd ed. (Durham, N.C.: Carolina Academic Press, 2003). xi, 532 p.

Includes bibliographical references and index.

Rajagopal, Balakrishnan. International law and social movements: challenges of theorizing resistance. *Columbia journal of transnational law* 41(2) 2003: 397–433.

Includes bibliographical references.

Ramón Chornet, Consuelo. El Derecho internacional ante las reivindicaciones de las minorías lingüísticas. Algunas aportaciones recientes. *Anuario de derecho internacional*, vol. XIX (2003): 409–417.

Includes bibliographical references.

Rona, Gabor. Interesting times for international humanitarian law: challenges from the "War on terror". *Fletcher forum of world affairs* 27(2) summer/fall 2003: 55–74.

Includes bibliographical references.

Roucounas, E. Facteurs privés et droit international public. *Recueil des cours* (Hague Academy of International Law), vol. 299 (2002): 9-420.

Includes bibliographical references.

Schermers, Henry G. and Niels M. Blokker. *International institutional law: unity within diversity.* 4th rev. ed. (Leiden, Netherlands; Boston, Mass.: M. Nijhoff, 2003) xxxiv, 1302p.
Bibliography: p. 1215–1246. Includes bibliographical references and index.

Secession and international law: conflict avoidance: regional appraisals. Edited by Julie Dahlitz (New York; Geneva: UN; The Hague: T.M.C. Asser Press, 2003). vii, 283 p.
Includes bibliographical references.

Shany, Yuval. *The competing jurisdictions of international courts and tribunals* (Oxford; New York: Oxford University Press, 2003). lxix, 348 p.
Bibliography: p. 314–329. Includes bibliographical references and index.

Shaw, Malcolm N. The role of recognition and non-recognition with respect to secession: notes on some relevant issues. In: *Secession and international law: conflict avoidance: regional appraisals*. Edited by Julie Dahlitz (New York; Geneva: UN; The Hague: T.M.C. Asser Press, 2003). p. 243–257.
Includes bibliographical references.

Slaughter, Anne-Marie. An American vision of international law? *Proceedings (American Society of International Law, Meeting)*, 97th (2003): 125–129.
Includes bibliographical references.

Starr, Sonja and Lea Brilmayer. Family separation as a violation of international law. *Berkeley journal of international law* 21(2) 2003: 213–287.
Includes bibliographical references.

"Symposium: the European tradition in international law: Alf Ross". *European journal of international law* 14(4) 2003: 653–841.
Includes bibliographical references.

Taft, William H. and Todd F. Buchwald. Preemption, Iraq, and international law. *American journal of international law* 97(3) July 2003: 557–563.
Includes bibliographical references.

Tangermann, Christoph. *Die völkerrechtliche Immunität von Staatsoberhäuptern: Grundlagen und Grenzen* (Berlin: Duncker and Humblot, 2002). 273 p.
Bibliography: p. 249–268. Includes bibliographical references and index.

Thirlway, H. Concepts, principles, rules and analogies: international and municipal legal reasoning. *Recueil des cours* (Hague Academy of International Law), vol. 294 (2002): 265–406.
Includes bibliographical references.

Udombana, Nsongurua J. Interim measures: a comparative study of selected international judicial institutions. *Indian journal of international law* 43(3) July-September 2003: 479–532.
Includes bibliographical references.

Von Mehren, A. T. Theory and practice of adjudicatory authority in private international law: a comparative study of the doctrine, policies and practices of Command- and Civil-Law systems, general course on private international law (1966). *Recueil des cours* (Hague Academy of International Law), vol. 295 (2002): 9–432.
Includes bibliographical references.

Weisburd, A. Mark. American judges and international law. *Vanderbilt journal of transnational law* 36(5) November 2003: 1475–1531.
Includes bibliographical references.

Wellens, Karel. Accountability of international organizations: some salient features. *Proceedings (American Society of International Law, Meeting)*, 97th (2003): 241–245.
Includes bibliographical references.

Xue, Hanqin. *Transboundary damage in international law* (Cambridge, New York: Cambridge University Press, 2003). xxx, 368 p.
Bibliography: p. 333–355. Includes bibliographical references and index.

Yasuaki, Onuma. International law in and with international politics: the functions of international law in international society. *European journal of international law* 14(1) 2003: 105–139.
Includes bibliographical references.

Yoo, John. International law and the war in Iraq. *American journal of international law* 97(3) July 2003: 563–576.
Includes bibliographical references.

Zegveld, Liesbeth. *Accountability of armed opposition groups in international law* (Cambridge (England); New York: Cambridge University Press, 2002) xxviii, 260 p.
Bibliography: p. 231–241. Includes bibliographical references and index.

B. UNITED NATIONS

1. *General*

Franck, Thomas M. Is the U.N. Charter a constitution? In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 95–106.
Includes bibliographical references.

Landauer, Carl. Antinomies of the United Nations: Hans Kelsen and Alf Ross on the Charter. *European journal of international law* 14(4) 2003: 767–799.
Includes bibliographical references.

Oellers-Frahm, Karin. Souveräne Gleichheit der Staaten in der internationalen gerichtlichen Streitbeilegung? In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 169–191.
Includes bibliographical references.

Osmanczyk, Edmund Jan. *The Encyclopedia of the United Nations and international agreements.* 3rd ed. Edited by Anthony Mango (New York: Routledge, 2003). 4 v.
Includes index (v.4).

Praxishandbuch UNO: die Vereinten Nationen im Lichte globaler Herausforderungen. Edited by Sabine Von Schorlemer. (Berlin: New York: Springer, 2003). xxxiv, 774 p.
Essays in honor of Peter J. Opitz. Includes 6 contributions in English.
Includes bibliographic references and index.

Ratynski Andersen, Maureen. Where to begin . . . When you don't know how to start: tips for researching UN legal materials. *International journal of legal information* 31(2) summer 2003: 264–277.

Seara Vázquez, Modesto. *A new Charter for the United Nations* (Huajuapan de León, México: Universidad Tecnológia de la Mixteca, 2003). 357 p.
Bibliography: p. 353–357. Includes bibliographical references.

Tavernier, P. L'année des Nations Unies (24 décembre 2001–20 décembre 2002). *Annuaire français de droit international*, vol. XLVIII (2002): 531–552.
Includes bibliographical references.

Thakur, Ramesh. Reforming the United Nations: changing with and for the times. *International peacekeeping* 10(4) winter 2003: 40–61.
Includes bibliographical references.

White, Nigel D. *The United Nations System: toward international justice* (Boulder, Colorado: Lynne Rienner Publishers, 2002). xi, 335 p.
Bibliography: p. 309–326. Includes bibliographical references and index.

2. *Particular organs*

General Assembly

Dauchy, J. Travaux de la Sixième Commission de l'Assemblée générale (cinquante-septième session). *Annuaire français de droit international*, vol. XLVIII (2002): 566–578.
Includes bibliographical references.

Hirsch Ballin, Ernst M. H. The initial phase of the International Criminal Court and the responsibilities of the Host State. *Proceedings (American Society of International Law, Meeting)*, 97th (2003): 260–264.
Includes bibliographical references.

International Court of Justice

Abad Castelos, Montserrat. El tribunal internacional de justicia y la protección cautelar de los derechos de los estados (Madrid, Spain: Universidade da Coruña, Facultade de Dereito, Area de Dereito Internacional Público: Dykinson, 2002). 237 p.
Bibliography: p. 225–237. Includes bibliographical references.

Amr, Mohamed Sameh M. *The role of the International Court of Justice as the principal judicial organ of the United Nations* (The Hague; New York: Kluwer Law International, 2003) xxiii, 447 p.
Revision of thesis (doctoral), University of London, 1997.
Includes bibliographical references and index.

Arangio-Ruiz, G. The ICJ Statute, the Charter and forms of legality review of Security Council decisions. In: *Man's inhumanity to man: essays on international law in honour of Antonio Cassese*. Edited by Lal Chand Vohrah . . . [et al.] (The Hague, New York: Kluwer Law International, 2003). p. 41–64.
Includes bibliographical references.

Azar, Aïda. *L'exécution des décisions de la Cour internationale de Justice;* avant-propos de Gilbert Guillaume; préface de Eric Canal-Forgues. (Bruxelles : Éditions Bruylant : Éditions de l'Université de Bruxelles, 2003). xx, 329 p.

Bibliography: p. 303–314. Includes bibliographical references and index.

Brownlie, Ian. Politics and law in international adjudication. *Proceedings (American Society of International Law, Meeting)*, 97th (2003): 282–286.

Includes bibliographical references.

Coleman, Andrew. The International Court of Justice and highly political matters. *Melbourne journal of international law* 4(1) July 2003: 29–75.

Includes bibliographical references.

Cot, Jean-Pierre. The balance of law and politics. *Proceedings (American Society of International Law, Meeting)*, 97th (2003): 286–289.

Includes bibliographical references.

Crook, John R. The 2002 judicial activity of the International Court of Justice. *American journal of international law* 97(2) April 2003: 352–364.

Includes bibliographical references.

Currie, John H. The continuing contributions of Ronald St. J. Macdonald to UN Charter and peace and security issues. *The Canadian yearbook of international law*, vol. XL (2002):265–286.

Summaries in French and English. Includes bibliographical references.

d'Argent, P. Des frontières et des peuples : l'affaire de la *Frontière terrestre et maritime entre le Cameroun et le Nigéria*, arrêt sur le fond. *Annuaire français de droit international*, vol. XLVIII (2002): 281–321.

Includes bibliographical references.

De Smet, Simon. The immunity of heads of states in US courts after the decision of the International Court of Justice. *Nordic journal of international law* 72(3) 2003: 313–339.

Includes bibliographical references.

Guillaume, Gilbert. *La Cour internationale de Justice à l'aube du XXIe siècle: le regard d'un juge* (Paris: Pedone, 2003). [xix], 331 p.

Bibliography: [xi-xix]. Includes bibliographical references.

Herczegh, G. Les exceptions préliminaires à la lumière de la jurisprudence de la Cour internationale de Justice (1994–2000). In: *Man's inhumanity to man: essays on international law in honour of Antonio Cassese*. Edited by Lal Chand Vohrah . . . [et al.] (The Hague, New York: Kluwer Law International, 2003). p. 399–421.

Includes bibliographical references.

Higgins, Rosalyn. The ICJ, the ECJ and the integrity of international law. *International and comparative law quarterly* 52(1) January 2003:1–20.

Includes bibliographical references.

Jennings, Robert. Jurisdiction and immunity in the ICJ decision in the Yerodia case. *International law Forum du droit international* 4(3) August 2002: 99–103.

Includes bibliographical references.

Kerbrat, Y. De quelques aspects des procédures incidentes devant la Cour internationale de Justice : les ordonnances des 29 novembre 2001 et 10 juillet 2002 dans les affaires des *Activités armées sur le territoire du Congo*. *Annuaire français de droit international*, vol. XLVIII (2002): 343–361.

Includes bibliographical references.

Lagrange, Evelyne. Libres propos sur la juridiction internationale permanente. Autour de l'ordonnance rendue par la Cour internationale de Justice le 10 juillet 2002. *Revue générale de droit international public* 107(1) 2003: p. 89–108.

Includes bibliographical references.

Perrin, D. Titre conventionnel et effectivités : l'Affaire de la so*uveraineté sur Pulau Ligitan et Pulau Sipadan* (Indonésie c. Malaisie). *Annuaire français de droit international*, vol. XLVIII (2002): 322–342.

Includes bibliographical references.

Al-Qahtani, Mutlaq. The status of would-be intervening states before the International Court of Justice and the application of *Res Judicata*. *The law and practice of international courts and tribunals* 2(2) August 2003: 269–294.

Includes bibliographical references.

Robinson, Davis R. The role of politics in the election and the work of judges of the International Court of Justice. *Proceedings (American Society of International Law, Meeting)*, 97th (2003): 277–282.

Includes bibliographical references.

Rosenne, Shabtai. The International Court of Justice: the new form of the operative clause of an order indicating provisional measures. *The law and practice of international courts and tribunals* 2(2) August 2003: 201–203.

Includes bibliographical references.

Rosenne's The World Court: what it is and how it works. (By Shabtai Rosenne). 6th rev. ed. Edited, revised and updated by Terry D. Gill; with the assistance of Harm Dotinga, Erik Jaap Molenaar and Alex Oude Elferink (Leiden, The Netherlands; Boston, Massachusetts: Martinus Nijhoff Publishers, 2003). xviii, 332 p.

Includes bibliographical references and indexes.

Santulli, C. Observations sur les exceptions de recevabilité dans l'affaire du *Mandat d'arrêt du 11 avril 2000* (République démocratique du Congo c. Belgique). *Annuaire français de droit international*, vol. XLVIII (2002): 257–280.

Includes bibliographical references.

Schreuer, Christoph and Stephan Wittich. Immunity v. accountability: the ICJ's judgment in the Yerodia case. *International law Forum du droit international* 4(3) August 2002: 117–120.

Includes bibliographical references.

Spiermann, Ole. A permanent court of international justice. *Nordic journal of international law* 72(3) 2003: 399–418.
Includes bibliographical references.

_____. Who attempts too much does nothing well: the 1920 Advisory Committee of Jurists and the Statute of the Permanent Court of International Justice. *The British year book of international law*, vol. 73 (2002): 187–260.
Includes bibliographical references.

Stern, Brigitte. Les dits et les non dits de la Cour internationale de Justice dans l'affaire RDC contre Belgique. *International law Forum du droit international* 4(3) August 2002: 104–116.
Includes bibliographical references.

Tanaka, Yoshifumi. Reflections on maritime delimitation in the *Qatar/Bahrain Case*. *International and comparative law quarterly* 52(1) January 2003:53–80.
Includes bibliographical references.

Treves, Tullio. The political use of unilateral applications and provisional measures proceedings. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 463–481.
Includes bibliographical references.

Secretariat

Krasno, Jean. The group of friends of the Secretary-General: a useful leveraging tool. In: *Leveraging for success in United Nations peace operations*. Edited by Jean Krasno, Bradd C. Hayes, Donald C.F. Daniel (Westport, Connecticut: Praeger, 2003), p. 171–200.
Includes bibliographical references.

The papers of United Nations Secretary-General Boutros-Boutros-Ghali. Selected and edited by Charles Hill (New Heaven, Connecticut: Yale University Press, 2003). 3 v.
Includes indexes.

Security Council

Amorim, Celso. Effectiveness and legitimacy of the United Nations Security Council: A tribute to Tono Eitel. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 5–18.
Includes bibliographical references.

Arangio-Ruiz, G. The ICJ Statute, the Charter and forms of legality review of Security Council decisions. In: *Man's inhumanity to man: essays on international law in honour of Antonio Cassese*. Edited by Lal Chand Vohrah . . . [et al.] (The Hague, New York: Kluwer Law International, 2003). p. 41–64.
Includes bibliographical references.

Aust, A. The Security Council and international criminal law. *Netherlands yearbook of international law*, vol. XXXIII (2002): 23–46.
Includes bibliographical references.

Bolani, Maria-Lydia. Security Council sanctions on non-state entities and individuals. *Revue hellénique de droit international* 56(2) 2003: 401–439.
Includes bibliographical references.

Cameron, Iain. UN targeted sanctions, legal safeguards and the European Convention on human rights. *Nordic journal of international law* 72(2) 2003: 159–214.
Includes bibliographical references.

Currie, John H. The continuing contributions of Ronald St. J. Macdonald to UN Charter and peace and security issues. *The Canadian yearbook of international law*, vol. XL (2002):265–285.
Summaries in French and English. Includes bibliographical references.

Davidsson, Elias. The U.N. Security Council's obligations of good faith. *Florida journal of international law* 15(4) summer 2003: 541–573.

De Wet, Erika and André Nollkaemper. Review of Security Council decisions by national courts. *German yearbook of international law*, vol. 45 (2002): 166–202.
Includes bibliographical references.

Dejammet, Alain. Ambiguities of UNSC 1441: constructive and not. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 19–22.

Frowein, Jochen Abraham. Issues of legitimacy around the United Nations Security Council. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 121–139.
Includes bibliographical references.

Glennon, Michael J. The UN Security Council in a unipolar world. *Virginia Journal of international law* 44(1) fall 2003:91–112.
Includes bibliographical references.

_____. Why the Security Council failed. *Foreign affairs* 82(3), May/June 2003: 16–35.

Grant, Thomas D. The Security Council and Iraq: an incremental practice. *American journal of international law* 97(4) October 2003: 823–842.
Includes bibliographical references.

Gutiérrez Espada, Cesáreo. La "contaminación" de Naciones Unidas o las resoluciones 1483 y 1511 (2003) del Consejo de Seguridad. *Anuario de derecho internacional*, vol. XIX (2003): 71–88.
Includes bibliographical references.

Heiskanen, V. The United Nations Compensation Commission. *Recueil des cours* (Hague Academy of International Law), vol. 296 (2002): 255–398.
Includes bibliographical references.

Johnstone, Ian. Security Council deliberations: the power of the better argument. *European journal of international law* 14(3) 2003: 437–480.
Includes bibliographical references.

Lysen, Göran. Targeted UN sanctions: application of legal sources and procedural matters. *Nordic journal of international law* 72(2) 2003: 291–304.

Includes bibliographical references.

Orakhelashvili, Alexander. The post-war settlement in Iraq: the UN Security Council Resolution 1483(2003) and general international law. *Journal of conflict and security law* 8(2) October 2003: p. 307–314.

Includes bibliographical references.

Wagner, M. Die wirtschaftlichen Maßnahmen des Sicherheits-rates nach dem 11. September 2001 im völkerrechtlichen Kontext—Von Wirtschaftssanktionen zur Wirtschaftsgesetzgebung? *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 63(4) 2003: 879–920.

Summary in English. Includes bibliographical references.

Wellens, Karel. The UN Security Council and new threats to the peace: back to the future. *Journal of conflict and security law* 8(1) April 2003: p. 15–70.

Includes bibliographical references.

Winkelmann, Ingo. Das Postulat einer stärkeren Beteiligung des Südens am Sicherheitsrat der Vereinten Nationen. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 229–252.

Includes bibliographical references.

Wooldridge, Fred and Olufemi Elias. Humanitarian considerations in the work of the United Nations Compensation Commission. *International review of the Red Cross/Revue internationale de la Croix-Rouge* 85(851) September 2003: 555–581.

Summary in French. Includes bibliographical references.

Zambelli, Mirko. *La constatation des situations de l'Article 39 de la Charte des Nations Unies par le Conseil de sécurité : le champ d'application des pouvoirs prévus au Chapitre VII de la Charte des Nations Unies* (Genève : Helbing and Lichtenhahn, 2002). xviii, 517 p.

Bibliography: p. 447–508. Includes bibliographical references.

Zappalà, S. Are some peacekeepers better than others? UN Security Council Resolution 1497(2003) and the ICC. *Journal of international criminal justice* 1(3) December 2003: 671–678.

Includes bibliographical references.

Zimmermann, Andreas. "Acting under Chapter VII (. . .)"—Resolution 1422 and possible limits of the powers of the Security Council. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 253–278.

Includes bibliographical references.

United Nations Forces

Frostad, Magne. Good guys wearing cuffs—The detention of peacekeepers. *German yearbook of international law*, vol. 45 (2002): 291–330.

Includes bibliographical references.

3. *Particular questions or activities*

Air and space law

Abeyratne, R. I. R. The application of intellectual property rights to outer space activities. *Journal of space law* 29(1/2) 2003: 1–20.
Includes bibliographical references.

Barnet, Todd. Legal fictions in the five United Nations space treaties stifle commerce and encourage a dangerous and chaotic space environment. *Annals of air and space law/ Annales de droit aérien et spatial,* vol. XXVIII (2003): 257–280.
Includes bibliographical references.

Batra, J. C. International air law : including Warsaw Convention 1929 and Montreal Convention 1999 (New Delhi: Reliance Pub. House, 2003). xiv, 188 p.
Bibliography: p. 167–184. Includes bibliographical references and index.

Hazan, Neil. The UNIDROIT preliminary draft protocol on matters specific to space assets. *Annals of air and space law/Annales de droit aérien et spatial,* vol. XXVIII (2003): 219–255.
Includes bibliographical references.

Hörstke, Stefanie. Air carrier ownership and control revisited at the fifth worldwide ICAO air transport conference. *Annals of air and space law/Annales de droit aérien et spatial,* vol. XXVIII (2003): 19–56.
Includes bibliographical references.

Kreymborg, Dorothy. Developments relevant to international air transport in the World Trade Organization (WTO): analysis of the first review of the GATS Annex. *Annals of air and space law/Annales de droit aérien et spatial,* vol. XXVIII (2003): 471–498.
Includes bibliographical references.

Lee, Ricky J. The *jus ad bellum in spatialis*: the exact content and practical implications of the law on the use of force in outer space. *Journal of space law* 29(1/2) 2003: 93–119.
Includes bibliographical references.

Leloudas, Georgious and Louis Haeck. Legal aspects of aviation risk management. *Annals of air and space law/Annales de droit aérien et spatial,* vol. XXVIII (2003): 149–169.
Includes bibliographical references.

Palmer, Geoffrey. The difficulties of third-party adjudication for political people. *Proceedings (American Society of International Law, Meeting)*, 97th (2003): 289–293.
Includes bibliographical references.

Petras, Christopher. The debate over the weaponization of space: a military—legal conspectus. *Annals of air and space law/Annales de droit aérien et spatial,* vol. XXVIII (2003): 171–217.
Includes bibliographical references.

Pradhan, Devendra. The fifth jurisdiction under the Montreal Liability Convention: wandering American or wandering everybody? *The journal of air law and commerce* 68(4) fall 2003: 717–730.
Includes bibliographical references.

Rodrigues, Natericia. Report on the work of the United Nations Committee on the peaceful uses of outer space and its subcommittees. *Annals of air and space law/Annales de droit aérien et spatial,* vol. XXVIII (2003): 421–444.
Includes bibliographical references.

Saba, John. Worldwide safe flight: will the international financial facility for aviation safety help it happen? *The journal of air law and commerce* 68(3) summer 2003: 537–581.
Includes bibliographical references.

Schrogl, Kai-Uwe. Weltorganisation und Weltraum: Neue Ansätze für internationale Zusammernarbeit, Rahmengestaltung und Nutzung durch das UN-System. *Vereinte Nationen* 51(1) Februar 2003: 1–5.
Includes bibliographical references.

Schubert, Francis. The financing of cross border air traffic services: a legal perspective. *Annals of air and space law/Annales de droit aérien et spatial,* vol. XXVIII (2003): 121–148.
Includes bibliographical references.

Zylicz, Marek. Realizacja idei "otwartego nieba" w prawie lotniczym. *Panstwo i pravo* 58(5) maj 2003: 3–17.
Includes bibliographical references.

Collective security

Cowling, Michael. The Iraqi war and collective security. *South African yearbook of international law*, vol. 28 (2003): 225–238.
Includes bibliographical references.

From promise to practice: strengthening UN capacities for the prevention of violent conflict. Edited by Chandra Lekha Sriram and Karin Wermester (Boulder, Colorado: Lynne Rienner Publishers, 2003), xii, 429 p.
Bibliography: p. 393–403. Includes bibliographical references and index.

Popiuk-Rysińska, Irena. International antitrust and the WTO: The lesson from intellectual property. *Virginia journal of international law* 43(4) summer 2003: 933–957.
Includes bibliographical references.

_____. Regionalism and the United Nations' collective security system after the Cold War. *Polish quarterly of international affairs* 12(1) winter 2003: 81–106.
Includes bibliographical references.

Stahn, Carsten. Enforcement of the collective will after Iraq. *American journal of international law* 97(4) October 2003: 804–823.
Includes bibliographical references.

White, Nigel D. *Collective security law* (Aldershot, England; Brookfield, Vt.: Ashgate/ Dartmouth, 2003). xxv, 589 p.
Includes bibliographical references and index.

Commercial arbitration

Alvarez, Henri C., Neil Kaplan and David W. Rivkin. *Model law decisions: cases applying the UNCITRAL model law in international commercial arbitration, 1985–2001* (New York: Kluwer Law International, 2003), xiv, 257 p.
Bibliography: p. 253–257. Includes bibliographical references.

Amundsen, Jennifer L. Membership has its privileges: the confidence-building potential of the New York Convention can boost commerce in developing nations. *Wisconsin international law journal* 21(2) spring 2003: 383–408.
Includes bibliographical references.

Ivanova, Pelagia. *Forum Non Conveniens* and personal jurisdiction: procedural limitations on the enforcement of foreign arbitral awards under the New York Convention. *Boston University law review* 83(4) October 2003: 899–920.
Includes bibliographical references.

Lelutiu, Radu. Managing requests for enforcement of vacated awards under the New York Convention. *The American review of international arbitration* 14(3) 2003: 345–361.
Includes bibliographical references.

Lew, Julian D.M., Loukas A. Mistelis and Stefan M. Kröll *Comparative international commercial arbitration* (The Hague; New York: Kluwer Law International, 2003) xxxv, 953 p.
Includes bibliographical references and index.

Practitioner's handbook on international arbitration. Edited by Frank-Bernd Weigand; written by Michael Bühler . . . [et al.] (München: C.H. Beck; Copenhague: Djøf, 2002), xxviii, 1315 p.
Includes bibliographical references and index.

Sekolec, Jernej. International dispute resolution: areas where further research may be useful. *Journal of international arbitration* 20(1) February 2003: 35–66.
Includes bibliographical references.

Consular relations

Carter, Linda E. Compliance with ICJ provisional measures and the meaning of review and reconsideration under the Vienna Convention on consular relations: *Avena and other Mexican nationals (Mex. v . U.S.). Michigan journal of international law* 25(1) fall 2003:117–134.
Includes bibliographical references.

Fleishman, Michael. Reciprocity unmasked: the role of the Mexican Government in defense of its foreign nationals in United States death penalty cases. *Arizona journal of international and comparative law* 20(2) summer 2003: 359–407.
Includes bibliographical references.

López-Almansa Beaus, Elena. Las medidas provisionales de la Corte Internacional de Justicia en el *Ansunto Avena y Otros Nacionales Mejicanos* (Méjico vs. Estados Unidos). *Anuario de derecho internacional*, vol. XIX (2003): 421–441.
Includes bibliographical references.

Macina, Alan. Avena and other Mexican nationals: the litmus for *LaGrand* and the future of consular rights in the United States. *California Western international law journal* 34(1) fall 2003: 115–143.

Includes bibliographical references.

Matringe, J. L'arrêt de la Cour internationale de Justice dans l'affaire LaGrand (Allemagne c. États-Unis d'Amérique) du 27 juin 2001. *Annuaire français de droit international*, vol. XLVIII (2002): 215–321.

Includes bibliographical references.

Diplomatic relations

Maginnis, Veronica L. Limiting diplomatic immunity: lessons learned from the 1946 Convention on the privileges and immunities of the United Nations. *Brooklyn journal of international law* 28(3) 2003: 989–1023.

Includes bibliographical references.

Disarmament

Bunn, George. The Nuclear Nonproliferation Treaty: history and current problems. *Arms control today* 33(10) December 2003: 4–10.

Includes bibliographical references.

Graham, Thomas and Damien J. LaVera. *Cornerstones of security: arms control treaties in the nuclear era* (Seattle: University of Washington Press, 2003). xvi, 1487 p.

Includes bibliographical references.

Kervers, Onno. Strengthening compliance with the Biological Weapons Convention: the Draft Protocol. *Journal of conflict and security law* 8(1) April 2003: p. 161–200.

Includes bibliographical references.

Scott, Bobby L. The UN Conference on the illicit trade of small arms and light weapons: an exercise in futility. *Georgia journal of international and comparative law* 31(3) 2003: 681–713.

Includes bibliographical references.

Environmental questions

Adams, Todd B. Is there a legal future for sustainable development in global warming? Justice, economics, and protecting the environment. *Georgetown international environmental law review* XVI(1) 2003: 77–126.

Includes bibliographical references.

Barral, Virginie. Johannesburg 2002 : quoi de neuf pour le développement durable. *Revue générale de droit international public* 107(2) 2003: p. 415–432.

Includes bibliographical references.

Barrett, Scott. *Environment and statecraft: the strategy of environmental treaty-making* (New York; Oxford, England: Oxford University Press, 2003). xvii, 427 p.

Bibliography: p. 399–412. Includes bibliographical references and index.

Bruch, Carl and John Pendergrass. Type II partnerships, international law, and the Commons. *Georgetown international environmental law review* XV(4) 2003: 855–886.
Includes bibliographical references.

Churchill, Robin R. Facilitating (transnational) civil liability litigation for environmental damage by means of treaties: progress, problems, and prospects. *Yearbook of international environmental law,* vol. 12 (2001): 3–41.
Includes bibliographical references.

Ferrajolo, Ornella. Les réunions des États Parties aux traités relatifs à la protection de l'environnement. *Revue générale de droit international public* 107(1) 2003: p. 73–88.
Summaries in French, English and Spanish. Includes bibliographical references.

Gaines, Sanford E. The problem of enforcing environmental norms in the WTO and what to do about it. *Hastings international and comparative law review* 26(3) spring 2003: 321–385.
Includes bibliographical references.

Ghandhi, P. R. The Human Rights Committee and the death row phenomenon. *Indian journal of international law* 43(1) January-March 2003: 1–66.
Includes bibliographical references.

Hamilton, Sarah R. Developments in climate change. *Colorado journal of international environmental law and policy* 2003 Yearbook: 37–44.
Includes bibliographical references.

Jinnah, Sikina. Emissions trading under the Kyoto Protocol. *Georgetown international environmental law review* XV(4) 2003: 709–761.
Includes bibliographical references.

Kahn, Greg. The fate of the Kyoto Protocol under the Bush administration. *Berkeley journal of international law* 21(3) 2003: 548–571.
Includes bibliographical references.

Kennett, Steven A. Carbon sinks and the Kyoto Protocol: legal and policy mechanisms for domestic implementation. *Journal of energy and natural resources law* 21(3) August 2003: 252–276.
Includes bibliographical references.

Kokish, Rebecca. Children's environmental health—international actions and implications. *Colorado journal of international environmental law and policy* 14(1) winter 2003: 143–166.
Includes bibliographical references.

Kokott, Juliane. Sind wir auf dem Wege zu einer Internationalen Umweltorganisation? In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 381–422.
Includes bibliographical references.

Laubner, Tilmann. World Summit on sustainable development, Johannesburg, South Africa, 26 August-4 September 2002: "People, planet and prosperity". *German yearbook of international law*, vol. 45 (2002): 417–430.
Includes bibliographical references.

Lopez, Todd M. A look at climate change and the evolution of the Kyoto Protocol. *Natural resources journal* 43(1) winter 2003: 285–312.

Maljean-Dubois, S. Environnement, développement durable et droit international. De Rio à Johannesburg : et au-delà? *Annuaire français de droit international*, vol. XLVIII (2002): 592–623.
Includes bibliographical references.

Marong, Alhaji B.M. From Rio to Johannesburg: reflections on the role of international legal norms in sustainable development. *Georgetown international environmental law review* XVI(1) 2003: 21–76.
Includes bibliographical references.

Maxwell, Jeffrey R. Transboundary air pollution: developments during 2003. *Colorado journal of international environmental law and policy* 2003 Yearbook: 99–106.
Includes bibliographical references.

McCallion, Kenneth F. International environmental justice: rights and remedies. *Hastings international and comparative law review* 26(3) spring 2003: 427–443.
Includes bibliographical references.

Nanda, Ved P. and George Pring. *International environmental law and policy for the 21st Century* (Ardsley; N.Y.: Transnational Publishers, 2003). xiii, 512 p.
Includes bibliographical references and index.

Negi, Archna. The WTO asbestos case: implications for the trade and environment debate. *Indian journal of international law* 43(1) January-March 2003: 93–107.
Includes bibliographical references.

Osofsky, Hari M. Defining sustainable development after Earth Summit 2002. *Loyola of Los Angeles international and comparative law review* 26(1) fall 2003:111–125.
Includes bibliographical references.

Ramangkura, Varamon. Thai shrimp, sea turtles, mangrove forest and the WTO: innovative environmental protection under the international trade regime. *Georgetown international environmental law review* XV(4) 2003: 677–708.
Includes bibliographical references.

Rivera-Torres, Olivette. The Biosafety Protocol and the WTO. *Boston College international and comparative law review* XXVI(2) spring 2003: 263–323.
Includes bibliographical references.

Robinson, Nicholas, A. Enforcing environmental norms: diplomatic and judicial approaches. *Hastings international and comparative law review* 26(3) spring 2003: 387–426.
Includes bibliographical references.

Rose, Gregory. International law of sustainable agriculture in the 21st Century: the International Treaty on plant genetic resources for food and agriculture. *Georgetown international environmental law review* XV(4) 2003: 583–632.
Includes bibliographical references.

Rosencranz, Armin. The origin and emergence of international environmental norms. *Hastings international and comparative law review* 26(3) spring 2003: 309–320.
Includes bibliographical references.

Sabia de Barberis, Gladys. La protección del medio ambiente en la jurisprudencia de la Corte Internacional de Justicia. *Anuario Argentino de derecho international* vol. XII (2003): 107–216.

Includes bibliographical references.

Schack-Espinoza, Maureen. Developments in biodiversity. *Colorado journal of international environmental law and policy* 2003 Yearbook: 29–35.

Includes bibliographical references.

Silva Soares, Guido Fernando and Everton Vieira Vargas. The Basel Liability Protocol on liability and compensation for damage resulting from transboundary movements of hazardous wastes and their disposal. *Yearbook of international environmental law,* vol. 12 (2001): 69–104.

Includes bibliographical references.

Sriram, Chandra Lekha. Universal jurisdiction: problems and prospects of externalizing justice. *Finnish yearbook of international law*, vol. XII (2001): 47–70.

Includes bibliographical references.

Stewart, Richard B. and Jonathan B. Wiener. *Reconstructing climate policy: beyond Kyoto*. (Washington, D.C.: AEI Press, 2003). ix, 193 p.

Bibliography: p. 135–183. Includes bibliographical references and index.

Tanaka, Maki. Bridging the gap between northern NGOs and southern sovereigns in the trade-environment debate: the pursuit of democratic dispute settlements in the WTO under the Rio Principles. *Ecology law quarterly* 30(1) 2003: 113–188.

Includes bibliographical references.

Thoms, Laura. A comparative analysis of international regimes on ozone and climate change with implications for regime design. *Columbia journal of transnational law* 41(3) 2003: 795–859.

Includes bibliographical references.

Walsh, Timothy J.V. Turning our backs: Kyoto's mistaken nuclear exclusion. *Georgetown international environmental law review* XVI(1) 2003: 147–170.

Includes bibliographical references.

Wolfrum, Rüdiger and Nele Matz. *Conflicts in international environmental law* (Berlin; New York: Springer, 2003). xi, 213 p.

Includes bibliographical references.

Financing

Bond, Alison. U.S. funding of the United Nations: arrears payments as an indicator of multilateralism. *Berkeley journal of international law* 21(3) 2003: 703–714.

Includes bibliographical references.

Müller, Joachim and Wolfgang Münch. Die neue Finanzordnung der Vereinten Nationen Ein weiterer Schritt auf dem Wege der Reformen. *Vereinte Nationen* 51(3) Juni 2003: 78–83.

Includes bibliographical references.

Friendly relations and cooperation among States

Tsokanas, Nikolaos P. The theory of post-Cold War relations between the UN and regional organizations. *Revue hellénique de droit international* 56(2) 2003: 567–576.
Includes bibliographical references.

Human rights

Abramson, Kara. Beyond consent, toward safeguarding human rights: implementing the United Nations Trafficking Protocol. *Harvard International law journal* 44(2) summer 2003: 473–502.
Includes bibliographical references.

Allgood, Sara E. United Nations human rights "Entitlements": the right to development analyzed within the application of the right of self-determination. *Georgia journal of international and comparative law* 31(2) 2003: 321–353.
Includes bibliographical references.

Alves, Lindgren J. A. The Durban Conference against racism and everyone's responsibilities. *Netherlands quarterly of human rights* 21(3) September 2003: 361–384.
Includes bibliographical references.

Baum, Gerhart R. Sudanesische Menschenrechtsbilanz: Innenansichten der Rolle eines Sonderberichterstatters. *Vereinte Nationen* 50 (3) Juni 2002: 110–115.
Includes bibliographical references.

Bayefsky, Anne F. *How to complain to the UN human rights treaty system* (The Hague; London; New York: Kluwer Law International, 2003). xxiii, 358 p.
Includes index.

Burchill, Richard. The right to live wherever you want? The right to family life following the UN Human Rights Committee's decision in *Winata*. *Netherlands quarterly of human rights* 21(2) June 2003: 225–245.
Includes bibliographical references.

Byrnes, Andrew. Changing reality: all roads lead to equality? *Proceedings (American Society of International Law, Meeting)*, 97th (2003): 60–65.
Includes bibliographical references.

Camponovo, Christopher N. Disaster in Durban: The United Nations World Conference against racism, racial discrimination, xenophobia, and related intolerance. *The George Washington international law review* 34(4) 2003: 659–710.
Includes bibliographical references.

Concluding observations of the UN Committee on Economic, Social and Cultural Rights: eighth to twenty-seventh sessions (1993–2001). Edited by Leif Holmström (The Hague; New York: Martinus Nijhoff, 2003). xvi, 716 p.
Includes bibliographical references.

Dennis, Michael J. Human rights in 2002: the annual sessions of the UN Commission on Human Rights and the Economic and Social Council. *American journal of international law* 97(2) April 2003: 364–386.
Includes bibliographical references.

Fitzpatrick, Joan. Trafficking as a human rights violation: the complex intersection of legal frameworks for conceptualizing and combating trafficking. *Michigan journal of international law* 24(4)summer 2003: 1143–1167.

Includes bibliographical references.

Glendon, Mary Ann. The forgotten crucible: the Latin American influence on the universal human rights idea. *Harvard human rights journal,* vol. 16, spring 2003: 27–39.

Includes bibliographical references.

Goodman, Ryan and Derek Jinks. Measuring the effects of human rights treaties. *European journal of international law* 14(1) 2003: 171–183.

Includes bibliographical references.

Hathaway, Oona, A. Testing conventional wisdom. *European journal of international law* 14(1) 2003: 185–200.

Includes bibliographical references.

Higgins-Thornton, Shawronda. Innocence snatched: a call for a multinational response to child abduction that facilitates sexual exploitation. *Georgia journal of international and comparative law* 31(3) 2003: 619–648.

Includes bibliographical references.

Hoffman, Geoffrey A. In search of an international human right to receive information. *Loyola of Los Angeles international and comparative law review* 25(2) spring 2003:165–204.

Includes bibliographical references.

Hussain, Mohammed. World Trade Organization and the right to health: an overview. *Indian journal of international law* 43(2) April-June 2003: 279–313.

Includes bibliographical references.

ILO. International Programme on the Elimination of Child Labour. *IPEC action against child labour: highlights, 2002* (Geneva: ILO, 2003).72 p.

Includes bibliographical references.

In modern bondage: sex trafficking in the Americas: national and regional overview of Central America and the Caribbean: Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua and Panama. Edited by David E. Guinn and Elissa Steglich (Ardsley, N.Y.: Transnational Publishers, 2003). xvi, 460 p.

Bibliography: p. 439–451. Includes bibliographical references and indexes.

Klein, Eckart. Participation in the International Covenant on civil and political rights: how states become states parties. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 369–379.

Includes bibliographical references.

Klein, Eckart and Friederike Brinkmeier. Internationaler Pakt und EMRK: Ein Vergleich der Rechtsprechung des Menschenrechtsausschusses der Vereinten Nationen und des Europäischen Gerichtshofs für Menschenrechte. *Vereinte Nationen* 50(3) Juni 2002: 99–103.

Includes bibliographical references.

Kumar, C. Raj. National human rights institutions: good governance perspectives on institutionalization of human rights. *American University international law review* 19(2) 2003: 259–300.

Includes bibliographical references.

Leading cases of the Human Rights Committee. Compiled by Raija Hanski and Martin Scheinin (Turku: Institut for Human Rights, Abo Akademi University, 2003). vii, 474 p.

Bibliography: p. 462. Includes bibliographical references and indexes.

Marshall, David and Shelley Inglis. The disempowerment of human rights-based justice in the United Nations Mission in Kosovo. *Harvard human rights journal,* vol. 16, spring 2003: 95–146.

Includes bibliographical references.

McColgan, Aileen. Principle of equality and protection from discrimination in international human rights law. *European human rights law review,* No. 2, 2003: 157–175.

Includes bibliographical references.

Meinecke, Christina. Grundwerte Solidarität, Respekt, Toleranz: Ein Rückblick auf die Weltkonferenz gegen den Rassismus in Durban. *Vereinte Nationen*, 50(3) Juni 2002: 94–99.

Includes bibliographical references.

Nersessian, David L. The razor's edge: defining and protecting human groups under the Genocide Convention. *Cornell international law journal* 36(2) spring 2003: 293–327.

Includes bibliographical references.

Ochoa, Christiana. Advancing the language of human rights in a global economic order: an analysis of a discourse. *Boston College third world law journal* XXIII(1) winter 2003: 57–114.

Includes bibliographical references.

Ochoa Ruiz, Natalia. Las cláusulas compromisorias de las Convenciones de Derechos Humanos de las Naciones Unidas a la Jurisdicción de la Corte Internacional de Justicia: ¿Un mecanismo jurisdiccional de protección de los Derechos Humanos? *Anuario de derecho internacional*, vol. XIX (2003): 263–298.

Includes bibliographical references.

Othman, Mohamed. East Timor: a critique of the model of accountability for serious human rights and international humanitarian law violations. *Nordic journal of international law* 72(4) 2003: 449–482.

Includes bibliographical references.

Pocar, F. Human rights under the International Covenant on civil and political rights and armed conflicts. In: *Man's inhumanity to man: essays on international law in honour of Antonio Cassese*. Edited by Lal Chand Vohrah . . . [et al.] (The Hague, New York: Kluwer Law International, 2003). p. 729–740.

Includes bibliographical references.

Re, Edward D. The Universal Declaration of Human Rights: effective remedies and the domestic courts. *California Western international law journal* 33(2) spring 2003: 137–170.

Includes bibliographical references.

Robinson, Darryl. The impact of the human rights accountability movement on the international law of immunities. *The Canadian yearbook of international law*, vol. XL (2002):151–193.

Summaries in French and English. Includes bibliographical references.

Rodríguez-Pinzón, Diego and Claudia Martin. The international human rights status of elderly persons. *American University international law review* 18(4) 2003: 915–1008.

Includes bibliographical references.

Sepúlveda, M. Magdalena. *The nature of the obligations under the International Covenant on economic, social and cultural rights* (Antwerpen, Belgium; New York: Intersentia, 2003). xx, 477 p.

Bibliography: p. 437–456. Includes bibliographical references and index.

Shelton, Dinah. Self-determination and secession: the jurisprudence of international human rights tribunals. In: *Secession and international law: conflict avoidance: regional appraisals*. Edited by Julie Dahlitz (New York; Geneva: UN; The Hague: T.M.C. Asser Press, 2003). p. 47–72.

Includes bibliographical references.

Tomuschat, Christian. Mehr Schutz für die Schutzlosen: Die beiden Fakultativprotokolle zu dem Übereinkommen über die Rechte des Kindes. *Vereinte Nationen*, 50(3) Juni 2002: 89–93.

Includes bibliographical references.

Vandenhole, Wouter. Completing the UN complaint mechanisms for human rights violations step by step: towards a complaints procedure complementing the International Covenant on Economic, Social and Cultural Rights. *Netherlands quarterly of human rights* 21(3) September 2003: 423–462.

Includes bibliographical references.

Vedel Kessing, Peter. New optional protocol to the UN Torture Convention. *Nordic journal of international law* 72(4) 2003: 571–592.

Includes bibliographical references.

Zemanek, K. Human rights protection vs. non-intervention: a perennial conflict? In: *Man's inhumanity to man: essays on international law in honour of Antonio Cassese*. Edited by Lal Chand Vohrah . . . [et al.] (The Hague, New York: Kluwer Law International, 2003). p. 953–975.

Includes bibliographical references.

International administrative law

Ruzié, D. Jurisprudence du Tribunal administratif de l'OIT. *Annuaire français de droit international*, vol. XLVIII (2002): 472–498.

_____. Jurisprudence du Tribunal administratif des Nations Unies. *Annuaire français de droit international*, vol. XLVIII (2002): 455–471

.

International criminal law

Accountability for atrocities: national and international responses. Edited by Jane E. Stromseth (Ardsley, N.Y.: Transnational Publishers, 2003). xv, 500 p.
Includes bibliographical references and index.

Akande, D. The jurisdiction of the International Criminal Court over nationals of non-parties: legal basis and limits. *Journal of international criminal justice* 1(3) December 2003: 618–650.
Includes bibliographical references.

Alcoceba Gallego, M. Amparo. La ilicitud internacional de los *Acuerdos Antídoto* celebrados por Estados Unidos para evitar la jurisdicción de la CPI. *Anuario de derecho internacional*, vol. XIX (2003): 349–372.
Includes bibliographical references.

Ambos, K. Some preliminary reflections on the *mens rea* requirements of the crimes of the ICC statute and of the elements of crimes. In: *Man's inhumanity to man: essays on international law in honour of Antonio Cassese*. Edited by Lal Chand Vohrah . . . [et al.] (The Hague; New York: Kluwer Law International, 2003). p. 11–40.
Includes bibliographical references.

Archbold, international criminal courts: practice, procedure, and evidence. Edited by Rodney Dixon, Karim A.A. Khan and Richard May (London: Sweet and Maxwell, 2003). lvii, 1532 p.
Includes bibliographical references and index.

Arnaut, Damir. When in Rome . . . ? The International Criminal Court and avenues for U.S. participation. *Virginia journal of international law* 43(2) winter 2003: 525–587.
Includes bibliographical references.

Ascencio, H. et R. Maison. L'activité des Tribunaux pénaux internationaux (2002). *Annuaire français de droit international*, vol. XLVIII (2002): 381–406.
Includes bibliographical references.

Aust, A. The Security Council and international criminal law. *Netherlands yearbook of international law*, vol. XXXIII (2002): 23–46.
Includes bibliographical references.

Barberini, Roberta. La Convenzione delle Nazioni Unite contro il crimine organizzato transnazionale. *La comunità internazionale* LVIII (3) terzo trimestre 2003: 395–404.
Includes bibliographical references.

Bassiouni, C. The philosophy and policy of international criminal justice. In: *Man's inhumanity to man: essays on international law in honour of Antonio Cassese*. Edited by Lal Chand Vohrah . . . [et al.] (The Hague, New York: Kluwer Law International, 2003). p. 65-126.
Includes bibliographical references.

Blanc Altemir, Antonio. El Tribunal especial para Sierra Leona: un instrumento contra la impunidad por las violaciones graves del derecho internacional humanitario. *Anuario de derecho internacional*, vol. XIX (2003): 101–137.
Includes bibliographical references.

Blanchet, Cahterine R. Some troubling elements in the treaty language of the Rome Statute of the International Criminal Court. *Michigan journal of international law* 24(2) winter 2003 : 647–662.
Includes bibliographical references.

Blokker, Niels and Sam Muller. International Criminal Court. *Hague yearbook of international law/Annuaire de La Haye de droit international*, vol. 15 (2002):173–178.
Includes bibliographical references.

Bohlander, Michael and Mark Findlay. The use of domestic sources as a basis for international criminal law principles. *The Global community*: y*earbook of international law and jurisprudence*, vol. I (2002): 3–26.
Includes bibliographical references.

Booth, Cherie. Prospects and issues for the International Criminal Court: lessons from Yugoslavia and Rwanda. In: *From Nuremberg to The Hague: the future of international criminal justice.* Edited by Philippe Sands (Cambridge, England; New York: Cambridge University Press, 2003). p. 157–192.
Includes bibliographical references.

Broomhall, Bruce. *International justice and the International Criminal Court: between sovereignty and the rule of law* (Oxford; New York: Oxford University Press, 2003). x, 215 p.
Bibliography: p. 193–209. Includes bibliographical references and index.

Casey, Lee A. and David B. Rivkin, Jr. The limits of legitimacy: the Rome Statute's unlawful application to non-state parties. *Virginia journal of international law* 44(1) fall 2003:63–89.
Includes bibliographical references.

Clapham, Andrew. Issues of complexity, complicity and complementarity: from the Nuremberg trials to the dawn of the new International Criminal Court. In: *From Nuremberg to The Hague: the future of international criminal justice.* Edited by Philippe Sands (Cambridge, England; New York: Cambridge University Press, 2003). p. 30–67.
Includes bibliographical references.

Combs, Nancy Amoury. Establishing the International Criminal Court. *International Law Forum du droit international* 5(1) February 2003: 77–85.
Includes bibliographical references.

Cottereau, G. Statut en vigueur, la Cour pénale internationale s'installe. *Annuaire français de droit international*, vol. XLVIII (2002): 129–161.
Includes bibliographical references.

Crawford, James. The drafting of the Rome Statute. In: *From Nuremberg to The Hague: the future of international criminal justice.* Edited by Philippe Sands (Cambridge, England; New York: Cambridge University Press, 2003). p. 109–156.
Includes bibliographical references.

Cryer, Robert. Witness evidence before international criminal tribunals. *The law and practice of international courts and tribunals* 2(3) October 2003: p. 411–439.
Includes bibliographical references.

Danner, Allison Marston. Enhancing the legitimacy and accountability of prosecutorial discretion at the International Criminal Court. *American journal of international law* 97(3) July 2003: 510–552.
Includes bibliographical references.

Dickinson, Laura A. The promise of hybrid courts. *American journal of international law* 97(2) April 2003: 295–310.
Includes bibliographical references.

Donovan, Daniel Kemper. Joint U.N.-Cambodia efforts to establish a Khmer Rouge tribunal. *Harvard international law journal* 44(2) summer 2003: 551–576.
Includes bibliographical references.

Dörmann, Knut. *Elements of war crimes under the Rome Statute of the International Criminal Court: sources and commentary* (New York: Cambridge University Press, 2003). l v, 524 p.
Bibliography: p. 499–503. Includes bibliographical references and index.

Drumbl, Mark A. Juridical and jurisdictional disconnects. *Finnish yearbook of international law*, vol. XII (2001): 119–141.
Includes bibliographical references.

Ehrenreich Brooks, Rosa. Law in the heart of darkness: atrocity and duress. *Virginia journal of international law* 43(3) spring 2003: 861–888.
Includes bibliographical references.

Escudero Espinosa, Juan Francisco . Los poderes del Consejo de Seguridad y la Corte Penal Internacional en el Estatuto de Roma. *Anuario de derecho internacional*, vol. XIX (2003): 185–261.
Includes bibliographical references.

El Estatuto de la Corte Penal Internacional: antecedentes y textos complementarios. Edición de Fernando Pignatelli y Meca (Madrid: Ministerio de Defensa, Secretaría General Técnica, 2003). 579 p.

Eubany, Cosmos. Justice for some? U.S. efforts under Article 98 to escape the jurisdiction of the International Criminal Court. *Hastings international and comparative law review* 27(1) fall 2003: 103–129.
Includes bibliographical references.

Fairlie, Megan A. Due process erosion: the diminution of live testimony at the ICTY. *California Western international law journal* 34(1) fall 2003: 47–83.
Includes bibliographical references.

Ferencz, Benjamin B. Misguided fears about the International Criminal Court. *Pace international law review* XV(I) spring 2003: 223–246.
Bibliography: p. 246.

Fleck, D. Are foreign military personnel exempt from international criminal jurisdiction under Status of Forces Agreements? *Journal of international criminal justice* 1(3) December 2003: 651–670.
Includes bibliographical references.

Friman, Håkan. Inspiration from the international criminal tribunals when developing law on evidence for the International Criminal Court. *The law and practice of international courts and tribunals* 2(3) October 2003: p. 373–400.

Includes bibliographical references.

Fornari, Matteo. Corte Penale Internazionale, Stati Uniti e *impunity agreements. La comunità internazionale* LVIII (2) secondo trimestre 2003: 241–264.

Includes bibliographical references.

Fox, H. Some aspects of immunity from criminal jurisdiction of the state and its officials. In: *Man's inhumanity to man: essays on international law in honour of Antonio Cassese*. Edited by Lal Chand Vohrah . . . [et al.] (The Hague, New York: Kluwer Law International, 2003). p. 297–307.

Includes bibliographical references.

Fritsche, Claudia. Security Council Resolution 1422: Peacekeeping and the International Criminal Court. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 107–120.

Includes bibliographical references.

From Nuremberg to The Hague: the future of international criminal justice. Edited by Philippe Sands (Cambridge, England; New York: Cambridge University Press, 2003). xiii, 192 p.

Includes bibliographical references.

Gaeta, P. Inherent powers of international courts and tribunals. In: *Man's inhumanity to man: essays on international law in honour of Antonio Cassese*. Edited by Lal Chand Vohrah . . . [et al.] (The Hague, New York: Kluwer Law International, 2003). p. 353–372.

Includes bibliographical references.

Galbraith, Jean. The Bush administration's response to the International Criminal Court. *Berkeley journal of international law* 21(3) 2003: 683–702.

Includes bibliographical references.

Godinho, J.A.F. The surrender agreements between the US and the ICTY and ICTR: a critical view. *Journal of international criminal justice* 1(2) August 2003: 502–516.

Includes bibliographical references.

Hall, Laura R. and Nahal Kazemi. Prospects for justice and reconciliation in Sierra Leone. *Harvard international law journal* 44(1) winter 2003: 287–300.

Includes bibliographical references.

Henham, Ralph. Some issues for sentencing in the International Criminal Court. *International and comparative law quarterly* 52(1) January 2003:81–114.

Includes bibliographical references.

Herzog, Felix. How to find the proportionate criminal sentence for crimes against humanity. *Finnish yearbook of international law*, vol. XII (2001): 269–279.

Includes bibliographical references.

The International Criminal Court: recommendations on policy and practice: financing, victims, judges, and immunities. Edited by Thordis Ingadottir (Ardsley, N.Y.: Transnational Publishers, 2003). xxiii, 212 p.

Includes bibliographical references and index.

Jessberger, Florian. Prosecuting international crimes in domestic courts: a look back ahead. *Finnish yearbook of international law*, vol. XII (2001): 281–304.

Includes bibliographical references.

Jones, John R.W.D. and Steven Powles. *International criminal practice: the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the International Criminal Court, the Special Court for Sierra Leone, the East Timor Special Panel for serious crimes, war crimes and prosecutions in Kosovo.* 3rd ed. (Ardsley, N.Y.: Transnational Publishers, 2003). xliv, 1085 p.

Bibliography: p. 1037–1051. Includes bibliographical references and index.

Katzenstein, Suzanne. Hybrid tribunals: searching for justice in East Timor. *Harvard human rights journal,* vol. 16, spring 2003: 245–278.

Includes bibliographical references.

Klabbers, Jan. Just revenge? The deterrence argument in international criminal law. *Finnish yearbook of international law*, vol. XII (2001): 249–267.

Includes bibliographical references.

Kleffner, J. K. The impact of complementarity on national implementation of substantive international criminal law. *Journal of international criminal justice* 1(1) April 2003: 86–113.

Includes bibliographical references.

Knoops, Geert-Jan Alexander. *An introduction to the law of international criminal tribunals: a comparative study.* (Ardsley, N.Y.: Transnational Publishers, 2003). xxx, 207 p.

Includes bibliographical references and index.

Koivu, Virpi. Head-of-State immunity v. individual criminal responsibility under international law. *Finnish yearbook of international law*, vol. XII (2001): 305–330.

Includes bibliographical references.

Kress, C. The procedural law of the International Criminal Court in outline: anatomy of a unique compromise. *Journal of international criminal justice* 1(3) December 2003: 603–617.

Includes bibliographical references.

La Rosa, Anne-Marie. *Juridictions pénales internationales: la procédure et la preuve* (Paris: Presses Universitaires de France, 2003). xix, 507 p.

Bibliography: p. 463–507. Includes bibliographical references.

Levitsky, Melvyn. Transnational criminal networks and international security. *Syracuse journal of international law and commerce* 30(2) summer 2003: 227–240.

Includes bibliographical references.

Lobanov, S.A. Mezhdunarodnyi ugolovnyi protsess: tendentsii sobremennogo razvitiia. *Gosudarstvo i pravo* No. 1 janv. 2003: 80–86.

Includes bibliographical references.

Lord, Rachel. The liability of non-state actors for torture in violation of international humanitarian law: an assessment of the jurisprudence of the ICTY. *Melbourne journal of international law* 4(1) July 2003: 112–138.
Includes bibliographical references.

Mackenzie, Ruth and Philippe Sands. International courts and tribunals and the independence of the international judge. *Harvard international law journal* 44(1) winter 2003: 271–285.
Includes bibliographical references.

Mayerfield, Jamie. The mutual dependence of external and internal justice: the democratic achievement of the International Criminal Court. *Finnish yearbook of international law*, vol. XII (2001): 71–107.
Includes bibliographical references.

Mégret, Frédéric. Three dangers for the International Criminal Court: a critical look at a consensual project. *Finnish yearbook of international law*, vol. XII (2001): 193–247.
Includes bibliographical references.

Morris, Madeline. The disturbing democratic defect of the International Criminal Court. *Finnish yearbook of international law*, vol. XII (2001): 109–118.
Includes bibliographical references.

Mose, E and C. Aptel. Trials without undue delay before the international criminal tribunals. In: *Man's inhumanity to man: essays on international law in honour of Antonio Cassese*. Edited by Lal Chand Vohrah . . . [et al.] (The Hague, New York: Kluwer Law International, 2003). p. 539–565.
Includes bibliographical references.

Mundis, Daryl A. The Assembly of States Parties and the institutional framework of the International Criminal Court. *American journal of international law* 97(1) January 2003: 132–147.
Includes bibliographical references.

Naqvi, Yasmin. Amnesty for war crimes: defining the limits of international recognition. *International review of the Red Cross/Revue internationale de la Croix-Rouge.* 85(851) September 2003: 583–625.
Summary in French. Includes bibliographical references.

The new international criminal law: 2001 International law session. Edited by Kalliopi Koufa (Athens-Thessaloniki: Sakkoulas Publications, 2003) 1221 p.
Includes bibliographical references.

Nigro, Raffaella. Corte Penale Internazionale e accordi bilaterali diretti a precludere agli Stati parti la consegna di presunti criminali. *La comunità internazionale* LVIII(4) quarto trimestre 2003: 619–638.
Includes bibliographical references.

Oellers-Frahm, Karin. Comments on the pre-trial proceedings in the Milošević case before the International Criminal Tribunal for the Former Yugoslavia. *German yearbook of international law*, vol. 45 (2002): 203–226.
Includes bibliographical references.

Orentlicher, Diane F. Judging global justice: assessing the International Criminal Court. *Wisconsin international law journal* 21(3) fall 2003: 495–512.
Includes bibliographical references.

"Papers presented at the British Institute of International and Comparative Law Conference on evidence before international criminal tribunals". In: *The law and practice of international courts and tribunals* 2(3) October 2003: 369–478.
Special issue. Includes bibliographical references.

Paulus, Andreas L. Legalist groundwork for the International Criminal Court. *European journal of international law* 14(4) 2003: 843–860.
Includes bibliographical references.

Pozo Serrano, Pilar. Medidas nacionales adoptadas para la ratificación y la aplicación del Estatuto de la Corte Penal Internacional: un balance provisional. *Anuario de derecho internacional*, vol. XIX (2003): 299–346.
Includes bibliographical references.

Quéguiner, Jean-François. Dix ans après la création du Tribunal pénal international pour l'ex-Yougoslavie: évaluation de l'apport de sa jurisprudence au droit international humanitaire. *International review of the Red Cross/Revue internatonale de la Croix-Rouge* 85(850) June 2003: 271–311.
Summary in French. Includes bibliographical references.

Ratner, Steven R. The International Criminal Court and the limits of global judicialization. *Texas international law journal* 38(3) Special 2003: 445–454.
Includes bibliographical references.

Rearick, Daniel, J. Innocent until alleged guilty: provisional release at the ICTR. *Harvard international law journal* 44(2) summer 2003: 577–595.
Includes bibliographical references.

Robinson, Darryl. Serving the interests of justice: amnesties, truth commissions and the International Criminal Court. *European journal of international law* 14(3) 2003: 481–505.
Includes bibliographical references.

_____. The impact of the human rights accountability movement on the international law of immunities. *The Canadian yearbook of international law*, vol. XL (2002):151–193.
Summaries in French and English. Includes bibliographical references.

Rodrigues, A. Apport de la pratique du Tribunal pénal international pour l'ex-Yougoslavie à la protection des droits fondamentaux de la personne humaine. In: *Man's inhumanity to man: essays on international law in honour of Antonio Cassese*. Edited by Lal Chand Vohrah . . . [et al.] (The Hague, New York: Kluwer Law International, 2003). p. 791–826.
Includes bibliographical references.

Romano, Cesare P.R. Mixed jurisdictions for East Timor, Kosovo, Sierra Leone and Cambodia: the coming of age of internationalized criminal bodies? *The Global community*: y*earbook of international law and jurisprudence*, vol. I (2002): 97–138.
Includes bibliographical references.

Romano, Cesare P.R. and Théo Boutruche. Tribunaux pénaux internationalisés : état des lieux d'une justice «hybride». *Revue générale de droit international public* 107(1) 2003: p. 109–124.

Includes bibliographical references.

Ross, Amy. Geographies of justice: international law, national sovereignty and human rights. *Finnish yearbook of international law*, vol. XII (2001): 7–16.

Includes bibliographical references.

Sadat, Leila Nadya. Summer in Rome, spring in the Hague, winter in Washington? U.S. policy towards the International Criminal Court. *Wisconsin international law journal* 21(3) fall 2003: 557–597.

Includes bibliographical references.

Sands, Philippe. After Pinochet: the role of national courts. In: *From Nuremberg to The Hague: the future of international criminal justice*. Edited by Philippe Sands (Cambridge, England; New York: Cambridge University Press, 2003). p. 68–108.

Includes bibliographical references.

Schabas, William. Indirect abolition: capital punishment's role in extradition law and practice. *Loyola of Los Angeles international and comparative law review* 25(3) summer 2003: 581–604.

Includes bibliographical references.

_____. Interpreting the statutes of the ad hoc tribunals. In: *Man's inhumanity to man: essays on international law in honour of Antonio Cassese*. Edited by Lal Chand Vohrah . . . [et al.] (The Hague, New York: Kluwer Law International, 2003). p. 847–888.

Includes bibliographical references.

Scheffer, David. Restoring U.S. engagement with the International Criminal Court. *Wisconsin international law journal* 21(3) fall 2003: 599–609.

Includes bibliographical references.

Scheffer, David J. Advancing U.S. interests with the International Criminal Court. *Vanderbilt journal of transnational law* 36(5) November 2003: 1567–1578.

Includes bibliographical references.

Shahabuddeen, M. Policy-oriented law in the International Criminal Tribunal for the Former Yugoslavia. In: *Man's inhumanity to man: essays on international law in honour of Antonio Cassese*. Edited by Lal Chand Vohrah. . . [et al.] (The Hague, New York: Kluwer Law International, 2003). p. 889–898.

Includes bibliographical references.

Sluiter, Göran. The surrender of war criminals to the International Crimiinal Court. *Loyola of Los Angeles international and comparative law review* 25(3) summer 2003: 605–651.

Includes bibliographical references. `

Sriram, Chandra Lekha. Revolutions in accountability: new approaches to past abuses. *American University international law review* 19(2) 2003: 301–429.

Includes bibliographical references.

Stahn, Carsten. The ambiguities of Security Council Resolution 1422(2002). *European journal of international law* 14(1) 2003: 85–104.
Includes bibliographical references.

Stephens, Beth. Accountability for international crimes: the synergy between the International Criminal Court and alternative remedies. *Wisconsin international law journal* 21(3) fall 2003: 527–556.
Includes bibliographical references.

"Symposium: On some of the legal problems the ICC is currently facing". *Journal of international criminal justice* 1(3) December 2003: 603–678.
Includes bibliographical references.

Tournaye, Cécile. Genocidal intent before the ICTY. *International and comparative law quarterly* 52(2) April 2003:447–462.
Includes bibliographical references.

Udombana, Nsongurua J. Globalization of justice and the Special Court for Sierra Leone's war crimes. *Emory international law review* 17(1) spring 2003: 55–132.
Includes bibliographical references.

Ülgen, Özlem. The ICTY and irregular rendition of suspects. *The law and practice of international courts and tribunals* 2(3) October 2003: p. 441–466.
Includes bibliographical references.

Verhoeven, J. Article 21 of the Rome Statute and the ambiguities of applicable law. *Netherlands yearbook of international law*, vol. XXXIII (2002): 3–22.
Includes bibliographical references.

Wagner, Natalie. The development of the grave breaches regime and of individual criminal responsibility by the International Criminal Tribunal for the Former Yugoslavia. *International review of the Red Cross/Revue internationale de la Croix-Rouge* 85(850) June 2003: 351–383.
Summary in French. Includes bibliographical references.

Wald, Patricia M. Trying war crimes in international courts. *International journal of legal information* 31(2) summer 2003: 278–289.
Includes bibliographical references.

_____. Why I support the International Criminal Court. *Wisconsin international law journal* 21(3) fall 2003: 513–525.
Includes bibliographical references.

Walsh, M. The International Bar Association proposal for a code of professional conduct for counsel before the ICC. *Journal of international criminal justice* 1(2) August 2003: 490–501.
Includes bibliographical references.

Westdickenberg, Gerd and Oliver Fixson. Das Verbrechen der Aggression im Römischen Statut des Internationalen Strafgerichtshofes. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 483–525.
Includes bibliographical references.

Wierda, Marieke. International criminal evidence: new directions. *The law and practice of international courts and tribunals* 2(3) October 2003: p. 401–409.
Includes bibliographical references.

Yang, Lijun. Some critical remarks on the Rome Statute of the International Criminal Court. *Chinese journal of international law* 2(2) 2003: 599–622.
Includes bibliographical references.

Zappalà, S. The reaction of the US to the entry into force of the ICC statute: comments on UN SC Resolution 1422(2002) and Article 98 Agreements. *Journal of international criminal justice* 1(1) April 2003: 114–134.
Includes bibliographical references.

Zemach, Ariel. Fairness and moral judgments in international criminal law: the settlement provision in the Rome Statute. *Columbia journal of transnational law* 41(3) 2003: 895–922.
Includes bibliographical references.

Zimmermann, Andreas. Role and function of international criminal law in the international system after the entry into force of the Rome Statute of the International Criminal Court. *German yearbook of international law*, vol. 45 (2002): 35–54.
Includes bibliographical references.

Zimmermann, Andreas and Holger Scheel. Zwischen Konfrontation und Kooperation: Die Vereinigten Staaten und der Internationale Strafgerichtshof. *Vereinte Nationen* 50(4) August 2002: 137–144.

International economic law

Dolzer, Rudolf. Generalklauseln in Investitions-schutzverträgen. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 291–305.
Includes bibliographical references.

International economic governance and non-economic concerns: new challenges for the international legal order. Edited by Stefan Griller (Wien; New York: Springer, 2003). 516 p.
Includes bibliographical references.

Lowenfeld, Andreas F. *International economic law* (New York: Oxford University Press, 2003). xliv, 776 p.
Includes bibliographical references and index.

_____. Investment agreements and international law. *Columbia journal of transnational law* 42(1) 2003: 123–130.
Includes bibliographical references.

International terrorism

Alvarez, José E. The UN's 'War' on terrorism. *International journal of legal information* 31(2) summer 2003: 238–250.
Includes bibliographical references.

Bantekas, Ilias. The international law of terrorist financing. *American journal of international law* 97(2) April 2003: 315–333.
Includes bibliographical references.

Dempsey, Paul Stephen. Aviation security: the role of law in the war against terrorism. *Columbia journal of transnational law* 41(3) 2003: 649–733.
Includes bibliographical references.

Echeverría Escalante, Adrián. *La lucha antiterrorista en contraposición a los derechos humanos* (San José, Costa Rica: Universidad de la Salle, Escuela de derecho, 2003). 121 p.
"Trabajo final de tesis para optar por el grado de Licenciado en derecho". "3 de Noviembre del 2003". Includes bibliographical references.

Goldstone, Richard J. and Janine Simpson. Evaluating the role of the International Criminal Court as a legal response to terrorism. *Harvard human rights journal,* vol. 16, spring 2003: 13–26.
Includes bibliographical references.

Halberstam, Malvina. The evolution of the United Nations position on terrorism: from exempting national liberation movements to criminalizing terrorism wherever and by whomever committed. *Columbia journal of transnational law* 41(3) 2003: 573–584.
Includes bibliographical references.

Jesus, Jose Luis. Protection of foreign ships against piracy and terrorism at sea: legal aspects. *International journal of marine and coastal law* 18(3) September 2003: 363–400.
Includes bibliographical references.

Joyner, Christopher C. International extradition and global terrorism: bringing international criminals to justice. *Loyola of Los Angeles international and comparative law review* 25(3) summer 2003: 493–541.
Includes bibliographical references.

Mensah, Thomas A. Suppression of terrorism at sea: developments in the wake of the events of 11 September 2001. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 627–647.
Includes bibliographical references.

Miller, Elin. The use of targeted sanctions in the fight against international terrorism—What about human rights? *Proceedings (American Society of International Law, Meeting)*, 97th (2003): 46–51.
Includes bibliographical references.

Rosand, Eric. Security Council Resolution 1373, the Counter-Terrorism Committee, and the fight against terrorism. *American journal of international law* 97(2) April 2003: 333–341.
Includes bibliographical references.

Saura, Jaume. Some remarks on the use of force against terrorism in contemporary international law and the role of the Security Council. *Loyola of Los Angeles international and comparative law review* 26(1) fall 2003:7–30.
Includes bibliographical references.

Stahn, Carsten. Terrorist acts as "armed attack": the right to self-defense, Article 51 (1/2) of the UN Charter, and international terrorism. *Fletcher forum of world affairs* 27(2) summer/fall 2003: 35–54.
Includes bibliographical references.

Stromseth, Jane E. The Security Council's counter-terrorism role: continuity and innovation. *Proceedings (American Society of International Law, Meeting)*, 97th (2003): 41–45.
Includes bibliographical references.

Suarez, A. Suzette V. Post September 11 security challenges to the legal regime of the maritime carriage of nuclear and radioactive materials. *International journal of marine and coastal law* 18(3) September 2003: 423–440.
Includes bibliographical references.

Subedi, Surya P. The UN response to international terrorism in the aftermath of the terrorist attack in America and the problem of the definition of terrorism in international law. *International law Forum du droit international* 4(3) August 2002: 159–169.
Includes bibliographical references.

Türk, Danilo. Law and policy: Security Council's ability to innovate. *Proceedings (American Society of International Law, Meeting)*, 97th (2003): 51–54.
Includes bibliographical references.

Ward, Curtis A. Building capacity to combat international terrorism: the role of the United Nations Security Council. *Journal of conflict and security law* 8(2) October 2003: p. 289–305.
Includes bibliographical references.

Wolfrum, Rüdiger. Fighting terrorism at sea: options and limitations under international law. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 649–668.
Includes bibliographical references.

International trade law

Bazinas, Spiros V. Harmonisation of international and regional trade law: the UNCITRAL experience. *Uniform law review* vol. VIII (2003–1/2): 53–62.
Includes bibliographical references.

Berger, Barbara. Unspektakulärer Dienst am Welthandel: Das Arbeitsprogramm der UNCITRAL. *Vereinte Nationen* 51(1) Februar 2003: 6–10.
Includes bibliographical references.

Berlingieri, Francesco. A new convention on the carriage of goods by sea: port-to-port or door-to-door? *Uniform Law Review* vol. VIII (2003–1/2): 265–280.
Includes bibliographical references.

Dobbins, Robert N. UNCITRAL model law on international commercial conciliation: from a topic of possible discussion to approval by the General Assembly. *Pepperdine dispute resolution law journal* 3(3) 2003: 529–538.
Includes bibliographical references.

Felemegas, John. An interpretation of Article 74 CISG by the U.S. Circuit Court of Appeals. *Pace international law review* XV(I) spring 2003: 91–147.
Includes bibliographical references.

Griffin, Bernardette. *The law of international trade.* 3rd ed. (London: Butterworths, 2003). xxv, 347 p.
Includes bibliographical references and index.

Lejnieks, Maris. Diverging solutions in the harmonisation of carriage of goods by sea: which approach to choose? *Uniform Law Review* vol. VIII (2003–1/2): 303–307.
Includes bibliographical references.

Sekolec, Jernej. International dispute resolution: areas where further research may be useful. *Journal of international arbitration* 20(1) February 2003: 35–66.
Includes bibliographical references.

Todd, Paul. Cases and materials on international trade law. 1st ed. (London: Sweet and Maxwell, 2003). lxvi, 1054 p.
Includes bibliographical references and index.

Vanto, Jarno. Attorneys' fees as damages in international commercial litigation. *Pace international law review* XV(I) spring 2003: 203–222.
Includes bibliographical references.

Walt, Steven. Implementing CISG's scope provisions: validity and three party cases. *Uniform commercial code law journal* 35(3) winter 2002: 43–62.
Includes bibliographical references.

International waterways

Benvenisti, Eyal. Water conflicts during the occupation of Iraq. *American journal of international law* 97(4) October 2003: 860–872.
Includes bibliographical references.

Woodhouse, Melvin. Is public participation a rule of the law of international watercourses? *Natural resources journal* 43(1) winter 2003: 137–184.

Intervention

Arcari, Mauricio. L'intervention armée contre l'Iraq et la question de l'autorisation du Conseil de sécurité. *Anuario de derecho internacional*, vol. XIX (2003): 5–39.
Includes bibliographical references.

Bermejo García, Romualdo. El debate sobre la legalidad internacional tras la crisis de Iraq y las Naciones Unidas. *Anuario de derecho internacional*, vol. XIX (2003): 41–69.
Includes bibliographical references.

Finnemore, Martha. *The purpose of intervention: changing beliefs about the use of force* (Ithica, New York: Cornell University Press, 2003) viii, 173 p.
Includes bibliographical references and index.

Humanitarian intervention: ethical, legal, and political dilemmas. Edited by J.L. Holzgrefe and Robert O. Keohane (New York: Cambridge University Press, 2003). xii, 350 p.
Bibliography: p. 322–335. Includes bibliographical references and index.

Humanitarian intervention: the evolving Asian debate. Edited by Watanabe Koji (Tokyo; New York: Japan Center for International Exchange, 2003). 143 p.
Includes bibliographical references and index.

Marauhn, Thilo. Konfliktfolgenbewältigung statt Legalisierung Die Vereinten Nationen nach dem Irak-Krieg. *Vereinte Nationen* 51(4) August 2003: 113–120.
Includes bibliographical references.

Orford, Anne. *Reading humanitarian intervention: human rights and the use of force in international law.* (New York: Cambridge University Press, 2003) ix, 243 p.
Bibliography: p. 220–235. Includes bibliographical references and index.

Shrivastava, B. K. and Manmohan Agarwal. Politics of intervention and the Bosnia-Herzegovina conflict. *International studies* 40(1) 2003: 69–84.

Toufayan, Mark. Deployment of troops to prevent impending genocide: a contemporary assessment of the UN Security Council's powers. *The Canadian yearbook of international law*, vol. XL (2002):195–249.
Summaries in French and English. Includes bibliographical references.

Williams, Ian. Nur das letzte Mittel: Der Bericht der Axworthy-Kommission zur humanitären Intervention. *Vereinte Nationen*, 50(1) Februar 2002: 10–16.

Zacklin, R. Beyond Kosovo: the United Nations and humanitarian intervention. In: *Man's inhumanity to man: essays on international law in honour of Antonio Cassese*. Edited by Lal Chand Vohrah . . . [et al.] (The Hague, New York: Kluwer Law International, 2003). p. 935–951.
Includes bibliographical references.

Jurisdiction

Amerasinghe, Chittharanjan Felix. *Jurisdiction of international tribunals* (The Hague; New York; Kluwer Law International, 2003). lxi, 881 p.
Includes bibliographical references and index.

Bykhovsky, Gene. An argument against assertion of universal jurisdiction by individual states. *Wisconsin international law journal* 21(1) winter 2003: 161–184.
Includes bibliographical references.

Reydams, Luc. *Universal jurisdiction: international and municipal legal perspectives* (Oxford; New York: Oxford University Press, 2003). xxvii, 258 p.
Bibliography: p. 233–246. Includes bibliographical references and index.

Sriram, Chandra Lekha. Universal jurisdiction: problems and prospects of externalizing justice. *Finnish yearbook of international law*, vol. XII (2001): 47–70.
Includes bibliographical references.

Law of the sea

Anderson, David. The effective administration of international justice—Early practice of the International Tribunal for the Law of the Sea. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 529–542.

Includes bibliographical references.

Bloch, Heiko. Standardisierung im internationalen Seerecht: Moderne Regelsetzungsverfahren der IMO für die Schiffssicherheit. *Vereinte Nationen* 51(1) Februar 2003: 11–14.

Includes bibliographical references.

Churchill, Robin and Vaughan Lowe. The International Tribunal for the Law of the Sea: survey for 2002. *International journal of marine and coastal law* 18(4) December 2003: 447–456.

Includes bibliographical references.

Colson, David. A. The delimitation of the outer continental shelf between neighboring states. *American journal of international law* 97(1) January 2003: 91–107.

Includes bibliographical references.

Dromgoole, Sarah. 2001 UNESCO Convention on the protection of the underwater cultural heritage. *International journal of marine and coastal law* 18(1) March 2003: 59–108.

Includes text of the Convention and bibliographical references.

Jesus, José Luís. Rocks, new-born islands, sea level rise and maritime space. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 579–603.

Includes bibliographical references.

Kwiatkowska, Barbara. The Ireland v United Kingdom (Mox Plant) Case: applying the doctrine of treaty parallelism. *International journal of marine and coastal law* 18(1) March 2003: 1–58.

Includes bibliographical references.

_____. The law of the sea related cases in the International Court of Justice during the presidency of Judge Stephen M. Schwebel (1997–2000) and beyond. *The Global community*: y*earbook of international law and jurisprudence*, vol. I (2002): 27–75.

Includes bibliographical references.

Laly-Chevalier, C. Activité du Tribunal international du droit de la mer (2001–2002). *Annuaire français de droit international*, vol. XLVIII (2002): 362–380.

Includes bibliographical references.

McDorman, Ted L. An overview of international fisheries disputes and the International Tribunal for the Law of the Sea. *The Canadian yearbook of international law*, vol. XL (2002):119–149.

Summaries in French and English. Includes bibliographical references.

McLaughlin, Rob. East Timor, transitional administration and the status of the territorial sea. *Melbourne journal of international law* 4(1) July 2003: 323–340.

Includes bibliographical references.

Molenaar, Erik Jaap. Participation, allocation and unregulated fishing: the practice of regional fisheries management organizations. *International journal of marine and coastal law* 18(4) December 2003: 457–480.

Includes bibliographical references.

Schneider-Addae-Mensah, David. Privileges and immunities under the Law of the Sea Convention: legal basis, relevance in practice, comparison to the United Nations. *German yearbook of international law*, vol. 45 (2002): 395–416.

Includes bibliographical references.

Scovazzi, T. La Convention sur la protection du patrimoine culturel sub-aquatique. *Annuaire français de droit international*, vol. XLVIII (2002): 579–591.

Includes bibliographical references.

Walker, George K. and John E. Noyes. Definitions for the 1982 Law of the Sea Convention—Part II. *California Western international law journal* 33(2) spring 2003: 191–324.

Includes bibliographical references.

Zekos, Georgios. Competition or conflict in the dispute settlement mechanism of the Law of the Sea Convention. *Revue hellénique de droit international* 56(1) 2003: 153–165.

Includes bibliographical references.

Law of treaties

Fitzmaurice, Malgosia. The identification and character of treaties and treaty obligations between states in international law. *The British year book of international law*, vol. 73 (2002): 141–185.

Includes bibliographical references.

Goldsmith, Jack L. and Eric A. Posner. International Agreements: a rational choice approach. *Virginia journal of international law* 44(1) fall 2003:113–143.

Includes bibliographicalreferences.

Linderfalk, Ulf. On the meaning of the 'Object and purpose' criterion, in the context of the Vienna Convention on the law of treaties, Article 19. *Nordic journal of international law* 72(4) 2003: 429–448.

Includes bibliographical references.

Parisi, Francesco and Catherine Ševčenko. Treaty reservations and the economics of Article 21(1) of the Vienna Convention. *Berkeley journal of international law* 21(1) 2003: 1–26.

Includes bibliographical references.

Wold, Chris. Implementation of reservations law in international environmental treaties: the cases of Cuba and Iceland. *Colorado journal of international environmental law and policy* 14(1) winter 2003:53–118.

Includes bibliographical references.

Law of war

Askin, Kelly D. Prosecuting wartime rape and other gender-related crimes under international law: extraordinary advances, enduring obstacles. *Berkeley journal of international law* 21(2) 2003: 288–349.
Includes bibliographical references.

Chetail, Vincent. The contribution of the International Court of Justice to international humanitarian law. *International review of the Red Cross/Revue internationale de la Croix-Rouge* 85(850) June 2003: 235–269.
Summary in French. Includes bibliographical references.

Fleck, Dieter. Humanitarian protection against non-state actors. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 69–94.
Includes bibliographical references.

Gillard, Emanuela-Chiara. Reparation for violations of international humanitarian law. *International review of the Red Cross/Revue internationale de la Croix-Rouge* 85(851) September 2003: 529–553.
Summary in French. Includes bibliographical references.

Heintschel v. Heinegg, Wolff. Das maritime *ius in bello* im 21.Jahrhundert. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 543–578.
Includes bibliographical references.

Jinks, Derek. September 11 and the laws of war. *The Yale journal of international law* 28(1) winter 2003: 1–49.
Includes bibliographical references.

Kalshoven, F. Reprisals and the protection of civilians: two recent decisions of the Yugoslavia Tribunal. In: *Man's inhumanity to man: essays on international law in honour of Antonio Cassese*. Edited by Lal Chand Vohrah . . . [et al.] (The Hague, New York: Kluwer Law International, 2003). p. 481–509.
Includes bibliographical references.

Méndez Silva, Ricardo and Liliana López Ortiz. *Derecho de los conflictos armados: compilación de instrumentos internacionales, regionales y otros textos relacionados* (México: Universidad Nacional Autónoma de México, 2003). 2 v.

Mofidi, Manooher and Amy E. Eckert. "Unlawful combatants" or "prisoners of war": the law and politics of labels. *Cornell international law journal* 36(1) spring 2003: 59–92.
Includes bibliographical references.

Naarden, Gregory L. Nonprosecutorial sanctions for grave violations of international humanitarian law: wartime conduct on Bosnian police officials. *American journal of international law* 97(2) April 2003: 342–352.
Includes bibliographical references.

Rabkin, Jeremy. The politics of the Geneva Conventions: disturbing background to the ICC debate. *Virginia journal of international law* 44(1) fall 2003:169–205.
Includes bibliographical references.

Russell-Brown, Sherrie L. Rape as an act of genocide. *Berkeley journal of international law* 21(2) 2003: 350–374.
Includes bibliographical references.

Scheffer, David J. Beyond occupation law. *American journal of international law* 97(4) October 2003: 842–860.
Includes bibliographical references.

Stein, Torsten. Zur international-strafrechtlichen Verantwortlichkeit des Befehlshabers einer multi-nationalen Streitmacht. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 449–462.
Includes bibliographical references.

Stewart, James G. Towards a single definition of armed conflict in international humanitarian law: a critique of internationalized armed conflict. *International review of the Red Cross/ Revue internationale de la Croix-Rouge* 85(850) June 2003: 313–350.
Summary in French. Includes bibliographical references.

Yoo, John C. and James C. Ho. The status of terrorists. *Virginia journal of international law* 44(1) Fall 2003:207–228.
Includes bibliographical references.

Zegveld, Liesbeth. Remedies for victims of violations of international humanitarian law. *International review of the Red Cross/Revue internationale de la Croix-Rouge* 85(851) September 2003: 497–527.
Summary in French. Includes bibliographical references.

Maintenance of peace

Abline, Gaël. De l'indépendance du Timor-Oriental. *Revue générale de droit international public* 107(2) 2003: p. 349–375.
Summaries in French, English and Spanish. Includes bibliographical references.

Aksu, Esref. *The United Nations, intra-State peacekeeping and normative change* (Manchester, England: Manchester University Press; New York: distributed exclusively in the USA by Palgrave, 2003). xii, 241 p.
Thesis(doctoral), La Trobe University, Melbourne, Australia.
Bibliography: p. 220–230. Includes bibliographical references and index.

Berdal, Mats. The United Nations in Bosnia, 1992–1995: Faithful scapegoat to the world? In: *Leveraging for success in United Nations peace operations*. Edited by Jean Krasno, Bradd C. Hayes, Donald C.F. Daniel (Westport, Connecticut: Praeger, 2003), p. 3–23.
Includes bibliographical references.

Bhuta, Nehal. Great expectations-East Timor and the vicissitudes of externalized justice. *Finnish yearbook of international law*, vol. XII (2001): 165–189.
Includes bibliographical references.

Boothby, Derek. The application of leverage in Eastern Slavonia. In: *Leveraging for success in United Nations peace operations*. Edited by Jean Krasno, Bradd C. Hayes, Donald C.F. Daniel (Westport, Connecticut: Praeger, 2003), p. 117–140.
Includes bibliographical references.

Chesterman, Simon. Justice under international administration: Kosovo, East Timor and Afghanistan. *Finnish yearbook of international law*, vol. XII (2001): 143–164.
Includes bibliographical references.

Coleman, Christopher and Andrew Grene. Challenges in the exercise of leverage in peacekeeping. In: *Leveraging for success in United Nations peace operations*. Edited by Jean Krasno, Bradd C. Hayes, Donald C.F. Daniel (Westport, Connecticut: Praeger, 2003), p. 223–231.
Includes bibliographical references.

Duarte Peña, Yvonne. *Las Naciones Unidas y la Unión Europea: hacia une mission común en la gestión de crisis y conflictos* (Bogota : Universidad Colegio Mayor de Nuestra Señora des Rosario, Facultad de Relaciones Internacionales, 2003). 202 p.
Bibliography: p. 63–79. Includes bibliographical references.

Executive policing: enforcing the law in peace operations. Edited by Renata Dwan (New York: Oxford University Press, 2002). viii, 144 p.
Includes bibliographical references and index.

Fairlie, Megan A. Affirming Brahimi: East Timor makes the case for a model criminal code. *American University international law review* 18(5) 2003: 1059–1102.
Includes bibliographical references.

Galbraith, Peter. The United Nations Transitional Authority in East Timor (UNTAET). *Proceedings (American Society of International Law, Meeting)*, 97th (2003): 210–212.

Iglesia Velasco, Alfonso Jesús. *Las operaciones de mantenimiento de la paz: concepto, evolución histórica y características, 1948–2002* (Madrid: Ediciones de la Universidad Autónoma de Madrid, 2003). 357 p.
Bibliography: p. 321–357. Includes bibliographical references.

_____. *Los problemas del mantenimiento internacional de la paz* (Madrid: Ministerio de Defensa, 2003). 421 p.
Bibliography: p. 367–416. Includes bibliographical references.

Ishizuka, Katsumi. Peacekeeping in East Timor: the experience of UNMISET. *International peacekeeping* 10(3) autumn 2003: 44–59.
Includes bibliographical references.

Klein, Jacques-Paul. The United Nations Transitional Administration in Eastern Slavonia (UNTAES). *Proceedings (American Society of International Law, Meeting)*, 97th (2003): 205–209.

Krasno, Jean, Donald C. F. Daniel, and Bradd C. Hayes. Leveraging for success. In: *Leveraging for success in United Nations peace operations*. Edited by Jean Krasno, Bradd C. Hayes, Donald C.F. Daniel (Westport, Connecticut: Praeger, 2003), p. 235–247.

Leveraging for success in United Nations peace operations. Edited by Jean Krasno, Bradd C. Hayes, Donald C.F. Daniel (Westport, Connecticut: Praeger, 2003), xiii, 264 p.
Bibliography: p. 249–250. Includes bibliographical references and index.

Orakhelashvili, Alexander. The legal basis of the United Nations peace-keeping operations. *Virginia journal of international law* 43(2) winter 2003: 485–524.
Includes bibliographical references.

Quaterman, Mark. UN leverage in East Timor: inducing Indonesian compliance through international law. In: *Leveraging for success in United Nations peace operations*. Edited by Jean Krasno, Bradd C. Hayes, Donald C.F. Daniel (Westport, Connecticut: Praeger, 2003), p. 141–168.
Includes bibliographical references.

Salomons, Dirk. Probing the successful application of leverage in support of Mozambique's quest for peace. In: *Leveraging for success in United Nations peace operations*. Edited by Jean Krasno, Bradd C. Hayes, Donald C.F. Daniel (Westport, Connecticut: Praeger, 2003), p. 81–115.
Includes bibliographical references.

Šimonović, Ivan. Post-conflict peace building: the new trends. *International journal of legal information* 31(2) summer 2003: 251–263.
Includes bibliographical references.

Sutterlin, James S. The United Nations and the maintenance of international security: a challenge to be met. 2nd ed. (Westport, Connecticut: Praeger, 2003). xi, 181 p.
Includes bibliographical references and index.

Vuong, Quynh-Nhu. U.S. peacekeeping and nation-building: the evolution of self-interested multilateralism. *Berkeley journal of international law* 21(3) 2003: 804–824.
Includes bibliographical references.

Wilde, Ralph. The United Nations as government: the tensions of an ambivalent role. *Proceedings (American Society of International Law, Meeting)*, 97th (2003): 212–215.
Includes bibliographical references.

Wilson, Gary. UN authorized enforcement: regional organizations versus 'coalitions of the willing'. *International peacekeeping* 10(2) summer 2003: 89–106.
Includes bibliographical references.

Membership and representation

Ingravallo, Ivan. L'ammissione della Svizzera all'ONU e la questione della neutralità permanente. *La comunità internazionale* LVIII (2) secondo trimestre 2003: 265–286.
Includes bibliographical references.

Namibia

Krasno, Jean. Leveraging Namibian independence. In: *Leveraging for success in United Nations peace operations*. Edited by Jean Krasno, Bradd C. Hayes, Donald C.F. Daniel (Westport, Connecticut: Praeger, 2003), p. 25–54.
Includes bibliographical references.

Moller, Leon Edward. The outstanding Namibian maritime boundaries with Angola and South Africa. *International journal of marine and coastal law* 18(2) June 2003: 241–260.
Includes bibliographical references.

Natural resources

Drnas de Clément, Zlata. Los resursos naturales compartidos entre los estados y el derecho internacional. *Anuario Argentino de derecho international* vol. XII (2003): 79–105.

Frakes, Jennifer. The Common heritage of mankind principle and the deep seabed, outer space, and Antartica: will developed and developing nations reach a compromise? *Wisconsin international law journal* 21(2) spring 2003: 409–434.
Includes bibliographical references.

Gardner, Royal C. Perspectives on wetlands and biodiversity: international law, Iraqi marshlands, and incentives for restoration. *Colorado journal of international environmental law and policy* 2003 Yearbook: 1–18.
Includes bibliographical references.

Nardone, Rona. Like oil and water: the WTO and the world's water resources. *Connecticut journal of international law* 19(1) fall 2003: 183–207.
Includes bibliographical references.

Savadogo, Louis. La Convention sur la protection du patrimoine culturel subaquatique. *Revue générale de droit international public* 107(1) 2003: p. 31–71.
Summaries in French, English and Spanish. Includes bibliographical references.

Young, Saskia. Contemporary issues of the Convention on international trade in endangered species of wild fauna and flora (CITES) and the debate over sustainable use. *Colorado journal of international environmental law and policy* 14(1) winter 2003: 167–189.
Includes bibliographical references.

Zimmerman, Mara E. The black market for wildlife: combating transnational organized crime in the illegal wildlife trade. *Vanderbilt journal of transnational law* 36(5) November 2003: 1657–1689.
Includes bibliographical references.

Non-governmental organizations

Gaer, Felice D. Human rights NGOs in UN peace missions. *International peacekeeping* 10(1) spring 2003: 73–89.
Includes bibliographical references.

Hartwick, Jeffrey Andrew. Non-governmental organizations at United Nations-sponsored world conferences: a framework for participation reform. *Loyola of Los Angeles international and comparative law review* 26(2) winter 2003:217–280.
Includes bibliographical references.

Jeffords, Maura Blue. Turning the protester into a partner for development: the need for effective consultation between the WTO and NGOs. *Brooklyn journal of international law* 28(3) 2003: 937–988.
Includes bibliographical references.

Pleuger, Gunter and Thomas Fitschen. "Giving greater opportunities to civil society to contribute to the goals and programmes of the United Nations"—Die Vereinten Nationen und die Rolle der Nichtregierungs-organisationen. In: *Verhandeln für den Frieden* =

Negotiating for peace: Liber Amicorum Tono Eitel (Berlin; New York: Springer, 2003). p. 193–218.
Includes bibliographical references.

Steiner, Melanie. NGO reflections on World Summit: Rio + 10 or Rio—10? *Review of European community and international environmental law* 12(1) 2003: 33–38.

Peaceful settlement of disputes

Palmer, Geoffey. The difficulties of third-party adjudicaton for political people. *Proceedings (American Society of International Law, Meeting)*, 97th (2003): 289–293.
Includes bibliographical references.

Peters, Anne. International dispute settlement: a network of cooperational duties. *European journal of international law* 14(1) 2003: 1–34.
Includes bibliographical references.

Rakhmanov, A.P. Mezhdunarodno-pravovye aspekty vseob"emliushchei bezopasnosti. *Gosudarstvo i pravo* No. 2 fevr. 2003: 67–74.
Includes bibliographical references.

Political and security questions

Arria, Diego. Bringing leverage to the peace process in El Salvador and Central America. In: *Leveraging for success in United Nations peace operations*. Edited by Jean Krasno, Bradd C. Hayes, Donald C.F. Daniel (Westport, Connecticut: Praeger, 2003), p. 55–80.
Includes bibliographical references.

Falk, Richard A. What future for the UN Charter system of war prevention? *American journal of international law* 97(3) July 2003: 590–598.
Includes bibliographical references.

Franck, Thomas M. What happens now? The United Nations after Iraq. *American journal of international law* 97(3) July 2003: 607–620.
Includes bibliographical references.

Kieh, George Klay. Liberia: legacies and leaders. In: *From promise to practice: strengthening UN capacities for the prevention of violent conflict*. Edited by Chandra Lekha Sriram and Karin Wermester (Boulder, Colorado: Lynne Rienner Publishers, 2003), p. 307–326.
Includes bibliographical references.

Maundi, Mohammed Omar, Preventing conflict escalation in Burundi. In: *From promise to practice: strengthening UN capacities for the prevention of violent conflict*. Edited by Chandra Lekha Sriram and Karin Wermester (Boulder, Colorado: Lynne Rienner Publishers, 2003), p. 327–348.
Includes bibliographical references.

Samuels, Kirsti. *Jus Ad Bellum* and civil conflicts: a case study of the international community's approach to violence in the conflict in Sierra Leone. *Journal of conflict and security law* 8(2) October 2003: p. 315–338.
Includes bibliographical references.

Vitzthum, Wolfgang Graf. Staatsaufbau in Südosteuropa, Bosnien-Herzegowina als Paradigma auβengestützter Staatsbildung. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 823–846.
Includes bibliographical references.

Werthes, Sascha. *Probleme und Perspektiven von Sanktionen als politisches Instrument des Vereinten Nationen* (Münster, Germany: LIT Verl., 2003). 194 p.
Bibliography: p. 159–177. Some material in English.

Progressive development and codification of international law (in general)

Hafner, Gerhard. Certain issues of the work of the Sixth Committee at the Fifty-sixth General Assembly. *American journal of international law* 97(1) January 2003: 147–162.
Includes bibliographical references.

Herdocia Sacasa, Mauricio. *La obra de la Comisión de Derecho Internacional de las Naciones Unidas en el quinquenio 1997–2001: el aporte global de América Latina* (Managua : Imprimatur Artes Gráficas, 2003). vii, 231 p.
Includes bibliographical references.

Santulli, C. Travaux de la Commission du droit international (cinquante-quatrième session). *Annuaire français de droit international*, vol. XLVIII (2002): 553–565.
Includes bibliographical references.

Simma, Bruno. The work of the International Law Commission at its fifty-fourth session (2002). *Nordic journal of international law* 72(1) 2003: 91–149.
Includes bibliographical references.

Refugees

Bhatia, Michael. Repatriation under a peace process: mandated return in the Western Sahara. *International journal of refugee law* 15(4) 2003: 786–822.
Includes bibliographical references.

Gorlick, Brian. Common burdens and standards: legal elements in assessing claims to refugee status. *International journal of refugee law* 15(3) 2003: 357–376.
Includes bibliographical references.

Luopajärvi, Katja. Is there an obligation on states to accept international humanitarian assistance to internally displaced persons under international law? *International journal of refugee law* 15(4) 2003: 678–714.
Includes bibliographical references.

Refugee protection in international law: UNHCR's Global Consultations on International Protection. Edited by Erika Feller, Volker Türk and Frances Nicholson (Cambridge, United Kingdom; New York: Cambridge University Press, 2003). lix, 717 p.
Includes bibliographical references and index.

Right of asylum

Bookstein, Amelia. *Beyond the headlines: an agenda for action to protect civilians in neglected conflicts* (Oxford, England: Oxfam GB on behalf of Oxfam International, 2003). 54 p.
Bibliography: p. 54. Includes bibliographical references.

Forced migration and the contemporary world: challenges to the international system. Edited by Andrzej Bolesta (Bialystok, Poland : Libra, 2003). 279 p.
Includes bibliographical references.

Rule of law

Bacchus, James. Groping toward Grotius: the WTO and the international rule of law. *Harvard international law journal* 44(2) summer 2003: 533–550.
Includes bibliographical references.

Kalamkarian, R. A. Kontseptsiia gospodstva prava v sovremennom mezhdunarodnom prave. *Gosudarstvo i pravo* No. 6 iiun' 2003: 50–57.
Includes bibliographical references.

Rule of power or rule of law?: an assessment of U.S. policies and actions regarding security-related treaties. Edited by Nicole Deller, Arjun Makhijani, and John Burroughs; contributing authors, John Burroughs . . . [et al.] (New York: The Apex Press, 2003). xxxviii, 227 p.
Bibliography: p. 189–218. Includes bibliographical references and index.

Self-defence

Baros, Miroslav. The Macedonian conflict and international law: self-determination or self-defence? *International peacekeeping* 10(3) autumn 2003: 60–78.
Includes bibliographical references.

Cohan, John Alan. The Bush doctrine and the emerging norm of anticipatory self-defense in customary international law. *Pace international law review* XV(II) fall 2003: 283–357.
Includes bibliographical references.

Parker, Tom. The proportionality principle in the war on terror. *Hague yearbook of international law/Annuaire de La Haye de droit international*, vol. 15 (2002):3–15.
Includes bibliographical references.

Ramírez, Jorge Alberto. Iraq war: anticipatory self-defense or unlawful unilateralism? *California Western international law journal* 34(1) fall 2003: 1–27.
Includes bibliographical references.

Sapiro, Miriam. Iraq: the shifting sands of preemptive self-defense. *American journal of international law* 97(3) July 2003: 599–607.
Includes bibliographical references.

Schmitt, Michael N. Preemptive strategies in international law. *Michigan journal of international law* 24(2) winter 2003: 513–548.
Includes bibliographical references.

Sharma, Surya P. The American doctrine of "Pre-emptive self-defence". *Indian journal of international law* 43(2) April-June 2003: 215–230.
Includes bibliographical references.

Stahn, Carsten. Terrorist acts as "armed attack": the right to self-defense, Article 51 (1/2) of the UN Charter, and international terrorism. *Fletcher forum of world affairs* 27(2) summer/fall 2003: 35–54.
Includes bibliographical references.

Van den hole, Leo. Anticipatory self-defence under international law. *American University international law review* 19(1) 2003: 69–106.
Includes bibliographical references.

Wedgewood, Ruth. The fall of Saddam Hussein: Security Council mandates and preemptive self-defense. *American journal of international law* 97(3) July 2003: 576–585.
Includes bibliographical references.

Self-determination

Baros, Miroslav. The Macedonian conflict and international law: self-determination or self-defence? *International peacekeeping* 10(3) autumn 2003: 60–78.
Includes bibliographical references.

Das, J. K. The right to self-determination of indigenous peoples: developing dynamics of human rights. *Indian journal of international law* 43(4) October-December 2003: 705–728.
Includes bibliographical references.

Higgins, Judge Rosalyn. Self-determination and secession. In: *Secession and international law: conflict avoidance: regional appraisals*. Edited by Julie Dahlitz (New York; Geneva: UN; The Hague: T.M.C. Asser Press, 2003). p. 21–38.
Includes bibliographical references.

McWhinney, E. Self-determination of peoples and plural-ethnic states (Secession and state succession and the alternative, federal option). *Recueil des cours* (Hague Academy of International Law), vol. 294 (2002): 167–264.
Includes bibliographical references.

Raday, Frances. Self-determination and minority rights. *Fordham international law journal* 26(3) March 2003: 453–499.
Includes bibliographical references.

Samuel, Tamrat. East Timor: The path to self-determination. In: *From promise to practice: strengthening UN capacities for the prevention of violent conflict*. Edited by Chandra Lekha Sriram and Karin Wermester (Boulder, Colorado: Lynne Rienner Publishers, 2003), p. 197–230
Includes bibliographical references.

State responsibility

Les articles de la C.D.I. sur la responsabilité de l'état pour fait internationalement illicite: introduction, texte et commentaires. Compiled by James Crawford. (Paris: Éditions A. Pedone, 2003). xvi, 461 p.

Includes bibliographical references and index.

Barboza, Julio. Contramedidas en la reciente Codificación de la Responsabilidad de los Estados—Fronteras con la Legitima Defensa y el Estado de Necesidad. *Anuario Argentino de Derecho International,* vol. XII (2003): 15–47.

Czapliński, Wladyslaw. UN codification of law of state responsibility. *Archiv des Völkerrechts* 41(1) März 2003: 62–82.

Includes bibliographical references.

Dupuy, Pierre-Marie. Quarante ans de codification du droit de la responsabilité internationale des États. Un bilan. *Revue générale de droit international public* 107(2) 2003: p. 305–348.

Summaries in French, English and Spanish. Includes bibliographical references.

Ferdinandusse, Ward. Out of the black-box? The international obligation of state organs. *Brooklyn journal of international law* 29(1) 2003: 45-127.

Includes bibliographical references.

Lukashuk, Igor' Ivanovich. Konseptsiia prava mezhdunarodnoi otvetstvennosti. *Gosudarstvo i pravo* No. 4 apr. 2003: 79–87.

Includes bibliographical references.

Moreau Defarges, Philippe. L'État responsable. *Défense nationale* 19(5) mai 2003: 147–155.

Includes bibliographical references.

Nollkaemper, André. Concurrence between individual responsibility and state responsibility in international law. *International and comparative law quarterly* 52(3) July 2003: 615–640.

Includes bibliographical references.

Pellet, A. Le nouveau projet de la C.D.I. sur la responsabilité de l'État pour fait internationalement illicite: requiem pour le crime? In: *Man's inhumanity to man: essays on international law in honour of Antonio Cassese*. Edited by Lal Chand Vohrah . . . [et al.] (The Hague, New York: Kluwer Law International, 2003). p. 655–683.

Includes bibliographical references.

_____. Les articles de la CDI sur la responsabilité de l'État pour fait internationalement illicite. *Annuaire français de droit international*, vol. XLVIII (2002): 1–23.

Includes bibliographical references.

Scovazzi, Tullio. State responsibility for environmental harm. *Yearbook of international environmental law,* vol. 12 (2001): 43–67.

Includes bibliographical references.

Simma, Bruno. Staatenverantwortlichkeit und Menschenrechte im ILC-Entwurf 2001. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 423–448.
Includes bibliographical references.

State sovereignty

Karkalis, Ioannis and Petros Sioussouras. Human rights protection and the relativity of the notion of state sovereignty. *Revue hellénique de droit international* 56(2) 2003: 455–473.
Includes bibliographical references.

State succession

Rasulov, Akbar. Revisiting state succession to humanitarian treaties: is there a case for automaticity? *European journal of international law* 14(1) 2003: 141–170.
Includes bibliographical references.

Technical cooperation

Tavis, Lee A. Novartis and the UN global compact initiative. *Vanderbilt journal of transnational law* 36(2) March 2003: 735–763.
Includes bibliographical references.

Trade and development

Broude, Tomer. An antidumping "To be or not to be" in five acts-A new agenda for research and reform. *Journal of world trade* 37(2) April 2003:305–328.
Includes bibliographical references.

Busch, Marc L. and Eric Reinhardt. Developing countries and GATT/WTO dispute settlement. *Journal of world trade* 37(4) August 2003:719–735.
Includes bibliographical references.

Cone, S.M. Legal services in the Doha Round. *Journal of world trade* 37(1) February 2003:29–47.
Includes bibliographical references.

Defilla, Steivan. Energy trade under the ECT and accession to the WTO. *Journal of energy and natural resources law* 21(4) November 2003: 428–446.
Includes bibliographical references and index.

DiMatteo, Larry A., Kiren Dosanjh, Paul L. Frantz, Peter Bowal and Clyde Stoltenberg. The Doha Declaration and beyond: giving a voice to non-trade concerns within the WTO trade regime. *Vanderbilt journal of transnational law* 36(1) January 2003: 95–160.
Includes bibliographical references.

Hart, Michael and Bill Dymond. Special and differential treatment and the Doha "Development" Round. *Journal of world trade* 37(2) April 2003:395–415.
Includes bibliographical references.

Mosoti, Victor. The WTO Agreement on trade related investment measures and the flow of foreign direct investment in Africa: meeting the development challenge. *Pace international law review* XV(I) spring 2003: 181–201.
Includes bibliographical references.

Olivares, Gustavo. The essence of economic globalization: the legal dimension. *Revue belge de droit international* XXXVI(1) 2003:56–91.
Includes bibliographical references.

Paul, Joel R. Do international trade institutions contribute to economic growth and development? *Virginia journal of international law* 44(1) Fall 2003:285–340.
Includes bibliographical references.

Pauwelyn, Joost. WTO compassion or superiority complex? What to make of the WTO waiver for "conflict diamonds". *Michigan journal of international law* 24(4) summer 2003: 1177–1207.
Includes bibliographical references.

Qureshi, Asif H. Interpreting WTO Agreements for the development objective. *Journal of world trade* 37(5) October 2003:847–882.
Includes bibliographical references.

Stewart, Terence P. and David S. Johanson. A nexus of trade and the environment: the relationship between the Cartagena Protocol on biosafety and the SPS Agreement of the World Trade Organization. *Colorado journal of international environmental law and policy* 14(1) winter 2003: 1–52.
Includes bibliographical references.

Subedi, Surya P. The road from Doha: the issues for the development round of the WTO and the future of international trade. *International and comparative law quarterly* 52(2) April 2003:425–446.
Includes bibliographical references.

"Symposium: The United States, the Doha round and the WTO—where do we go from here?". The international lawyer 37(3) fall 2003: 651–833.
Series of articles. Includes bibliographical references.

Vincent, Philippe. Les résultats de la quatrième conférence ministérielle de l'OMC-vers un cycle du développement? *Revue belge de droit international* XXXVI(1) 2003:111–130.
Includes bibliographical references.

Wai, Robert. Countering, branding, dealing: using economic and social rights in and around the international trade regime. *European journal of international law* 14(1) 2003: 35–84.
Includes bibliographical references.

Trusteeship

Bain, William. *Between anarchy and society: trusteeship and the obligations of power* (Oxford, England; New York: Oxford University Press, 2003). viii, 216 p.
Bibliography: p. 193–205. Includes bibliographical references and index.

Use of force

Alvarez, José E. Hegemonic international law revisited. *American journal of international law* 97(4) October 2003: 873–888.

Includes bibliographical references.

Bandopadhyay, Saptarishi. Kicking up the sand: the legality and consequences of the "Coalition's" invasion of Iraq. *Indian journal of international law* 43(1) January-March 2003: 117–129.

Includes bibliographical references.

Brown, Davis. Enforcing arms control agreements by military force: Iraq and the 800-pound gorilla. *Hastings international and comparative law review* 26(2) winter 2003: 159–225.

Includes bibliographical references.

Corten, Olivier. Opération *Iraqi Freedom*: peut-on admettre l'argument de l'"autorisation implicite" du Conseil de sécurité? *Revue belge de droit international* XXXVI(1) 2003:205–247.

Includes bibliographical references.

Delbrück, Jost. Right v. might—Great power leadership in the organized international community of states and the rule of law. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 23–39.

Includes bibliographical references.

Democratic accountability and the use of force in international law. Edited by Charlotte Ku and Harold K. Jacobson (Cambridge, UK; New York: Cambridge University Press, 2003): xxv, 440 p.

Bibliography: p. 415–429. Includes bibliographical references and index.

Elaraby, Nabil. Some reflections on the role of the Security Council and the prohibition of the use of force in international relations: Article 2(4) revisited in light of recent developments. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 41–67.

Includes bibliographical references.

Foley, Brian J. Avoiding a death dance: adding steps to the international law on the use of force to improve the search for alternatives to force and prevent likely harms. *Brooklyn journal of international law* 29(1) 2003: 129–173.

Includes bibliographical references.

Franck, Thomas. In extremis: are there legal principles applicable to the illegal use of force? In: *Man's inhumanity to man: essays on international law in honour of Antonio Cassese*. Edited by Lal Chand Vohrah . . . [et al.] (The Hague, New York: Kluwer Law International, 2003). p. 309–351.

Includes bibliographical references.

Hillgenberg, Hartmut. Gewaltverbot: Was gilt noch? In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 141–168.
Includes bibliographical references.

Hofmann, Rainer. International law and the use of military force against Iraq. *German yearbook of international law*, vol. 45 (2002): 9–34.
Includes bibliographical references.

Keohane, Robert O. The concept of accountability in world politics and the use of force. *Michigan journal of international law* 24(4) summer 2003: 1121–1141.
Includes bibliographical references.

Ku, Charlotte. When *can* nations go to war? Politics and change in the UN security system. *Michigan journal of international law* 24(4) summer 2003: 1077–1120.
Includes bibliographical references.

McLain, Patrick. Settling the score with Saddam: resolution 1441 and parallel justifications for the use of force against Iraq. *Duke journal of comparative and international law* 13(1) winter 2003: 233–291.
Includes bibliographical references.

McWhinney, Edward. The US/British invasion of Iraq and the United Nations Charter prohibition of the use of force: the paradox of unintended consequences. *Chinese journal of international law* 2(2) 2003: 571–585.
Includes bibliographical references.

Murphy, Ray. United Nations peacekeeping in Lebanon and Somalia, and the use of force. *Journal of conflict and security law* 8(1) April 2003: p. 71–99.
Includes bibliographical references.

Schrijver, Nico. Secession and the ban on the use of force: some reflections. In: *Secession and international law: conflict avoidance: regional appraisals*. Edited by Julie Dahlitz (New York; Geneva: UN; The Hague: T.M.C. Asser Press, 2003). p. 97–108.
Includes bibliographical references.

Stromseth, Jane E. Law and force after Iraq: a transitional moment. *American journal of international law* 97(3) July 2003: 628–642.
Includes bibliographical references.

Weckel, Philippe. L'usage déraisonnable de la force. *Revue générale de droit international public* 107(2) 2003: p. 377–400.
Includes bibliographical references.

C. INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS

General Agreement on Tariffs and Trade

Akande, Dapo and Sope Williams. International adjudication on national security issues: what role for the WTO? *Virginia journal of international law* 43(2) winter 2003: 365–404.
Includes bibliographical references.

Choi, Won-Mog. *'Like products' in international trade law: towards a consistent GATT/WTO jurisprudence* (Oxford, England; New York: Oxford University Press, 2003). 265 p.
Includes bibliographical references and index.

Holmes, Peter. *Emerging trends in WTO dispute settlement: back to the GATT?* (Washington, D.C.: World Bank, 2003). 30 p.
Bibliography: p. 24–25. Includes bibliographical references.

Mansfield, Edward D. and Eric Reinhardt. Multilateral determinants of regionalism: the effects of GATT/WTO on the formation of preferential trading arrangements. *International organization* 57(4) fall 2003: 829–862.
Bibliography: p. 859–862. Includes bibliographical references.

Mueller, Felix. Is the GATT article XIX "unforeseen developments clause" still effective under the Agreement on safeguards? *Journal of world trade* 37(6) December 2003:1119–1151.
Includes bibliographical references.

Regan, Donald H. Further thoughts on the role of regulatory purpose under article III of the GATT.*Journal of world trade* 37(4) August 2003:737–760.
Includes bibliographical references.

International Civil Aviation Organization

Abeyratne, Ruwantissa. Aviation and diplomacy: the ICAO role. *Annals of air and space law/Annales de droit aérien et spatial,* vol. XXVIII (2003): 367–395.
Includes bibliographical references.

Weber, Ludwig and Arie Jakob. Activities of the International Civil Aviation Organization (ICAO) in 2002/2003. *Annals of air and space law/Annales de droit aérien et spatial,* vol. XXVIII (2003): 397–419.
Includes bibliographical references.

International Labour Organization

ILO standards-related activities in the area of occupational safety and health. (Geneva: ILO, 2003). viii, 138 p.
Includes bibliographical references.

Knapp, John C. The boundaries of the ILO: a labor rights argument for institutional cooperation. *Brooklyn journal of international law* 29(1) 2003: 369–407.
Includes bibliographical references.

Rodriguez-Piñero, Luis; under the supervision of Professor Philip Alston. *Between policy and law : the International Labour Organisation and the emergence of the international regime on indigenous peoples, 1919–1989* (Florence, Italy: European University Institute, Dept. of Law, 2003). 434 p.
Thesis(doctoral), European University Institute, Department of Law, 2003.
Bibliography: p. 401–434. Includes bibliographical references.

International Maritime Organization

Ciesla, David. Developments in vessel-based pollution: the International Maritime Organization's Ballast Water Convention and the European Unions's regulation to phase out single-hull oil tankers. *Colorado journal of international environmental law and policy* 2003 Yearbook: 107–115.
Includes bibliographical references.

Gaskell, Nicholas. Decision making and the Legal Committee of the International Maritime Organization. *International journal of marine and coastal law* 18(2) June 2003: 155–214.
Includes bibliographical references.

Hesse, Captain Hartmut G. Maritime security in a multilateral context: IMO activities to enhance maritime security. *International journal of marine and coastal law* 18(3) September 2003: 325–340.
Includes bibliographical references.

Pladdet, Erika. Interference with navigation: modern challenges. *International law Forum du droit international* 5(2) May 2003: 137–141.
Includes bibliographical references.

International Monetary Fund

Bradlow, Daniel D. The governance of the international financial institutions: the need for reform. *Indian journal of international law* 43(3) July-September 2003: 533–544.
Includes bibliographical references.

Darrow, Mac. *Between light and shadow: the World Bank, the International Monetary Fund and international human rights law* (Oxford; Portland, Oregon: Hart, 2003). xv, 353 p.
Thesis (doctoral), University of Utrecht, 2001.
Bibliography: p. 307–348. Includes bibliographical references and index.

Peet, Richard. *Unholy trinity: the IMF, World Bank and WTO* (London; New York: Zed Books, 2003). x. 250 p.
Bibliography: p. 227–239. Includes bibliographical references and index.

United Nations Educational, Scientific and Cultural Organization

Dromgoole, Sarah. UNESCO Convention on the protection of the underwater cultural heritage 2001 : implications for commercial treasure salvors. *Lloyd's maritime and commercial law quarterly* LMCLQ(3) August 2003 :317–340.

Lankarani, L. L'avant-projet de Convention de l'UNESCO pour la sauvegarde du patrimoine culturel immatériel : évolution et interrogations. *Annuaire français de droit international*, vol. XLVIII (2002): 624–656.

Mucci, Federica. The legal protection of cultural heritage: a comparative analysis of some Mediterranean national legislations in the light of the relevant international conventions. *La comunità internazionale* LVIII (2) secondo trimestre 2003: 287–300.
Includes bibliographical references.

United Nations Industrial Development Organization

Bredel, Ralf. *Long-term conflict prevention and industrial development: the United Nations and its specialized agency, UNIDO* (Leiden, Netherlands; Boston, Mass.: M. Nijhoff, 2003). xx, 252 p.
Bibliography: p. 223–240. Includes bibliographical references and index.

World Bank

Bradlow, Daniel D. The governance of the international financial institutions: the need for reform. *Indian journal of international law* 43(3), July-September 2003: 533–544.
Includes bibliographical references.

Darrow, Mac. *Between light and shadow: the World Bank, the International Monetary Fund and international human rights law* (Oxford; Portland, Oregon: Hart, 2003). xv, 353 p.
Thesis (doctoral), University of Utrecht, 2001.
Bibliography: p. 307–348. Includes bibliographical references and index.

Peet, Richard. *Unholy trinity: the IMF, World Bank and WTO* (London; New York: Zed Books, 2003). x. 250 p.
Bibliography: p. 227–239. Includes bibliographical references and index.

Roos, S.R. Die Weltbank als Implementierungsgarant menschenrechts-schützender Völkerrechtsnormen. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 63(4) 2003: 1035–1062.
Includes bibliographical references.

Ziadé, Nassib G. The World Bank's internal conflict resolution system. *The law and practice of international courts and tribunals* 2(2) August 2003: 333–337.
Includes bibliographical references.

International Centre for Settlement of Investment Disputes

Gaillard, Emmanuel and Yas Banifatemi. The meaning of "and" in Article 42(1), second sentence, of the Washington Convention: the role of international law in the ICSID choice of law process. *ICSID Review: foreign investment law journal* 18 (2) fall 2003: 375–411.
Includes bibliographical references.

World Health Organization

Bump, Christine P. Close but no cigar: the WHO Framework Convention on tobacco control's futile ban on tobacco advertising. *Emory international law review* 17(3) fall 2003: 1251–1309.
Includes bibliographical references.

World Meteorological Organization

A decade of progress: the World Meteorological Organization in the 1990s and the new century. Edited by Godwin O. P. Obasi, Secretary General (Geneva: World Meteorological Organization, 2003). vii. 228 p.
Includes bibliographical references.

World Trade Organization

Afilalo, Ari and Sheila Foster. The World Trade Organization's anti-discrimination jurisprudence: free trade, national sovereignty, and environmental health in the balance. *Georgetown international environmental law review* XV(4) 2003: 633–676.
Includes bibliographical references.

Akande, Dapo and Sope Williams. International adjudication on national security issues: what role for the WTO? *Virginia journal of international law* 43(2) winter 2003: 365–404.
Includes bibliographical references.

Arrowsmith, Sue. Transparency in government procurement-the objectives of regulation and the boundaries of the WTO. *Journal of world trade* 37(2) April 2003:283–303.
Includes bibliographical references.

Arup, C.J. The state of play of dispute settlement "law" at the WTO. *Journal of world trade* 37(5) October 2003:897–920.
Includes bibliographical references.

Baroncini, Elisa. The WTO appellate body and a*micus curiae* briefs. *The Global community*: y*earbook of international law and jurisprudence*, vol. I (2002): 181–192.
Includes bibliographical references.

Böckenförde, M. Zwischen Sein und Wollen—Über den Einfluss umwelt-völkerrechtlicher Verträge im Rahmen eines WTO-Streitbeilegungsverfahrens. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 63(4) 2003: 971–1005.
Summary in English. Includes bibliographical references.

Boisson de Chazournes, Laurence. L'arbitrage à l'OMC. *Revue de l'arbitrage* No.3, juillet-septembre 2003: 949–988.
Includes bibliographical references.

Boisson de Chazournes and Makane Moïse Mbengue. The *Amici Curiae* and the WTO dispute settlement system : the doors are open. *The law and practice of international courts and tribunals* 2(2) August 2003: 205–248.
Includes bibliographical references.

Broek, Naboth van den. Power paradoxes in enforcement and implementation of WTO dispute settlement reports-interdisciplinary approaches and new proposals. *Journal of world trade* 37(1) February 2003:127–162.
Includes bibliographical references.

Cazala, Julien. L'invocation de l'estoppel dans le cadre de la procédure de règlement des différends de l'Organisation mondiale du commerce. *Revue générale de droit international public* 107(4) 2003 : 885–906.
Summaries in French, English and Spanish. Includes bibliographical references.

Charnovitz, Steve. The World Trade Organization and law enforcement. *Journal of world trade* 37(5) October 2003:817–837.
Includes bibliographical references.

Choi, Won-Mog. *'Like products' in international trade law: towards a consistent GATT/WTO jurisprudence* (Oxford, England; New York: Oxford University Press, 2003). 265 p.
Includes bibliographical references and index.

Cone, Sydney M. The environment and the World Trade Organization. *New York Law School journal of international and comparative law* 22(1/2) 2003: 245–257.
Includes bibliographical references.

Covelli, Nick. Member intervention in WTO dispute settlement proceedings after EC-*Sardines*- the rules, jurisprudence, and controversy. *Journal of world trade* 37(3) June 2003:673–690.
Includes bibliographical references.

Davidow, Joel and Hal Shapiro. The feasibility and worth of a WTO Competition Agreement. *Journal of world trade* 37(1) February 2003:49–68.
Includes bibliographical references.

Dinan, Donald R. An analysis of the United States-Cuba "Havana Club" rum case before the World Trade Organization. *Fordham international law journal* 26(2) January 2003: 337–376.
Includes bibliographical references.

Drahos, Peter. When the weak bargain with the strong: negotiations in the World Trade Organization. *International negotiation: a journal of theory and practice* 8(1) 2003: 79–109.
Bibliography: p. 107–109. Includes bibliographical references.

Dunoff, Jeffrey L. Is the WTO fair to developing states? *Proceedings (American Society of International Law, Meeting)*, 97th (2003): 153–157.
Includes bibliographical references.

Ehlermann, Claus-Dieter. Experiences from the WTO appellate body. *Texas international law journal* 38(3) Special 2003: 469–488.
Includes bibliographical references.

Ehlermann, Claus-Dieter and Lothar Ehring. WTO dispute settlement and competition law: views from the perspective of the appellate body's experience. *Fordham international law journal* 26(6) June 2003: 1505–1561.
Includes bibliographical references.

Esserman, Susan and Robert Howse. The WTO on trial. *Foreign affairs* 82(1) Jan./Feb. 2003: 130–140.
Includes bibliographical references.

Fauchald, Ole Kristian. Flexibility and predictability under the World Trade Organisation's non-discrimination clauses. *Journal of world trade* 37(3) June 2003: 443–482.
Includes bibliographical references.

Gathii, James. Fairness as fidelity to making the WTO fully responsive to all its members. *Proceedings (American Society of International Law, Meeting)*, 97th (2003): 157–167.
Includes bibliographical references.

Gherari, Habib and Jean-Marc Thouvenin. Chronique de l'organe de règlement des différends OMC 2002–1: 1er semestre 2002. *Revue du marché commun et de l'Union européenne* 466 mars 2003 : 183–193.
Summary in English. Includes bibliographical references.

Girouard, Robert J. Water export restrictions: a case study of WTO dispute settlement strategies and outcomes. *Georgetown international environmental law review* XV(2) 2003: 247–289.

Includes bibliographical references.

Guzman, Andrew T. International antitrust and the WTO: the lesson from intellectual property. *Virginia journal of international law* 43(4) summer 2003: 933–957.

Includes bibliographical references.

Holmes, Peter, Jim Rollo and Alasdair R. Young. *Emerging trends in WTO dispute settlement: back to the GATT?* (Washington, D.C.: World Bank, 2003). 30 p.

Bibliography: p. 24–25. Includes bibliographical references.

Hunter, Jordana. Broken promises: trade, agriculture and development in the WTO. *Melbourne journal of international law* 4(1) July 2003: 299–322.

Includes bibliographical references.

Jaenicke, Günther. The dispute settlement system of the World Trade Organization: jurisdiction and applicable law. In: *Verhandeln für den Frieden = Negotiating for peace: Liber Amicorum Tono Eitel* (Berlin; New York: Springer, 2003). p. 357–368.

Includes bibliographical references.

Layton, Duane W. and Jorge Miranda. Advocacy before WTO dispute setttlement panels in trade remedy cases. *Journal of world trade* 37(1) February 2003:69–103.

Includes bibliographical references.

Mansfield, Edward D. and Eric Reinhardt. Multilateral determinants of regionalism: the effects of GATT/WTO on the formation of preferential trading arrangements. *International organization* 57(4) fall 2003: 829–862.

Bibliography: p. 859–862. Includes bibliographical references.

McGinnis, John O. The appropriate hierarchy of global multilateralism and customary international law: the example of the WTO. *Virginia journal of international law* 44(1) Fall 2003:229–284.

Includes bibliographical references.

McNelis, Natalie. What obligations are created by WTO dispute settlement reports? *Journal of world trade* 37(3) June 2003:647–672.

Includes bibliographical references.

Morgan, David and Gavin Goh. Peace in our time?- An analysis of article 13 of the Agreement on agriculture. *Journal of world trade* 37(5) October 2003:977–992.

Includes bibliographical references.

Nouvel, Y., Aspects généraux de la conformité du droit interne au droit de l'OMC. *Annuaire français de droit international*, vol. XLVIII (2002): 657–674.

Includes bibliographical references.

O'Connor, Bernard. A note on the need for more clarity in the WTO Agreement on agriculture. *Journal of world trade* 37(5) October 2003 :839–846.

Includes bibliographical references.

Oesch, Matthias. *Standards of review in WTO dispute resolution* (Oxford, England; New York: Oxford University Press, 2003). xx, 276 p.
Bibliography: p. 245–268. Includes bibliographical references and index.

Peet, Richard. *Unholy Trinity: the IMF, World Bank and WTO* (London; New York: Zed Books, 2003). x, 250 p.
Bibliography: p. 227–239. Includes bibliographical references and index.

Petersmann, Ernst-Ulrich. Human rights and the law of the World Trade Organization. *Journal of world trade* 37(2) April 2003:241–281.
Includes bibliographical references.

Pratap, Ravindra. WTO: the Cancun ministerial. *Indian journal of international law* 43(4) October-December 2003: 758–764.
Includes bibliographical references.

Qureshi, Asif H. Participation of developing countries in the WTO dispute settlement system. *Journal of African law* 47(2) 2003: 174–198.
Includes bibliographical references.

Radosta, John, Navin Joneja and Mikhail Zeldovich. WTO dispute settlement: the system is flawed and must be fixed. *The international lawyer* 37(3) fall 2003: 697–752.
Includes bibliographical references.

Regan, Donald H. Do WTO dispute settlement reports affect the obligations of non-parties?
Journal of world trade 37(5) October 2003 :883–896.
Includes bibliographical references.

Shumilov, V. M. Pravo vsemirnoi torgovoi organizatsii (VTO) kak mezhdunarodno-pravovoi institut: kontseptual'nye podkhody. *Iurist-mezhdunarodnik* (2) 2003: 46–54.
Includes bibliographical references.

Stern, Brigitte. L'intervention des tiers dans le contentieux de l'OMC. *Revue générale de droit international public* 107(2) 2003: p. 257–303.
Summaries in French, English and Spanish. Includes bibliographical references.

A study on special and differential treatment in WTO Agreements (New Delhi: Center for Research and Training, AALCO Secretariat, 2003). vi, 154 p.
Includes bibliographical references.

Zampetti, Americo Beviglia. Democratic legitimacy in the WTO-The justice dimension. *Journal of world trade* 37(1) February 2003 :105–126.
Includes bibliographical references.

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