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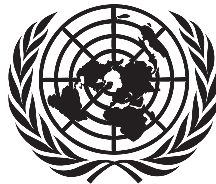

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Contents

Page

Foreword xix

Abbreviations xxi

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. . . . 3

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 5

2. Agreements relating to missions, offices and meetings

(*a*) Exchange of letters constituting an agreement between the United Nations and the Government of the Sultanate of Oman regarding the hosting of the "Workshop on the Use of Handheld Devices (HHD) for Population Censuses in the ESCWA Region", to be held in Muscat, from 4 to 6 April 2004. New York, 21 January 2004 and 2 March 2004 5

(*b*) Agreement between the United Nations and the Government of the Federative Republic of Brazil regarding the arrangements for the Eleventh Session of the United Nations Conference on Trade and Development (UNCTAD). São Paulo, 9 March 2004 9

(*c*) Exchange of letters constituting an agreement between the United Nations and the Government of the Syrian Arab Republic regarding the hosting of the "Workshop on Environment Statistics in the Countries of the Region of the Economic and Social Commission for Western Asia (ESCWA)", to be held in Damascus, Syria, from 4 to 8 April 2004. New York, 14 January 2004 and 18 March 2004 . 17

(*d*) Exchange of letters constituting an agreement between the United Nations and the Government of the Islamic Republic of Iran regarding the hosting of the United Nations/Islamic Republic of Iran Regional Workshop on the Use of Space Technology for Environmental Security, Disaster Rehabilitation and Sustainable Development hosted by the Government of the Islamic Republic of Iran, to be held in Tehran, Islamic Republic of Iran from 8 to 12 May 2004. Vienna, 26 April 2004 and 3 May 2004 21

Page

(*e*) Exchange of letters constituting an agreement between the United Nations and the Government of the Republic of Croatia on "Arrangements between the United Nations and the Government of the Republic of Croatia regarding the meeting of the parties to the Protocol on Strategic Environmental Assessment, to be held in Cavtat, from 1 to 4 June 2004". Geneva, 25 March 2004 and 10 May 2004 25

(*f*) Agreement between the United Nations and the Government of Haiti concerning the status of the United Nations Operation in Haiti. Port-au-Prince, 9 July 2004 28

(*g*) Agreement between the United Nations and the Government of Sudan concerning the activities of the United Nations Mission in Sudan. New York, 6 August 2004. 41

(*h*) Exchange of letters constituting an agreement between the United Nations and the Government of the Hashemite Kingdom of Jordan to establish a liaison office of the United Nations Assistance Mission for Iraq (UNAMI) in Amman, Jordan, to assist UNAMI in fulfilling its mandated activities. New York, 10 August 2004 and 11 August 2004 49

(*i*) Agreement between the United Nations and the Government of the Republic of Mauritius regarding the arrangements for the international meeting on the ten-year review of the Barbados Programme of Action for the Sustainable Development of Small Island Developing States. Port Louis, Mauritius, 10-14 January 2005. New York, 30 November 2004 54

(*j*) Exchange of letters constituting an agreement between the United Nations and the Government of Brazil regarding the hosting of the events under the project entitled "Weapons Destruction and Stockpile Management", to be held in Brasilia and Rio de Janeiro, Brazil, in December 2004 and March 2005. New York, 30 November 2004 and 2 December 2004. 61

3. Other agreements

Relationship Agreement between the United Nations and the International Criminal Court. New York, 4 October 2004. 65

4. United Nations Children's Fund

Basic Cooperation Agreement between UNICEF and the Government of the Islamic Republic of Iran. Tehran, 31 May 2004 73

5. Office of the United Nations High Commissioner for Refugees

Cooperation Agreement between the Office of the United Nations High Commissioner for Refugees and the Government of the Republic of the Congo. Brazzaville, 17 December 2004 82

Page

6. United Nations Human Settlements Programme

Agreements relating to the Venue Agreement between the United Nations Human Settlements Programme (UN-HABITAT) and the Kingdom of Spain regarding the hosting in the city of Barcelona (Spain) of the Second Session of the World Urban Forum. Barcelona, 15 September 2004 91

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 95

2. International Labour Organization

Cooperation agreement between the International Labour Organization and the African Development Bank and the African Development Fund 96

3. International Atomic Energy Agency

Status of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, 1959 100

4. World Bank

Agreement between the Government of the Russian Federation and the International Bank for Reconstruction and Development regarding the Resident Mission of the International Bank for Reconstruction and Development in the Russian Federation. Washington, 29 September 1996 100

5. International Monetary Fund

Agreement between the Government of the Russian Federation and the International Monetary Fund regarding the Resident Representative Office of the International Monetary Fund in the Russian Federation. Hong Kong, 24 September 1997 107

Part Two. Legal activities of the United Nations and related intergovernmental organizations

Chapter III. General review of the legal activities of the United Nations and related intergovernmental organizations

A. General review of the legal activities of the United Nations

1. Membership of the United Nations 117

2. Peace and security

(*a*) Peacekeeping missions and operations 117

(*b*) Political and peacebuilding missions and offices 121

(*c*) Other peacekeeping matters 125

(*d*) Action of Member States authorized by the Security Council 125

(*e*) Sanctions imposed under Chapter VII of the Charter of the United Nations 127

Page

(*f*) Terrorism 131

(*g*) Human rights and humanitarian questions considered by the Security Council 132

3. Disarmament and related matters

(*a*) Nuclear disarmament and non-proliferation issues. 135

(*b*) Biological and chemical weapons issues 137

(*c*) Conventional weapons issues 139

(*d*) Regional disarmament activities of the United Nations 141

(*e*) Other issues 142

4. Legal aspects of peaceful uses of outer space 144

5. Human rights

(*a*) Sessions of the United Nations human rights bodies and treaty bodies. 146

(*b*) Human rights issues in general 148

(*c*) Human rights treaty bodies 150

(*d*) Migrants and migrant workers 150

(*e*) Right to travel 151

(*f*) Right to food 151

(*g*) Enforced or involuntary disappearances 152

(*h*) Religious intolerance 153

(*i*) Extrajudicial, summary or arbitrary executions 153

(*j*) Terrorism and human rights 154

(*k*) Missing persons. 155

(*l*) Torture and other cruel, inhuman or degrading treatment or punishment 156

(*m*) Right to self-determination 157

(*n*) Racism, racial discrimination, xenophobia and related intolerance 157

(*o*) Rights and dignity of persons with disabilities 158

(*p*) Genetic privacy and non-discrimination. 159

6. Women and children

(*a*) Women 159

(*b*) Children 163

7. Humanitarian matters 166

8. Environment

(*a*) International instruments 167

(*b*) Implementation of instruments relating to the environment and development. 167

9. Law of the Sea

(*a*) Report of the Secretary-General 168

(*b*) General Assembly 170

	Page
10. Economic, social, cultural and related questions	
Culture	171
11. Crime prevention and criminal justice	
(*a*) International instruments	172
(*b*) Commission on Crime Prevention and Criminal Justice	172
(*c*) Economic and Social Council	172
(*d*) General Assembly	174
12. International drug control	
(*a*) Commission on Narcotic Drugs	175
(*b*) Economic and Social Council	176
(*c*) General Assembly	177
13. Refugees and displaced persons	
(*a*) Executive Committee of the Programme of the United Nations High Commissioner for Refugees	177
(*b*) General Assembly	179
14. International Court of Justice	
(*a*) Organization of the Court	179
(*b*) Jurisdiction of the Court	180
(*c*) General Assembly	181
15. International Law Commission	
(*a*) Membership of the Commission	181
(*b*) Fifty-sixth session of the Commission	182
(*c*) General Assembly	184
16. United Nations Commission on International Trade Law	
(*a*) United Nations Commission on International Trade Law	185
(*b*) General Assembly	186
17. Legal questions dealt with by the Sixth Committee and other related subsidiary bodies of the General Assembly	
(*a*) Nationality of natural persons in relation to the succession of States	187
(*b*) Responsibility of States for internationally wrongful acts	188
(*c*) Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts	188
(*d*) Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives	189
(*e*) Convention on jurisdictional immunities of States and their property	189
(*f*) Report of the Committee on Relations with the Host Country	190
(*g*) International Criminal Court	191
(*h*) Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization	192

Page

(*i*) Measures to eliminate international terrorism 194

(*j*) Scope of legal protection under the Convention on Safety of United Nations and Associated Personnel 196

(*k*) International convention against the reproductive cloning of human beings 198

(*l*) Observer status in the General Assembly 199

18. Advisory opinion of the International Court of Justice 200

19. Ad hoc international criminal tribunals

International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) 201

B. General review of the legal activities of intergovernmental organizations related to the United Nations

1. Universal Postal Union 203

2. International Labour Organization 203

(*a*) Resolutions submitted in accordance with article 17 of the Standing Orders of the Conference 203

(*b*) Standing Orders questions 204

(*c*) Withdrawal of 16 International Labour Recommendations 204

(*d*) Follow-up activities by the International Labour Office under the ILO Declaration on Fundamental Principles and Rights at Work . 205

(*e*) Adoption of the Recommendation concerning Human Resources Development: Education, Training and Lifelong Learning 205

(*f*) Ratification and promotion of fundamental ILO Conventions . . . 206

(*g*) Amendments to the Staff Regulations 206

(*h*) General status report on ILO action concerning discrimination in employment and occupation 206

3. International Monetary Fund

(*a*) Membership issues 207

(*b*) Issues pertaining to voting and participation 209

(*c*) IMF facilities 209

(*d*) Enhanced surveillance to prevent financial crisis 211

(*e*) Enhanced transparency – modifications to publication policy . . . 211

4. International Civil Aviation Organization

(*a*) Membership 212

(*b*) Conventions and agreements 212

(*c*) Major legal developments 212

5. United Nations Educational, Scientific and Cultural Organization

(*a*) International regulations 214

(*b*) Human rights 215

(*c*) Copyright activities 215

Page

6. World Meteorological Organization
   Cooperation with the United Nations and other organizations 217
7. International Maritime Organization
   (*a*) Membership of the International Maritime Organization 217
   (*b*) Review of legal activities of IMO 217
8. World Health Organization
   (*a*) Constitutional developments.............................. 224
   (*b*) Other normative developments and activities 224
9. International Atomic Energy Agency
   (*a*) Membership... 227
   (*b*) Privileges and immunities 228
   (*c*) Legal instruments 228
   (*d*) Legislative assistance activities 229
10. World Intellectual Property Organization
   (*a*) Introduction.. 233
   (*b*) Cooperation for development activities..................... 233
   (*c*) Norm-setting activities.................................. 234
   (*d*) International registration activities........................ 235
   (*e*) Intellectual property and global issues...................... 237
11. International Fund for Agricultural Development
   (*a*) Cooperation agreements, memoranda of understanding and other agreements 239
   (*b*) Legal developments...................................... 239
12. World Trade Organization
   (*a*) Membership... 240
   (*b*) Dispute settlement 240

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

United Nations Convention on Jurisdictional Immunities of States and Their Property. Adopted by the General Assembly on 2 December 2004 243

B. TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS

International Maritime Organization

International Convention for the Control and Management of Ships' Ballast Water and Sediments. Done at London, 13 February 2004 255

Page

CHAPTER V. DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. DECISIONS OF THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL

1. *Judgement No. 1169 (23 July 2004): Abebe* v. *the Secretary-General of the United Nations*

Receivability *ratione temporis*—Waiver of time limits pursuant to rule 111.3 (d) of the staff rules—Appointments under the 200 Series Staff Regulations and Rules in contravention of ST/AI/297—Legal expectancy of renewal—Eligibility to apply and entitlement to a position—Gender parity rules—General Assembly resolution 49/167 of 23 December 1994 and ST/AI/412—Promotion of General Service staff to Professional posts outside the framework of competitive examinations—General Assembly resolution 33/143 of 20 December 1978 281

2. *Judgement No. 1175 (23 July 2004): Ikegame* v. *the Secretary-General of the United Nations*

Forum non conveniens—Authority to take disciplinary actions for alleged misconducts occurring during secondment—Inter-Organization Agreement concerning Transfers, Secondment or Loan of Staff—Double jeopardy—Serious misconduct—Proportionality of disciplinary sanctions—Length of suspension pending disciplinary proceedings—Staff rule 110.1 and 2—Right to due process—Failure to notify staff of composition of Joint Disciplinary Committee—Conflict of interest—ST/AI/371 284

3. *Judgement No. 1181 (23 July 2004): Abu Kashef* v. *the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or the Agency)*

Termination of the Applicant's services in the interest of the Agency—UNRWA Area staff regulation 9.1—Unsatisfactory professional conduct and performance of staff—Misuse of *laissez-passer*—Proper exercise of managerial discretion—Burden of proof. 287

4. *Judgement No. 1183 (23 July 2004): Adrian* v. *the Secretary-General of the United Nations*

Recognition of domestic partnership—ST/SGB/2004/4—Principle of applying the law of nationality of staff member for purposes of marital status—Evolving concept of "couple" and of "marriage"—Force and effect of administrative instructions and information circulars—Interpretation or amendment of a staff rule—General Assembly resolution 58/285 of 8 April 2004 289

Page

5. *Judgement No. 1189 (23 July 2004): Bogusz* v. *the Secretary-General of the United Nations*

   Compliance with promotion procedures—ST/AI/413—Right to due process—Disclosure of objection to composition of Joint Appeals Board (JAB)—Denial of procedural rights—Declination to implement JAB recommendations on jurisdictional grounds—Consideration of equity and fairness as well as law—Necessity to identify an administrative decision adversely affecting the rights of the staff member—Consideration of health in making promotion decisions 291

6. *Judgement No. 1205 (24 November 2004): Alaj* et al. v. *the Secretary-General of the United Nations*

   Salary survey and scale—Discretion to undertake salary survey—Distinction between participation and consultation of staff—Retroactive application—Intervention—United Nations Common System Manual for Salary Surveys in Non-Headquarters Duty Stations (Manual). 293

7. *Judgement No. 1210 (24 November 2004): Tekolla* v. *the Secretary-General of the United Nations*

   Entitlement to special post allowance (SPA)—Quasi-judicial discretion of the Secretary-General—Retroactivity policy for SPA requests—Payment of SPA at not more than one level higher than staff member's level—Staff rule 103.11 (b) and Personnel Directive PD/1/84/Rev.1 296

8. *Judgement No. 1215 (24 November 2004): Nwingte* v. *the Secretary-General of the International Maritime Organization (IMO)*

   Interpretation of Appendix D of the IMO Staff Rules—Role of the Advisory Board on Compensation Claims (ABCC) in cases alleging service-incurred injury—Authority and competence by Administration to unilaterally deny service-incurred injury status to staff member. 298

9. *Judgement No. 1219 (24 November 2004): Grossman* v. *the Secretary-General of the United Nations*

   Calculation of Mission Subsistence Allowance—Definition of "non-working days"—Staff rule 107.15 (*e*)—1974 Field Administration Handbook—Right to recover overpayment—Staff rule 103.18—Unjust enrichment—Estoppel—Compelling reasons of equity 300

10. *Judgement No. 1222 (24 November 2004): Othigo* v. *the Secretary-General of the United Nations*

    Medical fraud—Recognition of only one dependent spouse—Discretion of the Secretary-General in disciplinary matters—Proportionality of sanctions—Separation from service with compensation in lieu of notice—Good faith defence—Plea of *ad misericordiam* 302

Page

B. Decisions of the Administrative Tribunal of the International Labour Organization

1. *Judgment No. 2278 (*4 February 2004)*: Mr. A. H.* v. *the European Patent Organisation*

   Residence requirement under article 23 of the service regulations—Right to freedom of residence—Principle of equal treatment—Duty to substantiate decision—Expectation and contractual obligation . . 304

2. *Judgment No. 2280 (4 February 2004): Mr. K. M.* v. *the European Patent Organisation*

   Duty of assistance to employees under article 28 of the service regulations—Injury by reason of the employee's office or duties—Obligation to provide compensation—Exemption from Dutch tax on private cars and motorcycles 306

3. *Judgment No. 2292 (4 February 2004): Mr. J. M. W.* v. *the European Patent Organisation*

   Territorial application of the Pension Scheme Regulations—Application of the Convention on the Grant of European Patents, 1973, to territories of Contracting States under article 168 of the Convention—Application of principles of the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, to staff relations—Protection of property rights—Principle of non-discrimination—Consequences of exercising option under article 33 of the Pension Scheme Regulations 308

4. *Judgment No. 2302 (4 February 2004): Mr. J. A. T.* v. *the International Organization for Migration*

   Waiver of diplomatic immunity—Discretion to waive immunity—Tribunal's lack of jurisdiction to quash decision to waive immunity—Procedure for waiver of immunity—Discretion not to renew contract in the interests of the Organization—Decision to suspend official—Agreement between the International Organization for Migration and the Government of South Africa 310

5. *Judgment No. 2365 (7 May 2004): In* re *T. B.* v. *the Universal Postal Union*

   Suspension from duty pending investigation of serious misconduct—Staff rule 110.3—Discretion to suspend a staff member—Scope of review by the Tribunal of a decision to suspend—Right to be heard—Abuse of authority. 311

6. *Judgment No. 2359 (14 May 2004): Mr. E. G. A.* v. *the European Patent Organisation*

   Dependency allowance—Definition of "dependent children"—Interpretation of rules—Article 69 (3) (c) of the service regulations and rule 2 of Communiqué No. 6. 313

Page

C. Decisions of the World Bank Administrative Tribunal

1. *Decision No. 309 (18 June 2004): Bernstein, Applicant* v. *International Bank for Reconstruction and Development, Respondent*

Pension eligibility requirements—Non-regular staff—Break in service—*Détournement de pouvoir*—Gender discrimination—Respect of prior expectations 314

2. *Decision No. 317 (18 June 2004): Yoon (No. 4), Applicant* v. *International Bank for Reconstruction and Development, Respondent*

Compliance with reinstatement order—"Comparable position"—Conduct of parties in Tribunal litigation—Censure of counsel 316

3. *Decision No. 325 (12 November 2004): E, Applicant* v. *International Bank for Reconstruction and Development, Respondent*

Divorce and support obligations—Garnishment of wages—Relationship of Bank and Tribunal to national courts and authorities—Principle of abstention—Due process—Investigations 317

D. Decisions of the Administrative Tribunal of the International Monetary Fund

Judgment No. 2004–1 (10 December 2004): Mr. "R" (No. 2), Applicant v. *International Monetary Fund, Respondent*

Reimbursement of security expenses indirectly incurred by a staff member—*Res judicata*—Article XIII of the Statute of the Administrative Tribunal of the International Monetary Fund (the Fund)—Unfairness of a regulatory decision in an individual case—Regulatory and individual decisions 319

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

1. Privileges and immunities

(*a*) Letter to the Acting Chair of the Special Committee on Peacekeeping Operations, United Nations, regarding immunities of civilian police and military personnel 323

(*b*) Note verbale to a Permanent Representative of a Member State to the United Nations regarding the freezing of bank accounts of the World Food Programme 326

(*c*) Interoffice memorandum to the Director of Investment Management Service, United Nations, regarding tax exemption 329

(*d*) Letter to a Permanent Representative of a Member State to the United Nations regarding the legal framework for the holding of a United Nations meeting away from Headquarters 330

(*e*) Facsimile to the Legal Adviser of the International Labour Organization, Geneva, regarding the refusal of a Member State to recognize the full immunities of international organizations 332

Page

(*f*) Letter to the Registrar of the International Court of Justice regarding privileges and immunities with respect to parking fees 333

(*g*) Letter to a Permanent Representative of a Member State to the United Nations regarding the levying of fees and taxes on the United Nations Organization Mission in the Democratic Republic of the Congo 334

2. Procedural and institutional issues

(*a*) Interoffice memorandum to the Acting High Commissioner for Human Rights on the tenure of office-holders of special procedures mandates 339

(*b*) Statement before the Economic and Social Council on the question of the power of the Council to override decisions of the Commission on Human Rights 340

(*c*) Note to the United Nations High Commissioner for Human Rights regarding a resolution of the Commission on Human Rights on internally displaced persons 341

(*d*) Letter to an individual regarding the procedure for admission of States to membership in the United Nations.................. 344

(*e*) Facsimile to the Director of the Transport Division, United Nations Economic Commission for Europe, Geneva, regarding draft amendments to the rules of procedures of the TIR Executive Board...... 346

(*f*) Note to the Director, Security Council Affairs Division, Department of Political Affairs, regarding the meeting of the Security Council in Nairobi, Kenya 347

3. Other issues relating to United Nations Peace Operations

(*a*) Note to the Assistant Secretary-General for Peacekeeping Operations regarding the United Nations Mission in Kosovo and the protection of cultural heritage............................ 350

(*b*) Note verbale to a Permanent Mission to the United Nations regarding the legal personality and treaty-making power of the United Nations Interim Administration Mission in Kosovo 351

4. Responsibility of international organizations

Interoffice memorandum to the Director of the Codification Division, Office of Legal Affairs, and Secretary of the International Law Commission regarding the topic Responsibility of International Organizations 352

5. Treaty law

(*a*) Letter to a Permanent Representative to the United Nations regarding the registration of treaties pursuant to Article 102 of the Charter of the United Nations............................ 356

Page

(*b*) Facsimile to the Executive Secretary, Secretariat of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989, regarding the entry into force of amendments to the Convention 358

(*c*) Interoffice memorandum to the Director of the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, regarding a declaration by [State] pursuant to article 21, paragraph 4, of the Agreement for the Implementation of the Provisions Fish Stocks, (the Agreement), 1995 360

6. International Humanitarian Law

(*a*) Interoffice memorandum to the Chief, Legal Affairs Section, Executive Office, Office of the United Nations High Commissioner for Refugees, regarding the Voluntary Repatriation (Tripartite) Agreement 362

(*b*) Letter to the Representative/President of the Unification and National Security Central Council in the Freedom Centre (Tongil Anbo Joongang Hyeopuih) in Seoul, Republic of Korea, regarding the eligibility of prisoners of war for payments for their labour in war camps during the Korean war 363

7. Human Rights and Refugee law

Note to the members of the Senior Management Group of the United Nations regarding conditions for the granting of political asylum 365

8. United Nations emblem and flag

Interoffice memorandum to the Senior Legal Adviser, Office of the Secretary-General, World Meteorological Organization, on guidelines on the use of the United Nations emblem 366

9. Personnel questions

Interoffice memorandum to the Recruitment Officer of the Department of Economic and Social Affairs, United Nations, on the reimbursement of United States taxes and nationality for United Nations administrative purposes 369

10. Miscellaneous

(*a*) Note to the Secretary-General's Special Representative for Western Sahara regarding the question of a referendum 372

(*b*) The establishment of an International Commission of Inquiry for Darfur 374

B. LEGAL OPINIONS OF THE SECRETARIATS OF INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS

1. International Labour Organization

(*a*) Provisional Record No. 16, ninety-second session, Report of the Standing Orders Committee 378

(*b*) Provisional record No. 20, ninety-second session, Report of the Committee on Human Resources. 380

Page

(*c*) Report of the Technical Committee No. 1 of the Preparatory Technical Maritime Conference, Geneva, 13–24 September 2004 381

Part Three. Judicial decisions on questions relating the United Nations and related intergovernmental organizations

CHAPTER VII. DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

A. INTERNATIONAL COURT OF JUSTICE

1. Judgments 385
2. Advisory Opinions 385
3. Pending cases as at 31 December 2004 386

B. INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

1. Judgments 386
2. Pending cases as at 31 December 2004 387

C. INTERNATIONAL CRIMINAL COURT 387

D. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

1. Judgments delivered by the Appeals Chamber 387
2. Judgments delivered by the Trial Chambers 388

E. INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

1. Judgments delivered by the Appeals Chamber 388
2. Judgments delivered by the Trial Chambers 389

F. SPECIAL COURT FOR SIERRA LEONE

1. Judgments 389
2. Decisions of the Appeals Chamber 389

CHAPTER VIII. DECISIONS OF NATIONAL TRIBUNALS

A. ARGENTINA

Proceedings for review of leave to appeal Jorge Francisco Baca Capodónico, Plea of no action, Case No. 35.295, 27 May 2004

Question of jurisdictional immunity of an official of the International Monetary Fund requested for extradition—Determination of the stage of the judicial proceedings in which the issue of immunity shall be raised—Issue of diplomatic immunity not included —Definitive nature of the injury at stake—Issue of immunity requires a special prior ruling to the extradition trial 391

B. AUSTRIA

Firma Baumeister Ing. Richard L v. O

Question of Immunity of an international organization having its headquarters in Austria—Agreement between the Republic of Austria and the OPEC Fund for International Development regarding Headquarters of the Fund—Immunity from any legal proceedings granted to international organizations—The purpose of immunity is to protect international organizations from interference from and the exertion of influence through the organs of individual States—Immunity more extensive for international organizations based on the functional character of their legal personality as compared to foreign States—Immunity of international organizations is considered as absolute when acting within the limits of their functions—Immunity considered as valid until expressly waived—Passive conduct not deemed to constitute a tacit waiver of immunity—Immunity constitutes a procedural barrier to enforcement of the law but does not alter the validity of the substantive law—Service of official documents, as summons of courts, to international organizations, shall be effected exclusively through the good offices of the Austrian Ministry for Foreign Affairs—Waiver of immunity shall not extend to any measure of execution 394

ANNEX. CHART OF THE UNITED NATIONS SYSTEM 403

Part Four. Bibliography

A. INTERNATIONAL ORGANIZATIONS IN GENERAL

1. General 407
2. Particular questions 407

B. UNITED NATIONS

1. General 408
2. Principle organs and subsidiary bodies 408
   International Court of Justice 408
   Security Council 411
3. Particular questions or activities
   Aviation Law 413
   Collective security 413
   Commercial arbitration 413
   Consular Relations 414
   Definition of aggression 414
   Diplomatic relations 414
   Disarmament 415
   Environmental questions 415
   Financing 417
   Friendly relations and cooperation among States 417

Page
Human rights 417
International administrative law 419
International criminal law 420
International economic law 427
International terrorism 427
International trade law 428
International waterways 429
Intervention 430
Jurisdiction 430
Law of armed conflict 430
Law of the sea 431
Law of treaties 433
Natural resources 433
Non-governmental organizations 434
Outer space law 435
Peaceful settlement of disputes 435
Peacekeeping and related activities 435
Political and security questions 436
Progressive development and codification of international law 436
Refugees 436
Rule of law 437
Self-defence 437
Self-determination 437
State responsibility 437
State sovereignty 438
Trusteeship 438
Use of force 438
C. INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS
International Centre for Settlement of Investment Disputes 439
International Labour Organization 440
International Maritime Organization 440
International Monetary Fund 440
International Telecommunication Union 440
United Nations Educational, Scientific and Cultural Organization 441
World Bank Group 441
World Health Organization 441
World Meteorological Organization 441
World Trade Organization 441

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. The present volume, which is the forty-second of the series, has been prepared by the Codification Division of the Office of Legal Affairs.

Chapters I and II contain treaty provisions relating to the legal status of the United Nations and related intergovernmental organizations. Treaty provisions which are included in these two chapters entered into force in 2004.

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 their entry into force. In the case of treaties too voluminous to publish in 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.

Chapter VII includes a list of judgments and of selected decisions and advisory opinions rendered by international tribunals in 2004.

In chapter VIII are found decisions given in 2004 by the national tribunals relating to the legal status of the various organizations.

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 relating to the work of the United Nations and related intergovernmental organizations published in 2004.

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

ACE	Advisory Committee on Enforcement (WIPO)
AML/CFT	Anti-money Laundering and Combating the Financing of Terrorism
CNS/ATM	Communications, Navigation, Surveillance/Air Trafic Management
CANWFZ	Central Asian Nuclear-Weapon-Free Zone
CCFL	Codex Alimentarius Committee on Food Labelling
ccTLDs	Country-code top-level domains
CERLALC	Centro Regional para el Formento del Libro en América Latina y el Caribe
CLCS	Commission on the Limits of the Continental Shelf
CMI	Comité Maritime International
CMIU	Central Monitoring and Inspection Unit
CNSN	National Centre for Nuclear Security
COARM	European Union Code of Conduct on Arms Exports
CPAs	Child Protection Advisers
CTBTO	Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization
CTC	Counter-Terrorism Committee
CTED	Counter-Terrorism Committee Executive Directorate
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes (WTO)
ECA	United Nations Economic Commission for Africa
ECOWAS	Economic Community of West African States
ECSL	European Centre for Space Law
EEZ	Exclusive Economic Zone
EPO	European Patent Organization
ETOEs	Extraterritorial Offices of Exchange
EU	European Union
EUFOR	European Union Force in Bosnia and Herzegovina
EURATOM	European Atomic Energy Community
FANCI	National Armed Forces of Côte d'Ivoire
FAO	Food and Agricultural Organization of the United Nations
FATF	Financial Action Task Force
GNSS	Global Navigation Satellite Systems

HCOC	The Hague Code of Conduct against Ballistic Missile Proliferation
HIPC	Heavily Indebted Poor Countries
HRMS	Human Resources Management Service
IAEA	International Atomic Energy Agency
IAF	International Astronautical Federation
IAMB	International Advisory and Monitoring Board
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
ICSC	International Civil Service Commission
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IFAD	International Fund for Agricultural Development
IHR	International Health Regulations
IISL	International Institute of Space Law
ILC	International Law Commission
ILO	International Labour Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
INDISCO	Interregional Programme to Support Self-Reliance of Indigenous and Tribal Communities through Cooperatives and other Self-Help Organizations
Interpol	International Criminal Police Organization
IOM	International Organization for Migration
IOPC Funds	International Oil Pollution Compensation Funds
ISA	International Seabed Authority
ISAF	International Security Assistance Force
JAB	Joint Appeals Board
JAC	Joint Advisory Committee
JAI	Joint Africa Institute
JDC	Joint Disciplinary Committee
LDCs	Least Developed Countries
LEG	IMO Legal Committee
MANPADS	Man-Portable Air Defence System
MDGs	Millennium Development Goals

MEPC	IMO Marine Environment Protection Committee
MIF	Multinational Interim Force
MINUCI	United Nations Mission in Cote d'Ivoire
MINUGUA	United Nations Verification Mission in Guatemala
MINURSO	United Nations Mission for the Referendum in Western Sahara
MINUSTAH	United Nations Stabilisation Mission in Haiti
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo
MSC	IMO Maritime Safety Committee
NATO	North Atlantic Treaty Organisation
OAS	Organization of American States
OECD	Organization for Economic Cooperation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
OIOS	Office of Internal Oversight
ONUB	United Nations Operation in Burundi
OPCW	Organization for the Prohibition of Chemical Weapons
OSCE	Organization for Security and Cooperation in Europe
PAROS	Prevention of an Arms Race in Outer Space
POLISARIO	Popular Front for the Liberation of Saguia el-Hamra and Rio de Oro
PRGF	Poverty Reduction and Growth Facility
SCCR	Standing Committee on Copyright and Related Rights (WIPO)
SCIT	Standing Committee on Information Technologies (WIPO)
SCP	Standing Committee on the Law of Patents (WIPO)
SDWG	Standards and Documentation Working Group (WIPO)
SFOR	Stabilisation Force
SMEs	Small and Medium-Sized Enterprises
SOFA	Status-of-forces agreement
SOMA	Status-of-mission agreement
SRSG	Special Representative of the Secretary-General
TIM	Trade Integration Mechanism (IMF)
TIRAC	TIR Administrative Committee
TIRExB	TIR Executive Board
UNAMA	United Nations Assistance Mission in Afghanistan
UNAMI	United Nations Assistance Mission for Iraq
UNAMIS	United Nations Advance Mission in the Sudan

UNAMSIL	United Nations Mission in Sierra Leone
UNCITRAL	United Nations Commission on International Trade Law
UNESCO	United Nations Educational, Scientific and Cultural Organization
UN-Habitat	United Nations Human Settlements Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNIFIL	United Nations Interim Force in Lebanon
UNISPACE III	Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space
UNDOF	United Nations Disengagement Observer Force (Syria/Israel)
UNEP	United Nations Environment Programme
UNFICYP	United Nations Peacekeeping Force in Cyprus
UNICEF	United Nations Children's Fund
UN-LiREC	United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMIL	United Nations Mission in Liberia
UNMISET	United Nations Mission of Support in East Timor
UNMOGIP	United Nations Military Observer Group in India and Pakistan
UNMOVIC	United Nations Monitoring, Verification and Inspection Commission
UN-Oceans	United Nations Oceans and Coastal Areas Network
UNOCI	United Nations Operation in Côte d'Ivoire
UNODC	United Nations Office on Drugs and Crime
UNOGBIS	United Nations Peacebuilding Support Office in Guinea-Bissau
UNOMB	United Nations Observer Mission in Bougainville
UNOMIG	United Nations Observer Mission in Georgia
UNON	United Nations Office at Nairobi
UNOWA	United Nations Office for West Africa
UNPOB	United Nations Political Office in Bougainville
UNPOS	United Nations Political Office for Somalia
UNPROFOR	United Nations Protection Force
UNRWA	United Nations Relief and Works Agency
UNSCO	United Nations Special Coordinator for the Middle East
UNTAET	United Nations Transitional Administration in East Timor
UNTOP	United Nations Tajikistan Office of Peacebuilding

UNTSO	United Nations Truce Supervision Organization
UPU	Universal Postal Union
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMD	Weapons of Mass Destruction
WMO	World Meteorological Organization
WTO	World Trade Organization

Part One

LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter I

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

[No legislative texts concerning the legal status of the United Nations and related intergovernmental organizations are reproduced for 2004.]

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.[1] Approved by the General Assembly of the United Nations on 13 February 1946

During 2004, no States acceded to the Convention. As at 31 December 2004, there were 148 States parties to the Convention.[2]

2. Agreements relating to missions, offices and meetings

(*a*) Exchange of letters constituting an agreement between the United Nations and the Government of the Sultanate of Oman regarding the hosting of the "Workshop on the Use of Handheld Devices (HHD) for Population Censuses in the ESCWA Region", to be held in Muscat, from 4 to 6 April 2004. New York, 21 January 2004 and 2 March 2004.[3]

I

21 January 2004

Excellency,

I have the honour to refer to the arrangements concerning the organization of a workshop entitled "Workshop on the Use of Handheld Devices (HHD) for Population Censuses in the ESCWA Region" (hereinafter referred to as "the Workshop"). The Workshop will be organized by the United Nations represented by the Department of Economic and Social Affairs (hereinafter referred to as "the United Nations") and the Government of the Sultanate of Oman represented by Ministry of National Economy (hereinafter referred to as "the

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

[2] For the list of the States parties, see *Multilateral Treaties Deposited with the Secretary-General* (United Nations publication, Sales No. E.05.V.3, ST/LEG/SER.E/23), vol. I, chap. III.

[3] Entered into force on 2 March 2004, in accordance with the provisions of the letters.

Government”). With the present letter, I wish to obtain your Government’s acceptance of the following:

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

(a) up to 30 regional participants, from the ESCWA countries selected by the United Nations;

(b) local government officials selected by the Government;

(c) one official from the United Nations and one official from ESCWA; and

(d) other participants, invited as observers by the United Nations and the Government, including representatives from the United Nations system.

2. The total number of participants will be approximately 50. The list of participants will be determined by the United Nations in consultation with the Government prior to the holding of the Workshop.

3 The Workshop will be conducted in Arabic, with simultaneous interpretation into English.

4. The United Nations will be responsible for:

(a) the invitations as well as the selection of national participants from ESCWA countries and participants from other international organizations;

(b) the cost of interpretation; and

(c) administrative arrangements and costs relating to the issuance of airline tickets and the payment of subsistence allowance for the participants specified in sub-paragraphs l a) and l c).

5. The Government will be responsible for:

(a) organizing the Workshop and the preparation of the appropriate documentation in consultation with the United Nations and the cost of document production in Arabic;

(b) meeting facilities for the Workshop;

(c) substantive support during and after Workshop;

(d) local counterpart staff to assist with the planning and any necessary administrative support during the Workshop;

(e) any costs related to the participation of national participants specified in sub-paragraph l b);

(f) any necessary office supplies and equipment, including stationery, personal computers, typewriters and photocopiers; and

(g) other local logistics and organizational services in support of the Workshop including hotel and transportation arrangements.

6. The Workshop will be held in Muscat, Oman from the 4th to the 6th of April 2004 at the offices of the Ministry of National Economy. All facilities will be arranged by the Government in consultation with the United Nations.

7. The cost of transportation and daily subsistence allowance for observers, as specified in sub-paragraph I d) above, will be the responsibility of their organizations.

8. As the Workshop will be convened by the United Nations, I wish to propose that the following terms shall apply:

(a) The Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1946 (hereinafter referred to as “the Convention”), shall be applicable in respect of the Workshop.

(b) In particular, the representatives of States participating in the Workshop shall enjoy the privileges and immunities provided under Article IV of the Convention. 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. Officials of the specialized agencies participating in the Workshop shall be accorded the privileges and immunities provided under Articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly on 21 November 1947.

(c) 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;

(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 Workshop;

(e) All participants and all persons performing functions in connection with the Workshop shall have the right of unimpeded entry into and exit from the Sultanate of Oman. 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 Workshop, visas shall be granted not 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 not later than three days before the opening. Arrangements shall also be made to ensure that visas for the duration of the Workshop are delivered at the airport of arrival to those who are 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. The Government shall furnish such police protection as is required to ensure the effective functioning of the Workshop 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.

10. 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 any transport services that are provided for the Workshop by or under the control of the Government;

(c) The employment for the Workshop of personnel provided or arranged for by the Government.

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

11. Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provisions of the Convention that is regulated by Section 30 of the Convention, 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 negotiation or any other agreed mode of settlement shall be submitted at the request of either party of 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 other party having notified the name of its arbitrator, or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them appoint the Chairman, then such arbitrator shall be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the parties, the tribunal shall adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the parties, and take all decisions by a two-thirds majority. Its decisions on all questions of procedure and substance shall be final and, even if rendered in default of one of the parties, be binding on both of them.

I further propose that upon receipt of your Government's confirmation in writing of the above, this exchange of letters shall constitute an Agreement between the United Nations and the Government of the Sultanate of Oman regarding the hosting of the Workshop, 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.

Yours sincerely,

[*Signed*] JOSE-ANTONIO OCAMPO
Under-Secretary-General
Department of Economic and Social Affairs

H.E. Mr. Fuad Al-Hinai
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of the Sultanate of Oman
to the United Nations
New York, N.Y.

II

2 March 2004

Dear Mr. de Vries,

I have the honour to refer to your letter ref. DESA/04/15 dated 21 January 2004 relating to the proposed arrangements for the hosting of the "Workshop on the Use of Hand-

held Devices (HHD) for Population Censuses in the ESCWA Region" to be held in Muscat, Oman, from 4-6 April 2004.

In reply, I have the honour to confirm that the terms of your proposal are acceptable to the Government of the Sultanate of Oman.

Consequently, your letter and this reply shall constitute an Agreement between the United Nations and the Government of the Sultanate of Oman, 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.

Please accept the assurances of my esteemed regards.

Sincerely,

[*Signed*] Fuad Al-Hinai
Ambassador
Permanent Representative

Mr. Willem F.M. de Vries
Officer-in-Charge
Statistics Division
Department of Economics and
Social Affairs
New York

(*b*) Agreement between the United Nations and the Government of the Federative Republic of Brazil regarding the arrangements for the Eleventh Session of the United Nations Conference on Trade and Development (UNCTAD). São Paulo, 9 March 2004.[4] [5]

The United Nations and

The Government of the Federative Republic of Brazil, hereinafter referred to as the "Government",

Considering that the General Assembly of the United Nations, in its resolution 57/235 of 22 January 2003, welcomed the invitation of the Government to hold at the Anhembi Convention Centre, São Paulo, Brazil, the eleventh session of the United Nations Conference on Trade and Development, hereafter referred to as the "Conference", and

Considering that the General Assembly of the United Nations, in paragraph 17 of section A of its resolution 47/202 of 22 December 1992, reaffirmed 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 costs directly or indirectly involved, after consultation with the Secretary-General

[4] Entered into force on 9 March 2004, in accordance with article XVI.

[5] The annexes are not published herein.

of the United Nations as to their nature and possible extent, and whereas the Government has agreed to do so,

Agree hereby on the following arrangements for the Conference:

Article I. Place and date of the Conference

The Conference shall be held from 13 to 18 June 2004 in the premises of the Anhembi Convention Centre, São Paulo. The opening ceremony will take place on 14 June and shall be preceded on 11 and 12 June by the following events: the SEBRAE/EMPRETEC International Meeting; the Group of 77 Ministerial Meeting; and the Civil Society Forum. The provisions of this Agreement, with the exception of Articles IX and X, shall also apply to these three events.

Article II. Participation and attendance

1. The Conference shall be open to the participation of the following:

(a) Representatives of States which are members of the United Nations Conference on Trade and Development (UNCTAD);

(b) Observers from organizations that have received a standing invitation from the General Assembly to participate in the sessions and the work of all international conferences convened under its auspices in the capacity of observers;

(c) Observers from interested intergovernmental organs of the United Nations;

(d) Observers from Specialized Agencies, the International Atomic Energy Agency and organizations institutionally linked to the United Nations;

(e) Observers from intergovernmental organizations in status with UNCTAD;

(f) Observers from non-governmental organizations in status with UNCTAD;

(g) Observers from other interested intergovernmental and non-governmental organizations and civil society at large, upon invitation or designation by the Secretary-General of the Conference;

(h) Officials of the United Nations Secretariat;

(i) Experts on mission for the United Nations;

(j) Other persons invited by the United Nations.

2. The Secretary-General of the Conference shall designate the staff members of the United Nations Secretariat assigned to service the Conference.

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

4. The Secretary-General of the Conference shall provide the Government with a list of participants referred to in paragraph 1 of this article upon receipt of this information before the opening of the Conference.

Article III. Premises and related facilities and services

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 annex I of the Agreement. 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 premises and related services shall be provided by the Government as set out in annex I of this Agreement. The premises shall remain at the disposal of the United Nations 24 hours a day from one week prior to the Conference until a maximum of 24 hours after its close.

2. The Government shall ensure that the following are available on a commercial basis; banking facilities, post office, telephone, fax, internet and other telecommunications facilities, catering facilities, travel agency and a secretarial service centre (business centre), for use by the delegations referred to in article II.

3. The Government shall ensure that the premises, facilities and services referred to in paragraphs 1 and 2 above are adequately staffed without cost to the United Nations, and that they shall operate in accordance with the timetable established by the Secretary-General of the Conference. The Government shall ensure that the premises of the Anhembi Convention Centre shall remain at the exclusive disposition of the United Nations continuously from 11 to 19 June 2004.

4. The premises, facilities and services referred to in paragraphs 1 and 2 of this article are specified in annex I to this Agreement.

Article IV. Equipment and supplies

1. The Government, at its expense, shall provide, install and maintain in good working order the equipment required for the Conference. Subject to availability, the United Nations may make available certain equipment for the Conference. The equipment and the supplies to be provided by the Government and the United Nations are described in annex I to this Agreement.

2. The United Nations shall normally provide, at its expense, the supplies required for the Conference. Where the Government provides any supplies at the request of the United Nations, the latter shall reimburse the former, provided that the amount reimbursed shall not exceed the cost to the United Nations of similar supplies in Geneva.

3. The Government shall bear the cost of transport and insurance, from any United Nations office to the Conference premises and return, in respect of the documents, equipment, supplies and any other items required for the adequate functioning of the Conference, including any equipment and supplies that may be required and made available by the United Nations. The United Nations, in consultation with the Government, shall determine the mode and route of shipment of such documents, equipment, supplies and other items as may be required for the Conference.

Article V. Utilities

The Government shall bear the cost of the utility services necessary for the effective functioning of the Conference premises referred to in article I and article III, such as water, gas and electricity with reference to utilities provided to the secretariat. The Government shall also bear the cost of local communications by telephone made from the Conferences premises, as well as the cost of fax and electronic mail transmission, video-conference, webcasting of general debates (as required for the conference proceedings), postage,

diplomatic pouch, international communications by telephone between the Conference premises and Geneva or New York for the purpose of the Conference and authorized by the Secretary-General of the Conference.

Article VI. Medical facilities

The Government shall provide at its expense within the Conference premises medical facilities to ensure adequate first aid to the persons referred to in Article II. The Government shall ensure immediate admission to hospital and transportation from the Conference premises to the hospital for emergency cases, provided that the Government shall not be liable for the cost of any hospital treatment.

Article VII. Officials of the United Nations

1. The United Nations shall assign a number of its officials, not exceeding 200, to service the conference. The categories and functions of the officials are described in annex I to this Agreement. A certain number of officials shall be required to work at the Anhembi Convention Centre immediately before the opening and after the closing of the Conference.

2. The United Nations, in consultation with the Government, shall arrange the travel of its officials assigned to plan for or to service the Conference, in accordance with its Rules and Regulations and administrative practices regarding the route, mode of travel, standard of travel, transit and excess baggage.

3. The Government shall bear the cost of travel of officials referred to in paragraph 2 above, from the United Nations offices where they are stationed to the site of the Conference which shall include the transportation expenses, transit expenses, terminal expenses and a baggage allowance in accordance with the Rules and Regulations of the United Nations.

4. The Government shall bear the cost of the daily subsistence allowance which the United Nations pays to its officials assigned to plan for or to service the Conference. The United Nations shall establish the rate of the subsistence allowance to be paid to its officials assigned to plan for or service the Conference in accordance with its Rules and Regulations and administrative practices and in the light of the cost of accommodation and the cost of living.

5. The United Nations shall pay salaries and related allowances of its officials assigned to plan for or to service the Conference in accordance with its Rules and Regulations and administrative practices.

Article VIII. Secretariat and local staff

1. The Government shall make available at its own cost an official who shall act as a liaison officer between the United Nations and the Government and have the requisite authority, 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 at its expense the local staff required for the Conference, in consultation with the Secretary-General of the Conference. The

number of local staff, in each category and their functions are specified in annex I to this Agreement.

3. The local staff shall, for the duration of the Conference, be under the supervision of the Secretary-General of the Conference and shall be required to work in accordance with the calendar and time schedule established by him. A certain number of local staff shall be required to work before the opening and after the closure of the Conference.

Article IX. Accommodation and liaison service

1. The Government shall bear the cost (which shall include taxes) of suitable hotel accommodation for United Nations staff to be assigned to the Conference as specified in annex I of the Agreement.

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

3. The Government shall provide a liaison service at the airport to facilitate the arrival and departure of the persons referred to in article II.

Article X. Local transport

1. The Government shall provide, at its expense, for persons referred to in Article II, transport from the airport to the recommended hotels as well as a shuttle service between these hotels and the Conference premises, provided that hotel reservations are made in the hotels recommended by the Government. Arrangements for the local transport of the international staff are specified in annex I of the Agreement.

2. The Government shall provide, at its expense, a number of vehicles with drivers for official use by the United Nations as specified in annex I of the Agreement.

3. 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 XI. Financial arrangements

1. The Government, in addition to the financial obligations provided for elsewhere in this Agreement, shall, in accordance with paragraph 17 of section A of General Assembly resolution 47/202 of 22 December 1992, bear the actual additional costs directly or indirectly involved in holding the Conference at the Anhembi Convention Centre, rather than at Geneva. Such costs, which are estimated at US$ 1,046,704 shall include the actual additional costs as indicated in annex II of the Agreement, including return travel and the related entitlements as well as the daily subsistence allowance of the United Nations staff members assigned to plan for or to service the Conference; the cost of the planning missions; compensation for travel time of language staff assigned to the Conference; communications; and the cost of shipping of documents, equipment and supplies from any United Nations office to the Conference premises and return.

2. The Government shall, not later than two weeks after the signing of this Agreement deposit with the United Nations the sum of US$ 82,100 and thereafter not later than 31 March 2004 the sum of US$ 964,604 specified in annex II of the Agreement. If the full

deposit does not cover the expenditure, as a result of variations such as inflation, DSA index and air fares, 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 of this article 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 of this article, as soon as possible and not later than October 2004. These costs shall be expressed in United States dollars, using the United Nations official rate of exchange prevailing at the time the payments were 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 of this article. Should the actual additional costs exceed the deposit as specified in paragraph 2 above, the Government shall remit the outstanding balance of the United States dollars 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 Government and the United Nations.

Article XII. Security

The Government shall provide the airport, hotels and the Conference premises with all the security required to ensure the safety of the persons referred to in article II and the effective functioning of the Conference in an atmosphere of security and tranquillity free from interference of any kind. Such services shall be under the direct supervision and control of a senior official designated by the Government who shall work in close cooperation with a senior official designated by the Secretary-General of the Conference.

Article XIII. 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) Death, injury to persons or damage to or loss of property in the Conference premises referred to in article I and article III that are provided by or are under the control of the Government;

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

(c) The employment for the Conference of the local staff 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, contemplated in paragraph 1 of this article.

3. The United Nations shall render reasonable assistance and shall exert its best efforts to make available to the Government relevant information, evidence and documents which are in the possession of, or under the control of the United Nations, to enable the Government to deal with any action, claim or other demand contemplated in paragraph 1 of this article.

Article XIV. 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 Brazil is a party, shall be applicable in respect of the Conference. In particular, the representatives of States referred to in paragraph l(a) of 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 paragraph l(h) and paragraph 2 of article II, shall enjoy the privileges and immunities provided under articles V and VII of the Convention; and any experts on missions for the United Nations in connection with the Conference, referred to in paragraph l(i) of article II, shall enjoy the privileges and immunities provided under articles VI and VII of the Convention.

2. The observers referred to in paragraph l(b), (c), (e), (f), and (g) of article II 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 local staff 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 observers from the Specialized Agencies, referred to in paragraph l(d) of article II, shall enjoy the privileges and immunities provided by the Convention on the Privileges and Immunities of Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947 or the Agreement on the Privileges and Immunities of the International Atomic Energy Agency of 1 July 1959, as appropriate.

5. In carrying out their functions for the United Nations, the observers of the organizations institutionally linked to the United Nations, referred to in paragraph l(d) of article II, 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.

6. 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.

7. All persons referred to in article II shall have the right of entry into and exit from Brazil, and no impediment shall be imposed on their transit to and from the Conference area. They shall be granted facilities for speedy travel. Visas and entry permits, where required, shall be granted to all those invited to the Conference free of charge, as speedily as possible and not later than two weeks before the date of the opening of the Conference. If the application for the visa is not made at least two-and-a-half weeks before the opening

of the Conference, the visa shall be granted not later than three days from the receipt of the application.

8. For the purpose of the Convention on the Privileges and Immunities of the United Nations, the Conference premises specified in article I and article III 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, which authorization shall not be withheld in cases of emergency. The premises shall be inviolable for the duration of the Conference, including the preparatory stage and the winding-up, from 7 to 19 June 2004.

9. All persons referred to in article II shall have the right to take out of Brazil at the time of their departure, without any restrictions, any unexpended portions of the funds they brought in to Brazil in connection with the Conference and to reconvert any such funds at the prevailing market rate.

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

Article XV. Settlement of disputes

Any dispute between the Government and the United Nations 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 Government, one to be named by the Secretary-General of the United Nations, 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 XVI. Final provisions

1. This Agreement and its annexes I and II 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 period thereafter as is necessary for all matters relating to any of its provisions to be settled.

Done at São Paulo on 9 March 2004 in English and Portuguese.

In case of divergence the English text shall prevail.

For the United Nations:	For the Government of the Federative Republic of Brazil:
[*Signed*] RUBENS RICUPERO	[*Signed*] CELSO AMORIM
Secretary-General of UNCTAD	Minister of Foreign Affairs

(*c*) Exchange of letters constituting an agreement between the United Nations and the Government of the Syrian Arab Republic regarding the hosting of the "Workshop on Environment Statistics in the Countries of the Region of the Economic and Social Commission for Western Asia (ESCWA)", to be held in Damascus, Syria, from 4 to 8 April 2004. New York, 14 January 2004 and 18 March 2004.[6]

I

14 January 2004

Excellency,

I have the honour to refer to the arrangements concerning the organization of a workshop entitled "Workshop on Environment Statistics in the Countries of the Region of the Economic and Social Commission for Western Asia (ESCWA)" (hereinafter referred to as "the Workshop"). The Workshop will be organized by the United Nations represented by the Department of Economic and Social Affairs (hereinafter referred to as "the United Nations") and the Government of the Syrian Arab Republic represented by Central Bureau of Statistics (hereinafter referred to as "the Government"). With the present letter, I wish to obtain your Government's acceptance of the following:

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

(a) up to 30 regional participants, from the ESCWA countries selected by the United Nations;

(b) local government officials selected by the Government;

(c) three officials from the United Nations and one official from ESCWA;

(d) three consultants selected by the United Nations; and

(e) other participants, invited as observers by the United Nations and the Government, including representatives from the United Nations system.

2. The total number of participants will be approximately 50. The list of participants will be determined by the United Nations in consultation with the Government prior to the holding of the Workshop.

3. The Workshop will be conducted in Arabic, with simultaneous interpretation into English.

4. The United Nations will be responsible for:

[6] Entered into force on 18 March 2004, in accordance with the provisions of the letters.

(a) the invitations as well as the selection of national participants from ESCWA countries and participants from other international organizations;

(b) the cost of interpretation;

(c) organizing the Workshop and the preparation of the appropriate documentation and the cost of document production in Arabic; and

(d) administrative arrangements and costs relating to the issuance of airline tickets and the payment of subsistence allowance for the participants specified in sub-paragraphs l a), l c) and 1 d).

5. The Government will be responsible for:

(a) meeting facilities for the Workshop;

(b) local counterpart staff to assist with the planning and any necessary administrative and substantive support before, during and after the Workshop;

(c) any costs related to the participation of national participants specified in sub-paragraph l b);

(d) any necessary office supplies and equipment, including stationery, personal computers, typewriters and photocopiers; and

(e) other local logistics and organizational services in support of the Workshop including hotel and transportation arrangements.

6. The Workshop will be held in Damascus, Syria from the 4th to the 8th of April 2004 at the offices of the Central Bureau of Statistics. All facilities will be arranged by the Government in consultation with the United Nations.

7. The cost of transportation and daily subsistence allowance for observers, as specified in sub-paragraph l e) above, will be the responsibility of their organizations.

8. As the Workshop will be convened by the United Nations, I wish to propose that the following terms shall apply:

(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 a party, shall be applicable in respect of the Workshop.

(b) 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. Officials of the specialized agencies participating in the Workshop shall be accorded the privileges and immunities provided under Articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly on 21 November 1947, to which the Government is a party.

(c) 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;

(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 Workshop;

(e) All participants and all persons performing functions in connection with the Workshop shall have the right of unimpeded entry into and exit from the Syrian Arab Republic. 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 Workshop, visas shall be granted not 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 not later than three days before the opening. Arrangements shall also be made to ensure that visas for the duration of the Workshop are delivered at the airport of arrival to those who are 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. The Government shall furnish such police protection as is required to ensure the effective functioning of the Workshop 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.

10. 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 any transport services that are provided for the Workshop by or under the control of the Government;

(c) The employment for the Workshop of personnel provided or arranged for by the Government.

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

11. Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provisions of the Convention that is regulated by Section 30 of the Convention, 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 negotiation or any other agreed mode of settlement shall be submitted at the request of either party of 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 other party having notified the name of its arbitrator, or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them appoint the Chairman, then such arbitrator shall be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the parties, the tribunal shall adopt its

own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the parties, and take all decisions by a two-thirds majority. Its decisions on all questions of procedure and substance shall be final and, even if rendered in default of one of the parties, be binding on both of them.

I further propose that upon receipt of your Government's confirmation in writing of the above, this exchange of letters shall constitute an Agreement between the United Nations and the Government of the Syrian Arab Republic regarding the hosting of the Workshop, 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.

Yours sincerely,

[*Signed*] José Antonio Ocampo
Under-Secretary-General
Department of Economic and Social Affairs

H.E. Mr. Fayssal Mekdad
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of the Syrian Arab Republic
to the United Nations
New York, N.Y.

II

18 March 2004

Excellency,

I have the honour to refer to your letter ref. DESA/04/008 dated 14 January 2004 relating to the proposed arrangements for the hosting of the "Workshop on Environment Statistics in the Countries of the Region of the Economic and Social Commission for Western Asia (ESCWA)" to be held in Damascus, Syria, from 4-8 April 2004.

In reply, I have the honour to confirm that the terms of proposal are acceptable to the Government of the Syrian Arab Republic.

Consequently, your letter and this reply shall constitute an Agreement between the United Nations and the Government of the Syrian Arab Republic, 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*] Dr. Fayssal Mekdad
Ambassador
Permanent Representative

H.E. Mr. José Antonio Ocampo
Under Secretary-General
Department of Economic And Social Affairs
New York

(*d*) Exchange of letters constituting an agreement between the United Nations and the Government of the Islamic Republic of Iran regarding the hosting of the United Nations/Islamic Republic of Iran Regional Workshop on the Use of Space Technology for Environmental Security, Disaster Rehabilitation and Sustainable Development hosted by the Government of the Islamic Republic of Iran, to be held in Tehran, Islamic Republic of Iran from 8 to 12 May 2004. Vienna, 26 April 2004 and 3 May 2004.[7]

I

26 April 2004

Excellency,

United Nations/Islamic Republic of Iran Regional Workshop on the Use of Space Technology for Environmental Security, Disaster Rehabilitation and Sustainable Development hosted by the Government of the Islamic Republic of Iran, to be held in Tehran, Islamic Republic of Iran from 8 to 12 May 2004

I wish to take this opportunity to express the gratitude of the United Nations, through Your Excellency, to your Government for its decision to host the above-referenced Workshop. The Workshop will provide a unique opportunity for bringing together experts, decision-makers and practitioners to share experience and knowledge with the aim of defining actions and follow-up activities that are required to facilitate the increased use of space technologies within the region. The United Nations Programme on Space Applications, through regional workshops, expert meetings, pilot projects and training opportunities, has been implementing a "Space Technology and Disaster Management Programme" and a "Natural Resources Management and Environmental Monitoring Programme" to support developing countries in incorporating space-based solutions for solving environmental and disaster-related issues. The above Workshop, to be jointly organised with the Iranian Remote Sensing Center and the European Space Agency, will further corroborate the premise that space technologies indeed do have a contribution to make, providing significant and unique solutions specifically in the area of environmental security, disaster rehabilitation and sustainable development.

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

A. The United Nations

1. The United Nations shall provide round trip international air travel in accordance with United Nations rules and procedures, to Tehran, Islamic Republic of Iran for up to 25

[7] Entered into force on 3 May 2004, in accordance with the provisions of the letters.

participants among nominees from developing countries that are invited to participate in the Workshop by the United Nations.

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

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

B. Language and participation

1. The total number of participants will be limited to 80 (including 30 Iranian participants).

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

C. The Government

1. The Government will act as host to the Workshop, which will be held at Tehran.

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

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

(a) room and board for 11 participants from developing countries;

(b) appropriate premises and equipment (including duplication facilities and consumables) for holding the Workshop;

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

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

(e) amplification and audio-visual projection equipment as may be necessary and technicians to operate them for the Workshop;

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

(g) communication facilities (facsimile, telephone) for official use in connection with the Workshop, office supplies and equipment for the conduct of the Workshop;

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

(i) all official transportation within the Islamic Republic of Iran for all participants in the Workshop;

(j) local transportation, including airport reception during arrival and departure for all participants at the Workshop;

(k) local transportation for the United Nations staff responsible for the Workshop for official purposes during the Workshop;

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

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

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

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

D. Privileges and immunities

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

1. *(a)* The Convention on the Privileges and Immunities of the United Nations (1946) acceded to by the Islamic Republic of Iran on 8 May 1947 shall be applicable in respect of the Workshop. The participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations under Article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Workshop shall enjoy the privileges and immunities provided under Articles V and VII of the Convention. Officials of the Specialized Agencies participating in the Workshop shall be accorded the privileges and immunities provided under Articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies (1947).

(b) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and persons performing functions in connection with the 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.

2. All participants and all persons performing functions in connection with the Workshop shall have the right of unimpeded entry into and exit from Islamic Republic of Iran. 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 not 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 not later than three days before the opening.

3. It is further understood that your Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of:

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

(ii) The transportation provided by your Government;

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

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

I further propose that upon receipt of your confirmation in writing of the above terms, this exchange of letters shall constitute an Agreement between the United Nations and the Government of Islamic Republic of Iran regarding the hosting of the Workshop, 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*] ANTONIO MARIA COSTA
Director-General,
United Nations Office at Vienna

H. E. Mr. Pirooz Hosseini
Ambassador Extraordinary and Plenipotentiary
Permanent Mission of the Islamic Republic
of Iran to the United Nations (Vienna)

II

Vienna, 3 May, 2004

Dear Mr. Costa,

In response to your letter dated April 26, 2004 concerning the arrangements for the "Regional Workshop on the Use of Space Technology for Environmental Security, Disaster Rehabilitation and Sustainable Development" to be held in Tehran, Iran, from 8 to 12 May

2004, I have the honor to express our agreement with the terms proposed in your letter for the workshop, within the specifications referred to in the Verbal Note dated April 8, 2004 (Ref: 345-1-3/108) of this Mission. Accordingly, your letter and this letter shall constitute an Agreement between the two sides, to enter into force on the date of receipt of this letter. However, those terms and the exchange of letters shall be without prejudice to future agreements/arrangements with the United Nations and/or its specialized agencies for similar events.

I am also delighted to assert that the Government of Iran is pleased for the mode of cooperation and support by your colleagues in the UN Office for Outer Space Affairs, and therefore wishes to express its appreciation in this respect.

At the end, I would like to avail myself of this opportunity to renew to you and all of your colleagues the assurances of my highest consideration.

[*Signed*] PIROOZ HOSSEINI
Ambassador and Permanent Representative

Mr. Antonio Maria Costa
Director-General
United Nations Office at Vienna

(*e*) Exchange of letters constituting an agreement between the United Nations and the Government of the Republic of Croatia on "Arrangements between the United Nations and the Government of the Republic of Croatia regarding the meeting of the parties to the Convention on Environmental Impact Assessment in a Transboundary Context and the Meeting of Signatories to the Protocol on Strategic Environmental Assessment, to be held in Cavtat, from 1 to 4 June 2004". Geneva, 25 March 2004 and 10 May 2004.[8] [9]

I

25 March 2004

Excellency,

I have the honour to give you below the text of arrangements between the United Nations and the Government of Croatia (hereinafter referred to as "the Government") in connection with the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context and the Meeting of Signatories to the Protocol on Strategic Environmental Assessment, to be held, at the invitation of the Government, in Cavtat from 1 to 4 June 2004.

Arrangements between the United Nations and the Government of Croatia regarding the meeting of the parties to the Convention on environmental impact assessment in

[8] Entered into force on 10 May 2004, in accordance with the provisions of the letters.

[9] The annex is not published herein.

a transboundary context and the meeting of the signatories to the Protocol on strategic environmental assessment, to be held in Cavtat, from 1 to 4 June 2004.

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

2. The supplementary expenses arising directly or indirectly from the Meeting, namely air tickets, economy class, Geneva-Cavtat-Geneva, and subsistence allowance for the United Nations personnel servicing the Meeting, as well as vouchers for air freight or excess baggage for documents and records, will be paid by the Trust Fund for the Convention.

3. The Government will provide for the Meetings adequate facilities including personnel resources, space and office supplies.

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 Meetings; (ii) the transportation provided by the Government; and (iii) the employment for the Meetings 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 Croatia is a party, shall be applicable to the Meetings, 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 Meetings shall enjoy the privileges and immunities provided under articles V and VII of the Convention;

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

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

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

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

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

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

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

Accept, Excellency, the assurances of my highest consideration.

[*Signed*] SERGEI ORDZHNONIKIDZE

His Excellency
Ambassador Gordan Markotić
Permanent Representative of Croatia
to the Office of the United Nations and
other international organizations at Geneva

II

Geneva, 10 May 2004

Excellency,

I have the honour to confirm the receipt of your letter dated 25 March 2004 by which you have proposed the text of Arrangements between the United Nations and the Government of the Republic of Croatia regarding the meeting of the parties to the Convention on Environmental Impact Assessment in a Transboundary Context and the meeting of signatories to the Protocol on Strategic Environmental Assessment, to be held in Cavtat, from 1 to 4 June 2004, which reads as follows:

[*See letter I*]

I have the honour to inform you that the Government of the Republic of Croatia accepts the proposal contained in your letter of 25 March 2004 and agrees that the said

letter and this reply constitute the Arrangements between the United Nations and the Government of the Republic of Croatia regarding the meeting of the parties to the Convention on Environmental Impact Assessment in a Transboundary Context and the meeting of signatories to the Protocol on Strategic Environmental Assessment, to be held in Cavtat, from 1 to 4 June 2004, which shall enter into force for the duration of the Meetings and for such additional periods as is necessary for their preparation and winding up.

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

[*Signed*] AMBASSADOR GORDAN MARKOTIĆ
Permanent Representative of the Republic of Croatia
to the United Nations Office at Geneva

His Excellency Sergei Ordzhonikidze
Director-General to the
United Nations Office at Geneva

(*f*) Agreement between the United Nations and the Government of Haiti concerning the status of the United Nations Operation in Haiti. Port-au-Prince, 9 July 2004.[10]

I. Definitions

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

(a) "MINUSTAH" means the United Nations Stabilization Mission in Haiti, established in accordance with Security Council resolution 1542 (2004) dated 30 April 2004 with the mandate described in the above mentioned resolution based on the recommendations contained in the Secretary General's report of 16 April 2004 (S/2004/300);

MINUSTAH 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 MINUSTAH to whom he or she delegates a specified function or authority;

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

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

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

[10] Entered into force on 9 July 2004, in accordance with article XI.

(c) "The Government" means the Government of Haiti;

(d) "The territory" means the territory of Haiti;

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

(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, to which the Republic of Haiti is a party;

(g) "Contractors" means persons, other than members of MINUSTAH, engaged by the United Nations, including juridical as well as natural persons and their employees and subcontractors, to perform services and/or supply equipment, provisions, supplies, materials and other goods in support of MINUSTAH 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 MINUSTAH and contractors in support of MINUSTAH activities;

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

(j) "Aircraft" means civilian and military aircraft in use by the United Nations and operated by members of MINUSTAH, participating States and contractors in support of MINUSTAH 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 MINUSTAH or any member thereof or to contractors apply throughout the territory of Haiti.

III. Application of the Convention

3. MINUSTAH, 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.

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

IV. Status of MINUSTAH

5. MINUSTAH 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 Agreement. They 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 MINUSTAH and its international status:

(a) The United Nations shall ensure that MINUSTAH shall conduct its operation in Haiti 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 MINUSTAH 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 August 1949 and their Additional Protocols of 8 June 1977.

MINUSTAH shall ensure that the members of its 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 MINUSTAH.

United Nations flag, markings and identification

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

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

Communications

10. MINUSTAH shall enjoy the facilities in respect of communications provided for in article III of the Convention and shall, in coordination with the Government, use such facilities as may be required for the performance of its 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) MINUSTAH shall have the right to install and operate United Nations radio stations to disseminate information relating to its mandate. It shall also have the right to install and operate radio sending and receiving stations and satellite systems to connect appropriate points within the territory 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 Radio Regulations and the frequencies on which any such station may be operated shall be assigned by the Government without delay;

(b) MINUSTAH shall enjoy, within the territory of Haiti, the right to unrestricted communication by radio (including satellite, mobile and hand held radio), telephone, elec-

tronic mail, facsimile or any other means, and of establishing the necessary facilities for maintaining such communications within and between premises of MINUSTAH, including the laying of cables and landlines and the establishment of fixed and mobile radio sending, receiving and repeater stations. The radio frequencies utilized shall be established in cooperation with the Government and shall be assigned without delay. 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, and that the use of that system shall be charged at the most favourable rate;

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

Travel and transport

12. MINUSTAH and its members as well as its contractors shall enjoy, together with vehicles, including vehicles of contractors used exclusively in the performance of their services for MINUSTAH, vessels, aircraft and equipment, freedom of movement without delay throughout Haiti. That freedom shall, with respect to large movements of personnel, equipment, vehicles or aircraft through airports or on railways or roads used for general traffic within Haiti, be coordinated with the Government. The Government undertakes to supply MINUSTAH, where necessary, with maps and other information, including dangers and impediments, which may be useful in facilitating its movements.

13. MINUSTAH vehicles shall not be subject to Haitian registration or licensing but shall carry third-party insurance.

14. MINUSTAH and its members as well as contractors, together with their vehicles, including vehicles of contractors used exclusively in the performance of their services for MINUSTAH, vessels and aircraft, may use roads, bridges, canals and other inland waterways, port facilities, airfields and airspace without the payment of dues, of tolls, landing fees, hangar or overflight fees or port charges, including wharfage and pilotage charges. However, MINUSTAH 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 MINUSTAH

15. MINUSTAH, 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 MINUSTAH shall also apply to the property, funds and assets of participating States used in connection with the national contingents serving in MINUSTAH, as provided for in paragraph 4 of the present Agreement. The Government recognizes the right of MINUSTAH 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 MINUSTAH 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 members of MINUSTAH, 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 the commissaries and the sale or resale of such goods to persons other than members of MINUSTAH, and he or she 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 MINUSTAH 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, and 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 Haiti 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 MINUSTAH and the Government.

V. Facilities for MINUSTAH and its contractors

Premises required for the operational and administrative activities of MINUSTAH

16. The Government shall provide without cost to MINUSTAH 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 MINUSTAH. Without prejudice, all such premises shall be inviolable and subject to the exclusive control and authority of the United Nations. The Government shall guarantee unimpeded access to such premises.

17. The Government undertakes to assist MINUSTAH as far as possible in obtaining, or to make available, where applicable, water, electricity and other necessary 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 MINUSTAH as to essential government services. Where such utilities or facilities are not provided free of charge, payment shall be made by MINUSTAH on terms to be agreed with the competent authority. MINUSTAH shall be responsible for the maintenance and upkeep of facilities so provided.

18. MINUSTAH 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 persons who are not members of MINUSTAH to such premises.

Provisions, supplies and services, and sanitary arrangements

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

21. The Government undertakes to assist MINUSTAH as far as possible in obtaining from local sources equipment, provisions, supplies, fuel, materials and other goods and services for its subsistence and operations. In respect of equipment, provisions, supplies, materials and other goods and services purchased locally by MINUSTAH or by contractors for the official and exclusive use of MINUSTAH, the Government shall make appropriate administrative arrangements for reimbursement of or relieve from any duty or tax included in the purchase price. The Government shall exempt MINUSTAH and its contractors from general sales taxes on all local purchases for official use. In making purchases on the local market, MINUSTAH 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 Haitian nationals resident in Haiti, in support of MINUSTAH, the Government agrees to provide contractors with facilities concerning their entry into and departure from Haiti as well as their repatriation in time of crisis. For this purpose, the Government shall promptly issue to contractors, free of charge and without any restrictions, all necessary visas, licences or permits. Contractors, other than Haitian nationals resident in Haiti, shall be accorded exemption from taxes on the services provided to MINUSTAH, including corporate, income, social security and other similar taxes arising directly from the provision of such services.

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

Recruitment of local personnel

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

Currency

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

VI. Status of the members of MINUSTAH

Privileges and immunities

26. The Special Representative, the Commander of the military component of MINUSTAH 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 MINUSTAH, 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. 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 to be experts on mission within the meaning of article VI of the Convention.

29. Military personnel of national contingents assigned to the military component of MINUSTAH 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 MINUSTAH 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 MINUSTAH shall be exempt from taxation on the pay and emoluments received from the United Nations or from a participating State and on any income received from outside Haiti. 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 MINUSTAH shall have the right to import free of duty their personal effects in connection with their arrival in and their departure from Haiti. They shall be subject to the laws and regulations governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in Haiti with MINUSTAH. Special facilities will be granted by the Government for the speedy processing of entry and exit formalities for all members of MINUSTAH, including the military component, upon prior written notification. On departure from Haiti, members of MINUSTAH 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 MINUSTAH.

33. The Special Representative shall cooperate with the Government and shall render all assistance within his or her power in ensuring the observance of the customs and fiscal laws and regulations of Haiti by the members of MINUSTAH, in accordance with the present Agreement.

Entry, residence and departure

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

35. The Government undertakes to facilitate the entry into and departure from Haiti of the Special Representative and members of MINUSTAH and shall be kept informed of such movement. For that purpose, the Special Representative and members of MINUSTAH 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 Haiti. They shall also be exempt from any regulations governing the residence of aliens in Haiti, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in Haiti.

36. For the purpose of such entry or departure, members of MINUSTAH 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 aforementioned identity card.

Identification

37. The Special Representative shall issue to each member of MINUSTAH before or as soon as possible after such member's first entry into Haiti, 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 MINUSTAH.

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

Uniforms and arms

39. United Nations military personnel and civilian police of MINUSTAH shall wear, while performing official duties, the uniform of their respective countries of origin 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 MINUSTAH may be authorized by the Special Representative at other times. Military personnel and civilian police of MINUSTAH 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 licences

40. The Government agrees to accept as valid, without tax or fee, a permit or licence issued by the Special Representative for the operation by any member of MINUSTAH,

including locally recruited personnel, of any MINUSTAH vehicles and for the practice of any profession or occupation in connection with the functioning of MINUSTAH, 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 licence.

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

42. Without prejudice to the provisions of paragraph 39, the Government further agrees to accept as valid, without tax or fee, a permit or licence issued by the Special Representative to a member of MINUSTAH for the carrying or use of firearms or ammunition in connection with the functioning of MINUSTAH.

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

44. The military police of MINUSTAH shall have the power of arrest over the military members of MINUSTAH. 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 MINUSTAH. Such other persons shall be delivered immediately to the nearest appropriate official of the Government so that the offence or disturbance on such premises may be dealt with.

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

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

(b) When such member of MINUSTAH is apprehended in the commission or attempted commission of a criminal offence. Such person shall be delivered immediately, together with any weapons or other items seized, to the nearest appropriate representative of MINUSTAH, 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), MINUSTAH or the Government, as the case may be, may conduct a preliminary interrogation but may not delay the transfer of custody. Following such transfer, the person concerned shall, upon request to the arresting authority, be made available for further interrogation.

47. MINUSTAH 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, 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 on the terms specified by the authority delivering them. Each shall notify the other of the disposition of any case in the outcome of which the other may have an interest or in which there has been a transfer of custody under the provisions of paragraphs 44 to 46.

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 MINUSTAH, its property, assets and members. In particular:

(i) The Government shall take all appropriate measures to ensure the safety and security of members of MINUSTAH. In particular, it shall take all appropriate steps to protect members of MINUSTAH, 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 MINUSTAH are inviolable and subject to the exclusive control and authority of the United Nations;

(ii) If members of MINUSTAH are captured or detained in the course of the performance of their duties and their identity 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 MINUSTAH;

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

(c) A threat to commit any such attack with the objective of compelling a natural 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 MINUSTAH, is present in its territory, unless it has extradited such 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 subject to its criminal jurisdiction who are accused of other acts in relation to MINUSTAH 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 any security necessary to protect MINUSTAH, its property and members during the exercise of their functions.

Jurisdiction

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

51. Should the Government consider that any member of MINUSTAH 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 for in paragraph 57 of the present Agreement;

(b) Military members of the military component of MINUSTAH 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 Haiti.

52. If any civil proceeding is instituted against a member of MINUSTAH before any court of Haiti, the Special Representative shall be notified immediately, and he or she 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 MINUSTAH is unable because of official duties or authorized absence to protect his or her interests in the proceeding, the court shall at the defendant's request suspend the

proceeding until the elimination of the disability, but for no more than 90 days. Property of a member of MINUSTAH that is certified by the Special Representative to be needed by the defendant for the fulfilment of his or her official duties shall be free from seizure for the satisfaction of a judgement, decision or order. The personal liberty of a member of MINUSTAH 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 MINUSTAH who dies in Haiti, as well as that member's personal property located within Haiti, 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 MINUSTAH, except for those arising from operational necessity, 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 or she had discovered the loss or injury, but in any event not later than one year after the termination of the mandate of MINUSTAH. Upon determination of liability as provided for in the present 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 MINUSTAH, to which MINUSTAH or any member thereof is a party and over which the courts of Haiti 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 by the two parties within 30 days of the appointment of the first member of the commission, the President of the International Court of Justice may, at the request of either party, appoint the chairman. Any vacancy on the commission shall be filled by the same method prescribed for the original appointment, provided that the 30-day period there prescribed shall start as soon as there is a vacancy in the chairmanship. The commission shall determine its own procedures, provided that any two members shall constitute a quorum for all purposes (except for a period of 30 days after the creation of a vacancy) and all decisions shall require the approval of any two members. The awards of the commission shall be final. The awards of the commission shall be notified to the parties and, if against a member of MINUSTAH, the Special Representative or the Secretary General of the United Nations shall use his or her 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. Disputes between MINUSTAH 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 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 MINUSTAH and to the facilities Haiti undertakes to provide to MINUSTAH, the Government shall have the ultimate responsibility for the implementation and fulfillment 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 MINUSTAH, except that:

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

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

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 Port-au-Prince on 9 July 2004.

For the United Nations:
[*Signed*] ADAMA GUINDO
MINUSTAH

For the Government of Haiti:
[*Signed*] GERARD LATORTUE
Prime Minister

(*g*) Agreement between the United Nations and the Government of Sudan concerning the activities of the United Nations Mission in Sudan. New York, 6 August 2004.[11]

Whereas the Security Council, by its Presidential Statement of 10 October 2003 (S/PRST/2003/16), requested the Secretary-General to initiate preparatory work on how the United Nations could best fully support the implementation of a comprehensive peace agreement between the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A);

Whereas the Secretary-General, in his report of 3 June 2004 (S/2004/453), proposed to establish, under the authority of a Special Representative, a United Nations advance team in order to make preparations for a future United Nations monitoring and observation operation in Sudan to assist in the implementation of a comprehensive peace agreement between the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A);

Whereas that report indicated that the Secretary-General would initiate consultations on a draft agreement with the Government of Sudan and the SPLM/A as soon as the Security Council had taken the decision to authorize the establishment of the advance team, such agreement to provide in principle for the application of the 1946 Convention on the Privileges and Immunities of the United Nations and, in accordance with General Assembly and Security Council resolutions on peacekeeping and related operations, to include relevant provisions of the model status-of-forces agreement (A/45/594) and the Convention on the Safety of United Nations and Associated Personnel;

Whereas the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A) concluded on 5 June 2004 the Nairobi Declaration in which they confirmed their agreement to the six protocols signed between them, including the Agreement on Security Arrangements during the interim period dated 25th September 2003 ("the Naivasha Agreement") and reconfirmed their commitment to completing the remaining stages of the negotiations and peace process;

Whereas, by resolution 1547 (2004) of 11 June 2004, the Security Council welcomed the report of the Secretary-General and his proposal to establish, for an initial period of three months and under the authority of an SRSG, a United Nations advance team in Sudan as a special political mission, dedicated to the preparation of the international monitoring foreseen in the 25 September 2003 Naivasha Agreement on Security Arrangements, to facilitate contacts with the parties concerned and to prepare for the introduction of a peace support operation following the signing of a Comprehensive Peace Agreement;

Whereas the Security Council, by its resolution 1547 (2004), endorsed the Secretary-General's proposals for the staffing of the advance team and requested in this regard the Secretary-General to conclude all necessary agreements with the Government of Sudan as expeditiously as possible;

Whereas the Security Council, by its resolution 1547 (2004), declared its readiness to consider establishing a United Nations peace support operation to support the implementation of a Comprehensive Peace Agreement, and requested the Secretary-General to sub-

[11] Entered into force on 6 August 2004, in accordance with article X.

mit to the Council recommendations for the size, structure and mandate of this operation, as soon as possible after the signing of a Comprehensive Peace Agreement.

Whereas the Security Council, by its resolution 1547 (2004), requested the Secretary-General, pending signature of a Comprehensive Peace Agreement, to take the necessary preparatory steps, including, in particular, pre-positioning the most critical logistical and personnel requirements to facilitate the rapid deployment of the above-mentioned possible operation principally to assist the parties in monitoring and verifying compliance with the terms of a Comprehensive Peace Agreement as well as to prepare for the Organization's role during the transitional period in Sudan.

Whereas the Government of Sudan has the primary responsibility under international law for the security and protection of United Nations and its associated personnel in Sudan;

Now, therefore, the United Nations and the Government of Sudan hereby agree as follows:

Article I. Privileges and immunities

1. In order to facilitate the activities of the United Nations advance team in Sudan (hereinafter "the UN Mission"), the Government of Sudan (hereinafter "the Government") shall, consistently with Article 105 of the Charter of the United Nations, extend to the UN Mission, as an organ of the United Nations, its property, funds and assets and its members listed in paragraphs 2 (a), (b) and (c) below the privileges and immunities provided for in the 1946 Convention on the Privileges and Immunities of the United Nations (hereinafter "the Convention"), to which the Government is a Party. Additional facilities as provided herein are also required for contractors and their employees engaged by the United Nations to perform services exclusively for the UN Mission or to supply exclusively to the UN Mission equipment, provisions, supplies, materials and other goods (hereinafter "United Nations contractors").

2. The Government shall extend to:

(a) the Special Representative of the Secretary-General (hereinafter the "SRSG") and other high-ranking members of the UN Mission 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 the UN Mission, the privileges and immunities to which they are entitled under Articles V and VII of the Convention. Locally recruited members of the UN Mission shall enjoy the immunities concerning official acts and the exemption from taxation and immunity from national service obligations provided for in section 18 (a), (b) and (c) of the Convention;

(c) other persons assigned to perform missions for the UN Mission, including military liaison officers, the privileges and immunities accorded to experts performing missions for the United Nations under Article VI and section 26 of Article VII of the Convention.

3. The members of the UN Mission listed in paragraph 2 above, 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 or for the UN Mission.

4. The members of the UN Mission listed in paragraph 2 above, including locally recruited personnel, shall be exempt from taxation on pay and emoluments received from the United Nations, as well as from all other direct taxes, except municipal rates for services enjoyed, and from all registration fees and charges. On departure from Sudan, members of the UN Mission may take with them such funds as the SRSG certifies were received in pay and emoluments from the United Nations and are a reasonable residue thereof.

5. United Nations contractors, other than local contractors, shall be accorded repatriation facilities in time of crisis and exemption from taxes and monetary contributions in Sudan on services, equipment, provisions, supplies, materials and other goods provided to the UN Mission, including corporate, income, social security and other similar taxes arising directly from or related directly to the provision of such services or goods.

6. The privileges and immunities necessary for the fulfillment of the functions of the UN Mission also include:

(*i*) entry and exit, without delay or hindrance, of its members and United Nations contractors and of the property, equipment, provisions, supplies, materials and other goods, including spare parts and means of transport, of the UN Mission and United Nations contractors. Members of the UN Mission 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 and departing from Sudan and shall be exempt from any regulations governing the residence of aliens, including registration. For the purpose of such entry and departure, members of the UN Mission shall only be required to have a personal numbered identity card issued by the SRSG, which shall show the holder's full name, date of birth, job title and photograph, except in the case of first entry, when the United Nations laissez-passer, national passport or personal identity card issued by the United Nations shall be accepted in lieu of the said identity card. The Government shall promptly issue to United Nations contractors, free of charge and without any restrictions and within 48 hours of application, all necessary visas, licenses or permits;

(*ii*) full and unrestricted freedom of movement throughout the country by the most direct route possible of its members and United Nations contractors and of property, equipment and means of transport of the UN Mission and United Nations contractors without the need for travel permits or prior authorisation or notification, except in the case of movements by air, which will comply with the customary procedural requirements for flight planning and operations within the airspace of Sudan as promulgated and specifically notified to the UN Mission by the Civil Aviation Authority of Sudan. The UN Mission, its members, United Nations contractors and the vehicles, vessels and aircraft of the UN Mission and United Nations contractors shall use roads, bridges, rivers, canals and other waters, port facilities and airfields without the payment of any form of monetary contributions, dues, tolls, landing fees, user fees, parking fees, overflight fees, port fees and charges, including wharfage charges. However, exemption from charges which are in fact charges for services rendered will not be claimed, it being understood that such charges shall be charged at the most favourable rates;

(*iii*) the right to import by the most convenient and direct route by sea, land or air and to clear ex customs and excise warehouse at locations in Sudan convenient for the UN Mission, free of duty, taxes, fees and charges and free of other prohibitions and restrictions, equipment, provisions, supplies, materials and other goods, including spare parts and means of transport, which are for the exclusive and official use of the UN Mission. For this purpose, the Government agrees expeditiously to establish, at the request of the UN Mission, temporary customs clearance facilities for the UN Mission at locations in Sudan not previously designated as official ports of entry for Sudan;

(*iv*) the right to re-export or otherwise dispose of property and equipment, as far as it is still usable, all unconsumed provisions, supplies materials 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 with the Government or an entity nominated by the Government;

(*v*) prompt issuance by the Government, upon presentation by the UN Mission of a bill of lading, airway bill, cargo manifest or packing list, of all necessary authorizations, permits and licenses for the importation or purchase of equipment, provisions, supplies, materials and other goods, including spare parts and means of transport, used in support of the UN Mission, including in respect of importation or purchase by United Nations contractors, free of any restrictions and without payment of monetary contributions or duties, fees, charges or taxes, including value-added tax;

(*vi*) exemption of vehicles, vessels and aircraft of the UN Mission from registration or licensing by the Government, it being understood that such vehicles shall carry third party insurance; acceptance by the Government of permits or licenses issued by the United Nations for the operation by any member of the UN Mission, including locally recruited personnel, of vehicles used in support of the UN Mission; acceptance or, where necessary, prompt validation by the Government, free of charge and without any restriction, of licenses and certificates already issued by appropriate authorities in other States in respect of aircraft and vessels used in support of the UN Mission, including those operated by contractors exclusively for the UN Mission; without prejudice to the foregoing, prompt issuance by the Government, free of charge and without any restrictions, of necessary authorizations, licenses and certificates, where required, for the acquisition, use, operation and maintenance of aircraft and vessels used in support of the UN Mission;

(*vii*) the right to fly the United Nations flag and place distinctive United Nations identification on premises, vehicles, aircraft and vessels used in support of the UN Mission;

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

Article II. Communications

1. The UN Mission shall enjoy the facilities in respect to communications provided for in Article III of the Convention.

2. The UN Mission shall have the right to establish, install and operate United Nations radio stations under its exclusive control to disseminate to the public in Sudan

information relating to its mandate. Programmes broadcast on such stations shall be under the exclusive editorial control of the UN Mission and shall not be subject to any form of censorship. The United Nations will make the broadcast signal of such stations available to the state broadcaster upon request for further dissemination through the state broadcasting system. Such United Nations radio stations shall be operated in accordance with the International Telecommunications Convention and Regulations. The frequencies on which such stations may operate shall be decided upon in cooperation with the Government. If no decision has been reached five (5) working days after the matter has been raised by the United Nations with the Government, the Government shall immediately allocate suitable frequencies for use by such stations.

3. The UN Mission shall have the right to install and operate radio sending and receiving stations, as well as satellite systems, in order to connect appropriate points within the territory of Sudan 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. Such telecommunication services shall be operated in accordance with the International Telecommunications Convention and Regulations. The frequencies on which such services may be operated shall be decided upon in cooperation with the Government. If no decision has been reached five (5) working days after the matter has been raised by the United Nations with the Government, the Government shall immediately allocate suitable frequencies to the United Nations for this purpose.

4. The UN Mission shall have 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 the UN Mission, including the laying of cables and land lines and the establishment of fixed and mobile radio sending, receiving and repeater stations. The frequencies on which the radio will operate shall be decided upon in cooperation with the Government. The Government shall, within five (5) working days of being so requested by the United Nations, allocate suitable frequencies to the United Nations for this purpose. 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. Use of the local system of telephone, facsimile and other electronic data shall be charged at the most favourable rate.

Article III. Premises

1. The Government shall, if possible, provide, without cost and in agreement with the UN Mission for as long as is required, such areas for offices and other premises as may be necessary for the conduct of the operational and administrative activities of the UN Mission in Sudan. Without prejudice to the fact that all such premises remain territory of Sudan, they shall be inviolable and subject to the exclusive control and authority of the United Nations.

2. The Government undertakes to assist the UN Mission in obtaining and making available, where applicable, water, sewerage, 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 the UN Mission as to essential government services.

3. The UN Mission shall have the right to generate within its premises electricity for its use and to transmit and distribute such electricity.

4. The UN Mission alone may consent to the entry of any government officials or of any other person not member of the UN Mission to such premises.

Article IV. Equipment, provisions and supplies

The Government undertakes to assist the UN Mission as far as possible in obtaining equipment, provisions, supplies, 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 purchased locally by the UN Mission or by United Nations contractors for the official and exclusive use of the UN Mission, the Government shall exempt the UN Mission and United Nations contractors from general sales tax and from any excise or tax or monetary contribution that may be payable as part of the price.

Article V. Recruitment of local personnel

The UN Mission may recruit locally such personnel as it requires. Upon the request of the SRSG, the Government undertakes to facilitate the recruitment of qualified local staff by the UN Mission and to accelerate the process of such recruitment.

Article VI. Safety and security

1. The Government shall ensure the safety, security and freedom of movement of the UN Mission, its personnel, associated personnel and their property and assets.

2. Pursuant to its responsibilities as set out in paragraph 1 above, 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 the UN Mission, its property, assets and members. In particular:

(i) the Government shall take all appropriate measures to ensure the safety and security of members of the UN Mission. It shall take all appropriate steps to protect members of the UN Mission, 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 the UN Mission are inviolable and subject to the exclusive control and authority of the United Nations.

(ii) if members of the UN Mission are captured, detained or held hostage in the course of the performance of their duties and their identification has been established, the Government shall make every endeavour to secure their immediate release to the United Nations.

(iii) the Government shall establish the following acts as crimes 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 the UN Mission;

(b) a violent attack upon the official premises, the private accommodation or the means of transportation of any member of the UN Mission 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 2 (iii) above: (a) when the crime was committed on the territory of Sudan; (b) when the alleged offender is a national of Sudan; (c) when the alleged offender, other than a member of the UN Mission, is present in Sudan, 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 2 (iii) above who are present within Sudan (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 the UN Mission 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.

3. The Government shall, where necessary, provide the UN Mission with maps and other information, including maps of and information on the location of minefields and other dangers and impediments, which may be useful in facilitating its movements and ensuring the security of its members.

Article VII. Uniforms and arms

1. United Nations Security Officers and United Nations close protection officers designated by the Special Representative may possess and carry arms while on official duty in accordance with their orders.

2. The Government shall permit the UN Mission to import firearms and ammunition for the official use of United Nations Security Officers and United Nations close protection officers. The provisions of Article I above shall apply in respect of such imports.

3. The Government shall accept as valid, without tax or fee, permits or licences issued by the SRSG to United Nations Security Officers and United Nations close protection officers for the carrying and use of firearms and ammunition in connection with the functioning of the UN Mission.

4. United Nations Security Officers may wear the United Nations uniform. They must do so at all times when carrying firearms while on official duty.

5. United Nations military liaison officers may wear, while performing official duties, the national military uniform of their respective States with standard United Nations accoutrements.

Article VIII. Third party claims

Third party claims for property loss or damage and for personal injury, illness or death arising from or directly attributed to the UN Mission shall be considered by the United Nations, 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 UN Mission. Upon determination of liability by the United Nations, 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.

Article IX. Settlement of disputes

Any dispute between the United Nations and the Government concerning the interpretation or application of this Agreement, except for a dispute that is regulated by Section 30 of the Convention, shall be resolved by negotiations or 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 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.

Article X. Miscellaneous 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 both Parties and shall remain in force until the departure of the final element of the UN Mission from Sudan, except that Article I, paragraph 3, shall remain in force.

3. Notwithstanding paragraph 2 above, in the event that the Security Council establishes a United Nations peace support operation in Sudan to support the implementation of a comprehensive peace agreement between the Government and the Sudan People's Liberation Movement/Army (SPLM/A), and without prejudice to the terms of the resolution by which the Security Council may establish any such operation (as well as of any subse-

quent resolutions of the Security Council), this Agreement shall apply, *mutatis mutandis*, in respect of the United Nations peace support operation so established until such time as the United Nations and the Government conclude a status-of-forces agreement with respect to the operation and that agreement enters into force. Pending the conclusion and entry-into-force of such an agreement, the provisions of the model status-of-forces agreement (United Nations document A/45/594) that apply to and in respect of the military personnel of national contingents assigned to the military component of a peacekeeping operation shall apply to and in respect of the military personnel of national contingents assigned to the military component of any such United Nations peace support operation.

4. Without prejudice to existing agreements regarding their legal status and operations in Sudan, the provisions of this Agreement shall apply to offices, funds and programmes of the United Nations, their property, funds and assets and their officials and experts on mission that are deployed in Sudan and perform functions in relation to the UN Mission.

5. The provisions of this Agreement may, as appropriate, be extended to specific specialized agencies and related organizations of the United Nations, their property, funds and assets and their officials and experts on mission that are deployed in Sudan and perform functions in relation to the UN Mission, provided that this is done with the written consent of the SRSG, the specialized agency or related organization concerned and the Government.

Signed this 6th day of August 2004 at New York.

For the United Nations:	For the Government of the Republic of Sudan:
[*Signed*] KIERAN PRENDERGAST	[*Signed*] ELFATIH MOHAMED AHMED ERWA
Under-Secretary-General for Political Affairs	Ambassador Extraordinary and Plenipotentiary Permanent Representative

(*h*) Exchange of letters constituting an agreement between the United Nations and the Government of the Hashemite Kingdom of Jordan to establish a liaison office of the United Nations Assistance Mission for Iraq (UNAMI) in Amman, Jordan, to assist UNAMI in fulfilling its mandated activities. New York, 10 August 2004 and 11 August 2004.[12]

I

10 August 2004

Excellency,

1. I have the honour to refer to the United Nations Assistance Mission for Iraq (UNAMI) which was established by Security Council resolution 1500 (2003) and which

[12] Entered into force on 11 August 2004, in accordance with the provisions of the said letters.

has been directed to undertake the activities set out in Security Council resolution 1546 (2004) of 8 June 2004.

2. In order to facilitate the activities of UNAMI, the United Nations needs to establish a UNAMI liaison office in Amman, Jordan, to assist UNAMI in fulfilling its mandated activities.

3. I therefore wish to propose that your Government shall, consistent with Article 105 of the Charter, extend to UNAMI, as an organ of the United Nations, its property, funds and assets and those members listed in paragraphs (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 Jordan is a Party. Facilities provided herein are also required for the contractors and their employees engaged by the United Nations or UNAMI to perform services exclusively for UNAMI and/or supply exclusively to UNAMI equipment, provisions, supplies, materials and other goods in support of UNAMI (hereinafter referred to as "United Nations contractors").

4. I propose, in particular, that your Government extend to:

(a) high-ranking members of UNAMI 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 UNAMI, the privileges and immunities to which they are entitled under Articles V and VII of the Convention. Locally recruited members of UNAMI, with the exception of those who are assigned to hourly rates, shall enjoy the immunities concerning official acts, exemption from taxation and immunity from national service obligations provided for in sections 18 (a), (b) and (c) of the Convention;

(c) Experts performing missions for UNAMI shall be accorded the privileges and immunities provide for under Article VI and Section 26, Article VII of the Convention.

Without prejudice to the above, all members of UNAMI as listed in paragraph 4 (a), (b) and (c) above shall enjoy immunity from legal process in respect of all words spoken and written and all acts performed by them in discharging their official duties. The Secretary-General shall have the right and duty to waive the immunity of any official or expert on mission 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.

5. United Nations contractors, other than local contractors, shall be accorded repatriation facilities in time of crisis and exemption from direct taxes in Jordan on the services provided to UNAMI, including corporate, income, social security and other similar taxes arising directly from the provision of such services. However, contractors will not be exempt from taxes which are, in fact, no more than charges for public utility services.

6. The privileges and immunities necessary for the fulfilment of the functions of UNAMI also include:

(i) freedom of entry and exit without undue delay or hindrance of the members of UNAMI as listed in paragraphs 4 (a), (b) and (c) above as well as UNAMI's property, supplies, equipment, spare parts and means of transport and, to that end, prompt issuance by the Government, free of charge and without any restrictions, of all necessary visas, licenses and permits. The Government shall, in accordance with its national law, allow

United Nations contractors their property, supplies, equipment, spare parts and means of transport, freedom of entry and exit without undue delay or hindrance and shall speedily process free of charge all requests for visas, licenses and permits without restrictions.

(ii) freedom of movement of its members and United Nations contractors, their property, equipment and means of transport which shall as appropriate be coordinated with the Government. UNAMI, its members, United Nations contractors and their vehicles, vessels and aircraft shall use roads, bridges, canals, and other waters, port facilities and airfields without the payment of dues, tolls, landing fees, parking fees, overflight fees, port fees and charges, including wharfage charges. However, exemption from charges which are limited in amount to the approximate cost of services rendered will not be claimed;

(iii) the right to import, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of UNAMI;

(iv) the right to re-export free of duty or other restrictions or otherwise dispose of equipment, as far as it is still usable, all unconsumed provisions, supplies and other goods so imported or cleared ex customs and excise warehouse which are not transferred, or otherwise disposed of, on terms and conditions to be agreed upon with the Government or an entity nominated by the Government;

(v) issuance without undue delay by the Government of all necessary authorizations, permits and licenses for the importation or re-exportation or purchase of equipment, provisions, supplies, materials and other goods used in support of UNAMI, including in respect of importation or re-exportation or purchase by United Nations contractors, free of any restrictions and without payment of duties, charges or taxes including value-added tax;

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

(vii) the right to fly the United Nations flag and place distinctive United Nations identification on premises, vehicles, aircraft and vessels used in support of UNAMI;

(viii) the right to enjoy in the territory of Jordan for its official communications treatment not less favourable than that accorded by the Government to any other Government. UNAMI shall have the right to communicate 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, and to communicate by telephone, facsimile and other electronic data systems. The frequencies on which the communication by radio will operate shall be decided upon on terms and conditions to be agreed with the Government;

(ix) the right to make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of UNAMI. The Government shall be informed, prior to the setting up of such arrangements, of their nature

and details and shall approve them without undue delay. It shall not interfere with or apply censorship to the mail of UNAMI or its members.

7. The Government shall assist UNAMI in obtaining such areas for headquarters or other premises as may be necessary for the conduct of the operational and administrative activities of UNAMI. Without prejudice to the fact that all such premises remain Jordanian territory, they shall be inviolable and subject to the exclusive control and authority of the United Nations.

8. The Government undertakes to assist UNAMI as far as possible in obtaining equipment, provisions, supplies, 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 purchased locally by UNAMI or by United Nations contractors for the official and exclusive use of UNAMI the Government shall make appropriate administrative arrangements or the remission or return of any excise or tax payable as part of the price. The Government shall exempt UNAMI and United Nations contractors from general sales taxes in respect of all official local purchases. In making purchases on the local market, UNAMI shall, on the basis of observations made and information provided by the Government in that respect, avoid any adverse effect on the local economy.

9. The Government shall take all appropriate measures to ensure the security of members of UNAMI as listed in paragraphs 4 (a), (b) and (c) above. In particular, it shall take all appropriate steps to protect members of UNAMI, their equipment and premises from attack or any action that prevents them from discharging their mandate. UNAMI and its members shall cooperate to the fullest extent possible with the Government in this regard. This is without prejudice to the fact that all premises of UNAMI are inviolable and subject to the exclusive control and authority of the United Nations.

10. The Government declares that it has established the following acts as crimes as defined and provided for under its national law, which are punishable by appropriate penalties:

(a) a murder, kidnapping or other attack upon the person or liberty of an individual;

(b) a violent attack upon official premises;

(c) a violent attack upon the private accommodation or the means of transportation of any individual likely to endanger his or her person or liberty;

(c)[13] 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.

11. Jordan, in accordance with its national laws, shall exercise jurisdiction over the crimes set out in paragraph 10 above committed against members or premises of UNAMI: (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 UNAMI, is present

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[13] Secretariat note: [*Sic*]

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 another State that has jurisdiction over the crime.

12. The Government shall submit to its competent authorities for the purpose of prosecution under its national laws without exception and without delay cases involving persons accused of crimes described in paragraph 10 above committed against members or premises of UNAMI who are present within its territory (if the Government does not extradite them), as well as cases involving those persons that are subject to its criminal jurisdiction who are accused of other crimes in relation to UNAMI 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 crimes liable to prosecution. Those authorities shall take their decision in the same manner as in the case of any other offence of a similar level of gravity under the laws of Jordan and under the same conditions.

13. The Government shall as appropriate provide UNAMI, where necessary and upon its request, with maps and other information which may be useful in facilitating and protecting the security of UNAMI in the conduct of its tasks and movements. Upon the request of the Special Representative, armed escorts will be provided to protect the members of the United Nations during the exercise of their functions.

14. UNAMI and its members listed in paragraphs 4 (a), (b) and (c) above shall, in so far as it is consistent with the provisions of this Agreement, respect all local laws and regulations.

15. It is further understood that operative paragraphs 5-11 inclusive of General Assembly resolution 52/247 of 26 June l998 apply in respect of third party claims against the United Nations resulting from or attributable to UNAMI or the activities of its members.

16. Any dispute between the United Nations and the Government concerning the interpretation or application of this Agreement, except for a dispute that is regulated by Section 30 of the Convention or Section 32 of the Convention on the Privileges and Immunities of the Specialized Agencies, shall be resolved by negotiations or other agreed mode of settlement.

17. Without prejudice to existing agreements regarding their legal status and operations in Jordan, the above-mentioned arrangements may as appropriate be extended to specific Specialized and related Agencies and offices, funds and programmes of the United Nations, their property, funds and assets and their officials and experts on mission that are established in Jordan to perform functions in relation to UNAMI, provided that this is done with the written consent of the Special Representative of UNAMI, the Specialized or related Agency or office, fund or programme concerned and the Government.

l8. If the above provisions meet with your approval, I would propose that this letter and your reply thereto constitute an agreement between the United Nations and the Government of Jordan with immediate effect. This Agreement shall remain in force for one year and is automatically renewed thereafter unless terminated by either party in writing giving at least 60 days' notice.

I would like to take this opportunity to express my gratitude to the Government of Jordan for the support provided to UNAMI in facilitating its tasks.

Accept, Excellency, the assurances of my highest consideration.

Yours sincerely,

[*Signed*] KIERAN PRENDERGAST
Under-Secretary-General for Political Affairs

His Royal Highness Prince Zeid Ra'ad Zeid Al-Hussein
Permanent Representative of the
Hashemite Kingdom of Jordan
to the United Nations
New York

II

11 August 2004

Excellency,

Reference to your letter dated 10 August 2004 containing proposed provisions in relation to the activities of the United Nations Assistance Mission to Iraq (UNAMI) in Jordan.

I have been authorized by the Government of the Hashemite Kingdom of Jordan to reply to your letter conveying the Jordanian Government's acceptance of its provisions. The letter and this reply constitute an agreement between the Government of Jordan and the United Nations which is effective immediately. Accept, Excellency, the assurances of my highest consideration.

Yours sincerely,

[*Signed*] ZEID RA'AD ZEID AL-HUSSEIN
Ambassador
Permanent Representative

H.E. Mr. Kieran Prendergast
Under-Secretary-General
Department of Political Affairs
United Nations
New York

(*i*) Agreement between the United Nations and the Government of the Republic of Mauritius regarding the arrangements for the international meeting on the ten-year review of the Barbados Programme of Action for the Sustainable Development of Small Island Developing States, Port Louis, Mauritius, 10-14 January 2005. New York, 30 November 2004.[14] [15]

WHEREAS at its 57th Session in resolution 57/262, and at its 58th Session in resolution 58/213 A and B, the General Assembly decided to convene an international meeting in

[14] Entered into force on 30 November 2004, in accordance with article XIII.

[15] The annex is not published herein.

2005 to undertake a full and comprehensive review of the implementation of the Barbados Programme of Action, and welcomed the offer of the Government of Mauritius to host the International Meeting. By paragraph 7 of its resolution 58/213 A and its subsequent resolution 58/213 B, the General Assembly also decided to hold, if deemed necessary by an open-ended preparatory meeting, and if funded from voluntary resources, two days of informal consultations in Mauritius on 8 and 9 January 2005 to facilitate the effective preparation of the International Meeting;

WHEREAS at its 58th Session in paragraph 9 of resolution 58/213 A, the General Assembly decided that the International Meeting will seek a renewed political commitment by the international community and will focus on practical actions for the further implementation of the Programme of Action, taking into consideration new and emerging issues, challenges and situations since the adoption of the Programme of Action;

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, agree as follows:

Article I. Place and dates of the International Meeting

The International Meeting shall be held at the Les Pailles Conference Centre in Port Louis in the Republic of Mauritius, from 10 to 14 January 2005. An open-ended preparatory meeting will be held on 8 and 9 January 2005, if deemed necessary.

Article II. Participation in the International Meeting

1. Participation in the International Meeting 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 meeting 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;

(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 meeting for the purpose of servicing it.

3. The public meetings of the International Meeting 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 Annex I attached 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 possible open-ended preparatory meeting and the International Meeting. 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 not more than two weeks prior to the International Meeting until a maximum of six days after its close. Premises and facilities provided in accordance with this Article may be made available, in an adequate manner, to the observers from the non-governmental organizations referred to in Article II above for the conduct of their activities relating to their contribution to the International Meeting.

2. The Government shall provide, within the conference area: registration area, bank, post office, and telephone 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 meeting on a commercial basis.

3. The Government shall bear the cost of transport and insurance charges, from any established United Nations office to the site of the International Meeting and return, of all United Nations equipment and supplies required for the adequate functioning of the International Meeting. The United Nations shall determine the mode of shipment of such equipment and supplies in consultation with the Host Country.

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 International Meeting.

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 airport and the conference area and principal hotels for the members of the United Nations Secretariat servicing the International Meeting upon their arrival and departure.

2. The Government shall ensure the availability of transport for all participants and those attending the International Meeting between the 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 International Meeting, as well as such other local transportation as is required by the secretariat in connection with the International Meeting. Such transportation shall be made available during, and two weeks before and up to three business days after the International Meeting as indicated to the Host Country by the United Nations.

Article VII. Police protection

The Government shall furnish such police protection as may be required to ensure the effective functioning of the International 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 co-operation with a designated senior official of the United Nations.

Article VIII. Local personnel for the International Meeting

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 International Meeting 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 International Meeting, as well as drivers for the cars referred to in article VI, paragraphs 1 and 3. Annex II to this Agreement lists the local staff required in this respect as 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 International Meeting 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 47/202, paragraph 17, bear the actual additional costs directly or indirectly involved in holding the International Meeting and its two-day open-ended preparatory meeting in Mauritius rather than at New York. Such costs, which are provisionally estimated at approximately 2,007,644.00 United States dollars 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 International Meeting, 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 International Meeting 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. The list of United Nations officials required to service the International Meeting is provided in Annex III to this Agreement, and the related travel costs as well as other associated costs are provided in the Annex IV.

2. The Government shall, not later than 7 December 2004 deposit with the United Nations the sum of 2,007,644.00 United States dollars 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 International Meeting.

4. After the International Meeting, 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 International Meeting 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 Mauritius is a party, shall be applicable in respect of the International Meeting. In particular the representatives of States referred to in article II 1 (a) above, and of the intergovernmental organs of the United Nations referred to in article II, paragraph 1 (d) 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 International Meeting referred to in article II, paragraphs 1 (f) and 2, above, shall enjoy the privileges and immu-

nities provided under articles V and VII of the Convention and any experts on mission for the United Nations in connection with the International Meeting 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 International Meeting.

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 International Meeting.

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 under articles VI and VIII of 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 International Meeting, including those referred to in article VIII and all those invited to the International Meeting, shall enjoy the privileges, immunities and facilities necessary for the independent exercise of their functions in connection with the International Meeting.

6. All persons referred to in article II shall have the right of entry into and exit from Mauritius, and no impediment shall be imposed on their transit to and from the meeting 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 International Meeting, provided the application for the visa is made at least three weeks before the opening of the International 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 International Meeting are delivered at Mauritius 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 International Meeting.

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 International Meeting, 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 Mauritius at the time of their departure, without any restriction, any unexpended portions of the funds they brought in to Mauritius in connection with the International Meeting 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 infor-

mation media, and shall waive import duties and taxes on supplies necessary for the International Meeting. 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 International Meeting and for such a period thereafter as is necessary for all matters relating to any of its provisions to be settled.

Signed this 30th day of November 2004 at New York in duplicate in English.

For the United Nations:

[*Signed*] ANWARUL K. CHOWDHURY

Under-Secretary-General and High Representative,

Secretary-General of the Mauritius International Meeting

For the Government of the Republic of Mauritius:

[*Signed*] JAGDISH KOONJUL

Ambassador Extraordinary and Plenipotentiary,

Permanent Representative of Mauritius to the United Nations

(*j*) Exchange of letters constituting an agreement between the United Nations and the Government of Brazil regarding the hosting of the events under the project entitled "Weapons Destruction and Stockpile Management", to be held in Brasilia and Rio de Janeiro, Brazil, in December 2004 and March 2005. New York, 30 November 2004 and 2 December 2004.[16][17]

I

30 November 2004

Excellency,

The United Nations, represented by the Department for Disarmament Affairs (DDA) (hereinafter referred to as "the United Nations"), acting through the United Nation Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (hereinafter referred to as "UN-LiREC") is organizing three events in Brasilia and Rio de Janeiro, Brazil, during December 2004 and March 2005.

Under its Project entitled "Weapons Destruction and Stockpile Management", UN-LiREC will provide technical assistance to the Government and assume the coordinating role in the implementation of the following three events (hereinafter referred to as "the Events").

A. Destruction of firearms (hereinafter referred to as "the Destruction") to be undertaken at the Army Storage Facility, Sector Militar, Brasilia, on 9 and 10 December 2004;

B. Coordination of a public event to celebrate the destruction of firearms (hereinafter referred to as "the Public Event") to be held at the Esplanada dos Ministerios, Brasilia, on 9 December 2004; and

C. Organization of a national seminar, "Rio de Janeiro Firearms, Ammunition and Explosives Control System" (hereinafter referred to as 'the Seminar') to be held at the Intercontinental Hotel in Rio de Janeiro from 28 to 30 March 2005.

The United Nations will implement the Events in accordance with the Programme of Action as adopted at the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects in July 2001.

The following participants, invited by UN-LiREC, will attend the:

(a) Destruction and Public Event:

(i) Technical advisory team from UN-LiREC and host country participants;

The total number of participants invited by UN-LiREC for the destruction will be approximately 12.

(b) Seminar:

(i) Representatives of the following institutions who are partners in the Project: Inter-American Drug Abuse Control Commission of the Organization of Ameri-

[16] Entered into force on 2 December 2004, in accordance with the provisions of the said letters.

[17] The annexes to the letter are not published herein.

can States (CICAD/OAS) and the United Nations Development Programme (UNDP) in Brazil;

(ii) Experts from Argentina, Brazil, Colombia, Paraguay, Sweden, Geneva and a representative from the Southern Common Market (MERCOSUR);

(iii) Participants from Intelligence Secretariat Buenos Aires (S.I.), Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and other Related Material (CIFTA), Administrative Department of Security, Colombia (DAS), Direction of Security Service Control, Firearms, Ammunition and Explosives of Civil Use Control (DICSCAMEC), the Swedish International Development Cooperation Agency (SIDA), São da Paz, São Paulo, State Government of São Paulo, State Government of Espirito Santo, State Government of Minas Gerais, Brazilian Army, Secretariat of State São Paulo, Secretariat of State Espirito Santo, Secretariat of State Minas Gerais, Foreign Affairs Ministry Brasilia, SENASP Brasilia, ABIN Brasilia, Police in Brasilia, Federal Police Brasilia, Forjas Taurus Porto Alegre, Amadeo Rossi Sao Leopoldo and Companhia Brasileira de Cartuchos and the Royal Canadian Mounted Police, Canada (RCMP); and

(iv) Officials of DDA, i.e., the UN-LiREC Director, the Programme Officer, a Public Information Assistant, the Event Coordinator, two Administrative Assistants and an Audiovisual Coordinator, officials from the United Nations Institute for Disarmament Research (UNIDIR) and the United Nations Information Centre (UNIC) in Brazil; The total number of participants invited by UN-LiREC for the Seminar will be approximately 40.

With the present letter, I wish to propose that the following terms shall apply to the Events:

1. The United Nations shall be responsible for the costs and services listed in Annex I.

2. The Government shall be responsible for the costs and services listed in Annex II.

3. The Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946 (hereinafter referred to as "the Convention"), to which the Government is a party, shall be applicable in respect of the Events. In particular, the participants invited by the United Nations acting through UN-LiREC 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 Events shall enjoy the privileges and immunities provided under Articles V and VII of the Convention.

4. Without prejudice to the provisions of the Convention, all participants and persons performing functions in connection with the Events shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Events.

5. 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 Events.

6. All participants and United Nations officials performing functions in connection with the Events shall have the right of unimpeded entry into and exit from Brazil. Visas and entry permits, where required, shall be granted free of charge. When applications are made four weeks before the opening of the Events, visas shall be granted not later than two weeks before the opening of the Events. 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 Events are delivered at the airport of arrival to those who are 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 Events.

7. The Government shall furnish such police protection as may be required to ensure the safety of the participants and United Nations personnel and the effective functioning of the Events 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.

8. 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 at the destruction sites, in the conference or office premises of the seminar, or at the venue of the public event, which are provided for the Events;

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

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

9. Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provisions of the Convention or 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 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 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-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.

10. I further propose that upon receipt of your Government's confirmation in writing of the above, this exchange of letters, together with its Annexes I and II which form an integral part thereof, shall constitute an Agreement between the United Nations and the Government of Brazil regarding the hosting of the Events, which shall enter into force on the date of your reply and shall remain in force for the duration, of the Events 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.

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

[*Signed*] NOBUYASU ABE
Under-Secretary-General
for Disarmament Affairs

His Excellency
Mr. Ronaldo Mota Sardenberg
Permanent Representative of Brazil
to the United Nations New York

II

New York, December 2, 2004

Mr. Under-Secretary-General for Disarmament Affairs,

With reference to your letter DDA/UN-LIREC 2004/008, dated November 30, regarding the two events of destruction of firearms to be organized in Brasilia, next December, and the seminar "Rio de Janeiro Firearms, Ammunition and Explosives Control System", to be held in Rio de Janeiro from 28 to 30 March 2005, with the cooperation of the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean - UN-LIREC, I transmit to you the accordance of the Government of Brazil with the terms of the document attached to your letter.

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

[*Signed*] RONALDO MOTA SARDENBERQ
Permanent Representative of Brazil

His Excellency
Nobuyasu Abe
Under-Secretary-General
for Disarmament Affairs

3. Other agreements

Relationship Agreement between the United Nations and the International Criminal Court. New York, 4 October 2004.[18]

Preamble

The United Nations and the International Criminal Court,

Bearing in mind the Purposes and Principles of the Charter of the United Nations,

Recalling that the Rome Statute of the International Criminal Court reaffirms the Purposes and Principles of the Charter of the United Nations,

Noting the important role assigned to the International Criminal Court in dealing with the most serious crimes of concern to the international community as a whole, as referred to in the Rome Statute, and which threaten the peace, security and well-being of the world,

Bearing in mind that, in accordance with the Rome Statute, the International Criminal Court is established as an independent permanent institution in relationship with the United Nations system,

Recalling also that, in accordance with article 2 of the Rome Statute, the International Criminal Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of the States Parties to the Rome Statute and thereafter concluded by the President of the Court on its behalf,

Recalling further General Assembly resolution 58/79 of 9 December 2003 calling for the conclusion of a relationship agreement between the United Nations and the International Criminal Court,

Noting the responsibilities of the Secretary-General of the United Nations under the provisions of the Rome Statute of the International Criminal Court,

Desiring to make provision for a mutually beneficial relationship whereby the discharge of respective responsibilities of the United Nations and the International Criminal Court may be facilitated,

Taking into account for this purpose the provisions of the Charter of the United Nations and the provisions of the Rome Statute of the International Criminal Court,

Have agreed as follows:

I. General provisions

Article 1. Purpose of the Agreement

1. The present Agreement, which is entered into by the United Nations and the International Criminal Court ("the Court"), pursuant to the provisions of the Charter of the United Nations ("the Charter") and the Rome Statute of the International Criminal Court ("the Statute"), respectively, defines the terms on which the United Nations and the Court shall be brought into relationship.

[18] Entered into force on 4 October 2004, in accordance with article 23.

2. For the purposes of this Agreement, "the Court" shall also include the Secretariat of the Assembly of States Parties.

Article 2. Principles

1. The United Nations recognizes the Court as an independent permanent judicial institution which, in accordance with articles 1 and 4 of the Statute, has international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

2. The Court recognizes the responsibilities of the United Nations under the Charter.

3. The United Nations and the Court respect each other's status and mandate.

Article 3. Obligation of cooperation and coordination

The United Nations and the Court agree that, with a view to facilitating the effective discharge of their respective responsibilities, they shall cooperate closely, whenever appropriate, with each other and consult each other on matters of mutual interest pursuant to the provisions of the present Agreement and in conformity with the respective provisions of the Charter and the Statute.

II. INSTITUTIONAL RELATIONS

Article 4. Reciprocal representation

1. Subject to the applicable provisions of the Rules of Procedure and Evidence of the Court ("the Rules of Procedure and Evidence"), the Secretary-General of the United Nations ("the Secretary-General") or his/her representative shall have a standing invitation to attend public hearings of the Chambers of the Court that relate to cases of interest to the United Nations and any public meetings of the Court.

2. The Court may attend and participate in the work of the General Assembly of the United Nations in the capacity of observer. The United Nations shall, subject to the rules and practice of the bodies concerned, invite the Court to attend meetings and conferences convened under the auspices of the United Nations where observers are allowed and whenever matters of interest to the Court are under discussion.

3. Whenever the Security Council considers matters related to the activities of the Court, the President of the Court ("the President") or the Prosecutor of the Court ("the Prosecutor") may address the Council, at its invitation, in order to give assistance with regard to matters within the jurisdiction of the Court.

Article 5. Exchange of information

1. Without prejudice to other provisions of the present Agreement concerning the submission of documents and information concerning particular cases before the Court, the United Nations and the Court shall, to the fullest extent possible and practicable, arrange for the exchange of information and documents of mutual interest. In particular:

(a) The Secretary-General shall:

(i) Transmit to the Court information on developments related to the Statute which are relevant to the work of the Court, including information on communications received by the Secretary-General in the capacity of depositary of the Statute or depositary of any other agreements which relate to the exercise by the Court of its jurisdiction;

(ii) Keep the Court informed regarding the implementation of article 123, paragraphs 1 and 2, of the Statute relating to the convening by the Secretary-General of review conferences;

(iii) In addition to the requirement provided in article 121, paragraph 7, of the Statute, circulate to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency which are not parties to the Statute the text of any amendment adopted pursuant to article 121 of the Statute;

(b) The Registrar of the Court ("the Registrar") shall:

(i) In accordance with the Statute and the Rules of Procedure and Evidence, provide information and documentation relating to pleadings, oral proceedings, judgements and orders of the Court in cases which may be of interest to the United Nations generally, and particularly in those cases which involve crimes committed against the personnel of the United Nations or that involve the improper use of the flag, insignia or uniform of the United Nations resulting in death or serious personal injury as well as any cases involving the circumstances referred to under article 16, 17, or 18, paragraph 1 or 2, of the present Agreement;

(ii) Furnish to the United Nations, with the concurrence of the Court and subject to its Statute and rules, any information relating to the work of the Court requested by the International Court of Justice in accordance with its Statute;

2. The United Nations and the Court shall make every effort to achieve maximum cooperation with a view to avoiding undesirable duplication in the collection, analysis, publication and dissemination of information relating to matters of mutual interest. They shall strive, where appropriate, to combine their efforts to secure the greatest possible usefulness and utilization of such information.

Article 6. Reports to the United Nations

The Court may, if it deems it appropriate, submit reports on its activities to the United Nations through the Secretary-General.

Article 7. Agenda items

The Court may propose items for consideration by the United Nations. In such cases, the Court shall notify the Secretary-General of its proposal and provide any relevant information. The Secretary-General shall, in accordance with his/her authority, bring such item or items to the attention of the General Assembly or the Security Council, and also to any other United Nations organ concerned, including organs of United Nations programmes and funds.

Article 8. Personnel arrangements

1. The United Nations and the Court agree to consult and cooperate as far as practicable regarding personnel standards, methods and arrangements.

2. The United Nations and the Court agree to:

(a) Periodically consult on matters of mutual interest relating to the employment of their officers and staff, including conditions of service, the duration of appointments, classification, salary scale and allowances, retirement and pension rights and staff regulations and rules;

(b) Cooperate in the temporary interchange of personnel, where appropriate, making due provision for the retention of seniority and pension rights;

(c) Strive for maximum cooperation in order to achieve the most efficient use of specialized personnel, systems and services.

Article 9. Administrative cooperation

The United Nations and the Court shall consult, from time to time, concerning the most efficient use of facilities, staff and services with a view to avoiding the establishment and operation of overlapping facilities and services. They shall also consult to explore the possibility of establishing common facilities or services in specific areas, with due regard for cost savings.

Article 10. Services and facilities

1. The United Nations agrees that, upon the request of the Court, it shall, subject to availability, provide on a reimbursable basis, or as otherwise agreed, for the purposes of the Court such facilities and services as may be required, including for the meetings of the Assembly of States Parties ("the Assembly"), its Bureau or subsidiary bodies, including translation and interpretation services, documentation and conference services. When the United Nations is unable to meet the request of the Court, it shall notify the Court accordingly, giving reasonable notice.

2. The terms and conditions on which any such facilities or services of the United Nations may be provided shall, as appropriate, be the subject of supplementary arrangements.

Article 11. Access to United Nations Headquarters

The United Nations and the Court shall endeavour, subject to their respective rules, to facilitate access by the representatives of all States Parties to the Statute, representatives of the Court and observers in the Assembly, as provided for in article 112, paragraph 1, of the Statute, to United Nations Headquarters when a meeting of the Assembly is to be held. This shall also apply, as appropriate, to meetings of the Bureau or subsidiary bodies.

Article 12. Laissez-passer

The judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the staff/officials of the Office of the Prosecutor and the Registry shall be entitled, in accordance with such special arrangements as may be concluded between the Secretary-General and the

Court, to use the laissez-passer of the United Nations as a valid travel document where such use is recognized by States in agreements defining the privileges and immunities of the Court. Staff of "the Registry" includes staff of the Presidency and of the Chambers, pursuant to article 44 of the Statute, and staff of the Secretariat of the Assembly of States Parties, pursuant to paragraph 3 of the Annex of Resolution ICC-ASP/2/Res.3.

Article 13. Financial matters

1. The United Nations and the Court agree that the conditions under which any funds may be provided to the Court by a decision of the General Assembly of the United Nations pursuant to article 115 of the Statute shall be subject to separate arrangements. The Registrar shall inform the Assembly of the making of such arrangements.

2. The United Nations and the Court further agree that the costs and expenses resulting from cooperation or the provision of services pursuant to the present Agreement shall be subject to separate arrangements between the United Nations and the Court. The Registrar shall inform the Assembly of the making of such arrangements.

3. The United Nations may, upon request of the Court and subject to paragraph 2 of this article, provide advice on financial and fiscal questions of interest to the Court.

Article 14. Other agreements concluded by the Court

The United Nations and the Court shall consult, when appropriate, on the registration or filing and recording with the United Nations of agreements concluded by the Court with States or international organizations.

III. Cooperation and judicial assistance

Article 15. General provisions regarding cooperation between the United Nations and the Court

1. With due regard to its responsibilities and competence under the Charter and subject to its rules as defined under the applicable international law, the United Nations undertakes to cooperate with the Court and to provide to the Court such information or documents as the Court may request pursuant to article 87, paragraph 6, of the Statute.

2. The United Nations or its programmes, funds and offices concerned may agree to provide to the Court other forms of cooperation and assistance compatible with the provisions of the Charter and the Statute.

3. In the event that the disclosure of information or documents or the provision of other forms of cooperation would endanger the safety or security of current or former personnel of the United Nations or otherwise prejudice the security or proper conduct of any operation or activity of the United Nations, the Court may order, particularly at the request of the United Nations, appropriate measures of protection. In the absence of such measures, the United Nations shall endeavour to disclose the information or documents or to provide the requested cooperation, while reserving the right to take its own measures of protection, which may include withholding of some information or documents or their submission in an appropriate form, including the introduction of redactions.

Article 16. Testimony of the officials of the United Nations

1. If the Court requests the testimony of an official of the United Nations or one of its programmes, funds or offices, the United Nations undertakes to cooperate with the Court and, if necessary and with due regard to its responsibilities and competence under the Charter and the Convention on the Privileges and Immunities of the United Nations and subject to its rules, shall waive that person's obligation of confidentiality.

2. The Secretary-General shall be authorized by the Court to appoint a representative of the United Nations to assist any official of the United Nations who appears as a witness before the Court.

Article 17. Cooperation between the Security Council of the United Nations and the Court

1. When the Security Council, acting under Chapter VII of the Charter of the United Nations, decides to refer to the Prosecutor pursuant to article 13, paragraph (b), of the Statute, a situation in which one or more of the crimes referred to in article 5 of the Statute appears to have been committed, the Secretary-General shall immediately transmit the written decision of the Security Council to the Prosecutor together with documents and other materials that may be pertinent to the decision of the Council. The Court undertakes to keep the Security Council informed in this regard in accordance with the Statute and the Rules of Procedure and Evidence. Such information shall be transmitted through the Secretary-General.

2. When the Security Council adopts under Chapter VII of the Charter a resolution requesting the Court, pursuant to article 16 of the Statute, not to commence or proceed with an investigation or prosecution, this request shall immediately be transmitted by the Secretary-General to the President of the Court and the Prosecutor. The Court shall inform the Security Council through the Secretary-General of its receipt of the above request and, as appropriate, inform the Security Council through the Secretary-General of actions, if any, taken by the Court in this regard.

3. Where a matter has been referred to the Court by the Security Council and the Court makes a finding, pursuant to article 87, paragraph 5 (b) or paragraph 7, of the Statute, of a failure by a State to cooperate with the Court, the Court shall inform the Security Council or refer the matter to it, as the case may be, and the Registrar shall convey to the Security Council through the Secretary-General the decision of the Court, together with relevant information in the case. The Security Council, through the Secretary-General, shall inform the Court through the Registrar of action, if any, taken by it under the circumstances.

Article 18. Cooperation between the United Nations and the Prosecutor

1. With due regard to its responsibilities and competence under the Charter of the United Nations and subject to its rules, the United Nations undertakes to cooperate with the Prosecutor and to enter with the Prosecutor into such arrangements or, as appropriate, agreements as may be necessary to facilitate such cooperation, in particular when the Prosecutor exercises, under article 54 of the Statute, his or her duties and powers with

respect to investigation and seeks the cooperation of the United Nations in accordance with that article.

2. Subject to the rules of the organ concerned, the United Nations undertakes to cooperate in relation to requests from the Prosecutor in providing such additional information as he or she may seek, in accordance with article 15, paragraph 2, of the Statute, from organs of the United Nations in connection with investigations initiated *proprio motu* by the Prosecutor pursuant to that article. The Prosecutor shall address a request for such information to the Secretary-General, who shall convey it to the presiding officer or other appropriate officer of the organ concerned.

3. The United Nations and the Prosecutor may agree that the United Nations provide documents or information to the Prosecutor on condition of confidentiality and solely for the purpose of generating new evidence and that such documents or information shall not be disclosed to other organs of the Court or to third parties, at any stage of the proceedings or thereafter, without the consent of the United Nations.

4. The Prosecutor and the United Nations or its programmes, funds and offices concerned may enter into such arrangements as may be necessary to facilitate their cooperation for the implementation of this article, in particular in order to ensure the confidentiality of information, the protection of any person, including former or current United Nations personnel, and the security or proper conduct of any operation or activity of the United Nations.

Article 19. Rules concerning United Nations privileges and immunities

If the Court seeks to exercise its jurisdiction over a person who is alleged to be criminally responsible for a crime within the jurisdiction of the Court and if, in the circumstances, such person enjoys, according to the Convention on the Privileges and Immunities of the United Nations and the relevant rules of international law, any privileges and immunities as are necessary for the independent exercise of his or her work for the United Nations, the United Nations undertakes to cooperate fully with the Court and to take all necessary measures to allow the Court to exercise its jurisdiction, in particular by waiving any such privileges and immunities in accordance with the Convention on the Privileges and Immunities of the United Nations and the relevant rules of international law.

Article 20. Protection of confidentiality

If the United Nations is requested by the Court to provide information or documentation in its custody, possession or control which was disclosed to it in confidence by a State or an intergovernmental, international or non-governmental organization or an individual, the United Nations shall seek the consent of the originator to disclose that information or documentation or, where appropriate, will inform the Court that it may seek the consent of the originator for the United Nations to disclose that information or documentation. If the originator is a State Party to the Statute and the United Nations fails to obtain its consent to disclosure within a reasonable period of time, the United Nations shall inform the Court accordingly, and the issue of disclosure shall be resolved between the State Party concerned and the Court in accordance with the Statute. If the originator is not a State Party to the Statute and refuses to consent to disclosure, the United Nations

shall inform the Court that it is unable to provide the requested information or documentation because of a pre-existing obligation of confidentiality to the originator.

IV. Final provisions

Article 21. Supplementary arrangements for the implementation of the present Agreement

The Secretary-General and the Court may, for the purpose of implementing the present Agreement, make such supplementary arrangements as may be found appropriate.

Article 22. Amendments

The present Agreement may be amended by agreement between the United Nations and the Court. Any such amendment shall be approved by the General Assembly of the United Nations and by the Assembly in accordance with article 2 of the Statute. The United Nations and the Court shall notify each other in writing of the date of such approval, and the Agreement shall enter into force on the date of the later of the said approvals.

Article 23. Entry into force

The present Agreement shall be approved by the General Assembly of the United Nations and by the Assembly in accordance with article 2 of the Statute. The United Nations and the Court shall notify each other in writing of the date of such approval. The Agreement shall thereafter enter into force upon signature.

In witness thereof, the undersigned have signed the present Agreement.

Signed this 4 day of October 2004 at United Nations Headquarters in New York in two copies in all the official languages of the United Nations and the Court, of which the English and French texts shall be authentic.

For the United Nations:
[*Signed*] Kofi A. Annan
Secretary-General

For the International Criminal Court:
[*Signed*] Philippe Kirsch
President

4. United Nations Children's Fund

Basic Cooperation Agreement between UNICEF and the Government of the Islamic Republic of Iran. Tehran, 31 May 2004.[19]

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 the Islamic Republic of Iran wish to establish the terms and conditions under which UNICEF shall, in the framework of the operational activities of the United Nations and within its mandate, cooperate in programmes in the Islamic Republic of Iran,

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

Article I. Definitions

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

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

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

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

(d) "Government" means the Government of the Islamic Republic of Iran;

(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;

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[19] Entered into force on 31 May 2004, in accordance with article XXIII.

(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;

(1) "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 the Government and UNICEF 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 evaluate 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 a UNICEF 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 , to provide support to the programmes of cooperation in connection with:

(a) The preparation, review 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. The Government will support UNICEF's efforts to raise the funds required to meet the financial needs of the agreed programme and will cooperate with UNICEF by:

(a) encouraging potential donor governments to make available to UNICEF the funds needed to implement the supplementary funded components of the country programme approved by UNICEF;

(b) endorsing UNICEF's efforts to raise funds for the programme from the private sector both internationally and in the Islamic Republic of Iran.

4. 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, to the extent possible, 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 the Government and UNICEF under applicable law.

2. Patent rights, copyrights 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 be accorded the privileges, immunities and facilities specified in article XIII, paragraphs 1(a) and 1(f) above.

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

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

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

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

Article XVII. Locally recruited personnel assigned to hourly rates

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

Article XVIII. Facilities in respect of communications

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

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

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

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

Article XIX. Facilities in respect of means of transportation

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

Article XX. Waiver of privileges and immunities

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

Article XXI. Claims against UNICEF

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

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

Done at Tehran, this 31 day of May, two thousand and four.

For the United Nations Children's Fund:	For the Government of the Islamic Republic of Iran:
[*Signed*] Ms. Kari Egge	[*Signed*] H. E. Mr. Bozorgmehr Ziaran
UNICEF Representative in Iran	Director General International Economic Affairs and Specialized Agencies
	Ministry of Foreign Affairs

5. Office of the United Nations High Commissioner for Refugees

Cooperation Agreement between the Office of the United Nations High Commissioner for Refugees and the Government of the Republic of the Congo. Brazzaville, 17 December 2004.[20] [21]

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

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

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

[20] Entered into force on 17 December 2004, in accordance with article XVII.

[21] Translated by the Secretariat of the United Nations.

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

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

Article I. Definitions

For the purposes 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 the Congo;

(d) "Host country" or "country" means the Republic of the Congo;

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

(f) "General Conventions" 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, and the 1960 Vienna Convention on diplomatic immunities;

(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 for in General Assembly resolution 76 (I);

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

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

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

Article II. Purpose of this Agreement

This Agreement embodies the basic conditions under which UNHCR shall, within its mandate, cooperate with the Government, open an office or offices in the country, and carry out its international protection and humanitarian assistance functions in favour of refugees and other persons of its concern, such as asylum seekers, stateless persons and returnees, pursuant to the general mandate of the Organization; and where appropriate,

persons who are displaced or who run the risk of being displaced within their own country, in accordance with the special mandate given to the Organization by the competent authorities of the United Nations in agreement with the Government of the Republic of the Congo.

Article III. Cooperation between the Government and UNHCR

1. Cooperation between the Government and UNHCR in the field of international protection of, and humanitarian assistance to, refugees and other persons of concern to UNHCR shall be carried out on the basis of the Statute of UNHCR, of other relevant decisions and resolutions relating to UNHCR adopted by United Nations organs and of article 35 of the Convention relating to the Status of Refugees of 1951 and article 2 of the Protocol relating to the Status of Refugees of 1967.

2. The UNHCR office shall maintain consultations and cooperation with the Government with respect to the preparation and review of projects for refugees and other persons of concern.

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

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

Article IV. UNHCR office

1. The Government welcomes that UNHCR establishes and maintains 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, with the agreement of the Government, designate the UNHCR office in the country to serve as a regional/area office.

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 categories of officials and the names of the officials included in these categories, and of other personnel as assigned to the office in the country, shall from time to time be made known to the Government.

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

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

Article VI. Facilities for implementation of UNHCR humanitarian programmes

1. The Government, in agreement with UNHCR, shall take any measure which may be necessary to exempt UNHCR officials, experts on mission and persons performing services on behalf of UNHCR from regulations or other legal provisions which may interfere with operations and projects carried out under this Agreement, and shall grant them such other facilities as may be necessary for the speedy and efficient execution of UNHCR humanitarian programmes for refugees in the country. Such measures shall include the provision of communication facilities in accordance with article IX of this Agreement, 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 provide UNHCR with appropriate office premises.

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

4. The Government shall take all necessary measures to ensure the protection and security of UNHCR and associated personnel. In particular, the Government shall take all necessary measures to protect UNHCR and associated personnel, their equipment and their premises from any actions or interference which could prevent them from carrying out their duties. This article shall apply without prejudice to the fact that UNHCR premises are inviolable and subject to the exclusive authority and control of UNHCR.

5. To the extent feasible, 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, to its property, funds and assets, and to its officials and experts on mission the relevant provisions of the above mentioned General Conventions duly ratified by the Republic of the Congo.

2. Without prejudice to paragraph 1 of this article, the Government shall in particular extend to UNHCR and its personnel the privileges, immunities, rights and facilities provided in articles VIII to X 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 shall be inviolable. The property, funds and assets of UNHCR, 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.

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

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

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

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

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

5. While UNHCR will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property that form part of the price to be paid (such as value added tax), nevertheless, when UNHCR is making purchases for official use of property on which such duties and taxes are chargeable, the Government will grant exemption therefrom.

6. Any materials imported, exported or purchased in the country by UNHCR, and by national or international bodies duly accredited by UNHCR to act on its behalf in connection with humanitarian assistance to refugees, shall be exempt from all customs duties, prohibitions and restrictions, as well as from direct and indirect taxation.

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

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

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

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

Article IX. Communication facilities

1. UNHCR shall enjoy, in respect of its official communications, treatment not less favourable than that accorded by the Government to any other Government, including its diplomatic missions, or to other intergovernmental, international organizations in matters

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 the UNHCR is exempted from all taxes and duties and enabled to effectively operate its radio and other telecommunications equipment, including satellite communications systems, on networks using the frequencies allocated by or coordinated with the competent national authorities under the applicable International Telecommunication Union 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) Access to the labour market with respect to their spouses and their dependent relatives forming part of their household without requiring a work permit;

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

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

(i) 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;

(j) Freedom to hold or maintain within the host 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;

(k) 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;

(l) 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 above mentioned General Conventions.

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

(a) Immunity from personal arrest or detention;

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

(c) Inviolability for all papers and documents;

(d) For the purposes 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 General Convention. In addition, they shall be granted:

(a) Facilities for the prompt processing 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. Crimes against UNHCR personnel

1. 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) Intentionally committing a murder, kidnapping or other attack upon the person or liberty of any member of the UNHCR personnel;

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

(c) Intentionally threatening to commit any such attack with the objective of coercing a natural or juridical person to do or refrain from doing any act;

(d) Intentionally attempting to commit any such attack; and

(e) Intentionally participating as an accomplice in any such attack, or in an attempt to commit such attack, or intentionally organizing or ordering others to commit such attack.

2. The Government shall establish its jurisdiction over the crimes set out in paragraph 1 above when the crime was committed in its territory and the alleged offender, other than a member of UNHCR personnel, is present in its territory, unless it has extradited such person to the State of his or her nationality, or, in the case of a stateless person, the State of his or her habitual residence, or to the State of nationality of the victim.

3. The Government ensure that the person accused of one of the crimes set out in paragraph 1, as well as any other person subject to its criminal jurisdiction accused of other acts against UNHCR or its personnel which, had they been committed in relation to the government forces or against the local civilian population, would have been subject to criminal prosecution, is handed over to its competent authorities for the institution of criminal proceedings in accordance with its domestic legal procedure.

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 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 and UNHCR.

Article XVI. Settlement of disputes

Any disputes 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 the chairperson. If within 30 days of the request for arbitration, either Party has not appointed an arbitrator or if within 15 days of the appointment of the two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. All decisions of the arbitrators shall require a vote of two of them. The procedure of the arbitration shall be fixed by the arbitrators and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

Article XVII. Final provisions

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

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 French language.

Done at Brazzaville on 17 December 2004.

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

[*Signed*] JANVIER DE RIEDMATTEN

Representative of UNHCR in the Republic of the Congo

For the Government of the Republic of the Congo:

[*Signed*] RAYMOND SERGE BALE

General Secretary, Ministry of Foreign Affairs, Cooperation and Francophonie

6. United Nations Human Settlements Programme

Agreements relating to the Venue Agreement between the United Nations Human Settlements Programme (UN-HABITAT) and the Kingdom of Spain regarding the hosting in the city of Barcelona (Spain) of the Second Session of the World Urban Forum. Barcelona, 15 September 2004.[22]

CONSIDERING that the United Nations Commission on Human Settlements requested, in its Resolution 18/5 of 16th February 2001, the promotion of "a merger of the Urban Environment Forum and the International Forum on Urban Poverty into a new urban forum, with a view to strengthening the coordination of international support to the implementation of the Habitat Agenda";

CONSIDERING that the United Nations General Assembly, in its Resolution 56/206 of 21st December 2001, which transformed the United Nations Commission on Human Settlements into the Governing Council of the United Nations Human Settlements Programme (UN-HABITAT) as a subsidiary organ of the General Assembly, and the United Nations Centre for Human Settlements into the United Nations Human Settlements Programme Secretariat (henceforth UN-HABITAT), decided that the World Urban Forum (henceforth the WUF) was to be a "non-legislative technical forum in which experts can exchange views in the years when the Governing Council does not meet";

CONSIDERING the objectives and the modes of work for the WUF that were adopted during the First Session of the WUF in Nairobi, Kenya, between 29th April and 3rd May 2002;

CONSIDERING the interest expressed by the City of Barcelona and the organisers of the Universal Forum of Cultures (Barcelona 2004) to include the Second Session of the WUF in the agenda of the Universal Forum of Cultures and that the Kingdom of Spain has agreed to host the WUF;

CONSIDERING that the organisational and financial aspects of the WUF have been set down in a Memorandum of Understanding to this effect, signed on 24th March 2003, between UN-HABITAT, the Municipality of Barcelona and the Universal Forum of Cultures.

UN-HABITAT and the Kingdom of Spain (henceforth referred to as the "Host State"), do hereby agree on the following:

Article I. Venue and date of the WUF

The Second Session of the WUF shall take place in the City of Barcelona, Spain, at the facilities designated to that effect in the area dedicated to the Universal Forum of Cultures, between 13th and 17th September 2004.

[22] Entered into force provisionally on 15 September 2004, in accordance with article IX.

Article II. Participation in the WUF

1. Participation in the Second Session of the WUF shall be open, according to the appointment or invitation that may be made by the UN-HABITAT Executive Director, to the participation of;

(a) All Member States of the United Nations or of any specialised agency or of the International Atomic Energy Agency;

(b) Representatives of organisations that have received a permanent invitation from the General Assembly to participate as observers in the sessions and in the work of all the international conferences convened under the auspices of the General Assembly, pursuant to General Assembly Resolutions 3237 (XXIX) of 22nd November 1974, and 43/177, of 15th December 1988;

(c) Representatives of specialised agencies of the United Nations, agencies connected thereto and of other intergovernmental United Nations bodies;

(d) Other interested intergovernmental organisations, which shall participate in the capacity of observers;

(e) Relevant non-governmental organisations recognized as consultative bodies by the Economic and Social Council and Habitat Agenda partners, accredited in conformity with General Assembly Resolution 55/194, of 5th January 2001, which shall participate in the capacity of observers. To the effect of the provisions of section III of Resolution 55/194, reference to the Preparatory Committee for the United Nations Conference on Human Settlements (Habitat II), contained in paragraph 2, shall be construed as made to all the Member States of HABITAT, and reference to the Committee comprised of the Desk of the Preparatory Committee and the Secretariat, contained in the same paragraph, shall be understood as made to the UN-HABITAT Executive Director and to the Ministry of Foreign Affairs and Co-operation of the Host State.

(f) Other persons invited by the UN-HABITAT Executive Director and the Host State.

2. The United Nations Secretary-General and the UN-HABITAT Executive Director shall appoint the United Nations members of staff designated to attend the Second Session of the WUF in order to provide services therein.

3. The public sessions of the Second Session of the WUF shall be open to media representatives accredited by the United Nations, at the latter's discretion, after prior consultation with the Host State.

Article III. Police protection

The Host State shall provide, at its expense, the necessary police protection to guarantee efficient functioning of the WUF in an atmosphere of security and peace, free from any type of interference whatsoever. Although these police services shall be under the supervision and direct control of a senior official appointed by the Host State, this senior official shall act in close co-operation with a senior official appointed by UN-HABITAT.

Article IV. Local staff for the WUF

The Host State shall appoint a liaison officer with UN-HABITAT who shall be in charge, in consultation with UN-HABITAT, of making, at its expense, whatever administrative and staff arrangements are necessary for the good functioning of the WUF in accordance with this Agreement.

Article V. Responsibility

1. The Host State shall assume responsibility for any action, claim or complaint against the United Nations or its staff deriving from:

(a) Personal injuries or material damages or losses at the WUF premises provided by the Host State, the City of Barcelona or the Universal Forum of Cultures, or are under their control;

(b) Personal injuries or material damages or losses caused by transport services, or deriving from the use of transport services, made available to the WUF by the Host State, the City of Barcelona or the Universal Forum of Cultures.

(c) Use by the WUF of staff provided by the Host State, the City of Barcelona or the Universal Forum of Cultures.

2. The Host State shall exonerate UN-HABITAT and its staff from responsibility with regard to any action, claim or complaint of such nature.

Article VI. Privileges and immunities

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13th February 1946, of which the Kingdom of Spain is a party without any reservations since 31st July 1974, shall be applicable to the WUF. Specifically, representatives of States taking part in the Second Session of the WUF shall enjoy the privileges and immunities provided for in Article IV of the Convention, United Nations members of staff, including UN-HABITAT members of staff, who exercise duties in relation with the WUF, shall enjoy the privileges and immunities provided for in Articles V and VII of the Convention, and experts on a United Nations Mission related to the WUF shall enjoy the privileges and immunities provided for in Articles VI and VII of the Convention.

2. Representatives of specialised or connected agencies shall enjoy the privileges and immunities provided for in the Convention on the Privileges and Immunities of the United Nations or the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, as appropriate.

3. Participants referred to in subsection b) of paragraph 1 of Article II above shall enjoy immunity of jurisdiction in respect of spoken or written statements and acts carried out by them in relation to their participation in the Second Session of the WUF. Participants referred to in subsections d), e) and f) of paragraph 1 of Article II above shall enjoy immunity of jurisdiction in respect of verbal statements made and acts carried out by them in relation to their participation in the Second Session of the WUF.

4. All persons mentioned in Article II shall be entitled to request entry into and exit from the Kingdom of Spain, and shall not be prevented from travelling to and from the WUF

area. They shall be granted facilities for speedy travel. Visas and entry and exit permits, where necessary, shall be issued at no cost, as speedily as possible pursuant to current legislation and observing, in particular, the international obligations assumed by the Host State.

5. With regard to the application of the Convention on the Privileges and Immunities of the United Nations, the facilities of the WUF shall be considered United Nations facilities and access to them shall be subject to the authority and control of the United Nations. The facilities shall be inviolable for the duration of the WUF and for the period necessary to conclude pending matters.

6. All persons mentioned in Article II above shall be entitled to take out of the Kingdom of Spain, upon their exit therefrom, and with no reservations, any surplus balance from the funds they had brought into the Kingdom of Spain in relation with the WUF, and reconvert such funds at the current market exchange rate.

7. The Host State shall allow the temporary duty-free importation of any equipment, including technical equipment, brought by the media representatives, and shall exempt from import taxes and duties any material necessary for the WUF. The Host State shall issue UN-HABITAT without delay with all the necessary import and export permits to this effect. The entirety of this equipment must be re-exported after the end of the WUF, unless other agreements with the Host State are in place.

8. It is understood that the privileges and immunities provided for in this article are accorded in the interest of the United Nations, including UN-HABITAT, and not to the benefit of the individuals themselves. The United Nations Secretary-General has the right and the obligation to waive the immunity of any of the persons mentioned in article II above, in any case in which, in his or her opinion, such immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations, including UN-HABITAT.

Article VII. Financial obligations

Besides the financial responsibilities provided for in other articles of this Agreement, the Host State shall defray the additional real costs incurred in by holding the WUF in the Kingdom of Spain instead of at the UN-HABITAT headquarters, as is provided for under the "Memorandum of Understanding between the United Nations Human Settlements Programme and the Municipality of Barcelona/Universal Forum of Cultures with regard to the organisational, logistical and financial arrangements for the Second Session of the World Urban Forum Barcelona 2004".

Article VII.[23] Settlement of disputes

Any dispute between UN-HABITAT and the Host State concerning the interpretation or application of this Agreement that is not settled through negotiation or another agreed form of settlement shall be submitted, at the request of either party, for its definitive decision, to a tribunal of three arbitrators, namely, one appointed by the United Nations Secretary-General, one appointed by the Host State, and a third one - who shall be the president - to be chosen by the other two arbitrators. If one of the parties has not appointed an arbitrator within 60 days from the date of the other party's appointment, or if these two

[23] Secretariat note: [*Sic*]

arbitrators do not agree on the third arbitrator within 60 days from their own appointment, the President of the International Court of Justice can make any necessary appointment, at the request of either party. Nevertheless, any dispute involving matters subject to the Convention on the Privileges and Immunities of the United Nations shall be dealt with in accordance with Section 30 of the mentioned Convention.

Article IX. Final provisions

1. This Agreement may be amended by written agreement between UN-HABITAT and the Host State.

2. This Agreement shall be provisionally applicable from the date of signature thereof and shall enter into force on the date of receipt of the last of the notifications by virtue of which the parties inform each other of the respective fulfilment of the corresponding legal and procedural requirements.

Signed in Barcelona on 15th September 2004, in four copies, in English and Spanish, both versions being equally authentic.

For the United Nations Human Settlements Programme (UN-HABITAT):	For the Kingdom of Spain:
[*Signed*] ANNA K. TIBAIJUKA	[*Signed*] MARÍA ANTONIA TRUJILLO RINCON
Executive Director	Minister of Housing

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.[24] Approved by the General Assembly of the United Nations on 21 November 1947

During 2004, no States acceded to the Convention. As at 31 December 2004, there were 110 States parties to the Convention.[24]

The following State party undertook to apply the provisions of the Convention to the following specialized agency:

Date of receipt of instrument of application	*States*	*Specialized agencies*
6 October 2004	Trinidad and Tobago	IFC

[24] For the list of the States parties, see *Multilateral Treaties Deposited with the Secretary-General* (United Nations publication, Sales No. E.05.V.3, S T/LEG/SER.E/23), vol. I, chap. III.

2. International Labour Organization

Cooperation agreement between the International Labour Organization and the African Development Bank and the African Development Fund[25]

COOPERATION AGREEMENT dated this twelfth day of May, 2004 between the International Labour Organization (hereinafter referred to as "ILO"), of the one part, and the African Development Bank and the African Development Fund (hereinafter collectively referred to as the "ADB"), of the other part.

THE PARTIES TO THIS COOPERATION AGREEMENT:

CONSIDERING that the mandate of the ADB is to contribute to the economic development and social progress of African countries ("Regional Countries"), individually and jointly, assisting the Regional Countries to break the vicious cycle of poverty, through facilitating and mobilising the flow of external and domestic resources, public and private, promoting investment and providing technical assistance and policy advice;

CONSIDERING that the ILO contributes to the improvement of social justice through the promotion of international labour standards, full productive quality employment, and decent work for all.

RECOGNIZING that the ILO is seeking to enhance its cooperation and partnership with the ADB to facilitate the development and implementation of coordinated and coherent policies and strategies in its overall endeavour to promote these objectives in African countries;

MINDFUL that the ADB as a regional development bank and the ILO as a specialised agency of the UN have complementary roles;

CONSCIOUS that both organizations should draw upon all their resources in their common areas of competence, to ensure that, in the context of a global strategy for economic and social development, economic and social policies are mutually reinforcing components in order to create broad-based sustainable development;

DESIROUS of developing and strengthening cooperation with respect to matters of common concern, and more particularly, the development, in their common member countries, of policies that emphasize the importance of increasing full and productive employment and incomes, economic integration and cooperation, enterprise promotion, labour law and labour administration, development of effective labour markets and labour market information systems, human resources development, good governance, labour standards and the respect of fundamental principles and rights at work, gender issues, social protection and social dialogue as part of the general process of enabling participatory economic and social development;

CONVINCED that the development and strengthening of such cooperation would be of mutual benefit to both organisations and would enhance cooperation among their Member States;

HAVE AGREED AS FOLLOWS:

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[25] Entered into force on 12 May 2004 , in accordance with article X.

Article I. Purpose and scope

1. The purpose of the present Cooperation Agreement is to facilitate collaboration between the ILO and the ADB in matters of common interest to them and particularly in the following activities:

a) country level operational work, including technical assistance activities, in accordance with their respective competence and capacities, and their respective priorities;

b) promotion of networking among development institutions in the region using formal as well as informal mechanisms;

c) the development of policies and procedures including those concerned with employment promotion, international labour standards and fundamental principles and rights at work, gender, social protection, and social dialogue.

d) research studies on matters within the competence of the ILO which the ADB or the ILO may need from time to time;

e) human resource development and training, including joint staff training activities as appropriate, and a programme of cooperation between the Joint African Institute and the ILO International Training Centre in Turin.

f) mutual cooperation in all other aspects which are consistent with the objectives of both organizations and the spirit of this agreement.

2. Any activity carried out by the ILO or the ADB pursuant to this Agreement shall be consistent with the policies, rules and regulations of each organization.

Article II. Mutual consultation

The ILO and the ADB shall maintain regular consultations on issues of strategic importance such as the social dimensions of economic development, and other matters of common interest for the purpose of furthering the effective achievement of the objectives they have in common and to ensure the greatest possible coordination of activities with a view to maximizing complementarity and mutual support.

Article III. Implementation mechanism

To facilitate implementation of this Cooperation Agreement, the parties hereto shall establish close cooperation between their respective staff to ensure the achievement of the objectives of this Cooperation Agreement, and to this end shall meet on a regular basis to plan and agree, as appropriate, on specific cooperative activities. Activities to be carried out pursuant to this Cooperation Agreement shall be subject to prior written agreement delineating the respective administrative and financial responsibilities of all parties concerned.

Article IV. Exchange of information

The ILO and the ADB commit themselves to exchange information on their respective policies, plans and activities in the African region on issues of converging interest. The ILO and the ADB shall combine their efforts to use their data and information to the best effect and to ensure the most efficient utilization of their resources in the collection, analysis, publication and diffusion of such information, subject to such arrangements as may be necessary for safeguarding the confidential character of any part thereof.

Article V. Reciprocal representation

The ILO shall invite representatives of the ADB to attend annual meetings of the International Labour Conference and participate whenever appropriate at such other regional meetings of the ILO in which the ADB has expressed an interest. The ADB shall invite the ILO as a guest to the annual meetings of the Board of Governors and to send observers to or to be represented at such other appropriate meetings established by the ADB in which the ILO has expressed an interest. Invitations shall be subject to the rules and procedures applicable to the respective meeting or conference.

Article VI. Selection of the ILO as an executing or implementing agency

The ILO is uniquely qualified to provide technical assistance, advice and training in many areas of expertise relating to its four strategic objectives which are: to promote and realize standards and fundamental principles and rights at work; create greater opportunities for women and men to secure decent employment and income; enhance the coverage and effectiveness of social protection for all; and strengthen social dialogue. It therefore may be engaged to implement ADB-financed loan and grant activities in these areas through a single source selection procedure, when this is in the mutual interest of the parties concerned.

Article VII. Channel of communication and notices

1. For the purpose of facilitating the implementation of this Cooperation Agreement, the channel of communication for the parties shall be:

(a) For the ILO: Mail Address:

ILO Regional Office
01 BP 3960 Abidjan
01 Cote d'lvoire
Tel: (225) 20 21 26 39
Fax:(225) 20 21 28 80
Internet: www.ilo.org

(b) For the Bank and the Fund: Mail Address:

African Development Bank
01 BP 1387
ABIDJAN 01
Cote d'lvoire
Tel: (225) 20 20 41 41
Fax: (225) 20 20 40 70
Internet: www.afdb.org

2. For the purpose of this Cooperation Agreement, the focal points of the parties shall be:

(*a*) For the ILO: Head of Regional Programming Unit

(*b*) For the ADB: Manager, Partnership and Cooperation Division

3. Either party may, by notice in writing to the other party, designate additional representatives or substitute other focal points for those designated in this Article.

4. Any notice, request or other communication under this Cooperation Agreement shall be in writing and shall be deemed to have been duly given or made when it has been delivered by hand, mail, cable, telex or telefax, as the case may be, by either party to the other at the address specified in the Agreement or such other address as either party may notify to the other party.

Article VIII. Supplementary arrangements and amendments

The parties to this Cooperation Agreement may by a simple exchange of letters enter into supplementary arrangements within the scope of this Cooperation Agreement, or amend any provision herein contained.

Article IX. Cost sharing arrangements

Costs or expenses relating to, or arising from, activities undertaken pursuant to this Cooperation Agreement shall be borne by one or both parties in accordance with the written agreements to be reached by the parties in advance of the implementation of the activities.

Article X. Entry into force, modification and termination

1. The present Agreement cancels and replaces the Agreement between the ILO and the African Development Bank and the Memorandum of Understanding on Working Arrangements between the ILO and the African Development Bank and the African Development Fund, signed on 18 April 1977, as well as any subsequent modifications.

2. The present Agreement will enter into force on the date on which it is signed by the authorized representatives of the ILO and the ADB.

3. The present agreement may be modified by an appropriate written amendment signed by both parties and annexed to this agreement.

4. The present agreement may be terminated by the written consent of the two parties or by either party giving the other party six (6) months written notice.

IN WITNESS WHEREOF, the International Labour Organization, the African Development Bank and the African Development Fund, each acting through its duly authorized representative, have signed this Agreement on the date first above written in two original counterparts in the English language.

For the African Development Bank and the African Development Fund:

[*Signed*] OMAR KABBAJ
President

For the International Labour Organization:

[*Signed*] JUAN SOMAVIA
Director General

3. International Atomic Energy Agency

Status of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, 1959[26]

In 2004, the status of the Agreement remained unchanged with 73 States parties.

4. World Bank

Agreement between the Government of the Russian Federation and the International Bank for Reconstruction and Development regarding the Resident Mission of the International Bank for Reconstruction and Development in the Russian Federation. Washington, 29 September 1996.[27]

The Government of the Russian Federation

and

The International Bank for Reconstruction and Development

HAVING regard to the Articles of Agreement of the International Bank for Reconstruction and Development, in particular the provisions of Article VII thereof, and also to the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies of November 21, 1947,

TAKING INTO ACCOUNT that in order to efficiently conduct its activities in the Russian Federation the International Bank for Reconstruction and Development has established a Resident Mission in the Russian Federation,

DESIRING to conclude an agreement regarding the operation of Resident Mission of the International Bank for Reconstruction and Development in the Russian Federation,

AGREE as follows:

Article I. Use of terms

For the purposes of this Agreement:

(a) "Government" means the Government of the Russian Federation;

(b) "The Bank" means the International Bank for Reconstruction and Development;

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[26] INFCIRC/9/Rev.2. For the list of States parties to the Agreement, see the website of the IAEA at http://www.iaea.org.

[27] Entered into force on 9 November 2004, in accordance with article XIV.

(c) “Articles of agreement” means the Articles of Agreement of the Bank;

(d) “Resident Mission” means the Resident Mission of the Bank in the Russian Federation and includes the main mission in Moscow and any additional missions that may be established with the agreement of the Government at other locations in the Russian Federation;

(e) “Premises of the Resident Mission” means the buildings and parts of buildings, and the land ancillary thereto, used for the official purposes of the Resident Mission;

(f) “Officers and Employees of the Resident Mission” means all officers and employees referred to in the Articles of Agreement, appointed or assigned by the Bank to the Resident Mission;

(g) “Resident Representative” means the principal executive officer of the Resident Mission appointed by the Bank, including any officer appointed to act on his behalf during his absence from duty;

(h) “Dependents” means the dependents of Officers and Employees of the Resident Mission, and includes their spouses, children, parents and other members of the family forming part of their households who are primarily dependent on such personnel for financial support;

(i) “Members of the household staff” means persons, other than nationals of the Russian Federation, employed as domestic staff of Officers and Employees of the Resident Mission;

(j) “Archives of the Resident Mission” means all records, correspondence, documents and other materials, including manuscripts, still and moving pictures and films, sound recordings, computer programs and written materials, video tapes and discs, as well as discs or tapes containing dates belonging to or held by or on behalf of the Resident Mission;

(k) “Meetings convened by the Bank” means meetings of the Bank or the Resident Mission, including any international conference or other gathering convened by the Bank or the Resident Mission, and any commission, committee or subgroup of any such meetings;

(l) “Property and assets of the Resident Mission” means all property and assets referred to in the Articles of Agreement, and vested by the Bank in the Resident Mission.

Article II. Certain immunities of the Bank and the Resident Mission

Section 1. The Bank, its Officers and Employees, shall enjoy in the territory of the Russian Federation the privileges, exemptions and immunities set forth in Article VII of the Bank’s Articles of Agreement and in the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies of 1947.

Section 2. Actions may be brought against the Bank only in accordance with Section 3 of Article VII of the Articles of Agreement.

Section 3. Property and assets of the Resident Mission, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizures by executive or legislative action.

Section 4. The Archives of the Resident Mission, wheresoever located and by whomsoever held, shall be inviolable.

Article III. The Resident Mission

Section 1. In addition to the main mission in Moscow, the Bank, with the -agreement of the Government, may establish additional missions at other locations in the Russian Federation. The Government shall, If requested, assist the Bank in obtaining premises necessary for the Resident Mission and facilities required for the activities of the Resident Mission. The Government shall also assist the Bank in obtaining real estate which may be necessary for the official purposes of the Resident Mission and its Officers and Employees.

Section 2. The Resident Mission shall be headed by a Resident Representative and shall be staffed with such other personnel appointed or assigned by the Bank.

Section 3. The Resident Mission shall be entitled to display the flag and the emblem of the Bank on its Premises, including the residence of the Resident Representative, and on the means of transport of the Resident Representative.

Article IV. Inviolability of the premises of the Resident Mission

Section 1. The Premises of the Resident Mission shall be inviolable and shall be under the control and authority of the Bank. No representatives of the authorities of the Russian Federation shall enter the Premises of the Resident Mission to perform any duties therein except with the consent of, and under conditions agreed to by, the Bank or the Resident Mission. Such consent may be assumed in the case of fire. The circumstances and the manner in which any such authorities may enter the Premises of the Resident Mission in connection with fire prevention shall be agreed with the Government by the Bank or the Resident Mission.

Section 2. The Bank shall have the power to make rules and regulations operative within the Resident Mission for the full and independent exercise of its activities and performance of its functions.

Section 3. Without prejudice to the terms of this Agreement, the Bank shall prevent the Premises of the Resident Mission from becoming a refuge from justice for persons seeking to avoid arrest or service of legal process under the laws of the Russian Federation.

Article V. Protection of the Resident Mission

The Government shall take all appropriate measures to protect the Premises of the Resident Mission against any intrusion or damage and to prevent any disturbance of law and order in the Resident Mission. The Resident Mission shall be accorded the same protection as that accorded to diplomatic missions in the Russian Federation. If requested by the Bank or the Resident Mission, the Government shall provide a sufficient number of police for the restoration of law and order in the Resident Mission and for the removal of offenders.

Article VI. Immunities from taxation

The Resident Mission, its assets, property, income and its operations and transactions authorized by the Articles of Agreement, shall be immune from all taxation (including

mandatory charges, such as for social security for its Officers and Employees) and from all customs duties, it being understood, however, that the Resident Mission will not claim exemptions from taxes which are, in fact, no more than charges for specific services rendered, and that the Bank will provide to the Officers and Employees of the Resident Mission who are nationals of the Russian Federation and who are not eligible for social security or similar benefits from the Bank, remuneration arrangements that take into account the lack of such benefit. Any goods and articles acquired in the Russian Federation or imported by the Resident Mission under such immunity may be disposed of locally, subject to terms agreed upon with the Government. The Resident Mission shall also be immune from liability for the collection or payment of any tax or duty.

Article VII. Services

Section 1. The Government shall assist the Bank in obtaining services required to maintain the Premises of the Resident Mission in a condition suitable for the effective discharge of the functions of the Resident Mission.

Section 2. The Government shall ensure that the Resident Mission is provided, on terms no less favorable than those accorded to any other international organization or diplomatic mission in the Russian Federation, with the necessary services, including post, telephone, telegraph, electricity, gas, water, sewerage, drainage, collection of refuse and fire protection, of a quality not inferior to that provided to any other international organization or diplomatic mission. In case of any interruption or threatened interruption of any such services the Government shall take appropriate steps to ensure that the activities of the Resident Mission are not prejudiced.

Section 3. Where electricity, gas, water or any other services are supplied by the Government or by authorities under the control of the Government, the Resident Mission shall be charged at rates no less favorable than those charged to other international organizations or diplomatic missions in the Russian Federation.

Section 4. The Government shall, if requested, assist the Bank in obtaining suitable housing accommodation for Officers and Employees of the Resident Mission and their Dependents.

Section 5. The Government shall assist the Resident Mission in obtaining gasoline or other fuels and oils for vehicles and any other means of transport required for the official use of the Bank, including for the use of Officers and Employees of the Bank, in quantities and at rates prevailing for other international organizations or diplomatic missions in the Russian Federation.

Article VIII. Financial facilities

Section 1. The Bank of Russia shall sell to the Bank, in exchange for any convertible currency, the national currency of the Russian Federation in such amounts as the Bank may from time to time require for meeting its expenditures in the Russian Federation, at the official exchange rate of the Bank of Russia no less favorable than that accorded to other International organizations or diplomatic missions in the Russian Federation.

Section 2. The Bank may use the local currency portion of the paid-in capital subscriptions of the Russian Federation to assist it in defraying the local expenses of the Resident

Mission. The Bank may submit requests for encashment of the Government's outstanding demand notes for this purpose from time to time.

Article IX. Freedom of meeting and discussion

The Bank shall have the right to convene meetings in the Premises of the Resident Mission and, with the agreement of the Government, at other locations in the territory of the Russian Federation.

At such meetings, the Government shall guarantee that no impediment is placed in the way of full freedom of discussion and decision.

Article X. Communications

Section 1. The Bank shall enjoy in the Russian Federation treatment no less favorable than that accorded to any other international organization or diplomatic mission in the Russian Federation, in the matter of priorities, rates and charges for telegraph, telexes, facsimile, telephone and other means of communications.

Section 2. The Government shall ensure that the Bank shall be accorded the same rates and treatment as may be granted to any other international organization or diplomatic mission in the Russian Federation with respect to the use of transport facilities.

Section 3. All official communications to and from the Resident Mission by whatever means or in whatever form transmitted shall be immune from censorship and any other form of interception or interference.

Section 4. The Resident Mission shall have the right in the Russian Federation to use codes and to dispatch and receive correspondence and other communications either by courier or in sealed bags which shall have immunities and privileges no less favorable than those accorded to diplomatic couriers and bags. The installation and use by the Resident Mission of a wireless transmitter, however, shall only be made with the prior consent of the Government.

Section 5. The Bank may, with the prior consent of the Government, install and operate in the Russian Federation point-to-point telecommunication facilities and other communications and transmission facilities as may be necessary to facilitate communications with the Resident Mission both from within and outside the Russian Federation.

Article XI. Transit and residence

Section 1. The Government shall take all measures required to facilitate the entry into residence in and departure from the Russian Federation, and freedom of movement in the Russian Federation of the following persons entering the Russian Federation on official business:

(i) Officers and Employees of the Resident Mission and their Dependents and Members of their household staff; and

(ii) Other persons officially invited by the Bank or the Resident Mission in connection with official activities of the Bank in the Russian Federation. The Bank or the Resident Mission shall communicate the names of such persons to the Government.

The persons referred to above shall have the same freedom of movement within the territory of the Russian Federation, subject to its laws and regulations concerning access to units and other locations which require a special authorization, and the same treatment in respect of traveling facilities, as is accorded to officials of comparable rank of diplomatic missions.

Section 2. The Government shall exempt from any restrictions on the entry of aliens or the conditions of their stay, persons, other than Members of household staff, referred to in Section 1 of Article XI of this Agreement. These persons shall be exempt from immigration restrictions and alien registration and from registration formalities for the purposes of immigration control. The Bank shall cooperate with the Government to avoid any prejudice to the national security of the Russian Federation.

Section 3. The Government shall take appropriate steps and issue to its concerned officials, general instructors to grant visas to any persons, other than Members of household staff, referred to in Section 1 of Article XI of this Agreement without delay and without payment of any charges. Officers and Employees of the Resident Mission and their Dependents shall be granted multiple Russian visas for the period of their official stay in the Russian Federation.

Article XII. Privileges and immunities of officers and employees of the Resident Mission

Section 1. Officers and Employees of the Resident Mission shall enjoy in the Russian Federation the following privileges and immunities:

(a) immunity from legal process with respect to acts performed by them in their official capacity;

(b) exemption from taxation including mandatory charges, such as for social security on or in respect of salaries and emoluments paid by the Bank;

(c) the same privileges in respect of exchange facilities as are accorded to officials of comparable rank of diplomatic missions;

(d) the same repatriation facilities in time of international crises, together with their Dependents and Members of their household staff, as are accorded to diplomatic agents; and

(e) the right to customs facilities with respect to articles for personal use imported into and exported from the Russian Federation as are granted to officials of comparable rank of diplomatic missions by the customs laws of the Russian Federation.

Section 2. Other than nationals of the Russian Federation, Officers and Employees of the Resident Mission, their Dependents and Members of their household staff shall be exempt from national service obligations in the Russian Federation. Officers and Employees of the Resident Mission, who are nationals of the Russian Federation, shall be exempt from national service obligations in the Russian Federation, provided that their names have, by reason of their duties, been placed upon a list compiled by the Bank and approved by the appropriate authorities of the Russian Federation. Should other Officers and Employees of the Resident Mission, who are nationals of the Russian Federation, be called up for national service, the Russian Federation shall at the request of the Bank, grant

such temporary deferments in the call-up of such Officers and Employees as may be necessary to avoid interruption in the continuation of essential work of the Resident Mission.

Section 3. Other than nationals of the Russian Federation, the Dependents of Officers and Employees of the Resident Mission shall be accorded opportunity to take employment in the Russian Federation, and shall be promptly provided by the Government with any clearances or documents that may be required for this purpose.

Section 4. In addition to the immunities, exemptions and privileges specified in Sections 1 to 3 of this Article, the Resident Representative (including any officer acting on behalf of the Resident Representative during the latter's absence from duty) and the spouse and dependents of the Resident Representative shall be accorded the privileges, immunities, exemptions and facilities accorded in the Russian Federation to diplomatic agents in accordance with international law supplemented by practice in the Russian Federation.

Section 5. The Bank shall communicate to the Government the names of those Officers and Employees of the Bank, their Dependents and Members of the household staff to whom the provisions of the present Article are applicable.

Section 6. The Officers and Employees of the Resident Mission shall be provided by the Government with a special identity card which shall serve to identify the holder to the authorities of the Russian Federation and to certify that the holder enjoys the privileges and immunities specified in this Agreement.

Section 7. The privileges and immunities set out in paragraphs (c), (d) and (e) of Section 1 of Article XII shall not apply to Officers and Employees of the Resident Mission or their Dependents who are nationals of the Russian Federation, or stateless persons and foreigners having permanent residence in the territory of the Russian Federation.

Section 8. The privileges, immunities, exemptions and facilities accorded in this Agreement are granted in the interests of the Bank and not for the personal benefit of the individuals themselves. The Bank may in its discretion waive any of the privileges and immunities conferred under the Articles of Agreement of the Bank, the Convention on the Privileges and Immunities of the Specialized Agencies of November 21, 1947, and this Agreement, to such extent and upon such conditions as it may determine.

Section 9. The Bank shall use its best efforts to ensure that the privileges, immunities, exemptions and facilities conferred by this Agreement are not abused and for this purpose shall establish such rules and regulations as it may deem necessary and expedient. Should the Government consider that an abuse has occurred, consultations shall be held between the Government end the Bank to determine whether any such abuse has occurred and, if so, to ensure that no repetition occurs.

Article XIII. Settlement of disputes

All issues concerning the interpretation or application of this Agreement shall be settled by the Parties through appropriate consultations. If a dispute cannot be resolved in such a way, the Parties will agree on other means to achieve a decision.

Article XIV. Final provisions, entry into force and termination

Section 1. This Agreement shall apply on an interim basis upon signature and shall enter into force upon exchange of notifications of execution of internal procedures required for its entry into force.

Section 2. At the request of either the Government or the Bank, consultations shall take place respecting the implementation or modification of this Agreement. The Government and the Bank may enter into such supplementary agreements as may be necessary for the implementation of this Agreement.

Section 3. This Agreement shall remain in force for a year from the date a Party informs the other Party in writing of its intention to terminate it.

Section 4. Relevant provisions of this Agreement shall continue to be applied after its termination within a period reasonably required for the settlement of the affairs of the Bank and the disposal of its property in the Russian Federation.

Done in Washington, this 29th day of September, 1995 in duplicate, in Russian and in English, both texts being equally authentic.

In witness whereof, the representatives duly authorized thereto, have signed this Agreement.

For the Government of the Russian Federation:
[*Signed*]
By Vladimir Potanin
First Deputy Prime Minister

For the International Bank for Reconstruction and Development:
[*Signed*]
By Johannes Linn
Regional Vice President
Europe and Central Asia

5. International Monetary Fund

Agreement between the Government of the Russian Federation and the International Monetary Fund regarding the Resident Representative Office of the International Monetary Fund in the Russian Federation. Hong Kong, 24 September 1997.[28]

The Government of the Russian Federation and the International Monetary Fund,

HAVING regard to the Articles of Agreement of the International Monetary Fund, in particular, the provisions of Article IX thereof, and also to the provisions of the United Nations Convention on the Privileges and Immunities of the Specialized Agencies of November 21, 1947,

TAKING INTO ACCOUNT that, in order to efficiently conduct its activities in the Russian Federation, the International Monetary Fund has established a Resident Representative Office in the Russian Federation,

[28] Entered into force on 9 November 2004, in accordance with article XIV.

DESIRING to conclude an agreement regarding the operation of Resident Representative Office and other activities of the International Monetary Fund in the Russian Federation,

AGREE as follows:

Article I. Use of terms

For the purposes of this Agreement:

(a) "Government" means the Government of the Russian Federation;

(b) "The Fund" means the International Monetary Fund;

(c) "Articles of Agreement" means the Articles of Agreement of the Fund;

(d) "Resident Representative Office" means the Resident Representative Office of the Fund in the Russian Federation;

(e) "Premises of the Resident Representative Office" means the buildings and parts of buildings, and the land ancillary thereto, used for the official purposes of the President Representative Office;

(f) "Officers and Employees of the Resident Representative Office" means all officers and employees referred to in the Articles of Agreement, appointed or assigned by the Fund to the Resident Representative Office;

(g) "Senior Resident Representative" means the principal executive officer of the Resident Representative Office appointed by the Fund, including any officer appointed to act on his behalf during his absence from duty;

(h) "Dependents" means the dependents of Officers and Employees of the Resident Representative Office, and includes their spouses, children, parents and other members of the family forming part of their households who are primarily dependent on such personnel for financial support;

(i) "Members of household staff" means persons, other than nationals of the Russian Federation, employed as domestic staff of Officers and Employees of the Resident Representative Office;

(j) "Meetings convened by the Fund" means meetings of the Fund or the Resident Representative Office, including any international conference or other gathering convened by the Fund or the Resident Representative Office, and any commission, committee or subgroup of any such meetings.

Article II. The Resident Representative Office

Section 1. The Resident Representative Office shall be headed by a Senior Resident Representative and shall be staffed with such other personnel appointed or assigned by the Fund.

Section 2. The Fund shall be entitled to display the flag and the emblem of the Fund on the Premises of the Resident Representative Office as well as the residence of the Senior Resident Representative, and on the means of transport of the Senior Resident Representative.

Section 3. The Government shall, if requested, assist the Fund in obtaining property to serve as the Premises and other facilities of the Resident Representative Office and as

may be necessary for any other official purposes of the Resident Representative Office and its Officers and Employees.

Article III. Privileges and immunities of the Fund

Section 1. The Fund shall enjoy in the territory of the Russian Federation the privileges, exemptions and immunities set forth in Article IX of the Fund's Articles of Agreement and in the provisions of the United Nations Convention on the Privileges and Immunities of the Specialized Agencies of 1947.

Section 2. The Fund, through the Resident Representative Office, and the assets, property, income and operations and transactions of the Fund authorized by the Articles of Agreement, shall be immune from all taxation and mandatory charges, with the exception of those that are charges for specific services rendered. The Fund will provide to the Officers and Employees of the Resident Representative Office who are nationals of the Russian Federation and who are not eligible for medical or pension schemes or similar benefits from the Fund, remuneration arrangements that take into account the lack of such benefits. Neither the Fund nor the Resident Representative Office shall be liable for the collection or payment of any tax or duty.

Section 3. The Fund, through the Resident Representative Office, shall be exempt from all customs duties, taxes and fees in respect of goods and articles, including publications, imported or exported for official use, with the exception of those that are charges for specific services rendered. Any goods and articles acquired in the Russian Federation or imported by the Resident Representative Office under such immunity may be disposed of locally, subject to terms agreed upon with the Government.

Article IV. Inviolability of the premises of the Resident Representative Office

Section 1. The Premises of the Resident Representative Office shall be inviolable and shall be under the control and authority of the Fund. No representatives of the authorities of the Russian federation shall enter the Premises of the Resident Representative Office to perform any duties therein except with the consent of, and under conditions agreed to by, the Fund or the Resident Representative Office. Such consent may be assumed in the case of fire. The circumstances and the manner in which any such authorities may enter the Premises of the Resident Representative Office in connection with fire prevention shall be agreed between the Government and the Fund or the Resident Representative Office.

Section 2. The Fund shall have the power to make rules and regulations operative within the Resident Representative Office for the full and independent exercise of its activities and performance of its functions.

Section 3. Without prejudice to the terms of this Agreement, the Fund shall prevent the Premises of the Resident Representative Office from becoming a refuge from justice for persons seeking to avoid arrest or service of legal process under the laws of the Russian Federation.

Article V. Protection of the Resident Representative Office

The Government shall take all appropriate measures to protect the Premises of the Resident Representative Office against any intrusion or damage and to prevent any distur-

bance of law and order in the Resident Representative Office. The Resident Representative Office shall be accorded the same protection as that accorded to diplomatic missions in the Russian Federation. If requested by the Fund or the Resident Representative Office, the Government shall provide a sufficient number of police for the restoration of law and order in the Resident Representative Office and for the removal of offenders.

Article VI. Communications

Section 1. All official communications to and from the Resident Representative Office by whatever means or in whatever form transmitted shall be immune from censorship and any other form of interception or interference.

Section 2. The Resident Representative Office shall have the right in the Russian Federation to use codes and to dispatch and receive correspondence and other communications either by courier or in sealed bags which shall have immunities and privileges no less favorable than those accorded to diplomatic couriers and bags. The use by the Resident Representative Office of a wireless transmitter shall only be made on the basis of legislative and legal regulatory acts of the Russian Federation.

Section 3. The Resident Representative Office may, with the prior consent of the Government, install and operate in the Russian Federation point-to-point telecommunication facilities and other communications and transmission facilities as may be necessary to facilitate communications with the Resident Representative Office both from within and outside the Russian Federation.

Article VII. Transit and residence

Section 1. The Government shall take all measures required to facilitate the entry into, residence in and departure from the Russian Federation, and freedom of movement in the Russian Federation, of the following persons entering the Russian Federation on official business:

(i) Officers and Employees of the Resident Representative Office and their Dependents and Members of their household staff;

(ii) officers and employees of the Fund on mission in the Russian Federation or in transit therein, including technical assistance experts assigned to work in the Russian Federation;

(iii) other experts under the Fund's technical assistance program who are assigned to work in the Russian Federation, whose names shall be communicated by the Fund to the Government; and

(iv) other persons officially invited by the Fund or the Resident Representative Office in connection with official activities of the Fund in the Russian Federation. The Fund or the Resident Representative Office shall communicate the names of such persons to the Government.

The person, referred to above shall have the same freedom of movement within the territory of the Russian Federation, subject to its laws and regulations concerning access to units and other locations which require a special authorization, and the same treatment in respect of traveling facilities, as are accorded to officials of comparable rank of diplomatic missions.

Section 2. The Government shall exempt from any restrictions on the entry of aliens or the conditions of their stay any persons referred to in Section 1 of this Article, other than Members of household staff. These persons shall be exempt from immigration restrictions and alien registration and from registration formalities for the purposes of immigration control. The Fund shall cooperate with the Government to avoid any prejudice to the national security of the Russian Federation.

Section 3. The Government shall take appropriate steps, and issue to its concerned officials, general instructions to grant visas to any persons referred to in Section 1 of this Article who are not nationals of the Russian Federation, other than Members of household staff, without delay and without payment of any charges. Officers and Employees of the Resident Representative Office and their Dependents shall be granted multiple-entry Russian visas for the period of their official stay in the Russian Federation.

Article VIII. Freedom of meeting and discussion

The Fund shall have the right to convene meetings in the Premises of the Resident Representative Office, and, with the agreement of the Government, at other locations in the territory of the Russian Federation. At such meetings, the Government shall guarantee that no impediment is placed in the way of full freedom of discussion and decision.

Article IX. Privileges and immunities of Fund officials

Section 1. Officers and Employees of the Resident Representative Office, technical assistance experts referred to in Article VII, Section l (ii) and (iii) above, and other Fund officials while on mission in the Russian Federation or in transit therein, shall enjoy the following privileges and immunities:

(a) immunity from legal process with respect to acts performed by them in their official capacity;

(b) exemption from taxation and mandatory charges, such as contributions to medical and pension schemes, on or in respect of salaries and emoluments paid by the Fund;

(c) immunity from personal arrest or detention, and from seizure of their personal baggage;

(d) the same privileges in respect of exchange facilities as are accorded to officials of comparable rank of diplomatic missions;

(e) the same repatriation facilities in time of international crises, together with their Dependents and Members of their household staff, as are accorded to diplomatic agents; and

(f) the right to customs facilities with respect to articles for personal imported into and exported from the Russian Federation as are granted to officials of comparable rank of diplomatic missions by the customs laws of the Russian Federation.

The privileges and immunities set out in paragraphs (c), (d), (e) and (f) above shall not apply to any persons who are nationals of the Russian Federation, or either stateless persons or foreigners having permanent residence in the territory of the Russian Federation, and were hired locally to perform services in the Resident Representative Office.

Section 2. Officers and Employees of the Resident Representative Office, their Dependents and Members of their household staffs shall be exempt from military and national service obligations in the Russian Federation, unless they are nationals of the Russian Federation. Officers and Employees of the Resident Representative Office who are nationals of the Russian Federation shall be exempt from military and national service obligations in the Russian Federation, so long as their names have, by reason of their duties, been placed upon a list compiled by the Fund and approved by the appropriate authorities of the Russian Federation. Should other Officers and Employees of the Resident Representative Office who are nationals of the Russian Federation be called up for military and national service, the Russian Federation shall, at the request of the Fund, grant such temporary deferments in the call-up of such Officers and Employees as may be necessary to avoid interruption in the continuation of essential work of the Resident Representative Office.

Section 3. The Dependents of Officers and Employees of the Resident Representative Office who are not nationals of the Russian Federation shall be accorded opportunity to take employment in the Russian Federation, and shall be promptly provided by the Government with any clearances or documents that may be required for this purpose.

Section 4. In addition to the immunities, exemptions and privileges specified in Sections 1 to 3 of this Article, the Senior Resident Representative (including any officer acting on behalf of the Senior Resident Representative during the latter's absence from duty) and the spouse and dependents of the Senior Resident Representative shall be accorded the privileges, immunities, exemptions and facilities accorded in the Russian Federation to heads of diplomatic missions in accordance with international law supplemented by practice in the Russian Federation.

Section 5. The Fund shall communicate to the Government the names of those Officers and Employees of the Resident Representative Office, their Dependents and Members of the household staff to whom the provisions of the present Article are applicable.

Section 6. The Officers and Employees of the Resident Representative Office shall be provided by the Government with a special identity card which shall serve to identify the holder to the authorities of the Russian Federation and to certify that the holder enjoys the privileges and immunities specified in this Agreement. The Government shall, upon request of the Fund, issue to any Fund official on mission to the Russian Federation or in transit therein a travel a document certifying that the holder is entitled to the privileges and immunities set forth in this Agreement.

Section 7. The privileges, immunities, exemptions and facilities accorded in this Agreement to Officers and Employees of the Resident Representative Office and other Fund officials are granted in the interests of the Fund and not for the personal benefit of the individuals themselves. The Fund shall have the right and the duty to waive any immunity from legal process conferred under this Agreement on any Officer or Employee of the Resident Representative Office or other official where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Fund.

Section 8. The Fund shall use its best efforts to ensure that the privileges, immunities, exemptions and facilities conferred by this Agreement are not abused and for this purpose shall establish such rules and regulations as it may deem necessary and expedient. Should the Government consider that an abuse has occurred, consultations shall be held between

the Government and the Fund to determine whether any such abuse has occurred and, if so, to ensure that no repetition occurs.

Article X. Settlement of disputes

All issues concerning the interpretation or application of this Agreement shall be settled by the Parties through appropriate consultations. If a dispute cannot be resolved, in such a way, the Parties shall agree on other means to achieve a decision.

Article XI. Final provisions, entry into force and termination

Section 1. This Agreement shall apply on an interim basis upon signature and shall enter into force upon execution of internal procedures required for its entry into force.

Section 2. At the request of either the Government or the Fund, consultations shall take place respecting the implementation or modification of this Agreement. The Government and the Fund may enter into such supplementary agreements as may be necessary for the Implementation of this Agreement.

Section 3. This Agreement shall expire one year from the date a Party Informs the other Party in writing of its intention to terminate it

Section 4. Relevant provisions of this Agreement shall continue to be applied after its termination within a period reasonably required for the settlement of the affairs of the Fund and the disposal of its property in the Russian Federation.

Done in Hong Kong, this 24 day of September, 1997 in duplicate, in Russian and in English, both texts being equally authentic.

In witness whereof, the representatives duly authorized thereto, have signed this Agreement.

[*Signed*]	[*Signed*]
For the Government of the Russian Federation	For the International Monetary Fund

Part Two

LEGAL ACTIVITIES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter III

GENERAL REVIEW OF THE LEGAL ACTIVITIES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. General review of the legal activities of the United Nations

1. Membership of the United Nations

As at 31 December 2004, the number of Member States remained at 191.

2. Peace and security

(*a*) Peacekeeping missions and operations

(i) *Peacekeeping operations and missions established in 2004*

a. Côte d'Ivoire

On 27 February 2004, the Security Council adopted resolution 1528 and, acting under Chapter VII of the Charter, decided to establish the United Nations Operation in Côte d'Ivoire (UNOCI) for an initial period of 12 months as from 4 April 2004. The Security Council requested the Secretary-General to transfer authority from the United Nations Mission in Côte d'Ivoire (MINUCI) and the Economic Community of West African States (ECOWAS) forces to UNOCI on 4 April 2004.

The Security Council also decided that UNOCI, in coordination with the French forces stationed in Côte d'Ivoire as authorized in the resolution, would have the mandate to facilitate the implementation by the Ivorian parties of the peace agreement signed by them in January 2003 by, *inter alia*, monitoring the ceasefire and movements of armed groups; assisting in the disarmament, demobilization and reintegration programme and in the establishment of a secure environment for humanitarian assistance, United Nations personnel and civilians in general; assisting the Government of National Reconciliation in the electoral process; providing advice in the restoration of law and order; and contributing to the promotion and protection of human rights in the country.

The Council further requested the Secretary-General and the Government of National Reconciliation to conclude a status-of-forces agreement within 30 days of adoption of the resolution, taking into consideration General Assembly resolution 58/82 on the scope of legal protection under the Convention on the Safety of United Nations and Associated

Personnel, 1994,[1] and noted that, pending the conclusion of such an agreement, the model status-of-forces agreement of 9 October 1990 shall apply provisionally.[2]

b. Haiti

On 20 April 2004, the Security Council, acting under Chapter VII of the Charter, adopted resolution 1542, by which it decided to establish, as envisaged in resolution 1529 (2004), the United Nations Stabilization Mission in Haiti (MINUSTAH) for an initial period of six months, to succeed to the Multinational Interim Force (MIF),[3] and requested that authority be transferred from MIF to MINUSTAH on 1 June 2004.

MINUSTAH's mandate included providing assistance to the Transitional Government in reforming the national police, implementing a disarmament, demobilization and reintegration programme, restoring the rule of law, public safety and public order and protecting United Nations personnel and civilians. It was also mandated to, *inter alia*, support the political process by fostering principles, democratic governance and institutional development and the organization of free elections, and to support the Transitional Government in promoting and protecting human rights and investigating violations thereof.

The Council further requested the Haitian authorities to conclude a status-of-forces agreement with the Secretary-General within 30 days of adoption of the resolution, and noted that, pending the conclusion of such an agreement, the model status-of-forces agreement of 9 October 1990 shall apply provisionally.

By resolution 1576 adopted on 29 November 2004, the Security Council, acting under Chapter VII of the Charter, decided to extend the mandate of MINUSTAH until 1 June 2005, with the intention to renew it for further periods.

c. Burundi

The United Nations Operation in Burundi (ONUB) was established for an initial period of six months by Security Council resolution 1545 adopted on 21 May 2004. The Security Council, acting under Chapter VII of the Charter, decided to authorize the deployment of a peacekeeping operation in Burundi in order to support and help to implement efforts undertaken by Burundians to restore lasting peace and bring about national reconciliation, as provided under the Arusha Peace and Reconciliation Agreement for Burundi, signed at Arusha on 28 August 2000.

The Security Council authorized ONUB to use all necessary means to carry out its mandate, within its capacity and in the areas where its armed units are deployed, and in coordination with humanitarian and development communities. The mandate of ONUB consists in, *inter alia*, monitoring ceasefire agreements and disarmament and demobilization programmes; contributing to the creation of a secure environment for the return of refugees and displaced persons and the completion of the electoral process; and assisting

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[1] United Nation, *Treaty Series*, vol. 2051, p. 363.

[2] A/45/594.

[3] The deployment of MIF was authorized by Security Council resolution 1529 (2004) and is discussed further under the heading "Action of Member States authorized by the Security Council".

and advising the transitional Government in its constitutional and institutional reforms, including of the judiciary.

The Council requested the transitional Government of Burundi to conclude a status-of-forces agreement for ONUB with the Secretary-General within 30 days, taking into consideration General Assembly resolution 58/82 on the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel, 1994, and noted that pending the conclusion of such an agreement, the model status-of-forces agreement for peacekeeping operations of 9 October 1990 shall apply provisionally.

On 1 December 2004, the Security Council adopted resolution 1577, and acting under Chapter VII of the Charter, the Council extended the mandate of ONUB, as defined in its resolution 1545 (2004), to 1 June 2005.

(ii) *Changes in the mandate and/or extensions of time limits of ongoing peacekeeping operations or missions in 2004*

a. Cyprus

The Peacekeeping Force in Cyprus (UNFICYP) was established by Security Council resolution 186 (1964). The Security Council, by resolution 1548 adopted on 11 June 2004 and resolution 1568 adopted on 22 October 2004, extended the mandate of UNFICYP until 15 December 2004 and 15 June 2005, respectively.

b. Syria and Israel

The United Nations Disengagement Observer Force (UNDOF) was established by Security Council resolution 350 (1974). The Security Council, by resolution 1525 adopted on 30 January 2004, resolution 1550 adopted on 29 June 2004 and resolution 1578 adopted on 15 December 2004, extended UNDOF's mandate until 31 July 2004, 31 December 2004 and 30 June 2005, respectively.

c. Lebanon

The United Nations Interim Force in Lebanon (UNIFIL) was established by Security Council resolutions 425 (1978) and 426 (1978). The Security Council, by resolution 1553 adopted on 29 July 2004, extended UNIFIL's current mandate until 31 January 2005.

d. Western Sahara

The United Nations Mission for the Referendum in Western Sahara (MINURSO) was established by Security Council resolution 690 (1991). The Security Council, by resolution 1570 adopted on 28 October 2004, extended the mandate of MINURSO until 30 April 2005.

e. Georgia

The United Nations Observer Mission in Georgia (UNOMIG) was established by Security Council resolution 858 (1993). The Security Council, by resolution 1524 adopted on 30 January 2004 and resolution 1554 adopted on 29 July 2004, extended UNOMIG's mandate, until 31 July 2004 and 31 January 2005, respectively.

f. Sierra Leone

The United Nations Mission in Sierra Leone (UNAMSIL) was established by Security Council 1270 (1999). The Security Council, by resolution 1537 adopted on 30 March 2004 and resolution 1562 adopted on 17 September 2004, extended UNAMSIL's mandate, until 30 September 2004 and 30 June 2005, respectively.

g. Democratic Republic of the Congo

The United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) was established by Security Council resolution 1279 (1999). On 12 March 2004, the Security Council adopted resolution 1533 and, acting under Chapter VII of the Charter, requested MONUC to continue to use all means, within its capabilities, to carry out the tasks outlined in resolution 1493 (2003) and, in particular, to inspect, without notice as it deems it necessary, the cargo of aircraft and of any transport vehicle using the ports, airports, airfields, military bases and border crossings in North and South Kivu and in Ituri.

The Security Council, by resolution 1565 adopted on 1 October 2004, acting under Chapter VII of the Charter, extended the deployment of MONUC until 31 March 2005 and gave MONUC a series of new responsibilities, including the protection of civilians under imminent threat of violence. The Council also set forth a series of tasks for MONUC to carry out in support of the Government of National Unity and Transition, including contributing to improved security conditions and assistance in the promotion and protection of human rights.

h. Ethiopia and Eritrea

The United Nations Mission in Ethiopia and Eritrea (UNMEE) was established by Security Council resolution 1312 (2000). The Security Council, by resolution 1560 adopted on 22 October 2004, extended the mandate of UNMEE until 15 March 2005.

i. Timor-Leste

The United Nations Mission of Support in East Timor (UNMISET) was established by Security Council resolution 1410 (2002). By its resolution 1543 adopted on 14 May 2004, the Security Council decided to extend the mandate of UNMISET for a period of six months with a view to subsequently extending the mandate for a further and final period of six months, until 20 May 2005. Furthermore, the Security Council also decided to reduce the size of UNMISET and to revise its tasks to consist of, *inter alia*, providing support for the public administration and justice system of Timor-Leste and for justice in the area of serious crimes; for the development of law enforcement; and for the security and stability of the country.

By Security Council resolution 1573 adopted on 16 November 2004, UNMISET's mandate was extended for a final period of six months until 20 May 2005.

j. Liberia

The United Nations Mission in Liberia (UNMIL) was established by Security Council resolution 1509 (2003). The Security Council, by resolution 1561 adopted on 17 September 2004, decided to extend the mandate of UNMIL until 19 September 2005.

(iii) *Other ongoing peacekeeping operations or missions in 2004*

During 2004, there were a number of other ongoing peacekeeping operations or missions, including the United Nations Truce Supervision Organization (UNTSO) in Israel, established by Security Council resolution 50 (1948); the United Nations Military Observer Group in India and Pakistan (UNMOGIP), established by Security Council resolution 91 (1951); and the United Nations Interim Mission in Kosovo (UNMIK), established by Security Council resolution 1244 (1999).

(iv) *Peacekeeping operations or missions concluded in 2004*

No peacekeeping operations or missions were concluded during 2004.

(*b*) Political and peacebuilding missions and offices

(i) *Political and peacebuilding missions and offices established in 2004*

a. Bougainville (Papua New Guinea)

The United Nations Observer Mission in Bougainville (Papua New Guinea) (UNOMB) was established[4] on 1 January 2004 by the Secretary-General with a mandate to assist in the promotion of the political process under the Lincoln Agreement[5] of 23 January 1998 and the Bougainville Peace Agreement between the Government of Papua New Guinea and the Bougainville parties of 30 August 2001. Conceived as a follow-on mission to the United Nations Political Office in Bougainville (UNPOB), established in August 1998, UNOMB's activities focus on weapons destruction, the constitutional process and, if requested by the parties, the certification of whether the level of security is conducive to the holding of elections of an autonomous Bougainville Government. In December 2004, the mandate of UNOMB was extended for a period of six months, until 30 June 2005.[6]

b. The Sudan

The United Nations Advance Mission in the Sudan (UNAMIS) was established following the adoption by the Security Council of resolution 1547 (2004), which welcomed

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[4] On 23 December 2003, the Security Council took note of the intention of the Secretary-General to downsize the United Nations Political Office in Bougainville and to establish UNOMB as its successor. See the exchange of letters between the Secretary-General and the President of the Security Council dated 23 December 2003 (S/2003/1198 and S/2003/1199).

[5] S/1998/287.

[6] See the exchange of letters between the Secretary-General and the President of the Security Council dated 21 and 23 December 2004, respectively (S/2004/1015 and S/2004/1016).

the proposal of the Secretary-General to establish, for a period of three months and under the authority of a Special Representative of the Secretary-General (SRSG), a United Nations advance team in the Sudan as a special political mission dedicated to the preparation of the international monitoring foreseen in the 2003 Naivasha Agreement on Security Arrangements,[7] to facilitate contacts with the parties concerned and to prepare for the introduction of a peace support operation following the signing of a comprehensive peace agreement.

The Security Council, by its resolution 1556 adopted on 30 July 2004, acting under Chapter VII of the Charter, extended the special political mission for an additional 90 days to 10 December 2004. On 18 September 2004, the Security Council adopted resolution 1574 and extended the mandate of UNAMIS by a further three months, until 10 March 2005.

(ii) *Changes in the mandate and/or extensions of the time limits of ongoing political and peacebuilding missions and offices in 2004*

a. Guinea-Bissau

The United Nations Peacebuilding Support Office in Guinea-Bissau (UNOGBIS) was established in March 1999 by the Secretary-General, with the support of the Security Council.[8] On 22 December 2004, the Council, by resolution 1580, decided to further extend and revise the mandate of UNOGBIS, as a special political mission, for one year, in light of the diverse tasks and risks facing the mission after the conclusion of Guinea-Bissau's transitional process. The mandate was therefore expanded to include other peacebuilding activities, such as the enhancement of the rule of law and human rights, the reform of the security sector, the mobilization of international financial assistance, and the strengthening of state institutions and structures.

b. West Africa

The United Nations Office for West Africa (UNOWA) was established for a period of three years from January 2002.[9] In October 2004, its mandate was extended for a further period of three years from 1 January 2005 to 31 December 2007.[10]

c. Afghanistan

The United Nations Assistance Mission in Afghanistan (UNAMA) was established by Security Council resolution 1401 (2002). On 26 March 2004, the Security Council, by its resolution 1536, decided to extend UNAMA's mandate for an additional period of 12 months from the date of the adoption of the said resolution.

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[7] See letter dated 2 February 2003 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council (S/2003/934).

[8] See letter dated 26 February 1999 from the Secretary-General addressed to the President of the Security Council (S/1999/232) and Security Council resolution 1233 (1999).

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

[10] See the exchange of letters between the Secretary-General and the President of the Security Council, dated 6 October 2004 (S/2004/797) and 25 October 2004 (S/2004/858), respectively.

d. Iraq

The United Nations Assistance Mission for Iraq (UNAMI) was established by the Security Council on 14 August 2003 by resolution 1500. On 8 June 2004, the Security Council, acting under Chapter VII of the Charter, adopted resolution 1546 relating to, *inter alia*, UNAMI, the Special Representative of the Secretary-General for Iraq, the Government of Iraq and the multinational force. Select parts of the resolution are discussed below.

(i) Mandate of the Special Representative of the Secretary-General and of UNAMI

The Security Council decided that in implementing, as circumstances permitted, their mandate to assist the Iraqi people and Government, the Special Representative of the Secretary-General and UNAMI, as requested by the Government of Iraq, shall, among other things, assist and advise in the political process and reconstruction and rehabilitation activities.

(ii) Government of Iraq

The Security Council endorsed the formation of a sovereign Interim Government of Iraq, as presented on 1 June 2004, which would assume full responsibility and authority by 30 June 2004 for governing Iraq while refraining from taking any actions affecting Iraq's destiny beyond the limited interim period until an elected Transitional Government of Iraq assumed office, as envisaged in the resolution.

The Council welcomed that, also by 30 June 2004, the occupation would end and the Coalition Provisional Authority would cease to exist, and that Iraq would reassert its full sovereignty. Further, the Security Council reaffirmed the right of the Iraqi people freely to determine their own political future and to exercise full authority and control over their financial and natural resources.

The Security Council also endorsed the proposed timetable for Iraq's political transition to a democratic government, including the convening of a national conference reflecting the diversity of the Iraqi society and the holding of direct democratic elections by 31 December 2004, if possible, and in no case later than 31 January 2005, to a Transitional National Assembly. Such an Assembly would, *inter alia*, have responsibility for forming a Transitional Government of Iraq and drafting a permanent constitution, leading to a constitutionally elected government by 31 December 2005.

(iii) Multinational Force

The Security Council noted that the presence of the multinational force in Iraq was at the request of the incoming Interim Government of Iraq and, therefore, reaffirmed the authorization for the multinational force under unified command established under resolution 1511 (2003).

The Council also decided that the multinational force shall have the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq in accordance with the letters annexed to the resolution expressing, *inter alia*, the Iraqi request for the continued presence of the multinational force. The responsibilities of the multinational force included the prevention and deterrence of terrorism so that, *inter alia*, the United Nations could fulfil its role in assisting the Iraqi people, as outlined in the resolution, and the Iraqi people could implement freely and without intimidation the timetable and programme for the political process and benefit from reconstruction and rehabilitation activities.

The Security Council further decided that the mandate for the multinational force shall be reviewed at the request of the Government of Iraq or 12 months from the date of the resolution, and that the mandate shall expire upon the completion of the political process set out in the resolution. However, it also declared that it would terminate the mandate earlier if requested by the Government of Iraq.

(iv) Development Fund for Iraq

The Security Council decided that, in connection with the dissolution of the Coalition Provisional Authority, the Interim Government of Iraq and its successors shall assume the rights, responsibilities and obligations relating to the Oil-for-Food Programme that were transferred to the Authority, including the operational responsibility for the Programme and any obligations undertaken by the Authority in that connection and for ensuring independently authenticated confirmation that goods have been delivered.

By its resolution 1557 adopted on 12 August 2004, the Security Council extended the mandate of UNAMI for a period of 12 months from the date of the resolution.

(iii) *Other ongoing political and peacebuilding missions and offices in 2004*

The following political and peacebuilding missions were operating in 2004: the Office of the United Nations Special Coordinator for the Middle East Peace Process (UNSCO), since 1 October 1999; the United Nations Political Office for Somalia (UNPOS), since 15 April 1995; the United Nations Peacebuilding Office in the Central African Republic (BONUCA), since 15 February 2000; the Office of the Special Representative of the Secretary-General for the Great Lakes Region, since 19 December 1997; and the United Nations Tajikistan Office of Peacebuilding (UNTOP), since 1 June 2000.

(iv) *Political and peacebuilding missions concluded in 2004*

a. Burundi

The United Nations Office in Burundi (UNOB), established on 25 October 1993, was absorbed into the United Nations Operation in Burundi on 21 May 2004.

b. Guatemala

The United Nations Verification Mission in Guatemala (MINUGUA), established on 19 September 1994, concluded its mandate on 31 December 2004.

c. Côte d'Ivoire

The United Nations Mission in Côte d'Ivoire (MINUCI), established pursuant to Security Council resolution 1479 (2003), ended upon the transfer of authority from MINUCI to UNOCI, pursuant to resolution 1528 adopted on 27 February 2004.[11]

[11] The establishment of UNOCI is discussed above under the heading "Peacekeeping operations and missions established in 2004".

(*c*) Other peacekeeping matters

At its fifty-eighth session, on 1 July 2004, the General Assembly adopted resolution 58/315[12] entitled "Comprehensive review of the whole question of peacekeeping operations in all their aspects". The resolution welcomed the report of the Special Committee on Peacekeeping Operations,[13] endorsed the Committee's proposals, recommendations and conclusions, and urged Member States, the Secretariat and relevant organs of the United Nations to take all necessary steps to implement the proposals, recommendations and conclusions of the Special Committee.

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

(i) *Action of Member States authorized in 2004*

Haiti

On 29 February 2004, the Security Council adopted resolution 1529 and, acting under Chapter VII of the Charter, authorized the immediate deployment of a Multinational Interim Force (MIF) for a period of not more than three months from the adoption of the resolution, prior to the establishment of a follow-on United Nations stabilization force[14] to support the continuation of a peaceful and constitutional political process and the maintenance of a secure and stable environment. The Council authorized the Member States participating in the MIF in Haiti to take all necessary measures to fulfil its mandate.

By its resolution 1542 adopted on 30 April 2004, the Security Council, acting under Chapter VII of the Charter, decided to establish MINUSTAH and requested that authority be transferred from MIF to MINUSTAH on 1 June 2004. It also authorized the remaining elements of MIF to continue carrying out its mandate under resolution 1529 (2004), within the means available, for a transition period not exceeding 30 days from 1 June 2004, as required and requested by MINUSTAH.

(ii) *Changes in authorization and/or extension of time limits in 2004*

a. Côte d'Ivoire

In its resolution 1527 adopted on 4 February 2004, the Security Council, acting under Chapter VII of the Charter, decided to renew until 27 February 2004 the authorization set out in resolution 1464 (2003) given to Member States participating in ECOWAS forces together with the French forces supporting them.

In resolution 1528 adopted on 27 February 2004, the Security Council, acting under Chapter VII of the Charter, decided, *inter alia*, to establish the United Nations Operation in Côte d'Ivoire (UNOCI)[15] for an initial period of 12 months as from 4 April 2004, and

[12] The resolution was adopted without a vote.

[13] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 19* (A/58/19).

[14] The establishment of MINUSTAH is discussed under the heading "Peacekeeping operations and missions established in 2004".

[15] The establishment of UNOCI is discussed under the heading "Peacekeeping operations and missions established in 2004".

requested the Secretary-General to transfer authority from MINUCI and ECOWAS forces to UNOCI on that date. In addition, the Security Council decided to renew, until 4 April 2004, the authorization given to the French forces and ECOWAS forces in resolution 1527 (2004). Furthermore, the Council authorized for a period of 12 months, from 4 April 2004, the French forces to use all necessary means in order to support UNOCI in accordance with the agreement to be reached between UNOCI and the French authorities.

b. Afghanistan

In its resolution 1563 adopted on 17 September 2004, the Security Council, acting under Chapter VII of the Charter, decided to extend the authorization of the International Security Assistance Force (ISAF), as set out in resolutions 1386 (2001) and 1510 (2003), for a period of 12 months beyond 13 October 2004 and further authorized the Member States participating in ISAF to take all necessary measures to fulfil its mandate.

c. Bosnia and Herzegovina

The Security Council, in resolution 1551 adopted on 9 July 2004, acting under Chapter VII of the Charter, authorized the Member States acting through or in cooperation with the North Atlantic Treaty Organization (NATO) to continue for a further planned period of six months the multinational stabilization force (SFOR), as established in accordance with Security Council resolution 1088 (1996), under unified command and control in order to fulfil the role specified in annex 1-A and annex 2 of the Peace Agreement.[16]

The Council also decided that the status-of-forces agreements contained in appendix B to annex 1-A of the Peace Agreement shall apply provisionally in respect to the proposed European Union (EU) mission and its forces, including from the point of their build-up in Bosnia and Herzegovina, in anticipation of the concurrence of the parties to those agreements to that effect.

Subsequently, in its resolution 1575 of 22 November 2004, the Security Council, acting under Chapter VII of the Charter, authorized the Member States acting through or in cooperation with the EU to establish for an initial planned period of 12 months, a multinational stabilization force (EUFOR) as a legal successor to SFOR under unified command and control. EUFOR would fulfil its missions in relation to the implementation of annex 1-A and annex 2 of the Peace Agreement in cooperation with the NATO Headquarter presence, in accordance with the arrangements agreed between NATO and the EU, as communicated to the Security Council in their letters of 19 November 2004,[17] which recognize that EUFOR will have the main peace stabilization role under the military aspects of the Peace Agreement.

Furthermore, the Council authorized the Member States acting under paragraphs 10 and 11 of resolution 1575 (2004), to take all necessary measures to effect the implementation of and to ensure compliance with annexes 1-A and 2 of the Peace Agreement, and stressed that the parties shall continue to be held equally responsible for compliance with that annex and that they shall be equally subject to such enforcement action by EUFOR

[16] A/50/790-S/1995/999, annex.

[17] S/2004/915 and S/2004/916.

and the NATO presence as may be necessary to ensure implementation of those annexes and the protection of EUFOR and the NATO presence.

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

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

By resolution 1526 adopted on 30 January 2004, the Security Council, acting under Chapter VII of the Charter, decided to improve the implementation of measures imposed by resolutions 1267 (1999), 1333 (2000) and 1390 (2002) with respect to Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them, as referred to in the list created by the Committee established pursuant to resolution 1267 (1999).

The Council decided, *inter alia*, to strengthen the mandate of the Committee to include, in addition to the oversight of States' implementation of the measures referred to in resolution 1267 (1999), a central role in assessing information for the Council's review regarding their effective implementation, as well as in recommending improvements thereof.

The Security Council further decided, in order to assist the Committee in the fulfilment of its mandate, to establish for a period of 18 months an Analytical Support and Sanctions Monitoring Team under the direction of the Committee, with the responsibilities enumerated in an annex to the resolution.

(ii) *Liberia*

In its resolution 1532 adopted on 12 March 2004, the Security Council, acting under Chapter VII of the Charter, decided that to prevent former Liberian President Charles Taylor, his immediate family members, senior officials of the former Taylor regime, or other close allies or associates, from using misappropriated funds and property to interfere in the restoration of peace and stability in Liberia and in the subregion, all States in which there are, at the date of adoption of the resolution or at any time thereafter, funds, other financial assets and economic resources owned or controlled directly or indirectly by such individuals, shall freeze without delay all such resources, and shall ensure that no such resources are made available, by their nationals or by any persons within their territory, directly or indirectly, to or for the benefit of such persons.

The Council also decided that the Committee, established by resolution 1521 (2003), shall, *inter alia*, identify the individuals and entities described in the resolution as senior officials, other close allies or associates of the former Taylor regime, and promptly circulate to all States a list of said individuals and entities. The Committee was further requested to regularly update and review the list every six months and assist States in tracing and freezing funds, other financial assets and economic resources.

On 14 June 2004, the Committee issued its list of individuals and entities subject to the measures contained in resolution 1532 (2004) (the "assets-freeze list").[18]

On 17 June 2004, the Security Council adopted resolution 1549 and, *inter alia*, decided to re-establish the Panel of Experts appointed pursuant to resolution 1521 (2003) to undertake a number of tasks, including the compilation of a report on the implementation and violation of the measures referred to in resolution 1521 (2003) and to monitor the implementation and enforcement of the measures imposed by resolution 1532 (2004).

On 23 November 2004, the Panel of Experts delivered a final report concerning measures imposed by resolutions 1521 (2003) and 1532 (2004).[19]

In resolution 1579 adopted on 21 December 2004, the Security Council, acting under Chapter VII of the Charter, decided, on the basis of its assessment of progress made by the National Transitional Government of Liberia towards meeting the conditions for the lifting of the measures imposed by resolution 1521 (2003), to renew such measures on arms, travel, timber and diamonds, for a further period of 12 months and to review them after six months.

(iii) *Democratic Republic of the Congo*

On 12 March 2004, the Security Council adopted resolution 1533 and, acting under Chapter VII of the Charter, reaffirmed the demand laid down in resolution 1493 (2003) that all States take the necessary measures to prevent the supply of arms and any related materiel or assistance to armed groups operating in North and South Kivu and in Ituri, and to groups not party to the Global and All-Inclusive agreement on the Transition in the Democratic Republic of the Congo (signed in Pretoria on 17 December 2002).[20]

In the same resolution, the Council established, in accordance with rule 28 of its provisional rules of procedure, a Committee with the task to seek from all States, and particularly those in the region, information regarding the actions taken by them to implement the measures imposed by resolution 1493 (2003) and to examine, and to take appropriate action on, information concerning alleged violations of those measures.

Furthermore, the Council requested the Secretary-General to create, for a period expiring on 28 July 2004, a group of experts having the necessary skills, *inter alia*, to examine and analyse information gathered by MONUC in the context of its monitoring mandate, and to gather and analyse all relevant information on the flow of arms and related materiel as well as networks operating in violation of the measures imposed by resolution 1493 (2003). The Group of Experts was further requested to consider and recommend ways of improving the capabilities of States interested in ensuring that the measures imposed by resolution 1493 (2003) are effectively implemented and to provide them with a list, with supporting evidence, of those found to have violated those measures, for possible future action by the Council.

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[18] S/2004/1025.

[19] S/2004/955.

[20] S/2002/914.

The Group of Experts submitted its first report[21] on 15 July 2004 and by resolution 1552 of 27 July 2004, the Security Council re-established the Group of Experts for a period expiring on 31 January 2005.

(iv) *The Sudan*

On 30 July 2004, the Security Council adopted resolution 1556. Acting under Chapter VII of the Charter, the Council decided that all States shall take the necessary measures to prevent the sale or supply of arms and related materiel and the provision of technical training or assistance thereupon, to all non-governmental entities and individuals, including the Janjaweed, operating in Darfur, by their nationals or from their territories or using their flag vessels or aircraft.

The Council expressed its intention to consider the modification or termination of the measures imposed when it determined that the Government of the Sudan had fulfilled its commitments to disarm the Janjaweed militias and apprehend and bring to justice Janjaweed leaders and their associates, who have incited and carried out human rights and international humanitarian law violations and other atrocities. It also expressed its intention to consider further actions, including measures as provided for in Article 41 of the Charter, on the Government in the event of non-compliance.[22]

By its resolution 1564 adopted on 18 September 2004, the Security Council, acting under Chapter VII of the Charter, declared that in the event the Government of the Sudan fails to comply fully with resolution 1556 (2004) or 1564 (2004), including failure to cooperate fully with the expansion and extension of the African Union monitoring mission in Darfur, it shall consider taking additional measures as contemplated in Article 41 of the Charter.

(v) *Côte d'Ivoire*

On 15 November 2004, the Security Council adopted resolution 1572 and, acting under Chapter VII of the Charter, decided that all States shall, for a period of 13 months from the date of adoption of the resolution, take the necessary measures to prevent the direct or indirect supply, sale or transfer to Côte d'Ivoire, from their territories or by their nationals, or using their flag vessels or aircraft, of arms or any related materiel, as well as the provision of any assistance, advice or training related to military activities.

The Security Council further decided that all States shall take the necessary measures, for a period of 12 months, to prevent the entry into or transit through their territories of all persons designated to constitute a threat to the peace and national reconciliation process in Côte d'Ivoire, and any other person determined as responsible for serious violations of human rights and international humanitarian law in Côte d'Ivoire, or who incites publicly hatred and violence, or who is determined to be in violation of measures imposed by the resolution.[23]

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[21] S/2004/551.

[22] See also the section below on the Sudan under the heading "Human rights and humanitarian questions considered by the Security Council".

[23] See also the section below on Côte d'Ivoire under the heading "Human rights and humanitarian questions considered by the Security Council".

The Security Council, also decided that all States shall, for the same period of 12 months, freeze immediately the funds, other financial assets and economic resources which are on their territories at the date of adoption of the resolution or at any time thereafter, owned or controlled directly or indirectly by the persons or entities designated pursuant to the said resolution. It further decided that all States shall ensure that such resources are prevented from being made available by their nationals or by any persons within their territories, to or for the benefit of such designated persons or entities.

To this end, the Council established, in accordance with rule 28 of its provisional rules of procedure, a Committee, *inter alia*, to designate the individuals and entities subject to the measures imposed by the resolution, to update the list regularly and to seek from all States concerned, information regarding the actions taken by them to implement the resolution. The Committee was requested to present regular reports on its work to the Council, with observations and recommendations, in particular on ways to strengthen the effectiveness of the measures imposed by the said resolution.

Finally, the Security Council decided that the measures imposed by the resolution shall enter into force on 15 December 2004, unless it determines prior to that date that the signatories of the Linas-Marcoussis[24] and Accra III[25] Agreements have implemented all their commitments under the Accra III Agreement and are embarked towards full implementation of the Linas-Marcoussis Agreement.

(vi) *Somalia*

In resolution 1558 adopted on 17 August 2004, the Security Council, acting under Chapter VII of the Charter, stressed the obligation of all States to comply fully with the measures imposed by resolution 733 (1992) and requested the Secretary-General to re-establish, in consultation with the Committee established pursuant to resolution 751 (1992),[26] within 30 days from the date of the adoption of the resolution, and for a period of six months, the Monitoring Group referred to in resolution 1519 (2003) with a mandate, *inter alia*, to continue refining and updating information on the draft list of those who continue to violate the arms embargo inside and outside Somalia, and their active supporters, for possible future measures by the Council. The Security Council also expressed its expectation that the Committee will recommend to the Council appropriate measures in response to violations of the arms embargo.

(vii) *Sierra Leone*

On 20 September 2004, the Security Council Committee established pursuant to resolution 1132 (1997), revised the list of individuals affected by the travel ban imposed on members of the military junta and adult members of their family.[27]

[24] S/2003/99.

[25] S/2004/629.

[26] For more information, see the annual report of the Committee, S/2004/1017.

[27] For more information, see the annual report of the Committee, S/2005/44.

(viii) *Iraq*

The Security Council Committee established pursuant to resolution 1518 (2003) continued its work in 2004 and updated on three occasions its list of individuals and entities identified as corporations or agencies of the previous Government of Iraq, or as senior officials of the former Iraqi regime and their immediate family members. The Committee also started discussing de-listing procedures.[28]

(*f*) **Terrorism**

(i) *Threats to international peace and security caused by terrorist acts*

In its resolution 1566 adopted on 8 October 2004, the Security Council, acting under Chapter VII of the Charter, called upon States to cooperate fully in the fight against terrorism in accordance with their obligations under international law, in order to find, deny safe haven and bring to justice, on the basis of the principle of extradite or prosecute, any person who supports, facilitates, participates or attempts to participate in the financing, planning, preparation or commission of terrorist acts or provides safe havens for such persons.

The Security Council further called upon all States to become party, as a matter of urgency, to the relevant international conventions and protocols whether or not they are a party to regional conventions on the matter and, it also called upon Member States to cooperate fully on an expedited basis in resolving all outstanding issues with a view to adopting by consensus the draft comprehensive convention on international terrorism and the draft international convention for the suppression of acts of nuclear terrorism.

Furthermore, the Council established a working group to consider and submit recommendations to the Council on practical measures to be imposed upon individuals, groups or entities involved in or associated with terrorist activities, other than those designated by the Al-Qaida/Taliban Sanctions Committee,[29] including more effective procedures considered to be appropriate for bringing them to justice through prosecution or extradition, freezing of their financial assets, preventing their movement through the territories of Member States, preventing the supply to them of all types of arms and related material, and on the procedures for implementing these measures. It also requested this Working Group to consider the possibility of establishing an international fund to compensate victims of terrorist acts and their families, which might be financed through voluntary contributions and which could consist in part of assets seized from terrorist organizations, their members and sponsors.

(ii) *Counter-Terrorism Committee*

The Security Council Committee established pursuant to resolution 1373 (2001), known as the Counter-Terrorism Committee (CTC),[30] continued in 2004 its efforts to sup-

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[28] For more information, see the annual report of the Committee, S/2004/1036.

[29] Established by Security Council resolution 1267 (1999).

[30] For the report of the Chair of the CTC on the problems encountered in the implementation of Security Council resolution 1373 (2001), see S/2004/70.

press and prevent terrorism and initiated a process of revitalization, which culminated with the adoption of Security Council resolution 1535 on 26 March 2004, aimed at strengthening the reach and effectiveness of the Committee. In the resolution, the Council endorsed the report[31] of the Committee on its revitalization and established the Counter-Terrorism Committee Executive Directorate (CTED) as a special political mission under the policy guidance of the CTC Plenary for an initial period ending on 31 December 2007.

In resolution 1566 adopted on 8 October 2004, the Security Council requested the CTC to develop a set of best practices to assist States in implementing the provisions of resolution 1373 (2001) related to the financing of terrorism. The Council directed the CTC, as a matter of priority and, when appropriate, in close cooperation with relevant international, regional and subregional organizations, to start visits to States, with the consent of the States concerned, in order to enhance the monitoring of the implementation of resolution 1373 (2001) and to facilitate the provision of technical and other assistance for such implementation.

(*g*) Human rights and humanitarian questions considered by the Security Council

(i) *The Sudan*

By its resolution 1556 adopted on 30 July 2004, the Security Council, acting under Chapter VII of the Charter, demanded that the Government of the Sudan fulfil its commitments to disarm the Janjaweed militias and apprehend and bring to justice Janjaweed leaders and their associates who have incited and carried out human rights and international humanitarian law violations and other atrocities, and further requested the Secretary-General to report in 30 days, and monthly thereafter, to the Council on the progress or lack thereof by the Government of the Sudan on this matter and expressed its intention to consider further actions, including measures as provided for in Article 41 of the Charter, on the Government of the Sudan, in the event of non-compliance.

On 18 September 2004, the Security Council, acting under Chapter VII, adopted resolution 1564 in which it reiterated its call for the Government of the Sudan to end the climate of impunity in Darfur by identifying and bringing to justice all those responsible, including members of popular defense forces and Janjaweed militias, for the widespread human rights abuses and violations of international humanitarian law, and insisted that the Government of the Sudan take all appropriate steps to stop all violence and atrocities.

The Council further demanded that the Government of the Sudan submit to the African Union Mission for verification documentation, particularly the names of Janjaweed militiamen disarmed and names of those arrested for human rights abuses and violations of international humanitarian law, with regard to its performance relative to resolution 1556 (2004) and the 8 April 2004 N'Djamena ceasefire agreement.

The Security Council further requested that the Secretary-General rapidly establish an international commission of inquiry[32] in order to immediately investigate reports of viola-

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[31] S/2004/124.

[32] For details regarding the establishment of the International Commission of Inquiry, see the letter from the Secretary-General to the President of the Security Council dated 4 October 2004 (S/2004/812). See also Chapter VI A of the present publication, under the section entitled "Miscellaneous".

tions of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable.

In its resolution 1574 adopted on 19 November 2004, the Security Council demanded that Government and rebel forces and all other armed groups immediately cease all violence and attacks, refrain from forcible relocation of civilians, cooperate with international humanitarian relief and monitoring efforts, ensure that their members comply with international humanitarian law, facilitate the safety and security of humanitarian staff, and reinforce throughout their ranks their agreements to allow unhindered access and passage by humanitarian agencies and those in their employ, in accordance with its resolution 1502 (2003) on the access of humanitarian workers to populations in need and the Abuja Protocols of 9 November 2004.

(ii) *Burundi*

In a Presidential Statement dated 15 August 2004,[33] the Security Council requested the Special Representative of the Secretary-General for Burundi, in close contact with the Special Representative of the Secretary-General for the Democratic Republic of the Congo, to establish the facts and to report to the Security Council on the massacre of refugees from the Democratic Republic of the Congo at Gatumba, Burundi, on 13 August 2004.

In its resolution 1577, adopted on 1 December 2004, the Security Council noted the joint report of the United Nations Operation in Burundi (ONUB), the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), regarding the massacre.[34]

Acting under Chapter VII of the Charter, the Security Council, *inter alia*, urged all the Governments and parties concerned in the region to denounce the use of and incitement to violence, to condemn unequivocally violations of human rights and of international humanitarian law, and to cooperate with ONUB and MONUC and with efforts of States aimed at ending impunity.

Further, the Security Council called upon the Government of the Democratic Republic of the Congo and of Rwanda to cooperate unreservedly with the Government of Burundi to ensure that the investigation into the Gatumba massacre is completed and that those responsible are brought to justice. The Security Council stated that it was deeply troubled by the fact that Mr. Agathon Rwasa's Forces nationales de libération (Palipehutu-FNL) had claimed responsibility for the Gatumba massacre and expressed its intention to consider appropriate measures that might be taken against those individuals who threaten the peace and national reconciliation process in Burundi.

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[33] S/PRST/2004/30.

[34] S/2004/821.

(iii) *Côte d'Ivoire*

In a Presidential Statement dated 25 May 2004,[35] issued after a meeting of the Security Council on the situation in Côte d'Ivoire, the Council took note, with deep concern, of the report of the commission of inquiry of OHCHR on the events that occurred in Abidjan on 25 and 26 March 2004. In light of these events, the Security Council requested the Secretary-General to establish, as soon as possible, an international commission of inquiry in order to investigate all human rights violations committed in Côte d'Ivoire since 19 September 2002, and determine responsibility.

In a Presidential Statement dated 5 August 2004,[36] the Security Council reiterated its full support to the international commission of inquiry put in place by OHCHR in order to establish the facts and circumstances of the perpetration of violations of human rights and international humanitarian law which occurred in Côte d'Ivoire since 19 September 2002, and, as far as possible, to identify their authors. It recalled that all persons responsible for such violations will be brought to justice. It also encouraged the Ivorian parties to establish without further delay the National Commission for Human Rights provided for by the Linas-Marcoussis Agreement.[37]

The confidential report of the international commission of inquiry was sent to the Secretary-General for presentation to the Security Council in December 2004.[38]

(iv) *Protection of civilians during armed conflict*

In a Presidential Statement[39] dated 14 December 2004, issued after a meeting of the Security Council on the protection of civilians in armed conflict, the Council, *inter alia*, recalled all its relevant resolutions, and in particular resolutions 1265 (1999) and 1296 (2000) on the protection of civilians in armed conflict.

The Security Council strongly condemned the increased use of sexual and gender-based violence as a weapon of war as well as the recruitment and use of child soldiers by parties to armed conflict in violation of international obligations applicable to them. The Council underlined the vulnerability of women and children in situations of armed conflict, bearing in mind in this regard its resolution 1325 (2000) on women, peace and security, as well as all other resolutions on children and armed conflict, including resolution 1539 (2004), and recognized their special needs, in particular those of the girl child.

Mindful of the particular vulnerability of refugees and internally displaced persons, the Council reaffirmed the primary responsibility of States to ensure their protection, in particular by preserving the civilian character of camps of refugees and internally displaced persons and to take effective measures to protect them from infiltration by armed groups, abduction and forced military recruitment.

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[35] S/PRST/2004/17.

[36] S/PRST/2004/29.

[37] S/2003/99.

[38] See the OHCHR annual report for 2004, p. 88.

[39] S/PRST/2004/46. For the report of the Secretary-General of 18 May 2004, see S/2004/431.

Further, the Security Council also reaffirmed its readiness to ensure that peacekeeping missions are given suitable mandates and adequate resources so as to enable them to better protect civilians under imminent threat of physical danger, including by strengthening the ability of the United Nations to plan and rapidly deploy peacekeeping and humanitarian personnel, utilizing the United Nations Stand-by Arrangements System, as appropriate.

(v) *Women and peace and security*

In a Presidential Statement dated 28 October 2004, issued after a meeting on Women and peace and security,[40] the Security Council reaffirmed its commitment to the continuing and full implementation of resolution 1325 (2000), and welcomed the increasing focus on the situation of women and girls in armed conflict since the adoption of the latter resolution. The Security Council also welcomed the report of the Secretary-General on women, peace and security.[41]

The Council requested the Secretary-General to ensure that human rights monitors and members of commissions of inquiry have the necessary expertise and training in gender-based crimes and in the conduct of investigations, including in a culturally sensitive manner favourable to the needs, dignity and rights of the victims. The Council urged all international and national courts specifically established to prosecute war-related crimes to provide gender expertise, gender training for all staff and gender-sensitive programmes for victims and witness protection. The Council also emphasized the urgent need for programmes that provide support to survivors of gender-based violence and requested that appropriate attention is given to the issue of gender-based violence in all future reports to the Council.

3. Disarmament and related matters

(*a*) Nuclear disarmament and non-proliferation issues

The Conference on Disarmament,[42] in an effort to avoid the deadlock which has existed since 1998, made it the priority of the Conference to reach an agreement on a programme of work. Nevertheless, despite the efforts by some Member States, the Conference was again unable to adopt a programme of work. Member States addressed the issue of nuclear disarmament in plenary meetings.

The third session of the Preparatory Committee for the 2005 Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), 1968,[43] was held in New York in April and May 2004. While the third session was tasked to make every effort to produce a consensus report containing substantive and procedural recommendations to the Review Conference, no agreement on any substantive recommendations, the agenda

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[40] S/PRST/2004/40.

[41] S/2004/814.

[42] The Conference on Disarmament, established in 1979 as the single multilateral disarmament negotiating forum of the International Community, was a result of the First Special Session on Disarmament of the United Nations General Assembly in 1978.

[43] United Nations, *Treaty Series*, vol. 729, p. 161.

or background documentation was reached.[44] Throughout the review process, States parties reaffirmed that the NPT rested on three pillars—non-proliferation, disarmament and the peaceful use of nuclear energy. The announcement in 2003 by the Democratic People's Republic of Korea (DPRK) to withdraw from the NPT remained a concern of the international community, with views diverging on its status in relation to the Treaty.

In 2004, the International Atomic Energy Agency (IAEA) carried out verification activities on the implementation of NPT safeguard agreements in the DPRK, the Islamic Republic of Iran and the Libyan Arab Jamahiriya. Since December 2002, the DPRK has not permitted IAEA to carry out verification activities on its territory. With regard to Libya, the Board of the Agency adopted a resolution in March 2004[45] in which it stated that, under article XII.C of the Statute of the IAEA, Libya's past failures to meet the requirements of its NPT safeguards agreement constituted non-compliance and, in accordance with that article, requested the Director General to report the matter to the Security Council for information purposes only. Also in 2004, the IAEA General Conference endorsed the Code of Conduct on the Safety of Research Reactors,[46] which had been adopted by the Board of Governors earlier in the year. The Code provides guidance to States for, *inter alia,* the development and harmonization of policies, laws and regulations on the safety of research reactors.

In the area of ballistic missiles, the Hague Code of Conduct against Ballistic Missile Proliferation (HCOC), 2002,[47] formerly known as "The International Code of Conduct", had 117 subscribing States at the end of 2004. The Subscribing States held their Second Intersessional Meeting in Vienna from 17 to 18 June 2004 where issues such as the implementation of confidence-building measures were discussed. The Third Regular Meeting of Subscribing States was held in New York from 17 to 18 November the same year.

The Secretary-General's High-level Panel on Threats, Challenges and Change, appointed by him in 2003, presented its report entitled "A more secure world: Our shared responsibility",[48] on 2 December 2004. The report stressed the interrelated nature of threats and proposed over 100 recommendations to help the world face the new and evolving threats identified and to strengthen the United Nations. With regard to its recommendations relating to nuclear disarmament and non-proliferation,[49] the High-level Panel, *inter alia,* was of the view that "it would be valuable if the Security Council explicitly pledged to take collective action in response to a nuclear attack or the threat of such attack on a non-nuclear-weapon State." It also recommended that the IAEA Board of Governors "recognize the Model Additional Protocol [to the NPT] as today's standard for IAEA safeguards" and that a "State's notice of withdrawal from the . . . [NPT] should prompt immediate verification of its compliance with the Treaty". If necessary, such verification could be

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[44] For the final report of the Preparatory Committee for the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, see NPT/CONF/2005/1.

[45] For the text of the resolution adopted by the Board on 10 March 2004 entitled "Implementation of the NPT Safeguards Agreement of the Socialist People's Republic of the Libyan Arab Jamahiriya", see IAEA document GOV/2004/18.

[46] GC(48)/7, annex.

[47] For the text of the Hague Code of Conduct, see A/57/724, enclosure.

[48] A/59/565.

[49] *Ibid.*, paras. 117–138.

mandated by the Security Council and, in the event of violations, the Panel held that all assistance provided by IAEA should be withdrawn. The High-level Panel further urged that an arrangement which would enable IAEA to act as a guarantor for the supply of fissile material to civilian nuclear users be concluded and that the Conference on Disarmament negotiate a verifiable cut-off treaty that would end the production of highly enriched uranium for both non-weapon and weapon purposes.

General Assembly

On 3 March 2004, the General Assembly adopted, on the recommendation of the First Committee, 14 resolutions and one decision[50] dealing with nuclear disarmament and non-proliferation issues, of which four are highlighted below.

In its resolution 59/102[51] entitled "Convention on the prohibition of the use of nuclear weapons", the General Assembly noted with regret that the Conference on Disarmament had been unable to undertake negotiations on this subject and reiterated its request that it commences negotiations in order to reach agreement on such a convention. Furthermore, the General Assembly, in its resolution 59/81,[52] also urged the Conference on Disarmament to agree on a programme of work that includes the immediate commencement of negotiations of a non-discriminatory, multilateral and internationally and effectively verifiable treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices.

In its resolution 59/83[53] entitled "Follow-up to the advisory opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons", the General Assembly underlined once again the unanimous conclusion of the Court that there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control. Furthermore, in its resolution 59/77,[54] the Assembly called upon the nuclear-weapon States, pending the achievement of the total elimination of such weapons, to agree on an internationally and legally binding instrument on a joint undertaking not to be the first to use nuclear weapons, and called upon all States to conclude an internationally and legally binding instrument on security assurances of non-use and non-threat of use of nuclear weapons against non-nuclear-weapon States.

(*b*) Biological and chemical weapons issues

The 2004 Meeting of the States Parties of the Biological Weapons Convention (BWC)[55] was held from 6 to 10 December 2004 in Geneva during which it held a general debate in order

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[50] See General Assembly resolutions 59/64, 59/66, 59/67, 59/75, 59/76, 59/77, 59/79, 59/81, 59/83, 59/91, 59/94, 59/102, 59/106 and 59/109 and decision 59/514.

[51] The resolution was adopted by a recorded vote of 125 in favour to 48, with 12 abstentions.

[52] The resolution was adopted by a recorded vote of 179 in favour to 2, with 2 abstentions.

[53] The resolution was adopted by a recorded vote of 132 in favour to 29, with 24 abstentions.

[54] The resolution was adopted by a recorded vote of 117 in favour to 43, with 21 abstentions.

[55] Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 1972. United Nations, *Treaty Series,* vol. 1015, p. 163.

to discuss the following two agenda items: (i) enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease; and (ii) strengthening and broadening national and international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animal, and plants.[56]

The ninth session of the Conference of the States Parties to the Chemical Weapons Convention (CWC)[57] was held from 29 November to 2 December 2004 in Geneva.[58] Membership in the Organization for the Prohibition of Chemical Weapons (OPCW) increased in 2004, from 158 to 167 members. The adoption of Security Council resolution 1540 (2004) relating to the proliferation of weapons of mass destruction and non-State actors (see below), further defined OPCW's contribution to the fight against the global threat posed by terrorism and OPCW cooperated closely with the Committee established pursuant to that resolution during the remainder of the year.

The United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), established pursuant to Security Council resolution 1284 (1999), continued its work on producing a compendium of Iraq's proscribed weapons and programmes with an emphasis on lessons learned. It is expected that a first complete draft will be ready by March 2005.[59] UNMOVIC also continued to conduct offsite assessments of the status of sites subject to monitoring which were damaged during the war in Iraq. The Security Council, in resolution 1546 adopted on 8 June 2004, reaffirmed its intention to revisit the mandates for UNMOVIC and IAEA with regard to verifications of the disarmament of weapons of mass destruction in Iraq.

(i) *General Assembly*

Resolutions concerning the Biological Weapons Convention (resolution 59/110) and the Chemical Weapons Convention (resolution 59/72) were adopted, without a vote, by the General Assembly on 3 December 2004. In addition, on the same date, the General Assembly adopted resolution 59/70[60] entitled "Measures to uphold the authority of the 1925 Geneva Protocol", in which it called upon those States that had continued to maintain reservations to the 1925 Geneva Protocol to withdraw them. It further requested the Secretary-General to submit to the General Assembly at its sixty-first session, a report on the implementation of the resolution.

(ii) *Security Council*

In its resolution 1540 adopted on 28 April 2004, the Security Council, acting under Chapter VII of the Charter, decided that all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, trans-

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[56] For the report of the Meeting of State Parties, see BWC/MSP/2004.

[57] Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992. United Nations, *Treaty Series,* vol. 1974, p. 45.

[58] For the report of the Conference of the States Parties, see OPCW document C-9/6.

[59] For the nineteenth quarterly report on the activities of UNMOVIC, see S/2004/924.

[60] The resolution was adopted by a recorded vote of 179 in favour to none, with 5 abstentions.

port, transfer or use nuclear, chemical or biological weapons and their means of delivery. It also decided that all States shall adopt and enforce appropriate effective laws which prohibit such activities, in particular for terrorist purposes, as well as attempts to engage or participate in them as an accomplice, assist or finance them. The Council further decided that all States shall establish domestic controls to prevent the proliferation of such weapons and their means of delivery.

Furthermore, none of the obligations set forth in the resolution were to be interpreted so as to conflict with or alter the rights and obligations of State parties to the NPT, the Chemical Weapons Convention and the Biological Weapons Convention, or alter the responsibilities of IAEA or OPCW. States were called upon to promote the universal adoption, full implementation and, where necessary, the strengthening of multilateral non-proliferation treaties as well as to adopt necessary national legislation to ensure compliance with their commitments under such key treaties.

By the same resolution the Security Council established, in accordance with rule 28 of its provisional rules of procedure, a Committee which would report to the Council on the implementation of the resolution. To this effect, States were called upon to report to the Committee on steps taken in its implementation.

(*c*) Conventional weapons issues

During 2004, the implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,[61] gained further momentum. In its resolution 58/241, adopted on 23 December 2003, the General Assembly had decided to establish an open-ended working group, to meet in three sessions of two weeks each, to negotiate an international instrument to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons. The Open-ended Working Group held an organizational session in New York on 3 and 4 February 2004, where it decided to hold its substantive sessions in New York from 14 to 25 June 2004, from 24 January to 4 February 2005, and from 6 to 17 June 2005. The first substantive session contained a general exchange of views on the nature of the future international instrument on tracing and a thematic discussion on the three key elements of tracing, namely, marking, record-keeping and international cooperation.[62] It was agreed that the Chairman of the Open-ended Working Group would produce and circulate the first draft of an international instrument before the convening of the second session in 2005.

Regarding the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols I, II and III), 1980,[63] a Meeting of the States Parties to the Convention was held in Geneva on 18 and 19 November 2004. The Meeting considered the report of the Group of Governmental Experts of the States parties to the Convention as

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[61] The Programme was adopted in July 2001; see document A/CONF.192/15, pp. 7–17.

[62] For the report of the Secretary-General on assistance to States for curbing illicit traffic in small arms and collecting them: the illicit trade in small arms and light weapons in all its aspects, see A/59/181.

[63] United Nations, *Treaty Series,* vol. 1341, p. 137.

well as recommendations to consider the issue of possible options to promote compliance with the Convention and its annexed Protocols.[64]

In the area of anti-personnel mines, the First Review Conference of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction (Mine-Ban Convention), 1997,[65] was held in Nairobi from 29 November to 3 December 2004. The Conference adopted a final report[66] containing information on the review of the operation and status of the Convention during the period from 1999 to 2004 and the texts of the adopted documents "Nairobi Action Plan 2005–2009" and "Towards a mine-free world: the 2004 Nairobi Declaration".

Furthermore, the sixth Annual Conference of States Parties to the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Amended Protocol II) of 1996,[67] was held in Geneva in November 2004. This year, the Conference received national annual reports from 50 States parties containing material on the dissemination of information on Amended Protocol II to armed forces and civilian populations; mine clearance and rehabilitation programmes; steps taken to meet the technical requirements of the Protocol; legislation related to the Protocol; international cooperation and assistance and other relevant matters. The Conference concluded its work by adopting a final document,[68] as well as an appeal[69] to all States that had not yet done so to take all measures to accede to Amended Protocol II as soon as possible.

(i) *General Assembly*

On 3 December 2004, the General Assembly, on the recommendation of the First Committee, adopted seven resolutions and one decision[70] dealing with conventional weapons issues, of which two are highlighted below.

On the item on illicit trade in small arms and light weapons, the General Assembly adopted resolution 59/86[71] in which it requested the Secretary-General, while seeking the views of States, to continue to hold broad-based consultations with all Member States and interested regional and subregional organizations, on further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons, with a view to establishing a group of governmental experts to consider such further steps. The Secretary-General was requested to report to the General Assembly at its sixtieth session on the outcome of his consultations.

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[64] For the report of the Meeting of the States Parties, see CCW/MSP/2004/2.

[65] United Nations, *Treaty Series,* vol. 2056, p. 211.

[66] APLC/CONF/2004/5.

[67] United Nations, *Treaty Series,* vol. 2048, p. 93.

[68] CCW/AP.II/CONF.6/3.

[69] *Ibid.*, annex II.

[70] General Assembly resolutions 59/74, 59/82, 59/84, 59/86, 59/90, 59/92 and 59/107 and decision 59/515.

[71] The resolution was adopted without a vote.

Furthermore, in its resolution 59/82,[72] the General Assembly also emphasized the importance of including in United Nations-mandated peacekeeping missions, as appropriate and with the consent of the host State, practical disarmament measures aimed at addressing the problem of the illicit trade in small arms and light weapons in conjunction with disarmament, demobilization and reintegration programmes aimed at former combatants, with a view to promoting an integrated comprehensive and effective weapons management strategy that would contribute to a sustainable peace-building process.

(ii) *Security Council*

On 19 January 2004, the Security Council addressed the issue of the illicit trade in small arms and light weapons in an open debate, during which the Secretary-General's report of 31 December 2003[73] was discussed. As a result of the debate, the Council adopted a Presidential Statement[74] by which, among other things, it welcomed General Assembly resolution 58/241 and encouraged arms-exporting countries to exercise the highest degree of responsibility in small arms and light weapons transactions. Also in 2004, the Security Council addressed the issue of small arms and light weapons during its consideration of related issues such as peacekeeping and peace-building missions; the protection of civilians in armed conflict;[75] and women, peace and security.[76]

(*d*) Regional disarmament activities of the United Nations

(i) *Africa*

During the year, the United Nations Regional Centre for Peace and Disarmament in Africa continued to promote the implementation of instruments relating to disarmament, including the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects through regional and subregional frameworks.

(ii) *Latin America and the Caribbean*

The United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UN-LiREC) continued to serve the countries in the region by promoting subregional, regional and cross-regional activities. In addition, the Regional Centre cooperated with the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO) and OPCW in assisting States to better understand the obligations and benefits of adhering to those related legal instruments and to improve their national capacity to implement them.

[72] The resolution was adopted without a vote.

[73] S/2003/1217 and Corr.1.

[74] S/PRST/2004/1.

[75] S/PRST/2004/46.

[76] S/PRST/2004/40.

(iii) *Asia and the Pacific*

In 2004, the activities of the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific were focused on nuclear-weapon-free zone issues and on the organization of regional conferences and seminars on subjects relating to both nuclear and conventional arms. In this context, the Regional Centre organized meetings for the five Central Asian States[77] to facilitate their negotiations on a Central Asian Nuclear-Weapon-Free Zone (CANWFZ) Treaty.

(iv) *General Assembly*

On 3 December 2004, the General Assembly adopted, on the recommendation of the First Committee, nine resolutions and one decision[78] dealing with regional disarmament, of which two are highlighted below.

In its resolution 59/88,[79] the General Assembly requested the Conference on Disarmament to consider the formulation of principles that can serve as a framework for regional agreements on conventional arms control. Furthermore, in resolution 59/89,[80] it also affirmed that global and regional approaches to disarmament complement each other and should therefore be pursued simultaneously to promote regional and international peace and security and called upon States to conclude agreements, wherever possible, for nuclear non-proliferation, disarmament and confidence-building measures at the regional and subregional levels.

(*e*) Other issues

(i) *Terrorism and disarmament*

a. General Assembly

In the area of terrorism and disarmament, on 3 December 2004, the General Assembly adopted, on the recommendation of the First Committee, resolution 59/80[81] on "Measures to prevent terrorists from acquiring weapons of mass destruction". The Assembly 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 such weapons, and to report to the General Assembly at its sixtieth session.

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[77] Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

[78] General Assembly resolutions 59/59, 59/63, 59/73, 59/85, 59/87, 59/88, 59/89, 59/96 and 59/108 and decision 59/513.

[79] The resolution was adopted by a recorded vote of 178 in favour to 1, with 1 abstention.

[80] The resolution was adopted without a vote.

[81] The resolution was adopted without a vote.

b. Security Council

On 28 April 2004, the Security Council adopted, under Chapter VII, resolution 1540 on the non-proliferation of nuclear, chemical, or biological weapons and their means of delivery with regard to non-State actors (see above).

(ii) *Outer Space*

In light of the fact that the Conference on Disarmament did not reach an agreement on a programme of work in 2004, no subsidiary body was established to deal with the issue of the prevention of an arms race in outer space (PAROS). Nevertheless, following an agreement reached by Member States, one plenary meeting was dedicated to an exchange of views on the issue. At that meeting, China and the Russian Federation circulated two jointly prepared informal papers entitled "Verification aspects of PAROS" and "Existing international legal instruments and prevention of the weaponization of outer space".[82]

General Assembly

On 3 December 2004, the General Assembly adopted, on the recommendation of the First Committee, resolution 59/65[83] entitled "Prevention of an arms race in outer space". The resolution called upon all States, in particular those with major space capabilities, to actively contribute to the objective of the peaceful use of outer space and of the prevention of an arms race in outer space and to refrain from actions contrary to that objective and to the relevant existing treaties in the interest of maintaining international peace and security and promoting international cooperation.

(iii) *Multilateralism and disarmament*

In its resolution 59/69,[84] adopted on 3 December 2004 on the recommendation of the First Committee, the General Assembly reaffirmed multilateralism as the core principle in negotiations in the area of disarmament and non-proliferation and urged the participation of all interested States in such multilateral negotiations in a non-discriminatory and transparent manner. It also took note of the Secretary-General's report entitled "Promotion of multilateralism in the area of disarmament and non-proliferation",[85] which contained the views of the Member States on this subject.

(iv) *Environmental norms and disarmament agreements*

Also on 3 December 2004, the General Assembly adopted, on the recommendation of the First Committee, resolution 59/68,[86] in which it reaffirmed that international dis-

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[82] For the Final Record of the 966th Plenary Meeting of the Conference on Disarmament, see CD/PV.966.

[83] The resolution was adopted by a recorded vote of 178 in favour to none, with 4 abstentions.

[84] The resolution was adopted by a recorded vote of 178 in favour to none, with 4 abstentions.

[85] A/59/128 and Add.1.

[86] The resolution was adopted by a recorded vote of 175 in favour to 2, with 3 abstentions.

armament forums should take fully into account the relevant environmental norms in negotiating disarmament and arms limitation treaties and agreements.

4. Legal aspects of peaceful uses of outer space

The Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space held its forty-third session in Vienna from 29 March to 8 April 2004.[87]

During the session, in the context of its consideration of the item on the status and application of the five United Nations treaties on outer space,[88] the Subcommittee was informed by the Chairman of the related Working Group that agreement had been reached on a draft resolution on the application of the concept of the "launching State", for consideration by the General Assembly.[89] The Subcommittee noted the status of the five United Nations treaties on outer space and endorsed the report of the Working Group as well as the recommendation that the mandate of the Working Group be extended for one additional year.

In connection with the item relating to the definition and delimitation of outer space and the character and utilization of the geostationary orbit,[90] the Subcommittee had before it, among other things, a questionnaire prepared by the Secretariat on possible legal issues with regard to aerospace objects[91] and an analytical summary of the replies of States thereto.[92] The Subcommittee reconvened the Working Group on this item to consider only matters relating to the definition and delimitation of outer space, in accordance with the agreement reached at its thirty-ninth session and, subsequently, endorsed the Working Group's report.[93]

Regarding the agenda item entitled "Examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment (opened for signature at Cape Town on 16 November 2001)" the Legal Subcommittee considered two sub-items: "(a) Considerations relating to the possibility of the United Nations serving as supervisory authority under the preliminary draft protocol";

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[87] For the report of the Legal Subcommittee, see A/AC.105/826.

[88] 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 222 (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 (United Nations, *Treaty Series,* vol. 1023, p. 15) and Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, 1979 (United Nations, *Treaty Series,* vol. 1363, p. 3).

[89] A/AC.105/826, annex I, appendix II.

[90] The item is entitled "Matters relating to the definition and delimitation of outer space and the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union".

[91] A/AC.105/635/Add.10.

[92] A/AC.105/C.2/L.249 and Corr.1.

[93] A/AC.105/826, annex II.

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 Subcommittee had before it two documents: (a) the report of the Secretariat on the Convention on International Interests in Mobile Equipment[94] and its preliminary draft protocol on matters specific to space assets: considerations relating to the possibility of the United Nations serving as a supervisory authority under the protocol;[95] and (b) the preliminary draft protocol to the Convention on International Interests in Mobile Equipment on matters specific to space assets, as amended by the Unidroit Committee of Governmental Experts.[96] The Legal Subcommittee reconvened its Working Group under this item, which agreed to continue, inter-session, its consideration of the question of the appropriateness of the United Nations acting as supervisory authority in an open-ended *ad hoc* working group, with a view to preparing a report, including the text of a draft resolution, to be submitted to the Subcommittee at its forty-fourth session, in 2005.[97]

The Legal Subcommittee also considered two new agenda items entitled "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 recommendations of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III)" and "Practice of States and international organizations in registering space objects".

The Committee on the Peaceful Uses of Outer Space held its forty-seventh session in Vienna from 2 to 11 June 2004. The Committee took note of the Legal Subcommittee's report and a number of views were expressed concerning the work of the Subcommittee.[98]

General Assembly

The General Assembly adopted two resolutions relating to the topic legal aspects of peaceful uses of outer space, namely, resolution 59/116 on the "International Cooperation and the peaceful use of outer space", in which it endorsed the report of the Committee on the Peaceful Uses of Outer Space, and resolution 59/65 on the "Prevention of an arms race in outer space".

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[94] DCME Doc. No. 74 International Civil Aviation Organization.

[95] A/AC.105/C.2/L.238.

[96] A/AC.105/C.2/2004/CRP.5.

[97] A/AC.105/826, annex III.

[98] For the report of the Committee on the Peaceful Uses of Outer Space, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 20* (A/59/20).

5. Human rights[99]

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

(i) *Commission on Human Rights*

The United Nations Commission on Human Rights was established in 1946 by the Economic and Social Council during its first session[100] to submit proposals, recommendations and reports to the Council regarding certain defined human rights areas, including on an international bill of rights, the status of women, freedom of information, the protection of minorities and the prevention of discrimination on grounds of race, sex, language or religion. At its second session[101] the mandate of the Commission was expanded to include any other matter concerning human rights not covered in the previous resolution. Its mandate expanded further over time allowing the Commission to respond to the whole range of human rights problems and to set standards to govern the conduct of States. The Commission held its sixtieth session from 15 March to 23 April 2004 in Geneva.[102]

(ii) *Sub-Commission for the Promotion and Protection of Human Rights*

The Sub-Commission for the Promotion and Protection of Human Rights was established by the Commission of Human Rights as its main subsidiary body during the first session of the Commission in 1947, and under the authority of the Economic and Social Council.[103] The Sub-Commission held its fifty-sixth session from 26 July to 13 August 2004 in Geneva.[104]

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[99] This section covers the resolutions adopted, if any, by the Security Council, the General Assembly and the Economic and Social Council. Other legal developments in human rights may be found under the sections in the present chapter entitled "Peace and security" and "Women and children". The present section does not cover resolutions addressing human rights issues arising in particular States, nor does it cover in detail the legal activities of the Commission on Human Rights, the Sub-Commission for the Promotion and Protection of Human Rights, or the treaty bodies (namely, the Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination, Committee on the Elimination of Discrimination Against Women, Committee Against Torture, Committee on the Rights of the Child and the Committee on Migrant Workers). Detailed information and documents relating to human rights are available on the website of the Office of the United Nations High Commissioner for Human Rights at www.ohchr.org. For a complete list of signatories and States parties to international instruments relating to human rights that are deposited with the Secretary-General, see *Multilateral Treaties Deposited with the Secretary-General* (United Nations publications, Sales No. E.05.V.3, ST/LEG/SER.E/23), vol. I, chap. IV.

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

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

[102] The report can be found in *Official Records of the Economic and Social Council 2004, Supplement No. 3* (E/2004/23).

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

[104] The report can be found in document E/CN.4/2005/2–E/CN.4/Sub.2/2004/48.

(iii) *Human Rights Committee*

The Human Rights Committee was established under the International Covenant on Civil and Political Rights, 1966,[105] to monitor the implementation of the Covenant and its Optional Protocols in the territory of States parties. In 2004, the Committee held its eightieth session from 16 March to 3 April in New York, and its eighty-first and eighty-second sessions from 12 to 30 July and from 18 October to 5 November, respectively, in Geneva.[106]

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

The Committee on Economic, Social and Cultural Rights was established by the Economic and Social Council[107] to monitor the implementation of the International Covenant on Economic, Social and Cultural Rights, 1966,[108] by its States parties. In 2004, the Committee held its thirty-second and thirty-third sessions from 26 April to 14 May and from 8 to 26 November respectively, in Geneva.[109]

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

The Committee on the Elimination of Racial Discrimination was established under the Convention on the Elimination of All Forms of Racial Discrimination, 1966,[110] to monitor the implementation of this Convention by its States parties. In 2004, the Committee held its sixty-fourth and sixty-fifth sessions from 23 February to 12 March and from 2 to 20 August 2004 in Geneva.[111]

(vi) *Committee on the Elimination of Discrimination against Women*

The Committee on the Elimination of Discrimination against Women was established under the Convention on the Elimination of All Forms of Discrimination against Women, 1979,[112] to monitor the implementation of this Convention by its States parties. In

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[105] United Nations, *Treaty Series,* vol. 999, p. 171.

[106] The reports of the eighty and eighty-first sessions can be found in *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40* (A/59/40) and the report of the eighty-second session can be found in *Official Records of the General Assembly, Sixtieth Session, Supplement No. 40* (A/60/40).

[107] Economic and Social Council resolution 1985/17 of 28 May 1985.

[108] United Nations, *Treaty Series,* vol. 993, p. 3.

[109] The reports of the sessions can be found in *Official Records of the Economic and Social Council, 2005, Supplement No. 2* (E/2005/22- E/C.12/2004/9).

[110] United Nations, *Treaty Series,* vol. 660, p. 195.

[111] The respective reports can be found in *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 18* (A/59/18).

[112] United Nations, *Treaty Series,* vol. 1249, p. 13.

2004, the Committee held its thirtieth and thirty-first sessions from 12 to 30 January and from 6 to 23 July respectively, in New York.[113]

(vii) *Committee against Torture*

The Committee against Torture was established under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984,[114] to monitor the implementation of this Convention by its States parties. In 2004, the Committee held its thirty-second and thirty-third sessions from 3 to 31 May and from 16 to 26 May in Geneva.[115]

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

The Committee on the Rights of the Child was established under the Convention on the Rights of the Child, 1989,[116] to monitor the implementation of this Convention by its States parties. In 2004, the Committee held its thirty-fifth, thirty-sixth and thirty-seventh sessions in Geneva, from 12 January to 7 February, from 17 May to 11 June, and from 13 September to 8 October, respectively.[117]

(ix) *Committee on Migrant Workers*

The Committee on Migrant Workers was established under the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990,[118] to monitor the implementation of this Convention by its States parties in their territories. The Committee held its first session from 1 to 5 March 2004 in Geneva.[119]

(*b*) Human rights issues in general

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, the following resolutions.

(*a*) In resolution 59/192[120] entitled "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Rec-

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[113] The respective reports can be found in *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 38* (A/59/38).

[114] United Nations, *Treaty Series,* vol. 1465, p. 85.

[115] The respective reports can be found in *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 44* (A/59/44) and *Official Records of the General Assembly, Sixtieth Session, Supplement No. 44* (A/60/44).

[116] United Nations, *Treaty Series,* vol. 1577, p. 3.

[117] The reports can be found respectively in documents CRC/C/133, CRC/C/137 and CRC/C/140.

[118] General Assembly resolution 45/158 of 18 December 1990.

[119] The report can be found in *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 48* (A/59/48).

[120] The resolution was adopted without a vote.

ognized Human Rights and Fundamental Freedoms" the General Assembly noted the reports of the Special Representative of the Secretary-General on the situation of human rights defenders.[121] The Assembly also called upon all States to ensure, protect and respect the freedom of expression and association of human rights defenders and, where registration is required, to facilitate registration, including through the establishment of effective and transparent criteria and non-discriminatory procedures under domestic law. It also emphasized the importance of combating impunity and, in this regard, urged States to take appropriate measures to address the question of impunity for threats, attacks and acts of intimidation against human rights defenders. Further, the General Assembly encouraged States to promote awareness and training in regard to the Declaration[122] in order to enable officials, agencies, authorities and the judiciary to observe its provisions and thus to promote better understanding and respect for human rights defenders.

(*b*) In resolution 59/190[123] entitled "Strengthening United Nations action in the field of human rights through the promotion of international cooperation and the importance on non-selectivity, impartiality and objectivity", the General Assembly reaffirmed that the promotion, protection and full realization of all human rights and fundamental freedoms, as a legitimate concern of the world community, should be guided by the principles of non-selectivity, impartiality and objectivity and should not be used for political ends. It further requested all human rights bodies within the United Nations system, as well as the special rapporteurs and representatives, independent experts and working groups, to take duly into account the contents of the resolution in carrying out their mandates.

On the same date, the General Assembly also adopted resolutions relating to the globalization and its impact on the full enjoyment of all human rights (59/184), the promotion of a democratic and equitable international order (59/193), and the question of human rights and unilateral coercive measures (59/188).

On 23 December 2004, the General Assembly further adopted, on the recommendation of the Third Committee, resolution 59/204[124] entitled "Respect for the purposes and principles contained in the Charter of the United 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". The Assembly also called upon Member States to refrain from enacting or enforcing unilateral coercive measures as tools of political, military or economic pressure against any country, in particular against developing countries, which would prevent those countries from exercising their right to decide of their own free will their own political, economic and social systems.

In addition, on the same date, the General Assembly also adopted, on the recommendation of the Third Committee, resolution 59/196[125] on "Regional arrangements for

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[121] E/CN.4/2001/94, E/CN.4/2002/106 and Add.1 and 2, E/CN.4/2003/104 and Add.1–4 and E/CN.4/2004/94 and Add.1–3; see also A/56/341, A/57/182, A/58/380 and A/59/401.

[122] Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly resolution 53/144 of 9 December 1998.

[123] The resolution was adopted without a vote.

[124] The resolution was adopted by a recorded vote of 118 in favour to 55, with 13 abstentions.

[125] The resolution was adopted without a vote.

the promotion and protection of human rights", in which it invited States in areas in which regional arrangements in the field of human rights do not yet exist to consider concluding such arrangements with a view to establishing suitable regional machinery for the promotion and protection of human rights.

(*c*) Human rights treaty bodies

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/181[126] on "Equitable geographical distribution in the membership of the human rights treaty bodies". In this resolution, the General Assembly encouraged the States parties to the United Nations human rights instruments to adopt concrete actions to ensure the objective of equitable geographical distribution in their memberships, *inter alia,* through the possible establishment of quota distribution systems by geographical region. Furthermore, the Assembly called upon the States parties to such instruments to include, as an agenda item at their forthcoming meetings, a debate on this issue, based on the recommendations of the Commission on Human Rights and the Economic and Social Council and the provisions of the resolution.

The General Assembly also recommended when considering the possible establishment of such quota distribution systems, the introduction of flexible procedures that encompassed the following criteria: (a) each of the five regional groups established by the General Assembly must be assigned a quota of the membership of each treaty body in equivalent proportion to the number of States parties to the instrument that it represents; (b) there must be provision for periodic revisions that reflect the relative changes in the geographical distribution of States parties; and (c) automatic periodic revisions should be envisaged in order to avoid amending the text of the instrument when the quotas are revised.

The Assembly further stressed that the process needed to achieve the goal of equitable geographical distribution in the membership could contribute to raising awareness of the importance of gender balance, the representation of the principal legal systems and the principle that the members of the treaty bodies shall be elected and shall serve in their personal capacity, and shall be of high moral character, acknowledged impartiality and recognized competence in the field of human rights.

(*d*) Migrants and migrant workers

Concerning migrants and migrant workers, the General Assembly adopted on 20 December 2004, on the recommendation of the Third Committee, resolution 59/194[127] entitled "Protection of migrants".

In this resolution, the General Assembly took note of the report of the Special Rapporteur of the Commission on Human Rights on the human rights of migrants[128] and the Judgment of the International Court of Justice of 31 March 2004 in the case concerning

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[126] The resolution was adopted by a recorded vote of 128 in favour to 52, with 4 abstentions.

[127] The resolution was adopted without a vote.

[128] E/CN.4/2002/76 and Add.1–4.

Avena and Other Mexican Nationals.[129] It reaffirmed emphatically the duty of States parties to ensure full respect for and observance of the Vienna Convention on Consular Relations of 1963,[130] in particular with regard to the right of all foreign nationals to communicate with a consular official of the sending State in the case of arrest, imprisonment, custody or detention, and the obligation of the receiving State to inform without delay the foreign national of his or her rights under the Convention.

On 23 December 2004, the General Assembly further adopted, on the recommendation of the Third Committee, resolution 59/262[131] entitled "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families."[132] The General Assembly welcomed the establishment of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as the report on its first session, held in Geneva from 1 to 5 March 2004,[133] and took note of the rules of procedure adopted by the Committee.[134]

(*e*) Right to travel

On 23 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/203[135] on "Respect for the right to universal freedom of travel and the vital importance of family reunification", in which it called upon all States to guarantee the universally recognized freedom of travel to all foreign nationals legally residing in their territory. It also reaffirmed that all Governments, in particular those of receiving countries, must recognize the vital importance of family reunification and promote its incorporation into national legislation in order to ensure protection of the unity of families of documented migrants; called upon all States to allow, in conformity with international legislation, the free flow of financial remittances by foreign nationals residing in their territory to relatives in the country of origin; and also called upon all States to refrain from enacting, and to repeal if it already exists, legislation intended as a coercive measure that discriminates against individuals or groups of legal migrants by adversely affecting family reunification and the right to send financial remittances to relatives in the country of origin.

(*f*) Right to food

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/202[136] on "The right to food", in which it took note of the interim report of the Special Rapporteur of the Commission on Human Rights on the

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[129] See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 4* (A/59/4), chap. V, sect. A. 23. See also *I.C.J. Reports 2004*, p. 12.

[130] United Nations, *Treaty Series,* vol. 596. p. 261.

[131] The resolution was adopted without a vote.

[132] United Nations, *Treaty Series,* vol. 2220, p. 93.

[133] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 48* (A/59/48).

[134] *Ibid.,* annex IV.

[135] The resolution was adopted by a recorded vote of 122 in favour to 3, with 61 abstentions.

[136] The resolution was adopted by a recorded vote of 182 in favour to 3, with no abstentions.

right to food.[137] The Assembly encouraged all States to take steps with a view to achieving progressively the full realization of the right to food, including steps to promote the conditions for everyone to be free from hunger and, as soon as possible, to enjoy fully the right to food, and to create and adopt national plans to combat hunger. It further encouraged all States to take action to address discrimination against women, particularly where it contributes to the malnutrition of women and girls, including measures to ensure the realization of the right to food and that women have equal access to resources, including income, land and water, to enable them to feed themselves.

Furthermore, the General Assembly welcomed the adoption by the Intergovernmental Working Group, as mandated by the Council of the Food and Agriculture Organization of the United Nations, of a set of voluntary guidelines[138] to support the progressive realization of the right to adequate food in the context of national food security, as well as the endorsement by the Committee on World Food Security of the voluntary guidelines as submitted and its decision to transmit them to the Council for final adoption and, in this regard, encouraged States members of the Council to adopt the voluntary guidelines.

(*g*) Enforced or involuntary disappearances

The General Assembly, on 20 December 2004, adopted on the recommendation of the Third Committee, resolution 59/200[139] entitled "Question of enforced or involuntary disappearances". In the said resolution, the Assembly took note of the report of the Working Group on Enforced or Involuntary Disappearances of the Commission on Human Rights,[140] and the note of the Secretary-General concerning the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance.[141]

The General Assembly also urged all Governments to take appropriate legislative or other steps to prevent and suppress the practice of enforced disappearances in keeping with the Declaration, and to take action to that end at the national and regional levels and in cooperation with the United Nations, including through the provision of technical assistance. It further called upon Governments to take steps to ensure that, when a state of emergency is introduced, the protection of human rights is ensured, in particular with regard to the prevention of enforced disappearances.

Furthermore, the General Assembly urged the Governments concerned: (a) to take steps to protect witnesses of enforced disappearances, human rights defenders acting against enforced disappearances, and the lawyers and families of disappeared persons against any intimidation or ill-treatment to which they may be subjected; (b) to continue their efforts to elucidate the fate of disappeared persons; and (c) to make provision in their legal systems for machinery for victims of enforced or involuntary disappearances or their families to seek fair and adequate reparation.

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[137] A/59/385.

[138] Report of the 30th Session of the Committee on World Food Security (CFS) Rome, 20–23 September 2004, FAO document CL 127/10-Sup.1, annex 1.

[139] The resolution was adopted without a vote.

[140] E/CN.4/2004/58.

[141] General Assembly resolution 47/133 of 18 December 1992. For the note of the Secretary-General, see A/59/341.

(*h*) Religious intolerance

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/199[142] entitled "Elimination of all forms of religious intolerance", in which it took note of the interim report of the Special Rapporteur of the Commission on Human Rights on freedom of religion or belief.[143]

In this resolution, the Assembly urged States to ensure that their constitutional and legal systems provide effective guarantees of freedom of thought, conscience, religion or belief, including the provision of effective remedies in cases where these rights are violated. It also urged States to ensure that no one within their jurisdiction is, 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.

Furthermore, the General Assembly also urged States, in conformity with international standards of human rights, to take all necessary action to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, with particular regard to persons belonging to religious minorities; and called upon all States to recognize, as provided for in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,[144] the right of all persons to worship or assemble in connection with a religion or belief and to establish and maintain places for those purposes.

(*i*) Extrajudicial, summary or arbitrary executions

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/197[145] entitled "Extrajudicial, summary or arbitrary executions", in which it took note of the interim report of the Special Rapporteur to the General Assembly.[146]

In addition, the Assembly demanded that all Governments ensure that the practice of extrajudicial, summary or arbitrary executions is brought to an end and that they take effective action to combat and eliminate the phenomenon in all its forms. It reiterated the obligation of all Governments 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, to put an end to impunity and to prevent the further occurrence of such executions.

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[142] The resolution was adopted by a recorded vote of 188 in favour to none, with no abstentions.

[143] A/59/366.

[144] General Assembly resolution 36/55 of 25 November 1981.

[145] The resolution was adopted by a recorded vote of 142 in favour to none, with 43 abstentions.

[146] A/59/319.

The General Assembly further called upon all States in which the death penalty has not been abolished to comply with their obligations 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,[147] and articles 37 and 40 of the Convention on the Rights of the Child, 1989,[148] bearing in mind the safeguards and guarantees set out in Economic and Social Council resolutions 1984/50 and 1989/64.

Furthermore, the General Assembly urged all Governments: (a) to take all necessary measures to prevent the occurrence of extrajudicial, summary or arbitrary executions, including those occurring in custody; (b) to take all necessary and possible measures, in conformity with international human rights law and international humanitarian law, to prevent loss of life, in particular that of children, during public demonstrations, internal and communal violence, civil unrest and public emergencies or armed conflicts, and to ensure that the police, law enforcement agents and security forces act with restraint and in conformity with international human rights law and international humanitarian law; and (c) to ensure the effective protection of the right to life of all persons under their jurisdiction and to investigate promptly and thoroughly all killings, including those targeted at specific groups of persons, and to bring those responsible to justice before a competent, independent and impartial judiciary and to ensure that such killings, including those committed by security forces, police and law enforcement agents, paramilitary groups or private forces, are neither condoned nor sanctioned by State officials or personnel.

(*j*) Terrorism and human rights[149]

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, the following two resolutions relatingto terrorism and human rights.

(*a*) In its resolution 59/195[150] on "Human rights and terrorism", the General Assembly took note of the final report of the Special Rapporteur of the Sub-Commission on Terrorism and human rights[151] and rejected the identification of terrorism with any religion, nationality or culture. It also called upon States to take appropriate measures, in conformity with relevant provisions of national and international law, including international human rights standards, before granting refugee status, for the purpose of ensuring that an asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts, including assassinations, and to ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists.

In addition, the General Assembly urged States and the Office of the United Nations High Commissioner for Refugees to review, with full respect for legal safeguards, the valid-

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[147] United Nations, *Treaty Series,* vol. 999, p. 171.

[148] United Nations, *Treaty Series,* vol. 1577, p. 3.

[149] Other legal developments relating to terrorism may be found under the sections entitled "Peace and security" and "Legal Questions dealt with by the Sixth Committee and other Committees of the General Assembly".

[150] The resolution was adopted by a recorded vote of 127 in favour to 50, with 8 abstentions.

[151] E/CN.4/Sub.2/2004/40.

ity of a refugee status decision in an individual case if credible and relevant evidence comes to light which indicates that the person in question has planned, facilitated or participated in the commission of terrorist acts.

(*b*) In its resolution 59/191[152] entitled "Protection of human rights and fundamental freedoms while countering terrorism", the General Assembly noted the study of the United Nations High Commissioner for Human rights[153] on this subject and welcomed the report of the Secretary-General, both of which were submitted pursuant to resolution 58/187.[154]

In this resolution, the General Assembly reaffirmed the obligation of States, in accordance with article 4 of the International Covenant on Civil and Political Rights, 1966,[155] to respect certain rights as non-derogable in any circumstances. It further recalled, in regard to all other Covenant rights, that any measures derogating from the provisions of the Covenant must be in accordance with that article in all cases, and underlined the exceptional and temporary nature of any such derogation.[156] It called upon States to raise awareness about the importance of these obligations among national authorities involved in combating terrorism.

Further, in the said resolution, the General Assembly noted with appreciation the appointment of an independent expert on the protection of human rights and fundamental freedoms while countering terrorism pursuant to Commission on Human Rights resolution 2004/87,[157] and encouraged States to cooperate fully with him.

(*k*) Missing persons

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/189[158] on "Missing persons". In the said resolution, the Assembly urged States strictly to observe and respect the rules of international humanitarian law, as set out in the Geneva Conventions, 1949,[159] and in the Additional Protocols[160] thereto, and called upon States that are parties to an armed conflict to take all appropriate measures to prevent persons from going missing in connection with the armed conflict and to account for persons reported missing as a result of such a situation.

Further, the General Assembly requested States to pay the utmost attention to cases of children reported missing in connection with armed conflicts and to take appropriate measures to search for and identify those children. It also invited States which are parties

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[152] The resolution was adopted without a vote.

[153] For the report entitled "Protection of human rights and fundamental freedoms while countering terrorism", see A/59/428.

[154] A/59/404.

[155] United Nations, *Treaty Series,* vol. 999, p. 171.

[156] See General Comment No. 29 on states of emergency adopted by the Human Rights Committee on 24 July 2001.

[157] *Official Records of the Economic and Social Council, 2004, Supplement No. 3* (E/2004/23), chap. II, sect. A.

[158] The resolution was adopted without a vote.

[159] United Nations, *Treaty Series,* vol. 75, pp. 31, 85, 135, and 287.

[160] United Nations, *Treaty Series,* vol. 1125, pp. 3 and 609.

to an armed conflict to cooperate fully with the International Committee of the Red Cross in establishing the fate of missing persons and to adopt a comprehensive approach to this issue, including all practical and coordination mechanisms that may be necessary, based on humanitarian considerations only, and urged States and encouraged intergovernmental and non-governmental organizations to take all necessary measures at the national, regional and international levels to address this problem and to provide appropriate assistance as requested by the States concerned. In addition, the General Assembly invited relevant human rights mechanisms and procedures, as appropriate, to address the problem of persons reported missing in connection with armed conflicts in their forthcoming reports to the General Assembly.

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

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/182[161] on "Torture and other cruel, inhuman or degrading treatment or punishment". In this resolution, the General Assembly welcomed the report of the Committee against Torture,[162] and the interim report of the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment.[163]

The General Assembly recalled that a number of courts have recognized that the prohibition of torture is a peremptory norm of international law. It called upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment and condemned, in particular, any action or attempt by States or public officials to legalize or authorize torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions.

Additionally, the General Assembly stressed that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and took note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles)[164] as a useful tool in efforts to combat torture.

The General Assembly stressed also that all acts of torture must be made offences under domestic criminal law, and emphasized that acts of torture are serious violations of international humanitarian law and can constitute crimes against humanity and war crimes and that the perpetrators of such acts must be prosecuted and punished. It urged States to ensure that any statement that is established to have been made as a result of tor-

[161] The resolution was adopted without a vote.

[162] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 44* (A/59/44).

[163] A/59/324.

[164] General Assembly resolution 55/89, annex.

ture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. The Assembly further stressed that States must not punish personnel who are involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment for not obeying orders to commit or conceal acts amounting to torture or other cruel, inhuman or degrading treatment or punishment.

Furthermore, the Assembly recalled that States shall not expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture; and stressed that national legal systems must ensure that victims of torture and other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social and medical rehabilitation. It urged Governments to take effective measures to this end and, in this regard, encouraged the development of rehabilitation centres.

(*m*) Right to self-determination

With regard to the right to self-determination, on 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee the following resolutions.

(*a*) Resolution 59/180[165] on "Universal realization of the right of peoples to self-determination", in which the General Assembly took note of the report of the Secretary General on this item.[166]

(*b*) Resolution 49/178[167] entitled "Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination". In this resolution, the Assembly requested the new Special Rapporteur to circulate to States and consult with them on the new proposal for a legal definition of a mercenary drafted by the former Special Rapporteur[168] and to report her findings to the Commission on Human Rights and the General Assembly.

(*n*) Racism, racial discrimination, xenophobia and related intolerance

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/177[169] on "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 this resolution, the General Assembly endorsed the concern expressed by the Commis-

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[165] The resolution was adopted without a vote.

[166] A/59/376.

[167] The resolution was adopted by recorded vote of 129 in favour to 46, with 13 abstentions.

[168] See E/CN.4/2004/15, para. 47.

[169] The resolution was adopted by a recorded vote of 183 in favour to 3, with 2 abstentions.

sion on Human Rights in its resolution 2004/88[170] to the effect that, at the current pace, with 170 ratifications and only 45 declarations, the deadline of 2005 for universal ratification decided by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance will, regrettably not be realized.

Further, the General Assembly condemned the resurgence of xenophobia, and underlined the fact that, while anchoring human rights in legal instruments is a fundamental way of expressing their universality, it is no longer capable of eliminating the underlying causes of discriminatory culture and mentalities, and that action on human rights must henceforth include discussion of the deep cultural roots of racism. The Assembly noted 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.[171]

On the same date and on the recommendation of the Third Committee, the Assembly also adopted resolutions 59/176 entitled "International Convention on the Elimination of All Forms of Racial Discrimination" and resolution 59/175 entitled "Measures to be taken against political platforms and activities based on doctrines of superiority and violent nationalist ideologies which are based on racial discrimination or ethnic exclusiveness and xenophobia, including neo-Nazism". In the latter resolution, the General Assembly noted the recommendations of the Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, including the need for States to exercise greater control over racist and xenophobic statements, especially when they are expressed by representatives of political parties or other ideological movements.[172] In this regard, it emphasized that measures taken to combat racism must be in accordance with the commitments they have undertaken under the Durban Declaration and Programme of Action[173] and with international standards of freedom of expression.

In addition, the General Assembly also urged States to take certain steps, including appropriate measures to condemn all propaganda and all organizations which are based on ideas and theories of superiority.

(*o*) Rights and dignity of persons with disabilities

During 2004, the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities[174] held its fourth session from 23 August to 3 September 2004. In its report,[175] the Ad Hoc Committee recommended that it continue its work in 2005.

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[170] *Official Records of the Economic and Social Council, 2004, Supplement No. 3* (E/2004/23), chap. II, sect. A.

[171] A/59/329.

[172] A/59/330.

[173] A/CONF.189/12 and Corr.1, chap. I.

[174] Established by General Assembly resolution 56/168 of 19 December 2001.

[175] A/59/360.

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/198[176] entitled "Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities". In this resolution, the Assembly invited Member States and observers to continue to participate actively and constructively in the Ad Hoc Committee with a view to the early conclusion of a draft text of a convention, in order to present it to the General Assembly, as a matter of priority, for its adoption.

(*p*) Genetic privacy and non-discrimination

On 21 July 2004, the Economic and Social Council adopted resolution 2004/9 on "Genetic privacy and non-discrimination" in which it urged States to ensure that no one shall be subjected to discrimination based on genetic information. It further urged States to protect the privacy of those subject to genetic testing and to ensure that such testing and the subsequent processing, use and storage of human genetic data is done with the prior, free, informed and express consent of the individual or authorization obtained in the manner prescribed by law consistent with international law, including international human rights law, and to ensure that limitations on the principle of consent are prescribed only for compelling reasons, such as forensic medicine and related legal proceedings, by domestic law consistent with international law, including international human rights law.

Furthermore, the Council called upon States to take appropriate specific measures, including through legislation, to prevent the misuse of genetic information leading to discrimination against, or stigmatization of, individuals, members of their families or groups in all areas, particularly in insurance, employment, education and other areas of social life, whether in the public or the private sector, and, in this respect, called upon States to take all appropriate measures to ensure that the results and interpretations of population-based genetic studies are not used for purposes that discriminate against the individual or group concerned. It also urged States to continue to support research in the area of human genetics, subject to accepted scientific and ethical standards and to the potential benefit of all people, emphasizing that such research and its applications should fully respect human rights, fundamental freedoms and human dignity, as well as the prohibition of all forms of discrimination based on genetic characteristics.

6. Women and children

(*a*) Women[177]

(i) *Commission on the Status of Women*

The Commission on the Status of Women was established by the Economic and Social Council in its resolution 11 (II) of 21 June 1946 as a functional commission in order to deal

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[176] The resolution was adopted without a vote.

[177] For a complete list of signatories and States parties to international instruments relating to women that are deposited with the Secretary-General, see the chapters relating to human rights and the status of women in *Multilateral Treaties Deposited with the Secretary-General* (United Nations publications, Sales No. E.05.V.3, ST/LEG/SER.E/23), vol. I, chap. IV, and vol. II, chap.XVI.

with questions relating to gender equality and the advancement of women. It is the principal global policy-making body in this field and prepares recommendations and reports to the Council on the promotion of women's rights in political, economic, civil, social and educational fields.

The Commission held its forty-eighth session from 1 to 12 March 2004 in New York. During this session, the Commission adopted a number of resolutions for the attention of the Economic and Social Council, of which two are highlighted below.[178]

In resolution 48/2 entitled "Women, the girl child and HIV/AIDS", the Commission urged Governments to take all necessary measures to empower women and strengthen their economic independence and to protect and promote their full enjoyment of all human rights and fundamental freedoms in order to enable them to protect themselves from HIV infection. It further called upon Governments to intensify efforts to eliminate all forms of discrimination against women and girls in relation to HIV/AIDS, including through challenging stereotypes, stigmatization, discriminatory attitudes and gender inequalities, and to encourage the active involvement of men and boys in this regard.

In resolution 48/3 entitled "Release of women and children taken hostage, including those subsequently imprisoned, in armed conflicts", the Commission urged all parties to armed conflicts to respect fully the norms of international humanitarian law in armed conflict and to take all necessary measures for the protection of the civilian population and to release immediately all women and children who have been taken hostage. It further urged all such parties to provide safe unimpeded access to humanitarian assistance for those women and children in accordance with international humanitarian law and stressed both the need to put an end to impunity and the responsibility of all States to prosecute in accordance with international law those responsible for war crimes, including hostage-taking.

(ii) *Economic and Social Council*

On 21 July 2004, the Economic and Social Council adopted, on the recommendation of the Commission on the Status of Women, the following two resolutions:

(*a*) Resolution 2004/11 on "Agreed conclusions of the Commission on the Status of Women on the role of men and boys in achieving gender equality". In this resolution, the Economic and Social Council endorsed the agreed conclusions adopted by the Commission at its forty-eighth session, in which the Commission, *inter alia,* recognized that while men and boys sometimes face discriminatory barriers and practices, they can and do make contributions to gender equality in many capacities, including as individuals and as members of families, social groups and communities, in all spheres of society. The Commission also urged Governments and, as appropriate, the relevant bodies of the United Nations system, the international financial institutions, civil society, including the private sector and non-governmental organizations, and other stakeholders to take certain actions relating to the contribution of men and boys to gender equality.

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[178] For the report on the session, see *Official Records of the Economic and Social Council, 2004, Supplement No. 7* (E/2004/27-E/CN.6/2004/14).

(*b*) Resolution 2004/12 entitled "Agreed conclusions of the Commission on the Status of Women on women's equal participation in conflict prevention, management and resolution and in post-conflict peace-building". In this resolution, the Economic and Social Council endorsed the agreed conclusions adopted by the Commission at its forty-eighth session, in which the Commission, *inter alia,* called for the full respect of international human rights and humanitarian law, including the four Geneva Conventions of 1949,[179] in particular the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. It also called for the promotion and protection of the full enjoyment of all human rights and fundamental freedoms by women and girls at all times, including during conflict prevention, conflict management and conflict resolution and in post-conflict peace-building.

Furthermore, the Commission stated that women's full and equal participation and the integration of gender perspectives are crucial to democratic electoral processes in post-conflict situations. A gender-sensitive constitutional and legal framework, especially electoral laws and regulations, is necessary to ensure that women can fully participate in such processes. Political parties can play a crucial role in promoting women's equal participation. Steps are also necessary to ensure that women participate fully in, and that a gender perspective is incorporated throughout, the design and implementation of voter and civic education programmes and in election administration and observation.

(iii) *General Assembly*

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, the following resolutions.[180]

(*a*) Resolution 59/165 entitled "Working towards the elimination of crimes against women and girls committed in the name of honour". In this resolution, the General Assembly called upon all States to take a number of steps, including intensifying efforts to prevent and eliminate crimes against women and girls committed in the name of honour by using legislative, administrative and programmatic measures. It also called upon States to investigate, prosecute and document cases of such crimes, to punish the perpetrators and to address effectively complaints, *inter alia,* by creating, strengthening or facilitating institutional mechanisms so that victims and others can report these crimes in a safe and confidential environment.

(*b*) Resolution 59/166 on "Trafficking in women and girls". In this resolution, the General Assembly noted with appreciation the report of the Secretary-General[181] on this item and urged Governments to take appropriate measures to address the root factors, including poverty and gender inequality, as well as external factors that encourage the particular problem of trafficking in women and girls for prostitution and other forms of commercialized sex, forced marriage and forced labour, in order to eliminate such trafficking, including by strengthening existing legislation with a view to providing better

[179] United Nations, *Treaty Series,* vol. 75, pp. 31, 85, 135, 287.

[180] The resolutions were adopted without a vote.

[181] A/59/185 and Corr.1.

protection of the rights of women and girls and to punishing perpetrators, through both criminal and civil measures.

The Assembly also called upon all Governments to criminalize all forms of trafficking in persons, recognizing its increasing occurrence for purposes of sexual exploitation and sex tourism, and to condemn and penalize all those offenders involved, including intermediaries, whether local or foreign, through the competent national authorities, either in the country of origin of the offender or in the country in which the abuse occurs, in accordance with due process of law, while also ensuring that the victims of those practices are not penalized for being trafficked. It also called upon all Governments to penalize persons in authority found guilty of sexually assaulting victims of trafficking in their custody.

The General Assembly further called upon Governments to take steps to ensure that the treatment of victims of trafficking, as well as all measures taken against trafficking in persons, in particular those that affect the victims thereof, pay particular attention to the needs of women and girls and are applied with full respect for the human rights and are consistent with internationally recognized principles of non-discrimination, including the prohibition of racial discrimination and the availability of appropriate legal redress, which may include measures that offer victims the possibility of obtaining compensation for damage suffered. It invited Governments to consider preventing, within the legal framework and in accordance with national policies, victims of trafficking in persons, in particular women and girls, from being prosecuted for their illegal entry or residence, bearing in mind that they are victims of exploitation.

In addition, the General Assembly also invited Governments to encourage Internet service providers to adopt or strengthen self-regulatory measures to promote the responsible use of the Internet with a view to eliminating trafficking in women and children, in particular girls.

(*c*) Resolution 59/167 entitled "Elimination of all forms of violence against women, including crimes identified in the outcome document of the twenty-third special session of the General Assembly, entitled 'Women 2000: gender equality, development and peace for the twenty-first century'". In this resolution, the General Assembly welcomed the report of the Secretary-General entitled "Violence against women",[182] and stressed the need to treat all forms of violence against women and girls of all ages as a criminal offence punishable by law, including violence based on all forms of discrimination.

(*d*) Resolution 59/168 entitled "Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly". In this resolution, the General Assembly emphasized the importance of men and boys taking joint responsibility with women and girls in the promotion of gender equality, taking into account the agreed conclusions adopted by the Commission on the Status of Women at its forty-eighth session. It further recognized the important role of law, including legislation, in the promotion of gender equality and the implementation of the Beijing Platform for Action,[183] commended the progress made by States in the area of legal reform, and called upon States

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[182] A/59/281.

[183] *Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annexes I and II.

to continue their efforts to repeal laws and eradicate practices that discriminate against women and to adopt laws and promote practices that protect the rights of women and promote gender equality.

In addition, the General Assembly recognized the important role of women in the prevention and resolution of conflicts and in peacebuilding. It urged Governments and the United Nations system to take further steps to ensure the integration of gender perspectives and the full and equal participation of women at all levels of decision-making and implementation in all aspects of conflict prevention and resolution and peacebuilding activities and to ensure that efforts to strengthen the rule of law and transitional justice in conflict and post-conflict situations incorporate gender perspectives, with a view to achieving gender equality in constitutional, legislative and judicial reform.

(*b*) Children[184]

(i) *General Assembly*

On 23 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/261[185] entitled "Rights of the child". In this resolution, the General Assembly urged States parties to the Convention on the Rights of the Child, 1989,[186] and the Optional Protocols[187] thereto to take all appropriate measures for the implementation of the rights recognized in the Convention by, *inter alia,* putting in place effective national legislation, policies and action plans, by strengthening relevant governmental structures for children and by ensuring adequate and systematic training in the rights of the child for professional groups working with and for children.

The Assembly called upon all States to address cases of international abduction of children, and encouraged them to engage in multilateral and bilateral cooperation so as to facilitate, *inter alia,* the return of the child to the country in which he or she resided immediately before the removal or retention and, in this respect, to pay particular attention to cases of international abduction of children by a parent or by other relatives.

Furthermore, the Assembly also called upon States to investigate and submit cases of torture and other forms of violence against children to the competent authorities for the purpose of prosecution, to impose appropriate disciplinary or penal sanctions against those responsible for such practices and to end impunity for perpetrators of crimes against children.

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[184] For a complete list of signatories and States parties to international instruments relating to children that are deposited with the Secretary-General, see the chapter relating to human rights in *Multilateral Treaties Deposited with the Secretary-General* (United Nations publications, Sales No. E.05.V.3, ST/LEG/SER.E/23), vol. I, chap. IV.

[185] The resolution was adopted by a recorded vote of 166 in favour to 2, with 1 abstention.

[186] United Nations, *Treaty Series,* vol. 1577, p. 3.

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

The General Assembly further called upon all States to ensure that no child in detention is sentenced to forced labour or corporal punishment or deprived of access to and provision of health-care services, hygiene and environmental sanitation, education, basic instruction and vocational training, taking into consideration the special needs of children with disabilities in detention, in accordance with their obligations under the Convention on the Rights of the Child, 1989.

With regard to the prevention and eradication of the sale of children, child prostitution and child pornography, the Assembly called upon all States to ensure the prosecution of offenders, whether local or foreign, by the competent national authorities, either in the country in which the crime was committed, or in the country of which the offender is a national or resident, or in the country of which the victim is a national, or on any other basis permitted under domestic law in accordance with due process of law, and for these purposes, to afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings.

Concerning children affected by armed conflict, the General Assembly reaffirmed the essential roles of the General Assembly, the Economic and Social Council and the Commission on Human Rights in promoting and protecting the rights and welfare of children. It noted the importance of the debates held by the Security Council on children and armed conflict and its resolutions,[188] and took note of other recent documents on this issue[189] and of the importance of the undertaking by the Council to give special attention to the protection, welfare and rights of children in armed conflict when taking action aimed at maintaining peace and security, including provisions for the protection of children in the mandates of peacekeeping operations, as well as the inclusion of child protection advisers in those operations.

Furthermore, the General Assembly also took note of the report of the Secretary-General on the comprehensive assessment of the United Nations system response to children affected by armed conflict[190] and the report of the Special Representative of the Secretary-General for Children and Armed Conflict.[191]

In addition, it called upon States to take all feasible measures, as a matter of priority, to prevent the recruitment and use of children by armed groups, as distinct from the armed forces of a State, including the adoption of legal measures necessary to prohibit and criminalize such practices.

(ii) *Security Council*

On 22 April 2004, the Security Council adopted resolution 1539 regarding children and armed conflict. In this resolution, the Security Council, having considered the report of the Secretary-General,[192] stressed that the resolution did not seek to make any legal determination as to whether the situations referred to in the Secretary-General's report

[188] Security Council resolutions 1379 (2003), 1460 (2003) and 1539 (2004).

[189] A/58/546-S/2003/1053 and Corr.1 and 2 and A/59/184-S/2004/602.

[190] A/59/331.

[191] A/59/426.

[192] A/58/546–S/2003/1053 and Corr.1 and 2.

are or are not armed conflicts within the context of the Geneva Conventions and the Additional Protocols thereto nor did it prejudge the status of the non-State parties involved in those situations.

The Security Council requested the Secretary-General, taking into account the proposals contained in his report as well as any other relevant elements, to devise urgently, and preferably within three months, an action plan for a systematic and comprehensive monitoring and reporting mechanism in order to provide timely, objective, accurate and reliable information on the recruitment and use of child soldiers in violation of applicable international law and on other violations and abuses committed against children affected by armed conflict, for consideration in taking appropriate action.

Furthermore, the Security Council expressed its intention to take appropriate measures, in particular while considering subregional and cross-border activities, to curb linkages between illicit trade in natural and other resources, illicit trafficking in small arms and light weapons, cross-border abduction and recruitment, and armed conflict, which can prolong armed conflict and intensify its impact on children, and consequently requested the Secretary-General to propose effective measures to control this illicit trade and trafficking.

The Security Council took note with deep concern of the continued recruitment and use of children by the parties mentioned in the Secretary-General's report, in the situations of armed conflict which are on its agenda, in violation of applicable international law relating to the rights and protection of children. In this regard the Council:

(*a*) Called upon these parties to prepare within three months concrete time-bound action plans to halt recruitment and use of children in violation of the international obligations applicable to them, in close collaboration with United Nations peacekeeping missions and United Nations country teams, consistent with their respective mandates;

(*b*) Requested the Secretary-General to ensure that compliance with the provisions of the resolution is reviewed regularly through a process involving all stakeholders at the country level, including government representatives, and coordinated by a focal point to be designated by the Secretary-General and in charge of engaging parties in dialogue leading to time-bound action plans, so as to report to the Secretary-General through his Special Representative by 31 July 2004, bearing in mind lessons learned from past dialogues as contained in paragraph 77 of the Secretary-General's report; and

(*c*) Expressed its intention to consider imposing targeted and graduated measures, through country-specific resolutions, such as, *inter alia,* a ban on the export or supply of small arms and light weapons and of other military equipment and on military assistance, against these parties if they refuse to enter into dialogue, fail to develop an action plan or fail to meet the commitments included in their action plan, bearing in mind the Secretary-General's report.

In addition, the Security Council noted with concern all the cases of sexual exploitation and abuse of women and children, especially girls, in humanitarian crisis, including those cases involving humanitarian workers and peacekeepers. It requested contributing countries to incorporate the Six Core Principles of the Inter-Agency Standing Commit-

tee on Emergencies[193] into pertinent codes of conduct for peacekeeping personnel and to develop appropriate disciplinary and accountability mechanisms and welcomed the promulgation of the Secretary-General's bulletin[194] on special measures for protection from sexual exploitation and sexual abuse.

Furthermore, the Security Council decided to continue the inclusion of specific provisions for the protection of children in the mandates of United Nations peacekeeping operations, including, on a case-by-case basis, the deployment of child protection advisers (CPAs), and requested the Secretary-General to ensure that the need for, and the number and roles of CPAs are systematically assessed during the preparation of each United Nations peacekeeping operation.

7. Humanitarian matters[195]

On 23 July 2004, the Economic and Social Council adopted resolution 2004/54 entitled "Strengthening of the coordination of emergency humanitarian assistance of the United Nations". In the said resolution, the Council took note of the report of the Secretary-General[196] on this item and strongly urged States to ensure that those responsible for attacks against humanitarian and United Nations and associated personnel are promptly brought to justice, as provided by obligations under national and international law.

On 20 December 2004, the General Assembly, without reference to a Main Committee, adopted resolution 59/211[197] entitled "Safety and security of humanitarian personnel and protection of United Nations personnel", in which it welcomed the relevant report of the Secretary-General.[198] The Assembly also called upon all States to provide adequate and prompt information in the event of the arrest or detention of humanitarian or United Nations and associated personnel, to afford them the necessary medical assistance and to allow independent medical teams to visit and examine their health. It further urged States to take the necessary measures to ensure the speedy release of those who have been arrested or detained in violation of the relevant conventions referred to in the said resolution and applicable international humanitarian law.

Furthermore, the General Assembly called upon all other parties involved in armed conflicts to refrain from abducting humanitarian or United Nations and associated personnel or detaining them in violation of the relevant conventions referred to in the resolution and applicable international humanitarian law, and to speedily release, without harm or requirement of concession, any abductee or detainee.

[193] A/57/465, annex I.

[194] ST/SGB/2003/13.

[195] See also the discussion in the section below on the Sixth Committee under the heading "Scope of legal protection under the Convention on Safety of United Nations and Associated Personnel".

[196] A/59/93-E/2004/74.

[197] The resolution was adopted without a vote.

[198] A/59/332.

8. Environment

(*a*) International instruments[199]

During 2004, the following instruments were adopted:

(*a*) Amendment to the 1991 Convention on Environmental Impact Assessment in a Transboundary Context, on 4 June 2004;[200] and

(*b*) Amendments to Articles 25 and 26 of the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, on 17 February 2004.[201]

During 2004, the following instruments entered into force:

(*a*) Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998, on 24 February 2004;[202] and

(*b*) Stockholm Convention on Persistent Organic Pollutants, 2001, on 17 May 2004.[203]

(*b*) Implementation of instruments relating to the environment and development

On 22 December 2004, the General Assembly adopted, on the recommendation of the Second Committee, resolution 59/227[204] entitled "Implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development". In the said resolution, the General Assembly noted that the Commission on Sustainable Development at its twelfth session[205] undertook an in-depth evaluation of progress in implementing Agenda 21,[206] the Programme for the Further Implementation of Agenda 21,[207] and the Johannesburg Plan of Implementation.[208] Furthermore,

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[199] For a complete list of signatories and States parties to international instruments relating to the environment that are deposited with the Secretary-General, see *Multilateral Treaties Deposited with the Secretary-General* (United Nations publication, Sales No. E.05.V.3, ST/LEG/SER.E/23), vol. II, chap. XXVII. For a list of environmental law treaties deposited elsewhere, see the website of the United Nations Environment Programme at www.unep.org.

[200] Adopted by the States parties to the Convention. For the text of the Amendment, see annex VII to the report of the Third Meeting of the Parties (ECE/MP.EIA/6 (Decision III/7)).

[201] Adopted by the States parties to the Convention. For the text of the Amendments, see United Nations Economic Commission for Europe, document ECE/MP.WAT/14.

[202] United Nations, *Treaty Series*, vol. 2244, p. 337.

[203] United Nations, *Treaty Series*, vol. 2256, p. 119.

[204] The resolution was adopted without a vote.

[205] For the report of the Commission, see *Official Records of the Economic and Social Council, 2004, Supplement No. 9* (E/2004/29).

[206] *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992* (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: *Resolutions adopted by the Conference*, resolution 1, annex II.

[207] *Ibid.*, resolution S-19/2, annex.

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

the General Assembly also took note of the report[209] of the Secretary-General on this item and called upon Governments to take action to ensure the effective implementation of and follow-up to the commitments, programmes and time-bound targets adopted at the World Summit on Sustainable Development.

Concerning the sustainable development for land use, the General Assembly also adopted, on the same day and on the recommendation of the Second Committee, resolution 59/235[210] entitled "Implementation of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa". In the said resolution, the Assembly called upon Governments, where appropriate, in collaboration with relevant multilateral organizations, including the Global Environment Facility implementation agencies, to integrate desertification into their plans and strategies for sustainable development. The Assembly further took note of the note of the Secretary-General regarding implementation of the Convention.[211]

On the same date, the General Assembly also adopted, on the recommendation of the Second Committee, resolutions relating to water resources (59/228), climate change (59/234) and biodiversity (59/236).

In the area of protection against harmful products and waste, the Economic and Social Council adopted resolution 2004/55 on 23 July 2004, in which it urged all Governments to participate fully in the process of developing a strategic approach to international chemicals management by 2005, in order to achieve the 2020 target as set out in paragraph 23 of the Johannesburg Plan of Implementation. The Council also encouraged countries to implement the new Globally Harmonized System of Classification and Labelling of Chemicals, as agreed in paragraph 23 (c) of the Johannesburg Plan of Implementation.

9. Law of the Sea

(*a*) Report of the Secretary-General

The Secretary-General, in his report to the General Assembly at its fifty-ninth session under the agenda item entitled "Oceans and the Law of the Sea",[212] noted that 16 November 2004 marked the tenth anniversary of the entry into force of the United Nations Convention on the Law of the Sea (UNCLOS), 1982,[213] and provided an overview of the developments since that date. The report also covered a number of topics including, maritime space, international shipping activities, crimes at sea and the marine environment. In addition, the outcome of the fourteenth meeting of the States parties to UNCLOS, held in New York from 16 to 18 June 2004, is summarized in the report.

In relation to the topic of maritime space, the report provided an overview of State practice, maritime claims and delimitation of maritime zones ten years after UNCLOS

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[209] A/59/220.

[210] The resolution was adopted without a vote.

[211] A/59/197, sect. II.

[212] A/59/62 and Add.1. Developments in 2004 which were covered in the report of the Secretary-General to the General Assembly at its sixtieth session (A/60/63) are also noted.

[213] United Nations, *Treaty Series*, vol. 1836, p. 3.

entered into force. It was noted that States, with respect to maritime zones, had shown a strong adherence to the principles and rules established by its provisions and that, to a large extent, 25 coastal States non-parties to UNCLOS also accepted the Convention as a source of customary international law.

The report also reviewed the developments relating to the three institutions established by UNCLOS since 1994, namely, the International Seabed Authority (ISA), the International Tribunal for the Law of the Sea and the Commission on the Limits of the Continental Shelf (CLCS). During 2004, the thirteenth and fourteenth sessions of the CLCS were held and, during the former session, a revised set of its Rules of Procedure was adopted.[214] The tenth annual session of ISA was held in 2004 and its substantive work focused on the development of regulations for prospecting and exploration for polymetallic sulphides and cobalt crusts.[215]

In the area of maritime boundaries, the maritime boundary dispute between Barbados and Trinidad and Tobago relating to the delimitation of the Exclusive Economic Zone (EEZ) and continental shelf between them was submitted by Barbados in February 2004 to arbitration before an arbitral tribunal constituted in accordance with annex VII to UNCLOS. In June the same year, an arbitral tribunal was also established under annex VII to settle the maritime boundary dispute between Guyana and Suriname.

Issues relating to flag State implementation were discussed at the fifth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea. The Consultative Process adopted several recommendations for the General Assembly's consideration,[216] including that it request the Secretary-General, in cooperation and consultation with relevant agencies, organizations and offices, to further elaborate, *inter alia,* matters regarding the "genuine link" in relation to the duty of flag States to exercise effective control over ships flying their flag, and the consequences of non-compliance with such duties as prescribed in the relevant international instruments.

In his report, in relation to the topic of crimes at sea, the Secretary-General noted that several amendments to the International Convention for the Safety of Life at Sea (SOLAS), 1974, [217] entered into force on 1 July 2004. The amendments provide for a comprehensive maritime security regime for international shipping. The regime includes the International Ship and Port Facility Security (ISPS) Code, Part A, which is mandatory and Part B, which is voluntary. Flag States will now be required to issue a Continuous Synopsis Record (CSR) to ships flying their flag, designed to provide an on-board record of the history of the ship. In relation to smuggling of migrants and trafficking in persons, he also noted that the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000,[218] entered into force on 28 January 2004.

[214] CLCS/40.

[215] ISBA/10/LTC/WP.1.

[216] A/59/122, paras. 10, 31–42.

[217] United Nations, *Treaty Series*, vol. 1184, p. 2.

[218] General Assembly resolution 55/25, annex III.

At the request of the General Assembly in resolution 58/240, the Secretary-General also described in his report the threats and risks to vulnerable and threatened marine ecosystems and biodiversity in areas beyond national jurisdiction. The report contained an overview of the existing legal and policy framework, at the global and regional level, to address the conservation and management of vulnerable marine ecosystems and biodiversity beyond national jurisdiction.

(*b*) General Assembly

On 17 November 2004, the General Assembly, without reference to a Main Committee, adopted resolution 59/24[219] entitled "Oceans and the law of the sea".

On the subject of the marine environment, marine resources, marine biodiversity and the protection of vulnerable marine ecosystems, the General Assembly decided to establish an Ad Hoc Open-ended Informal Working Group to study specified issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.

Regarding inter-agency coordination and cooperation, the General Assembly noted, in the same resolution, the establishment of the Oceans and Coastal Areas Network (UN-Oceans), a new inter-agency mechanism for coordination and cooperation on issues relating to oceans and coastal issues, called for in paragraph 69 of General Assembly resolution 58/240.

On the same date, the General Assembly also adopted, without reference to a Main Committee, resolution 59/25[220] 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 the said resolution the Assembly welcomed the entry into force of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, 2000, on 19 June 2004, and noted with satisfaction the entry into force on 1 February 2004 of the Agreement on the Conservation of Albatrosses and Petrels under the Convention on the Conservation of Migratory Species of Wild Animals, 2001.

[219] The resolution was adopted by a recorded vote of 141 in favor to 1, with 2 abstentions.

[220] The resolution was adopted without a vote.

10. Economic, social, cultural and related questions

Culture

(i) *International instruments*[221]

The Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, 1999, entered into force on 9 March 2004.[222]

(ii) *Economic and Social Council*

On 21 July 2004, the Economic and Social Council adopted resolution 2004/34 entitled "Protection against trafficking in cultural property", in which it took note of the Cairo Declaration on the Protection of Cultural Property, made at the international conference celebrating the fiftieth anniversary of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict,[223] held in Cairo from 14 to 16 February 2004 as well as its relevant recommendations. The Council also noted the report of the Secretary-General entitled "Prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property."[224]

In the said resolution, the Economic and Social Council also requested the Secretary-General to direct the United Nations Office on Drugs and Crime, in close cooperation with the United Nations Educational, Scientific and Cultural Organization, to convene an expert group meeting to submit relevant recommendations to the Commission on Crime Prevention and Criminal Justice, at its fifteenth session, on the protection against trafficking in cultural property, including ways of making more effective the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property.

Furthermore, the Council encouraged Member States asserting State ownership of cultural property to consider means of issuing statements of such ownership with a view to facilitating the enforcement of property claims in other States. It also urged Member States to continue to strengthen international cooperation and mutual assistance in the prevention and prosecution of crimes against movable property that forms part of the cultural heritage of peoples.

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[221] For a complete list of signatories and States parties to international instruments relating to educational and cultural matters that are deposited with the Secretary-General, see *Multilateral Treaties Deposited with the Secretary-General* (United Nations publications, Sales No. E.05.V.3, ST/LEG/SER.E/23), vol. II, chap. XIV. For a complete list of signatories and States parties to international instruments relating to cultural matters adopted under the auspices of the United Nations Educational, Scientific and Cultural Organization solely or jointly with other international organizations, see www.unesco.org.

[222] United Nations, *Treaty Series*, vol. 2253, p. 172.

[223] United Nations, *Treaty Series*, vol. 249, p. 358.

[224] E/CN.15/2004/10 and Add.1.

11. Crime prevention and criminal justice[225]

(*a*) International instruments[226]

The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000,[227] came into force on 28 January 2004.

The first session of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime was held in Vienna from 28 June to 9 July 2004.[228]

(*b*) Commission on Crime Prevention and Criminal Justice

The Commission on Crime Prevention and Criminal Justice was established by the Economic and Social Council in its resolution 1992/1 of 6 February 1992 as a functional commission in order to deal with a broad scope of policy matters in this field, including combatting national and transnational crime, including organized crime, economic crime and money laundering; promoting the role of criminal law in environmental protection; crime prevention in urban areas, including juvenile crime and violence; and improving the efficiency and fairness of criminal justice administration systems. Aspects of these principal themes are selected for discussion at each of its annual sessions.

The thirteenth session of the Commission on Crime Prevention and Criminal Justice was held in Vienna from 11 to 20 May 2004.[229] During the session, the Commission provided policy guidance and direction to the United Nations Office on Drugs and Crime (UNODC) and held a thematic discussion on the rule of law and development.

(*c*) Economic and Social Council

On 21 July 2004, the Economic and Social Council adopted, on the recommendation of the Commission of Crime Prevention and Criminal Justice, several resolutions on this item:

(*a*) Resolution 2004/24 entitled "Establishment of an intergovernmental expert group to prepare a draft model bilateral agreement on disposal of confiscated proceeds

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[225] This section covers the sessions of the General Assembly, the Economic and Social Council and the Commission on Crime Prevention and Criminal Justice. Selected resolutions and decisions are highlighted. Resolutions recommending the adoption of subsequent resolutions by another organ are not covered. For detailed information and documents regarding this topic generally, see the website of the United Nations Office on Drugs and Crimes at www.unodc.org.

[226] For a complete list of signatories and States parties to international instruments relating to penal matters that are deposited with the Secretary-General, see *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2004* (United Nations publication, Sales No. E.05.V.3, ST/LEG/SER.E/23), vol. II, chap. XVIII.

[227] General Assembly resolution 58/25, annex III.

[228] For the report of the Conference of Parties, see CTOC/COP/2004/6 and Corr.1.

[229] For the report of the thirteenth session of the Commission, see *Official Records of the Economic and Social Council, 2004, Supplement No. 10* (E/2004/30).

of crime covered by the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988". In the said resolution, the Council requested the Secretary-General to convene an open-ended intergovernmental expert group to prepare a draft model bilateral agreement on sharing confiscated proceeds of crime covered by the Conventions.

(*b*) Resolution 2004/25 entitled "The rule of law and development: strengthening the rule of law and the reform of criminal justice institutions, with emphasis on technical assistance, including in post-conflict reconstruction". In this resolution, the Council requested the United Nations Office on Drugs and Crime (UNODC), in coordination with the Department of Peacekeeping Operations and other relevant entities charged with providing assistance to countries in post-conflict situations, to consider specific practical strategies to assist in promoting the rule of law, especially in countries emerging from conflict, and taking an integrated approach to crime prevention and criminal justice reform, with particular emphasis on protecting vulnerable groups.

(*c*) Resolution 2004/26 on "International cooperation in the prevention, investigation, prosecution and punishment of fraud, the criminal misuse and falsification of identity and related crimes". In this resolution, the Council requested the Secretary-General to convene an intergovernmental expert group to prepare a study on fraud and the criminal misuse and falsification of identity. It also requested the intergovernmental expert group to use the information gained by the study for the purpose of developing useful practices, guidelines or other materials in this area.

(*d*) Resolution 2004/27 entitled "Guidelines on justice for child victims and witnesses of crime". In the said resolution, the Council requested the Secretary-General to convene an intergovernmental expert group in order to develop guidelines on justice in matters involving child victims and witnesses of crime. It further requested the intergovernmental expert group to take into consideration any relevant material, including the guidelines on justice for child victims and witnesses of crime drawn up by the International Bureau for Children's Rights, annexed to the above resolution.

(*e*) Resolution 2004/28 on "United Nations standards and norms in crime prevention and criminal justice". In the said resolution, the Council took note of the report of the Secretary-General[230] and of the report of the Intergovernmental Expert Group Meeting on this item[231] as well as the instruments for gathering information on United Nations standards and norms related primarily to persons in custody, non-custodial sanctions and juvenile and restorative justice, as revised by the Intergovernmental Expert Group Meeting. In the said resolution, the Council requested certain measures to be taken in order to review and reform the process of information gathering with regard to the application of United Nations standards and norms, and to streamline the provision of technical assistance in the use and application of such standards and norms. The Secretary-General was also requested to convene a meeting of intergovernmental experts to design information-gathering instruments on: (i) Standards and norms related to legal, institutional and

[230] E/CN.15/2004/9.

[231] *Ibid*., Add.1.

practical arrangements for international cooperation, wherever feasible; and (ii) Standards and norms primarily related to crime prevention and victim issues.

(*f*) Resolution 2004/35 on "Combating the spread of HIV/AIDS in criminal justice pre-trial and correctional facilities". In the said resolution, the Council urged Member States to consider, where appropriate and in accordance with national legislation, the use of alternatives to imprisonment, as well as early release, for prisoners with advanced AIDS, and requested and encouraged UNODC to work in coordination with other relevant United Nations entities to collect information and analyze the situation of HIV/AIDS in pre-trial and correctional facilities, with a view to providing Governments with programmatic and policy guidelines.

Also on 21 July 2004, the Economic and Social Council adopted resolutions on strengthening international cooperation and technical assistance in combating money laundering (2004/29), on the prevention of urban crime (2004/31), on the implementation of technical assistance projects in Africa by UNODC (2004/32), and on strengthening the technical cooperation capacity of the crime prevention and criminal justice programme of UNODC (2004/33).

(*d*) General Assembly

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/157[232] on "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". In the said resolution, the Assembly took note of the report of the Secretary-General on the Convention against Transnational Organized Crime and the Protocols thereto,[233] and requested UNODC to continue to assist States with capacity-building in the area of international cooperation in criminal matters, in particular extradition and mutual legal assistance.

Also in the area of technical assistance and capacity-building, the General Assembly, on the same date, adopted resolutions on strengthening international cooperation and technical assistance in promoting the implementation of the universal conventions and protocols related to terrorism within the framework of the activities of the United Nations Office on Drugs and Crime (59/153); on the action against corruption: assistance to States in capacity-building with a view to facilitating the entry into force and subsequent implementation of the United Nations Convention against Corruption (59/155); and on strengthening the United Nations Crime Prevention and Criminal Justice Programme,[234] in particular its technical cooperation capacity (59/159).

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[232] The resolution was adopted without a vote.

[233] E/CN.15/2004/5.

[234] For the report of the Secretary-General entitled "Strengthening the United Nations Prevention and Criminal Justice Programme, in particular its technical cooperation capacity", see A/59/205. The report of the Secretary-General outlined the work of the United Nations Crime Prevention and Criminal Justice Programme of the United Nations Office on Drugs and Crime and other developments during the year.

In addition, the Assembly also adopted resolutions on international cooperation in the prevention, combating and elimination of kidnapping and in providing assistance to victims (59/154)[235] and on preventing, combating and punishing trafficking in human organs (59/156).

Furthermore, on 22 December 2004, the General Assembly adopted, on the recommendation of the Second Committee, resolution 59/242[236] entitled "Preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets to the countries of origin". In the said resolution the Assembly took note of the report of the Secretary-General,[237] encouraged all Governments to prevent, combat and penalize corruption in all its forms, including bribery, money-laundering and the transfer of illicitly acquired assets, and to work for the prompt return of such assets through asset recovery consistent with the principles of the United Nations Convention against Corruption, 2003.[238]

12. International drug control[239]

(*a*) Commission on Narcotic Drugs[240]

The Commission on Narcotic Drugs was established by the Economic and Social Council in its resolution 9 (I) of 16 February 1946 as a functional commission and as the central policy-making body within the United Nations system dealing with drug-related matters. Pursuant to Economic and Social Council resolution 1999/30, the Commission's agenda is structured in two distinct segments; one relating to its normative functions and one to its role as governing body of the United Nations International Drug Control Programme. Furthermore, the Commission also convenes ministerial-level segments of its sessions to focus on specific themes. During its forty-seventh session, on 27 November 2003 and from 15 to 19 March 2004, in Vienna,[241] the Commission held a thematic debate on "Synthetic drugs and control of precursors: production of, trafficking in and abuse of synthetic drugs, including methaqualone (Mandrax); strengthening systems for the control of precursor chemicals and to prevent diversion of and trafficking in such chemicals".

The following resolutions were adopted by the Commission and brought to the attention of the Economic and Social Council.

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[235] For the report entitled "International cooperation in the prevention, combating and elimination of kidnapping and in providing assistance to victims", see E/CN.15/2004/7 and Add.1.

[236] The resolution was adopted without a vote.

[237] For the report entitled "Preventing and combating corrupt practices and transfer of funds of illicit origin and returning such assets to the countries of origin", see A/59/203 and Add.1.

[238] General Assembly resolution 58/4 of 31 October 2003.

[239] For a complete list of signatories and States parties to international instruments relating to narcotic drugs and psychotropic substances that are deposited with the Secretary-General, see *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2004* (United Nations publication, Sales No. E.05.V.3, ST/LEG/SER.E/23), vol. I, chap. VI.

[240] For detailed information and documents regarding this topic generally, see the website of the United Nations Office on Drugs and Crime at www.unodc.org.

[241] For the report of the Commission, see *Official Records of the Economic and Social Council, 2004, Supplement No. 8* (E/2004/28).

(*a*) Resolution 47/4 entitled "Cooperative initiatives and intelligence-sharing as part of international efforts to fight illicit drugs", in which Member States were encouraged to sign formal memoranda of understanding between national law enforcement authorities, providing a framework for mutual assistance and for cooperation in investigations of transnational criminal activity.

(*b*) Resolution 47/5 entitled "Illicit drug profiling in international law enforcement: maximizing outcome and improving cooperation", in which Member States were called upon to seek to review their legislation with a view to facilitating the exchange of drug profiling information and drug samples with other States.

(*c*) Resolution 47/6 on "Effective controlled delivery", in which Member States were encouraged to consider adopting national laws and procedures in respect of controlled delivery operations or to review them where appropriate, to ensure that suitable legislation, resources, expertise, procedures and coordination mechanisms are in place to enable such operations.

(*b*) Economic and Social Council

On 21 July 2004, the Economic and Social Council adopted, on the recommendation of the Commission on Narcotic Drugs, resolution 2004/42 entitled "Sale of internationally controlled licit drugs to individuals via the Internet". In this resolution, the Council called upon Member States to enforce the provisions of article 30 of the Single Convention on Narcotic Drugs, 1961,[242] and article 10 of the Convention on Psychotropic Substances, 1971,[243] as they apply to pharmacies within their territory, specifically with regard to the need: (i) to license those that distribute internationally controlled licit drugs via the Internet and to require them to disclose information regarding the identity of the parties responsible and their legal location; and (ii) to actively pursue those that are in violation of the importing and exporting provisions of those Conventions. The Council also encouraged Member States to enact or, where appropriate, to enhance sanctions or penalties for providing internationally controlled licit drugs over the Internet without a valid prescription within their national borders. It further encouraged Member States that do not have laws that preclude trade in internationally controlled licit drugs via the Internet to establish such laws or regulations including certain minimum requirements and obligations set out in the resolution.

On the same date and on the recommendation of the Commission on Crime Prevention and Criminal Justice, the Economic and Social Council also adopted the following resolutions: "Drug control and related crime prevention for countries emerging from conflict" (2004/39); "Guidelines for psychologically assisted pharmacological treatment of persons dependent on opioids" (2004/40); and "Control of the manufacture of trafficking in and abuse of synthetic drugs" (2004/41).

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[242] United Nations, *Treaty Series*, vol. 976, p. 3.

[243] *Ibid*., vol. 1019, p. 175.

(*c*) General Assembly

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/163[244] on "International cooperation against the world drug problem", in which it called upon all States to strengthen international cooperation among judicial and law enforcement authorities in order to prevent and combat illicit drug trafficking, including by establishing and strengthening regional mechanisms, providing technical assistance, and establishing effective methods for cooperation, in particular in the areas of air, maritime, port and border control and in the implementation of extradition treaties. The Assembly further urged States to strengthen their actions aimed at preventing and combating the laundering of proceeds derived from drug trafficking and related criminal activities, and to improve information-sharing among financial institutions and agencies in charge of preventing and detecting the laundering of such proceeds.

13. Refugees and displaced persons[245]

(*a*) Executive Committee of the Programme of the United Nations High Commissioner for Refugees[246]

The Executive Committee of the Programme of the United Nations High Commissioner for Refugees was established by the Economic and Social Council in 1958 and functions as a subsidiary organ of the General Assembly and reports to it through the Third Committee. The Executive Committee meets annually in Geneva to review and approve the programmes and budget of the Office of the United Nations High Commissioner for Refugees (UNHCR), and to advise it on international protection issues and discuss a wide range of other items with UNHCR and its intergovernmental and non-governmental partners The fifty-fifth session of the Executive Committee was held in Geneva from 4 to 8 October 2004,[247] during which it adopted a number of conclusions.

In its Conclusion A entitled "General Conclusions on International Protection", the Executive Committee, *inter alia,* expressed concern at the persecution, generalized violence and violations of human rights which continue to cause and perpetuate displacement within and beyond national borders and which increase the challenges faced by States in effecting durable solutions. In this regard, it called on States to address these challenges while ensuring full respect for the fundamental principle of *non-refoulement,* including the non-rejection at frontiers without access to fair and effective procedures for determining status and needs of protection. Furthermore, the Executive Committee also reiterated

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[244] The resolution was adopted without a vote.

[245] For a complete list of signatories and States parties to international instruments relating to refugees that are deposited with the Secretary-General, see *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2004* (United Nations publication, Sales No. E.05.V.3, ST/LEG/SER.E/23), vol. I, chap. V.

[246] For detailed information and documents regarding this topic generally, see the website of UNHCR at www.unhcr.org.

[247] For the report of the fifty-fifth session of the Executive Committee, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 12A* (A/59/12/Add.1).

that the grant of asylum to refugees is a peaceful and humanitarian act, and that all actors are obliged to abstain from any activity which serves to undermine it.

In its Conclusion C entitled "Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees", the Executive Committee invited countries of origin, in cooperation with UNHCR, other States and concerned actors, to address issues of a legal and administrative nature which are likely to hinder voluntary repatriation in a safe and dignified manner, by taking into consideration the guidance set out in the Conclusion. In this regard, the Executive Committee, *inter alia,* reaffirmed that refugees have the right to return to their own country and that States have the obligation to receive their own nationals and should facilitate such return. It also recognized that refugees, in exercising their right to return, should, in principle, have the possibility to return to their place of origin, or to a place of residence of their choice, subject only to restrictions permitted by international human rights law. It further emphasized that in the context of voluntary repatriation, countries of asylum have the responsibility to protect refugees from threats and harassment, including from any groups or individuals who may impede their access to information on the situation in the country of origin or may impede the exercise of their free will regarding the right to return. The Committee reaffirmed that voluntary repatriation should not necessarily be conditioned on the accomplishment of political solutions in the country of origin in order not to impede the exercise of the refugees' right to return and recognized that the voluntary repatriation and reintegration process is normally guided by the conditions in the country of origin.

Furthermore, the Executive Committee strongly urged countries of origin to ensure that returning refugees do not face a risk of persecution, discrimination or detention due to their departure from the country or on account of their status as refugees, their political opinion, race, ethnic origin, religious belief or membership of a particular social group. It also recognized the utility of amnesties in encouraging voluntary repatriation and recommended that countries of origin issue amnesty declarations granting returning refugees immunity from prosecution for having left or remaining outside the country. However, such amnesties should not be extended to returning refugees charged with, *inter alia,* a serious violation of international humanitarian law, genocide, crime against humanity, crime constituting a serious violation of human rights, or a serious common crime involving death or serious bodily harm, committed prior to or during exile.

With regard to property rights, the Executive Committee recognized that, in principle, all returning refugees should have the right to have restored to them or be compensated for any housing, land or property of which they were deprived in an illegal, discriminatory or arbitrary manner before or during exile and noted the potential need for fair and effective restitution mechanisms, which also take into account the situation of secondary occupants of refugees' property. In this context, it also noted that where property cannot be restored, returning refugees should be justly and adequately compensated by the country of origin. Furthermore, any restitution and compensation framework should take account of the situation of returning refugee women, in particular where women are prevented from securing property rights in accordance with inheritance laws or where inheritance procedures prevent them from recovering their property within a reasonable period of time.

With the aim of avoiding statelessness, the Executive Committee also noted in its Conclusion the importance of ensuring nationality and urged countries of origin to ensure that there is no exclusion of returning refugees from nationality. In this regard, it recalled Conclusion No. 78 (XLVI) on the prevention and reduction of statelessness and the protection of stateless persons and noted the importance of providing, under national law, for the recognition of the civil status of returning refugees and changes thereto, as well as of documentation or registration proving that status, issued by the competent bodies in the country of asylum or elsewhere. The Executive Committee called on countries of origin and countries of habitual residence to accept refugees who are non-nationals but who have been habitually resident in that country, including those who were previously stateless there.

(*b*) General Assembly[248]

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/170[249] entitled "Office of the United Nations High Commissioner for Refugees", in which it considered the report of the High Commissioner on the activities of the Office[250] and endorsed the report of the Executive Committee of the Programme of UNHCR on the work of its fifty-fifth session.

In the said resolution, the General Assembly recognized the desirability of countries of origin addressing issues of a legal and administrative nature which are likely to hinder the voluntary repatriation in a safe and dignified manner, bearing in mind that some legal safety or administrative issues may be addressed only over time and that voluntary repatriation can and does take place without all legal and administrative issues having first been resolved. Furthermore, the General Assembly also emphasized the obligation of all States to accept the return of their nationals and called upon States to facilitate the return of those who have been determined not to be in need of international protection.

14. International Court of Justice[251]

(*a*) Organization of the Court

In 2004, the composition of the Court is as follows:

President: Shi Jiuyong (China);

Vice-President: Raymond Ranjeva (Madagascar);

Judges: Gilbert Guillaume (France); Abdul G. Koroma (Sierra Leone); Vladlen S. Vereshchetin (the Russian Federation); Rosalyn Higgins (United Kingdom); Gonzalo Parra-Aranguren (Venezuela); Pieter H. Kooijmans (the Netherlands); Francisco Rezek

[248] For resolutions dealing with refugees in particular regional areas, see the following resolutions adopted by the General Assembly: 59/117 of 10 December 2004 (Assistance on Palestine refugees) , 59/119 of 10 December 2004 (Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East), of 10 December 2004 59/120 (Palestine refugees' properties and their revenues), and 59/172 of 20 December 2004 (Assistance to refugees, returnees and displaced persons in Africa).

[249] The resolution was adopted without a vote.

[250] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 12* (A/59/12).

[251] Information about the cases before the International Court of Justice during 2004 is contained in chapter VII below.

(Brazil); Awn Shawkat Al-Khasawneh (Jordan); Thomas Buergenthal (the United States of America); Nabil Elaraby (Egypt); Hisashi Owada (Japan); Bruno Simma (Germany); and Peter Tomka (Slovakia).

In accordance with Article 29 of the Statute, the Court forms annually a Chamber of Summary Procedure, which is constituted as follows:

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 the election 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 its present 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

On 28 May 2004, Slovakia deposited a declaration recognizing the compulsory jurisdiction of the Court. As at 31 December 2004, 65 States had made such declarations, as contemplated by Article 36, paragraphs 2 and 5, of the Statute.

The declaration of Slovakia reads as follows:

> "On behalf of the Slovak Republic I have the honour to declare that the Slovak Republic recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, that is on condition of reciprocity, the jurisdiction of the International Court of Justice in conformity with Article 36, paragraph 2, of the Statute of the Court over all legal disputes arising after the date of signature of the present declaration with regard to situations or facts subsequent to the same date.
>
> This declaration does not apply to disputes:
>
> (1) Which the parties have agreed to settle by some other method of peaceful settlement;
>
> (2) In respect of which any other Party to the dispute has accepted the jurisdiction of the International Court of Justice only in relation to or for the purpose of the dispute; or when the declaration recognizing the jurisdiction of the Court on behalf of any other Party to the dispute was deposited less than twelve months prior to the filing of the unilateral application bringing the dispute before the Court;
>
> (3) With regard to the protection of environment;
>
> (4) With regard to questions which by international law fall exclusively within the domestic jurisdiction of the Slovak Republic.

The Slovak republic reserves the right at any time, by means of a notification addressed to the Secretary-General of the United Nations, and with effect as from the date of receipt of such notification, to amend or withdraw this declaration.

Done at Bratislava on 11 May 2004

[*Signed*] Rudolf Schuster

President of the Slovak Republic"

(*c*) General Assembly

At its fifty-ninth session, on 4 November 2004, the General Assembly adopted, without reference to a Main Committee, decision 59/508[252] taking note of the report of the International Court of Justice for the period from 1 August 2003 to 31 July 2004.

15. International Law Commission[253]

(*a*) Membership of the Commission

The membership of the International Law Commission for the 2002–2006 quinquennium, at its fifty-sixth session consisted of Mr. Emmanuel Akwei Addo (Ghana); Mr. Husain M. Al-Baharna (Bahrain); Mr. Ali Mohsen Fetais Al-Marri (Qatar); Mr. Joao Clemente Baena Soares (Brazil); Mr. Ian Brownlie (United Kingdom); Mr. Enrique Candioti (Argentina); Mr. Choung Il Chee (Republic of Korea); Mr. Pedro Comissário Afonso (Mozambique); Mr. Riad Daoudi (Syrian Arab Republic); Mr. Christopher John Robert Dugard (South Africa); Mr. Constantin P. Economides (Greece);[254] Ms. Paula Escarameia (Portugal); Mr. Salifou Fomba (Mali); Mr. Giorgio Gaja (Italy); Mr. Zdzislaw Galicki (Poland); Mr. Peter C. R. Kabatsi (Uganda);[255] Mr. Maurice Kamto (Cameroon); Mr. James Lutabanzibwa Kateka (United Republic of Tanzania); Mr. Fathi Kemicha (Tunisia); Mr. Roman Anatolyevitch Kolodkin (Russian Federation);[256] Mr. Martti Koskenniemi (Finland); Mr. William R. Mansfield (New Zealand); Mr. Michael Matheson (United States);[257] Mr. Theodor Viorel Melescanu (Romania);[258] Mr. Djamchid Momtaz (Islamic Republic of

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[252] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 49* (A/59/49), vol. II.

[253] Detailed information and documents regarding the work of the Commission may be found at the Commission's website: www.un.org/law/ilc/index.htm.

[254] Elected by the Commission in 2003 to fill the casual vacancies in the Commission's membership arising from the death of Mr. Valery Kuznetzov (Russian Federation) and the election of Mr. Bruno Simma (Germany) and Mr. Peter Tomka (Slovakia) to the International Court of Justice.

[255] Elected by the Commission in 2002 to fill the casual vacancy following the death of Mr. Adegoke Ajibola Ige (Nigeria).

[256] Elected by the Commission in 2003 to fill the casual vacancies in the Commission's membership arising from the death of Mr. Valery Kuznetzov (Russian Federation) and the election of Mr. Bruno Simma (Germany) and Mr. Peter Tomka (Slovakia) to the International Court of Justice.

[257] Elected by the Commission in 2003 to fill the casual vacancy arising from the resignation of Mr. Robert Rosenstock (United States of America).

[258] Elected by the Commission in 2003 to fill the casual vacancies in the Commission's membership arising from the death of Mr. Valery Kuznetzov (Russian Federation) and the election of Mr. Bruno Simma (Germany) and Mr. Peter Tomka (Slovakia) to the International Court of Justice.

Iran); Mr. Bernd H. Nihau (Costa Rica); Mr. Didier Opertti Badan (Uruguay); Mr. Guillaume Pambou-Tchivounda (Gabon); Mr. Alain Pellet (France); Mr. Pemmaraju Sreenivasa Rao (India); Mr. Victor Rodríguez Cedeño (Venezuela); Mr. Bernardo Sepulveda (Mexico); Ms. Hanqin Xue (China); and Mr. Chusei Yamada (Japan).

(*b*) Fifty-sixth session of the Commission

The International Law Commission held the first part of its fifty-sixth session from 3 May to 4 June and the second part of the session from 5 July to 6 August 2004 at its seat at the United Nations Office in Geneva.[259] The Commission considered the following topics.

As regards the topic "Diplomatic protection", the Commission considered the fifth report[260] of the Special Rapporteur (Mr. John Dugard), concerning the relationship between diplomatic protection and functional protection by international organizations, diplomatic protection and human rights, and diplomatic protection and protection of ships' crews by the flag State. The Commission requested the Special Rapporteur to consider whether the doctrine of clean hands is relevant to the topic of diplomatic protection and, if so, whether it should be reflected in the form of an article. A memorandum[261] on this topic was prepared by the Special Rapporteur, but the Commission did not have time to consider it and decided to consider this issue at the next session. The Commission referred draft article 21 and a reformulation of draft article 26 to the Drafting Committee and requested the Committee to consider elaborating a provision on the connection between the protection of ships' crews and diplomatic protection. The Commission considered the report of the Drafting Committee and adopted on first reading a set of 19 draft articles on diplomatic protection. The Commission decided to transmit the draft articles to Governments for comments, in accordance with articles 16 and 21 of its Statute.

Concerning the topic "Responsibility of International Organizations", the Special Rapporteur (Mr. Giorgio Gaja), submitted his second report[262] dealing with attribution of conduct to international organizations. The report proposed four draft articles which were considered by the Commission and referred to the Drafting Committee. The four draft articles (article 4 "General rule on attribution of conduct to an international organization", article 5 "Conduct of organs placed at the disposal of an international organization by a State or another international organization", article 6 "Excess of authority or contravention of instructions", and article 7 "Conduct acknowledged and adopted by an international organization as its own") were adopted together with commentaries by the Commission.

As regards the topic "Shared Natural Resources", the Commission considered the second report[263] of the Special Rapporteur (Mr. Chusei Yamada), which contained seven draft articles. In view of the sensitivity expressed both in the Commission and in the Sixth Committee on the use of the term "shared resources", which might refer to the common heritage of mankind or to the notion of shared ownership, the Special Rapporteur pro-

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[259] For the report of the International Law Commission on the work of its fifty-sixth session, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10).

[260] A/CN.4/538.

[261] ILC(LVI)/DP/CPR.1.

[262] A/CN.4/541.

[263] A/CN.4/539 and Add.1.

posed to focus on the sub-topic of "transboundary groundwaters" without using the term "shared". The Special Rapporteur did not recommend referring any of the draft articles to the Drafting Committee; the draft articles were formulated so as to generate comments, to receive more concrete proposals and also to identify additional areas that should be addressed. An open-ended Working Group on Transboundary Groundwaters was established by the Commission, chaired by the Special Rapporteur. The Working Group held three meetings.

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 considered the second report[264] of the Special Rapporteur (Mr. Pemmaraju Sreenivasa Rao). A Working Group was established and it reviewed and revised the 12 draft principles submitted by the Special Rapporteur and recommended to the Committee that eight draft articles be referred to the Drafting Committee. The Commission did so and also asked the Drafting Committee to prepare the text of a preamble. The Commission adopted on first reading a set of eight draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities. In accordance with articles 16 and 21 of its Statute, the Commission decided to transmit the draft principles, through the Secretary-General, to Governments for comments and observations.

As regards the topic "Unilateral Acts of States", the Commission considered the seventh report[265] of the Special Rapporteur (Mr. Victor Rodríguez Cedeño), which contained a survey of State practice in respect of unilateral acts and took account of the need to identify the relevant rules for codification and progressive development. A Working Group on Unilateral Acts was reconstituted and its work focused on the detailed consideration of specific examples of unilateral acts.

Concerning the topic "Reservations to Treaties", the Commission considered the ninth report[266] of the Special Rapporteur (Mr. Alain Pellet). The ninth report concerned the object and definition of objections. The report constituted a complementary section to the eighth report[267] on the formulation of objections to reservations and interpretative declarations. The Commission referred two draft guidelines (2.6.1 "Definition of objections to reservations" and 2.6.2 "Objection to late formulation or widening of the scope of a reservation"), to the Drafting Committee. The Commission adopted five draft guidelines, (draft guideline 2.3.5 "Widening of the scope of a reservation", 2.4.9 "Modification of an interpretative declaration", 2.4.10 "Limitation and widening of the scope of a conditional interpretative declaration", 2.5.12 "Withdrawal of an interpretative declaration", and 2.5.13 "Withdrawal of a conditional interpretative declaration"). The Commission also adopted the commentaries to the draft guidelines.

As regards the topic "Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law", the Study Group of the Commission[268] considered the preliminary report on the Study on the function and scope of

[264] A/CN.4/540.

[265] A/CN.4/542 and Corr.1 (French only) Corr.2 and Corr.3.

[266] A/CN.4/544.

[267] A/CN.4/535 and Add.1.

[268] For the report of the Study Group, see A/CN.4/L.663/Rev.1.

the *lex specialis* rule and the question of self-contained regimes, as well as outlines on the Study on the application of successive treaties relating to the same subject matter (article 30 of the Vienna Convention on the Law of Treaties, 1969[269]); on the Study concerning the modification of multilateral treaties between certain of the parties only (article 41 of the Vienna Convention on the Law of Treaties, 1969); on the Study on the interpretation of treaties in the light of "any relevant rules on international law applicable in relations between parties" (article 31 (3)(c) of the Vienna Convention on the Law of Treaties, 1969); and the Study on hierarchy in international law: *jus cogens,* obligations *erga omnes,* Article 103 of the Charter of the United Nations, as conflict rules.

On the recommendation of the Planning Group, the Commission decided to include in its current programme of work two new topics, "Expulsion of aliens" and "Effects of armed conflicts on treaties". The Commission decided to appoint Mr. Maurice Kamto, Special Rapporteur for the topic "Expulsion of aliens" and Mr. Ian Brownlie, Special Rapporteur for the topic "Effects of armed conflicts on treaties". The Commission also agreed with the recommendation of the Planning Group to include the topic "Obligation to extradite or prosecute (*aut dedere aut judicare*)" in its long-term programme of work. The Commission envisaged the inclusion of this topic in its current programme of work as of its next session.

(*c*) General Assembly

On 2 December 2004, the General Assembly, on the recommendation of the Sixth Committee, adopted resolution 59/4[270] entitled "Report of the International Law Commission on the work of its fifty-sixth session".

In the said resolution, the General Assembly took note of the report of the International Law Commission and drew the attention of Governments to the importance for the International Law Commission of having their views on the various aspects involved in the agenda, in particular on the draft articles and commentary on diplomatic protection and the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities. The General Assembly invited Governments to provide information to the International Law Commission regarding their practice, bilateral or regional, regarding the allocation of groundwaters from transboundary aquifer systems and the management of non-renewable transboundary aquifer systems relating to the topic entitled "Shared natural resources", and State practice on the topic "Unilateral acts of States". The General Assembly further endorsed the decision of the Commission to include in its agenda the topics "Expulsion of Aliens" and "Effects of armed conflicts on treaties".

[269] United Nations, *Treaty Series*, vo1. 1155, p. 331.

[270] The resolution was adopted without a vote.

16. United Nations Commission on International Trade Law

(*a*) United Nations Commission on International Trade Law[271]

The United Nations Commission on International Trade Law (UNCITRAL) held its thirty-seventh session in Vienna from 14 to 25 June 2004 and adopted its report[272] on 20 and 25 June 2004.

During the session, the Commission considered and adopted the UNCITRAL Legislative Guide on Insolvency Law[273] (to which the UNCITRAL Model Law on Cross-Border Insolvency and its Guide to enactment is annexed) and recommended that States assess the economic efficiency of their insolvency regimes and give favorable consideration to the Legislative Guide when revising or adopting legislation relevant to insolvency. The Commission noted with appreciation the participation in and support of international intergovernmental and non-governmental organizations active in the field of insolvency law reform in the development of the Legislative Guide and confirmed its intention to continue coordination and cooperation with the World Bank and the International Monetary Fund to facilitate the development of a unified international standard in this area.

With respect to the topic of arbitration, the Commission had before it the reports of Working Group II (Arbitration and Conciliation) on its thirty-ninth and fortieth sessions.[274] The Commission noted that discussions had continued on a draft text for revision of article 17 of the UNCITRAL Model Law on International Commercial Arbitration on the power of an arbitral tribunal to grant interim measures of protection and on insertion of a new article of the Model Law, tentatively numbered 17 *bis,* on the recognition and enforcement of such interim measures.

With respect to transport law, the Commission had before it the reports of Working Group III (Transport Law) on its twelfth and thirteenth sessions[275] and noted that the Working Group had achieved progress on a number of difficult issues arising in the second reading of the draft instrument on the carriage of goods [wholly or partly] [by sea].

In connection with electronic commerce, the Commission noted the progress made by the Secretariat in the development of a draft convention dealing with selected issues on electronic contracting and noted that Working Group IV (Electronic Commerce) was endeavouring to complete its work with a view to enabling review and approval of the text by the Commission in 2005.[276]

With regard to its work on security interests, the Commission had before it the reports of Working Group VI (Security Interests) on its fourth and fifth sessions and a report on the second joint session of Working Group V (Insolvency Law) and Working Group VI.[277] The Commission observed that Working Group VI had completed the second reading of the draft guide on secured transactions and noted with particular interest that

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[271] 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/59/17), chap. I, sect. B.

[272] *Ibid*., A/59/17.

[273] *Legislative Guide on Insolvency Law* (United Nations Publication, Sales No. E.05.V.10).

[274] A/CN.9/545 and A/CN.9/547.

[275] A/CN.9/544 and A/CN.9/552.

[276] A/CN.9/546 and A/CN.9/548.

[277] A/CN.9/543, A/CN.9/549 and A/CN.9/550.

the Working Group had agreed that publicity should be a precondition of the effectiveness of security rights against third parties and of ensuring protection of third parties. The Commission also noted the progress made by the Working Group in the coordination of its work on conflict of laws with the Hague Conference on Private International law and with the International Institute for the Unification of Private Law (Unidroit), which was preparing a text on securities, and with the World Bank, which was preparing principles and guidelines for effective insolvency and creditor rights systems.

In connection with possible future work in the area of public procurement, the Commission considered a note by the Secretariat[278] containing a summary of issues that might merit consideration in the review of the UNCITRAL Model Law on Procurement of Goods, Construction and Services,[279] to reflect new practices and requested the Working Group on Procurement to develop proposals for further consideration of the Commission. Some areas to be considered included the legislative treatment of electronic communications in public procurement, the procurement of services and remedies and enforcement.

Regarding the topic "Monitoring the implementation of the 1958 New York Convention",[280] the Commission requested the Secretariat to provide a preliminary analysis of replies received to the questionnaire sent to States relating to the legal regime in their jurisdictions governing the recognition and enforcement of foreign awards.

With regard to case law on UNCITRAL texts (CLOUT) and digests of case law, the Commission observed that 42 issues of CLOUT arising from 489 cases relating to the United Nations Convention on Contracts for the International Sale of Goods, 1980,[281] and the UNCITRAL Model Law on International Commercial Arbitration[282] had been prepared for publication. The Commission was also informed that the digest on court and arbitral decisions identifying trends in the interpretation of the Convention and on the Model Law had been prepared. The Commission requested that both digests be published in the six official languages of the United Nations and their adoption be promoted as a reference tool for judges, arbitrators, practitioners, academics and Government officials so that case law relating to UNCITRAL texts could be used more efficiently.

(*b*) General Assembly

On 2 December 2004, the General Assembly adopted, on the recommendation of the Sixth Committee, resolution 58/75,[283] in which it took note of the report of the Commission on the work of its thirty-seventh session and commended the Commission for the progress made in its work on insolvency law, arbitration, secured transactions, electronic contracting, transport law, procurement law and the legislative implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), 1958.

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[278] A/CN.9/539 and Add.1.

[279] *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 17* and corrigendum (A/49/17 and Corr.1), annex I.

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

[281] United Nations, *Treaty Series*, vol. 1489, p. 3.

[282] *Yearbook of the United Nations Commission on International Trade Law,* vol. XVI: 1985 (United Nations publication, Sales No. 87.V.4), annex I.

[283] The resolution was adopted without a vote.

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

During the fifty-ninth session of the General Assembly, the Sixth Committee, in addition to the topics concerning the International Law Commission and the United Nations Commission on International Trade Law, discussed above, considered a wide range of other topics. The work of the Sixth Committee and of other related subsidiary organs is described below, together with the relevant resolutions and decisions of the General Assembly adopted during 2004.[284] The resolutions of the General Assembly described in this section, unless otherwise indicated, were adopted during its fifty-ninth session on 2 December 2004 on the recommendation of the Sixth Committee[285] and without a vote.

(*a*) Nationality of natural persons in relation to the succession of States

(i) *Sixth Committee*

The Sixth Committee considered this item at its 15th and 26th meetings on 28 October and on 17 November 2004, respectively.[286]

(ii) *General Assembly*

In its resolution 59/34, the General Assembly reiterated its invitation to Governments to take into account the provisions of the articles on nationality of natural persons in relation to the succession of States contained in the annex to resolution 55/153 of 12 December 2000.[287] It encouraged States to consider at the regional or subregional levels, the elaboration of legal instruments regulating these questions with a view, in particular, to preventing the occurrence of statelessness as a result of State succession. Furthermore, the General Assembly invited Governments to submit comments concerning the advisability of elaborating a legal instrument on this topic, including the avoidance of statelessness as a result of a succession of States.

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[284] For further information and documents regarding the work of the Sixth Committee and the other related subsidiary organs of the General Assembly mentioned in this section, see www.un.org/law/lindex.htm.

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

[286] For the report of the Sixth Committee, see A/59/504. For the summary records, see A/C.6/59/SR.15 and 26.

[287] These articles were adopted by the International Law Commission during its fifty-first session in 1999.

(*b*) Responsibility of States for internationally wrongful acts

(i) *Sixth Committee*

The Sixth Committee considered this item at its 15th, 16th, 25th and 26th meetings, on 28 and 29 October and on 9 and 17 November 2004.[288]

(ii) *General Assembly*

In its resolution 59/35, the General Assembly commended the articles on responsibility of States for internationally wrongful acts[289] to the attention of Governments, without prejudice to the question of their future adoption or other appropriate action and requested the Secretary-General to invite Governments to submit their written comments on any future action regarding these articles. The Assembly also requested the Secretary-General to prepare an initial compilation of decisions of international courts, tribunals and other bodies referring to the articles and to invite Governments to submit information on their practice in this regard.

(*c*) Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts

(i) *Sixth Committee*

The Sixth Committee considered this item at its 16th and 23rd meetings, on 29 October and 8 November 2004.[290] For its consideration of the matter, the Committee had before it the report of the Secretary-General on the status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts.[291]

(ii) *General Assembly*

In its resolution 59/36, the General Assembly recalled the entry into force, on 9 March 2004, of the Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1999.[292] It affirmed the necessity of making the implementation of international humanitarian law more effective and requested the Secretary-General to submit to the General Assembly at its sixty-first session a report on the status of the Additional Protocols relating to the protection of victims of armed conflicts, as well as on measures taken to strengthen the existing body of international humanitarian law, *inter alia,* with respect to its dissemination and full implementation at the national level,

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[288] For the report of the Sixth Committee, see A/59/505. For the summary records, see A/C.6/59/SR.15, 16, 25 and 26.

[289] General Assembly resolution 56/83 of 12 December 2001, annex. This articles were adopted by the International Law Commission during its fifty-third session in 2001.

[290] For the report of the Sixth Committee, see A/59/506. For the summary records, see A/C.6/59/SR.16 and 23.

[291] A/59/321.

[292] United Nations, *Treaty Series,* vol. 2253, p. 212.

based on information received from Member States and the International Committee of the Red Cross.

(*d*) Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives

(i) *Sixth Committee*

The Sixth Committee considered this item at its 5th, 14th and 16th meetings, on 13, 26 and 29 October 2004.[293] For its consideration of the item, the Committee had before it the report of the Secretary-General.[294]

(ii) *General Assembly*

In its resolution 59/37, the General Assembly strongly condemned acts of violence against diplomatic and consular missions and representatives, as well as against missions and representatives of international intergovernmental organizations and their officials, and emphasized that such acts can never be justified. It called upon all States to take certain steps to ensure the protection, security and safety of such missions, representatives and officials. Furthermore, the General Assembly called upon States, in cases where a dispute arises in connection with a violation of their international obligations concerning the protection of these missions or the security of their representatives and officials, to make use of the means available for peaceful settlement of disputes, including the good offices of the Secretary-General, and requested the Secretary-General, when he deems it appropriate, to offer his good offices to the States directly concerned. The Assembly also requested the Secretary-General to submit to the General Assembly at its sixty-first session a report regarding certain matters elaborated in resolution 59/37.

(*e*) Convention on jurisdictional immunities of States and their property

(i) *Ad Hoc Committee on Jurisdictional Immunities of States and Their Property*

The Ad Hoc Committee on Jurisdictional Immunities of States and Their Property, established by the General Assembly in its resolution 55/150 of 12 December 2000, was reconvened in accordance with General Assembly resolution 58/74 of 9 December 2003. Its mandate consisted of formulating 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. The Ad Hoc Committee met from 1 to 5 March 2004.[295]

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[293] For the report of the Sixth Committee, see A/59/507. For the summary records, see A/C.6/59/SR.5, 14 and 16.

[294] A/59/125 and Add. 1.

[295] For the report of the Ad Hoc Committee, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 22* (A/59/22).

At its 8th plenary meeting, the Ad Hoc Committee decided to recommend to the General Assembly the adoption of the draft United Nations Convention on Jurisdictional Immunities of States and Their Property and that the General Assembly include in its resolution adopting the draft Convention the general understanding that it does not cover criminal proceedings.

(ii) *Sixth Committee*

The Committee considered the item at its 13th, 14th, 21st and 25th meetings, on 25 and 26 October and on 5 and 9 November 2004.[296]

(iii) *General Assembly*

In its resolution 59/38, the General Assembly, stressing the importance of uniformity and clarity in the law applicable to jurisdictional immunities of States and their property, adopted the United Nations Convention on Jurisdictional Immunities of States and Their Property,[297] and requested the Secretary-General as depositary to open it for signature. Furthermore, the General Assembly agreed with the general understanding reached in the Ad Hoc Committee that the Convention does not cover criminal proceedings and invited States to become parties to the Convention.

(*f*) Report of the Committee on Relations with the Host Country

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

The Committee on Relations with the Host Country, established by General Assembly resolution 2819 (XXVI) of 15 December 1971, deals with a wide range of issues concerning the relationship between the United Nations and the United States as the host country, including questions pertaining to the security of the missions and their personnel; privileges and immunities; immigration and taxation; housing, transportation and parking; insurance, education, and health; and public relations issues with New York as the host city. In accordance with General Assembly resolution 58/78 of 9 December 2003, the Committee reconvened in 2004 and held three meetings; its 220th meeting on 29 April 2004, its 221st meeting on 26 July 2004 and its 222nd meeting on 13 October 2004.[298]

During its 2004 session, the Committee considered the following four topics: transportation: use of motor vehicles, parking and related matters; acceleration of immigration and customs procedures; entry visas issued by the host country; and host country travel regulations. At its 222nd meeting, it approved a number of conclusions and recommendations, including in relation to the observance of privileges and immunities; the functioning of the parking programme of diplomatic vehicles; the issuance of entry visas to represen-

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[296] For the report of the Sixth Committee, see A/59/508. For the summary records, see A/C.6/59/SR.13, 14, 21 and 25.

[297] The Convention is reproduced in chapter IV of the present publication.

[298] For the report of the Committee, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 26* (A/59/26).

tatives of Member States; the issuance of travel regulations with regard to personnel of certain missions and staff of the Secretariat; and the importance of permanent missions, their personnel and Secretariat personnel meeting their financial obligations.

(ii) *Sixth Committee*

The Sixth Committee considered the report of the Host Country Committee at its 26th meeting, on 17 November 2004.[299]

(iii) *General Assembly*

In its resolution 59/42, the General Assembly endorsed the recommendations and conclusions of the Host Country Committee contained in paragraph 26 of its report[300] and requested the host country to continue to take all measures necessary to prevent any interference with the functioning of missions. It noted that the Committee had conducted an initial detailed review of the implementation of the Parking Programme for Diplomatic Vehicles with a view to addressing the problems experienced by some permanent missions during the first year of the Programme and ensuring its proper implementation, and that it should remain seized of the matter. It further noted that during the reporting period some travel restrictions previously imposed by the host country on staff of certain missions and staff members of the Secretariat of certain nationalities were removed, and requested the host country to consider removing the remaining travel restrictions, and in that regard noted the positions of affected States, of the Secretary-General and of the host country. The Assembly requested the Secretary-General to remain actively engaged in all aspects of the relations of the United Nations with the host country and requested the Committee to continue its work, in conformity with General Assembly resolution 2819 (XXVI).

(*g*) **International Criminal Court**

(i) *Sixth Committee*

The Sixth Committee considered this item at its 6th and 27th meetings, on 14 October and on 19 November 2004.[301]

(ii) *General Assembly*

During the resumed fifty-eighth session, on 13 September 2004, the General Assembly adopted, without reference to a Main Committee, resolution 58/318[302] entitled "International Criminal Court." In this resolution, the General Assembly approved the draft Rela-

[299] For the report of the Sixth Committee, see A/59/511. For the summary records, see A/ C.6/59/SR. 26.

[300] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 26* (A/59/26).

[301] For the report of the Sixth Committee, see A/59/512. For the summary records, see A/C.6/59/ SR.6 and 27.

[302] The resolution was adopted without a vote.

tionship Agreement between the United Nations and the International Criminal Court and decided to apply the Relationship Agreement provisionally, pending its formal entry into force.[303]

During its fifty-ninth session, the General Assembly adopted resolution 59/43, in which it called upon all States that are not yet parties to the Rome Statute of the International Criminal Court, 1998,[304] to consider ratifying or acceding to it without delay, and encouraged efforts aimed at promoting awareness of the results of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, held in Rome from 15 June to 17 July 1998, the provisions of the Statute and the process leading to the establishment of the International Criminal Court. Furthermore, the Assembly called upon all States to consider becoming parties to the Agreement on the Privileges and Immunities of the International Criminal Court, 2002,[305] without delay.

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

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

At its twenty-ninth session, the General Assembly decided to establish an Ad Hoc Committee on the Charter of the United Nations to consider, *inter alia,* any specific proposals that Governments might make with a view to enhancing the ability of the United Nations to achieve its purposes as well as other suggestions for the more effective functioning of the United Nations that might not require amendments to the Charter.[306] At its thirtieth session, the Assembly decided to reconvene the Ad Hoc Committee as the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization to examine suggestions and proposals regarding the Charter and the strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of cooperation among all nations and the promotion of the rules of international law.[307] Since the thirtieth session, the Special Committee has been reconvened every year and in 2004, pursuant to General Assembly resolution 58/248 of 23 December 2003, it met from 29 March to 8 April. The Special Committee held two meetings, the 245th meeting on 29 March, and the 246th meeting on 7 April. In addition, its Working Group of the Whole held seven meetings.[308]

The issues considered by the Special Committee at its 2004 session were, the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by sanctions, peaceful settlement of disputes, proposals concern-

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[303] The agreement is reproduced in chapter IV of the present publication and is published in the United Nations, *Treaty Series,* vol. 2283, p. 196.

[304] United Nations, *Treaty Series,* vol. 2187, p. 3.

[305] United Nations, *Treaty Series,* vol. 2271, p. 3.

[306] General Assembly resolution 3349 (XXIX) of 17 December 1974.

[307] General Assembly resolution 3499(XXX) of 15 December 1975.

[308] For the report of the Special Committee, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 33* (A/59/33).

ing the Trusteeship Council, the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council,* and working methods of the Special Committee and identification of new subjects. In its report, the Special Committee made several recommendations to the General Assembly.[309] In relation to the topic on assistance to third States affected by sanctions, the Special Committee recommended, *inter alia,* that the Assembly should continue to consider, in an appropriate substantive manner and framework, the results of the meeting of the *ad hoc* expert group convened pursuant to resolution 52/162[310] and that it should address further the question of the implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions under Chapter VII and the implementation of various General Assembly resolutions on this issue. With regard to the topic on the *Repertory* and the *Repertoire,* the Special Committee recommended that the Assembly review the possibility of establishing, at its fifty-ninth session, a trust fund for the preparation, updating and publication of the *Repertory,* which should accept solely voluntary contributions by States and private institutions and individuals.

(ii) *Sixth Committee*

The Sixth Committee considered the report of the Special Committee at its 3rd, 4th, 6th, 24th and 26th meetings, on 7, 8 and 14 October and 8 and 17 November 2004.[311] The Committee took into consideration a number of documents including the reports of the Secretary-General on the *Repertory of Practice of United Nations Orga*ns and the *Repertoire of the Practice of the Security Council,*[312] and on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions.[313]

(iii) *General Assembly*

In its resolution 59/44 entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization", the General Assembly took note of the report of the Special Committee and requested that it continue 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 implementation of the provision of the Charter 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. The General Assembly also requested the Secretary-General to establish a trust fund to eliminate the backlog of the *Repertory of Practice of*

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[309] *Ibid.,* para. 14.

[310] A/53/312.

[311] For the report of the Sixth Committee, see A/59/513. For the summary records, see A/C.6/59/SR.3, 4, 6, 24, and 26.

[312] A/59/189.

[313] A/59/334.

United Nations Organs and endorsed his efforts to eliminate the backlog of the *Repertoire of the Practice of the Security Council.*

Under the same item, the General Assembly also adopted resolution 59/45 on "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions". In this resolution, the General Assembly renewed its invitation to the Security Council to consider the establishment of further mechanisms or procedures for consultations 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. In this context, the Council was also invited to consider 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.

The Assembly further invited the Security Council, its sanctions committees and the Secretariat, as appropriate, to continue to ensure that, *inter alia,* (i) assessment reports include as part of their analysis the likely and actual unintended impact of the sanctions on third States and recommend ways in which the negative impact of sanctions can be mitigated; (ii) the Security Council, where economic sanctions have had severe effects on third States, is able to request the Secretary-General to consider appointing a special representative or dispatching fact-finding missions on the ground to undertake necessary assessments and to identify, as appropriate, possible ways of assistance; and (iii) the Council is able to consider establishing working groups to consider such situations.

The Assembly further requested the Secretary-General to pursue the implementation of various resolutions[314] on this item and to ensure that the competent units within the Secretariat develop the 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 such States and to explore innovative and practical measures of assistance to them.

(*i*) Measures to eliminate international terrorism

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

The eighth session of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 was convened in accordance with General Assembly resolution 58/81 of 9 December 2003. The Ad Hoc Committee was requested to continue to elaborate a draft comprehensive convention on international terrorism; to continue its efforts to resolve the outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism; and to keep on its agenda the

[314] General Assembly resolutions 50/51, 51/208, 52/162, 53/107, 54/107, 55/157, 56/87, 57/25 and 58/80.

question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. The Ad Hoc Committee held its 30th to 32th plenary meetings on 28 June, 1 July, and 2 July 2004.[315] In addition, the Coordinators of the two draft conventions held separate informal consultations with interested delegations and, at the 31st plenary meeting, presented to the Committee their oral reports on the results of those consultations.[316] At the same meeting, the Chairman of the Ad Hoc Committee also informed the Committee that while there had not been any specific proposal regarding the question of convening a high-level conference, some delegations had had informal contacts on that issue.

The Ad Hoc Committee, bearing in mind General Assembly resolution 58/81, decided to recommend that the Sixth Committee, at the fifty-ninth session of the General Assembly, consider establishing a working group, if appropriate, to continue the elaboration of the two draft conventions and to keep on its agenda the question of convening a high-level conference, under the auspices of the United Nations, to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

(ii) *Sixth Committee*

The Sixth Committee considered this item at its 1st, 7th to 10th and 26th meetings, on 4 and from 18 to 20 October and on 17 November 2004. The documents before the Committee included the report of the Secretary-General on measures to eliminate international terrorism.[317]

Pursuant to paragraph 16 of General Assembly resolution 58/81, the Committee, at its 1st meeting, established a Working Group 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 to keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.[318] The Working Group held two plenary meetings and the Coordinators of the two draft conventions also held informal consultations. In addition, the Chairman invited interested delegations to approach him on the question of convening a high level conference. At the 2nd meeting of the Working Group, the Coordinators presented their oral reports on the results of the informal consultations[319] and the Chairman informed the Working Group that in his contacts with several delegations on the question of convening a high-level conference, they had informed him that consultations on this question were continuing at a political level in their capitals.

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[315] For the report of the Ad Hoc Committee, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 37* (A/59/37).

[316] *Ibid.*, annex II.

[317] A/59/210 and Corr.1.

[318] For the report of the Working Group, see A/C.6/59/L.10.

[319] *Ibid.*, annex I.

The Working Group referred its report to the Sixth Committee, in which it decided, bearing in mind General Assembly resolution 58/81, to recommend 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.

At the 7th meeting of the Sixth Committee, the Chairman of the Ad Hoc Committee and of the Working Group introduced the reports of the two bodies.

(iii) *General Assembly*

In its resolution 59/46, the General Assembly reaffirmed the Declaration on Measures to Eliminate International Terrorism[320] and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism,[321] and called upon all States to implement them. The General Assembly further called upon States to take various measures to prevent and combat international terrorism and reminded States of their obligations under relevant international conventions and protocols and Security Council resolutions, including Security Council resolution 1373 (2001), to ensure that perpetrators of terrorist acts are brought to justice. In this regard, the Assembly also reaffirmed that international cooperation as well as actions by States to combat terrorism should be conducted in conformity with the principles of the Charter, international law and relevant international conventions.

Furthermore, the General Assembly also noted the progress attained in the elaboration of the draft comprehensive convention on international terrorism and the draft international convention for the suppression of acts of nuclear terrorism. It decided that the Ad Hoc Committee should, on an expedited basis, continue to elaborate the draft comprehensive convention on international terrorism and resolve the outstanding issues relating to the elaboration of the draft international convention for the suppression of acts of nuclear terrorism as a means of further developing a comprehensive legal framework of conventions dealing with international terrorism and 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. The Assembly further requested the Secretary-General to make a comprehensive inventory of the response of the Secretariat to terrorism as part of his annual report on measures to eliminate international terrorism.

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

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

The third session of the Ad Hoc Committee, established by General Assembly resolution 56/89 of 12 December 2001, was convened pursuant to General Assembly resolution

[320] General Assembly resolution 49/60 of 9 December 1994, annex.

[321] General Assembly resolution 51/210 of 17 December 1996, annex.

58/82 of 9 December 2003, with a mandate to expand the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel, 1994,[322] including, *inter alia,* by means of a legal instrument. The Ad Hoc Committee met from 12 to 16 April 2004 and held its 5th to 7th plenary meetings on 12, 14, and 16 April 2004.[323] In addition, the Working Group of the Whole also held several meetings. The Committee had before it, *inter alia,* two proposals, submitted by New Zealand and Costa Rica, respectively.[324] New Zealand's proposal contained a draft text of an instrument expanding the scope of legal protection under the 1994 Convention. Costa Rica's proposal contained a text on the relationship between the 1994 Convention and international humanitarian law.

The Ad Hoc Committee decided to recommend to the General Assembly that its mandate be renewed for 2005 in order to continue its work to expand the scope of legal protection under the 1994 Convention, including, *inter alia,* by means of a legal instrument.

(ii) *Sixth Committee*

The Sixth Committee considered the item at its 10th, 13th and 26th meetings, on 20 and 25 October and 17 November 2004.[325] The documents before the Sixth Committee included the report of the Secretary-General on the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel, 1994.[326]

At its 1st meeting, on 4 October, the Sixth Committee established a Working Group to continue the work of the Ad Hoc Committee.[327] The Working Group held four meetings and had before it, *inter alia,* the Chairman's text[328] on an instrument expanding the scope of legal protection under the 1994 Convention, which was the outcome of inter-sessional informal consultations and bilateral contacts, building upon work accomplished during previous discussions. The Working Group agreed to use the Chairman's text as the basis of work for current and future discussions concerning the expansion of the scope of legal protection under the 1994 Convention, while it was understood that this would not limit the right of delegations to make suggestions thereon. Substantive discussions were subsequently held on the expansion of the scope of legal protection under the Convention and on the proposal concerning the relationship between the Convention and international humanitarian law submitted by Costa Rica during the third session of the Ad Hoc Committee. The Working Group referred its report to the Sixth Committee, in which it recommended that the Ad Hoc Committee be reconvened with a mandate to expand the scope of legal protection under the 1994 Convention, including, *inter alia,* by means of a legal instrument. In addition, it also recommended that the Chairman's text be used as the basis

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[322] United Nations, *Treaty Series,* vol. 2051, p. 363.

[323] For the report of the Ad Hoc Committee, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 52* (A/59/52).

[324] *Ibid.,* annexes A and B, respectively.

[325] For the report of the Sixth Committee, see A/59/515 and Corr.1. For the summary records, see A/C.6/59/SR.10, 13 and 26.

[326] A/59/226.

[327] For the report of the Working Group, see A/C.6/59/L.9.

[328] *Ibid.,* annex I A.

of the work of the Ad Hoc Committee and that the proposal by Costa Rica be considered by the Ad Hoc Committee separately.

At the 10th meeting of the Sixth Committee, on 20 October 2004, the Chairman of the Ad Hoc Committee and of the Working Group introduced the reports of the two bodies.

(iii) *General Assembly*

In its resolution 59/47, the General Assembly 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 to ensure that such crimes do not go unpunished and that the perpetrators of such crimes are brought to justice. It recommended that the Secretary-General continue to seek the inclusion of, and that host countries include, key provisions of the Convention in future as well as, if necessary, in existing status-of-forces, status-of-mission and host country agreements. It further recommended that 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 purposes of article 1 (c) (ii) of the Convention. It also noted that the Secretary-General had prepared a standardized provision for incorporation in the agreements concluded between the United Nations and humanitarian non-governmental organizations or agencies for the purposes of clarifying the application of the Convention to persons deployed by those organizations or agencies, and requested him to make available to Member States the names of organizations or agencies that had concluded such agreements. It requested the Secretary-General to report to the Assembly at its sixtieth session on the measures taken to implement the resolution.

Furthermore, the General Assembly decided that the Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel should reconvene from 11 to 15 April 2005, with a mandate to expand the scope of legal protection under the Convention, including, *inter alia,* by means of a legal instrument.

(*k*) International convention against the reproductive cloning of human beings

(i) *Sixth Committee*

The Sixth Committee considered this matter at its 11th, 12th and 27th meetings, on 21 and 22 October and on 19 November 2004.[329] In light of the divergent views among Member States on the future mandate of the Ad Hoc Committee on an international convention against the reproductive cloning of human beings,[330] the Chairman of the Sixth Committee announced that, on the basis of informal consultations with interested delegations, it was being proposed that the Sixth Committee establish a working group to

[329] For the report of the Sixth Committee, see A/59/516 and Corr.1. For the summary records, see A/C.6/59/SR.11, 12 and 27.

[330] See, for example, draft resolutions A/C.6/59/L.2 and A/C.6/59/L.8.

finalize the text of a United Nations declaration on human cloning, on the basis of draft resolution (A/C.6/59/L.26) and to report to the Sixth Committee during the current fifty-ninth session. The working group was to meet on 14, 15 and 18 February 2005 and the Sixth Committee in the afternoon of 18 February, to consider and take action on the report of the working group. At the same meeting, on the basis of the Chairman's proposal, the Sixth Committee adopted a decision to establish such a working group.

(ii) *General Assembly*

In its decision 59/547 of 23 December 2004,[331] adopted on the recommendation of the Sixth Committee, the General Assembly decided to establish a Working Group to finalize the text of a United Nations declaration on human cloning on the basis of a draft resolution,[332] and to report to the Sixth Committee during the fifty-ninth session. Further action on the matter, including meetings of the Working Group, took place in the resumed fifty-ninth session in 2005.

(*l*) Observer status in the General Assembly

(i) *Sixth Committee*

The Sixth Committee considered requests for observer status in the General Assembly by the Shanghai Cooperation Organization, the Southern African Development Community, the Collective Security Treaty Organization, the Economic Community of West African States, the Organisation of Eastern Caribbean States, and the South Asian Association for Regional Cooperation.

The question of observer status for the Shanghai Cooperation Organization, the Southern African Development Community, the Collective Security Treaty Organization and the Economic Community of West African States was considered at the Sixth Committee's 2nd and 3rd meetings on 5 and 7 October 2004.[333] The observer status for the Organisation of Eastern Caribbean States was considered at the Committee's 13th and 16th meetings.[334] Lastly, the question of the observer status of the South Asian Association for Regional Cooperation was considered at the 19th and 21st meetings of the Committee on 3 and 5 November 2004.[335]

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[331] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 49* (A/59/49), vol. II.

[332] A/C.6/59/L.26.

[333] For the reports of the Sixth Committee, see A/59/517–520. For the summary records, see A/C.6/59/SR.2 and 3.

[334] For the report of the Sixth Committee, see A/59/521. For the summary records, see A/C.6/59/SR.13 and 16.

[335] For the summary records, see A/C.6/59/SR.19 and 21. For the report of the Sixth Committee, see A/59/522.

(ii) *General Assembly*

The General Assembly adopted resolutions 59/48, 59/49, 59/50, 59/51, 59/52 and 59/53, in which it granted observer status to the Shanghai Cooperation Organization, the Southern African Development Community, the Collective Security Treaty Organization, the Economic Community of West African States, the Organization of Eastern Caribbean States and the South Asian Association for Regional Cooperation, respectively.

18. Advisory opinion of the International Court of Justice

On 8 December 2003, during its tenth emergency special session, the General Assembly adopted resolution ES-10/14 entitled "Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory." In this resolution, the General Assembly decided, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to urgently render an 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?"

On 9 July 2004, the International Court of Justice delivered its advisory opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.*[336] The Court replied to the question posed by the General Assembly as follows:

> "A. The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, are contrary to international law;
>
> B. Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, in accordance with paragraph 151 of this Opinion;
>
> C. Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem;
>
> D. All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention;

[336] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004,* p. 136.

E. The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the present Advisory Opinion."

On 20 July 2004, the General Assembly adopted, without reference to a Main Committee, resolution ES-10/15[337] entitled "Advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* including in and around East Jerusalem", in which it, *inter alia,* demanded that Israel, the occupying Power, comply with its legal obligations as mentioned in the Advisory Opinion. The Assembly called upon all States Members of the United Nations to comply with their legal obligations as mentioned in the Advisory Opinion and requested the Secretary-General to establish a register of damage caused to all natural or legal persons concerned in connection with paragraphs 152 and 153 of the Advisory Opinion.[338]

Furthermore, the General Assembly called upon both the Government of Israel and the Palestinian Authority to immediately implement their obligations under the road map,[339] in cooperation with the Quartet, as endorsed by Security Council resolution 1515 (2003), to achieve the vision of two States living side by side in peace and security and emphasized that both Israel and the Palestinian Authority are under an obligation scrupulously to observe the rules of international humanitarian law.

In addition, the General Assembly called upon all States parties to the Fourth Geneva Convention to ensure respect by Israel for the Convention, and invited Switzerland, in its capacity as the depositary of the Geneva Conventions, to conduct consultations and to report to the General Assembly on the matter, including with regard to the possibility of resuming the Conference of High Contracting Parties to the Fourth Geneva Convention.

19. Ad hoc international criminal tribunals[340]

International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR)

(i) *Election of permanent judges of the ICTY*

On 19 November 2004,[341] the General Assembly, pursuant to article 13 *bis* of the statute of the ICTY,[342] elected 14 permanent judges for a four-year term of office, beginning on 17 November 2005. Those elected were Mr. Carmel Agius (Malta); Mr. Jean-Claude

[337] The resolution was adopted by recorded vote of 150 in favor to 6 against, with 10 abstentions.

[338] See also chapter VI A of the present publication, under the section entitled "Miscellaneous".

[339] S/2003/529, annex.

[340] This section covers the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), which were the subject of resolutions of the Security Council and the General Assembly. Further information regarding the Judgements and Decisions of the ICTY and ICTR is contained in chapter VII of the present publication.

[341] See General Assembly decision 59/406. *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 49* (A/59/49), vol. II.

[342] The statute of the ICTY is annexed to the report of the Secretary-General pursuant to Security Council resolution 808 (1993) (S/25704 and Add.1). As at 31 December 2004, the statute had been

Antonetti (France); Mr. Iain Bonomy (United Kingdom); Mr. O-gon Kwon (Republic of Korea); Mr. Liu Daqun (China); Mr. Theodor Meron (United States); Mr. Bakone Melema Moloto (South Africa); Mr. Alphonsus Martinus Maria Orie (Netherlands); Mr. Kevin Horace Parker (Australia); Mr. Fausto Pocar (Italy); Mr. Patrick Lipton Robinson (Jamaica); Mr. Wolfgang Schomburg (Germany); Mr. Mohamed Shahabuddeen (Guyana); and Ms. Christine Van Den Wyngaert (Belgium).

(ii) *General Assembly*

On 23 December 2004, the General Assembly adopted, on the recommendation of the Fifth Committee, resolution 59/273[343] on "Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994". The General Assembly welcomed the efforts of the Tribunal to assist the Government of Rwanda in strengthening its judiciary, and requested the Tribunal to increase its capacity-building efforts for the judiciary of Rwanda, including through the recruitment of Rwandan legal professionals and training and attachment programmes, in view of the intention to transfer cases for prosecution to Rwanda as from 2005. It recognized the importance of carrying out an effective outreach programme within the overall mandate of the Tribunal and its Completion Strategy, and requested the Tribunal, in accordance with its mandate, to develop and implement outreach programmes that are proactive, utilizing available resources optimally, and that contribute to the reconciliation process by effectively developing an increased understanding of its work among Rwandans.

(iii) *Security Council*

By resolution 1534 adopted on 26 March 2004, the Security Council, acting under Chapter VII of the Charter of the United Nations, reaffirmed the necessity of trial of persons indicted by the ICTY and ICTR. It emphasized the importance of fully implementing the Completion Strategies, as set out in paragraph 7 of resolution 1503 (2003) that called on the ICTY and ICTR to take all possible measures to complete the investigations by the end of 2004, to complete all trial activities at first instance by the end of 2008 and to complete all work in 2010. The Council called on the ICTY and ICTR Prosecutors to review the case load of the ICTY and ICTR, respectively, in particular with a view to determining which cases should be proceeded with and which should be transferred to competent national jurisdictions and called further on each Tribunal, in reviewing and confirming any new indictments, to ensure that any such indictments concentrate on the most senior leaders suspected of being the most responsible for crimes within the jurisdiction of the relevant Tribunal as set out in resolution 1503 (2003). Furthermore, the Security Council recalled that the strengthening of competent national judicial systems is crucially important to

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amended by Security Council resolutions 827 (1993), 1166 (1998), 1329 (2000), 1411 (2002), 1431 (2002) and 1481 (2003).

[343] The resolution was adopted without a vote.

the rule of law in general and to the implementation of the ICTY and ICTR Completion Strategies in particular.

B. General review of the legal activities of intergovernmental organizations related to the United Nations

1. Universal Postal Union

Following a decision by the Bucharest Congress, the Universal Postal Union (UPU) acceded to the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986,[344] on 19 October 2004.

The Congress further established a UPU policy on extraterritorial offices of exchange (ETOEs). Under the policy, items sent from ETOEs are to be considered commercial items not subject to UPU Acts, unless the administration of destination has agreed to apply the Acts to the items it receives from them. Furthermore, the dispatch of items via an ETOE should no longer result in a decrease in the remuneration the destination country would receive for their delivery.

2. International Labour Organization

(*a*) Resolutions submitted in accordance with article 17 of the Standing Orders of the Conference[345]

At the 92nd session of the International Labour Conference, Geneva, the following draft resolutions were submitted in accordance with article 17 of the Standing Orders of the Conference. Of these, a resolution on the promotion of gender equality, pay equity and maternity protection was adopted.[346]

(a) Resolution concerning the strengthening of the role of the International Labour Organization (ILO) in supporting workers and employers in Palestine and the other occupied Arab territories as a result of continued Israeli occupation and aggressive practices;

(b) Resolution concerning the role of ILO in efforts to secure global peace, justice and security around the world;

(c) Resolution concerning pay equity;

(d) Resolution concerning ILO's efforts to combat poverty;

(e) Resolution concerning the social responsibilities of business;

(f) Resolution concerning the application of international labour standards to international civil servants;

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[344] A/CONF.129/15.

[345] ILC92-PR1–2004–05–0238–1-En.doc.

[346] ILC92-PR18–257-En.doc. The resolutions concerning pay equity (*c*), the promotion of gender equality (*m*), and the fourth anniversary of the Maternity Protection Convention, 2000 (*n*) were combined to become a new resolution on the promotion of gender equality, pay equity and maternity protection.

(g) Resolution concerning older workers and employment and social protection;

(h) Resolution concerning peace;

(i) Resolution concerning gender-equal pay;

(j) Resolution concerning poverty;

(k) Resolution concerning corporate social responsibility;

(1) Resolution concerning democratic values, good governance and transparency in a global economy and their impact on the world of work, competitiveness and sustainable development;

(m) Resolution concerning the promotion of gender equality;

(n) Resolution concerning the fourth anniversary of the Maternity Protection Convention, 2000 (No. 183);

(o) Resolution concerning the role of ILO in conflict prevention and resolution; and

(p) Resolution concerning corporate social responsibility.

(*b*) Standing Orders questions

At its 289th session (March 2004), the Governing Body of the International Labour Organization recommended that the International Labour Conference, for a trial period of at least three years, replace the provisions of its Standing Orders concerning the Credentials Committee with new provisions. These provisions are the result of a process of deliberation requested by the Credentials Committee at the 90th and 91st sessions of the Conference with a view to improving its work and effectiveness.[347]

(*c*) Withdrawal of 16 International Labour Recommendations[348]

The International Labour Conference, at its 92nd session on 1 June 2004 decided to withdraw the following 16 International Labour Recommendations:

(a) Withdrawal of the Reciprocity of Treatment Recommendation, 1919 (No. 2);

(b) Withdrawal of the Maternity Protection (Agriculture) Recommendation, 1921 (No. 12);

(c) Withdrawal of the Living-in Conditions (Recommendation), 1921 (No. 16);

(d) Withdrawal of the Weekly Rest (Commerce) Recommendation, 1921 (No. 18);

(e) Withdrawal of the Utilisation of Spare Time Recommendation, 1924 (No. 21);

(f) Withdrawal of the Migration (Protection of Females at Sea) Recommendation, 1926 (No. 26);

(g) Withdrawal of the Power-Driven Machinery Recommendation, 1929 (No. 32);

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[347] Third report of the Credentials Committee, ILC, 90th session, Provisional Record No. 5D; and Second report, ILC, 91st session, Provisional Record No. 5C. As regards examination of the question by the Governing Body, see also the following documents: GB.286/LILS/3, GB.286/13/1, GB.288/LILS/4, GB.288/10/1 and GB.289/LILS/1/1.

[348] ILC, Provisional Record 4–2A, 92nd session, Geneva, 2004.

(h) Withdrawal of the Protection Against Accident (Dockers) Reciprocity Recommendation, 1929 (No. 33);

(i) Withdrawal of the Protection Against Accidents (Dockers) Consultation of Organizations Recommendation, 1929 (No. 34);

(j) Withdrawal of the Forced Labour (Regulation) Recommendation, 1930 (No. 36);

(k) Withdrawal of the Invalidity, Old-age, Survivors' Insurance Recommendation, 1933 (No. 43);

(1) Withdrawal of the Elimination of Recruiting Recommendation, 1936 (No. 46);

(m) Withdrawal of the Contracts Employment (Indigenous Workers) Recommendation, 1939 (No. 58);

(n) Withdrawal of the Social Policy in Dependant Territories Recommendation, 1944 (No. 70);

(o) Withdrawal of the Social Policy in Dependant Territories (Supplementary Provisions) Recommendation, 1945 (No. 74); and

(p) Withdrawal of the Minimum Age (Coal Mines) Recommendation, 1953, (No. 96).

(*d*) Follow-up activities by the International Labour Office under the ILO Declaration on Fundamental Principles and Rights at Work[349]

Delegates at the 92nd session of the International Labour Conference were informed of the activities undertaken in pursuit of the action plans approved by the Governing Body in November 2000 on freedom of association and the effective recognition of the right to collective bargaining,[350] in November 2001 on forced or compulsory labour,[351] and in November 2003 on discrimination.[352]

(*e*) Adoption of the Recommendation concerning Human Resources Development: Education, Training and Lifelong Learning

The International Labour Conference, at its 92nd session, on 1 June 2004, adopted the Human Resources Development Recommendation, 2004.[353]

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[349] ILC, 86th session, Geneva, 1998, *Record of Proceedings,* vol. I, Nos. 20, 20A and 22, and vol. II, p. 20; *Official Bulletin* of the ILO, vol. LXXXI, 1998, Series A, No. 2.

[350] GB.279/TC/3.

[351] GB.282/TC/5.

[352] GB.288/TC/4.

[353] ILC, Provisional Record, 92nd Session 20 A, Geneva, 2004.

(*f*) Ratification and promotion of fundamental ILO Conventions[354]

In July 2004, the Director-General sent a circular letter to Governments of countries that had not ratified all the fundamental Conventions, asking them to indicate their position with regard to these Conventions and in particular whether or not their position had changed since their previous communication.

(*g*) Amendments to the Staff Regulations

Since the reorganization of the Office in line with strategic planning in 1999, a number of terminological changes occurred at senior-level management positions, in particular the introduction of Executive Directors and Regional Directors, instead of the former Deputy Directors-General and Assistant Directors-General. These changes were, however, never reflected in the Staff Regulations. Thus, in accordance with article 14, paragraph 7, of the Staff Regulations, at the 291st session (November 2004) of the Governing Body, the Director-General proposed to reflect consistently the new terminology throughout the legislation.

(*h*) General status report on ILO action concerning discrimination in employment and occupation[355]

(i) *Gender equality*

Gender equality was adopted as one of the Organization's operational objectives in the Programme and Budget proposals for 2004–2005. Indicators for this objective aim to measure the progress of ILO constituents in taking positive action to increase gender equality in the world of work. They focus on the ratification and application of four key international labour conventions for gender equality (elimination of discrimination, equal remuneration, maternity protection and workers with family responsibilities), as well as balanced representation of women and men at decision-making levels, including in ILO governance institutions, meetings and training activities.

(ii) *Racial, ethnic, religious, and social origin discrimination*

In 2004, ILO continued to cooperate with the Office of the United Nations High Commissioner for Human Rights with regard to the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. The ILO Committee of Experts continued to address the situation of the Roma in relevant countries and the International Labour Office participated in meetings organized by

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[354] GB.291/LILS/4. The fundamental Conventions are: Freedom of Association and Protection of the Right to Organise Convention, 1948; Right to Organise and Collective Bargaining Convention, 1949; Forced Labour Convention, 1930; Abolition of Forced Labour Convention, 1957; Equal Remuneration Convention, 1951; Discrimination (employment and Occupation) Convention, 1958; Minimum Age Convention, 1973; and Worst Forms of Child Labour Convention, 1999.

[355] GB.289/LILS/3.

the Organization for Security and Cooperation in Europe and the World Bank on the Roma, highlighting the need to address their employment situation from an equality perspective.

(iii) *Discrimination and migrant workers*

The International Labour Office continued its activities to support the establishment of national frameworks for the prevention of discrimination against migrant workers. In Asia, various promotional and advisory activities concerning ILO standards on migrant workers contributed to raising the profile of migration for employment and trafficking and created further opportunities for dialogue on the relevant standards. An information guide entitled *Preventing discrimination, exploitation and abuse of women migrant workers* has been published. In preparation for the general discussion at the International Labour Conference in June 2004, the Office held a series of regional and subregional consultations on labour migration, commissioned case studies on the law and practice on labour migration in seven countries and collected and reviewed information on this issue through a questionnaire.

(iv) *Discrimination and indigenous and tribal peoples*

The Interregional Programme to Support Self-Reliance of Indigenous and Tribal Communities through Cooperatives and other Self-Help Organizations (INDISCO) continued its work on projects in Africa and Asia. Community-level empowerment schemes have contributed to the elimination of discrimination against indigenous and tribal peoples, particularly in terms of access to employment and income generation, micro-credits, health and education, ancestral domains and policy-making processes.

(v) *Discrimination and workers of the occupied Arab territories*

At the 289th session of the Governing Body, the Director-General presented the regular report on the issue of discrimination and workers of the occupied Arab territories to the Conference. ILO continued to take steps to strengthen its technical cooperation programme aimed at creating sustainable jobs and future employment opportunities in the territories and reforming labour institutions, as well as seeking to facilitate social dialogue among constituents.

3. International Monetary Fund

(*a*) Membership issues

(i) *Accession to membership*

No new members joined the International Monetary Fund (IMF) in 2004 and the total membership remained at 184.

(ii) *Status and obligations under article VIII or article XIV of IMF's Articles of Agreement*

Under article VIII, sections 2 (a), 3, and 4, of IMF's Articles of Agreement, members of IMF may not, without IMF's approval, (i) impose restrictions on the making of payments and transfers for current international transactions; or (ii) engage in any discriminatory currency arrangements or multiple currency practices. Notwithstanding these provisions, pursuant to article XIV, Section 2, of the Articles of Agreement, when a member joins IMF, it may notify IMF that it intends to avail itself of the transitional arrangements under article XIV that allow the member to maintain and adapt to changing circumstances the restrictions on payments and transfers for current international transactions that were in effect on the date on which it became a member. Article XIV does not, however, permit a member, after it joins IMF, to introduce new restrictions on the making of payments and transfers for current international transactions without the approval of IMF.

Members that avail themselves of the transitional arrangements under article XIV, section 2, consult with IMF annually on the restrictions maintained thereunder. IMF generally encourages such members to remove these restrictions and to formally accept the obligations of article VIII, sections 2 (a), 3, and 4, where a member no longer maintains restrictions under article XIV, section 2, or the member's balance of payments position is sufficiently strong so as not to justify the retention of restrictions maintained under article XIV, section 2. Where necessary, and if requested by a member, IMF also provides technical assistance to help the member remove its exchange restrictions.

In 2004, five members, Cape Verde, Colombia, Iran (Islamic Republic of), Azerbaijan and Tajikistan, formally accepted the obligations of article VIII, sections 2 (a), 3, and 4. The total number of countries that had accepted these obligations as at 31 December 2004 was 163.

(iii) *Overdue financial obligations to the IMF*

At the end of December 2004, members with protracted arrears (i.e., financial obligations that are overdue by six months or more) to the IMF were Liberia, Somalia, the Sudan and Zimbabwe.

Article XXVI, section 2 (a), of IMF's Articles of Agreement provides that if "a member fails to fulfil any of its obligations under this Agreement, the Fund may declare the member ineligible to use the general resources of the Fund". Declarations of ineligibility under article XXVI, section 2 (a), remained in effect at the end of December 2004 with respect to the four IMF members with protracted arrears.

(iv) *Suspension of voting rights and compulsory withdrawal from the IMF*

(a) Liberia's voting and related rights were suspended on 5 March 2003. The suspension remained in effect throughout 2004.

(b) Zimbabwe's voting and related rights were suspended on 6 June 2003. The suspension remained in effect throughout 2004. On 3 December 2003, the Executive Board of the IMF noted that Zimbabwe had been in continuous arrears to the IMF since Febru-

ary 2001 and had persisted in its failure to fulfil its obligations under IMF's Articles of Agreement after the expiration of a reasonable period following the decision of suspension, taken pursuant to article XXVI, section 2 (b). In view of these circumstances, the Executive Board noted that it intended to initiate promptly the compulsory withdrawal procedure pursuant to article XXVI, section 2 (c). This procedure was initiated on 6 February 2004, with the issuance of the Managing Director's complaint to the Executive Board.

(*b*) Issues pertaining to voting and participation

(i) *Liberia*

As a consequence of the suspension of Liberia's voting and related rights (as discussed above), the Governor and Alternate Governor for Liberia in the IMF ceased to hold office pursuant to paragraph 3 (a) of schedule L of IMF's Articles of Agreement. Accordingly, Liberia was not entitled to participate in the 2004 Election of Executive Directors and was not represented at the 2004 IMF Annual Meeting.

(ii) *Somalia*

In October 1992, the IMF found that there was no effective government for Somalia with which IMF could carry on its activities. Since then, the positions of the Governor and Alternate-Governor for Somalia in the IMF have been vacant and Somalia did not participate in the 2004 Election of Executive Directors and was not represented at the 2004 IMF Annual Meeting.

(iii) *Zimbabwe*

As a consequence of the suspension of Zimbabwe's voting and related rights (as discussed above), the Governor and Alternate Governor for Zimbabwe in the IMF ceased to hold office pursuant to paragraph 3 (a) of schedule L of IMF's Articles of Agreement. Accordingly, Zimbabwe was not entitled to participate in the 2004 Election of Executive Directors and was not represented at the 2004 IMF Annual Meeting.

(*c*) IMF facilities

(i) *Modifications to the Poverty Reduction and Growth Facility (PRGF) Trust and the Poverty Reduction and Growth Facility-Heavily Indebted Poor Countries (PRGF-HIPC) Trust Instruments*

a. Additional HIPC assistance ("Topping-up")

In April 2004, the Executive Board of the IMF decided to revise the PRGF-HIPC Trust Instrument in order to bring it in line with its discussion in 2001, i.e., additional debt relief would be allowed to countries reaching their completion point, but only so as to bring the ratio of the net present value of debt-to-exports to 150 per cent (or debt-to-fiscal revenue to 250 per cent), if the deterioration in the member's debt sustainability is

primarily attributable to a fundamental change in the member's economic circumstances due to exogenous factors.

b. Extension of the sunset clause and modification of the eligibility criteria under the enhanced HIPC Initiative

In October 2004, the Executive Board of the IMF decided to extend the HIPC sunset clause by another two years, to the end of 2006, and modified the eligibility criteria under the enhanced HIPC Initiative to limit the application of the extension of the sunset clause to the International Development Association and IMF's Poverty Reduction and Growth Facility-eligible countries that have not yet benefited from HIPC debt relief and are assessed to have external public debt in excess of the enhanced HIPC Initiative thresholds after full application of traditional debt relief mechanisms based on debt data from the end of 2004.

c. Modification of the Poverty Reduction Strategy Paper (PRSP) architecture

In November 2004, the Executive Board of the IMF decided to revise the PRGF Trust and the PRGF-HIPC Trust Instruments in order to make a number of changes in respect of the relationship between poverty reduction strategy (PRS) documents (i.e., interim PRSPs, PRSP preparation status reports, PRSPs, and annual progress reports), and IMF financial assistance under PRGF arrangements and decisions on debt relief under the HIPC Initiative. In particular, the Executive Board eliminated the requirement for an explicit endorsement of a PRS document in connection with financial assistance under PRGF arrangements and decisions under the HIPC Initiative. The amendments also consolidated and integrated into the PRGF Trust and PRGF-HIPC Trust Instruments the rules on PRS documents that had evolved over time outside these Instruments. Under the current framework, financial assistance under PRGF arrangements and HIPC Initiative decisions generally require that the member concerned has in place a satisfactory PRS set out in a PRS document that had been issued to the Executive Board normally within the previous 12 months and had been the subject of an analysis in a Joint Staff Advisory note, also issued to the Executive Board.

(ii) *Support for trade-related balance of payments adjustments*

In April 2004, the Executive Board of the IMF approved the establishment of a Trade Integration Mechanism (TIM) within IMF's existing facilities to clarify further how IMF will stand ready to help its members mitigate short-term balance of payments difficulties stemming from trade liberalization measures undertaken by other countries. Financing under the TIM is designed to address existing or anticipated balance of payments difficulties related to the implementation of the trade liberalization measures mentioned above. These measures would normally be of the type introduced under a World Trade Organization (WTO) agreement or measures taken outside the WTO context on a non-discriminatory basis. Assistance under the TIM is provided in support of an appropriate macroeconomic and structural policy framework designed to address the identified balance of payments problems. Financing under the TIM is made available in the context of an upper credit *tranche* stand-by arrangement, an extended arrangement, or an arrangement under

the PRGF, either at the time of approval of the underlying arrangement or on completion of a program review under an existing arrangement.

To address the difficulties involved in projecting the balance of payments consequences of a particular trade event, financial assistance in accordance with the TIM is structured into a "baseline feature" and a "deviation feature". The baseline feature is established as part of the regular program design, either at the beginning of the underlying arrangement or at the time of a scheduled program review. The deviation feature is designed to assure a member from the outset of IMF's readiness to consider a future augmentation in access should the balance of payments effect of the trade event turn out to be even larger than anticipated under the established baseline feature. Augmentation under the deviation feature is limited to 10 per cent of quota, and this additional financing may be granted upon a determination made by IMF in the context of a special review that: (i) the member's adjustment program is broadly on track; and (ii) the additional financing is justified by unanticipated balance of payments difficulties of the type covered under the TIM. However, nothing prevents members from requesting IMF financial assistance outside the context of the TIM to address balance of payments problems of the type covered by this mechanism. In July 2004, Bangladesh became the first country to benefit from assistance under the TIM through augmentation of access under the existing PRGF arrangement for Bangladesh.

(*d*) Enhanced surveillance to prevent financial crisis

In March 2004, in view of the success of the pilot program and the importance attached to anti-money laundering and combating the financing of terrorism (AML/CFT) work, the Executive Board of the IMF agreed that AML/CFT should be a regular part of IMF's work, and that AML/CFT assessments, whether prepared by the IMF/World Bank or the Financial Action Task Force on Money Laundering (FATF) and FATF-style regional bodies, should continue to be included in all Financial Sector Assessment Program and Offshore Financial Centers assessments. The Executive Board also endorsed the revised FATF Recommendations as the relevant standard for the preparation of AML/CFT Reports on Standards and Codes and the revised assessment methodology.

IMF and the World Bank started conducting assessments under the new methodology during the second half of 2004. In doing so, they also provided the assessed countries with guidance on how best to address shortcomings in their AML/CFT frameworks. In parallel with the assessment program, both institutions delivered increased technical assistance to their member countries in order to help them develop and strengthen their AML/CFT regimes. Finally, IMF and the World Bank have continued to play an active role in the development of AML/CFT policy in close collaboration with FATF and other international bodies.

(*e*) Enhanced transparency – modifications to publication policy

In February 2004, the Executive Board of the IMF decided on a set of measures to enhance transparency. The Executive Board established a policy of voluntary but presumed publication for all staff reports on the use of IMF financial resources extended in support of members' economic adjustment programs, on post-program monitoring, and

on *ex post* program assessments. The Board further decided that, in cases where a member requests "exceptional access" to the use of IMF financial resources, the IMF Managing Director would generally not recommend Executive Board approval of such a request or the completion of an Executive Board review of the member's program unless the member consented to the publication of the associated staff report. With regard to IMF's surveillance function, the Executive Board also decided to move to voluntary but presumed publication of all article IV consultation country reports, related background papers, and public information notices.

Under the transparency decision, a presumption of publication means that IMF publication of an applicable document would be expected to occur within 30 calendar days of the Executive Board meeting at which that document was considered. The member is expected to indicate its intentions on publication prior to the expiration of the 30 days.

The Executive Board also decided that, prior to the publication of certain defined country-specific documents, the concerned member may request deletions to a document. The Executive Board's decision provided that such deletions should be limited to highly market-sensitive material, mainly on exchange rates and interest rates, in banking and fiscal areas, and in vulnerability assessments. Deletions, however, do not apply to information that is already in the public domain or to politically sensitive information that is not highly market sensitive. A document may also be modified prior to publication to correct factual errors, including errors in characterizing the authorities' views.

4. International Civil Aviation Organization

(*a*) Membership

No new members joined the International Civil Aviation Organization (ICAO) in 2004.

(*b*) Conventions and agreements

The Protocol relating to an amendment to the Convention on International Civil Aviation [article 56], signed at Montreal on 6 October 1989 (increase of the Air Navigation Commission from 15 to 19 members)[356] was ratified by 7 new States, bringing the total number of ratifications to 106 by the end of 2004.

(*c*) Major legal developments

(i) *Work programme of the Legal Committee and legal meetings*

The 35th session of the ICAO Assembly established the General Work Programme of the Legal Committee as follows.

(*a*) Consideration of the establishment of a legal framework with regard to navigation and surveillance/air traffic management (CNS/ATM) systems, including global navigation satellite systems (GNSS). The secretariat Study Group on Legal Aspects of CNS/ATM Systems submitted its final report to the ICAO Council, which covered considerations of a

[356] ICAO Document 9544.

contractual framework and of an international convention relating to CNS/ATM systems. The Council submitted its report to the 35th session of the Assembly, and, on that basis, the Assembly adopted resolution A35–3 entitled "A Practical Way Forward on Legal and Institutional Aspects of Communications, Navigation, Surveillance/Air Traffic Management (CNS/ATM) Systems".

(*b*) 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.[357] The Legal Committee, during its 32nd session, considered the text of a draft Convention on Damage Caused by Foreign Aircraft to Third Parties. The Council considered the Legal Committee report on this subject, which included the text of the draft convention resulting from the deliberations of the Committee. The Council agreed that the text of the draft convention was not yet mature enough for submission to a diplomatic conference and required additional study. A Special Group on the Modernization of the Rome Convention of 1952 was established to advance the work.

(*c*) Acts or offences of concern to the international aviation community and not covered by existing air law instruments. The Council reported to the 35th session of the Assembly on the status of the implementation of Assembly resolution A33–4 entitled "Adoption of national legislation on certain offences committed on board civil aircraft (unruly/disruptive passengers)".

(*d*) International interests in mobile equipment (aircraft equipment). The Secretary General received the necessary start-up funding for the work of the Preparatory Commission for the International Registry provided on a voluntary basis by Contracting States and interested private parties. An international tendering process began and from among four candidates, the Preparatory Commission, at its second meeting held in Montreal from 27 to 28 May, selected Aviareto from Ireland as the entity which will establish the International Registry and act as the Registrar, in accordance with the Convention on International Interests in Mobile Equipment and the Protocol thereto on Matters specific to Aircraft Equipment, adopted in Cape Town in November 2001.[358]

The Working Group set up by the Preparatory Commission agreed on a set of draft regulations for the International Registry, which will be tabled before the Preparatory Commission at its third meeting scheduled to be held in Montreal from 17 to 18 January 2005.

(e) Review of the question of the ratification of international air law instruments. The secretariat continued to take administrative action necessary to encourage ratification of international air law instruments, such as the development and dissemination of ratification packages, promotion of ratification at various fora, and continued emphasis on ratification matters by the President of the Council and the Secretary General during their visits to States.

(f) United Nations Convention on the Law of the Sea, 1982 – Implications, if any, for the application of the Convention on International Civil Aviation (Chicago Convention),

[357] ICAO Document 7364. United Nations, *Treaty Series,* vol. 310, p. 181.

[358] ICAO documents 9793 and 9794.

1944,[359] its annexes and other international air law instruments. The secretariat pursued its monitoring activities in this area.

The Legal Committee also expressed its views on a draft amendment to the Technical annex to the Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991,[360] and recommended that certain provisions of the Convention be applied, *mutatis mutandis*, without amending either the Convention or its Technical annex. Based on this recommendation, as endorsed by the Council on 31 May, the 35th session of the Assembly adopted resolution A35–2 entitled "Application of article IV of the Convention on the Marking of Plastic Explosives for the Purpose of Detection".

(ii) *Assistance in the field of aviation war risk insurance*

Globaltime, an ICAO proposal for a global scheme intended to provide non-cancellable, third-party aviation war risk coverage through a non-profit insurance entity with multilateral backing of Governments for the initial years, is a short- and medium-term contingency scheme.[361] By the end of the year, Contracting States representing 46.36 per cent of annual contribution rates indicated their intention to participate in Globaltime, among which 34.93 per cent under certain conditions.[362] Therefore, the 51 per cent threshold of intentions to participate has so far not been reached and the ICAO global scheme is held in contingency mode.[363] The secretariat continued monitoring market developments and, in this respect, participated in the High-Level Conference on Catastrophic Risks and Insurance organized on the occasion of the 74th session of the Insurance Committee of the Organization for Economic Cooperation and Development.

5. United Nations Educational, Scientific and Cultural Organization

(*a*) International regulations

(i) *Entry into force of instruments previously adopted*

Within the period covered by this review, the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict adopted at the Hague on 26 March 1999 entered into force on 9 March 2004.[364]

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[359] United Nations, *Treaty Series,* vol. 15, p. 295. For the text of the Protocols amending this Convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21; vol. 893, p. 117; vol. 958, p. 217; vol. 1008, p. 213; vol. 2122, p. 337; vol. 2133, p. 43; and vol. 2216, p. 483.

[360] ICAO document 9571. United Nations, *Treaty Series,* vol. 2122, p. 359.

[361] Resolution A33–20.

[362] Resolution A33–26.

[363] State Letter LE 4/64–03/65 of 30 June 2003.

[364] United Nations, *Treaty* Series, vol. 2253, p. 172. For more information on legal instruments, see www.unesco.org/legal_instruments. This site lists each instrument by type and by UNESCO sector of activity. Inside each instrument, html versions of the texts in English and French are available as well as links to PDF files from official documents in all six official languages of UNESCO. This site also contains the list of State parties to each convention.

(ii) *Proposals concerning the preparation of new instruments*

During 2004, preparatory work was undertaken on a preliminary draft Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions, on a draft International Convention against Doping in Sport, and on a draft Declaration on Universal Norms on Bioethics. Proposals for the adoption of these three new instruments are included on the provisional agenda of the 33rd session of the General Conference (3–21 October 2005).

(*b*) Human rights

Examination of cases and questions concerning the exercise of human rights coming within the United Nations Educational, Scientific and Cultural Organization's (UNESCO) fields of competence

The Committee on Conventions and Recommendations met in private sessions at UNESCO Headquarters from 15 to 16 April 2004 and from 29 to 30 September 2004 in order to examine communications which had been transmitted to it in accordance with decision 104 EX/3.3[365] of the Executive Board.

At its April 2004 session, the Committee examined 28 communications of which 2 were examined with a view to determining their admissibility or otherwise, 19 as to their substance, and 7 were examined for the first time. Four communications were struck from the list because they were considered as having been settled. The examination of the 24 was deferred. The Committee presented its report to the Executive Board at its 169th session.

At its September 2004 session, the Committee examined 30 communications of which 4 were examined with a view to determining their admissibility, 20 as to their substance and 6 new communications were submitted to the Committee. Eight communications were struck from the list because they were considered as having been settled. The examination of the 22 was deferred. The Committee presented its report to the Executive Board at its 170th session.

(*c*) Copyright activities[366]

In 2004, UNESCO's activities in the field of copyright and related rights focused mainly on the following.

(i) *Information and public awareness activities*

(a) E-Copyright bulletin. Online publication of *UNESCO Copyright Bulletin* in the six official languages as a free-of-charge electronic legal journal. The Arabic version was

[365] Decision 104 EX/3.3 relates to the study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective. For the text of decision 104 EX/3.3, see, 104/EX/Decisions.

[366] For more information on copyright activities, see www.unesco.org/culture/copyright.

published for the first time in 2004. The *Copyright Bulletin* contains doctrine and information on national laws, on UNESCO's activities in the field, on participation of States in various conventions, and on specialised books recently published.

(b) Publication of *New topics in the field of copyright and neighbouring rights* by Professor Delya Lypzig. The book is a supplement of the *UNESCO Manual on Copyright and neighbouring rights* and covers the challenges of digital technology that copyright has faced over the last ten years and the legal and jurisprudential response to these challenges at international, regional and national levels.

(c) Collection of national copyright laws. The new version of the collection of *National Copyrights Laws in the World,* comprising about 100 national copyright and related rights legislations of UNESCO member States, has been published online. This unique tool endeavours to provide access to legal texts and is constantly being updated and completed.

(ii) *Training and teaching activities*

The teaching of copyright law has been pursued by the existing network of UNESCO Copyright Chairs. UNESCO contributed to the reinforcement of some Chairs, and to the development of national expertise in the field of copyright by supplying the Chairs with pedagogical material in this area or supporting them in publishing their own publications. UNESCO further prepared for the establishment of new UNESCO Copyright Chairs in Cameroon and Moldova.

In addition, copyright training seminars were organised in different parts of the world.

(iii) *Administration of the Universal Copyright Convention*[367] *and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention)*[368]

In 2004, in view of the preparation of the 13th session of the Intergovernmental Copyright Committee, established under the Universal Copyright Convention, 1952, and the 19th session of the Intergovernmental Committee of the Rome Convention,[369] the following studies were commissioned: "Certain legal problems related to the making available of literary and artistic works and other protected subject matter through digital networks"; "Applicable law in cross-border cases of copyright infringement in the digital environment"; and "Report on piracy: current trends and rates and consequences for creativity and sustainable development".

[367] United Nations, *Treaty Series,* vol. 216, p. 132.

[368] United Nations, *Treaty Series,* vol. 496, p. 43.

[369] The two sessions will take place in June 2005 at UNESCO Headquarters.

(iv) *Enforcement and management of rights*

a. Prevention of piracy through training

During the period under review, UNESCO developed and launched the Anti-Piracy Training for Trainers project, consisting of a series of regional and/or subregional courses for copyright law enforcement officials, with an objective to provide knowledge and expertise in the field of copyright law and intellectual piracy, at a first stage to the participants in the course, and, at a second stage, to a larger circle of national enforcement agencies involved in anti-piracy activities, such as law-makers, government, police, customs, magistrates etc.

The first advanced course for copyright enforcement officials was organised by UNESCO in the subregion of South-East Europe in May 2004 and was followed by national anti-piracy seminars in the beneficiary countries.

b. Prevention of piracy through public awareness-raising and information

In 2004, UNESCO published jointly with the *Centro Regional para el Formento del Libro en América Latina y el Caribe* (CERLALC) and the Copyright Directorate of Columbia *Los oficios de la imaginacion – The skills of imagination*, a copyright handbook which aims to promote a culture of respect for copyright among children in early school.

6. World Meteorological Organization

Cooperation with the United Nations and other organizations

Agreements and working arrangements – 2004

(a) Memorandum of Understanding for cooperation with the Netherlands Organization for applied Scientific Research.

(b) Memorandum of Understanding with the International Research Institute.

(c) Memorandum of Understanding with the Economic Cooperation Organization.

7. International Maritime Organization

(*a*) Membership of the International Maritime Organization (IMO)

Tuvalu became a member of IMO in 2004. As at 31 December 2004, the membership of the Organization was at 164.

(*b*) Review of legal activities of IMO

The Legal Committee held its eighty-eighth session from 19 to 23 April 2004 and its eighty-ninth session from 25 to 29 October 2004.

(i) *Review of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988,*[370] *and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988*[371] *(SUA Convention and Protocol)*

At its eighty-eighth session, the Committee considered the need to ensure that the prospective SUA Protocols do not jeopardize the principle of freedom of navigation and the right of innocent passage which are guaranteed by the United Nations Convention on the Law of the Sea (UNCLOS), 1982, as well as by basic principles of international law. It also noted the need to consider carefully the linkage between the proposed new offences and the boarding provisions as not all offences should necessarily trigger the right to board. Concern was expressed about the inclusion in the draft of provisions criminalizing the transportation of weapons of mass destruction (WMD), as well as the criminalization of activities which were the subject of other treaties, such as the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 1972, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992, and the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), 1968. In this connection, the Committee addressed the issue of the extent of its mandate to elaborate the two draft protocols.

The Committee gave extensive consideration to the new offences contained in draft article 3 *bis* including a provision aimed at suppressing ecological terrorism by criminalizing discharges of substances in such quantities or concentration that cause serious damage to the environment and the inclusion of offences intended to criminalize the sea transport of different substances or materials.

The Committee recognized that the inclusion of boarding provisions constituted a significant departure from the fundamental principles of freedom of navigation on the high seas and exclusive jurisdiction of flag States over their vessels. In this regard, it was accepted that the principle of flag State jurisdiction must be respected and that a boarding by another State on the high seas could only take place in exceptional circumstances. The Committee also recognized that the provisions on compensation for an unjustified boarding needed to be strengthened.

At its eighty-ninth session, the Committee continued its deliberations, taking into account the work done by the *ad hoc* intersessional Working Group, which had met at IMO Headquarters from 12 to 16 July 2004. The Committee extensively discussed the dangers and difficulties of boarding at sea and whether appropriate measures could be more safely taken in port.

The Committee adopted a provision establishing that any use of force during boarding shall not exceed the minimum degree of force necessary and reasonable in the circumstances and agreed on the need to include an explicit provision on the primary right to exercise jurisdiction and the circumstances when it might be waived where States have concurrent jurisdiction over offences.

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[370] United Nations, *Treaty Series,* vol. 1678, p. 201.

[371] *Ibid.*

It also agreed on the need for the inclusion of compensation for unjustified boarding and considered several proposals in this regard. There was insufficient support for a proposal to include provisions on joint and several liability, arbitration and the right of direct action against flag and boarding States on the grounds that it was too detailed and would be difficult to implement.

The Committee extensively discussed the incorporation of transport offences and noted that a clarification of the meaning of "transports" was required to provide legal certainty and avoid situations in which innocent passengers and crew might be accused of offences under the Convention.

The Committee agreed to include the offence of transporting a fugitive and supported, in principle, the inclusion of an offence for the transport of dual use materials and related technology. It also agreed to include in the definition of "death or serious injury or damage" resulting from unlawful acts a reference to substantial damage to the environment, including air, soil, water, fauna or flora.

The Committee agreed to reconvene its *ad hoc* intersessional Working Group from 31 January to 4 February 2005 to further elaborate the draft SUA protocols.

(ii) *Draft wreck removal convention*

At its eighty-eighth session, the Committee considered the following four main issues: application of the draft wreck removal convention to the territorial sea; exclusion of liability for acts of terrorism; identification of the person normally in charge of the day-to-day operation of the ship, who might not necessarily be the registered owner as presently defined in the convention; and the relationship between the draft wreck removal convention and the existing liability regimes. It also examined and approved, subject to drafting improvements, the provisions concerning objectives and general principles, scope of application, reporting of wrecks and determination of the hazard.

The Committee agreed that further intersessional work was required to ensure compatibility between the draft wreck removal convention and the International Convention on Salvage, 1989,[372] and requested the assistance of the *Comité Maritime International* (CMI) in this regard. The results of the CMI study were considered at the eighty-ninth session.

At that session, the Committee approved the text of an article on financial liability for locating, marking and removing wrecks and considered the implications of including terrorism within the concept of "acts of war". It also approved an article on relationship with other liability conventions, subject to drafting improvements, to avoid the possibility of double compensation.

The Committee agreed that the draft required further consideration in the light of the comments and proposals made and recommended that work should continue intersessionally under the leadership of the delegation of the Netherlands to further refine the text.

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[372] United Nations, *Treaty Series*, vol. 1953, p. 165.

(iii) *Provision of financial security*

Crew claims

At its eighty-eighth session, the Committee noted the report[373] of the fifth session of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers (Joint Working Group) (12–14 January 2004).

The Committee authorized the Joint Working Group to proceed with the development of longer-term sustainable solutions to address the problems of financial security with regard to compensation in case of death and personal injury, leaving aside, for the time being, whether they should be mandatory or not.

At its eighty-ninth session, the Committee noted progress made by the Joint Working Group. It also noted that the International Labour Organization (ILO) was developing a database on cases of abandonment, which was expected to be ready and fully operational in the course of the first quarter of 2005.

The Committee renewed its call for member States and international organizations to respond to Circular letters No. 2531 on Monitoring the Implementation of the Guidelines on Provision of Financial Security in case of Abandonment of Seafarers (resolution A.930(22)) and No. 2532 on Reporting on Cases of Abandonment.

(iv) *Follow-up on resolutions adopted by the International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974*

a. Bareboat chartered vessels

At its eighty-eighth session, the Committee noted information regarding an ongoing study of the CMI concerning the current practice of registration of bareboat chartered vessels and the implications for insurance certificate-issuing obligations under IMO liability conventions.

At its eighty-ninth session, the Committee considered a follow-up report of the CMI on this issue as well as a submission identifying two key issues relating to the compulsory insurance provisions of the Athens Protocol, 2002,[374] which would need to be addressed. The Committee briefly discussed the various options for resolving these issues but reached no firm conclusions except that revision of the Athens Convention[375] was not one of the options. It encouraged informal consultations to continue.

b. Liability coverage under the Protocol of 2002 to the Athens Convention, 1974

At its eighty-eighth session, the Committee noted concerns expressed by the International Group of P&I Associations (International Group) that sufficient liability coverage

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[373] IMO/ILO/WGLCCS 5/3.

[374] The Protocol of 2002 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, adopted on 1 November 2002. LEG/CONF 13/20 of 19 November 2002.

[375] United Nations, *Treaty Series*, vol. 1463, p. 19.

may not be available to permit certification of the liability exposure under the Athens Protocol, 2002. Liability cover for acts of terrorism was a particular problem. In this connection, it noted that the delegation of Norway had undertaken to explore the insurance issue through informal exchanges of views with other delegations and would report back to it.

(v) *Fair treatment of seafarers*

At its eighty-eighth session, the Committee considered a submission expressing concern about the treatment of seafarers following maritime accidents and proposing that IMO, perhaps in cooperation with ILO, consider the development of appropriate guidelines or other measures on the fair treatment of seafarers caught up in such situations based not only on the principles of UNCLOS but also on the fact that unwarranted detention was a violation of basic human rights.

The Committee noted the information given by the representative of ILO on action taken within that Organization and suggested the formation of a Joint IMO/ILO Working Group to develop guidelines on the subject. The Committee further noted the Secretary-General's concerns regarding the detention of seafarers serving on ships involved in accidents, which have resulted in serious pollution of the marine environment.

The Committee agreed to include as a new, independent item on its work programme the development of guidelines on the fair treatment of seafarers and endorsed the proposal to establish a Joint IMO/ILO Working Group.

At its eighty-ninth session, the Committee agreed on terms of reference for the Working Group and noted that these did not extend to the treatment of seafarers following incidents committed with criminal intent.

(vi) *Places of refuge*

At its eighty-eighth session, the Committee noted that resolution A.949(23) on Guidelines on Places of Refuge for Ships in Need of Assistance requested it to consider, as a matter of priority, the said Guidelines from a legal perspective, including the provision of financial security to cover coastal State expenses and compensation issues.

The Committee noted that the CMI would be considering liability and compensation issues at its Vancouver Conference in June 2004 and that the International Group intended to formulate a standard form letter of undertaking to facilitate access to places of refuge in appropriate cases, which would respond to liabilities that were already covered, such as pollution and wreck removal.

At its eighty-ninth session, the Committee noted a proposal from the CMI Vancouver Conference for a new convention on places of refuge as well as the views of the International Group that it would be premature for IMO to decide on the need for such a convention, prior to the entry into force of all the IMO conventions on liability and compensation and an assessment of their effect in relation to places of refuge. The Committee agreed that this matter required further study.

(vii) *Monitoring the implementation of the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by Sea, 1996 (HNS Convention)*[376]

At its eighty-eighth session, the Committee noted the work in progress in several countries towards ratification of the HNS Convention and that the International Oil Pollution Compensation (IOPC) Funds were near to completing the development of an HNS Data Base, which would include a "cargo calculator" to facilitate reporting of contributing HNS Cargo. It also noted a report of the delegation of the United Kingdom, as leader of the HNS Correspondence Group, on the work undertaken by the Group since the Legal Committee's eighty-sixth session.

At its eighty-ninth session, the Committee noted a further report by the HNS Correspondence Group, in particular, that the ratification process had been held back to ensure that as many States as possible ratify at or about the same time, thereby triggering the entry into force of the treaty.

The Committee also noted that article 43 of the HNS Convention imposed a requirement on States parties to report information on contributing cargo at the time of ratification and on an annual basis, including nil reports. In this connection, it noted that the IOPC Funds had completed the development of a database for identifying and recording contributing cargo.

(viii) *Access of news media to the proceedings of institutionalized committees*

At its eighty-eighth session, the Committee considered a submission containing draft guidelines on the access of news media to the proceedings of various committees of the Organization and agreed, in principle, to the establishment of such guidelines.

In so doing, it endorsed the views of the Secretary-General on trust and co-operation with the press and also agreed on the need for IMO meetings to be transparent, noting, however, that the press should be accurate in their reporting and that the guidelines should maintain the right balance between publicity for the work of the Organization whilst, at the same time, maintaining the efficient and effective conduct of IMO meetings. Since the aim was to apply the guidelines to all committees and their subsidiary bodies, the rules of procedure of each committee might need to be changed to permit access by the media to the proceedings of the various IMO organs.

At its eighty-ninth session, the Committee adopted an amendment to rule 9 of its Rules of Procedure to explicitly allow access to its meetings by news media, without, at the same time, opening them to the general public. It also noted that a system of accreditation of representatives from the maritime news media had been established to facilitate their attendance at IMO meetings.

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[376] LEG/CONF.10/8/2 of 9 May 1996.

(ix) *Technical cooperation – subprogramme for maritime legislation*

At its eighty-eighth session, the Committee noted the progress report provided in document LEG 88/11 and its annex on technical cooperation activities in the field of maritime legislation which had taken place from July to December 2003.

It further noted the information provided by the Technical Cooperation Division, regarding the increasing number of requests from developing countries for assistance in updating their maritime legislation, the special global programme to address new and urgent requests in this regard, as well as the recently-completed impact assessment exercise on maritime legislation.

At its eighty-ninth session, the Committee noted a progress report on technical co-operation activities in the field of maritime legislation which had taken place from January to June 2004 and, in particular, the development of some 18 models of primary or secondary legislation.

(x) *Torres Strait Particularly Sensitive Sea Area associated protective measure – compulsory pilotage*

At its eighty-ninth session, the Committee considered the legal aspects of compulsory pilotage in straits used for international navigation, in the light of a proposal by Australia and Papua New Guinea to extend the existing Great Barrier Reef Particularly Sensitive Sea Area to cover the Torres Strait and to adopt, as one associated protective measure, a compulsory pilotage scheme in the Torres Strait.

There was general recognition of the importance of protecting the marine environment of the Torres Strait, as well as of upholding fundamental principles of international law, including those codified in UNCLOS, in particular the right of transit passage through a strait used for international navigation. There was also agreement that IMO was the competent international organization to address such measures. However, the Committee remained divided on the legality of compulsory pilotage in a strait used for international navigation.

(xi) *Measures to protect crews and passengers against crimes on vessels*

At its eighty-eighth session, the Committee noted an interim analysis by the CMI on its ongoing work to examine State practice on how crimes committed on vessels on the high seas were handled in different jurisdictions as well as suggestions by one delegation on possible measures to prevent such crimes.

At its eighty-ninth session, the Committee noted the adoption of a resolution by the CMI Assembly on the ability of coastal States to take custody of a foreign citizen accused of a criminal offence on a foreign flag ship on the high seas and the recommendation therein that the CMI establish a Joint International Working Group to draft a model national law concerning such offences. However, it was decided that no further action was required of the Committee at this time, leaving open the possibility that the matter could be reactivated at some future meeting by interested delegations.

(xii) *Severe Marine Pollutants and the 1973 Intervention Protocol*[377]

At its eighty-eighth session, the Committee noted the information concerning developments taking place in the Sub-Committee on Dangerous Goods, Solid Cargoes and Containers affecting the list of substances to which the 1973 Intervention Protocol applies and the potential implications of this information for the HNS Convention.

(xiii) *Work programme and long-term work plan*

At its eighty-ninth session, the Committee considered that, notwithstanding the good progress made by the Working Group on the revision of the SUA treaties at that session, the draft instruments would still require another week of the Committee's time. It accordingly decided to hold a second session of its *ad hoc* intersessional Working Group from 31 January to 4 February 2005 and to have a two-week Legal Committee meeting from 18 to 29 April 2005, on the understanding that the first week would be completely devoted to the finalization of the revision of the SUA treaties and the second week would then be devoted to the draft wreck removal convention and the remaining items on the Committee's agenda.

The Committee decided to recommend the convening of a Diplomatic Conference on the revision of the SUA treaties from 10 to 14 October 2005.

8. World Health Organization

(*a*) Constitutional developments

In 2004, no new member State joined the World Health Organization (WHO). Thus at the end of 2004, there were 192 member States and two Associate members of WHO.

As at 31 December 2004, 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 116 member States; the amendment to article 7 of the Constitution, adopted in 1965 by the eighteenth World Health Assembly to suspend certain rights of members practising racial discrimination, had been accepted by 90 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 91 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

(i) *WHO Framework Convention on Tobacco Control*

On 21 May 2003, the fifty-sixth World Health Assembly adopted by resolution WHA56.1 the WHO Framework Convention on Tobacco Control (FCTC) and established

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[377] Protocol relating to intervention on the high seas in cases of pollution by substances other than oil, 1973. United Nations, *Treaty Series*, vol. 1313, p. 3.

an Open-ended Intergovernmental Working Group (IGWG) to consider and prepare proposals on a number of issues identified in the Convention. In preparation for the convening of the Conference of the Parties and the implementation of the treaty, the IGWG held its first session from 21 to 25 June 2004. The issues considered included: Rules of Procedure for the Conference of the Parties; options for the designation of the permanent secretariat; Financial Rules for the Conference of the Parties; a draft budget for the first financial period; and a review of existing sources and mechanisms of funding for the treaty. There was general agreement on the establishment of the permanent secretariat at WHO and the need for WHO to undertake a detailed study on potential sources and mechanisms of support for the FCTC. There was also consensus on the draft Rules of Procedure for the Conference of Parties and the draft Financial Rules. The IGWG requested WHO to prepare a full report on these issues, highlighting areas of convergence and identifying those areas that required further work.

The FCTC closed for signature on 29 June 2004. It continued to be open for ratification, acceptance, approval or formal confirmation by those countries or regional economic integration organizations that had already signed it and for accession by those that had not. On 29 November 2004, the fortieth instrument of ratification, acceptance, approval, formal confirmation, or accession of the convention was deposited and, in accordance with its article 36, the treaty would enter into force ninety days after that deposit, i.e., on 27 February 2005. By the end of 2004, the Convention had attained a total of 49 Contracting Parties and 167 member States and the European Community had signed it. The adoption of the FCTC by the World Health Assembly in 2003 and its rapid acceptance have demonstrated that WHO and its member States recognize the importance of the Convention in the global effort to counteract tobacco-related illness.

WHO continued to expand its capacity to provide general and specialized legal support to member States on tobacco control. These activities were increasingly focused on supporting the drafting of tobacco control legislation and the incorporation of provisions of the FCTC in national legislation, at the request by member States. WHO convened workshops regarding enforcement of tobacco control legislation in its South-East Asia Region and on enforcement of packaging and labeling legislation in its region of the Americas. Legal support was also provided through country missions by WHO Headquarters staff. FCTC awareness-raising and capacity-building workshops were convened at subregional or national levels in all the six WHO regions to provide information on the specific obligations contained in the Convention, its opportunities and implications, and the legal and practical issues regarding its adoption.

(ii) *Revision of the International Health Regulations*

As requested by resolution WHA56.28, adopted by the fifty-sixth World Health Assembly on 28 May 2003, the WHO secretariat prepared an initial draft of the revised International Health Regulations (IHR). The document was communicated to WHO member States on 12 January 2004 in time for regional consultations that took place between March and June of the same year. Resources were provided to all the six WHO regions to ensure the participation of the least developed countries. The results from the regional consultations together with other comments received were used by the secretariat to prepare a second draft of the revised IHR that was communicated to member States on

30 September 2004. The Intergovernmental Working Group on the Revision of the IHR, established by resolution WHA56.28 to review and recommend a draft revision of the IHR for consideration by the Health Assembly, held its first session from 1 to 12 November 2004. Although significant progress was made by the Working Group, member States agreed that a second session would be required in February 2005 to finalize the negotiations on the revised IHR and requested the Chair of the Working Group to prepare a proposal reflecting the outcome of the discussions. It was anticipated that the proposal by the Chair would form the basis for the discussions at its second session.

(iii) *Health legislation*

In 2004, the WHO Health Law Work Programme continued to administer the *International Digest of Health Legislation* and *Recueil international de législation sanitaire,* which contains a selection of national, regional and international health legislation. The texts represent over 140 jurisdictions and cover a range of diverse subjects, such as health sector organization, the control of emerging communicable diseases (SARS and avian influenza), organ transplantation, blood transfusion, domestic violence, abortion, the employment of disabled persons, mental health, smoking control, patients' rights, pesticide residues in food, waste management, greenhouse gas emissions, radiation protection, and road safety. The collection serves as an effective means for exchange of information and technical cooperation with countries in the field of health legislation. In addition, WHO launched the Directory of Legal Instruments on HIV/AIDS.

WHO supported member States, at their request, in developing appropriate national health legislation adapted to their needs. This country specific work, often conducted in collaboration with the WHO Regional and Country Offices, was performed, for example, with Pakistan, South Africa and Viet Nam concerning the preparation of their respective organ transplantation laws in the implementation of the World Health Assembly resolutions WHA44.25 and WHA57.18; Belarus in strengthening legislation on patients' rights; Togo in reviewing and supporting the finalization of the draft Code of Health Law; Tonga and Vanuatu on seatbelt/road safety legislation; Viet Nam and the Philippines on the implementation of the International Code of Marketing of Breast milk Substitutes; Cambodia, Cook Islands and the Lao People's Democratic Republic on food safety legislation; and Japan in conducting research on leprosy legislation. In addition, WHO provided support to member States on the drafting of tobacco control legislation (see above at (i)), and in the teaching of health law in Dakar University, Senegal, and collaborated in the organization of regional and international conferences in the fields of medical and health law.

The WHO Health Law Work Programme continued to develop model health legislation as tools for technical cooperation in health law. These legislative guidelines and good practice models are intended to assist m*ember States when reviewing and updating their legislative and regulatory frameworks.* In 2004, the work focused on elaborating a Model Legislative Framework for National Blood Transfusion Policy and a Model Electromagnetic Fields Law and Regulations. WHO also launched a major project to develop a Model Public Health Act to advance the United Nations Millennium Development Goals and to serve as a reference tool for member States to update laws with current issues in public health.

(iv) *Other activities*

WHO actively participated in the drafting process of the Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities. During the fourth meeting of the Ad Hoc Committee on this topic, WHO submitted a statement including comments on the draft provisions of particular interest to the Organization, including draft article 21, entitled "Right to health and rehabilitation".

WHO continued to provide technical support to the United Nations human rights treaty monitoring bodies, in particular to the Committee on the Rights of the Child, the Committee on the Elimination of All Forms of Discrimination Against Women, and the Committee on Economic, Social and Cultural Rights, in relation to health and human rights issues.

In General Comment number 14[378] on the right to the highest attainable standard of health issued by the Committee on Economic, Social and Cultural Rights in 2000, the Committee noted the need for right to health indicators designed to monitor, at the national and international levels, State parties' obligations under article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966.[379] In the General Comment, the Committee identified WHO as one of the relevant United Nations agencies to guide States parties in that process. In this context, WHO convened in 2004 the second consultation on the right to health indicators.

The Codex Alimentarius Committee on Food Labelling (CCFL) undertook, at the request of the Codex Alimentarius Commission, to consider developing a definition for advertising in relation to health and nutrition claims. The WHO Regional Office for the Western Pacific conducted country specific training concerning the work of the Codex Alimentarius Commission and promoted regional cooperation in the field of food safety, *inter alia,* by establishing a database on food legislation and imported food control.[380]

The Organization continued to monitor the implementation of the International Code of Marketing of Breast milk Substitutes, adopted by the World Health Assembly in 1981. A course on its implementation was organized, with WHO support, for the Pacific in November 2004.

9. International Atomic Energy Agency

(*a*) Membership

In 2004, Mauritania became a member State of the International Atomic Energy Agency (IAEA). By the end of the year, there were 138 member States.

[378] E/C.12/2000/4.

[379] United Nations, *Treaty Series*, vol. 993, p. 3.

[380] The database is available at www.wpro.who.int/fsi/legislation/search.asp.

(*b*) Privileges and immunities

In 2004, the status of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, 1959,[381] remained unchanged with 73 parties.

(*c*) Legal instruments

(i) *Convention on the Physical Protection of Nuclear Materia1, 1979*[382]

In 2004, Azerbaijan, Burkina Faso, Cameroon, the Democratic Republic of the Congo, Djibouti, Dominica, Honduras, Kuwait, Nicaragua, Niger and Qatar adhered to the Convention. By the end of the year, there were 110 parties.

(ii) *Convention on Early Notification of a Nuclear Accident, 1986*[383]

In 2004, Algeria and Angola adhered to the Convention. By the end of the year, there were 93 parties.

(iii) *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986*[384]

In 2004, Algeria and Chile adhered to the Convention. By the end of the year, there were 90 parties.

(iv) *Vienna Convention on Civil Liability for Nuclear Damage, 1963*[385]

In 2004, the status of the Convention remained unchanged with 32 parties.

(v) *Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention, 1988*[386]

In 2004, the status of the Joint Protocol remained unchanged with 24 parties.

(vi) *Convention on Nuclear Safety, 1994*[387]

In 2004, the status of the Convention remained unchanged with 55 parties.

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[381] United Nations, *Treaty Series*, vol. 374, p. 147.

[382] United Nations, *Treaty Series*, vol. 1456, p. 101.

[383] United Nations, *Treaty Series*, vol. 1439, p. 275.

[384] United Nations, *Treaty Series*, vol. 1457, p. 133.

[385] United Nations, *Treaty Series*, vol. 1063, p. 265.

[386] United Nations, *Treaty Series*, vol. 1672, p. 293.

[387] United Nations, *Treaty Series*, vol. 1963, p. 293.

(vii) *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 1997*[388]

In 2004, Lithuania adhered to the Convention. By the end of the year, there were 34 parties.

(viii) *Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage, 1997*[389]

In 2004, the status of the Protocol remained unchanged with five parties.

(ix) *Convention on Supplementary Compensation for Nuclear Damage, 1997*[390]

In 2004, the status of the Convention remained unchanged with three parties.

(x) *Revised Supplementary Agreement Concerning the Provision of Technical Assistance by the IAEA (RSA)*

In 2004, Tajikistan concluded the RSA Agreement. By the end of the year, there were 100 member States which concluded the RSA Agreement with the Agency.

(*d*) Legislative assistance activities

As part of its technical cooperation programme for 2004, IAEA provided legislative assistance to a number of member States from various regions through both bilateral meetings and regional workshops. Legislative assistance was given to 11 countries by means of written comments or advice on specific national legislation submitted to the Agency for review. Also, at the request of member States, trainings on issues related to nuclear legislation were provided to 13 fellows.

In addition, the IAEA's legislative assistance activities in 2004 included the following:

(a) A Regional Training Workshop for French and English African speaking countries for the Development of a Legal Framework for Preparedness and Response to Radiological Emergencies and for Civil Liability for Nuclear Damage, was held at IAEA Headquarters in Vienna, Austria, from 11 to 15 October 2004; and

(b) A Regional Workshop for countries of the Latin America region on the Effective Implementation of National Nuclear Energy Legislation, was organised with the cooperation of the National Centre for Nuclear Security (CNSN) of the Government of Cuba, and was held in Havana, Cuba, from 15 to 19 November 2004.

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[388] United Nations, *Treaty Series*, vol. 2153, p. 303.

[389] INFCIRC/566.

[390] INFCIRC/567.

(i) *Convention on the Physical Protection of Nuclear Material, 1979 (CPPNM)*

In 2004, the formal process towards amending the CPPNM started. On 5 July 2004, at the request of the Government of Austria and 24 cosponsoring States, and in accordance with article 20, paragraph 1, of the CPPNM, the Director General circulated proposed amendments to the CPPNM to all States parties, which would extend the scope of the CPPNM to cover, *inter alia*, the physical protection of nuclear material used for peaceful purposes, in domestic use, storage and transport and the physical protection of nuclear material and the protection of peaceful nuclear facilities against sabotage.

Under the terms of the CPPNM, the Director General shall convene a conference to consider the proposed amendments when requested to do so by the majority of the States parties to the CPPNM.

(ii) *Convention on Nuclear Safety, 1994*

Pursuant to rule 11 of the Rules of Procedure and Financial Rules of the Convention on Nuclear Safety, 1994, the Organizational Meeting for the third Review Meeting of Contracting Parties to the Convention was held at IAEA Headquarters, Vienna, Austria, from 28 to 30 September 2004. Out of 55 Contracting Parties 44 participated in the meeting.

(iii) *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 1997*

It was agreed at the first Review Meeting of Contracting Parties to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (held from 3 to 14 November 2003), that the General Committee of the first Review Meeting could function during the period between the first Review Meeting and the Organizational Meeting (scheduled from 7 to 9 November 2005) for the second Review Meeting (scheduled to take place from 15 to 26 May 2006). The purpose would be for the General Committee to review draft documents, prepared by the IAEA secretariat, "to clarify the guidelines to better reflect the duties of officers, prior to and during a Review Meeting and their necessary qualifications". The membership of the General Committee consists of the President and Vice President of the first Review Meeting and the Chairs of the Country Groups. The General Committee met at IAEA Headquarters, Vienna, Austria, from 9 to 11 June 2004.

The first two issues of the newsletter *Joint Convention News* were published in April and September 2004, respectively. This was a new initiative under the Joint Convention created as a means of providing to Contracting Parties information on developments, as well as enabling work and discussions, between meetings.

(iv) *Code of Conduct on the Safety and Security of Radioactive Sources and Guidance on the Import and Export of Radioactive Sources*[391]

In January 2004, the revised Code of Conduct on the Safety and Security of Radioactive Sources was published by the IAEA. The revised Code of Conduct had been approved by the IAEA Board of Governors[392] and subsequently endorsed by the IAEA General Conference, in September 2003. In endorsing the objectives and principles set out in the Code of Conduct, the General Conference had recognized that the Code is not a legally binding instrument.

The general objective of the Code is to achieve a high level of safety and security of radioactive sources that may pose a significant risk, which are referred to in annex I to the Code. The Code includes guidance on general basic principles, legislation and the regulatory body, with paragraphs 23 to 29 containing specific guidance on the import and export of radioactive sources.

By late 2004, over 60 countries had informed, pursuant to IAEA General Conference resolution GC(47)/RES/7.B, that they are respectively working towards following the guidance contained in the Code.

In 2004, the IAEA secretariat convened an open-ended group of technical and legal experts to develop guidance on the import and export of radioactive sources in order to facilitate the implementation of the Code of Conduct. In September 2004, the Board approved the Guidance on the Import and Export of Radioactive Sources,[393] and, during the same month, the General Conference welcomed the Board's approval and endorsed the Guidance while recognizing that it is not legally binding. The Guidance is supplementary to the Code and it is intended to assist States in working towards following the Code of Conduct.

(v) *Code of Conduct on the Safety of Research Reactors*

In March 2004, the IAEA Board of Governors approved the Code on the Safety of Research Reactors.[394] The Code was subsequently transmitted[395] to the September 2004 General Conference which, *inter alia,* endorsed the guidance for the safe management of research reactors set out in the Code and encouraged member States to apply it.

The objective of the Code is to achieve and maintain a high level of nuclear safety in research reactors worldwide through the enhancement of national measures and international cooperation, including where appropriate, safety related technical cooperation. The Code provides guidance for the State, the national regulatory body and the relevant operating organization and applies to the safety of research reactors at all stages of their lives from sitting to decommissioning.

[391] IAEA/CODEOC/2004 (2004).

[392] GOV/2003/49-GC(47)/9.

[393] GOV/2004/62-GC(48)/13.

[394] GOV/2004/4/Corr.1.

[395] Document GC(48)/7.

(vi) *Safeguards Agreements*

During 2004, Safeguards Agreements pursuant to the Treaty on the Non-proliferation of Nuclear Weapons (NPT), 1968,[396] with Cameroon,[397] Kyrgyzstan,[398] Seychelles,[399] and Tajikistan[400] entered into force. A Safeguards Agreement concluded with Cuba[401] pursuant to the NPT and the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean[402] entered into force. In addition, a Safeguards Agreement with Uganda pursuant to the NPT was approved by the Board of Governors, but has not yet entered into force.

Also in 2004, Protocols Additional to the Safeguards Agreements between IAEA and Armenia,[403] Cuba,[404] El Salvador,[405] Ghana,[406] the Republic of Korea,[407] Paraguay,[408] Seychelles,[409] Tajikistan,[410] and Uruguay[411] entered into force. Additional Protocols between IAEA, EURATOM and France;[412] between IAEA, EURATOM and the United Kingdom;[413] and between IAEA, EURATOM and Austria, Belgium, Denmark, Germany, Finland, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden[414] entered into force. Additional Protocols were signed by Albania, Cameroon, Kazakhstan, Kiribati, the Libyan Arab Jamahiriya, Mauritius, Mexico, Morocco, Niger and Tanzania but have not yet entered into force. Five other Additional Protocols, with Algeria, Benin, Colombia, Serbia and Montenegro, and Uganda, were approved by the Board of Governors in 2004.

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[396] United Nations, *Treaty Series*, vol. 729, p. 161.

[397] Reproduced in IAEA Document INFCIRC/641.

[398] Reproduced in IAEA Document INFCIRC/629.

[399] Reproduced in IAEA Document INFCIRC/635.

[400] Reproduced in IAEA Document INFCIRC/639.

[401] Reproduced in IAEA Document INFCIRC/633.

[402] United Nations. *Treaty Series*, vol. 634, p. 281.

[403] Reproduced in IAEA Document INFCIRC/455/Add.2.

[404] Reproduced in IAEA Document INFCIRC/633/Add.1.

[405] Reproduced in IAEA Document INFCIRC/232/Add.1.

[406] Reproduced in IAEA Document INFCIRC/226/Add.2.

[407] Reproduced in IAEA Document INFCIRC/236/Add.1.

[408] Reproduced in IAEA Document INFCIRC/279/Add.1.

[409] Reproduced in IAEA Document INFCIRC/635/Add.1.

[410] Reproduced in IAEA Document INFCIRC/639/Add.1.

[411] Reproduced in IAEA Document INFCIRC/157/Add.2.

[412] Reproduced in IAEA Document INFCIRC/290/Add.1.

[413] Reproduced in IAEA Document INFCIRC/263/Add.1.

[414] Reproduced in IAEA Document INFCIRC/193/Add.8.

10. World Intellectual Property Organization

(*a*) Introduction

During the period under review, the World Intellectual Property Organization (WIPO) concentrated on the implementation of substantive work programs through three sectors: cooperation with member States; international registration of intellectual property rights; and intellectual property treaty formulation and normative development, all of which are summarized below.

(*b*) Cooperation for development activities

In 2004, 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. In particular, legal assistance on the compatibility of national legislation with WIPO-administered treaties and the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS), 1994,[415] aimed, *inter alia*, to enable policy-makers and legal officials to make informed decisions (i) on the use of flexibilities available in the international legal framework; (ii) in their national laws; and (iii) regarding accession to those international treaties to facilitate their use of intellectual property in business development and trade. In this respect, WIPO provided legal and technical assistance to 44 developing countries in the form of 45 draft laws, 33 comments on draft legislation, and 8 consultations.

As the mid-term Review of the Implementation for the Program of Action for the Least Developed Countries (LDCs) approached, coordination and monitoring of the implementation of WIPO deliverables for LDCs continued to be an important component of work undertaken. In this regard, substantive legislative and technical assistance was provided in five important areas, namely: human resources development; information technology; genetic resources; traditional knowledge and folklore; small and medium-sized enterprises; and the establishment of collective management societies.

In October 2004, the Ministerial Conference on Intellectual Property for Least Developing Countries was organized by WIPO in cooperation with the Government of the Republic of Korea to discuss the integration of intellectual property into LDCs national development policies.

The development of human resources in developing countries and countries in transition continued to be a crucial strategic component in the efforts to modernize the intellectual property system as well as for its effective implementation and use. The WIPO Worldwide Academy contributed to this goal through significant activities towards policy development, professional training and distance learning programs. In particular, four new advanced online distance learning courses were initiated in the areas of plant varieties protection, patents, crafts and visual arts (for small and medium-sized enterprises), and intellectual property dispute resolution (the WIPO Arbitration and Mediation Center).

[415] United Nations, *Treaty Series,* vol. 1869, p. 299 (annex I C).

(*c*) Norm-setting activities

One of the principal tasks of WIPO is to promote the harmonization of intellectual property laws, standards and practices among its member States through the progressive development of international approaches in the protection, administration and enforcement of intellectual property rights. The establishment of common principles and rules governing intellectual property requires extensive consultations. In this respect, three WIPO Standing Committees on legal matters – one dealing with patents, one dealing with trademarks, industrial designs and geographical indications, and one dealing with copyright and related rights – help member States to centralize the discussions, coordinate efforts and establish priorities in these areas.

(i) *Standing Committee on the Law of Patents (SCP)*

In May 2004, at its tenth session, the SCP made substantial progress in developing the international patent system in accordance with the interests and the policies of member States and with a view to enhancing international cooperation in the area of patent law and practice. Discussions continued to be primarily devoted to the provisions of the draft Substantive Patent Law Treaty (SPLT) and related regulations and practice guidelines, and on how to proceed with the harmonization of certain concepts of substantive patent law.

In September 2004, on the request of the SCP, the secretariat submitted to the Assemblies of WIPO member States an initial draft study entitled: "Enlarged Concept of Novelty: Initial Study Concerning Novelty and the Prior Art Effect of Certain Applications under article 8(2) of the draft SPLT". This study aims to provide broad background information and to facilitate further substantive discussion in the SCP and addresses not only national and regional laws and practices regarding the prior art effect of earlier applications, but also the policy objectives underlying these different practices.

(ii) *Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT)*

Two sessions of the SCT were held in 2004 at which good progress was made in regard to the revision process of the Trademark Law Treaty (TLT), 1994.[416] In this respect, the Assemblies of WIPO member States approved the convening of a Diplomatic Conference for the Adoption of a Revised Trademark Law Treaty to be scheduled in March 2006, which will update the existing treaty, bringing its procedures into line with technological advances.

Work on the harmonization of rules or guiding principles on trademark law and related administrative practices focused on the evaluation of data collected from member States via a questionnaire on trademark law and practice. The information collected was summarized by the secretariat in a document, which may in due course result in recommendations or guidelines on the items covered.

[416] United Nations, *Treaty Series*, vol. 2037, p. 35.

(iii) *Standing Committee on Copyright and Related Rights (SCCR)*

In response to the impact of digital and other new technologies and the growing use of the Internet, in 2004, the SCCR continued to make substantial progress towards the convening of a diplomatic conference for the possible adoption of an international instrument on the protection of broadcasting organizations. A revised consolidated treaty text was prepared for the SCCR's twelfth session held in November 2004, based on proposals submitted by WIPO member States and the European Community to further promote consensus and to facilitate the deliberations of the SCCR.

The SCCR also continued discussions on protecting the investment involved in creating and maintaining non-original databases while striving to maintain affordable access to scientific and technical journals or other sources of information in the public domain.

In September 2004, the Assemblies of WIPO member States reviewed the status of consultations on outstanding issues relating to the protection of audiovisual performances and decided on further action. In line with this, in November 2004, WIPO organized an Information Meeting on the Protection of Audiovisual Performances and on this occasion, a study was presented for the consideration of all delegations entitled: "Study on Transfer of the Rights of Performers to Producers of Audiovisual Fixations: Conclusions".

(iv) *Standing Committee on Information Technologies (SCIT)*

At its meeting held in January 2004, the Standards and Documentation Working Group (SDWG) of the SCIT adopted some revisions to WIPO Standards facilitating the access to and the use of publicly available industrial property information associated with the grant of patents, trademarks and industrial designs. Progress was also made in relation to some proposals to revise WIPO Standards relating to trademarks for the electronic management of figurative elements of trademarks. A Task Force to renew the WIPO *Handbook on Industrial Property Information and Documentation* was also established.

(*d*) International registration activities

(i) *Patents*

In September 2004, the Assembly of the Patent Cooperation Treaty (PCT), 1970,[417] Union adopted amendments to the PCT Regulations having effect as from April 2005. These changes concerned the simplification of the protest procedure in case of non-unity of the invention and corrigenda to consequential amendments further to the amendments already adopted by the PCT Union Assembly in 2002.

By the end of 2004, the PCT celebrated the filing of the one millionth PCT application. In 2004 alone, a record 122,898 international patent applications were filed, representing an increase of 11.5 per cent over 2003. A total of 7,268 international applications originated from the top ten developing countries compared to 5,861 in 2003. Furthermore,

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[417] United Nations, *Treaty Series,* vol. 1160, p. 231. For the text of the treaty as amended and modified, see under "Treaties" at www.wipo.int.

by the end of 2004, the total number of PCT Contracting States rose to 124, of which 69 (or 56 per cent) are developing countries.

(ii) *PCT electronic filing*

In February 2004, the electronic filing of international patent applications based on the PCT-SAFE software launched in 2003, became available to all applicants. About 14 per cent of the PCT applications filed in 2004 were filed in a full electronic form. Further, to allow the WIPO secretariat to receive, process and communicate priority documents submitted in electronic form, a new electronic priority document (E-Pdoc) application system was also launched in 2004.

(iii) *Trademarks*

In April 2004, a number of amendments to the Common Regulations under the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol), 1989,[418] entered into force. The amendments resulted in the inclusion of Spanish as an additional language of the Madrid System and enabled the accession of the European Community to the Madrid Protocol to become operational. Consequently, the use of the international trademark registration system reached a record level for 2004. In fact, the WIPO secretariat received 29,482 new international trademark applications (an increase of 5,610, or 23.5 per cent over 2003) and recorded, notified and published 23,382 international registrations (an increase of 1,532, or 7.0 per cent, over 2003). This brought to some 424,000 the total number of international registrations in force under the Madrid System belonging to over 138,280 different trademark holders.

During 2004, the International Bureau processed 7,345 renewals (an increase of 708, or 10.6 per cent over 2003), 9,759 subsequent designations (an increase of 1,016 or 11.6 per cent over 2003) and 48,150 other changes to existing registrations (6,271 or 11.7 per cent less than in 2003). 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 2004 was equivalent to some five million national registrations.

The year 2004 also saw an important development of the membership of the Madrid Protocol with the adherence of Kyrgyzstan, Namibia, the Syrian Arab Republic, and one intergovernmental organization, the European Community. The European Community was the first intergovernmental organization ever to join the Protocol.

(iv) *Industrial designs*

The Common Regulations under the 1999 Act, the 1960 Act and the 1934 Act of the Hague Agreement concerning the International Deposit of Industrial Design, 1925,[419] came into force in April 2004.

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[418] WIPO Publication Number: 204.

[419] WIPO Publication Number: 269.

During the year, the International Bureau received a total of 1,376 international industrial design applications, 1,415 registrations and 3,591 renewals. Compared to 2003, these figures report a decrease of 37.0 per cent, 42.8 per cent and 3.7 per cent respectively, and represent a declining trend which is thought to be a consequence of the entering into operation, in April 2003, of the European Community's Registered Design System.

(*e*) Intellectual property and global issues

(i) *Genetic resources, traditional knowledge and folklore*

At its sixth and seventh sessions, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) made solid progress towards a strong international framework through a range of practical initiatives for capacity-building, legal and policy guidance and defensive protection against illegitimate patenting of traditional knowledge. The IGC agreed to develop concrete outcomes in the form of two draft overviews of the policy objectives for the protection of traditional knowledge and traditional cultural expressions. These draft provisions have been accepted as a framework of reference for the work of the IGC.

(ii) *Small and medium-sized enterprises (SMEs) and intellectual property*

Activities focused on the development of an extensive international network of partners to help deliver the message of the crucial role played by the intellectual property system in enhancing the competitiveness of SMEs in all sectors of the economy. This network included SME support and finance institutions worldwide, other United Nations agencies, national SME focal points, intellectual property offices and copyright administrations in member States.

(iii) *Intellectual property enforcement issues*

At its second session held in June 2004, the Advisory Committee on Enforcement (ACE) examined the role of the judiciary, quasi-judicial authorities and the prosecution in the enforcement of intellectual property rights and related issues, such as litigation costs, parallels between civil and common law legal systems, administrative procedures in the enforcement of intellectual property rights, criminal procedures and sanctions, and various national experiences.

In this respect, the ACE maintained the global importance of continued judicial training in the field of intellectual property and the need to raise awareness of intellectual property enforcement issues at all levels of the judiciary. In line with this, the Committee agreed that education and awareness-building will be one of the major themes of discussion in its next session to be held in 2006.

(iv) *The WIPO Arbitration and Mediation Center*

The activity of the WIPO Arbitration and Mediation Center is a truly global service, with procedures in 11 languages, domain names in a variety of scripts, and parties from 118 countries. In 2004, the Center received some 1,179 new domain name cases under the Uniform Domain Name Dispute Resolution Policy (UDRP), representing a 6.6 per cent increase compared to 2003. Most disputes concerned international domains with ".com" representing over 80 per cent of names involved. The Center also dealt with 70 cases involv-

ing country-code top-level domains (ccTLDs) corresponding to a 37% increase compared to 2003. Services were provided for disputes in 43 ccTLDs, including ".ch" (Switzerland), ".fr" (France) and ".ir" (Iran (Islamic Republic of)) to which the Center has also rendered advice and assistance in the drafting of dispute resolution policies.

The Center produced and disseminated information on the options for the out-of-court settlement of intellectual property disputes, including a brochure describing WIPO arbitration processes and the contribution that arbitration makes to the effective functioning of intellectual property transactions.

(v) *New members and new accessions*

In 2004, 56 new instruments of ratification and accession were received and processed and 81 notifications of treaty actions were issued in respect of WIPO-administered treaties.

The following figures show the new country 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 2004.[420]

(a) Convention Establishing the World Intellectual Property Organization, 1967: 2 (181);

(b) Paris Convention for the Protection of Industrial Property, 1883: 2 (168);

(c) Berne Convention for the Protection of Literary and Artistic Works, 1886: 5 (157);

(d) Patent Cooperation Treaty, 1970: 1 (124);

(e) Madrid Agreement Concerning the International Registration of Marks, 1891: 2 (56);

(f) Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 1989: 4 (66);

(g) Trademark Law Treaty, 1994: 3 (33);

(h) Patent Law Treaty, 2000: 2 (9);

(i) Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, 1957: 2 (74);

(j) Locarno Agreement Establishing an International Classification for Industrial Designs, 1968: 1 (44);

(k) Strasbourg Agreement Concerning the International Patent Classification, 1971: 1 (55);

(l) Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, 1973: 1 (20);

(m) WIPO Copyright Treaty, 1996: 6 (50);

(n) WIPO Performances and Phonograms Treaty, 1996: 6 (48);

(o) Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958: 2 (22);

(p) Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, 1891: 1 (34);

[420] For the texts and status of the conventions listed in this section, see under "Treaties" at www.wipo.int.

(q) Nairobi Treaty on the Protection of the Olympic Symbol, 1981: 2 (43);

(r) Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, 1977: 2 (60);

(s) Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961: 3 (79);

(t) Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, 1971: 1 (73);

(u) Hague Agreement concerning the International Deposit of Industrial Designs: 2 (31), 1925; and

(v) Geneva Act of the Hague Agreement, 1999: 5 (16).

11. International Fund for Agricultural Development

(*a*) Cooperation agreements, memoranda of understanding and other agreements

At its eighty-second session (8–9 September 2004), the Executive Board authorized the International Fund for Agricultural Development (IFAD) to establish a cooperation agreement with the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH.[421] A memorandum of understanding between IFAD and GTZ GmbH was signed on 14 September 2004 and submitted to the Executive Board at its eighty-third session (1–2 December 2004) for information.[422]

Also at its eighty-second session, the Executive Board authorized[423] IFAD to adhere to the Financial and Administrative Framework Agreement between the European Union, represented by the European Commission, and the United Nations, signed on 29 April 2003.[424] The agreement was signed on 27 September 2004 and submitted to the Executive Board at its eighty-third session.[425]

At its eighty-third Session, the Executive Board further authorized IFAD to establish a cooperation agreement with the Organization for Economic Cooperation and Development, and a memorandum of understanding with the International Bank for Reconstruction and Development, as trustee of the BioCarbon Fund, in respect of the Dryland Management Tranche under the BioCarbon Fund.[426]

(*b*) Legal developments

At its twenty-seventh session (18–19 February 2004), the Governing Council of IFAD approved by resolution 134/XXVII, the delegation of authority from the Governing Council to the Executive Board to decide on the establishment of all multi-donor trust funds.

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[421] EB 2004/82/R.33.

[422] EB 2004/83/INF.4.

[423] EB 2004/82/R.32.

[424] United Nations, *Treaty Series,* vol. 2213, p. 39.

[425] EB 2004/83/INF.3.

[426] EB 2004/83/R.48.

The Executive Board, at its eighty-second session, adopted IFAD's Human Resources Policy,[427] which replaced the Personnel Policies Manual, adopted by the Executive Board at its third session in 1978 and amended regularly since. The Human Resources Policy provides guiding principles of the various human resources management processes, in accordance with which the President shall manage the employees of IFAD.

12. World Trade Organization

(*a*) Membership

During 2004, Cambodia and Nepal became members of the World Trade Organization, making the total membership at the end of the year 148.

(*b*) Dispute settlement

During 2004, 19 requests for consultation were received pursuant to article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).[428] The Dispute Settlement Body established panels in the following cases:

(i) Dominican Republic – Measures affecting the importation and internal sale of cigarettes, complaint by Honduras (WT/DS302);

(ii) United States – Countervailing duty investigation on dynamic random access memory semiconductors (DRAMs) from Korea, complaint by Korea (WT/DS296);

(iii) European Communities – Countervailing measures on dynamic random access memory chips from Korea, complaint by Korea (WT/DS299);

(iv) European Communities – Measures affecting commercial vessels, complaint by Korea (WT/DS301);

(v) United States – Laws, regulations and methodology for calculating dumping margins ("zeroing"), complaint by the European Communities (WT/DS294);

(vi) Mexico – Tax measures on soft drinks and other beverages, complaint by the United States (WT/DS308); and

(vii) Korea – Anti-dumping duties on imports of certain paper from Indonesia, complaint by Indonesia (WT/DS312).

During the same year, the Dispute Settlement Body adopted panel and Appellate Body reports on the following cases:

(i) Mexico – Measures affecting telecommunications services, complaint by the United States (WT/DS204) (panel report);

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[427] EB 2004/82/R.28/Rev.1.

[428] United Nations, *Treaty Series,* vol. 1869, p. 401 (annex 2).

(ii) United States – Sunset review of anti-dumping duties on corrosion-resistant carbon steel flat products from Japan, complaint by Japan (WT/DS244) (panel and Appellate Body reports);

(iii) European Communities – Conditions for the granting of tariff preferences to developing countries, complaint by India (WT/DS246) (panel and Appellate Body reports);

(iv) United States – Final countervailing duty determination with respect to certain softwood lumber from Canada, complaint by Canada (WT/DS257) (panel and Appellate Body reports);

(v) United States – Final dumping determination on softwood lumber from Canada, complaint by Canada (WT/DS264) (panel and Appellate Body reports);

(vi) United States – Sunset reviews of anti-dumping measures on oil country tubular goods from Argentina, complaint by Argentina (WT/DS268) (panel and Appellate Body reports);

(vii) Canada – Measures relating to exports of wheat and treatment of imported grain, complaint by the United States (WT/DS276) (panel and Appellate Body reports); and

(viii) United States – Investigation of the International Trade Commission in softwood lumber from Canada, complaint by Canada (WT/DS277) (panel report).

The Dispute Settlement Body further authorized the suspension of concessions or other obligations pursuant to article to 22, paragraph 6, of the DSU in the following cases:[429]

(i) Decision by the Arbitrator, United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by Brazil – Recourse to Arbitration by the United States under Article 22.6 of the DSU (WT/DS217/ARB/BRA);

(ii) Decision by the Arbitrator, United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by Canada – Recourse to Arbitration by the United States under Article 22.6 of the DSU (WT/DS234/ARB/CAN);

(iii) Decision by the Arbitrator, United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by Chile – Recourse to Arbitration by the United States under Article 22.6 of the DSU (WT/DS217/ARB/CHL);

(iv) Decision by the Arbitrator, United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by the European Communities – Recourse to Arbitration by the United States under Article 22.6 of the DSU (WT/DS217/ARB/EEC);

(v) Decision by the Arbitrator, United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by India – Recourse to Arbitration by the United States under Article 22.6 of the DSU (WT/DS217/ARB/IND);

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[429] WT/DSB/M/178 in respect of Brazil, the European Communities, India, Japan, Republic of Korea, Canada and Mexico and WT/DSB/M/180 in respect of Chile.

(vi) Decision by the Arbitrator, United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by Japan – Recourse to Arbitration by the United States under Article 22.6 of the DSU (WT/DS217/ARB/JPN);

(vii) Decision by the Arbitrator, United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by Korea – Recourse to Arbitration by the United States under Article 22.6 of the DSU (WT/DS217/ARB/KOR); and

(viii) Decision by the Arbitrator, United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by Mexico – Recourse to Arbitration by the United States under Article 22.6 of the DSU (WT/DS234/ARB/MEX).

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

United Nations Convention on Jurisdictional Immunities of States and Their Property. Adopted by the General Assembly on 2 December 2004*

The States Parties to the present Convention,

Considering that the jurisdictional immunities of States and their property are generally accepted as a principle of customary international law,

Having in mind the principles of international law embodied in the Charter of the United Nations,

Believing that an international convention on the jurisdictional immunities of States and their property would enhance the rule of law and legal certainty, particularly in dealings of States with natural or juridical persons, and would contribute to the codification and development of international law and the harmonization of practice in this area,

Taking into account developments in State practice with regard to the jurisdictional immunities of States and their property,

Affirming that the rules of customary international law continue to govern matters not regulated by the provisions of the present Convention,

Have agreed as follows:

Part I. Introduction

Article 1. Scope of the present Convention

The present Convention applies to the immunity of a State and its property from the jurisdiction of the courts of another State.

Article 2. Use of terms

1. For the purposes of the present Convention:

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* Adopted during the 65th plenary meeting of the General Assembly by resolution 59/38 of 2 December 2004.

(*a*) "court" means any organ of a State, however named, entitled to exercise judicial functions;

(*b*) "State" means:

(i) the State and its various organs of government;

(ii) constituent units of a federal State or political subdivisions of the State, which are entitled to perform acts in the exercise of sovereign authority, and are acting in that capacity;

(iii) agencies or instrumentalities of the State or other entities, to the extent that they are entitled to perform and are actually performing acts in the exercise of sovereign authority of the State;

(iv) representatives of the State acting in that capacity;

(*c*) "commercial transaction" means:

(i) any commercial contract or transaction for the sale of goods or supply of services;

(ii) any contract for a loan or other transaction of a financial nature, including any obligation of guarantee or of indemnity in respect of any such loan or transaction;

(iii) any other contract or transaction of a commercial, industrial, trading or professional nature, but not including a contract of employment of persons.

2. In determining whether a contract or transaction is a "commercial transaction" under paragraph 1 (c), reference should be made primarily to the nature of the contract or transaction, but its purpose should also be taken into account if the parties to the contract or transaction have so agreed, or if, in the practice of the State of the forum, that purpose is relevant to determining the non-commercial character of the contract or transaction.

3. The provisions of paragraphs 1 and 2 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in other international instruments or in the internal law of any State.

Article 3. Privileges and immunities not affected by the present Convention

1. The present Convention is without prejudice to the privileges and immunities enjoyed by a State under international law in relation to the exercise of the functions of:

(*a*) its diplomatic missions, consular posts, special missions, missions to international organizations or delegations to organs of international organizations or to international conferences; and

(*b*) persons connected with them.

2. The present Convention is without prejudice to privileges and immunities accorded under international law to heads of State *ratione personae*.

3. The present Convention is without prejudice to the immunities enjoyed by a State under international law with respect to aircraft or space objects owned or operated by a State.

Article 4. Non-retroactivity of the present Convention

Without prejudice to the application of any rules set forth in the present Convention to which jurisdictional immunities of States and their property are subject under international law independently of the present Convention, the present Convention shall not apply to any question of jurisdictional immunities of States or their property arising in a proceeding instituted against a State before a court of another State prior to the entry into force of the present Convention for the States concerned.

PART II. GENERAL PRINCIPLES

Article 5. State immunity

A State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State subject to the provisions of the present Convention.

Article 6. Modalities for giving effect to State immunity

1. A State shall give effect to State immunity under article 5 by refraining from exercising jurisdiction in a proceeding before its courts against another State and to that end shall ensure that its courts determine on their own initiative that the immunity of that other State under article 5 is respected.

2. A proceeding before a court of a State shall be considered to have been instituted against another State if that other State:

(*a*) is named as a party to that proceeding; or

(*b*) is not named as a party to the proceeding but the proceeding in effect seeks to affect the property, rights, interests or activities of that other State.

Article 7. Express consent to exercise of jurisdiction

1. A State cannot invoke immunity from jurisdiction in a proceeding before a court of another State with regard to a matter or case if it has expressly consented to the exercise of jurisdiction by the court with regard to the matter or case:

(*a*) by international agreement;

(*b*) in a written contract; or

(*c*) by a declaration before the court or by a written communication in a specific proceeding.

2. Agreement by a State for the application of the law of another State shall not be interpreted as consent to the exercise of jurisdiction by the courts of that other State.

Article 8. Effect of participation in a proceeding before a court

1. A State cannot invoke immunity from jurisdiction in a proceeding before a court of another State if it has:

(*a*) itself instituted the proceeding; or

(*b*) intervened in the proceeding or taken any other step relating to the merits. However, if the State satisfies the court that it could not have acquired knowledge of facts on

which a claim to immunity can be based until after it took such a step, it can claim immunity based on those facts, provided it does so at the earliest possible moment.

2. A State shall not be considered to have consented to the exercise of jurisdiction by a court of another State if it intervenes in a proceeding or takes any other step for the sole purpose of:

(*a*) invoking immunity; or

(*b*) asserting a right or interest in property at issue in the proceeding.

3. The appearance of a representative of a State before a court of another State as a witness shall not be interpreted as consent by the former State to the exercise of jurisdiction by the court.

4. Failure on the part of a State to enter an appearance in a proceeding before a court of another State shall not be interpreted as consent by the former State to the exercise of jurisdiction by the court.

Article 9. Counterclaims

1. A State instituting a proceeding before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of any counterclaim arising out of the same legal relationship or facts as the principal claim.

2. A State intervening to present a claim in a proceeding before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of any counterclaim arising out of the same legal relationship or facts as the claim presented by the State.

3. A State making a counterclaim in a proceeding instituted against it before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of the principal claim.

Part III. Proceedings in which State immunity cannot be invoked

Article 10. Commercial transactions

1. If a State engages in a commercial transaction with a foreign natural or juridical person and, by virtue of the applicable rules of private international law, differences relating to the commercial transaction fall within the jurisdiction of a court of another State, the State cannot invoke immunity from that jurisdiction in a proceeding arising out of that commercial transaction.

2. Paragraph 1 does not apply:

(*a*) in the case of a commercial transaction between States; or

(*b*) if the parties to the commercial transaction have expressly agreed otherwise.

3. Where a State enterprise or other entity established by a State which has an independent legal personality and is capable of:

(*a*) suing or being sued; and

(*b*) acquiring, owning or possessing and disposing of property, including property which that State has authorized it to operate or manage, is involved in a proceeding which

relates to a commercial transaction in which that entity is engaged, the immunity from jurisdiction enjoyed by that State shall not be affected.

Article 11. Contracts of employment

1. Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to a contract of employment between the State and an individual for work performed or to be performed, in whole or in part, in the territory of that other State.

2. Paragraph 1 does not apply if:

(*a*) the employee has been recruited to perform particular functions in the exercise of governmental authority;

(*b*) the employee is:

(i) a diplomatic agent, as defined in the Vienna Convention on Diplomatic Relations of 1961;

(ii) a consular officer, as defined in the Vienna Convention on Consular Relations of 1963;

(iii) a member of the diplomatic staff of a permanent mission to an international organization or of a special mission, or is recruited to represent a State at an international conference; or

(iv) any other person enjoying diplomatic immunity;

(*c*) the subject-matter of the proceeding is the recruitment, renewal of employment or reinstatement of an individual;

(*d*) the subject-matter of the proceeding is the dismissal or termination of employment of an individual and, as determined by the head of State, the head of Government or the Minister for Foreign Affairs of the employer State, such a proceeding would interfere with the security interests of that State;

(*e*) the employee is a national of the employer State at the time when the proceeding is instituted, unless this person has the permanent residence in the State of the forum; or

(*f*) the employer State and the employee have otherwise agreed in writing, subject to any considerations of public policy conferring on the courts of the State of the forum exclusive jurisdiction by reason of the subject-matter of the proceeding.

Article 12. Personal injuries and damage to property

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to pecuniary compensation for death or injury to the person, or damage to or loss of tangible property, caused by an act or omission which is alleged to be attributable to the State, if the act or omission occurred in whole or in part in the territory of that other State and if the author of the act or omission was present in that territory at the time of the act or omission.

Article 13. Ownership, possession and use of property

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the determination of:

(*a*) any right or interest of the State in, or its possession or use of, or any obligation of the State arising out of its interest in, or its possession or use of, immovable property situated in the State of the forum;

(*b*) any right or interest of the State in movable or immovable property arising by way of succession, gift or bona vacantia; or

(*c*) any right or interest of the State in the administration of property, such as trust property, the estate of a bankrupt or the property of a company in the event of its winding up.

Article 14. Intellectual and industrial property

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to:

(*a*) the determination of any right of the State in a patent, industrial design, trade name or business name, trademark, copyright or any other form of intellectual or industrial property which enjoys a measure of legal protection, even if provisional, in the State of the forum; or

(*b*) an alleged infringement by the State, in the territory of the State of the forum, of a right of the nature mentioned in subparagraph (*a*) which belongs to a third person and is protected in the State of the forum.

Article 15. Participation in companies or other collective bodies

1. A State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to its participation in a company or other collective body, whether incorporated or unincorporated, being a proceeding concerning the relationship between the State and the body or the other participants therein, provided that the body:

(*a*) has participants other than States or international organizations; and

(*b*) is incorporated or constituted under the law of the State of the forum or has its seat or principal place of business in that State.

2. A State can, however, invoke immunity from jurisdiction in such a proceeding if the States concerned have so agreed or if the parties to the dispute have so provided by an agreement in writing or if the instrument establishing or regulating the body in question contains provisions to that effect.

Article 16. Ships owned or operated by a State

1. Unless otherwise agreed between the States concerned, a State which owns or operates a ship cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the operation of that ship if, at

the time the cause of action arose, the ship was used for other than government non-commercial purposes.

2. Paragraph 1 does not apply to warships, or naval auxiliaries, nor does it apply to other vessels owned or operated by a State and used, for the time being, only on government non-commercial service.

3. Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the carriage of cargo on board a ship owned or operated by that State if, at the time the cause of action arose, the ship was used for other than government non-commercial purposes.

4. Paragraph 3 does not apply to any cargo carried on board the ships referred to in paragraph 2, nor does it apply to any cargo owned by a State and used or intended for use exclusively for government non-commercial purposes.

5. States may plead all measures of defence, prescription and limitation of liability which are available to private ships and cargoes and their owners.

6. If in a proceeding there arises a question relating to the government and non-commercial character of a ship owned or operated by a State or cargo owned by a State, a certificate signed by a diplomatic representative or other competent authority of that State and communicated to the court shall serve as evidence of the character of that ship or cargo.

Article 17. Effect of an arbitration agreement

If a State enters into an agreement in writing with a foreign natural or juridical person to submit to arbitration differences relating to a commercial transaction, that State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to:

(*a*) the validity, interpretation or application of the arbitration agreement;

(*b*) the arbitration procedure; or

(*c*) the confirmation or the setting aside of the award, unless the arbitration agreement otherwise provides.

Part IV. State immunity from measures of constraint in connection with proceedings before a court

Article 18. State immunity from pre-judgment measures of constraint

No pre-judgment measures of constraint, such as attachment or arrest, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

(*a*) the State has expressly consented to the taking of such measures as indicated:

(i) by international agreement;

(ii) by an arbitration agreement or in a written contract; or

(iii) by a declaration before the court or by a written communication after a dispute between the parties has arisen; or

(*b*) the State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding.

Article 19. State immunity from post-judgment measures of constraint

No post-judgment measures of constraint, such as attachment, arrest or execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

(*a*) the State has expressly consented to the taking of such measures as indicated:

(i) by international agreement;

(ii) by an arbitration agreement or in a written contract; or

(iii) by a declaration before the court or by a written communication after a dispute between the parties has arisen; or

(*b*) the State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding; or

(*c*) it has been established that the property is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum, provided that post-judgment measures of constraint may only be taken against property that has a connection with the entity against which the proceeding was directed.

Article 20. Effect of consent to jurisdiction to measures of constraint

Where consent to the measures of constraint is required under articles 18 and 19, consent to the exercise of jurisdiction under article 7 shall not imply consent to the taking of measures of constraint.

Article 21. Specific categories of property

1. The following categories, in particular, of property of a State shall not be considered as property specifically in use or intended for use by the State for other than government non-commercial purposes under article 19, subparagraph (*c*):

(*a*) property, including any bank account, which is used or intended for use in the performance of the functions of the diplomatic mission of the State or its consular posts, special missions, missions to international organizations or delegations to organs of international organizations or to international conferences;

(*b*) property of a military character or used or intended for use in the performance of military functions;

(*c*) property of the central bank or other monetary authority of the State;

(*d*) property forming part of the cultural heritage of the State or part of its archives and not placed or intended to be placed on sale;

(*e*) property forming part of an exhibition of objects of scientific, cultural or historical interest and not placed or intended to be placed on sale.

2. Paragraph 1 is without prejudice to article 18 and article 19, subparagraphs (*a*) and (*b*).

Part V. Miscellaneous provisions

Article 22. Service of process

1. Service of process by writ or other document instituting a proceeding against a State shall be effected:

(*a*) in accordance with any applicable international convention binding on the State of the forum and the State concerned; or

(*b*) in accordance with any special arrangement for service between the claimant and the State concerned, if not precluded by the law of the State of the forum; or

(*c*) in the absence of such a convention or special arrangement:

(i) by transmission through diplomatic channels to the Ministry of Foreign Affairs of the State concerned; or

(ii) by any other means accepted by the State concerned, if not precluded by the law of the State of the forum.

2. Service of process referred to in paragraph 1 (*c*) (i) is deemed to have been effected by receipt of the documents by the Ministry of Foreign Affairs.

3. These documents shall be accompanied, if necessary, by a translation into the official language, or one of the official languages, of the State concerned.

4. Any State that enters an appearance on the merits in a proceeding instituted against it may not thereafter assert that service of process did not comply with the provisions of paragraphs 1 and 3.

Article 23. Default judgment

1. A default judgment shall not be rendered against a State unless the court has found that:

(*a*) the requirements laid down in article 22, paragraphs 1 and 3, have been complied with;

(*b*) a period of not less than four months has expired from the date on which the service of the writ or other document instituting a proceeding has been effected or deemed to have been effected in accordance with article 22, paragraphs 1 and 2; and

(*c*) the present Convention does not preclude it from exercising jurisdiction.

2. A copy of any default judgment rendered against a State, accompanied if necessary by a translation into the official language or one of the official languages of the State concerned, shall be transmitted to it through one of the means specified in article 22, paragraph 1, and in accordance with the provisions of that paragraph.

3. The time-limit for applying to have a default judgment set aside shall not be less than four months and shall begin to run from the date on which the copy of the judgment is received or is deemed to have been received by the State concerned.

Article 24. Privileges and immunities during court proceedings

1. Any failure or refusal by a State to comply with an order of a court of another State enjoining it to perform or refrain from performing a specific act or to produce any

document or disclose any other information for the purposes of a proceeding shall entail no consequences other than those which may result from such conduct in relation to the merits of the case. In particular, no fine or penalty shall be imposed on the State by reason of such failure or refusal.

2. A State shall not be required to provide any security, bond or deposit, however described, to guarantee the payment of judicial costs or expenses in any proceeding to which it is a respondent party before a court of another State.

Part VI. Final clauses

Article 25. Annex

The annex to the present Convention forms an integral part of the Convention.

Article 26. Other international agreements

Nothing in the present Convention shall affect the rights and obligations of States Parties under existing international agreements which relate to matters dealt with in the present Convention as between the parties to those agreements.

Article 27. Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of the present Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which cannot be settled through negotiation within six months shall, at the request of any 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 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, the present Convention, declare that it does not consider itself bound by paragraph 2. The other States Parties shall not be bound by paragraph 2 with respect to any State Party which has made such a declaration.

4. Any State Party that has made a declaration in accordance with paragraph 3 may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

Article 28. Signature

The present Convention shall be open for signature by all States until 17 January 2007, at United Nations Headquarters, New York.

Article 29. Ratification, acceptance, approval or accession

1. The present Convention shall be subject to ratification, acceptance or approval.

2. The present Convention shall remain open for accession by any State.

3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

Article 30. Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the present Convention after the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 31. Denunciation

1. Any State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations. The present Convention shall, however, continue to apply to any question of jurisdictional immunities of States or their property arising in a proceeding instituted against a State before a court of another State prior to the date on which the denunciation takes effect for any of the States concerned.

3. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in the present Convention to which it would be subject under international law independently of the present Convention.

Article 32. Depositary and notifications

1. The Secretary-General of the United Nations is designated the depositary of the present Convention.

2. As depositary of the present Convention, the Secretary-General of the United Nations shall inform all States of the following:

(*a*) signatures of the present Convention and the deposit of instruments of ratification, acceptance, approval or accession or notifications of denunciation, in accordance with articles 29 and 31;

(*b*) the date on which the present Convention will enter into force, in accordance with article 30;

(*c*) any acts, notifications or communications relating to the present Convention.

Article 33. Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention are equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention opened for signature at United Nations Headquarters in New York on 17 January 2005.

Annex to the Convention

Understandings with respect to certain provisions of the Convention

The present annex is for the purpose of setting out understandings relating to the provisions concerned.

With respect to article 10

The term "immunity" in article 10 is to be understood in the context of the present Convention as a whole.

Article 10, paragraph 3, does not prejudge the question of "piercing the corporate veil", questions relating to a situation where a State entity has deliberately misrepresented its financial position or subsequently reduced its assets to avoid satisfying a claim, or other related issues.

With respect to article 11

The reference in article 11, paragraph 2 (*d*), to the "security interests" of the employer State is intended primarily to address matters of national security and the security of diplomatic missions and consular posts.

Under article 41 of the 1961 Vienna Convention on Diplomatic Relations and article 55 of the 1963 Vienna Convention on Consular Relations, all persons referred to in those articles have the duty to respect the laws and regulations, including labour laws, of the host country. At the same time, under article 38 of the 1961 Vienna Convention on Diplomatic Relations and article 71 of the 1963 Vienna Convention on Consular Relations, the receiving State has a duty to exercise its jurisdiction in such a manner as not to interfere unduly with the performance of the functions of the mission or the consular post.

With respect to articles 13 and 14

The expression "determination" is used to refer not only to the ascertainment or verification of the existence of the rights protected, but also to the evaluation or assessment of the substance, including content, scope and extent, of such rights.

With respect to article 17

The expression "commercial transaction" includes investment matters.

With respect to article 19

The expression "entity" in subparagraph (*c*) means the State as an independent legal personality, a constituent unit of a federal State, a subdivision of a State, an agency or instrumentality of a State or other entity, which enjoys independent legal personality.

The words "property that has a connection with the entity" in subparagraph (*c*) are to be understood as broader than ownership or possession.

Article 19 does not prejudge the question of "piercing the corporate veil", questions relating to a situation where a State entity has deliberately misrepresented its financial position or subsequently reduced its assets to avoid satisfying a claim, or other related issues.

B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations

International Maritime Organization

International Convention for the Control and Management of Ships' Ballast Water and Sediments. Done at London, 13 February 2004*

Preamble

THE PARTIES TO THIS CONVENTION,

RECALLING Article 196 (1) of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which provides that "States shall take all measures necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control, or the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes thereto,"

NOTING the objectives of the 1992 Convention on Biological Diversity (CBD) and that the transfer and introduction of Harmful Aquatic Organisms and Pathogens via ships' ballast water threatens the conservation and sustainable use of biological diversity as well as decision IV/5 of the 1998 Conference of the Parties (COP 4) to the CBD concerning the conservation and sustainable use of marine and coastal ecosystems, as well as decision VI/23 of the 2002 Conference of the Parties (COP 6) to the CBD on alien species that threaten ecosystems, habitats or species, including guiding principles on invasive species,

NOTING FURTHER that the 1992 United Nations Conference on Environment and Development (UNCED) requested the International Maritime Organization (the Organization) to consider the adoption of appropriate rules on ballast water discharge,

MINDFUL of the precautionary approach set out in Principle 15 of the Rio Declaration on Environment and Development and referred to in resolution MEPC.67 (37), adopted by the Organization's Marine Environment Protection Committee on 15 September 1995,

ALSO MINDFUL that the 2002 World Summit on Sustainable Development, in paragraph 34(b) of its Plan of Implementation, calls for action at all levels to accelerate the development of measures to address invasive alien species in ballast water,

CONSCIOUS that the uncontrolled discharge of Ballast Water and Sediments from ships has led to the transfer of Harmful Aquatic Organisms and Pathogens, causing injury or damage to the environment, human health, property and resources,

RECOGNIZING the importance placed on this issue by the Organization through Assembly resolutions A.774 (18) in 1993 and A.868 (20) in 1997, adopted for the purpose of addressing the transfer of Harmful Aquatic Organisms and Pathogens,

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* Adopted at the International Conference on Ballast Water Management for Ships on 13 February 2004, BWM/CONF/36.

RECOGNIZING FURTHER that several States have taken individual action with a view to prevent, minimize and ultimately eliminate the risks of introduction of Harmful Aquatic Organisms and Pathogens through ships entering their ports, and also that this issue, being of worldwide concern, demands action based on globally applicable regulations together with guidelines for their effective implementation and uniform interpretation,

DESIRING to continue the development of safer and more effective Ballast Water Management options that will result in continued prevention, minimization and ultimate elimination of the transfer of Harmful Aquatic Organisms and Pathogens,

RESOLVED to prevent, minimize and ultimately eliminate the risks to the environment, human health, property and resources arising from the transfer of Harmful Aquatic Organisms and Pathogens through the control and management of ships' Ballast Water and Sediments, as well as to avoid unwanted side-effects from that control and to encourage developments in related knowledge and technology,

CONSIDERING that these objectives may best be achieved by the conclusion of an International Convention for the Control and Management of Ships' Ballast Water and Sediments,

HAVE AGREED as follows:

Article 1. Definitions

For the purpose of this Convention, unless expressly provided otherwise:

1. "Administration" means the Government of the State under whose authority the ship is operating. With respect to a ship entitled to fly a flag of any State, the Administration is the Government of that State. With respect to floating platforms engaged in exploration and exploitation of the sea-bed and subsoil thereof adjacent to the coast over which the coastal State exercises sovereign rights for the purposes of exploration and exploitation of its natural resources, including Floating Storage Units (FSUs) and Floating Production Storage and Offloading Units (FPSOs), the Administration is the Government of the coastal State concerned.

2. "Ballast Water" means water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship.

3. "Ballast Water Management" means mechanical, physical, chemical, and biological processes, either singularly or in combination, to remove, render harmless, or avoid the uptake or discharge of Harmful Aquatic Organisms and Pathogens within Ballast Water and Sediments.

4. "Certificate" means the International Ballast Water Management Certificate.

5. "Committee" means the Marine Environment Protection Committee of the Organization.

6. "Convention" means the International Convention for the Control and Management of Ships' Ballast Water and Sediments.

7. "Gross tonnage" means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969 or any successor Convention.

8. "Harmful Aquatic Organisms and Pathogens" means aquatic organisms or pathogens which, if introduced into the sea including estuaries, or into fresh water courses, may create hazards to the environment, human health, property or resources, impair biological diversity or interfere with other legitimate uses of such areas.

9. "Organization" means the International Maritime Organization.

10. "Secretary-General" means the Secretary-General of the Organization.

11. "Sediments" means matter settled out of Ballast Water within a ship.

12. "Ship" means a vessel of any type whatsoever operating in the aquatic environment and includes submersibles, floating craft, floating platforms, FSUs and FPSOs.

Article 2. General Obligations

1. Parties undertake to give full and complete effect to the provisions of this Convention and the Annex thereto in order to prevent, minimize and ultimately eliminate the transfer of Harmful Aquatic Organisms and Pathogens through the control and management of ships' Ballast Water and Sediments.

2. The Annex forms an integral part of this Convention. Unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to the Annex.

3. Nothing in this Convention shall be interpreted as preventing a Party from taking, individually or jointly with other Parties, more stringent measures with respect to the prevention, reduction or elimination of the transfer of Harmful Aquatic Organisms and Pathogens through the control and management of ships' Ballast Water and Sediments, consistent with international law.

4. Parties shall endeavour to co-operate for the purpose of effective implementation, compliance and enforcement of this Convention.

5. Parties undertake to encourage the continued development of Ballast Water Management and standards to prevent, minimize and ultimately eliminate the transfer of Harmful Aquatic Organisms and Pathogens through the control and management of ships' Ballast Water and Sediments.

6. Parties taking action pursuant to this Convention shall endeavour not to impair or damage their environment, human health, property or resources, or those of other States.

7. Parties should ensure that Ballast Water Management practices used to comply with this Convention do not cause greater harm than they prevent to their environment, human health, property or resources, or those of other States.

8. Parties shall encourage ships entitled to fly their flag, and to which this Convention applies, to avoid, as far as practicable, the uptake of Ballast Water with potentially Harmful Aquatic Organisms and Pathogens, as well as Sediments that may contain such organisms, including promoting the adequate implementation of recommendations developed by the Organization.

9. Parties shall endeavour to co-operate under the auspices of the Organization to address threats and risks to sensitive, vulnerable or threatened marine ecosystems and

biodiversity in areas beyond the limits of national jurisdiction in relation to Ballast Water Management.

Article 3. Application

1. Except as expressly provided otherwise in this Convention, this Convention shall apply to:

(*a*) ships entitled to fly the flag of a Party; and

(*b*) ships not entitled to fly the flag of a Party but which operate under the authority of a Party.

2. This Convention shall not apply to:

(*a*) ships not designed or constructed to carry Ballast Water;

(*b*) ships of a Party which only operate in waters under the jurisdiction of that Party, unless the Party determines that the discharge of Ballast Water from such ships would impair or damage their environment, human health, property or resources, or those of adjacent or other States;

(*c*) ships of a Party which only operate in waters under the jurisdiction of another Party, subject to the authorization of the latter Party for such exclusion. No Party shall grant such authorization if doing so would impair or damage their environment, human health, property or resources, or those of adjacent or other States. Any Party not granting such authorization shall notify the Administration of the ship concerned that this Convention applies to such ship;

(*d*) ships which only operate in waters under the jurisdiction of one Party and on the high seas, except for ships not granted an authorization pursuant to sub-paragraph (*c*), unless such Party determines that the discharge of Ballast Water from such ships would impair or damage their environment, human health, property or resources, or those of adjacent of other States;

(*e*) any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service. However, each Party shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent, so far as is reasonable and practicable, with this Convention; and

(*f*) permanent Ballast Water in sealed tanks on ships, that is not subject to discharge.

3. With respect to ships of non-Parties to this Convention, Parties shall apply the requirements of this Convention as may be necessary to ensure that no more favourable treatment is given to such ships.

Article 4. Control of the Transfer of Harmful Aquatic Organisms and Pathogens through Ships' Ballast Water and Sediments

1. Each Party shall require that ships to which this Convention applies and which are entitled to fly its flag or operating under its authority comply with the requirements set forth in this Convention, including the applicable standards and requirements in the

Annex, and shall take effective measures to ensure that those ships comply with those requirements.

2. Each Party shall, with due regard to its particular conditions and capabilities, develop national policies, strategies or programmes for Ballast Water Management in its ports and waters under its jurisdiction that accord with, and promote the attainment of the objectives of this Convention.

Article 5. Sediment Reception Facilities

1. Each Party undertakes to ensure that, in ports and terminals designated by that Party where cleaning or repair of ballast tanks occurs, adequate facilities are provided for the reception of Sediments, taking into account the Guidelines developed by the Organization. Such reception facilities shall operate without causing undue delay to ships and shall provide for the safe disposal of such Sediments that does not impair or damage their environment, human health, property or resources or those of other States.

2. Each Party shall notify the Organization for transmission to the other Parties concerned of all cases where the facilities provided under paragraph 1 are alleged to be inadequate.

Article 6. Scientific and Technical Research and Monitoring

1. Parties shall endeavour, individually or jointly, to:

(*a*) promote and facilitate scientific and technical research on Ballast Water Management; and

(*b*) monitor the effects of Ballast Water Management in waters under their jurisdiction.

Such research and monitoring should include observation, measurement, sampling, evaluation and analysis of the effectiveness and adverse impacts of any technology or methodology as well as any adverse impacts caused by such organisms and pathogens that have been identified to have been transferred through ships' Ballast Water.

2. Each Party shall, to further the objectives of this Convention, promote the availability of relevant information to other Parties who request it on:

(*a*) scientific and technology programmes and technical measures undertaken with respect to Ballast Water Management; and

(*b*) the effectiveness of Ballast Water Management deduced from any monitoring and assessment programmes.

Article 7. Survey and certification

1. Each Party shall ensure that ships flying its flag or operating under its authority and subject to survey and certification are so surveyed and certified in accordance with the regulations in the Annex.

2. A Party implementing measures pursuant to Article 2.3 and Section C of the Annex shall not require additional survey and certification of a ship of another Party, nor shall the Administration of the ship be obligated to survey and certify additional measures imposed

by another Party. Verification of such additional measures shall be the responsibility of the Party implementing such measures and shall not cause undue delay to the ship.

Article 8. Violations

1. Any violation of the requirements of this Convention shall be prohibited and sanctions shall be established under the law of the Administration of the ship concerned, wherever the violation occurs. If the Administration is informed of such a violation, it shall investigate the matter and may request the reporting Party to furnish additional evidence of the alleged violation. If the Administration is satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, it shall cause such proceedings to be taken as soon as possible, in accordance with its law. The Administration shall promptly inform the Party that reported the alleged violation, as well as the Organization, of any action taken. If the Administration has not taken any action within 1 year after receiving the information, it shall so inform the Party which reported the alleged violation.

2. Any violation of the requirements of this Convention within the jurisdiction of any Party shall be prohibited and sanctions shall be established under the law of that Party. Whenever such a violation occurs, that Party shall either:

(*a*) cause proceedings to be taken in accordance with its law; or

(*b*) furnish to the Administration of the ship such information and evidence as may be in its possession that a violation has occurred.

3. The sanctions provided for by the laws of a Party pursuant to this Article shall be adequate in severity to discourage violations of this Convention wherever they occur.

Article 9. Inspection of Ships

1. A ship to which this Convention applies may, in any port or offshore terminal of another Party, be subject to inspection by officers duly authorized by that Party for the purpose of determining whether the ship is in compliance with this Convention. Except as provided in paragraph 2 of this Article, any such inspection is limited to:

(*a*) verifying that there is onboard a valid Certificate, which, if valid shall be accepted; and

(*b*) inspection of the Ballast Water record book, and/or

(*c*) a sampling of the ship's Ballast Water, carried out in accordance with the guidelines to be developed by the Organization. However, the time required to analyse the samples shall not be used as a basis for unduly delaying the operation, movement or departure of the ship.

2. Where a ship does not carry a valid Certificate or there are clear grounds for believing that:

(*a*) the condition of the ship or its equipment does not correspond substantially with the particulars of the Certificate; or

(*b*) the master or the crew are not familiar with essential shipboard procedures relating to Ballast Water Management, or have not implemented such procedures;

a detailed inspection may be carried out.

3. In the circumstances given in paragraph 2 of this Article, the Party carrying out the inspection shall take such steps as will ensure that the ship shall not discharge Ballast Water until it can do so without presenting a threat of harm to the environment, human health, property or resources.

Article 10. Detection of Violations and Control of Ships

1. Parties shall co-operate in the detection of violations and the enforcement of the provisions of this Convention.

2. If a ship is detected to have violated this Convention, the Party whose flag the ship is entitled to fly, and/or the Party in whose port or offshore terminal the ship is operating, may, in addition to any sanctions described in Article 8 or any action described in Article 9, take steps to warn, detain, or exclude the ship. The Party in whose port or offshore terminal the ship is operating, however, may grant such a ship permission to leave the port or offshore terminal for the purpose of discharging Ballast Water or proceeding to the nearest appropriate repair yard or reception facility available, provided doing so does not present a threat of harm to the environment, human health, property or resources.

3. If the sampling described in Article 9.1 (*c*) leads to a result, or supports information received from another port or offshore terminal, indicating that the ship poses a threat to the environment, human health, property or resources, the Party in whose waters the ship is operating shall prohibit such ship from discharging Ballast Water until the threat is removed.

4. A Party may also inspect a ship when it enters the ports or offshore terminals under its jurisdiction, if a request for an investigation is received from any Party, together with sufficient evidence that a ship is operating or has operated in violation of a provision in this Convention. The report of such investigation shall be sent to the Party requesting it and to the competent authority of the Administration of the ship concerned so that appropriate action may be taken.

Article 11. Notification of Control Actions

1. If an inspection conducted pursuant to Article 9 or 10 indicates a violation of this Convention, the ship shall be notified. A report shall be forwarded to the Administration, including any evidence of the violation.

2. In the event that any action is taken pursuant to Article 9.3, 10.2 or 10.3, the officer carrying out such action shall forthwith inform, in writing, the Administration of the ship concerned, or if this is not possible, the consul or diplomatic representative of the ship concerned, of all the circumstances in which the action was deemed necessary. In addition, the recognized organization responsible for the issue of certificates shall be notified.

3. The port State authority concerned shall, in addition to parties mentioned in paragraph 2, notify the next port of call of all relevant information about the violation, if it is unable to take action as specified in Article 9.3, 10.2 or 10.3 or if the ship has been allowed to proceed to the next port of call.

Article 12. Undue Delay to Ships

1. All possible efforts shall be made to avoid a ship being unduly detained or delayed under Article 7.2, 8, 9 or 10.

2. When a ship is unduly detained or delayed under Article 7.2, 8, 9 or 10, it shall be entitled to compensation for any loss or damage suffered.

Article 13. Technical Assistance, Co-operation and Regional Co-operation

1. Parties undertake, directly or through the Organization and other international bodies, as appropriate, in respect of the control and management of ships' Ballast Water and Sediments, to provide support for those Parties which request technical assistance:

(*a*) to train personnel;

(*b*) to ensure the availability of relevant technology, equipment and facilities;

(*c*) to initiate joint research and development programmes; and

(*d*) to undertake other action aimed at the effective implementation of this Convention and of guidance developed by the Organization related thereto.

2. Parties undertake to co-operate actively, subject to their national laws, regulations and policies, in the transfer of technology in respect of the control and management of ships' Ballast Water and Sediments.

3. In order to further the objectives of this Convention, Parties with common interests to protect the environment, human health, property and resources in a given geographical area, in particular, those Parties bordering enclosed and semi-enclosed seas, shall endeavour, taking into account characteristic regional features, to enhance regional co-operation, including through the conclusion of regional agreements consistent with this Convention. Parties shall seek to co-operate with the Parties to regional agreements to develop harmonized procedures.

Article 14. Communication of information

1. Each Party shall report to the Organization and, where appropriate, make available to other Parties the following information:

(*a*) any requirements and procedures relating to Ballast Water Management, including its laws, regulations, and guidelines for implementation of this Convention;

(*b*) the availability and location of any reception facilities for the environmentally safe disposal of Ballast Water and Sediments; and

(*c*) any requirements for information from a ship which is unable to comply with the provisions of this Convention for reasons specified in regulations A-3 and B-4 of the Annex.

2. The Organization shall notify Parties of the receipt of any communications under the present Article and circulate to all Parties any information communicated to it under subparagraphs 1(*b*) and (*c*) of this Article.

Article 15. Dispute Settlement

Parties shall settle any dispute between them concerning the interpretation or application of this Convention by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice.

Article 16. Relationship to International Law and Other Agreements

Nothing in this Convention shall prejudice the rights and obligations of any State under customary international law as reflected in the United Nations Convention on the Law of the Sea.

Article 17. Signature, Ratification, Acceptance, Approval and Accession

1. This Convention shall be open for signature by any State at the Headquarters of the Organization from 1 June 2004 to 31 May 2005 and shall thereafter remain open for accession by any State.

2. States may become Parties to the Convention by:

(*a*) signature not subject to ratification, acceptance, or approval; or

(*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 an instrument to that effect with the Secretary-General.

4. If a State comprises two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval, or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

5. Any such declaration shall be notified to the Depositary in writing and shall state expressly the territorial unit or units to which this Convention applies.

Article 18. Entry into force

1. This Convention shall enter into force twelve months after the date on which not less than thirty States, the combined merchant fleets of which constitute not less than thirty-five percent of the gross tonnage of the world's merchant shipping, have either signed it without reservation as to ratification, acceptance or approval, or have deposited the requisite instrument of ratification, acceptance, approval or accession in accordance with Article 17.

2. For States which have deposited an instrument of ratification, acceptance, approval or accession in respect of this Convention after the requirements for entry into force thereof have been met, but prior to the date of entry in force, the ratification, acceptance, approval or accession shall take effect on the date of entry into force of this Convention or three months after the date of deposit of instrument, whichever is the later date.

3. Any instrument of ratification, acceptance, approval or accession deposited after the date on which this Convention enters into force shall take effect three months after the date of deposit.

4. After the date on which an amendment to this Convention is deemed to have been accepted under Article 19, any instrument of ratification, acceptance, approval or accession deposited shall apply to this Convention as amended.

Article 19. Amendments

1. This Convention may be amended by either of the procedures specified in the following paragraphs.

2. Amendments after consideration within the Organization:

(*a*) Any Party may propose an amendment to this Convention. A proposed amendment shall be submitted to the Secretary-General, who shall then circulate it to the Parties and Members of the Organization at least six months prior to its consideration.

(*b*) An amendment proposed and circulated as above shall be referred to the Committee for consideration. Parties, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Committee for consideration and adoption of the amendment.

(*c*) Amendments shall be adopted by a two-thirds majority of the Parties present and voting in the Committee, on condition that at least one-third of the Parties shall be present at the time of voting.

(*d*) Amendments adopted in accordance with subparagraph (*c*) shall be communicated by the Secretary-General to the Parties for acceptance.

(*e*) An amendment shall be deemed to have been accepted in the following circumstances:

(i) An amendment to an article of this Convention shall be deemed to have been accepted on the date on which two-thirds of the Parties have notified the Secretary-General of their acceptance of it.

(ii) An amendment to the Annex shall be deemed to have been accepted at the end of twelve months after the date of adoption or such other date as determined by the Committee. However, if by that date more than one-third of the Parties notify the Secretary-General that they object to the amendment, it shall be deemed not to have been accepted.

(*f*) An amendment shall enter into force under the following conditions:

(i) An amendment to an article of this Convention shall enter into force for those Parties that have declared that they have accepted it six months after the date on which it is deemed to have been accepted in accordance with subparagraph (e)(i).

(ii) An amendment to the Annex shall enter into force with respect to all Parties six months after the date on which it is deemed to have been accepted, except for any Party that has:

(1) notified its objection to the amendment in accordance with subparagraph (*e*)(ii) and that has not withdrawn such objection; or

(2) notified the Secretary-General, prior to the entry into force of such amendment, that the amendment shall enter into force for it only after a subsequent notification of its acceptance.

(*g*)(i) A Party that has notified an objection under subparagraph (*f*)(ii)(1) may subsequently notify the Secretary-General that it accepts the amendment. Such amendment shall enter into force for such Party six months after the date of its notification of acceptance, or the date on which the amendment enters into force, whichever is the later date.

(ii) If a Party that has made a notification referred to in subparagraph (*f*)(ii)(2) notifies the Secretary-General of its acceptance with respect to an amendment, such amendment shall enter into force for such Party six months after the date of its notification of acceptance, or the date on which the amendment enters into force, whichever is the later date.

3. Amendment by a Conference:

(*a*) Upon the request of a Party concurred in by at least one-third of the Parties, the Organization shall convene a Conference of Parties to consider amendments to this Convention.

(*b*) An amendment adopted by such a Conference by a two-thirds majority of the Parties present and voting shall be communicated by the Secretary-General to all Parties for acceptance.

(*c*) Unless the Conference decides otherwise, the amendment shall be deemed to have been accepted and shall enter into force in accordance with the procedures specified in paragraphs 2(*e*) and (*f*) respectively.

4. Any Party that has declined to accept an amendment to the Annex shall be treated as a non-Party only for the purpose of application of that amendment.

5. Any notification under this Article shall be made in writing to the Secretary-General.

6. The Secretary-General shall inform the Parties and Members of the Organization of:

(*a*) any amendment that enters into force and the date of its entry into force generally and for each Party; and

(*b*) any notification made under this Article.

Article 20. Denunciation

1. This Convention may be denounced by any Party at any time after the expiry of two years from the date on which this Convention enters into force for that Party.

2. Denunciation shall be effected by written notification to the Depositary, to take effect one year after receipt or such longer period as may be specified in that notification.

Article 21. Depositary

1. This Convention shall be deposited with the Secretary-General, who shall transmit certified copies of this Convention to all States which have signed this Convention or acceded thereto.

2. In addition to the functions specified elsewhere in this Convention, the Secretary-General shall:

(*a*) inform all States that have signed this Convention, or acceded thereto, of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) the date of entry into force of this Convention; and

(iii) the deposit of any instrument of denunciation from the Convention, together with the date on which it was received and the date on which the denunciation takes effect; and

(*b*) as soon as this Convention enters into force, transmit the text thereof to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 22. Languages

This Convention 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 thirteenth day of February, two thousand and four.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments for that purpose, have signed this Convention.

Annex. Regulations for the Control and Management of Ships' Ballast Water and Sediments

Section A. General provisions

Regulation A-1. Definitions

For the purposes of this Annex:

1. "Anniversary date" means the day and the month of each year corresponding to the date of expiry of the Certificate.

2. "Ballast Water Capacity" means the total volumetric capacity of any tanks, spaces or compartments on a ship used for carrying, loading or discharging Ballast Water, including any multi-use tank, space or compartment designed to allow carriage of Ballast Water.

3. "Company" means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who on assuming such responsibil-

ity has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code[1].

4. “Constructed” in respect of a ship means a stage of construction where:

.1 the keel is laid; or

.2 construction identifiable with the specific ship begins;

.3 assembly of the ship has commenced comprising at least 50 tonnes or 1 per cent of the estimated mass of all structural material, whichever is less; or

.4 the ship undergoes a major conversion.

5. “Major conversion” means a conversion of a ship:

.1 which changes its ballast water carrying capacity by 15 per cent or greater, or

.2 which changes the ship type, or

.3 which, in the opinion of the Administration, is projected to prolong its life by ten years or more, or

.4 which results in modifications to its ballast water system other than component replacement-in-kind. Conversion of a ship to meet the provisions of regulation D-1 shall not be deemed to constitute a major conversion for the purpose of this Annex.

6. “From the nearest land” means from the baseline from which the territorial sea of the territory in question is established in accordance with international law except that, for the purposes of the Convention, “from the nearest land” off the north-eastern coast of Australia shall mean from a line drawn from a point on the coast of Australia in

latitude 11°00′ S, longitude 142°08′ E

to a point in latitude 10°35′ S, longitude 141°55′ E

thence to a point latitude 10°00′ S, longitude 142°00′ E

thence to a point latitude 9°10′ S, longitude 143°52′ E

thence to a point latitude 9°00′ S, longitude 144°30′ E

thence to a point latitude 10°41′ S, longitude 145°00′ E

thence to a point latitude 13°00′ S, longitude 145°00′ E

thence to a point latitude 15°00′ S, longitude 146°00′ E

thence to a point latitude 17°30′ S, longitude 147°00′ E

thence to a point latitude 21°00′ S, longitude 152°55′ E

thence to a point latitude 24°30′ S, longitude 154°00′ E

thence to a point on the coast of Australia

in latitude 24°42′ S, longitude 153°15′ E.

[1] Refer to the ISM Code adopted by the Organization by resolution A.741(18), as amended.

7. "Active Substance" means a substance or organism, including a virus or a fungus, that has a general or specific action on or against Harmful Aquatic Organisms and Pathogens.

Regulation A-2. General Applicability

Except where expressly provided otherwise, the discharge of Ballast Water shall only be conducted through Ballast Water Management in accordance with the provisions of this Annex.

Regulation A-3. Exceptions

The requirements of regulation B-3, or any measures adopted by a Party pursuant to Article 2.3 and Section C, shall not apply to:

1. the uptake or discharge of Ballast Water and Sediments necessary for the purpose of ensuring the safety of a ship in emergency situations or saving life at sea; or

2. the accidental discharge or ingress of Ballast Water and Sediments resulting from damage to a ship or its equipment:

.1 provided that all reasonable precautions have been taken before and after the occurrence of the damage or discovery of the damage or discharge for the purpose of preventing or minimizing the discharge; and

.2 unless the owner, Company or officer in charge wilfully or recklessly caused damage; or

3. the uptake and discharge of Ballast Water and Sediments when being used for the purpose of avoiding or minimizing pollution incidents from the ship; or

4. the uptake and subsequent discharge on the high seas of the same Ballast Water and Sediments; or

5. the discharge of Ballast Water and Sediments from a ship at the same location where the whole of that Ballast Water and those Sediments originated and provided that no mixing with unmanaged Ballast Water and Sediments from other areas has occurred. If mixing has occurred, the Ballast Water taken from other areas is subject to Ballast Water Management in accordance with this Annex.

Regulation A-4. Exemptions

1. A Party or Parties, in waters under their jurisdiction, may grant exemptions to any requirements to apply regulations B-3 or C-1, in addition to those exemptions contained elsewhere in this Convention, but only when they are:

.1 granted to a ship or ships on a voyage or voyages between specified ports or locations; or to a ship which operates exclusively between specified ports or locations;

.2 effective for a period of no more than five years subject to intermediate review;

.3 granted to ships that do not mix Ballast Water or Sediments other than between the ports or locations specified in paragraph 1.1; and

.4 granted based on the Guidelines on risk assessment developed by the Organization.

2. Exemptions granted pursuant to paragraph 1 shall not be effective until after communication to the Organization and circulation of relevant information to the Parties.

3. Any exemptions granted under this regulation shall not impair or damage the environment, human health, property or resources of adjacent or other States. Any State that the Party determines may be adversely affected shall be consulted, with a view to resolving any identified concerns.

4. Any exemptions granted under this regulation shall be recorded in the Ballast Water record book.

Regulation A-5. Equivalent compliance

Equivalent compliance with this Annex for pleasure craft used solely for recreation or competition or craft used primarily for search and rescue, less than 50 metres in length overall, and with a maximum Ballast Water capacity of 8 cubic metres, shall be determined by the Administration taking into account Guidelines developed by the Organization.

Section B. Management and control requirements for ships

Regulation B-1. Ballast Water Management Plan

Each ship shall have on board and implement a Ballast Water Management plan. Such a plan shall be approved by the Administration taking into account Guidelines developed by the Organization. The Ballast Water Management plan shall be specific to each ship and shall at least:

1. detail safety procedures for the ship and the crew associated with Ballast Water Management as required by this Convention;

2. provide a detailed description of the actions to be taken to implement the Ballast Water Management requirements and supplemental Ballast Water Management practices as set forth in this Convention;

3. detail the procedures for the disposal of Sediments:

.1 at sea; and

.2 to shore;

4. include the procedures for coordinating shipboard Ballast Water Management that involves discharge to the sea with the authorities of the State into whose waters such discharge will take place;

5. designate the officer on board in charge of ensuring that the plan is properly implemented;

6. contain the reporting requirements for ships provided for under this Convention; and

7. be written in the working language of the ship. If the language used is not English, French or Spanish, a translation into one of these languages shall be included.

Regulation B-2. Ballast Water Record Book

1. Each ship shall have on board a Ballast Water record book that may be an electronic record system, or that may be integrated into another record book or system and, which shall at least contain the information specified in Appendix II.

2. Ballast Water record book entries shall be maintained on board the ship for a minimum period of two years after the last entry has been made and thereafter in the Company's control for a minimum period of three years.

3. In the event of the discharge of Ballast Water pursuant to regulations A-3, A-4 or B-3.6 or in the event of other accidental or exceptional discharge of Ballast Water not otherwise exempted by this Convention, an entry shall be made in the Ballast Water record book describing the circumstances of, and the reason for, the discharge.

4. The Ballast Water record book shall be kept readily available for inspection at all reasonable times and, in the case of an unmanned ship under tow, may be kept on the towing ship.

5. Each operation concerning Ballast Water shall be fully recorded without delay in the Ballast Water record book. Each entry shall be signed by the officer in charge of the operation concerned and each completed page shall be signed by the master. The entries in the Ballast Water record book shall be in a working language of the ship. If that language is not English, French or Spanish the entries shall contain a translation into one of those languages. When entries in an official national language of the State whose flag the ship is entitled to fly are also used, these shall prevail in case of a dispute or discrepancy.

6. Officers duly authorized by a Party may inspect the Ballast Water record book on board any ship to which this regulation applies while the ship is in its port or offshore terminal, and may make a copy of any entry, and require the master to certify that the copy is a true copy. Any copy so certified shall be admissible in any judicial proceeding as evidence of the facts stated in the entry. The inspection of a Ballast Water record book and the taking of a certified copy shall be performed as expeditiously as possible without causing the ship to be unduly delayed.

Regulation B-3. Ballast Water Management for Ships

1. A ship constructed before 2009:

   .1 with a Ballast Water Capacity of between 1,500 and 5,000 cubic metres, inclusive, shall conduct Ballast Water Management that at least meets the standard described in regulation D-1 or regulation D-2 until 2014, after which time it shall at least meet the standard described in regulation D-2;

   .2 with a Ballast Water Capacity of less than 1,500 or greater than 5,000 cubic metres shall conduct Ballast Water Management that at least meets the standard described in regulation D-1 or regulation D-2 until 2016, after which time it shall at least meet the standard described in regulation D-2.

2. A ship to which paragraph 1 applies shall comply with paragraph 1 not later than the first intermediate or renewal survey, whichever occurs first, after the anniversary date of delivery of the ship in the year of compliance with the standard applicable to the ship.

3. A ship constructed in or after 2009 with a Ballast Water Capacity of less than 5,000 cubic metres shall conduct Ballast Water Management that at least meets the standard described in regulation D-2.

4. A ship constructed in or after 2009, but before 2012, with a Ballast Water Capacity of 5,000 cubic metres or more shall conduct Ballast Water Management in accordance with paragraph 1.2.

5. A ship constructed in or after 2012 with a Ballast Water Capacity of 5000 cubic metres or more shall conduct Ballast Water Management that at least meets the standard described in regulation D-2.

6. The requirements of this regulation do not apply to ships that discharge Ballast Water to a reception facility designed taking into account the Guidelines developed by the Organization for such facilities.

7. Other methods of Ballast Water Management may also be accepted as alternatives to the requirements described in paragraphs 1 to 5, provided that such methods ensure at least the same level of protection to the environment, human health, property or resources, and are approved in principle by the Committee.

Regulation B-4. Ballast Water Exchange

1. A ship conducting Ballast Water exchange to meet the standard in regulation D-1 shall:

> .1 whenever possible, conduct such Ballast Water exchange at least 200 nautical miles from the nearest land and in water at least 200 metres in depth, taking into account the Guidelines developed by the Organization;
>
> .2 in cases where the ship is unable to conduct Ballast Water exchange in accordance with paragraph 1.1, such Ballast Water exchange shall be conducted taking into account the Guidelines described in paragraph 1.1 and as far from the nearest land as possible, and in all cases at least 50 nautical miles from the nearest land and in water at least 200 metres in depth.

2. In sea areas where the distance from the nearest land or the depth does not meet the parameters described in paragraph 1.1 or 1.2, the port State may designate areas, in consultation with adjacent or other States, as appropriate, where a ship may conduct Ballast Water exchange, taking into account the Guidelines described in paragraph 1.1.

3. A ship shall not be required to deviate from its intended voyage, or delay the voyage, in order to comply with any particular requirement of paragraph 1.

4. A ship conducting Ballast Water exchange shall not be required to comply with paragraphs 1 or 2, as appropriate, if the master reasonably decides that such exchange would threaten the safety or stability of the ship, its crew, or its passengers because of adverse weather, ship design or stress, equipment failure, or any other extraordinary condition.

5. When a ship is required to conduct Ballast Water exchange and does not do so in accordance with this regulation, the reasons shall be entered in the Ballast Water record book.

Regulation B-5. Sediment Management for Ships

1. All ships shall remove and dispose of Sediments from spaces designated to carry Ballast Water in accordance with the provisions of the ship's Ballast Water Management plan.

2. Ships described in regulation B-3.3 to B-3.5 should, without compromising safety or operational efficiency, be designed and constructed with a view to minimize the uptake and undesirable entrapment of Sediments, facilitate removal of Sediments, and provide safe access to allow for Sediment removal and sampling, taking into account guidelines developed by the Organization. Ships described in regulation B-3.1 should, to the extent practicable, comply with this paragraph.

Regulation B-6. Duties of Officers and Crew

Officers and crew shall be familiar with their duties in the implementation of Ballast Water Management particular to the ship on which they serve and shall, appropriate to their duties, be familiar with the ship's Ballast Water Management plan.

Section C. Special requirement in certain areas

Regulation C-1. Additional Measures

1. If a Party, individually or jointly with other Parties, determines that measures in addition to those in Section B are necessary to prevent, reduce, or eliminate the transfer of Harmful Aquatic Organisms and Pathogens through ships' Ballast Water and Sediments, such Party or Parties may, consistent with international law, require ships to meet a specified standard or requirement.

2. Prior to establishing standards or requirements under paragraph 1, a Party or Parties should consult with adjacent or other States that may be affected by such standards or requirements.

3. A Party or Parties intending to introduce additional measures in accordance with paragraph 1 shall:

.1 take into account the Guidelines developed by the Organization.

.2 communicate their intention to establish additional measure(s) to the Organization at least 6 months, except in emergency or epidemic situations, prior to the projected date of implementation of the measure(s). Such communication shall include:

.1 the precise co-ordinates where additional measure(s) is/are applicable;

.2 he need and reasoning for the application of the additional measure(s), including, whenever possible, benefits;

.3 a description of the additional measure(s); and

.4 any arrangements that may be provided to facilitate ships' compliance with the additional measure(s).

.3 to the extent required by customary international law as reflected in the United Nations Convention on the Law of the Sea, as appropriate, obtain the approval of the Organization.

4. A Party or Parties, in introducing such additional measures, shall endeavour to make available all appropriate services, which may include but are not limited to notification to mariners of areas, available and alternative routes or ports, as far as practicable, in order to ease the burden on the ship.

5. Any additional measures adopted by a Party or Parties shall not compromise the safety and security of the ship and in any circumstances not conflict with any other convention with which the ship must comply.

6. A Party or Parties introducing additional measures may waive these measures for a period of time or in specific circumstances as they deem fit.

Regulation C-2. Warnings Concerning Ballast Water Uptake in Certain Areas and Related Flag State Measures

1. A Party shall endeavour to notify mariners of areas under their jurisdiction where ships should not uptake Ballast Water due to known conditions. The Party shall include in such notices the precise coordinates of the area or areas, and, where possible, the location of any alternative area or areas for the uptake of Ballast Water. Warnings may be issued for areas:

.1 known to contain outbreaks, infestations, or populations of Harmful Aquatic Organisms and Pathogens (e.g., toxic algal blooms) which are likely to be of relevance to Ballast Water uptake or discharge;

.2 near sewage outfalls; or

.3 where tidal flushing is poor or times during which a tidal stream is known to be more turbid.

2. In addition to notifying mariners of areas in accordance with the provisions of paragraph 1, a Party shall notify the Organization and any potentially affected coastal States of any areas identified in paragraph 1 and the time period such warning is likely to be in effect. The notice to the Organization and any potentially affected coastal States shall include the precise coordinates of the area or areas, and, where possible, the location of any alternative area or areas for the uptake of Ballast Water. The notice shall include advice to ships needing to uptake Ballast Water in the area, describing arrangements made for alternative supplies. The Party shall also notify mariners, the Organization, and any potentially affected coastal States when a given warning is no longer applicable.

Regulation C-3. Communication of Information

The Organization shall make available, through any appropriate means, information communicated to it under regulations C-1 and C-2.

Section D. Standards for ballast water management

Regulation D-1. Ballast Water Exchange Standard

1. Ships performing Ballast Water exchange in accordance with this regulation shall do so with an efficiency of at least 95 percent volumetric exchange of Ballast Water.

2. For ships exchanging Ballast Water by the pumping-through method, pumping through three times the volume of each Ballast Water tank shall be considered to meet the standard described in paragraph 1. Pumping through less than three times the volume may be accepted provided the ship can demonstrate that at least 95 percent volumetric exchange is met.

Regulation D-2. Ballast Water Performance Standard

1. Ships conducting Ballast Water Management in accordance with this regulation shall discharge less than 10 viable organisms per cubic metre greater than or equal to 50micrometres in minimum dimension and less than 10 viable organisms per millilitre less than 50 micrometres in minimum dimension and greater than or equal to 10micrometres in minimum dimension; and discharge of the indicator microbes shall not exceed the specified concentrations described in paragraph 2.

2. Indicator microbes, as a human health standard, shall include:

.1 Toxicogenic *Vibrio cholerae* (O1 and O139) with less than 1 colony forming unit (cfu) per 100 millilitres or less than 1 cfu per 1 gram (wet weight) zooplankton samples;

.2 *Escherichia coli* less than 250 cfu per 100 millilitres;

.3 Intestinal Enterococci less than100 cfu per 100 milliliters.

Regulation D-3. Approval Requirements for Ballast Water Management Systems

1. Except as specified in paragraph 2, Ballast Water Management systems used to comply with this Convention must be approved by the Administration taking into account Guidelines developed by the Organization.

2. Ballast Water Management systems which make use of Active Substances or preparations containing one or more Active Substances to comply with this Convention shall be approved by the Organization, based on a procedure developed by the Organization. This procedure shall describe the approval and withdrawal of approval of Active Substances and their proposed manner of application. At withdrawal of approval, the use of the relevant Active Substance or Substances shall be prohibited within 1 year after the date of such withdrawal.

3. Ballast Water Management systems used to comply with this Convention must be safe in terms of the ship, its equipment and the crew.

Regulation D-4. Prototype Ballast Water Treatment Technologies

1. For any ship that, prior to the date that the standard in regulation D-2 would otherwise become effective for it, participates in a programme approved by the Administration to test and evaluate promising Ballast Water treatment technologies, the standard

in regulation D-2 shall not apply to that ship until five years from the date on which the ship would otherwise be required to comply with such standard.

2. For any ship that, after the date on which the standard in regulation D-2 has become effective for it, participates in a programme approved by the Administration, taking into account Guidelines developed by the Organization, to test and evaluate promising Ballast Water technologies with the potential to result in treatment technologies achieving a standard higher than that in regulation D-2, the standard in regulation D-2 shall cease to apply to that ship for five years from the date of installation of such technology.

3. In establishing and carrying out any programme to test and evaluate promising Ballast Water technologies, Parties shall:

.1 take into account Guidelines developed by the Organization, and

.2 allow participation only by the minimum number of ships necessary to effectively test such technologies.

4. Throughout the test and evaluation period, the treatment system must be operated consistently and as designed.

Regulation D-5. Review of Standards by the Organization

1. At a meeting of the Committee held no later than three years before the earliest effective date of the standard set forth in regulation D-2, the Committee shall undertake a review which includes a determination of whether appropriate technologies are available to achieve the standard, an assessment of the criteria in paragraph 2, and an assessment of the socio-economic effect(s) specifically in relation to the developmental needs of developing countries, particularly small island developing States. The Committee shall also undertake periodic reviews, as appropriate, to examine the applicable requirements for ships described in regulation B-3.1 as well as any other aspect of Ballast Water Management addressed in this Annex, including any Guidelines developed by the Organization.

2. Such reviews of appropriate technologies shall also take into account:

.1 safety considerations relating to the ship and the crew;

.2 environmental acceptability, i.e., not causing more or greater environmental impacts than they solve;

.3 practicability, i.e., compatibility with ship design and operations;

.4 cost effectiveness, i.e., economics; and

.5 biological effectiveness in terms of removing, or otherwise rendering not viable, Harmful Aquatic Organisms and Pathogens in Ballast Water.

3. The Committee may form a group or groups to conduct the review(s) described in paragraph 1. The Committee shall determine the composition, terms of reference and specific issues to be addressed by any such group formed. Such groups may develop and recommend proposals for amendment of this Annex for consideration by the Parties. Only Parties may participate in the formulation of recommendations and amendment decisions taken by the Committee.

4. If, based on the reviews described in this regulation, the Parties decide to adopt amendments to this Annex, such amendments shall be adopted and enter into force in accordance with the procedures contained in Article 19 of this Convention.

Section E. Survey and certification requirements for ballast water management

Regulation E-1. Surveys

1. Ships of 400 gross tonnage and above to which this Convention applies, excluding floating platforms, FSUs and FPSOs, shall be subject to surveys specified below:

.1 An initial survey before the ship is put in service or before the Certificate required under regulation E-2 or E-3 is issued for the first time. This survey shall verify that the Ballast Water Management plan required by regulation B-1 and any associated structure, equipment, systems, fitting, arrangements and material or processes comply fully with the requirements of this Convention.

.2 A renewal survey at intervals specified by the Administration, but not exceeding five years, except where regulation E-5.2, E-5.5, E-5.6, or E-5.7 is applicable. This survey shall verify that the Ballast Water Management plan required by regulation B-1 and any associated structure, equipment, systems, fitting, arrangements and material or processes comply fully with the applicable requirements of this Convention.

.3 An intermediate survey within three months before or after the second Anniversary date or within three months before or after the third Anniversary date of the Certificate, which shall take the place of one of the annual surveys specified in paragraph 1.4. The intermediate surveys shall ensure that the equipment, associated systems and processes for Ballast Water Management fully comply with the applicable requirements of this Annex and are in good working order. Such intermediate surveys shall be endorsed on the Certificate issued under regulation E-2 or E-3.

.4 An annual survey within three months before or after each Anniversary date, including a general inspection of the structure, any equipment, systems, fittings, arrangements and material or processes associated with the Ballast Water Management plan required by regulation B-1 to ensure that they have been maintained in accordance with paragraph 9 and remain satisfactory for the service for which the ship is intended. Such annual surveys shall be endorsed on the Certificate issued under regulation E-2 or E-3.

.5 An additional survey either general or partial, according to the circumstances, shall be made after a change, replacement, or significant repair of the structure, equipment, systems, fittings, arrangements and material necessary to achieve full compliance with this Convention. The survey shall be such as to ensure that any such change, replacement, or significant repair has been effectively made, so that the ship complies with the requirements of this Convention. Such surveys shall be endorsed on the Certificate issued under regulation E-2 or E-3.

2. The Administration shall establish appropriate measures for ships that are not subject to the provisions of paragraph 1 in order to ensure that the applicable provisions of this Convention are complied with.

3. Surveys of ships for the purpose of enforcement of the provisions of this Convention shall be carried out by officers of the Administration. The Administration may, however, entrust the surveys either to surveyors nominated for the purpose or to organizations recognized by it.

4. An Administration nominating surveyors or recognizing organizations to conduct surveys, as described in paragraph 3 shall, as a minimum, empower such nominated surveyors or recognized organizations[2] to:

.1 require a ship that they survey to comply with the provisions of this Convention; and

.2 carry out surveys and inspections if requested by the appropriate authorities of a port State that is a Party.

5. The Administration shall notify the Organization of the specific responsibilities and conditions of the authority delegated to the nominated surveyors or recognized organizations, for circulation to Parties for the information of their officers.

6. When the Administration, a nominated surveyor, or a recognized organization determines that the ship's Ballast Water Management does not conform to the particulars of the Certificate required under regulation E-2 or E-3 or is such that the ship is not fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources such surveyor or organization shall immediately ensure that corrective action is taken to bring the ship into compliance. A surveyor or organization shall be notified immediately, and it shall ensure that the Certificate is not issued or is withdrawn as appropriate. If the ship is in the port of another Party, the appropriate authorities of the port State shall be notified immediately. When an officer of the Administration, a nominated surveyor, or a recognized organization has notified the appropriate authorities of the port State, the Government of the port State concerned shall give such officer, surveyor or organization any necessary assistance to carry out their obligations under this regulation, including any action described in Article 9.

7. Whenever an accident occurs to a ship or a defect is discovered which substantially affects the ability of the ship to conduct Ballast Water Management in accordance with this Convention, the owner, operator or other person in charge of the ship shall report at the earliest opportunity to the Administration, the recognized organization or the nominated surveyor responsible for issuing the relevant Certificate, who shall cause investigations to be initiated to determine whether a survey as required by paragraph 1 is necessary. If the ship is in a port of another Party, the owner, operator or other person in charge shall also report immediately to the appropriate authorities of the port State and the nominated surveyor or recognized organization shall ascertain that such report has been made.

8. In every case, the Administration concerned shall fully guarantee the completeness and efficiency of the survey and shall undertake to ensure the necessary arrangements to satisfy this obligation.

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[2] Refer to the guidelines adopted by the Organization by resolution A.739(18), as may be amended by the Organization, and the specifications adopted by the Organization by resolution A.789(19), as may be amended by the Organization.

9. The condition of the ship and its equipment, systems and processes shall be maintained to conform with the provisions of this Convention to ensure that the ship in all respects will remain fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources.

10. After any survey of the ship under paragraph 1 has been completed, no change shall be made in the structure, any equipment, fittings, arrangements or material associated with the Ballast Water Management plan required by regulation B-1 and covered by the survey without the sanction of the Administration, except the direct replacement of such equipment or fittings.

Regulation E-2. Issuance or Endorsement of a Certificate

1. The Administration shall ensure that a ship to which regulation E-1 applies is issued a Certificate after successful completion of a survey conducted in accordance with regulation E-1. A Certificate issued under the authority of a Party shall be accepted by the other Parties and regarded for all purposes covered by this Convention as having the same validity as a Certificate issued by them.

2. Certificates shall be issued or endorsed either by the Administration or by any person or organization duly authorized by it. In every case, the Administration assumes full responsibility for the Certificate.

Regulation E-3. Issuance or Endorsement of a Certificate by Another Party

1. At the request of the Administration, another Party may cause a ship to be surveyed and, if satisfied that the provisions of this Convention are complied with, shall issue or authorize the issuance of a Certificate to the ship, and where appropriate, endorse or authorize the endorsement of that Certificate on the ship, in accordance with this Annex.

2. A copy of the Certificate and a copy of the survey report shall be transmitted as soon as possible to the requesting Administration.

3. A Certificate so issued shall contain a statement to the effect that it has been issued at the request of the Administration and it shall have the same force and receive the same recognition as a Certificate issued by the Administration.

4. No Certificate shall be issued to a ship entitled to fly the flag of a State which is not a Party.

Regulation E-4. Form of the Certificate

The Certificate shall be drawn up in the official language of the issuing Party, in the form set forth in Appendix I. If the language used is neither English, French nor Spanish, the text shall include a translation into one of these languages.

Regulation E-5. Duration and Validity of the Certificate

1. A Certificate shall be issued for a period specified by the Administration that shall not exceed five years.

2. For renewal surveys:

.1 Notwithstanding the requirements of paragraph 1, when the renewal survey is completed within three months before the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of expiry of the existing Certificate.

.2 When the renewal survey is completed after the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of expiry of the existing Certificate.

.3 When the renewal survey is completed more than three months before the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of completion of the renewal survey.

3. If a Certificate is issued for a period of less than five years, the Administration may extend the validity of the Certificate beyond the expiry date to the maximum period specified in paragraph 1, provided that the surveys referred to in regulation E-1.1.3 applicable when a Certificate is issued for a period of five years are carried out as appropriate.

4. If a renewal survey has been completed and a new Certificate cannot be issued or placed on board the ship before the expiry date of the existing Certificate, the person or organization authorized by the Administration may endorse the existing Certificate and such a Certificate shall be accepted as valid for a further period which shall not exceed five months from the expiry date.

5. If a ship at the time when the Certificate expires is not in a port in which it is to be surveyed, the Administration may extend the period of validity of the Certificate but this extension shall be granted only for the purpose of allowing the ship to complete its voyage to the port in which it is to be surveyed, and then only in cases where it appears proper and reasonable to do so. No Certificate shall be extended for a period longer than three months, and a ship to which such extension is granted shall not, on its arrival in the port in which it is to be surveyed, be entitled by virtue of such extension to leave that port without having a new Certificate. When the renewal survey is completed, the new Certificate shall be valid to a date not exceeding five years from the date of expiry of the existing Certificate before the extension was granted.

6. A Certificate issued to a ship engaged on short voyages which has not been extended under the foregoing provisions of this regulation may be extended by the Administration for a period of grace of up to one month from the date of expiry stated on it. When the renewal survey is completed, the new Certificate shall be valid to a date not exceeding five years from the date of expiry of the existing Certificate before the extension was granted.

7. In special circumstances, as determined by the Administration, a new Certificate need not be dated from the date of expiry of the existing Certificate as required by paragraph 2.2, 5 or 6 of this regulation. In these special circumstances, the new Certificate shall be valid to a date not exceeding five years from the date of completion of the renewal survey.

8. If an annual survey is completed before the period specified in regulation E-1, then:

.1 the Anniversary date shown on the Certificate shall be amended by endorsement to a date which shall not be more than three months later than the date on which the survey was completed;

.2 the subsequent annual or intermediate survey required by regulation E-1 shall be completed at the intervals prescribed by that regulation using the new Anniversary date;

.3 the expiry date may remain unchanged provided one or more annual surveys, as appropriate, are carried out so that the maximum intervals between the surveys prescribed by regulation E-1 are not exceeded.

9. A Certificate issued under regulation E-2 or E-3 shall cease to be valid in any of the following cases:

.1 if the structure, equipment, systems, fittings, arrangements and material necessary to comply fully with this Convention is changed, replaced or significantly repaired and the Certificate is not endorsed in accordance with this Annex;

.2 upon transfer of the ship to the flag of another State. A new Certificate shall only be issued when the Party issuing the new Certificate is fully satisfied that the ship is in compliance with the requirements of regulation E-1. In the case of a transfer between Parties, if requested within three months after the transfer has taken place, the Party whose flag the ship was formerly entitled to fly shall, as soon as possible, transmit to the Administration copies of the Certificates carried by the ship before the transfer and, if available, copies of the relevant survey reports;

3 if the relevant surveys are not completed within the periods specified under regulation E-1.1; or

4 if the Certificate is not endorsed in accordance with regulation E-1.1.

APPENDIX I

FORM OF INTERNATIONAL BALLAST WATER MANAGEMENT CERTIFICATE

APPENDIX II.

FORM OF BALLAST WATER RECORD BOOK

[*Appendices are not published herein.*]

Chapter V

DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS[1]

A. Decisions of the United Nations Administrative Tribunal[2]

1. *Judgement No. 1169 (23 July 2004): Abebe* v. *the Secretary-General of the United Nations*[3]

Receivability *ratione temporis*—Waiver of time limits pursuant to rule 111.3 (d) of the staff rules—Appointments under the 200 Series Staff Regulations and Rules in contravention of ST/AI/297[4]—Legal expectancy of renewal—Eligibility to apply and entitlement to a position—Gender parity rules—General Assembly resolution 49/167 of 23 December 1994 and ST/AI/412—Promotion of General Service staff to Professional posts outside the framework of competitive examinations—General Assembly resolution 33/143 of 20 December 1978

[1] In view of the large number of judgements which were rendered in 2004 by the administrative tribunals of the United Nations and related intergovernmental organizations, only those judgements which address significant issues of United Nations administrative law or are otherwise of general interest have been summarized in the present edition of the Yearbook. For the full text of the complete series of judgements rendered by the tribunals, namely, Judgements Nos. 1164 to 1222 of the United Nations Administrative Tribunal, Judgements Nos. 2271 to 2374 of the Administrative Tribunal of the International Labour Organization, Decisions Nos. 309 to 329 of the World Bank Administrative Tribunal, and Judgement No. 2004–1 of the International Monetary Fund Administrative Tribunal, see, respectively, documents AT/DEC/1164 to AT/DEC/1222; Judgements of the Administrative Tribunal of the International Labour Organization: 96th and 97th Sessions; World Bank Administrative Tribunal Reports, 2004; and International Monetary Fund Administrative Tribunal Reports, Judgement No. 2004–1.

[2] The Administrative Tribunal of the United Nations is competent to hear and pass judgment upon applications alleging non-observance of contracts of employment of staff members of the United Nations Secretariat or of their terms of appointment. In addition, the Tribunal's competence extends to the United Nations Joint Staff Pension Fund (including cases from all specialized agencies that participate in the Fund and which have accepted the jurisdiction of the Tribunal in Pension Fund cases), the United Nations Programmes and Funds, such specialized agencies and related organizations that have accepted the competence of the Tribunal (the International Maritime Organization and the International Civil Aviation Organization), the staff of the Registries of the International Court of Justice, the International Tribunal for the Law of the Sea, and the staff of the International Seabed Authority. For more information about the United Nations Administrative Tribunal and the full texts of its judgements, see http://untreaty.un.org/UNAT/main_page.htm.

[3] Julio Barboza, President; and Omer Yousif Bireedo and Jacqueline R. Scott, Members.

[4] Administrative instructions describe instructions and procedures for the implementation of the Financial Regulations and Rules, Staff Regulations and Rules or Secretary-General's bulletins and are

The Applicant entered the service of the United Nations Economic Commission for Africa (ECA) at the G-5 level, as an English Secretary, on 25 October 1977. Her contract was subsequently extended and, on 1 August 1982, she received a permanent appointment.

On 8 March 1990, the Applicant, who was serving at the G-6 level, applied for the L-1 level post of Project Administrative Officer. On 30 August that year, she was offered a one-year intermediate-term appointment as Acting Project Administrative Officer, at the level L-1, step 1, under the 200 Series of the Staff Regulations and Rules. She was advised that her appointment would be subject to her resignation from her permanent post; accordingly, on 3 September, she resigned from her permanent post and accepted the offer. Thereafter, the Applicant's 200 Series contract was extended several times until she was informed, on 16 January 1996, that her appointment would not be extended beyond 31 January 1996, due to lack of funds.

On 2 April 1996, ECA advised the Office of Human Resources Management (OHRM) that a number of General Service staff members had been given 200 Series appointments for extended periods of time and had been given, or had assumed, career expectations under this Series. On 19 April, OHRM responded that the staff members in question had received 200 Series appointments in contravention of administrative instruction ST/AI/297 and of the delegation of authority to ECA. OHRM suggested that the staff members might be re-employed at the General Service level, if posts were available to accommodate them. On 10 May, the Legal Adviser, ECA, informed the Executive Secretary that the staff members had not been "properly advised as to the consequences of the 200 Series appointment." He continued, "[t]he only remedy I see to this is that on expiry of their present contract[s,] ECA seek exceptional approval to reinstate them in the 100 Series at the [General Service] level they had at the time of the 200 Series appointment."

On 31 July 1996, the Applicant was reinstated at her previous G-6 level with retroactive effect as of 1 February. On 2 August, the Applicant sent an "appeal" against the decision to reinstate her at the General Service level to the Executive Secretary and after extensive correspondence on the matter, she reiterated this request on 7 March 1997. Thereafter, she requested administrative review.

On 11 August 1997, the Applicant lodged an appeal with the Joint Appeals Board (JAB) in New York. In its report of 7 December 1999, the JAB found the case receivable, *ratione temporis*, as exceptional circumstances existed in the case which warranted a waiver of the time limits, pursuant to staff rule 111.3 (d). It found that ECA should have considered the Applicant for promotion to the Professional level in view of her education, performance, and the Organization's goal of increasing the number of women serving at that level, as mandated by General Assembly resolution 49/167 of 23 December 1994 and ST/AI/412. The JAB concluded that the Applicant deserved full and fair consideration for appointment at the Professional level and recommended that the Secretary-General order ECA to make bona fide efforts to find her "a suitable post at the Professional level," in conformity with ST/AI/412. On 10 April 2000, the Applicant was informed that the Secretary-General did not agree with the JAB's conclusions as, pursuant to General Assembly resolution 33/143 of 20 December 1978, the promotion of staff from the General Service category to the Professional category is made exclusively through competitive examination. Accordingly,

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promulgated and signed by the Under-Secretary-General for Administration and Management or by other officials to whom the Secretary-General has delegated specific authority (see ST/SGB/1997/1).

he had decided to take no further action in her case. On 30 April 2002, the Applicant filed her Application with the Tribunal.

In its consideration of the case, the Tribunal agreed with the JAB that the case was receivable, *ratione temporis*. The Tribunal found that the Applicant and the Organization were involved in ongoing communication in an effort to resolve her situation and, whether her request for administrative review was submitted on 21 March 1997, as claimed by the Applicant, or on 13 May 1997, per the Respondent, it fell within the required two-month time limit. Accordingly, the Tribunal proceeded to consider the substantive question of whether the Applicant was entitled to be placed against another Professional post when her 200 Series appointment ended.

The Tribunal recalled that, in ordinary circumstances, given the temporary nature of 200 Series posts; the fact that the Applicant was notified on several occasions that her post was in danger of non-renewal; and, in the absence of an express promise that her contract would be renewed, she would not have a legal expectancy of renewal of her appointment. Despite the fact that the Respondent had admitted his culpability in putting the Applicant in the untenable situation in which she found herself, having resigned her permanent position, the Tribunal found that the Applicant had not provided any evidence that she was given an expectation of a career under the 200 Series. The Tribunal thus concluded that she did not have a legal expectancy to a career under the 200 Series and that the decision not to extend her 200 Series contract was within the Respondent's discretion and was not improperly motivated by prejudice, bias, or other extraneous factors.

Insofar as the Applicant's contention that she was entitled to be placed against a suitable Professional post under the 100 Series by virtue of ST/AI/412 is concerned, the Tribunal found that she had confused eligibility to apply for a position with entitlement. It noted that the Applicant had not applied for a single Professional post following the cessation of her 200 Series employment. Nonetheless, the Tribunal concluded that the Respondent had an obligation to identify appropriate posts for which she might apply and be qualified and to encourage her to apply thereto. Moreover, it found that under the terms of ST/AI/412, the Respondent should not have filled any Professional vacancies—other than those filled by competitive examination—with male candidates, until he had searched for six months for a suitable female candidate. As there was no evidence that the Respondent had made any effort to fulfil his obligations in this respect, the Tribunal held that he had acted in "complete disregard" of ST/AI/412. In view of her performance and experience, the Tribunal noted that the Applicant was exactly the kind of candidate for which gender parity rules were designed, and expressed its disappointment with the Respondent's lack of effort. It found that as she was entitled to have had the Respondent identify, and encourage her to apply for posts for which she might be qualified, she was entitled to compensation for the Respondent's failure to do so but that such entitlement did not give rise to a right to be placed against a Professional post.

Finally, the Tribunal addressed the issue of whether the Applicant was required to take the competitive "G to P" examination. The Tribunal found that under ordinary circumstances she would be required to take the examination in order to encumber a Professional post but that, as the Respondent had created the exceptional circumstances of her case and had permitted her to encumber a Professional post for several years, the requirement should be waived.

Accordingly, the Tribunal awarded the Applicant compensation of six months' net base salary at the P-2 level, at the rate in effect at the date of Judgement, for the failure of the Respondent to identify, and encourage her to apply for suitable Professional posts for which she might be qualified; ordered the Respondent to make "a substantial and timely effort to identify suitable Professional posts for which the Applicant might be qualified and to encourage the Applicant to apply for these posts"; and, rejected all other pleas.

2. *Judgement No. 1175 (23 July 2004): Ikegame* v. *the Secretary-General of the United Nations*[5]

Forum non conveniens—Authority to take disciplinary actions for alleged misconducts occurring during secondment—Inter-Organization Agreement concerning Transfers, Secondment or Loan of Staff[6]—Double jeopardy—Serious misconduct—Proportionality of disciplinary sanctions—Length of suspension pending disciplinary proceedings—Staff rule 110.1 and 2—Right to due process—Failure to notify staff of composition of Joint Disciplinary Committee—Conflict of interest—ST/AI/371[7]

The Applicant entered the service of the United Nations on 1 August 1995, as an Economic Affairs Officer at the P-5 level with a permanent contract. On 1 June 1999, she was seconded to a D-1 level post with the Food and Agriculture Organization (FAO) in Rome for two years.

On 4 March 2001, the Applicant was promoted to a D-1 post at the Department of Economic and Social Affairs, United Nations, with effect from 1 June 2001. On 24 May, FAO advised the United Nations that the Applicant would return to New York upon the completion of her secondment to take up her new duties. Attached to this memorandum were "Administrative Details" outlining FAO's appraisal of the Applicant's performance and conduct during her secondment. According thereto, FAO had initiated disciplinary proceedings against her following an internal investigation into her rental subsidy claims and instances of misconduct on her part had been established, but in light of her return to the United Nations, FAO had decided that disciplinary action "was no longer at issue." On 31 May, the Applicant provided an explanation of her actions to the Office of Human Resources Management.

On 1 June 2001, the Applicant took up her D-1 level position but, on 4 June, she was suspended from duty with full pay, with immediate effect, pending completion of disciplinary proceedings. The Applicant was invited to comment on the FAO allegations that she had committed rental subsidy fraud and had falsified the photocopy of a cheque in an effort to conceal her actions and mislead investigating officers. The Applicant responded on 18 June, professing "great surprise" at her suspension, which she considered to violate ST/AI/371. She noted that FAO had decided not to impose disciplinary action and argued

[5] Kevin Haugh, Vice-President; and Jacqueline R. Scott and Dayendra Sena Wijewardane, Members.

[6] The full title of the Agreement is Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations Applying the United Nations Common System of Salaries, Allowances and Benefits (see doc. CEB/2003/HLCM/CM/7).

[7] For information on Administrative instructions, see note 4 above.

that disciplinary proceedings at the United Nations would amount to double jeopardy, and would be prejudicial to her appeal at FAO.

On 19 September 2001, the case was referred to the Joint Disciplinary Committee (JDC) in New York. In its report of 22 April 2002, the JDC concluded that the Administration had failed to substantiate its charge of rental subsidy fraud. On the second charge of falsification of the copy of a cancelled cheque, the JDC found that the Applicant's "free and uncoerced admission of taking an intentional and affirmative action of altering both sides of the cancelled [cheque] and submitting it as an official document in the context of rental subsidy claim" constituted adequate evidence in support of the Administration's allegation of misconduct. Having concluded that the Applicant had failed to comply with her obligations under the United Nations Charter and to observe the standards of conduct expected of an international civil servant, the JDC recommended that she be demoted two levels and that a written censure be issued to her and placed as a permanent record in her Official Status file. On 25 June, the Applicant was informed that the Secretary-General had decided to accept the findings and conclusions of the JDC, and agreed that her conduct fell short of the standard of conduct expected of an international civil servant and amounted to serious misconduct within the meaning of staff rule 110.1, warranting disciplinary action. On 15 August, the Applicant filed her Application with the Tribunal.

In its consideration of the case, the Tribunal first addressed the issues of *forum non conveniens* and the authority of the United Nations to investigate and take disciplinary action with respect to the Applicant's alleged misconduct whilst on secondment to FAO. On the issue of *forum non conveniens,* the Tribunal determined that although New York may not have been the most convenient forum because of lack of nexus and because of inconvenience and difficulty in obtaining relevant background information, witness testimony and evidence, it was the reasonable and logical choice as the Applicant had returned to Headquarters. Insofar as the United Nations' authority in the matter was concerned, the Tribunal noted that article 7 (a) of the Inter-Organization Agreement concerning Transfers, Secondment or Loan of Staff provides that

> "[w]hen a seconded staff member returns to the releasing organization the receiving organization will provide the releasing organization with a statement showing: . . . (iv) an appraisal of the performance and conduct of the staff member during his secondment".

Moreover, pursuant to paragraph 9 (b) of the Agreement, if the receiving organization summarily dismisses the staff member, the releasing organization may investigate the matter itself and reach its own conclusion as to whether the circumstances warrant similar termination from the releasing organization. The Tribunal found that the rationale of paragraph 9 (b) could be applied to the Applicant's case and, thus, the Organization's actions were in keeping with the spirit of the Agreement. The Tribunal also considered the issue of double jeopardy, but determined that as FAO had not imposed disciplinary measures upon the Applicant but had expressly left her conduct to be dealt with by the United Nations, the concept of double jeopardy did not apply.

Insofar as the Applicant's lengthy suspension with full pay was concerned, the Tribunal found that it had not violated her rights to due process. At the time of her suspension, she had admitted her alteration of the cheque in question and the Tribunal considered this

> "reason enough for the Respondent to be concerned about allowing the Applicant to encumber the D-1 post to which she had recently been promoted . . . [as] . . . her admitted

> forgery was sufficient reason to have shaken the Respondent's confidence in her ability to comport herself with the honesty and integrity expected of all United Nations staff members and particularly of such a high ranking staff member".

The Tribunal noted that the provisions of staff rule 110.2 state that suspension pending disciplinary proceedings should normally not exceed three months but held that, while the Applicant's 13 months suspension was significantly longer than that period, she had suffered no financial harm as a result and, in view of her admittedly improper conduct, could not be heard to complain about the foreseeable consequences, which included suspension.

The Applicant had raised serious questions with respect to the constitution of the JDC. The Tribunal found also that the Administration's failure to notify her of the members of the JDC panel until she arrived at the hearing amounted to a denial of her rights to due process justifying compensation, as she was denied the right to submit a formal, substantive objection to any of the members. Further, the Tribunal agreed with the Applicant that the presence of one of the members of the JDC panel created a conflict of interest for two reasons: his "behaviour and comportment evidenced a lack of impartiality to the Applicant's counsel [said to result from prior interaction at the JDC], which might have, in turn, resulted in a lack of impartiality toward the Applicant"; and, more significantly, he had an "economic/employment interest . . . in the Applicant's demotion." The Tribunal noted that, whilst the JDC member "may have been pure of heart and may have harboured no self interest in the outcome of the Applicant's case, his presence, at a minimum, created the appearance of impropriety," and reiterated its position that joint bodies must "maintain an impeccable level of impartiality and fairness." The Tribunal held that the inclusion of a panel member "who at best appears to lack impartiality and be self-interested diminishes the entire JDC process and undermines any recommendation made by such JDC."

The Tribunal found that, under such circumstances, it would be justified in dismissing the entire case against a staff member but that, as the Applicant had admitted altering a copy of a cancelled cheque that was submitted by her for official purposes, the conclusion reached by the majority of the JDC was reasonable, if not inevitable. The Tribunal held that the Applicant's admitted wrongdoing constituted misconduct of such nature as to reasonably warrant her demotion by two levels and noted that, under the circumstances, it would also have found dismissal to be proportional to the misconduct. Accordingly, the Tribunal awarded the Applicant compensation of US$ 4,500 for the denial of her rights to due process by the JDC, but rejected all other pleas.

3. *Judgement No. 1181 (23 July 2004): Abu Kashef* v. *the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or the Agency)*[8]

Termination of the Applicant's services in the interest of the Agency—UNRWA Area staff regulation 9.1—Unsatisfactory professional conduct and performance of staff—Misuse of *laissez-passer*—Proper exercise of managerial discretion—Burden of proof

The Applicant entered the service of UNRWA at grade 11, on a temporary indefinite appointment as an Area staff member with the Gaza Training Centre, on 1 September 1984. Effective 1 January 1996, he was promoted to the post of Principal, at grade 16, subject to a twelve-month probationary period.

The Applicant's performance evaluation report (PER) for 1996 reflected "A Performance that Does Not Fully Meet Standards". As a result, the Applicant was informed that his probation had been extended for an additional six months and that failure to obtain a satisfactory PER at the end of his probation could result in the termination of his services. The Applicant's next PER rated his performance as "Satisfactory", however, his PER for August 1998 to June 1999 again reflected "A Performance that Does Not Fully Meet Standards". In consequence, his annual increment was deferred for six months and he was issued a "final warning". His PER for the period July to December 1999 also rated his performance as "Does Not Fully Meet Standards".

On 4 July 1999, the Applicant was served with a written censure for bypassing his supervisor and discussing a policy matter directly with the Director of Education, Headquarters, Amman. The Applicant did not appeal the written censure. Thereafter, he was investigated on allegations that he had misused his United Nations *laissez-passer* for private travel to Syria and Lebanon; had misrepresented the purposes of his trip as official travel in order to obtain a Syrian visa through UNRWA; and, had claimed 8 December 1999 as a "duty day" when, in fact, he was in Syria. The Applicant provided UNRWA with an explanation of his actions, insisting that he had travelled to Lebanon and Syria in the interest of UNRWA, at his own expense.

On 28 March 2000, the Applicant was informed that he had failed to provide a convincing explanation for misusing his *laissez-passer* and that, as the incident was part of a pattern of unsatisfactory professional conduct and performance, his services were being terminated effective 29 March in the interest of the Agency, under Area staff regulation 9.1. On 9 April, the Applicant requested administrative review of this decision but, on 13 April, he was informed that the decision stood. On 10 May, the Applicant lodged an appeal with the Joint Appeals Board (JAB) in Amman. In its report of 25 September 2001, the JAB concluded that the termination of the Applicant's appointment was harsh; based on incidents which did not necessitate such a severe measure; and, provoked by bias and prejudice against him. Accordingly, the JAB unanimously recommended that the impugned decision be reviewed. On 23 January 2002, the Applicant was informed that the Commissioner-General had determined that the JAB's conclusions were not supported by the evidence

[8] Kevin Haugh, First Vice-President; Brigitte Stern, Second Vice-President; and Jacqueline R. Scott, Member.

and that, therefore, he could not accept its recommendation. On 18 September, the Applicant filed his Application with the Tribunal.

In its consideration of the case, the Tribunal noted that, pursuant to Area staff regulation 9.1, "[t]he Commissioner-General may at any time terminate the appointment of any staff member if, in his opinion, such action would be in the interest of the Agency." The Tribunal recalled its jurisprudence that the Commissioner-General has the discretion to make managerial decisions with regard to staff members but that this discretion is not unfettered. Such decisions must not be improperly motivated, violate due process, be arbitrary, taken in bad faith or be discriminatory. Where a staff member seeks to vitiate the Respondent's decision on the basis of prejudice, improper motive or other extraneous factors, the burden of proving such prejudice or improper motive is on the staff member, who must adduce convincing evidence.

With respect to the Applicant's performance evaluations, the Tribunal found that his allegations of discrimination or improper motive were not supported by the evidence and that "having failed to rebut [his] PERs, the Applicant [was] deemed to have accepted them." Thus, it held that the decision to terminate the Applicant's services "in the interest of the Agency," insofar as it relied on his poor performance, was within the bounds of the Respondent's managerial discretion.

The Tribunal next considered whether the Respondent's decision was justified based on the Applicant's misconduct. The Tribunal noted that the misuse of the *laissez-passer* was but one instance of misconduct cited by the Respondent and had been "simply the 'straw that broke the camel's back'; the death knell to the Applicant's service with the United Nations". The Applicant had alleged that other staff members used their *laissez-passer* in a similar fashion, without suffering adverse consequences. The Tribunal recognized "the sometimes casual way in which the *laissez-passer* may actually be used," but held that it could not dispute the Respondent's right to take alleged violations of the rules governing the use of the *laissez-passer* "with the utmost seriousness and to impose the ultimate sanction on violators, provided he does not act in a discriminatory fashion and is not improperly motivated". Having found that the Applicant had failed to produce any evidence that the decision to terminate his services was arbitrary, capricious, improperly motivated or that others in similar circumstances had been treated differently, the Tribunal found that, insofar as the impugned decision relied on the Applicant's unsatisfactory conduct, it was also within the Respondent's managerial discretion.

Accordingly, the Application was rejected in its entirety.

4. *Judgement No. 1183 (23 July 2004): Adrian* v. *the Secretary-General of the United Nations*[9]

Recognition of domestic partnership—ST/SGB/2004/4[10]—Principle of applying the law of nationality of staff member for purposes of marital status—Evolving concept of "couple" and of "marriage"—Force and effect of administrative instructions and information circulars—Interpretation or amendment of a staff rule—General Assembly resolution 58/285 of 8 April 2004

The Applicant, a French national, entered the service of the United Nations Centre for Human Settlements in Nairobi at the L-2 level, as an Associate Expert, on 19 August 1990. His contract was extended a number of times and, effective 1 April 2002, he was appointed to the P-4 level position of Human Settlements Officer.

On 22 June 2000, the Applicant and his same-gender partner registered their domestic partnership under the French "*Pacte Civil de Solidarité*" (PACS). On 26 June, the Applicant requested spousal benefits for his partner. On 10 July, the United Nations Office at Nairobi (UNON) informed the Applicant that as French law does not characterize domestic partnerships as a marriage, the parties to such partnerships are not spouses and, therefore, his partner could not be recognized as a spouse or dependent spouse for the purpose of United Nations entitlements. On 7 September, the Applicant requested administrative review of this decision and, on 5 December, he lodged an appeal with the Joint Appeals Board (JAB) in Nairobi. In its report of 28 May 2002, the JAB concluded that, under French law, the PACS "was not the same legal instrument as a marriage" and that the Secretary-General's interpretation of the terms "spouse" and "dependant spouse" was not arbitrary. Accordingly, the JAB recommended that the appeal be rejected. On 24 October, the Applicant was informed that the Secretary-General had accepted the JAB's conclusions and recommendation, and had decided to take no further action on his appeal. On 8 November, the Applicant filed his Application with the Tribunal.

On 20 January 2004, ST/SGB/2004/4 entitled "Family status for purposes of United Nations entitlements", was issued, providing, in relevant part, as follows:

> "4. A legally recognized domestic partnership contracted by a staff member under the law of the country of his or her nationality will also qualify that staff member to receive the entitlements provided for eligible family members. . . .
>
> 5. The present bulletin shall enter into force on 1 February 2004."

In resolution 58/285, adopted on 8 April 2004, however, the General Assembly "[invited] the Secretary-General to reissue . . . ST/SGB/2004/4 after reviewing its contents, taking into account the views and concerns expressed by Member States thereon." The General Assembly

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[9] Julio Barboza, President; Brigitte Stern, Vice-President; and Jacqueline R. Scott, Member.

[10] Secretary-General's bulletins are approved and signed by the Secretary-General. Bulletins are issued with respect to the following matters: promulgation of rules for the implementation of regulations, resolutions and decisions adopted by the General Assembly; promulgation of regulations and rules, as required, for the implementation of resolutions and decisions adopted by the Security Council; organization of the Secretariat; the establishment of specially funded programmes; or any other important decision of policy as decided by the Secretary-General (see ST/SGB/1997/1).

> "[noted] the absence of the terms referred to in paragraph 4 of the bulletin in the context of the existing Staff Regulations and Rules, and [decided] that the inclusion of those terms shall require the consideration of and necessary action by the General Assembly".

In its consideration of the case, the Tribunal recalled that it had been presented with a similar case in Judgement No. 1063, *Berghuys* (2002), in which, "pursuant to the law of nationality of the staff member in question, [it] rejected the pension request submitted by the partner of a deceased staff member". The Tribunal also recalled that, in *Berghuys,* it had noted the importance of the principle adopted by the Organization of referring to the law of the staff member's State of nationality in questions of marital status, and had also noted the evolving nature of "[t]he concept of couple and that of marriage".

The Tribunal recognized the emergence of new forms of commitment, such as the PACS, which comprise domestic partnerships that do not entail all the rights of marriage, and are open to both heterosexual and homosexual couples. It found that, "[i]t was precisely to take into account such changes, which are occurring throughout the world, that the Secretary-General issued bulletin ST/SGB/2004/4." The Tribunal referred to its jurisprudence that administrative instructions and information circulars have the same force and effect as staff rules providing they are not inconsistent with the staff regulations and, accordingly, evaluated ST/SGB/2004/4 in order to ensure that it was in conformity with the Staff Regulations and Rules. The Tribunal found that the bulletin did not constitute an amendment to the Staff Regulations and Rules, but merely provided an interpretation of certain terms contained therein. The Tribunal was satisfied that the interpretation did not conflict with the letter and spirit of the Staff Regulations and Rules as "the only decision the Secretary-General took was to confirm a long-standing practice of the Organization according to which personal status is determined by the national law of the person concerned," and the Secretary-General had "simply [taken] note of the fact that some bodies of legislation are now treating same-sex partnerships as marriage for the purpose of granting certain social benefits". According to the Tribunal:

> "[t]his is no different . . . from the Organization's previously followed practice whereby, pursuant to the national law of certain States, it recognized polygamous unions, which are also distinct from marriage, i.e. the union of *one* man and *one* woman, in that they represent a union between *one* man and *several* women".

The Tribunal took account of General Assembly resolution 58/285 of 8 April 2004, but did not see it as an order requiring a change in the Staff Regulations and Rules, as it "simply note[d] that if the contents of the bulletin were to be incorporated in the staff regulations or rules, the Assembly should be consulted." Whilst the Assembly had invited the Secretary-General to review the situation, the bulletin remained in effect. In consequence, the Tribunal found that it should apply ST/SGB/2004/4 as of its entry into force on 1 February 2004.

In conclusion, the Tribunal held that when the Applicant first made his request for spousal benefits for his partner, he did not have such a right and the Administration was correct to refuse his request. However, the Tribunal considered that he did have the right to such benefits as of 1 February 2004 and, thus, it ordered that the Applicant be paid all spousal benefits and entitlements as of that date.

5. *Judgement No. 1189 (23 July 2004): Bogusz* v. *the Secretary-General of the United Nations*[11]

Compliance with promotion procedures—ST/AI/413[12]—Right to due process—Disclosure of objection to composition of Joint Appeals Board (JAB)—Denial of procedural rights—Declination to implement JAB recommendations on jurisdictional grounds—Consideration of equity and fairness as well as law—Necessity to identify an administrative decision adversely affecting the rights of the staff member—Consideration of health in making promotion decisions

The Applicant entered the service of the United Nations at the P-2 level, as Associate Social Affairs Officer, on 1 August 1974. Her contract was subsequently extended and she was granted a permanent appointment. At the time of the events which gave rise to her Application, she held the P-4 position of Programme Officer, Central Monitoring and Inspection Unit (CMIU), Office for Internal Oversight Services (OIOS).

On 3 March 1997, the Applicant applied for the P-5 level post of Senior Programme Management Officer, CMIU. On 13 March, she wrote to the Under-Secretary-General for OIOS regarding her candidacy and, in July, she met with him and the Director of CMIU, at which time, she alleged, the Under-Secretary-General indicated his support for her candidacy, despite the reservations of the Director, conditioned upon her finalization of a specific report.

On 2 March 1998, the Applicant went on three days of certified sick leave, which her personal doctor subsequently extended. In response to calls made to the Applicant's home, on 6 and 10 March her husband faxed OIOS to inform them that his wife was "resting under medical care". On 10 March, OIOS inquired as to her expected date of return and warned the Applicant that unless her sick leave was certified, her absence would be recorded as annual leave, until such leave was exhausted, and then as leave without pay. She remained on certified sick leave until 5 August 1999 when she was separated from service on grounds of ill health.

On 30 July 1998, the Applicant was invited to attend an interview for the P-5 post. She responded that she was on sick leave and unable to attend, but was still very interested in the post and would like to be interviewed at a later date. On 23 December, she was again invited for interview, however, she replied that she was unable to undergo an interview due to her illness, but had provided two memoranda to support her application and had been extensively interviewed previously for the post by the Under-Secretary-General for OIOS and the Director, CMIU. On 20 January 1999, the Applicant was informed that another candidate had been selected. On 18 March, she requested administrative review of the decision not to select her for the P-5 post.

On 28 July 1999, the Applicant lodged an appeal with the JAB in New York regarding the decision not to promote her and complained also of harassment and prejudicial treatment, both before and after she went on medical leave. On 18 and 19 July 2001, she wrote to the Secretary of the JAB, objecting to the composition of the Panel, who decided

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[11] Kevin Haugh, Vice-President; and Omer Yousif Bireedo and Dayendra Sena Wijewardane, Members.

[12] For information on Administrative instructions, see note 4 above.

not to replace the contested member since lack of objectivity on his part could not be established. Subsequently, she asked the Secretary of the JAB to note her reservations for the record but not to make them known to the Panel. In its report of 31 January 2002, the JAB concluded that OIOS had complied with the promotion procedure under ST/AI/413, thus procedurally guaranteeing that the Applicant had received full and fair consideration during the promotion exercise. Insofar as the Applicant's claim that she had been subject to harassment by the Director, CMIU, both prior to and during her medical leave, the JAB concluded that, while there was no adequate evidence indicating that OIOS had been made aware of her complaints about harassment and prejudicial treatment and thus had had no duty to address them, OIOS "had statutory responsibilities to reach out to [her] when she was undergoing a major depression with understanding, support and encouragement, and . . . had failed to fulfil its expected responsibilities as a good employer". For this failure, the JAB recommended "symbolic compensation" of six months' net base salary "for the unnecessary aggravation and deterioration of [the Applicant's] mental conditions as a result of the indifferent and distrustful attitude of the OIOS Administration". On 11 October, the Applicant was informed that the Secretary-General agreed with the JAB's conclusion regarding the promotion exercise but that he had determined that her appeal with respect to harassment and prejudicial treatment was irreceivable, as it was not made within the prescribed time-limits against a specific administrative decision. Accordingly, he had not accepted the recommendation that she be paid compensation. On 12 February 2003, the Applicant filed her Application with the Tribunal.

In its consideration of the case, the Tribunal rejected the Applicant's contention that her candidacy for the P-5 post had been subjected to unfair conditions, such as the precondition placed on her by the Under-Secretary-General and the requirement to attend an interview while she was on sick leave, finding that

> "it was proper and reasonable for the Under-Secretary-General for Internal Oversight Services to have set for the Applicant a test wherein she could effectively demonstrate her capacity or potential to perform tasks of the higher level so that her performance might be better evaluated".

Moreover, the Tribunal found that the Applicant had been given a number of opportunities to interview for the position, each of which she declined due to illness, and that she had no right to have had the promotion exercise postponed indefinitely or until such unspecified date as her condition improved. The Tribunal also held that, in view of the nature of her illness and the uncertainty of her prognosis, the Administration was entitled to take her health into consideration in making the promotion decision. Thus, the Tribunal rejected the Applicant's claim that she was treated unfairly or denied reasonable consideration for promotion to the P-5 post.

Insofar as the Applicant's claims of harassment and ill-treatment, both during her employment and after she went on sick leave, were concerned, the Tribunal took note of the fact that the Respondent did not raise any issues of receivability or admissibility during the JAB proceedings and held that it "is unfair to staff members to tacitly allow such issues to be considered without protest by a JAB and then to decline to implement its recommendation on such jurisdictional grounds." The Applicant argued before the Tribunal that they were receivable "as the ill treatment afforded to [her] preceded and was cited in the request for administrative review." The Tribunal disagreed with the JAB's decision that although she had not identified an administrative decision linked to her alleged harassment, it was

a forum of equity as well as of law and could resort to considerations of equity and fairness in order to render the administration of justice more complete. Instead, it found that an administrative decision said to have adversely affected the rights of the staff member must always be identified, and that

> "in cases where the administrative decision is said to be the culmination of a course of conduct on the part of the Administration, the course of conduct must be considered as a relevant surrounding circumstance or as an aggravating or mitigating circumstance as the case may be. In cases of harassment, when complaints are adequately brought either to the attention of management or to the Grievance Panel, and investigation or other action would appear warranted, then a decision on the complaint, be it to ignore it or to fail to properly investigate it or to improperly reject it or to fail to take appropriate action where harassment is established, can each amount to an administrative decision of the type giving rise to a right to appeal to a JAB".

In the Applicant's case, the impugned administrative decision was the decision to appoint another person to the P-5 post. Whilst "[o]ther complaints adequately connected" to this decision would be receivable, the Tribunal held that the complaints of alleged ill treatment were so far removed from the impugned decision that the JAB had no jurisdiction to enter into them.

With respect to the Applicant's contentions concerning irregularities in the JAB proceedings, the Tribunal noted that, whilst the Presiding member of the JAB had acted within his authority in rejecting her objections to the composition of the JAB panel, "the Tribunal was surprised to learn that the Applicant's objections were disclosed to the JAB panel members and published in the JAB report" and considered "such disclosure to have been unnecessary and inappropriate, since the Applicant had specifically requested that her objections remain confidential". The Tribunal found that the appropriate course of action would have been to advise her that her objections would not be kept confidential and to have permitted her the opportunity of withdrawing them. The Tribunal did not find that the fairness of the JAB deliberations had been influenced, however, and decided to award "only nominal compensation" of US$ 750 for the violation of her rights.

6. *Judgement No. 1205 (24 November 2004): Alaj* et al. v. *the Secretary-General of the United Nations*[13]

Salary survey and scale—Discretion to undertake salary survey—Distinction between participation and consultation of staff—Retroactive application—Intervention—United Nations Common System Manual for Salary Surveys in Non-Headquarters Duty Stations (Manual)

On 10 June 1999, the Security Council adopted resolution 1244 (1999) in which it authorized the Secretary-General to establish in Kosovo an interim civilian administration led by the United Nations and an international civil presence in Kosovo. As a result, the United Nations Interim Administration Mission in Kosovo (UNMIK) was established.

In June 1999, a high-level mission was sent to Kosovo by the Office of Human Resources Management (OHRM) to undertake a review of the available salary information

[13] Julio Barboza, President; and Omer Yousif Bireedo and Jacqueline R. Scott, Members.

from the region. On 16 June, OHRM advised the United Nations Office of the High Commissioner for Refugees (UNHCR) Headquarters of the approval of a provisional General Service salary scale for locally recruited staff, subject to adjustment upon completion of a comprehensive salary survey. On 22 June, the new salary scale, which was made effective as of 1 June, was sent to the UNHCR Kosovo Office, which registered its objection thereto on 10 July.

On 20 July 1999, OHRM advised:

> "All locally-recruited staff of the common system in the General Service category recruited on or after 1 June 1999 shall be paid based on the new Provisional Salary Scale for Kosovo.
>
> Those staff members in the General Service category recruited prior to 1 June 1999 and paid under the Belgrade salary scale shall receive, in addition to the salary based on the Kosovo scale, a personal transitional allowance (PTA) representing the difference between the Belgrade salary scale . . . and the Kosovo scale. The PTA should be phased out at the expiration of the staff member's current short term contract."

Subsequently, 29 staff members recruited after the opening of the UNHCR Kosovo Office in June had their contracts changed to take into account the new provisional salary scale.

On 27 July 1999, an OHRM "Survey Specialist" was dispatched to Kosovo to review "the level of mission subsistence allowance in the mission area of UNMIK and [to conduct] a survey of best prevailing conditions of employment for the locally-recruited staff in Kosovo".

On 13 August 1999, the Applicants wrote to the Secretary-General requesting administrative review of the June decision to change the salary scales for locally-recruited staff members and, on 18 February 2000, they lodged an appeal with the Joint Appeals Board (JAB) in Geneva. In its report of 14 March 2002, the JAB determined that there were three categories of staff members, each of which had different entitlements:

> Category A—29 locally-recruited staff members who had their contracts changed at the end of July 1999, despite the fact that the new salary scale had been approved already on 16 June. The JAB found that whilst an administrative error had been made in implementing the wrong salary scale in their original contracts, the Administration had an obligation to correct this error and such correction did not undermine the acquired rights of the affected staff members.
>
> Category B—20 staff members who were employed prior to the opening of the Office in June 1999. As these staff members were awarded a PTA for the remainder of their existing contracts, the JAB found that they had suffered no loss of pay and, thus, their appeal was groundless.
>
> Category C—49 staff members who arrived after the opening of the Office or started new contracts after having been assigned to other duty stations. The JAB found that there were no grounds for applying any other salary scale than the one promulgated on 16 June 1999 in these cases.

Accordingly, the JAB concluded that the circumstances surrounding the establishment of the provisional salary scale and its application to the locally-recruited staff members in Kosovo did not reveal any violation of the rights of the 98 Applicants. On 22 August, the

Applicants were informed that the Secretary-General agreed with the JAB's findings and conclusions and had decided to accept its unanimous recommendation and to take no further action on the appeal.

In 2002 and 2003, comprehensive salary surveys were carried out in Kosovo.

On 23 December 2002, the Applicants filed an Application with the Tribunal, claiming, inter alia, that the decision to reduce the salary scales was taken without proper staff consultation and in violation with established procedures and that the reduction was based on incorrect and arbitrary assessment of Kosovo salaries. On 19 September 2003, an additional 56 staff members filed an Application for intervention in the case.

In its consideration of the case, the Tribunal admitted the Application for intervention on the basis that it advanced similar contentions to that of the Applicants' Application.

On the substance of the case, the Tribunal was satisfied that it was reasonable for the Respondent to have sought to verify the prevailing conditions in 1999 "in a zone that had suffered a veritable man-made cataclysm", finding that he was under no legal obligation to consult the staff about a decision to conduct a salary survey in order to ratify or modify an existing salary scale. The Tribunal noted the distinction between "consultation" and staff "participation", the latter which is required for salary surveys under the Manual and the criteria set out by the International Civil Service Commission. Insofar as staff participation was required, the Tribunal was satisfied that, given the circumstances of the June 1999 survey, "a flexible approach was justified for two reasons, namely the essentially provisional nature of the first salary scale and the decidedly exceptional circumstances of the establishment of a new mission in Kosovo." Moreover, the Tribunal found that "the shortcomings of the first provisional survey were mostly corrected by the second" (July 1999) survey.

The Applicants had impugned the validity of the Kosovo scale, maintaining that the (higher) Belgrade scale ought to have applied, on the basis that, as the June 1999 survey was defective and the July 1999 survey was improperly conducted, both surveys were null and void. The Tribunal was not persuaded by this reasoning, finding that the 2002 and 2003 surveys confirmed the results of the earlier surveys and, more importantly, the staff had not requested that a new survey be conducted in 1999, with the participation of staff; this is what the Administration did in 2002.

The Applicants also challenged the retroactive application of the provisional June scale. The Tribunal agreed that the new scale should have been applied from the moment it was promulgated, i.e., 17 June 1999, but found that "the issue of retroactivity was moot, as no contracts were signed by any of the Applicants prior to 17 June".

Accordingly, the Application was rejected in its entirety.

7. Judgement No. 1210 (24 November 2004): Tekolla v. *the Secretary-General of the United Nations*[14]

Entitlement to special post allowance (SPA)—Quasi-judicial discretion of the Secretary-General—Retroactivity policy for SPA requests—Payment of SPA at not more than one level higher than staff member's level—Staff rule 103.11 (b) and Personnel Directive PD/1/84/Rev.1

The Applicant entered the service of the United Nations Economic Commission for Africa (ECA) at the G-6 level, as Documents Clerk, on 3 December 1962. His contract was subsequently extended and, effective 1 March 1974, he received a permanent appointment. At the time of the events which gave rise to his Application, he held the P-3 position of Economic Affairs Officer.

From October 1993 until 1 November 1995, the Applicant assumed the duties and responsibilities of an Economic Affairs Officer at the P-4 level. From August 1994, efforts were made by the Officer-in-Charge (OiC) of the Section and the Director of the Division to have the Applicant placed against the P-4 post and be paid SPA and, on 17 March 1995, he was advised that action was being taken to place him against the post.

From 15 September 1995 until 30 June 1996, the Applicant also assumed the duties and responsibilities of the P-5 post of OiC of the Section.

On 14 May 1998, the Office of Human Resources Management informed the Human Resources Management Service (HRMS), United Nations Office at Nairobi, that it could not support the request for an SPA

> "[g]iven the existing policy to restrict the retroactivity of SPAs to one year from the date when the recommendation was first made, as well as a lack of clarity on the exact dates when [the Applicant] was formally assigned to perform the [higher level] functions".

On 18 August, HRMS confirmed the dates of the Applicant's service at the P-4 and P-5 levels, noting that although his request for SPA was justified, "of course there is the issue of one year retroactivity which we have to take into account". On 29 June 1999, the Applicant was granted an SPA at the P-4 level for the period from 1 December 1995 until 30 June 1996.

On 30 September 1999, the Applicant took early retirement pursuant to a Memorandum of Understanding (MOU) which set out the terms of his agreed termination which included, *inter alia*, that the Organization had no further obligations to him. On 10 January 2000, the Applicant wrote to HRMS, claiming that the retroactivity policy should not apply to his SPA as the delay was due to the failure of ECA to take appropriate action on time. On 27 March, HRMS rejected this claim, citing the terms of the MOU. On 25 April, the Applicant requested administrative review of the decision not to grant him an SPA for the two posts he had encumbered and, on 25 July, he lodged an appeal with the Joint Appeals Board (JAB) in New York. In its report of 5 November 2002, the JAB concluded that "the MOU could not have included the SPA issue, because the [Applicant] had

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[14] Kevin Haugh, Vice-President; and Spyridon Flogaitis and Dayendra Sena Wijewardane, Members.

assumed in good faith that the reason for not receiving the SPA was a technical problem and therefore was still pending". The JAB concluded that the Applicant was entitled to an SPA at the P-4 level from March to December 1995 for the performance of the P-4 level duties. In accordance with the provisions of Personnel Directive PD/1/84/Rev.1, which states that SPA is not normally payable at more than one level higher than that of the staff member, the JAB also concluded that the Applicant was entitled to an SPA at the P-4 level for his service as OiC from 15 September 1995 until 30 June 1996. Accordingly, the JAB recommended that the Applicant should be paid an additional five months of SPA to reflect the period 1 July to 1 December 1995.

On 10 January 2003, the Applicant filed his Application with the Tribunal. On 10 July, he was informed that the Secretary-General had accepted the JAB's conclusion and its recommendation to pay him SPA at the P-4 level for five months.

In its consideration of the case, the Tribunal held that ECA's response to the requests for an SPA for the Applicant could "best be described as vacillating, procrastinating and evasive". It found that the decision to grant him an SPA only as from 1 December 1995, due to "the alleged bar against retroactive payments", was "unconscionable" as it was the Administration itself which had caused the delay. Likewise, the Tribunal found the Administration's attempt to rely upon the terms of the MOU as extinguishing the Applicant's claims with regard to an SPA as "unconscionable" as, in the absence of specific provisions otherwise, it was quite reasonable for the Applicant to assume that the MOU related only to retirement entitlements.

The Tribunal noted that the JAB had counted the Applicant's period of service at the P-4 level as from 17 March 1995, thus recommending payment from 1 July (three months after the commencement of higher level functions). In view of the uncontested fact that the Applicant had assumed the functions as of 1 October 1993, the Tribunal held that it "ha[d] difficulty understanding the logic or rationale" of this recommendation.

The Tribunal reiterated its jurisprudence that payment of an SPA is not a staff member's right as, under staff rule 103.11 (b) and PD/1/84/Rev.1, the Respondent possesses discretionary authority over such awards. It found, however, that it is "a quasi judicial discretion which cannot be exercised capriciously or arbitrarily" and, "[s]ince no rational or cogent reason ha[d] been advanced as to why the Applicant should not have received payment" prior to 1 July 1995, it held that the Respondent's discretion had not been exercised lawfully or reasonably.

The Tribunal calculated the appropriate amount of SPA for the Applicant, taking the following factors into consideration:

(*a*) it was indisputable that the Applicant had fulfilled higher level functions for a total of 33 months in two periods (one P-4 and one P-5) between 1 October 1993 and 30 June 1996;

(*b*) pursuant to PD/1/84/Rev.1, SPA is not normally payable for the first three months of service at the higher level, and thus three months should be deducted from each period;

(*c*) "on a proper construction" of PD/1/84/Rev.1, the Applicant would not be entitled to payment of more than one SPA at a time, even if his performance of the P-4 and P-5 duties overlapped; and

(*d*) he had already received a total of 12 months' SPA.

Accordingly, the Tribunal awarded the Applicant compensation equivalent to SPA at the P-4 level, at the rate in effect at the time of Judgement, for an additional period of 15 months.

8. Judgement No. 1215 (24 November 2004): Nwingte v. *the Secretary-General of the International Maritime Organization (IMO)*[15]

INTERPRETATION OF APPENDIX D OF THE IMO STAFF RULES—ROLE OF THE ADVISORY BOARD ON COMPENSATION CLAIMS (ABCC) IN CASES ALLEGING SERVICE-INCURRED INJURY—AUTHORITY AND COMPETENCE BY ADMINISTRATION TO UNILATERALLY DENY SERVICE-INCURRED INJURY STATUS TO STAFF MEMBER

The Applicant entered the service of IMO at the G-6 level, as Principal Clerk-Secretary, on 1 September 1995. She was promoted to the G-7 level position of Senior Administrative Assistant on 1 March 1997.

In 1998, the Applicant began to experience pain in her shoulder and right wrist which was diagnosed as repetitive strain injury (RSI) or work-related upper limb disorder. She subsequently informed the Medical Adviser's Office that her general practitioner had recommended a change in her workstation.

On 7 July 2000, the Staff Nurse wrote to the Head, Information Technology and Information Systems, regarding a replacement printer which had been requested for the Applicant as a broken lever on the printer she had been using to print was causing her difficulty. On 27 July, the Medical Adviser advised the Head, Personnel Section, that he had seen the Applicant, who continued to have wrist problems; that he had advised her to see her own general practitioner; that she should refrain from work for a minimum of two weeks; and, that she should not resume work without medical clearance. On 14 August, the Medical Adviser reported that the Applicant's condition had improved and she could return to work in a limited capacity, but recommended that she not use the defective printer. On 15 August, the Applicant requested that the sick leave approved by the Medical Adviser not be counted against her normal sick leave entitlement and that expenses from medical treatment be covered by the Respondent because her sick leave arose from RSI originating from the performance of her work duties.

On 28 September 2000, the Applicant was advised by the Head, Personnel Section, that IMO did "not accept an injury of an upper limb disorder as being service-incurred" and, in view of the small percentage of her time spent printing, disagreed that the broken printer had caused her injury. However, IMO did offer, as an exceptional measure, to refund the portion of her medical expenses not covered by medical insurance. On 3 November, the Applicant wrote to the Secretary-General requesting administrative review of the decision not to recognize her condition as work-related and, on 27 February 2001, she lodged an appeal with the IMO Joint Appeals Board (JAB). In its report of 28 February 2003, the JAB questioned the authority of the Head, Personnel Section, to comment on a medical disorder in the terms employed and recommended that "[m]embers of staff should not make medical comments or refute diagnosis when they obviously have no expertise". Insofar as

[15] Brigitte Stern, Vice-President; and Omer Yousif Bireedo and Jacqueline Scott, Members.

the Applicant's condition was concerned, the JAB found that the medical evidence available on the case was "sparse" and recommended a full medical report be obtained from an independent rheumatology or occupational health expert. The JAB also found that, even after the involvement of the Staff Nurse, IMO had unnecessarily delayed replacing the defective printer and had unduly delayed in responding to the Applicant's concerns, and recommended that IMO act "much more quickly and also more sympathetically in any future similar cases." On 11 March, the Secretary-General informed the Applicant that he had accepted the recommendations of the JAB.

On 4 April 2003, the Applicant was advised that an appointment had been set up for her to see the Medical Adviser. On 9 April, however, she indicated that the appointment would not satisfy the recommendation of the JAB that a report be obtained from an independent expert. Thereafter, the Applicant met with a specialist who produced a report dated 6 June. However, she refused to authorize the release of the contents of the report to the JAB. On 23 June 2003, the Applicant filed her Application with the Tribunal.

In its consideration of the case, the Tribunal first considered whether the IMO had the authority to deny the Applicant service-incurred injury status without submitting her case to the Advisory Board on Compensation Claims (ABCC). The Tribunal found that the IMO's interpretation of Appendix D of the IMO Staff Rules and the function of the ABCC in cases of alleged service-incurred injuries was "misguided" and noted that its interpretation

> "contravenes the manner in which the United Nations currently implements and historically has implemented Appendix D. . . Although Appendix D, on its face, is unclear as to who makes the initial determination as to service-incurred status, the long-standing practice of the United Nations has been that the Secretary-General is the one who makes the determination, *based on the recommendations* of the ABCC."

Accordingly, the Tribunal held that the Administration had erred in "unilaterally denying service-incurred status to the Applicant" and that, having been taken without proper authority or competence, the impugned decision was null and void.

Moreover, the Tribunal found that IMO had failed to apply even its stated, limited interpretation of Appendix D to the Applicant's case. In its Answer to the proceedings before the Tribunal, IMO asserted that it would submit a question of service-incurred injury to the ABCC when the Administration had denied the claim but the staff member disputed that determination. In the Applicant's case, however, no such submission occurred: when she disputed the finding of the Head, Personnel Section, that her injury was not service-incurred, the matter was not sent to the ABCC but, rather, the Applicant was referred to the JAB which lacked the authority to determine whether her injury was service-incurred. The Tribunal rejected IMO's defence that it was unaware the Applicant was making a claim for compensation under Appendix D, finding that it was obvious she was requesting compensation—albeit in the form of reclassification of sick leave and payment of medical expenses—for a service-incurred injury. The Tribunal held that IMO's "assertions in this regard indicate either disingenuousness or a lack of competence". The Tribunal also rejected IMO's contention that the Applicant had failed to file the appropriate form in order to claim an Appendix D benefit, finding that she had followed the relevant procedures "in all respects".

The Tribunal registered its concern regarding the "sweeping statement made by the Head, Personnel Section, denying the Applicant's claim for service-incurred status", stating that it was "at a loss to understand how an individual, not a member of the ABCC and with no apparent medical expertise, could so broadly ordain that upper limb disorders could never be service-incurred". It held that IMO, "through its Head, Personnel Section, [had] wildly overstepped its bounds and mischaracterized IMO's position on service-incurred injuries".

The Tribunal concluded that the failure of the Administration to follow the appropriate procedure under Appendix D had violated the Applicant's rights to be heard by the ABCC, and ordered the IMO

> "to establish an ABCC under article 16 (a) of Appendix D to the IMO Staff Rules for prompt review of the Applicant's request to treat her RSI as service-incurred and to make recommendations to the Secretary-General as to whether her injury was service-incurred".

It also awarded the Applicant compensation of US$ 10,000 for the above-referenced violation of her right and for the delays in her case.

9. Judgement No. 1219 (24 November 2004): Grossman v. *the Secretary-General of the United Nations*[16]

CALCULATION OF MISSION SUBSISTENCE ALLOWANCE (MSA)—DEFINITION OF "NON-WORKING DAYS"—STAFF RULE 107.15 (E)—1974 FIELD ADMINISTRATION HANDBOOK—RIGHT TO RECOVER OVERPAYMENT—STAFF RULE 103.18—UNJUST ENRICHMENT—ESTOPPEL—COMPELLING REASONS OF EQUITY

On 1 May 1992, the Applicant was temporarily assigned to the United Nations Protection Force (UNPROFOR). Upon arrival, the Office of Personnel informed her of the mission's leave policy; specifically, she was advised that MSA would not be paid for periods of annual leave taken outside the mission area but would be paid for annual leave taken within the mission area. Following an audit of UNPROFOR, on 31 January 1994 the Internal Audit Division issued a report indicating that the mission had not been in compliance with staff rule 107.15 (e) with respect to MSA paid for periods of annual leave taken within the mission area. On 17 June, the Department of Peace-keeping Operations advised UNPROFOR that "[t]he upper limit on payment of MSA during periods of annual leave is one and a half days for each month of completed mission assignment regardless of where the leave is spent", and instructed that all leave records were to be reviewed and the necessary recovery action taken. On 15 July, UNPROFOR staff members were advised of this directive via information circular UNPROFOR/IC/328.

On 16 December 1994, the Applicant was informed that overpayments made to her would be recovered commencing January 1995. On 15 February 1995, she requested administrative review of this decision and, on 22 May, she lodged an appeal with the Joint Appeals Board (JAB) in New York. In its report of 25 July 1997, the JAB found that the relevant rules were ambiguous with respect to "non-working days" and unclear regarding MSA entitlements. It held that the case was "not as much a case involving overpayments of

[16] Brigitte Stern, Vice-President; and Spyridon Flogaitis and Dayendra Sena Wijewardane, Members.

MSA . . . as . . . a case of incorrect instructions on the part of the UNPROFOR administration" and recommended that the recovered amounts be reimbursed. On 13 November, the Applicant was informed that the Secretary-General had decided not to accept the JAB's recommendation "[s]ince the erroneous interpretation of the rules led to incorrect instructions and resulted in overpayments of MSA, the Organization had the obligation, under staff rule 103.18, to recover such overpayments". On 30 June 2003, the Applicant filed her Application with the Tribunal.

In its consideration of the case, the Tribunal determined that the central issue before it was whether the MSA paid to the Applicant when she was on annual leave whilst remaining in the mission area "was legally and correctly recovered by the Respondent". Thus, the Tribunal had to evaluate whether the policy implemented by UNPROFOR prior to the audit was in accordance with the staff rules and other applicable instructions.

The Tribunal found that the provisions of staff rule 107.15 (e) made it clear that staff members are not entitled to MSA when they are on annual or special leave. Moreover, it held that the reference to the payment of MSA for "non-working days, as long as the staff member is in the mission area" on page C-42 of the Field Administration Handbook was intended to cover weekends, holidays and emergency days, not annual leave initiated by a staff member. Thus, the Applicant had not been entitled to payment for MSA whilst on annual leave in the mission area.

Insofar as the Applicant had claimed that recovery of the money was unjust, unfair and discriminatory, the Tribunal decided to consider whether the manner in which the UNPROFOR administration implemented the MSA system gave rise to a claim of estoppel. It recalled its jurisprudence in Judgement No. 1079, *MacNaughton-Jones* (2002), in which it held "that the fact that an overpayment arises from confusion on the part of the Administration does not give rise to any consideration of equity requiring the Administration to forego its right of recovery provided it applies its own two year [time limit] rule." The Tribunal noted that, in this case, the Administration had acted well within that time limit. The Tribunal further recalled its jurisprudence in Judgement No. 986, *Steiner et al.* (2000) that, under staff rule 103.18 (b)(ii), overpayments can legally be recovered "because there was an 'indebtedness to the United Nations' occasioned by the Applicant's unjust enrichment". It held that only "compelling reasons of equity" would prevent the recovery of an overpayment and rejected as insufficient to meet this test the Applicant's assertion that she was the innocent recipient of the overpayment and had acted in good faith throughout. Accordingly, the Application was rejected in its entirety.

10. *Judgement No. 1222 (24 November 2004): Othigo* v. *the Secretary-General of the United Nations*[17]

Medical fraud—Recognition of only one dependent spouse—Discretion of the Secretary-General in disciplinary matters—Proportionality of sanctions—Separation from service with compensation in lieu of notice—Good faith defence—Plea of *ad misericordiam*

The Applicant entered the service of the United Nations Office at Nairobi (UNON) at the G-4 level, as Security Officer, on 8 August 1989. His contract was subsequently extended a series of times.

On 26 March 2002, the Chief of Security, UNON, was advised that the Applicant had submitted fraudulent medical claims in respect of maternity care and hospitalization for a woman whom he had misrepresented as his wife. The matter was reported to the Office of Internal Oversight Services (OIOS) for investigation, in the course of which the Applicant admitted that he had misrepresented Ms. X as Mrs. Othigo, his recognized spouse, in order to have the former admitted for hospital treatment. The Applicant provided an affidavit to the effect that he had married Ms. X in a traditional ritual. He subsequently produced an affidavit from a Commissioner of Oaths, in which he swore to being married to two wives, Mrs. Othigo and Ms. X, and admitted to having arranged for his second wife's admission into hospital for treatment using the particulars of his first wife. During the course of the investigation, Ms. X was readmitted into hospital, where she died. Albeit aware of the woman's identity, the Joint Medical Service subsequently certified the hospitalization expenses for her as Mrs. Othigo on compassionate grounds in order to facilitate the release of her body from the hospital mortuary.

On 9 October 2002, the OIOS report was sent to the Applicant and he was asked to respond to the allegations against him. He submitted his defence on 18 November but, on 3 December, he was advised that his case would be submitted to the Joint Disciplinary Committee (JDC) in Nairobi. In its report of 12 May 2003, the JDC concluded that it was "clear that the staff member ha[d] submitted medical claims for a person for whom such entitlements [did] not exist" under the United Nations Medical Insurance Plan (MIP). The JDC noted that, even had the Applicant and Ms. X been legally married, Ms. X could not have been covered by the MIP unless the Applicant's first wife had been removed from the plan, as staff members may not claim two dependent spouses. The JDC considered the Applicant's misconduct "so serious that [it] was unable to recommend a disciplinary measure that would allow [him] to continue his employment within the United Nations." In view of his length of service; his close relationship with Ms. X and the child; and, the fact that the Applicant had paid the hospital bills, the JDC did not recommend summarily dismissal but, rather, recommended that the Applicant be separated from service with three months' compensation in lieu of notice. On 10 June, the Applicant was informed that the Secretary-General had decided to accept the JDC's recommendation. On 8 October, the Applicant filed his Application with the Tribunal claiming that the sanction imposed was disproportionate.

[17] Kevin Haugh, Vice-President; and Omer Yousif Bireedo and Spyridon Flogaitis, Members.

In its consideration of the case, the Tribunal agreed with the JDC that the Applicant's "good faith" defence was not plausible, finding that, had he believed that Ms. X was entitled to MIP coverage as his second wife, there would have been no need to have misrepresented her as Mrs. Othigo.

The Tribunal also noted that the Applicant, before the Tribunal, argued that "his actions should be construed as 'misguided' or 'erroneous,' albeit wrongful, rather than fraudulent . . . and [that] he [made] an *ad misericordiam* plea that he should, in all the circumstances, have been afforded a greater degree of leniency." It also noted that the Applicant meant "erroneous in the sense of conduct which cannot be justified, rather than conduct which was the result of a factual mistake."

The Tribunal recalled its jurisprudence regarding the broad powers of discretion enjoyed by the Secretary-General in disciplinary matters. It affirmed that the Tribunal "does not substitute its judgement for that of the Secretary-General, but restricts itself to reviewing whether the decision-making process, and the decision reached, respected the rights of the staff member in question". It considered that it was "appropriate and proper" for the Respondent to have characterized the conduct in question as fraudulent and, under the circumstances, did not find the sanction imposed upon the Applicant as excessive or disproportionate. Accordingly, the Application was rejected in its entirety.

B. Decisions of the Administrative Tribunal of the International Labour Organization[18]

1. *Judgment No. 2278 (4 February 2004): Mr. A. H.* v. *the European Patent Organisation*[19]

Residence requirement under article 23 of the service regulations—Right to freedom of residence—Principle of equal treatment—Duty to substantiate decision—Expectation and contractual obligation

The Complainant challenged the decision of the President of the European Patent Organisation (EPO) that he was not allowed to take up residence in Belgium.

The Complainant, a British national, joined the European Patent Office (Office), which is based in The Hague, in 1997. For the first three years of his employment, the Complainant lived in the Netherlands. In November 2000, he purchased a house in Essen, Belgium, situated close to the Dutch border at a distance of 89 kilometres (km) from his place of work. In December 2000, the Complainant applied for an EPO home loan for his house, whereupon the Director of Personnel informed him that he was not allowed to take

[18] The Administrative Tribunal of the International Labour Organization is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of the staff regulations of the International Labour Organization and of the other international organizations that have recognized the competence of the Tribunal: International Labour Organization, including the International Training Centre; World Health Organization, including the Pan American Health Organization; United Nations Educational, Scientific and Cultural Organization; International Telecommunication Union; World Meteorological Organization, Food and Agriculture Organization of the United Nations, including the World Food Programme; European Organization for Nuclear Research; World Trade Organization; International Atomic Energy Agency; World Intellectual Property Organization; European Organization for the Safety of Air Navigation (Eurocontrol); Universal Postal Union; European Southern Observatory; Intergovernmental Council of Copper Exporting Countries; European Free Trade Association; Inter-Parliamentary Union; European Molecular Biology Laboratory; World Tourism Organization; European Patent Organisation; African Training and Research Centre in Administration for Development; Intergovernmental Organisation for International Carriage by Rail; International Center for the Registration of Serials; International Office of Epizootics; United Nations Industrial Development Organization; International Criminal Police Organization (Interpol); International Fund for Agricultural Development; International Union for the Protection of New Varieties of Plants; Customs Cooperation Council; Court of Justice of the European Free Trade Association; Surveillance Authority of the European Free Trade Association; International Service for National Agricultural Research; International Organization for Migration; International Centre for Genetic Engineering and Biotechnology; Organisation for the Prohibition of Chemical Weapons; International Hydrographic Organization; Energy Charter Conference; International Federation of Red Cross and Red Crescent Societies; Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization; European and Mediterranean Plant Protection Organization; International Plant Genetic Resources Institute; International Institute for Democracy and Electoral Assistance; International Criminal Court; International Olive Oil Council; Advisory Centre on WTO Law; and African, Caribbean and Pacific Group of States. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Organization and disputes relating to the application of the regulations of the former Staff Pension Fund of the International Labour Organization. For more information about the Administrative Tribunal of the International Labour Organization and the full texts of its judgments, see www.ilo.org/public/english/tribunal/.

[19] Michel Gentot, President; James K. Hugessen, Vice-President; and Mary G. Gaudron, Judge.

up residence in Belgium, since he had accepted the terms in his letter of appointment, and particularly the "condition" that he resides in the Netherlands.

The Complainant lodged an internal appeal against this decision. While the Appeals Committee unanimously recommended that his appeal be allowed, the President of the Office rejected its recommendation. The decision of the President was the subject of the Complaint to the Tribunal.

The Complainant contended, inter alia, that EPO's attempt to prevent him from residing outside the Netherlands was contrary to the Universal Declaration of Human Rights and article 23 of the EPO service regulations.[20] He also alleged unequal treatment by identifying other staff members who had been allowed to reside in Belgium, one of whom had obtained a home loan from EPO for a Belgian property.

The Tribunal first stressed the "necessity for administrative decisions to be properly supported by reasons. This [was] particularly the case where, after an elaborate internal appeal procedure . . . the executive head of an international organization, acting in a quasi judicial capacity and as the penultimate arbiter of disputes between the administration and the staff, decides not to accept the recommendation of the internal appellate body." The Tribunal referred to its previous Judgment No. 2092 *In re Spaans* (2002), in which it stated that "when the executive head of an organization accepts and adopts the recommendations of an internal appeal body he is under no obligation to give any further reasons than those given by the appeal body itself. Where, however, . . . he rejects those recommendations his duty to give reasons is not fulfilled by simply saying that he does not agree with the appeal body."

The Tribunal also held that not only had the President of the Office a duty to be fair and objective in the performance of his functions as the final decision-maker in internal appeals, also his conduct must make it manifest that he has been so. It was not enough to state that he thought EPO had put forward the better case; this was a conclusion not a reason. The Tribunal concluded that the decision must be quashed for failure to give reasons.

The Tribunal further concluded that the decision was flawed in substance and cited and adopted passages from the report of the Appeals Committee.

In its report, the Appeals Committee noted that the Office applied a general rule that the requirements of article 23 of the service regulations would not be met if an employee's residence was more than one hour's travel time by public transportation away from his or her place of work. While the Committee considered that the Office was, in principle, entitled to establish such a general rule, it also noted that the rule had been established in order to limit claims to expatriation allowances by Belgian nationals living in Belgium and working in The Hague. The residence obligation was restrictively interpreted in such a

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[20] Article 23 of the Service Regulations for Permanent Employees of the EPO headed "Residence," provides as follows: "A permanent employee shall reside either in the place where he is employed or at no greater distance therefrom than is compatible with the proper performance of his duties." Article 1 of the EPO Regulations for the Grant of Home Loans reads as follows: "(1) Any permanent employee of the European Patent Office having active status shall be entitled to apply for a loan for the building, purchase or conversion of residential property that is his main residence or is intended to become same after his retirement . . . (2) The property must be a residence within the meaning of Article 23 of the Service Regulations . . ."

way as to exclude residence outside of the Netherlands. Within the Netherlands, the Office accepted any residence within a 100 km radius of the place of employment.

The Appeals Committee concluded that the one hour rule was "based on extraneous considerations which led to a limitation, beyond the requirement of article 23, of the employee's right of freedom to residence."

Concerning the Complainant's claim of unequal treatment by EPO, the Appeals Committee found that the Organization had applied the one hour rule differently in the case of another staff member, living in the Netherlands, and that there was no basis for doing so. It reiterated its conclusion that the mere fact that the Complainant's residence was outside the Netherlands did not "constitute sufficient reason for refusing to acknowledge fulfilment of the residence requirement."

Finally, the Appeals Committee also held that EPO could not assert that the Complainant had agreed to take up residence in the Netherlands by accepting the offer of employment in which it was stated that "[t]he Office expects you to reside in the Netherlands." The Appeals Committee agreed that the "expectation" that the Complainant would take up residence in the Netherlands was not a contractual obligation.

The Tribunal ordered that the impugned decision be set aside. The Complainant's claim for damages was considered irreceiveable as he had not asserted that claim before the Appeals Committee. The Complainant was awarded costs, which, however, was limited in view of the repetitive nature of the Complainant's pleadings together with the personal attacks on a member of EPO's legal department and the unfounded and insulting comments about EPO contained therein.

2. *Judgment No. 2280 (4 February 2004): Mr. K. M.* v. *the European Patent Organisation*[21]

DUTY OF ASSISTANCE TO EMPLOYEES UNDER ARTICLE 28 OF THE SERVICE REGULATIONS—INJURY BY REASON OF THE EMPLOYEE'S OFFICE OR DUTIES—OBLIGATION TO PROVIDE COMPENSATION—EXEMPTION FROM DUTCH TAX ON PRIVATE CARS AND MOTORCYCLES

The Complainant challenged the decision of the President of the European Patent Office (Office) to dismiss his internal appeal of a decision denying a request for reimbursement of legal costs under article 28 of the Service Regulations for Permanent Employees of the European Patent Office.[22]

The Complainant, a permanent employee of European Patent Organisation (EPO) posted in The Hague, bought a car in Belgium and imported it to the Netherlands, upon

[21] Michel Gentot, President; and Jean-François Egli and Seydou Ba, Judges.

[22] Article 28 of the Service Regulations for Permanent Employees of the Office, is entitled "Assistance by the Organisation." It reads as follows, "(1) If, by reason of his office or duties, any permanent employee . . . or any member of his family living in his household is subject to any insult, threat, defamation or attack to his person or property, the Organisation shall assist the employee, in particular in proceedings against the author of any such act. (2) If a permanent employee . . . suffers injury by reason of his office or duties, the Organisation shall compensate him in so far as he has not wilfully or through serious negligence himself provoked the injury, and has been unable to obtain full redress."

which the Dutch customs authorities asked him to pay a BPM tax.[23] The Complainant requested legal and financial assistance from the Office under article 28 of the service regulations in disputing the tax. This request was rejected since it was considered to be a matter of a private nature. The Complainant then brought his dispute with the customs authorities before the Dutch courts, in which it was decided that the Complainant was not ordinarily resident in the Netherlands and, accordingly, he was exempt from the BPM tax. Subsequently, the Complainant asked the President of the Office for reimbursement of the costs he had incurred in the court proceedings. This request was rejected and the Complainant lodged an internal appeal. The Appeals Committee unanimously recommended that the appeal be dismissed on the grounds that the Complainant was liable to pay the BPM tax and that the conditions for entitlement for compensation under article 28 of the service regulations were not met, i.e., injury suffered by reason of his office or duty. Accepting the recommendation of the Appeals Committee, the President rejected the appeal and this decision was the subject of the complaint to the Tribunal.

In its consideration of the case, the Tribunal agreed with EPO that "the fact that the [C]omplainant reside[d] in the Netherlands to work there for the Organisation [was] not connected with his personal decision to import a car from Belgium for his private use rather than purchase one in the Netherlands. It was because of that importation that he incurred costs in obtaining the recognition by the Dutch courts of a tax exemption which the EPO considered in good faith that he was not entitled to, based on his status and the provisions of both the Agreement with the Netherlands and the Protocol on privileges and immunities of the EPO." The Tribunal concluded that it could not be established that the Complainant had suffered injury by reason of his office or duty, as required by article 28 of the service regulations.

Concerning the Complainant's claim that his residence was in Croatia and that he spent more than 180 days outside the Netherlands, the Tribunal pointed out that the Organisation could not have recognized the Complainant's residence as being outside the Netherlands in view of article 23 of the service regulations which provides, in part, that a "permanent employee shall reside . . . in the place where he is employed", which, in the case of the Complainant, was in The Hague. The Organisation could not be blamed for not assisting the Complainant in his dispute with the Dutch authorities or for refusing to pay the compensation requested by the Complainant.

In view of its findings, the Tribunal concluded that the Complainant's allegation of breach of duty of care by the Organisation was unfounded. The Tribunal also held that the allegation of abuse of authority by, *inter alia*, collusion between the Organisation and the Dutch authorities, was unfounded. The Tribunal dismissed the Complaint.

[23] *Belasting van personenauto's en motorrijwielen.* The BPM tax is payable by residents of the Netherlands only.

3. *Judgment No. 2292 (4 February 2004): Mr. J. M. W.* v. *the European Patent Organisation*[24]

Territorial application of the Pension Scheme Regulations—Application of the Convention on the Grant of European Patents, 1973,[25] to territories of Contracting States under article 168 of the Convention—Application of principles of the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950,[26] to staff relations—Protection of property rights—Principle of non-discrimination—Consequences of exercising option under article 33 of the Pension Scheme Regulations

The Complainant, a British national, is a former staff member of the European Patent Organisation (EPO), from which he retired with an invalidity pension on 1 June 2001. He opted to retire in the United Kingdom (UK) and, under articles 33 and 42 of the Pension Scheme Regulations (the Regulations),[27] this choice determined the scale used to calculate the Complainant's pension and the adjustment to which he was entitled as a result of the fact that he was liable to pay UK income tax.

The Complainant wished to move to Gibraltar but was informed that, if he moved, his pension would be paid in German marks according to the German scale without any adjustment for income tax.[28] The Principal Director of Personnel advised that the territorial application of the Regulations was limited to the territories of the Contracting States of the Convention on the Grant of European Patents (the European Patent Convention), 1973. The United Kingdom, a Contracting State, had not designated Gibraltar as a territory to which the Convention was extended under its article 168.

The Complainant lodged internal appeals which were rejected by the President of the European Patent Office in a decision of 31 January 2003, upon the recommendation of the Appeals Committee. The decision of the President is the subject of the Complaint. Prior to the date of the President's decision in 2003, the Complainant had moved to the Isle of Man, a dependency of the British Crown.

The Tribunal first considered the claim by the Organisation that the Complaint was irreceivable as the Complainant had taken up residence in the Isle of Man where the issues raised regarding his pension did not apply. EPO cited the Tribunal's Judgment No. 764, *In re Berte* (No. 2) (1986), in which it held that:

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[24] Michel Gentot, President; James K. Hugessen, Vice-President; and Mary G. Gaudron, Judge.

[25] United Nations, *Treaty Series,* vol. 1065, p. 254.

[26] United Nations, *Treaty Series,* vol. 213, p. 221.

[27] Article 33, paragraph 1, specifies that pensions shall be calculated by reference to the permanent employee's salary and scales applicable to the country of his last posting. Paragraph 2 provides that "if the employee settles subsequently . . . in the country of which he is a national," he may "opt for the scale applicable to that country," and that option is deemed to be "irrevocable." Paragraph 4 reads "[w]here a country opted for under the provisions of [paragraph 2] is not or has not been a Member State of the one of the [Coordinated Organizations], the reference scale shall be that applicable in the host country of the headquarters of the Organisation responsible for payment of benefits." Article 42 provides that "[t]he recipient of a pension under these Regulations shall be entitled to the adjustment applying to the Member State of the Organisation in which the pension and adjustment relating thereto are chargeable to income tax under the tax legislation in force in that State."

[28] The EPO Headquarter is situated in Germany.

> "A decision by an international organization is challengeable before the Tribunal only if it causes the complainant injury. One that has no effect on his position is not, for example, an act which is not operative but a mere declaration of intent."

The Tribunal, taking into account the evidence provided by the Complainant that he had bought a property in Gibraltar, concluded that the likelihood that the Complainant may move there was sufficient to rule on the objection raised. However, the Tribunal further held that "the Complainant's request for an order to the Organisation regarding his right to exercise a new option, should the EPO revoke his option for the [United Kingdom] scale, amount[ed] to a request for legal advice, which [lay] beyond the jurisdiction of the Tribunal and must therefore be dismissed as irreceivable."

The Tribunal went on to consider the arguments as to the merits raised in the Complaint. The Tribunal noted that the United Kingdom had not declared, under article 168 of the Convention, Gibraltar as a territory to which the Convention is directly applicable and, contrary to the Complainant's opinion, concluded that "[i]t would be absurd to consider that the scope of the provisions of the EPO's pension scheme should be any different from that of the founding instrument of the Organisation, that is to say, the European Patent Convention".

Insofar as the Complainant's claim that the different pension rules applicable according to the place of residence of staff was a breach of the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, the Tribunal held that while EPO was not bound by the Convention in the same way as signatory States, the general principles enshrined therein applied to relations with staff. However, the Tribunal further stated that "the fact that in connection with pension rights different rules apply according to the place of residence of retired staff members constitutes neither a breach of property rights nor a violation of the principle of equality, provided that the staff are not deprived of any of the rights they enjoy under the statutory and regulatory provisions . . . and that they have freely exercised their right of option." In this case, the issue was whether the option exercised by the Complainant, who took up residence first in London and then in the Isle of Man, would allow him the same benefits if he decided to take up residence in Gibraltar.

The Tribunal also held that the Complainant's argument that, having exercised an option under article 33 of the Regulations to take up residence in the United Kingdom, he was free to change his residence to any territory whilst retaining the same benefits, was absurd and the exercise of the option obviously did not have this effect. The Tribunal concluded that "for the purposes of calculating the [C]omplainant's pension, the EPO rightly refused to maintain the scale applicable to the United Kingdom and the related adjustment in the event that he takes up residence in Gibraltar."

The Tribunal dismissed the Complaint.

4. *Judgment No. 2302 (4 February 2004): Mr. J. A. T.* v. *the International Organization for Migration*[29]

Waiver of diplomatic immunity—Discretion to waive immunity—Tribunal's lack of jurisdiction to quash decision to waive immunity—Procedure for waiver of immunity—Discretion not to renew contract in the interests of the Organization—Decision to suspend official—Agreement between the International Organization for Migration and the Government of South Africa

The Complainant challenged the decision of the Director General of the International Organization for Migration (IOM) to reject his appeal concerning the waiver of his diplomatic immunity, suspension from duty, non-renewal of his contract, and a claim for damages.

The Complainant was appointed Regional Representative of IOM's Mission with Regional Functions in Pretoria in 2000, under a one year fixed-term contract. In September 2001, IOM's Legal Advisor was informed that two of the Organization's employees had accused the Complainant of sexual harassment. The Director General sent a letter to the Complainant asking for his written comments in response to the affidavits from the two employees.

On 21 September 2001, the Director General received a fax, apparently unsigned, in which the Director of Public Prosecutions, Transvaal, asked that "the Director General . . . be formally and expressly requested, via the Department of Foreign Affairs," to waive any immunity that the Complainant might enjoy, in accordance with section 27 of the Agreement between IOM and the Government of South Africa. The Director General replied by fax and stated that the charge against the Complainant was not covered by the immunity from jurisdiction which he enjoyed. Under the terms of the Agreement between IOM and the Government of South Africa, the Complainant enjoyed immunity from detention and arrest. The Director General concluded that a refusal to waive the Complainant's immunity would impede the proper administration of justice and that a waiver would not prejudice the interests of IOM. He therefore decided to waive the immunity enjoyed by the Complainant.

On 26 September 2001, the Complainant was arrested and charged with indecent assault, but released on bail on the following day. On the same day, the Director General suspended him from duty with full pay. The Complainant's contract, which was due to expire on 29 October 2001, was extended for a period of three months. However, in a letter of 7 November 2001, the Director General informed the Complainant that, in the interests of the Organization, his contract would not be renewed beyond 31 January 2002.

On 5 January 2002, the Complainant lodged an appeal to the Joint Administrative Review Board relating to the decisions to waive his diplomatic immunity, to suspend him from duty, the non-renewal of his contract and the damages he allegedly suffered. The Board recommended rejecting the appeal and the Director General decided to endorse that recommendation. The decision of the Director General is the subject of the Complaint to the Tribunal.

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[29] Michel Gentot, President; James K. Hugessen, Vice-President; and Mary G. Gaudron, Judge.

The Tribunal first considered the Complainant's request to quash the decision to waive the Complainant's immunity. Referring to its Judgments No. 933, *In re Van Der Peet* (No. 12) (1988), No. 1543, *In* re *Popineau* (No. 12) (1996), and No. 2190, *F. Z.* (2003), the Tribunal noted that there was precedent to the effect that an organization "has a discretion to assess, in the context of its relations with a Member State, which are beyond the jurisdiction of the Tribunal, whether it is appropriate to lift the immunity from legal process of its employees". Thus, the Tribunal held that [w]hile [it] cannot quash a decision to waive diplomatic immunity, it may nevertheless examine the circumstances in which the immunity was waived and draw the appropriate consequences if there has been a violation of the contractual rights of the officials concerned or applicable general principles".

Turning to the question of whether a genuine application for waiver had been made, the Tribunal noted that the fax from the Director of Public Prosecutions was not signed by a competent authority, that there was no clear indication that it was addressed to the Organization and, further, that it did not contain a direct request for the Complainant's immunity to be waived. Furthermore, the fax from the Director of Public Prosecutions could not be considered as a properly submitted request as it stated that the request should pass via the Department of Foreign Affairs.

The Tribunal concluded that the Complainant had grounds to claim compensation for damage resulting from the decision to waive his immunity and assessed damages in the sum of 5,000 Swiss francs.

The Tribunal also concluded that the Complainant's request to quash the decision suspending him from his duties should fail as the Director General had given him the opportunity to defend himself against the serious accusations brought against him. It considered that the suspension was inevitable as one of the persons who made the allegations was the Complainant's own assistant.

Moreover, the Tribunal held that the claim regarding the decision to refuse to renew the Complainant's contract must fail since the Director General had acted within his discretion in rejecting the request for renewal and his decision showed neither an error of law nor an error of fact.

The Complainant's allegations of bad faith and abuse of authority were not accepted. As the Complainant was partially successful, the Tribunal awarded the Complainant costs of 2,000 Swiss francs.

5. *Judgment No. 2365 (7 May 2004): In* re *T. B.* v. *the Universal Postal Union*[30]

Suspension from duty pending investigation of serious misconduct—Staff rule 110.3—Discretion to suspend a staff member—Scope of review by the Tribunal of a decision to suspend—Right to be heard—Abuse of authority

The Complainant, a staff member of the Universal Postal Union (UPU), challenged a decision to temporarily suspend him after a number of irregularities had been discovered by an internal audit of his mission expenses. The auditor's report recommended his suspension in view of the systematic nature of the irregularities and, also, having regard to the number of appeals previously filed by the Complainant against UPU. On 16 May

[30] Michel Gentot, President; and Jean-François Egli and Seydou Ba, Judges.

2002, the Director General informed the Complainant of the initiation of a disciplinary procedure against him and of his suspension with immediate effect under staff rule 110.3, without loss of salary, until the procedure was complete. The Complainant was not heard prior to that decision.

On 14 June, the Complainant asked the Director General to reconsider his decision and, after having received no answer within the statutory time limit, the Complainant referred the matter to the Joint Appeals Committee (JAC). On 21 October, upon the recommendation of the JAC, the Director General confirmed the suspension of the Complainant. This was the impugned decision challenged by the Complainant before the Tribunal.

The Complainant was dismissed for serious misconduct with effect from 28 February 2003.

In its consideration of the case, the Tribunal first noted that "the suspension of the [C]omplainant was an interim precautionary measure, which was to last as long as the disciplinary procedure." It further noted that it was initially ordered without hearing the Complainant's views, "but that the latter's right to be heard [had been] safeguarded since he later [had] had an opportunity to exercise it before the impugned decision was taken", on 21 October 2002.

The Tribunal also held that as a suspension "imposes a constraint on a staff member, [the] suspension must be legally founded, justified by the requirements of the organization and in accordance with the principle of proportionality." The decision to suspend lies at the discretion of the Director General and it is therefore subject to limited review by the Tribunal, "that is to say, if it was taken without authority or in breach of a rule of form or of procedure, or was based on an error of fact or of law, or overlooked some essential fact, or was tainted with abuse in authority, or if a clearly mistaken conclusion was drawn from the evidence".

The Tribunal further considered the language of staff rule 110.3 and held that the expression therein "if he considers that the charge is well founded" should be understood to mean "if he considers that the specific accusations made allow him to presume that the charge is well-founded".

With regard to the Complainant's argument that insufficient reasons were given by the Director General for his decision, the Tribunal stated that, "without exceeding his extensive authority, the Director General could legitimately consider that it was in the UPU's interest to suspend the [C]omplainant", in view of the seriousness of the charges against him. Since the suspension was only temporary, not widely publicized and did not affect the Complainant's right to defend himself, it concluded that his rights were not violated. It further held that although the reasons given in the impugned decision might not have been sufficient, it was substantiated by the reasons given in the investigative report and in the recommendation by the JAC.

The Tribunal also concluded, contrary to the Complainant's arguments, that the suspension was based on objective reasons and did not constitute abuse of authority. Neither

was it a measure of reprisal, as there was no evidence that the Director General intended to penalize the Complainant for his prior appeals by deciding to suspend him.

Finally, concerning the Complainant's claim that the Director General prejudged his case as he made the decision one or two days after receiving the lengthy audit report, the Tribunal considered that the Complainant had misunderstood the internal nature of the report and held that the report could not on its own be conclusive proof against a staff member. Even if he was unable to study the report in full, there was no abuse in authority by the Director General in concluding that the report contained indications which merited further scrutiny through disciplinary proceedings.

The Tribunal dismissed the Complaint.

6. *Judgment No. 2359 (14 May 2004): Mr. E. G. A.* v. *the European Patent Organisation*[31]

Dependency allowance—Definition of "dependent children"—Interpretation of rules—Article 69(3) (c) of the service regulations and rule 2 of Communiqué No. 6

The Complainant challenged the decision of the President of the European Patent Organisation (EPO) to dismiss his appeal for payment of dependency allowance with respect to the period from 24 July 2000 to 31 August 2001.

In June 2000, the Complainant's partner took up residence with him. She had two children and until then she had been supporting them with a small income from a part-time employment supplemented by social benefits. Her working hours had been considerably limited by the fact that her handicapped son required additional care. Once she was cohabiting with the Complainant, the Netherlands authorities assessed her entitlement to social security benefits on the basis of the couple's combined income. As a result, in June 2000, she ceased to receive one of the two social security benefits to which she had previously been entitled. On 24 July 2000, the Complainant applied for a dependency allowance in respect of his partner's children.

By a note of 31 October 2000, the Director of Personnel rejected the Complainant's application on the grounds that the conditions for dependency allowance were not fulfilled, because the children were not under the Complainant's parental authority,[32] whereupon he lodged an internal appeal. On 12 September 2001, when the appeal was still pending, the Complainant obtained joint custody of his partner's children and he was granted dependency allowance with effect from 1 September 2001. The Complainant maintained his appeal, claiming payment of the allowance, with interest, as from 24 July 2000, the date of his application, plus moral damages and costs.

In its opinion of 9 December 2002, the Appeals Committee recommended that the appeal be dismissed. The Appeals Committee considered that the mother had partially forfeited her entitlement to social security benefits of her own free will by deciding to cohabit with the Complainant and noting that she had also chosen not to enforce mainte-

[31] Michel Gentot, President; James K. Hugessen, Vice-President; and Mary G. Gaudron, Judge.

[32] The Complainant was not married to his partner at that time. The children themselves were not married, and they were not the Complainant's legitimate, natural or adopted children. Nor was the Complainant in the process of adopting them.

nance claims against the children's biological father. The Committee also considered that the conditions for recognition as a dependent child were not met. On 6 February 2003, the Complainant was informed that the President of EPO had decided to reject his appeal in accordance with the recommendation of the Appeals Committee.

In reviewing the case, the Tribunal found some distinct problems with the reasoning of the Appeals Committee. The Tribunal stated that, "to say that the [C]omplainant's partner was not able to support her children because she voluntarily joined his household is to adopt an unduly simplistic view of causation, rather than to look for the real and effective cause of her inability." The Tribunal further stated that the rule relevant to the case was intended to be evidentiary, in the sense that it "relieve[s] an employee of the burden of producing detailed evidence that he or she 'mainly and continuously' supports the children in question if the various matters specified in the rules are established. An employee who cannot establish those matters may, nevertheless, establish by other evidence that the children in question are 'mainly and continuously' supported by him or her, or by his or her spouse."

The Tribunal concluded that the view taken by the Appeals Committee that the relevant rule is definitional rather then evidentiary, was an error of law. Furthermore, the Tribunal concluded that to reject the Complainant's appeal involved not only an error of law, but also an unduly legalistic approach to the relevant provisions.

The evidence was that, no other person than the Complainant and his partner contributed to the support of the children and that the Complainant was the breadwinner. Thus, the children were mainly and continuously supported by him at the relevant time. Accordingly, the Tribunal entitled the Complainant to be paid an allowance for the two dependent children for the period from 24 July 2000 until 31 August 2001. The Tribunal found no case for moral damages.

C. Decisions of the World Bank Administrative Tribunal[33]

1. *Decision No. 309 (18 June 2004): Bernstein, Applicant* v. *International Bank for Reconstruction and Development, Respondent*[34]

Pension eligibility requirements—Non-regular staff—Break in service—*Détournement de pouvoir*—Gender discrimination—Respect of prior expectations

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[33] 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 of the International Finance Corporation (referred to collectively in the statute of the Tribunal as "the Bank Group"). The Tribunal is open to any current or former member of the staff of the Bank Group, any person who is entitled to a claim upon a right of a member of the staff as a personal representative or by reasons 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. For more information on the World Bank Administrative Tribunal and the full texts of its decisions, see http://wbln0018.worldbank.org/crn/wbt/wbtwebsite.nsf.

[34] 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 Applicant challenged the decision of the International Bank for Reconstruction and Development (the Bank) to deny her pension credit for her service as a non-regular staff member due to a disqualifying break in service. Such pension credit had been conferred on qualifying staff members in 2002 as an extension of the Bank's 1998 Human Resources Policy Reform (the Reform). The Applicant alleged that the Bank had engaged in gender discrimination because the disqualifying break in eligible service was the consequence of decisions made at a time when she was due to deliver her first child.

The Applicant joined the Bank in 1982 as a short-term staff member. In 1983, she obtained a long-term consultancy, which lasted until she left the Bank for the private sector in 1986. She rejoined the Bank as a short-term Consultant in 1989, and that same year her appointment was converted to a long-term consultancy. This consultancy expired on 30 April 1990, and shortly thereafter the Applicant gave birth to her first child. In August 1990, she obtained a short-term consultancy and, on 15 November 1990, another long-term consultancy. This latter consultancy lasted until November 1994, when her appointment ended due to a four-year limit from which the Applicant was not exempt since she had not been in continuous long-term service as of 30 September 1990. The Applicant was thereafter converted to a short-term consultancy until 2 January 1997, when she again became a long-term Consultant upon the partial abolition of the four-year rule. She was converted to a term appointment in 1998, and to an open-ended appointment in 1999.

Meanwhile, the Applicant began to accrue prospective pension credit on 15 April 1998, when the Reform came into effect. In 2002, the Bank's Executive Directors approved Schedule F to the Staff Retirement Plan (SRP), which conferred past pension credit on non-regular 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 Applicant sought past pension credit for the period from her post-birth return to the Bank in August 1990 until the time she began participation in the SRP in 1998. The Bank informed the Applicant that she was ineligible for past pension credit because: (i) the pre-December 1994 period was excluded by the break begun when her long-term consultancy ended that month under the four-year rule; and (ii) the period from 2 January 1997 through 14 April 1998 was excluded since it amounted to less than 730 days.

In its consideration of the case, the Tribunal noted that the Applicant was questioning the rules rather than their application, and upheld its prior rulings in *Lavalle,* Decision No. 301 (2003) and in *Elder,* Decision No. 306 (2003) that the Bank's Schedule F neither constituted a *détournement de pouvoir* nor was unreasonable. The Tribunal confirmed the validity of general rules and noted the administrative nightmare and risk of arbitrary differentiation between like staff members that a review of each staff member's career history would entail. The Tribunal nevertheless agreed with the Applicant that her case was extraordinary, in that her change in status in 1990 from long-term to short-term was due exclusively to her child's imminent birth. As no paid maternity leave was granted

for consultants, the Applicant had had no option but to let her long-term consultancy contract expire, which would otherwise have been extended and her employment status unaffected by the four-year limitation introduced in her absence. The Tribunal further found that the Applicant's work as a short-term Consultant from 1994 to 1996 was materially identical to her work as a long-term Consultant immediately before and immediately after, and that the Bank had understood it to be such at the time.

The Tribunal thus concluded that the Applicant's short-term status at that time was an artifice undertaken to comply with the four-year rule. The Tribunal rejected the Bank's contention that it should not be held liable for compliance with a rule instituted as part of a staff regularization scheme mandated earlier by the Tribunal.[35] The Tribunal stated that the question was not one of regularization but rather one of determining for past pension credit purposes whether the Applicant's short-term employment was equivalent to a long-term consultancy because of its unchanging nature.

The Tribunal noted that "under recognized international standards, absence from work due to pregnancy and childbirth should not result in loss of continuity of employment, seniority or status." The Tribunal found that it was only because of the Applicant's pregnancy that she had lost her long-term status and was consequently affected by the four-year rule. The Tribunal concluded that the Applicant had had an expectation to rejoin the Bank in 1990 as a long-term Consultant, and that this perception and belief had been shared by the Bank. Moreover, the Tribunal found that at that time, neither the Applicant nor her managers were aware of the four-year rule. The Tribunal stated in this regard that while general policies might be changed by the Bank, a prior expectation must be respected when created by the acts of management itself.

The Tribunal for such reasons granted the Applicant past pension credit for the 1990 to 1998 period, minus 730 days as required by the terms of the SRP. The Tribunal further awarded the Applicant costs.

2. *Decision No. 317 (18 June 2004): Yoon (No. 4), Applicant* v. *International Bank for Reconstruction and Development, Respondent*[36]

COMPLIANCE WITH REINSTATEMENT ORDER—"COMPARABLE POSITION"—CONDUCT OF PARTIES IN TRIBUNAL LITIGATION—CENSURE OF COUNSEL

The Applicant claimed that she had not been reinstated to a "comparable position" by virtue of a prior Tribunal judgment[37] and that her new assignment had been made on the basis of a biased, fabricated and false appraisal of her aptitude and achievements. She further claimed that the International Bank for Reconstruction and Development ("the Bank") had retaliated against her and threatened to revoke her reinstatement. She entered a number of additional complaints against the Bank, and requested a wide range of relief, including the disciplining of three staff members.

[35] See, *Prescott,* Decision No. 253 [2001].

[36] Francisco Orrego Vicuña, President; Elizabeth Evatt, Vice President; and Jan Paulsson and Sarah Christie, Judges.

[37] *Yoon (No.2),* Decision No. 248 (2001).

The Tribunal stated that a person who is to be reinstated can neither expect that his or her previous position will have remained vacant, nor have greater rights than any other staff member. The Tribunal established that no one should be transferred, demoted or dismissed to accommodate a reinstatement, and that no position should be created simply for the purpose of reinstatement, as such would be a waste of Bank resources.

The Tribunal endorsed the test applied by the Appeals Committee in evaluating the Bank's compliance with the Applicant's reinstatement order, and stated that it should serve as a template in future cases. This test involved: (i) a substantive assessment of the proposals and conditions that were the subject of post-judgment communications between the Bank and the Applicant; (ii) an examination of the consultation and accommodation that occurred between the parties in placing the Applicant in a "comparable" position; (iii) a comparison of the Applicant's position at the time of reinstatement to the one she occupied upon her termination; and (iv) a review of the length of time it took for the Bank to reinstate the Applicant. After analyzing the facts of the case, the Tribunal declared that despite the Applicant's stridency and repetitive allegations and contentions, her accusations were hollow and wholly unjustified by the record. For such reasons, the Tribunal dismissed the Application.

Moreover, despite considering the Applicant a "highly articulate professional," the Tribunal determined that her case had been harmed by her frequent and obvious mischaracterizations of the record, and that the central thrust of her narrative strained logic. The Tribunal found that the Applicant had unjustifiably and recklessly accused other staff members, that she had mischaracterized past Tribunal judgments so as to cross the line of reasonable advocacy. The Tribunal found the Applicant's theories startling, fanciful, incredible and self-defeating. The Tribunal further deemed the conduct of the Applicant's counsel to have been "professionally reprehensible", as it found his "gratuitous confrontationalism, fallacious arguments, and unreliable pleadings to have served no purpose other than to fan the litigation." The Tribunal therefore censured him in the hope he would reflect on his duties as an officer of the court.

3. *Decision No. 325 (12 November 2004): E, Applicant* v. *International Bank for Reconstruction and Development, Respondent*[38]

Divorce and support obligations—Garnishment of wages—Relationship of Bank and Tribunal to national courts and authorities—Principle of abstention—Due process—Investigations

The Applicant challenged the decision of the International Bank for Reconstruction and Development (the Bank) to deduct a certain amount from his net annual salary and to forward it to his former spouse as semi-monthly court-ordered spousal and child support payments. The Applicant and the Bank disagreed in this regard as to the proper interpretation of the divorce decree that established the support obligation, in particular with regard to the crediting of "mortgage".

[38] Bola A. Ajibola, President; Elizabeth Evatt and Jan Paulsson, Vice Presidents; and Robert A. Gorman, Francisco Orrego Vicuña, Sarah Christie and Florentino P. Feliciano, Judges.

In 1998, the Bank had adopted a policy, known as the Bank Policy on Spousal and Child Support (the Policy), to deduct court-ordered spousal and child support payments from a staff member's wages when he or she could not provide evidence of having satisfied such obligations. The Policy was designed to ensure that staff did not seek to hide behind the Bank's immunity from garnishment orders, and gave to the Bank the authority to hear from a staff member accused of delinquency and, upon finding a "clear legal obligation" to make payments "of a readily ascertainable amount," to commence deductions.

In 2003, the Applicant's former spouse wrote to the Bank's Vice President of Human Resources to complain that the Applicant was not making full and timely spousal and child support payments as required by the divorce decree. This letter was forwarded to the Bank's Department of Institutional Integrity (INT), which requested evidence of compliance from the Applicant. The Applicant responded by asserting that he had complied fully with the decree. After a review of all the submitted materials, the Director of INT, on 31 July 2003, sent to the Manager of the Bank's Human Resources Service Center (HRSSC) a memorandum on INT's review and conclusions. The memorandum was not likewise forwarded to the Applicant. Pursuant to the INT memorandum, the HRSSC Manager informed the Applicant on 5 August 2003 that automatic payroll deductions would commence on 15 August 2003. The Applicant requested a copy of the INT memorandum and received it on 12 August 2003. The Applicant thereafter requested an administrative review of the decision to commence such deductions. He also complained of highly prejudicial errors in the administrative process of the INT and the Human Resources, including the denial of a fair opportunity to respond to their actions. In response, the Vice President of Human Resources informed the Applicant that she regarded his position to be contrary to the decree's clear language.

In considering the case, the Tribunal noted that neither party had challenged the Policy itself, and that both had agreed on the general principle that the Bank must avoid interpreting or construing ambiguous or unclear provisions of a national court decree. The Tribunal confirmed that this principle of abstention was equally applicable to itself. It further stated that "the Bank and its internal agencies such as INT should, when called upon to examine the judgments of national courts, refrain from resolving plausible, conflicting interpretive claims."

The Tribunal concluded that the conflicting interpretations of the divorce decree by the Applicant and by his former spouse concerning the crediting of "mortgage" raised a genuine and reasonable doubt as to the meaning of that within the decree's context, and that the decree otherwise contained important ambiguities that were beyond the power of the Bank to resolve. The Tribunal stated that while the Bank's practices and the common understanding of the term "mortgage" were relevant to such an inquiry, they were not dispositive. The Tribunal further declared that it was not for the Bank to instruct national courts "as to the correct meaning of terms in the decrees of those courts", and that it was altogether beyond the power of the Bank to declare that the national court would be "quite simply" wrong in the interpretation of its own language. The Tribunal found that the burden lay upon the Applicant's former spouse to turn to the national courts if she wished to vindicate her position.

In considering the Applicant's challenge regarding the procedure utilized by the Bank in ascertaining his liability for support payments and the lack of due process, the

Tribunal stated that since it is within the discretion of the Bank to assign the enforcement of its policies to a suitable internal entity, that entity has discretion to utilize suitable procedures when making findings, conclusions and recommendations. The Tribunal held that there was no abuse of discretion in giving to INT, outside of the relevant framework for investigations and with less elaborate procedures, the power to investigate and make recommendations concerning the alleged failures of a staff member in making family support payments pursuant to a divorce decree. The Tribunal nevertheless required that the procedures formulated under the Policy must accord with the fundamentals of due process of law, and that their distinction from other investigation procedures must be clear.

The Tribunal concluded that the requirements of due process had not been fully satisfied in the Applicant's case, as the Applicant had not been informed as to the applicable procedures and protections, nor had he been provided with reports, drafts or reasoning prior to the time the decision was made to garnish his salary.

The Tribunal for such reasons ordered that the deductions cease pending the decision of the national courts, that reimbursement be made, and that the Applicant be awarded compensation and costs.

D. Decisions of the Administrative Tribunal of the International Monetary Fund[39]

Judgment No. 2004–1 (10 December 2004): Mr. "R" (No. 2), Applicant v. *International Monetary Fund, Respondent*[40]

Reimbursement of security expenses indirectly incurred by a staff member—*Res judicata*—Article XIII of the Statute of the Administrative Tribunal of the International Monetary Fund (the Fund)—Unfairness of a regulatory decision in an individual case—Regulatory and individual decisions

The Applicant, the former Director of the Joint Africa Institute (JAI), then located in Abidjan, Côte d'lvoire, challenged a decision of the Department of Human Resources to deny his request for reimbursement of security expenses said to have been incurred by him indirectly when he elected to live in a hotel rather than a private residence at his overseas post. The Applicant contended that the Fund's housing allowance for overseas Office staff, while designed to compensate for the difference between housing costs in Washington, D.C. and the duty station, unreasonably fails to take into account differences in security costs at the two locations, except in the circumstance in which the Fund has occasion to pay directly for security enhancements of and protection to the overseas residence. Therefore, the Applicant contended that the Fund unfairly penalizes a staff member who

[39] The Administrative Tribunal of the International Monetary Fund became operational on 1 January 1994. The Tribunal is competent to pass judgment upon any application: a) by a member of the staff challenging the legality of an administrative act adversely affecting him; or b) by an enrollee in, or beneficiary under, any retirement or other benefit plan maintained by the Fund as employer challenging the legality of an administrative act concerning or arising under any such plan which adversely affects the applicant. For more information on the Administrative Tribunal of the International Monetary Fund and the full texts of its judgments, see www.imf.org/external/imfat/index.htm.

[40] Stephen M. Schwebel, President; and Nisuke Ando and Michel Gentot, Associate Judges.

decides to rent accommodation in a facility already outfitted with security equipment and guard services, the costs of which are included in the rent. The Applicant sought as relief the amount he estimated he would have incurred directly for guard services had he elected to live in a private residence.

This was the second case brought to the Tribunal by the Applicant challenging the benefits he received during his assignment as Director of the JAI. In his earlier Application, he contested the denial of his request for a) an overseas assignment allowance, and b) a housing allowance commensurate with the housing benefit received by the Fund's Resident Representative in Abidjan. In that Application, he challenged as discriminatory the difference in benefits granted to overseas Office Directors *vis-à-vis* Resident Representatives where such officials are posted in the same foreign city. In *Mr. "R,"* Judgment No. 2002–1 (2002), the Tribunal rejected the Applicant's contentions, holding that the allocation of different benefits to different categories of overseas staff was "rational, related to objective factors, and untainted by any animus against the Applicant, and that it was within the Fund's managerial discretion to decline to make an exception to the policy in the Applicant's case."

The Fund urged the Administrative Tribunal to deny the present Application on the ground that article XIII of the Tribunal's statute (finality of judgments) prevents the Applicant from re-litigating the same claims which were decided in the previous case. In the alternative, the Fund argued that its decision was consistent with the application of the appropriate housing policy.

In considering the Fund's first argument, the Tribunal referred to article XIII, section 2, of its statute which provides that "[j]udgments shall be final, subject to article XVI and article XVII, and without appeal.," which codifies a cardinal principle of judicial review, *res judicata,* and prevents the re-litigation of claims already adjudicated and promotes certainty among the parties and judicial economy. This case was the first before the Tribunal in which the principle has been raised as a defense to an Application.

The Tribunal referred to various decisions of the International Labour Organization Administrative Tribunal articulating the requirements for the doctrine of *res judicata* to operate as a bar to a subsequent proceeding. In applying these principles, the Tribunal noted that it was required to consider "what claims were raised by the Applicant in his earlier suit, what was the purpose of that litigation, what the legal arguments were put forward by the parties and considered by the Tribunal, and what was decided by the Tribunal and on what basis."

First, the Tribunal considered whether the outcome sought by the Applicant was the same as that sought in the earlier case. In this regard, the Tribunal noted that in the first case, the Applicant challenged the Fund's decision not to accord him the same perquisites as those granted to the Resident Representative. In the present case, however, the Applicant contested the application of a policy that distinguished between costs directly and indirectly incurred, the Fund meeting the former but not the latter. The Tribunal thus concluded that the purpose of the two claims were not the same.

The Tribunal then considered whether the Applicant's cause of action had the same foundation in law as that in the earlier case. The earlier case was decided by the Tribunal by determining if granting different benefits to different categories of staff constituted discrimination, "elucidating the principle of non-discrimination as a substantive

limit on the exercise of discretionary authority." In the present case, the Applicant challenged a policy that distinguished between security costs directly and indirectly incurred, thus identifying a different inequity than the one previously complained of. The Tribunal concluded that the doctrine of *res judicata* did not apply.

In considering the merits of the Application, the Tribunal first asked whether the Fund properly interpreted and applied its housing policy. The decision to refuse to reimburse indirect security costs was based on the policy that the Fund would pay for costs directly incurred by a staff member but not those which were avoided due to his choice of accommodation. The Tribunal concurred with the Applicant's argument "that these costs, far from being avoided, were indeed 'incurred,' albeit indirectly."

The Tribunal also addressed the Fund's argument that the Applicant was only seeking to challenge a regulatory decision.[41] The Tribunal, citing earlier decisions in which it discussed essential conditions for a valid regulatory decision, questioned whether the Fund's "policy" regarding reimbursement of security expenses for staff posted abroad met those requirements as there was no evidence before the Tribunal that the policy had been communicated to the staff of the Fund at large. Nevertheless, the Tribunal held that "even if it lack[ed] jurisdiction to pass upon the security policy as a 'regulatory decision', it [was] competent to consider the fairness of its application to the Applicant as an 'individual decision'."

The Tribunal ultimately concluded that there was "no cogent consideration, in the light of the Fund's policy of meeting security costs, why [the Fund] should be absolved of those costs in the case of [the Applicant] simply because they were indirectly rather than directly incurred. On the contrary, equal treatment of staff in their fundamental right to enjoy physical security should govern."

Accordingly, the Tribunal rescinded the decision of the Fund to deny payment of security costs indirectly incurred by the Applicant

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[41] Under article II of its statute, the Tribunal has jurisdiction over challenges to both regulatory and individual decisions by the Fund.

Chapter VI

SELECTED LEGAL OPINIONS OF THE SECRETARIATS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Legal opinions of the Secretariat of the United Nations

(Issued or prepared by the Office of Legal Affairs)

1. Privileges and immunities

(*a*) Letter to the Acting Chair of the Special Committee on Peacekeeping Operations, United Nations, regarding immunities of civilian police and military personnel

Privileges and immunities of civilian police and military personnel—Article VI of the Convention on the Privileges and Immunities of the United Nations, 1946*—Model status-of-forces agreement (A/45/594)—Status-of-mission agreements—Civilian police enjoy the status of experts performing missions—Civilian police enjoy functional immunity—Privileges and immunities are granted in the interest of the Organization and not for the personal benefit of the individual—Legal obligation of the United Nations to cooperate with local authorities to facilitate the administration of justice—Waiver of immunity when possible without prejudice to the interest of the Organization—Military personnel are subject to the exclusive criminal jurisdiction of the respective participating State—Customary principles and practices applicable to peacekeeping—Military personnel may be subject to local civil jurisidction for acts giving rise to civil liablity and committed otherwise than in the performance of their offical functions

This is in response to your letter of 12 April 2004 conveying a request from the Special Committee on Peacekeeping Operations, "for written information by the Office of Legal Affairs regarding immunities of civilian police and military personnel." You also attached a list of questions which you have requested that I use as guidance when responding.

As far as civilian police are concerned, you have requested that I use the following as guidance:

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

– "The nature of immunities enjoyed by civilian police personnel serving under [the] United Nations flag.

– Whether these immunities differ between different peace operations and why.

– The legal bases for the above immunities.

– The competent jurisdiction in cases of civil/criminal liability [and] basis for competence/jurisdiction."

United Nations civilian police officers enjoy the status of "experts performing missions" for the United Nations within the meaning of article VI of the Convention on the Privileges and Immunities of the United Nations, 1946, a copy of which I attach.* This status is also provided for in, *inter alia,* status-of-forces agreements (SOFAs) or status-of-mission agreements (SOMAs) that are concluded between the United Nations and Governments hosting peacekeeping operations, as well as the model status-of-forces agreement (A/45/594). SOFAs and SOMAs reviewed by this Office follow the model status-of-forces agreement and the Convention by consistently affording to United Nations civilian police the status of experts on mission. If no status-of-forces agreement has been concluded and the model status-of-forces agreement has not been made applicable by the Security Council resolution authorizing the operation, then the status of civilian police officers remains governed by the Convention.

The chapeau of article VI, section 22, of the Convention provides as follows:

> "Experts (other than officials coming within the scope of [a]rticle V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions."

As experts performing missions for the United Nations, civilian police officers enjoy "functional immunity", that is, immunity for purposes of the official acts done by them in the course of the performance of their official functions. Their privileges and immunities, which include immunity from personal arrest and detention, are granted solely to enable them to perform their official functions. These privileges and immunities are granted in the interests of the Organization and are not for the personal benefit of the individuals themselves. United Nations civilian police officers may therefore be made subject to local civil and criminal jurisdiction for acts committed by them in the host country that are done by them *otherwise* than in the performance of their official functions.

In this regard, the United Nations has a legal obligation to cooperate with the appropriate local authorities to facilitate the proper administration of justice. Under article VI of the Convention, the Secretary-General has the right and duty to waive the immunity of any expert on mission, including civilian police officers, in any case where, in his opinion, this immunity would impede the course of justice, and it can be waived without prejudice to the interests of the United Nations. It is therefore possible and consistent with the Convention and the model status-of-forces agreement, that a United Nations civilian police officer be prosecuted in the host State for a criminal act, even if committed in the course of performing his or her functions, where immunity for that act would impede the course of justice and that immunity can properly be waived.

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* The Convention is not reproduced herein.

As far as the military members of military components serving in a peacekeeping operation are concerned, you have requested that I use the following as guidance:

– "The nature of immunities enjoyed by military personnel serving under [the] United Nations flag.

– Whether these immunities differ between different peace operations and why.

– The legal bases for the above immunities.

– The competent jurisdiction in cases of civil/criminal liability [and] basis for competence/jurisdiction."

Military personnel of military components who serve in United Nations peacekeeping operations under the authority of the Secretary-General are, in accordance with the customary principles and practices applicable to peacekeeping, subject to the exclusive criminal jurisdiction of their respective national authorities, and so enjoy absolute and complete immunity from local criminal process in States hosting peacekeeping operations. This status is consistently provided for in, *inter alia,* Status-of-forces agreements that are concluded between the United Nations and Governments hosting peacekeeping operations, as well as in the model status-of-forces agreement, a copy of which I attach* and which provides as follows in article 47 (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 [host country/territory]."

This immunity from criminal jurisdiction in a host State can be justified, *inter alia,* by the fact that military personnel, as a rule, are subject to their own distinct military judicial system, including for acts committed by them outside their own country. It may further be noted in this connection that paragraph 48 of the model Status-of-forces agreement provides that, "[t]he Secretary-General of the United Nations will obtain assurances from Governments of participating States that they will be prepared to exercise jurisdiction with respect to crimes or offences which may be committed by members of their national contingents serving with the peacekeeping operation."

However, consistent with the model status-of-forces agreement and specific Status-of-forces agreements reviewed by this Office and concluded with countries that host peacekeeping operations, military members of the military component of a United Nations peacekeeping operation may be subjected to local civil jurisdiction for acts that give rise to civil liability and that are committed by them in the host country *otherwise* than in the performance of their official functions.

I trust that the above is of assistance.

14 April 2004

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* The model Status-of-forces agreement, document A/45/594, is not reproduced herein.

(*b*) Note verbale to a Permanent Representative of a Member State to the United Nations regarding the freezing of bank accounts of the World Food Programme

Freezing of the World Food Programme's bank accounts as a result of a labour dispute—World Food Programme is a joint subsidiary organ of the United Nations and the Food and Agriculture Organization—Convention on the Privileges and Immunities of the United Nations (Convention), 1946*—Property and assets of the United Nations enjoy immunity from every form of legal process and from execution—No waiver of immunity shall extend to any measure of execution—A party may not invoke provisions of internal law as justification for its failure to perform a treaty—Article 27 of the Vienna Convention on the Law of Treaties, 1969**—National jurisdiction over the terms of employment of United Nations officials would contravene the prerogatives of the Secretary-General and the General Assembly and would undermine the official's exclusive international character—Articles 100 and 101 of the Charter of the United Nations—Any interpretation of the Convention must be carried out within the spirit of the underlying principles of the Charter and, in particular, Article 105 thereof—Requirement of the Organization to provide appropriate modes of settlement of contractual disputes or other disputes of a private law character to which the United Nations is a party

The Legal Counsel of the United Nations presents his compliments to the Permanent Representative of [State] to the United Nations and has the honour to refer to the attached joint note verbale*** from the United Nations and the Food and Agriculture Organization (FAO) to the Ministry of External Relations of the Government of [State] concerning recent judgements by the Supreme Court of Justice of [State] in labour case [number] filed by [name], against the World Food Programme (WFP), a joint subsidiary organ of the United Nations and the FAO. Further to current appeals by the United Nations Resident Representative in [State], the Legal Counsel has the honour to bring the following to the attention of the Permanent Representative of [State] to the United Nations.

The Legal Counsel wishes to recall that by Order of [date], the President of the Supreme Court of Justice, [name], struck out the decision issued by the lower courts on [date] on the basis of WFP's immunity from legal process pursuant to article II, sections 2 and 3, of the Convention on Privileges and Immunities of the United Nations, 1946. Nonetheless, on [date], [name] appealed against that Order and on [date], the Supreme Court accepted the application for review submitted by [name]. On [date], the new President of the Supreme Court of Justice, [name], annulled the Order of [date], basing his decision on the fact that "the Vienna Convention on Diplomatic Relations" does not provide for immunity from labour disputes under [State] law; based on the foregoing, the Supreme Court restored the lower court decision of [date]. On [date], WFP funds in two bank accounts in Citibank and the International Bank were frozen and a total of US$ 157,678.75 was embargoed by the Order of the Supreme Court of Justice.

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

** United Nations, *Treaty Series,* vol. 1155, p. 331.

*** The note verbale is not reproduced herein.

The Legal Counsel wishes to inform the Permanent Representative of [State] that the FAO and the WFP had previously submitted several notes verbales in connection with this case to the Ministry for Foreign Affairs of the Government of [State]. The United Nations, FAO and WFP are deeply grateful for the continuing efforts of the Ministry for Foreign Affairs to ensure respect for WFP's immunity from legal process and are encouraged by its previous success in doing so. Unfortunately, the Legal Counsel regrets to note that in the light of the most recent decision by the Supreme Court, the Legal Counsel is compelled to call upon the Permanent Representative to request the Ministry for Foreign Affairs to intervene once again, and on an urgent basis, to ensure that the WFP's immunity from legal process and from execution is upheld, that the afore-mentioned order is nullified and that all frozen funds are returned as soon as possible.

To that end, the Legal Counsel has the honour to reiterate the applicable legal obligations and norms. The status of the WFP, as a joint subsidiary organ of the United Nations and the FAO, is regulated by the Convention on Privileges and Immunities of the Specialized Agencies, 1947,* to which [State] has been a party since [date] and the Convention on Privileges and Immunities of the United Nations, 1946, to which [State] has been a party since [date] (the Convention) promulgated in Official Registry [date]—not by the Vienna Convention on Diplomatic Relations, 1961.** Pursuant to section 2, article II, of the Convention, "the United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case, it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution." The United Nations and the FAO have maintained the WFP's privileges and immunities in respect of this case.

Pursuant to article V of the Food Assistance Programme of [date] entered into between the Government of [State] and the WFP as well as article V of the Long Term Agreement to the Food Assistance Programme entered into between the Government of [State] and the World Food Programme, the latter being published in Official Registry [date], the Government has an obligation to "apply the provisions of the Convention on Privileges and Immunities of the Specialized Agencies to the World Food Programme, its property, funds and assets and to its officials and experts".

In this connection, the Legal Counsel takes note that article 163 of the Constitution of [State], provides that "the norms contained in the treaties and international conventions, once promulgated in the Official Registry, will form part of the judicial ordinance of the Republic and will prevail over the laws and other norms of minor hierarchy." The latter is consistent with article 27 of the Vienna Convention on the Law of Treaties, 1969,*** which stipulates that "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty".

Thus, based on the foregoing, national labour laws do not have primacy over the provisions of the Convention and the Charter to which [State] is a party. Moreover, pursuant to Article 101 of the Charter of the United Nations, officials of the United Nations, includ-

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

** United Nations, *Treaty Series,* vol. 500, p. 95.

*** United Nations, *Treaty Series,* vol. 1155, p. 331.

ing WFP, are appointed by the Secretary-General pursuant to regulations promulgated by the General Assembly. National jurisdiction over the terms of employment of United Nations officials would contravene the prerogatives of the Secretary-General and the General Assembly and would serve to undermine their exclusively international character as confirmed in Article 100 of the Charter.

Pursuant to section 34 of the Convention, the Government of [State] undertook an obligation to be "in a position under its own law to give effect to the terms" of the Convention. Any interpretation of the provisions of the General Convention must be carried out within the spirit of the underlying principles of the Charter of the United Nations, and in particular Article 105 thereof, which provides that the Organization shall enjoy such privileges and immunities as are necessary for the fulfilment of its purposes.

In this connection, the competent judicial authorities should be assured that, notwithstanding the immunity of the Organization from legal process under the applicable provisions of the Convention and the Charter of the United Nations, [name] is not without a remedy to redress his complaint. Pursuant to article VIII, section 29 (a), of the Convention, the United Nations is required to provide appropriate modes of settlement of "[d]isputes arising out of contracts or other disputes of a private law character to which the United Nations is a party." Consistent with the provisions of the Convention, and as reflected in [name's] contract, the United Nations Staff Regulations and Rules set out the internal dispute settlement mechanisms available to staff members for redress of their grievances against the Organization. [Name] therefore has recourse to an internal appeals process, including review by a quasi-judicial body and subsequent consideration by the United Nations Administrative Tribunal, which performs judicial functions and delivers binding judgments on the parties. [Name] should be advised to avail himself of the remedies available to him under the Staff Regulations and Rules.

The Legal Counsel kindly requests that the Ministry for Foreign Affairs take the necessary steps to inform the competent judicial authorities, of WFP's immunity from every form of legal process and from execution, including the civil suit in question in accordance with the obligations of the Government of [State]. In particular, the Legal Counsel trusts that the case will be dismissed with prejudice in all its aspects, including the execution order, and expects that all embargoed funds will be returned as soon as possible.

The Legal Counsel avails himself of this opportunity to renew to the Permanent Representative of [State] to the United Nations the assurances of his highest consideration.

16 July 2004

(*c*) Interoffice memorandum to the Director of Investment Management Service, United Nations, regarding tax exemption

Refusal to reimburse withheld taxes to the Joint Staff Pension Fund (FUND)—All assets of the United Nations are exempt from direct taxation, including investments—Article II, section 7 (a), of the Convention on the Privileges and Immunities of the United Nations, 1946* —The Organization enjoys Privileges and immunities as necessary for the fulfilment of its purposes—Measures which may increase burdens, financial or other, of the Organization, are seen as inconsistent with Article 105 of the Charter of the United Nations—Assets of the Fund are considered property of the United Nations despite being held on behalf of the participants and beneficiaries—Article 18 of the Regulations, Rules and Pension Adjustment System of the Joint Staff Pension Fund

1. This is in response to your memorandum dated 21 July 2004 seeking our assistance in preparing an appropriate response to the [State] tax authorities in relation to a claim for tax exemption by the Investment Management Service for the sum of approximately 131,000 euros. You advise that in September 1993 the [United Nations Joint Staff Pension] Fund was granted a tax exempt status by the [Member State] authorities in accordance with the Convention on the Privileges and Immunities of the United Nations, 1946. You advise that since then the [State] authorities have refused to reimburse withheld taxes. You state that the reasons for this refusal are set forth in the letters of 12 June 1997 and 9 August 1995.

2. The attached letter from the [State's] [tax authorities] to [Bank] (the Fund's Custodian in Europe) of 12 June 1997 states that "payment of [State's] tax credits cannot be made to non-resident organizations unless provision for such payment is made in . . . an International Convention to which [State] is a signatory country".** It further states that "where a foreign [S]tate or one of its agencies engages in commercial activities in the market place, it cannot claim relief under Sovereign Immunity provisions contained in [State's] domestic legislation" and that "commercial activities would include investments made in [State's] Securities". The letter from the [State's] [tax authorities] to [name], Taxation Department dated 9 August 1995 requests an indication as to the basis for the exemption as under article 3 of the Regulations and Rules of the Fund, "the Fund would appear to extend to a wider range of organizations and to be open to specialized agencies other than would be covered by the Convention on the Privileges and Immunities."

3. The position of the United Nations is that *all* assets of the United Nations are exempt from direction taxation. This position derives from the obligations of Member States under the Convention on the Privileges and Immunities of the United Nations, 1946, (the Convention) to which [State] acceded without reservation on [date], and the Charter of the United Nations. Pursuant to article II, section 7 (a), of the Convention, "the United Nations, its assets, income and other property shall be exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services." Article 105 of the Charter provides that "[t]he Organization shall enjoy in the territory of each of its members such

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

** The letter is not reproduced herein.

privileges and immunities as are necessary for the fulfilment of its purposes." Among these privileges and immunities is immunity from taxation of the assets, income and property of the Organization. Measures which may increase the burdens, financial or other, of the Organization are seen as inconsistent with the obligations under Article 105 of the Charter. It is clear that the assets of the United Nations include the assets of the United Nations Joint Staff Pension Fund. Article 18 of the Regulations, Rules and Pension Adjustment System of the Joint Staff Pension Fund (the Regulations and Rules) states that "[t]he assets shall be the property of the Fund and shall be acquired, deposited and held in the name of the United Nations". Although the assets are held on behalf of the participants and beneficiaries of the Fund, which may include the employees of non-United Nations bodies which meet the criteria for membership as set forth under article 3 (b) of the Regulations and Rules, the assets are nevertheless the property of the United Nations. They are accordingly entitled to exemption from taxation under the Convention on the Privileges and Immunities of the United Nations, 1946.

4. Should you encounter any further difficulties in recovering the withheld taxes, please notify our Office immediately and we will prepare a note verbale to the Government of [State] requesting it to ensure that its tax authorities respect the privileges and immunities of the United Nations.

14 September 2004

(*d*) Letter to a Permanent Representative of a Member State to the United Nations regarding the legal framework for the holding of a United Nations meeting away from Headquarters

HOST COUNTRY AGREEMENTS—LEGAL FRAMEWORK GOVERNING THE HOLDING OF UNITED NATIONS MEETINGS AWAY FROM HEADQUARTERS—ARTICLES 104 AND 105 OF THE CHARTER OF THE UNITED NATIONS—CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946*—ADMINISTRATIVE INSTRUCTION ST/AI/342**—PRIVILEGES AND IMMUNITIES TO ALL PERSONS PARTICIPATING IN OR PROVIDING SERVICES FOR THE EVENT—ACCESS AND VISAS—MANDATORY LIABILITY CLAUSE—PEACEFUL SETTLEMENT OF DISPUTES—NEED FOR LEGALLY BINDING AGREEMENTS

I wish to refer to the meeting held on 2 July 2004 between [name] of [State authorities] and [names] of this Office regarding the legal framework for future United Nations meetings that may be held in [State].

The meeting enabled us to exchange views on a number of issues that have created difficulties in concluding host country agreements in a timely fashion.

As agreed during the meeting, I am providing you with a brief overview of our policy with regard to the legal framework governing the holding of United Nations meetings away from headquarters.

This legal framework is primarily determined by Articles 104 and 105 of the Charter of the United Nations, the Convention on the Privileges and Immunities of the United

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

** For information on administrative instructions, see note 4 in chapter V.

Nations, 1946, and relevant General Assembly resolutions. It is further determined by internal regulations and rules such as Bulletins and administrative instructions issued by the Secretary-General.

Guidelines for the preparation of the required agreements with the host country have been formulated in administrative instruction ST/AI/342 of 8 May 1987, a copy of which is attached for your ease of reference.* Depending on the size and duration of an event, a full-fledged "conference agreement" may be necessary. For small-scale seminars, symposia or workshops, referred to in this letter as "meetings", a simplified agreement (host country agreement) in the form of an exchange of letters is usually deemed sufficient. It is our understanding that our ongoing consultations relate only to the latter as no major deviations are contemplated from our standard conference agreement.

The model exchange of letters contained in ST/AI/342, on the basis of which several hundred host country agreements have been concluded with the vast majority of Member States, provides the Secretariat with a certain degree of flexibility. It also reflects a certain number of fundamental principles from which we cannot deviate. These principles include:

(*a*) The need to ensure that the necessary privileges and immunities are granted by the host Government to all persons participating in or providing services for the event—including individuals that may not be covered by the Convention on Privileges and Immunities of the United Nations, 1946. As you know, that Convention only covers representatives of States, United Nations officials and experts on mission. We note, in this regard, that the categories of participants in United Nations events have expanded significantly since the adoption of the Convention (they nowadays customarily include representatives of non-governmental organizations, civil society, as well as financial or private institutions).

(*b*) The need to ensure that all invitees to a United Nations event are granted unimpeded access to and from the meeting venue, and that no limitations of a domestic nature are placed on the granting of visas where the latter are necessary. Any limitation on the right to enter the country for the purpose of participating in a United Nations event would amount, in effect, to a veto power over any particular United Nations invitee.

(*c*) The need to ensure that the host Government will indemnify and hold the United Nations harmless for any injury or loss occurring within the premises or the transportation provided—by the host Government, or by the support personnel provided for the event by the Government. The inclusion of a liability clause to that effect in the standard host country agreement is mandatory under General Assembly resolution 47/202 of 18 December 1992 which provides that United Nations bodies may hold sessions away from established Headquarters, on the condition that the host countries agree "to defray the actual additional costs directly or indirectly involved." The financial liability which may be entailed for the United Nations in such an event is considered by the United Nations to be an "indirect additional cost".

(*d*) The need to provide for an effective provision on the peaceful settlement of disputes, consistent, in particular, with the Manila Declaration on the Peaceful Settlement of International Disputes.**

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* The Administrative instruction is not reproduced herein.

** General Assembly resolution 37/10 of 15 November 1982, annex.

(*e*) The need to conclude legally binding agreements, in particular—but not only—because conference and host country agreements set out rights and obligations for each party that modify and go beyond the framework of the Convention.

I would be most grateful if you would bring the above considerations to the attention of your authorities. As agreed during the meeting, we are also submitting, for your Government's consideration, a draft framework agreement for meetings held in [State].* I look forward to the further discussion of the draft framework agreement, the conclusion of which would greatly facilitate the holding of meetings in [State].

18 October 2004

(*e*) Facsimile to the Legal Adviser of the International Labour Organization, Geneva, regarding the refusal of a Member State to recognize the full immunities of international organizations

Refusal of State to recognize full immunities of international organizations—Non-intervention to assert immunities on behalf of organizations in national courts—Immunity from legal process—Privileges and immunities as necessary for the fulfilment of the Organization's purposes—Article 40, paragraph 1, of the Constitution of the International Labour Organization—Retention of local counsel

1. This is with reference to your facsimile of 13 October 2004 concerning the [State's] position that it does not recognize the full immunities of international organizations and that it would not intervene on behalf of such organizations in its national courts. Further to [our] discussions with members of your office as well as with representatives of the [State's] Mission to the United Nations in New York, we understand that, while the underlying divorce case giving rise to your original demarche to the [State's] authorities has been withdrawn, you would nonetheless appreciate our advice on how to assess the position maintained by the [State] Government. Our comments are as follows.

2. At the outset, we wish to note that the [State] is not a party to the Convention on the Privileges and Immunities of the Specialized Agencies, 1947. Nonetheless, as a member of the International Labour Organization (ILO), the [State] has obligations with respect to ILO's immunity from legal process under article 40, paragraph 1, of the ILO Constitution which provides that ILO "shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes".

3. The [State] maintains that ILO's status, privileges and immunities in the [State] are governed exclusively by the [national legislation] which has been made applicable to international organizations, including the ILO, pursuant to the [national legislation]. We can confirm that in accordance with its established policy and practice, the [State authority] does not intervene to assert the privileges and immunities of States or international organizations in [State] courts of first instance. Where it deems appropriate, it has intervened in such cases at the appellate level. Based on the foregoing, the competent [State]

* The draft agreement is not reproduced herein.

authorities have advised the ILO to retain local counsel to seek dismissal of cases lodged against it in the national [State] courts.

4. We would advise ILO against the retention of local counsel and would suggest alternatively, that the ILO Legal Adviser inform the competent judge, in writing, of the immunities enjoyed by ILO under the ILO Constitution as well as under the [national legislation] and the [national legislation]. Any such communication should be copied to the [State] Mission to the United Nations in Geneva as well as the [State] Mission to the United Nations in New York.

27 October 2004

(*f*) Letter to the Registrar of the International Court of Justice regarding privileges and immunities with respect to parking fees

Diplomatic immunity with regard to parking fees—Definition of public utility—Article 19 of the Statute of the International Court of Justice—Article 41, paragraph 1, of the Vienna Convention on Diplomatic Relations, 1961*—Agreement Relating to Privileges and Immunities of Members of the International Court of Justice, the Registrar, Officials of the Registry, Assessors, the Agents and Counsel of the Parties and of Witnesses and Experts concluded between the Court and the [State] of [date]—Duty to respect the laws and regulations of the host State

. . .

With respect to your query concerning the determination by the [City] authorities that parking fees constitute charges for public utility services and do not fall within the diplomatic immunities enjoyed by the members of the Court, you may wish to advise the [City] authorities that the United Nations has consistently maintained that the term "public utility" has a restricted connotation applying to particular supplies for services rendered by a Government or a corporation under Government regulation for which charges are made at a fixed rate according to the amount of supplies furnished or services rendered. As a matter of principle and as a matter of obvious practical necessity, charges for actual services rendered must relate to services which can be specifically identified, described and itemized. It would therefore be incumbent upon the [City] authorities to identify, describe and itemize the services rendered in order to maintain its position that such fees are charges for public utility services from which the members of the Court are not exempt.

Article 19 of the Statute of the Court provides that the members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities. The latter status is further confirmed in the Exchange of Letters Recording an Agreement Relating to Privileges and Immunities of Members of the International Court of Justice, the Registrar, Officials of the Registry, Assessors, the Agents and Counsel of the Parties and of Witnesses and Experts concluded between the Court and the [State] on [date].

The question whether individuals enjoying diplomatic status are immune from the payment of parking fees has been a subject of considerable debate in the United Nations Headquarters in New York and the Legal Counsels of the United Nations have had ample

* United Nations, *Treaty Series,* vol. 500, p. 95.

occasion to comment thereon (please see A/AC.154/358 and A/AC.154/307 copies attached for ease of reference*). My predecessors have consistently maintained that, in accordance with article 41, paragraph 1, of the Vienna Convention on Diplomatic Relations, 1961, diplomats have a duty to respect the laws and regulations of the host State and that such duty is without prejudice to their privileges and immunities. Thus, while the host State has an obligation to ensure that city, state and federal authorities respect the privileges and immunities of diplomats, in turn, the diplomats have an obligation to respect the local laws and regulations of the host city and State. Based on the foregoing, my predecessors have concluded that while diplomats are immune from legal process or other enforcement action for failure to do so, diplomats have an obligation to respect local parking regulations including the payment of parking fines and fees.

24 November 2004

(*g*) Letter to a Permanent Representative of a Member State to the United Nations regarding the levying of fees and taxes on the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC)

Levy of taxes and fees on MONUC—Article 105 of the Charter of the United Nations—Privileges and Immunities necessary for the fulfilment of the Organization's purposes—No Member State may hinder in any way the working of the Organization or take any measure the effect of which might be to increase its burdens financial or otherwise—MONUC as subsidiary organ of the United Nations—Article II, section 7(a), of the Convention on the Privileges and Immunities of the United Nations, 1946**—Exemption from direct taxes—Non-exemption from charges for public utility services—Definition of pulic utility services—Air navigation charges, landing and parking fees constitute direct taxes—Airport taxes constitute direct taxes—Exemption from direct taxes and fees applies with respect to all travel that is undertaken on official business of the United Nations—Exemption from requirements of visa and/or visa fees for all members of a peacekeeping operation—Paragraph 33 of the model status-of-forces agreement (A/45/594)

I have the honour to refer to certain taxes that are currently being levied on MONUC by the [State] Civil Aviation Authority for the use of [City] airport, specifically, an airport tax of US$ 10.00 that is levied on each MONUC passenger and air navigation charges, landing and parking fees that are levied on each MONUC aircraft.

I also have the honour to refer to the fee of US$ 60.00 that is being levied by the [State] Immigration Services for the issuance of [State] visas to passengers who are travelling on official business for MONUC and who are proceeding to, or transiting, [State].

I wish to set out the position of the United Nations as far as these various taxes and fees are concerned. I hope thereby to clarify the fiscal regime which is applicable to the United Nations, and so to MONUC as one of its subsidiary organs, and to draw your attention to the exemptions to which the Organization is entitled under and by virtue of

* The documents are not reproduced herein.

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

the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations, 1946, to which your Government is party, having acceded thereto, without reservation, on [date].

The position of the United Nations is guided by the fundamental principles in the Charter of the United Nations, in particular in its Article 105, paragraph 1, which provides that the Organization is to enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.

The Report of the Committee of the San Francisco Conference that was responsible for the drafting of this Article of the Charter emphasized in this regard that "if there is one principle certain it is that no Member State may hinder in any way the working of the Organization or take any measure the effect of which might be to increase its burdens financial or otherwise" (*Documents of the United Nations Conference on International Organization,* vol. XIII, pp. 705 and 780).

This principle has been further elaborated in the Convention on the Privileges and Immunities of the United Nations, 1946; which was adopted by the General Assembly of the United Nations on 13 February 1946, in accordance with Article 105, paragraph 3, of the Charter, with a view to specifying the details of the application of Article 105, paragraphs 1 and 2, of the Charter.

In accordance with the Convention, the Organization is to be relieved of the burden of all taxes. Thus, article II, section 7, of the Convention provides that the United Nations is to be exempt from all direct taxes (though not from charges for public utility services), while article II, section 8, provides for the remission or return to the Organization of indirect taxes that may be paid by it as part of the price of property that it might purchase (where the amount involved is important enough to make this administratively possible and subject to the making of appropriate administrative arrangements).

Of these provisions, article II, section 7 (a), is directly relevant in the present connection. As you will be aware, that provision stipulates that:

> "The United Nations, its assets, income and other property shall be:
>
> (a) exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services".

As noted above, MONUC is a subsidiary organ of the United Nations. As such, it benefits from this exemption.

Air navigation charges, landing and parking fees

The United Nations has consistently taken the position that air navigation charges, landing and parking fees are direct taxes from which the Organization is exempt pursuant to the provisions of section 7 (a) of the Convention and are not regarded as "public utility services".

This longstanding position is reflected in the study of the practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities that was prepared by the Secretari-

at of the United Nations for the International Law Commission in 1967,* as well as in the supplementary study that the Secretariat prepared in 1985.** Relevant pages of both of those studies are attached for your ease of reference.*** There has been no relevant change in the practice of the Organization since that time. Indeed, the Organization's position on such matters has since been reiterated in at least one opinion of the Office of Legal Affairs that has been published in the *United Nations Juridical Yearbook*. **** A copy of that opinion is also attached.*****

As is noted in that opinion, as well as in the 1967 study, the position of the United Nations on this matter has been accepted by its Members States.

While landing fees, parking fees and other air navigation charges clearly fall within the category of "direct taxes" from which the United Nations is exempt, I also wish to take this opportunity to clarify what charges fall within the category of "charges for public utility services," from which the United Nations does not claim exemption pursuant to the Convention. The consistent practice of the United Nations in this regard, described in both of the studies and in the opinion cited above, has been to interpret the expression "charges for public utility services," as it appears in article II, section 7 (a), of the Convention, as applying to particular supplies or services rendered by a Government, or by a corporation under government regulation, for which charges are made at a fixed rate according to the amount of supplies furnished or services rendered. While the United Nations will pay charges which relate to actual services rendered, such services must be ones that can be specifically identified, described and itemized and that can be calculated according to some predetermined unit.

In light of these clarifications, I trust that your Government will exempt MONUC, as a subsidiary organ of the United Nations, from charges such as landing and parking fees and other air navigation charges which do not constitute charges for public utility services.

The United Nations, for its part, is prepared to examine other charges which may be presented to it by your Government, with a view to ascertaining whether they constitute "charges for public utility services" within the meaning of article II, section 7 (a), of the Convention.

Airport taxes

The United Nations has consistently taken the position that airport taxes, airport terminal taxes and airport departure taxes are direct taxes from which the Organization is exempt by virtue of article II, section 7 (a), of the Convention.

This position, which is also one of considerable longstanding, is reflected in the first of the two studies cited above (*loc. cit.* above, at page 243, paragraphs 156 and 157) and has been confirmed since that time in a number of opinions of the Office of Legal Affairs,

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* *Yearbook of the International Law Commission, 1967,* vol. II (United Nations publication, Sales No. E.68.V.2), p. 154 at pp. 247–248, para. 172.

** *Yearbook of the International Law Commission, 1985,* vol. II, Part One, Add. 1 (United Nations publication, Sales No. E.86.V.9 (Part 1/Add.1)), p. 145 at pp. 165–166, para. 36.

*** These studies are not reproduced herein.

**** *United Nations Juridical Yearbook, 1993* (United Nations publication, Sales No. E.97.V.13), p. 368.

***** The opinion is not reproduced herein.

several of which have been published in the *United Nations Juridical Yearbook*.* Copies of the relevant passages from the 1967 study and of these opinions are attached for your ease of reference.**

As appears both from the 1967 study and from these opinions, the United Nations has taken the position that this exemption applies with respect to all travel that is undertaken on the official business of the United Nations and so at its expense. It therefore applies regardless of whether that travel is undertaken by officials of the Organization, or by experts performing missions for the United Nations or by members of national contingents assigned to the military components of the Organization's peacekeeping operations. In all such cases, the tax would fall directly upon the Organization, in as much as it would be assessed directly against an individual who had been duly authorized by the Organization to travel on its business and in as much as the Organization would either itself be obliged to pay the tax or else would have to reimburse those travelling with its authorization and on its business who had themselves been obliged to pay it.

This position of the Organization has been recognized and accepted by Member States. In the present connection, it may be particularly relevant to recall that, even by 1967, the United Nations had already obtained exemption from airport terminal taxes imposed on several national contingents that were being flown from their home State for service with the Organization's peacekeeping operations (see the 1967 study, *loc. cit.* above, at paragraph 157).

In the light of these clarifications, I trust that your Government will accordingly exempt all members of MONUC, including Military Observers, Civilian Police, military personnel of national contingents and United Nations Volunteers, who are travelling on the official business of MONUC, including to take up service with MONUC or to return from service with it, from payment of the US$ 10.00 airport tax at [City] airport and at other airports in [State].

Visa fees

The position of the United Nations with regard to visa fees has, likewise, been guided by the fundamental principle in Article 105, paragraph 1, of the Charter of the United Nations, understood in the light of the explanation of its drafters that the practical significance of this principle is that "no Member State may hinder in any way the working of the Organization or take any measure the effect of which might be to increase its burdens financial or otherwise".

Pursuant to this principle, the agreements which the Organization has concluded with Member States to regulate the status of its various offices and operations around the world have consistently made provision either (i) for the complete exemption of the members of those offices or operations from national visa regulations or (ii) if the State concerned has not been prepared to grant such an exemption, for visas to be granted promptly, without restriction and—most importantly in the present regard—free of charge. The Govern-

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* *United Nations Juridical Yearbook, 1973* (United Nations publication, Sales No. E.75.V.1), p. 132; *United Nations Juridical Yearbook, 1986* (United Nations publication, Sales No. E.94.V.2), p. 321; and *United Nations Juridical Yearbook, 1995* (United Nations publication, Sales No. E.01.V.1), p. 405.

** The opinions are not reproduced herein.

ment of [State] has agreed to both of these types of provisions in agreements that it has concluded with the United Nations.

An example of a provision of the first kind appears in the Organization's model status-of-forces agreement, which reflects the customary principles and practices of peacekeeping. Paragraph 33 of the model provides that *all members* of a peacekeeping operation shall be exempt from passport and visa regulations, as well as from immigration inspection and restrictions on entry and departure (see A/45/594, annex). This exemption applies not only to officials of the United Nations who are assigned to serve in its peacekeeping operations, but to all members of those operations, including Military Observers, United Nations Civilian Police and military personnel of national contingents assigned to the operation's military component. As you will recall, the Government of [State] concluded a status-of-forces agreement for the United Nations Assistance Mission for [State] incorporating just such a provision on [date].

As to the second type of provision, as you will also recall, the Government of [State] concluded an agreement with the United Nations Development Programme (UNDP), based on the Standard Basic Assistance Agreement, which provides in article X, paragraph 1 (b), that your Government shall issue visas promptly and "without cost". As appears from article IX, paragraph 5, this obligation applies, not only with respect to officials of UNDP, but also to experts, consultants, and volunteers that UNDP or its Executing Agencies may select to perform services on their behalf, as well as organizations and corporations and their employees that UNDP may retain to execute or assist in the execution of projects. Similarly, the Basic Cooperation Agreement that the Government of [State] signed with the United Nations Children's Fund (UNICEF) on [date] stipulates that visas shall be issued promptly and "free of charge" not only to UNICEF officials, but also to experts on mission and to contractors engaged by UNICEF to perform services in the execution of programmes in the country concerned.

Your Government has therefore, with respect to United Nations officials, experts on mission and all those travelling on the official business of the United Nations, followed a practice of either completely exempting such individuals from national visa regulations or of granting them visas promptly, without restriction and—most significantly, in the present connection—free of charge.

As to the visa facilities that have been granted to MONUC and its personnel by other States in the region, I would point out that the Memorandum of Understanding that was concluded between the United Nations and the Government of Uganda on 8 August 2003 concerning the activities of MONUC in Uganda* provides in article I, paragraph 3 (i), for "[p]rompt issuance by the Government to members of MONUC and United Nations contractors, free of charge and without any restrictions of all necessary visas, licenses or permits"; while the Memorandum of Understanding that was concluded between the United Nations and the Government of the United Republic of Tanzania on 19 May 2003 concerning the activities of MONUC in Tanzania** provides, in article I, paragraph 3 (i), for the "[e]xemption of members of MONUC from passport and visa regulations and prompt issuance by the Government to United Nations contractors, free of charge and

* United Nations, *Treaty Series,* vol. 2221, p. 297.

** United Nations, *Treaty Series,* vol. 2215, p. 3.

without restrictions, of all necessary visas". Copies of these agreements are attached for your ease of reference.*

In the light of the practice outlined above, I trust that your Government will be prepared to grant all members of MONUC—including members of the United Nations Secretariat assigned to its civilian component, Military Observers, Civilian Police, military personnel of national contingents assigned to its military component and United Nations Volunteers—who are travelling on the official business of MONUC, including to take up service with MONUC or to return from service with it, exemption from payment of the US$ 60.00 visa fee.

In closing, I should like to take this opportunity of thanking your Government for the cooperation and assistance that it is extending to MONUC.

8 December 2004

2. Procedural and institutional issues

(*a*) Interoffice memorandum to the Acting High Commissioner for Human Rights on the tenure of office-holders of special procedures mandates

Commission on Human Rights—Applicability of rule on time-limit on tenure to all special procedures mandate-holders—Irrelevance of the mode of appointment—Decision 2002/114 of the Commission on Human Rights**—Decision 2002/279 of the Economic and Social Council

1. This is in reference to your memorandum of 20 January 2004, requesting our views on whether the rule adopted by the Commission on Human Rights limiting the tenure of office-holders of specific procedures mandates to six years and allowing for an additional three-year renewal for those having served more than three years when their current mandate expires, is applicable indiscriminately to all such special procedures mandate-holders regardless of their mode of appointment.

2. At the fifty-fifth session of the Commission on Human Rights, the Chairman, on behalf of the Commission, made the following statement with regard to special procedures mandates:

> "To help maintain appropriate detachment and objectivity on the part of individual office-holders, and to ensure a regular infusion of new expertise and perspectives, any individual's tenure in a given mandate, whether thematic or country-specific, will be no more than six years. As a transitional-measure, office-holders who have served more than three years when their current mandates expire will be limited to at most three years of further renewals in these posts." (E/1999/23-E/CN.4/1999/167, Chapter XX, paragraph 552).

3. In its decision 2002/114 on the expiration of office-holders' terms of appointment under special procedures, the Commission on Human Rights decided that "the six-year period of time referred to in paragraph a (ii) (Special Procedures mandates) of the Chair-

* The agreements are not reproduced herein.

** *Official Records of the Economic and Social Council, 2004, Supplement No. 3* (E/2002/23—E/CN.4/2002/200 and Corr.1), chap. II, sect. B.

person of the Commission's statement on enhancement of the effectiveness of the mechanism of the Commission, will not extend beyond the last day of the substantive session of the Council immediately following the relevant session of the Commission." The decision of the Commission was approved by the Economic and Social Council in its decision 2002/279.

4. The language of the Chairperson's statement and the resolutions of both the Commission on Human Rights and the Economic and Social Council is clear. The limitation on tenure of office-holders is all-inclusive and applies to "any individual's tenure in a given mandate, whether thematic or country-specific". There is no indication that the Commission intended to limit the tenure of only those office-holders of special procedures mandates appointed by the Commission, and exempt from the limitation those appointed by the Secretary-General. Had it been its intention, the Commission should have said so explicitly. For as long, therefore, as special rapporteurs, special representatives or independent experts, and other working groups are mandated by the Commission on Human Rights as special procedures mandate-holders, the actual appointing authority, for the purpose of the time limitation, is irrelevant.

5. We note in this connection that the list of "All Persons Mandated to Carry Out the Thematic and Country-Specific Procedures of the Commission on Human Rights" prepared by the Secretariat in accordance with paragraph 11 (b) of Commission resolution 2002/84,* contains the names of special rapporteurs of country-specific procedure, thematic procedures and technical cooperation programmes, some of whom are appointed by the Commission, others are appointed by the Secretary-General.

6. Beyond the literal interpretation of the rule, it has been the declared purpose of the limitation on the time period for special procedures mandate-holders, to ensure appropriate detachment and objectivity on the part of individual office-holders, and the regular infusion of new expertise and perspective. A discriminatory application of the rule to some but not all human rights mandate-holders will defeat the purpose of the rule. For all of the foregoing, both as a matter of law and policy, we concur with your conclusion that the rule on limitation of tenure applies to all special procedures mandate-holders without any distinction and regardless of the appointing authority.

23 February 2004

(*b*) Statement before the Economic and Social Council on the question of the power of the Council to override decisions of the Commission on Human Rights

Competence of the Economic and Social Council to override a decision of a functional commission—Commission on Human Rights decision 2004/117—Article 68 of the Charter of the United Nations—Inherent powers as parent organ—Rule 56 of the Rules of Procedure of the Economic and Social Council

* *Official Records of the Economic and Social Council, 2004, Supplement No. 3* (E/2002/23—E/CN.4/2002/200), chap. II, sect. A.

Mr. President,

In your letter of 19 July 2004 addressed to me yesterday, on behalf of the Economic and Social Council, you requested that the Office of Legal Affairs provide a legal opinion, in reference to paragraph 3 of draft resolution E/2004/L.21 “on the competence of the Council to adopt a resolution superseding a decision taken by a functional commission”, in particular, Commission on Human Rights decision 2004/117.*

Article 68 of the United Nations Charter empowers the Economic and Social Council to set up commissions in the economic, social and human rights fields, and such other commissions “as may be required for the performance of its functions”. In accordance with Article 68 of the Charter, the Council established the Commission on Human Rights as a functional commission in its resolution 5 (I) (1946). As the parent organ, the Economic and Social Council, in principle, retains the power to intervene and overrule the decisions of its functional commissions. While the power to control its functional commission is thus inherent in the Council, and may be exercised not only with regard to decisions submitted for its approval or action, but also with regard to those which are not submitted for its action, a review of the practice shows that the Council has used these powers sparingly. A recent example was last year when in the context of a 1503 procedure, Economic and Social Council decision 2003/58 turned down the Commission of Human Rights decision 2003/11.**

In the event of a challenge to the Council’s competence to override a decision of a functional commission, a decision on competence must be taken in accordance with rule 56 of the Rules of Procedure of the Economic and Social Council.

20 July 2004

44th meeting of the Economic and Social Council

(*c*) Note to the United Nations High Commissioner for Human Rights regarding a resolution of the Commission on Human Rights on internally displaced persons

Commission for Human Rights resolution 2004/55*** on internally displaced persons—Replacement of the “Special Procedures” with a new “mechanism”—Applicability of rule on time-limit for tenure of office holders to the new “mechanism”—Definition of “Special procedures”—Discretionary power of the Secretary-General to appoint a Special Representative of his choice—Re-assignment of Special Representatives to other mandates may be allowed but not re-appointment under the same mandate

* *Official Records of the Economic and Social Council, 2004, Supplement No. 3* (E/2004/23 and Corr.1—E/CN.4/2004/127 and Corr.1), chap. II, sect. B.

** *Official Records of the Economic and Social Council, 2004, Supplement No. 3* (E/2003/23—E/CN.4/2003/135), chap. II, sect. A.

*** *Official Records of the Economic and Social Council, 2004, Supplement No. 3* (E/2004/23 and Corr.1—E/CN.4/2004/127 and Corr.1), chap. II, sect. A.

1. This is in reference to [name's] e-mail to [the Office of Legal Affairs] of 16 July 2004, seeking guidance on the legal and practical implications of the recent resolution of the Commission on Human Rights (CHR) on internally displaced persons. Communications addressed to the Office of the High Commissioner for Human Rights (OHCHR) by the Office for the Coordination of Humanitarian Affairs and the [State] Ministry of Foreign Affairs were subsequently provided to this Office by [name] and the Director for Human Rights of the Federal Ministry of Foreign Affairs of [State], respectively.

2. The resolution in question is CHR resolution 2004/55 of 20 April 2004 on Internally Displaced Persons, which "requests the Secretary-General, in effectively building upon the work of his Representative, to establish a mechanism that will address the complex problem of internal displacement" (paragraph 23). The resolution also mandates the "mechanism" "to work towards strengthening the international response to the complex problem of situations of internal displacement, and engage in coordinated international advocacy and action for improving protection and respect of the human rights of the internally displaced, while continuing and enhancing dialogues with Governments, as well as non-governmental organizations and other related actors".

3. The communications addressed in this connection to OHCHR clarifying the "legislative history" of the resolution state clearly that in adopting resolution 2004/55, it was the intention of the Commission to replace the "Special Procedures" with a "mechanism" with respect to internally displaced persons, and in so doing exempt the "mechanism" and the current Special Representative, in particular, from the application of the six-year time limit, otherwise applicable under CHR decision 2002/114* of 26 April 2002 to all other office-holders of Special Procedures mandates.

4. In considering the legal and practical implications of resolution 2004/55, we have examined the nature of the new "mechanism" in its relationship to the "Special Procedures"; the applicability of the six-year rule to the "mechanism" and to [name], the Special Representative, in particular, and the implications of the above on the discretionary power of the Secretary-General to appoint a Special Representative of his own choice.

5. In its request that the Secretary-General establish a "mechanism" for internally displaced persons, the CHR resolution did not elaborate on the nature of the new mechanism, its composition, legal status or organizational structure, nor for that matter did it clarify its relationship to the existing "Special Procedures". The "mechanism" which has no defined meaning of its own other than denoting a modality, a system or a procedure, was thus left for the Secretary-General to devise. But while it is clear that the Commission intended that the new "mechanism" would be the *sole* mechanism for internally displaced persons, it is far less clear in what way the new "mechanism" differs substantially from the existing one to exempt it or its Representative from the application of the six-year rule.

6. The mandate entrusted to the new "mechanism" for internally displaced persons under resolution 2004/55 has evolved to take account of changing realities, new legal and political circumstances and the needs of the internally displaced. While different in some respects from the mandate originally conferred upon the Special Representative twelve

* *Official Records of the Economic and Social Council, 2004, Supplement No. 3* (E/2002/23—E/CN.4/2002/200), chap. II, sect. B.

years earlier in CHR resolution 1992/73,* it is not fundamentally different in its nature, subject-matter or thematic issue. It is for all intents and purposes, therefore, the "same mandate".

7. Like the current Special Representative for internally displaced persons mandated by the Commission and appointed by the Secretary-General, the new "mechanism" is mandated by the Commission and "established" by the Secretary-General. Like the existing mechanism also, the new mechanism is to be supported from within existing resources by OHCHR, and report, through the Secretary-General, to the CHR and the General Assembly.

8. Identical in all respects—other than in name—both the new and old mechanisms for internally displaced persons fall within the general description of "Special Procedures", defined generically as "a general name given to the mechanism established by the Commission on Human Rights to address either specific country situations or thematic issues. Special Procedures are either an individual—called a Special Rapporteur, Special Representative or independent expert—or a 'working group' usually composed of five independent experts." (A note prepared early this year by OHCHR). As the "mechanism" is only another form of "Special Procedures", there is no legal basis for the assumption that office-holders of a "mechanism" mandate are not subject to the six-year rule in the same manner as all other office-holders of Special Procedures mandates.

9. Quite apart, however, from the question of whether the resolution can be interpreted to exempt the "mechanism" or the Special Representative from the six-year rule, it cannot, in any event, be interpreted to limit the discretionary power of the Secretary-General to appoint a Special Representative of his own choice.

10. It is perhaps worth reiterating in this connection the reasoning behind the six-year rule as stated by the Chairman of the CHR during its fifty-fifth session:

> "To help maintain appropriate detachment and objectivity on the part of the individual office-holders, and to ensure a regular infusion of new expertise and perspectives, any individual's tenure in a given mandate, whether thematic or country-specific, will be no more than six years. As a transitional-measure, office-holders who have served more than three years when their current mandates expire will be limited to at most three years of further renewals in these posts. Reassignment of individuals to other mandates will be considered only in exceptional circumstances (E/1999/23—E/CN.4/1999/167, chapter XX, paragraph 552)."

11. This Office was not requested to advise on how to provide for [name's] re-appointment. It was argued, however, that under the Special Procedures system, in exceptional circumstances, Special Representatives could be re-appointed. Our interpretation of the Chairman's statement to that effect, however, is that exceptional circumstances may only allow for *re-assignment to other mandates* but not for *re-appointment under the same mandate*. Finally, it would seem to us that for [name], the Special Representative, to continue his appointment beyond his current term, the six-year rule will have to be explicitly abolished or waived in his regard by the Commission; a decision which like similar decisions of this kind, would have to be endorsed by the Economic and Social Council.

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* *Official Records of the Economic and Social Council, 1992, Supplement No. 2* (E/1992/22—E/CN.4/1992/84), chap. II, sect. A.

3 August 2004

(*d*) Letter to an individual regarding the procedure for admission of States to membership in the United Nations

Procedures for admission of States to membership in the United Nations—Charter of the United Nations—Provisional Rules of Procedure of the Security Council—Rules of Procedure of the General Assembly

This is with reference to your letter to the Legal Counsel of 6 August 2004 requesting information on the procedure for admission of States to membership in the United Nations. Attached please find a non-paper setting out the applicable provisions of the Charter of the United Nations, the Provisional Rules of Procedure of the Security Council and the Rules of Procedure of the General Assembly.

12 August 2004

Procedure for Admission of States to membership in the United Nations

Summary of procedure

In accordance with Article 4 of the United Nations Charter and rule 58 of the Provisional Rules of Procedure of the Security Council and rule 134 of the Rules of Procedure of the General Assembly, any State which desires to become a Member of the United Nations shall submit an application in a letter signed by the Head of State, Head of Government or the Minister of Foreign Affairs to the Secretary-General, which application shall contain a declaration required by rule 58 of the Provisional Rules of Procedure of the Security Council and rule 134 of the Rules of Procedure of the General Assembly. The declaration, made in a formal instrument, confirms that the State in question accepts the obligations contained in the Charter. Upon receipt of the original texts of the documents, the Secretary-General will, after verifying that they are in due and proper form, take the steps provided for in rule 59 of the Provisional Rules of Procedure of the Security Council to transmit the application to the Security Council and rule 135 of the Rules of Procedure of the General Assembly to transmit the application to the General Assembly.

The application is considered by a Committee on the Admission of New Members of the Security Council which submits its recommendation to the Security Council. The Security Council then takes a decision and makes a recommendation to the General Assembly. The President of the Security Council then transmits that recommendation to the President of the General Assembly. The General Assembly then takes a decision at an open meeting of the Assembly.

This procedure is described in more detail below.

The Charter

Article 4 of the United Nations Charter provides as follows:

"1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council."

The Charter envisages an application from a State. That application will first be considered by the Security Council and subsequently by the General Assembly.

Provisional Rules of Procedure of the Security Council

Rules 58 to 61 of the Provisional Rules of Procedure of the Security Council set out the procedure which is to be followed in the case of admission of new members.

Rule 58 requires the application to contain a declaration that the applicant State accepts the obligations required by the Charter.

Rule 59 requires the Secretary-General to place the application before the Security Council as soon as it is received and requires the President of the Security Council to refer it to a Committee of the Security Council which shall examine the application and report not less than 35 days prior to the start of a regular session of the General Assembly. This time limit is normally waived if the General Assembly is in session.

Rule 60 requires the Security Council to decide whether in its opinion the applicant is a peace-loving State and is able and willing to carry out the obligations in the Charter and accordingly whether to recommend the applicant State for membership. Under Article 27, paragraph 3, of the Charter this decision shall be made by an affirmative vote of at least nine members including the concurring votes of the permanent members.

Rule 60 also sets out the procedures for communication of the decision of the Security Council to the General Assembly.

Rules of Procedure of the General Assembly

Rules 134 to 138 set out the procedure to be followed by the General Assembly.

Rule 134 is in substance identical to rule 58 of the Security Council.

Rule 135 requires the Secretary-General to send a copy of the application to the General Assembly.

Rule 136 provides that if the applicant State is recommended by the Security Council, the General Assembly shall decide by a two-thirds majority of members present and voting upon the application.

Rule 137 provides that if the Security Council does not recommend the applicant State for membership, or postpones the consideration, the General Assembly may after full consideration of the report of the Security Council send the application back to the Security Council together with a full record of the discussion in the General Assembly for further consideration and recommendation or report.

Rule 138 deals with the effective date of membership of the applicant State which is the date on which the General Assembly takes a decision on the application.

(*e*) Facsimile to the Director of the Transport Division, United Nations Economic Commission for Europe, Geneva, regarding draft amendments to the rules of procedures of the TIR Executive Board

Amendment to the rules of procedures of the TIR Executive Board—Amendment to the Customs Convention on the International Transport of Goods under Cover of TIR Carnets, 1975*—Introduction of replacement members—*Ad Litem* Judges—Removal for lack of regular participation by members—Members elected in their personal capacity

1. This is with reference to your memorandum of 19 August 2004 which we received on 8 October 2004 concerning the draft amendments to the rules of procedure of the TIR Executive Board (TIRExB). In particular, you seek our advice on the proposal to amend the rules of procedure of the TIRExB to introduce the election of replacement members in order to fill vacancies arising out of the resignation of members, their removal by their respective Governments and/or their lack of regular participation in the work of the TIRExB. In the event that the rules can be amended as proposed, you also seek our advice whether such amendments would necessitate amendments to annex 8, article 9, of the Customs Convention on the International Transport of Goods under Cover of TIR Carnets, 1975. Our comments are as follows.

2. At the outset, we wish to point out that the election of replacement members may raise financial and other implications that need to be addressed and clearly understood prior to the adoption of any such amendments. For instance, if such replacement members were expected or invited to attend TIRExB meetings prior to assuming actual membership, their travel and per diem costs would need to be approved and allocated. If that is not the intention of the proponents of the amendment, it should be clearly specified that such replacement members would have no official functions, duties or rights unless and until they become actual members.

3. The concept of replacement members is relatively unheard of in the United Nations system. The only possibly related precedent could be the election of *ad litem* judges of the International Criminal Tribunals for the former Yugoslavia and for Rwanda. The latter judges are elected as a pool from which the two Tribunals could draw in the event that the proceedings require replacement or additional judges. Such judges as indicated in paragraph 2 above have no functions, duties or rights unless and until they are called upon to serve. It should be noted that the introduction of *ad litem* judges was effectuated by a Security Council resolution amending the statutes of the two Tribunals, respectively. The introduction of replacement members onto the TIRExB would similarly require amendment of the Convention.

4. In the event of the death or resignation of any of the nine members of the TIRExB, the usual procedure would be to convene the TIR Administrative Committee (TIRAC) to fill the casual vacancy arising from such death or resignation. The application of such procedure would be automatic and would not require the amendment of the Convention or the rules of procedure.

* United Nations, *Treaty Series,* vol. 1079, p. 89.

5. As for the replacement of those members whose Government or organization inform the TIRExB that they no longer hold office, we wish to confirm that the members of the TIRExB are elected by the TIRAC in their personal capacity and not as representatives of their respective Governments or organizations. If that is indeed the case, a member of TIRExB, once elected by TIRAC, could not be removed by his or her Government or organization.

6. The proposal to remove a member for lack of regular participation is unprecedented in the practice of the United Nations system and, as such, raises serious concern. If accepted, the proposal would empower the TIRExB to remove an existing member and replace him or her with an elected replacement leaving the TIRAC merely with the right, indeed the obligation, to endorse that replacement. As the members are elected by TIRAC, it should be for TIRAC not TIRExB to remove any such members from office. In any event, the exercise of such power by the TIRExB was clearly not envisaged under the Convention and would clearly require amendment of annex 8, article 9, thereof. While we understand the concerns and frustrations expressed in respect of those who do not fully perform their obligations as members of TIRExB, given the relatively short term of office, it is preferable to deny such members re-election than to amend the Convention and rules of procedure in such an unprecedented manner. Moreover, given that, according to the TIRExB rules of procedure, only five members constitute the required quorum for decision-making; the absence of up to four members would not impede the TIRExB from conducting its business.

7. Based on the foregoing, and as indicated in paragraph 4 above, we would recommend that the TIRExB rely on existing rules and practices of the United Nations system to fill vacancies if and when they arise. If despite the foregoing comments, the TIRAC or TIRExB decide to proceed with the proposed amendments to the rules of procedure, it would be equally necessary to amend the Convention in which case reference should be made to the applicable amendment procedures and entry into force provisions of articles 59 and 60 of the Convention.

11 October 2004

(*f*) Note to the Director, Security Council Affairs Division, Department of Political Affairs, regarding the meeting of the Security Council in Nairobi, Kenya

Relocation of the Security Council as an organ—Emergency sessions—Prohibition of simultaneous meetings at two different locations—Prohibition of representation by alternates at Headquarters while Council is meeting elsewhere, though not simultaneous—Article 28 of the Charter of the United Nations—Rule 5 of the Provisional Rules of Procedure of the Security Council—Duty to be able to function continuously—Preservation of the unity of the Security Council as an organ

1. This is in reference to your note of 27 October 2004 regarding Security Council resolution 1569 (2004) by which the Council has decided to hold meetings in Nairobi on 18 and 19 November 2004 on the agenda item "The reports of the Secretary-General on the Sudan". You seek our advice on whether in case of an emergency while the Security Council is in or *en route* to and from Nairobi, meetings of the Council could be held in

New York at a level other than Permanent Representatives, provided they are not held simultaneously in both places.

2. We recall that while on a number of occasions the Council has met away from Headquarters, and notably in Addis Ababa in 1972 and in Panama City in 1973, the need to convene the Council in an emergency session while it met at a location other than the seat, has never arisen. Our advice is, therefore, based on an analysis of the relevant provisions of the United Nations Charter and the Provisional Rules of Procedure of the Security Council.

3. Article 28, paragraphs 1 and 3, of the United Nations Charter provide, respectively, as follows:

> "1. The Security Council shall be so organized as to be able to *function continuously.* Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organization" (emphasis added).
>
> . . .
>
> 3. The Security Council may hold meetings at such places other than the seat of the Organization as in its judgment will best facilitate its work."

4. Rule 5 of the Provisional Rules of Procedure of the Security Council provides that:

> "Meetings of the Security Council shall normally be held at the seat of the United Nations.
>
> Any member of the Security Council or the Secretary-General may propose that the Security Council should meet at another place. Should the Security Council accept any such proposal, it shall decide upon the place and the period during which the Council shall meet at such place."

5. In providing for the possibility of holding meetings away from Headquarters, Article 28, paragraph 3, of the Charter foresees the "relocation" of the Security Council *as an organ,* and not merely of the gathering place of its fifteen member States. As an organ, therefore, the Council cannot meet simultaneously in two locations, not even at different levels of representations.

6. The practice of representation by an accredited alternate or deputy in a situation where the Permanent Representative is temporarily unavailable at the seat, is likewise inapplicable in the present case, where all Permanent Representatives are in fact present at the "relocated" seat. To suggest that the Security Council can meet at a level of accredited alternates or deputies in New York, while meeting—though not simultaneously—at the level of Permanent Representatives in Nairobi, would lead to a situation where for the duration of the emergency meeting at Headquarters, the Council in Nairobi would be practically paralyzed, unable to discuss the emergency situation which is debated in New York, nor the agenda item for which it was convened away from Headquarters.

7. The holding of meetings away from Headquarters nevertheless raises the question of the relationship between Article 28, paragraph 3, of the Charter which provides for meetings of the Council to be held away from Headquarters, and Article 28, paragraph 1, whereby the Council is duty bound to be "so organized as to be able to function continuously", or otherwise maintain a state of constant readiness to enable it to convene at any time. This question was discussed at the Committee on Council Meetings away from Headquarters, established in 1972 to examine all aspects of Security Council meetings in an African capital and to draft "general guidelines that could be applied in all similar

situations that might arise in the future application of Article 28, paragraph 3". In its 1972 report, the Committee said:

> "One of the first considerations raised . . . was the amount of time which the Council should contemplate spending away from Headquarters. Several representatives drew attention to the importance of the principle contained in paragraph 1 of Article 28 of the Charter which stipulates that in view of its primary responsibility for the maintenance of international peace and security, the Security Council shall be so organized as to be able to function continuously. A number of points were raised in this connection, *including the importance of immediate access to the Council by all Members of the United Nations at all times, the necessity of having rapid communications readily available at all times, the possibility of the occurrence of unforeseen emergencies, which might oblige the Council to return urgently to Headquarters,* and the importance of ensuring the success of the Council's first meetings in an African capital" (emphasis added).

8. While the question of how to deal with emergencies when the Council is away from Headquarters was not conclusively determined by the Committee, the option that the Council would meet at a level of accredited deputies or alternates in New York while meeting at the level of Permanent Representatives in Africa, was not even envisaged. It was rather foreseen that rapid means of communications put at the disposal of the Council and facilities for an urgent flight back to Headquarters would enable it to deal with the situation effectively, either at its temporary location or at Headquarters.

9. In conclusion, Article 28, paragraph 3, of the Charter foresees the "relocation" of the Council *as an organ.* Any emergency situation which may arise at any time must be dealt with by the Council at its location at the time the question arises. In the present circumstances, therefore, an emergency situation would be dealt with by the Council in, or on its way to or from Nairobi. Article 28, paragraph 3, should thus be interpreted in a manner which would preserve the unity of the Security Council as an organ. Any interpretation which would lead to an artificial "split" of the Council, or worse still, its paralysis, should be avoided.

4 November 2004

3. Other issues relating to United Nations Peace Operations

(*a*) Note to the Assistant Secretary-General for Peacekeeping Operations regarding the United Nations Mission in Kosovo (UNMIK) and the protection of cultural heritage

Protection of cultural and religious sites in Kosovo—Qualified applicability to Kosovo of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954*—Willingness to apply relevant provisions of the Convention to the extent of their applicability in the circumstances—Protection of cultural and religious heritage being part of a general obligation to provide protection and security throughout Kosovo—Common Document—Standards for Kosovo—International responsibility of UNMIK—Non-applicability of obligation to establish services or specialist personnel to secure respect for cultural property (article 7 of the Convention)

1. Reference is made to your note of 30 December 2003 to which a letter dated 25 December 2003 from [name], the Serbian Deputy Prime Minister to the President of the Security Council was attached for our comments.

2. In his letter, [name] alleges that UNMIK has failed to protect and preserve Serbian cultural and religious sites throughout Kosovo and Metohija. Recalling that annex 2 of Security Council resolution 1244 (1999) providing for Serb presence at Serb patrimonial sites has not been implemented, [name] alleges that UNMIK did not comply with its obligations under the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954, the "Common Document" and the "Standards for Kosovo". Pending the examination of the facts of the allegations, we set out below our observations on the applicable legal norms.

3. The applicability of the Hague Convention, in the case of Kosovo, needs qualification. The Hague Convention applies in situations of armed conflict, in cases of total and partial occupation, and in peacetime (to the extent of the parties' obligation to refrain from use which may expose the property to destruction or damage in the event of armed conflict (article 4)). The present situation in Kosovo, however, is neither one of armed conflict, nor one of occupation. The "Common Document", therefore, describes correctly the qualified applicability of the Hague Convention in confirming "the *will to apply* the *relevant provisions of the Hague Convention* (1954) regarding the protection of cultural sites and property in Kosovo" (emphasis added). UNMIK is accordingly bound to apply the relevant provisions of the Convention with the necessary modifications flowing from the nature of UNMIK and the legal status of Kosovo.

4. The "Standards for Kosovo" document provides in its relevant part that all communities are entitled to preserve their cultural, historical and religious heritage "*with the assistance of relevant authorities (PISG), in accordance with European standards*". As a policy document and a statement of intent, UNMIK may be held to the standards it has

* United Nations, *Treaty Series,* vol. 249, p. 240.

set in the document to provide for assistance in the preservation of cultural heritage "in accordance with European standards".

5. Quite apart, however, from the specific undertakings under each of the foregoing instruments, the obligation to preserve and protect cultural and religious property is part of a more general obligation binding upon the United Nations Administration to provide for protection and security throughout Kosovo. While its practical implementation may be delegated to the Provisional Institutions within their respective competencies, the international responsibility, in case of failure, lies ultimately with UNMIK.

6. In the light of the foregoing, we suggest that any briefing to the Security Council should reaffirm not the applicability of the Hague Convention, as such, *but our willingness to apply its relevant provisions to the extent of their applicability in the circumstances.* We also suggest that while undertaking to take all necessary measures to protect cultural and religious property we should not necessarily undertake to be bound by article 7 of the Hague Convention to establish "services or specialist personnel whose purpose will be to secure respect for cultural property", as suggested in the letter.

5 January 2004

(*b*) Note verbale to a Permanent Mission to the United Nations regarding the legal personality and treaty-making power of the United Nations Interim Administration Mission in Kosovo (UNMIK)

International legal personality and treaty-making capacity of UNMIK—Security Council resolution 1244 (1999)—Secretary-General's report on UNMIK (S/1999/799)—Assumed treaty-making power by UNMIK to conclude bilateral agreements on behalf of Kosovo—Non-applicability of the European Convention on Extradition, 1957,* in Kosovo by virtue of Serbia and Montenegro's accession

The Assistant Secretary-General for Legal Affairs of the United Nations presents his compliments to the Permanent Mission of [State], and has the honour to refer to its note verbale [number] of 25 February 2004, attaching a draft agreement between the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Government of [State] on the transfer of residents of Kosovo to [State]. The advice of the Office of Legal Affairs was sought on: (i) whether UNMIK disposes of an international legal personality and treaty-making power; (ii) if, in the judgment of the Secretariat, UNMIK does not enjoy such treaty-making power, would the United Nations consider concluding the agreement on behalf of Kosovo; and (iii) whether the European Convention on Extradition of 13 December 1957, to which Serbia and Montenegro have acceded on 29 December 2002 and on which the draft bilateral agreement is largely based, could be made applicable in the territory of Kosovo.

UNMIK was established by Security Council resolution 1244 (1999) of 10 June 1999, as the "international civil presence in Kosovo in order to provide an interim administration for Kosovo". Its authority and competencies in matters of civil administration were further elaborated in the Secretary-General's report on the Interim Administration Mis-

* United Nations, *Treaty Series*, vol. 359, p. 273.

sion in Kosovo (S/1999/779 of 12 July 1999) to include all legislative and executive powers, including the administration of the judiciary.

While not expressly vested with treaty-making power, the power to conclude bilateral agreements with third States and organizations on behalf of Kosovo has in practice been assumed by UNMIK with regard to matters falling within the scope of its responsibilities under Security Council resolution 1244 (1999), and to the extent necessary for the administration of the territory. A number of agreements have thus been concluded over the years on a variety of practical matters relating to economic development assistance and cooperation, road transport and police cooperation with the Republic of Albania, Italy, the United States, Switzerland, Iceland and the former Yugoslav Republic of Macedonia, among others. Bilateral agreements have also been concluded between UNMIK and international organizations, and notably the International Civil Aviation Organization and Interpol. We note in this connection that a similar treaty-making power has been exercised by the United Nations Transitional Administration in East Timor (UNTAET) in matters affecting the territory of East Timor.

The answer to the first question obviates the need to reply to the second.

The question of the applicability of the European Convention on Extradition, 1957, in Kosovo is unrelated to the question of the accession thereto by Serbia and Montenegro. As a general principle, international conventions ratified by or acceded to by Serbia and Montenegro after 10 June 1999 are not automatically applicable to Kosovo, although they can be made applicable thereto by incorporation through a bilateral agreement between UNMIK and a third State. The present draft agreement, however, does not purport to apply the European Convention on Extradition, 1957, by incorporation, although it generally draws upon it. For these reasons, therefore, the European Convention on Extradition, 1957, cannot be considered to apply, either directly or by incorporation, in the territory of Kosovo; the similarities between the draft agreement and the European Convention, notwithstanding.

12 March 2004

4. Responsibility of international organizations

Interoffice memorandum to the Director of the Codification Division, Office of Legal Affairs and Secretary of the International Law Commission regarding the topic Responsibility of International Organizations

Responsibility of international organizations—Attribution of conduct by reference to "the rules of the Organization"—Definition of the "rules of the Organization"—Acts of peacekeeping forces, as subsidiary organs, are in principle imputable to the Organization—United Nations command and control—Delineation of respective responsibilities of the Organization and contributing States with respect to third party liability—Liability in compensation is, in the first place, entailed for the Organization—Imputability of acts of Chapter VII operations, conducted under national command and control, to the conducting State(s)—International responsibility in joint operations lies where effective command and control is vested and practically exercised

1. This is in reference to your memorandum of 29 September 2003 transmitting the request of the International Law Commission (ILC) for our views and comments on chapters III (A) and IV of its report to the 2003 Session,* pertaining to the topic of Responsibility of International Organizations. While we have no comments on chapter IV of the report, our views on the questions raised by the Commission in chapter III (A) are set out below. A set of documents reflecting the practice of the United Nations in matters of international responsibility and third party liability, in particular, is also attached.**

2. The questions put to the Secretariat by the ILC are as follows:

(*a*) Whether a general rule on attribution of conduct to international organizations should contain a reference to the "rules of the organization";

(*b*) If the answer to (*a*) is in the affirmative, whether the definition of "rules of the organization", as it appears in article 2, paragraph 1 (j), of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986,*** is adequate; and

(*c*) The extent to which the conduct of peacekeeping is attributable to the contributing State and the extent to which it is attributable to the United Nations.

A. Attribution of conduct by reference to the "rules of the organization"

3. A general rule on attribution of conduct to an international organization should contain a reference to the "rules of the organization"—the equivalent of "the internal law of the State" under article 4, paragraph 2, of the draft articles on Responsibility of States for Internationally Wrongful Acts.**** It is indeed by reference to the rules of the organization, that an organ, a person or entity of the organization whose conduct engages the responsibility of the organization, is defined.

B. Definition of the "rules of the organization"

4. The definition of the "rules of the organization" contained in article 1, paragraph 1 (j), of the Vienna Convention, 1986, is, for the purpose of this study, adequate. It is particularly so in connection with peacekeeping operations where principles of international responsibility for the conduct of the Force have for the most part been developed in a fifty-year practice of the Organization.

C. The attribution of the conduct of a peacekeeping force to the United Nations or to contributing States

5. The question of attribution of the conduct of a peacekeeping force to the United Nations or to contributing States is determined by the legal status of the Force, the agreements between the United Nations and contributing States and their opposability to third States.

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* *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10).

** The documents listed in paragraph 11 below are not reproduced herein.

*** Doc. A/CONF.129/15.

**** General Assembly resolution 56/83 of 12 December 2001, annex.

6. A United Nations peacekeeping force established by the Security Council or the General Assembly is a subsidiary organ of the United Nations. Members of the military personnel placed by Member States under United Nations command, although remaining in their national service, are, for the duration of their assignment to the Force, considered international personnel under the authority of the United Nations and subject to the instructions of the Force Commander. The functions of the Force are exclusively international and members of the Force are bound to discharge their functions with the interest of the United Nations only in view. The peacekeeping operation as a whole is subject to the executive direction and control of the Secretary-General, under the overall direction of the Security Council or the General Assembly as the case may be.

7. As a subsidiary organ of the United Nations, an act of a peacekeeping force is, in principle, imputable to the Organization, and if committed in violation of an international obligation entails the international responsibility of the Organization and its liability in compensation. The fact that any such act may have been performed by members of a national military contingent forming part of the peacekeeping operation does not affect the international responsibility of the United Nations *vis-à-vis* third States or individuals.

8. Agreements concluded between the United Nations and States contributing troops to the Organization contain a standard clause on third-party liability delineating the respective responsibilities of the Organization and contributing States for loss, damage, injury or death caused by the personnel or equipment of the contributing State. Article 9 of the Model Memorandum of Understanding between the United Nations and [Participating State] contributing resources to [The United Nations Peacekeeping Operation] provides in this regard:

> "The United Nations will be responsible for dealing with any claims by third parties where the loss of or damage to their property, or death or personal injury, was caused by the personnel or equipment provided by the Government in the performance of services or any other activity or operation under this memorandum. However if the loss, damage, death or injury arose from gross negligence or willful misconduct of the personnel provided by the Government, the Government will be liable for such claims" (A/51/967, annex).[1]

9. While the agreements between the United Nations and contributing States divide the responsibility in the relationship between them, they are not opposable to third States. *Vis-à-vis* third States and individuals, therefore, where the international responsibility of the Organization is engaged, liability in compensation is, in the first place, entailed for the United Nations, which may then revert to the contributing State concerned and seek recovery on the basis of the agreement between them.

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[1] A similar provision is contained in article 6 of the model agreement used by the Organization to obtain gratis personnel (ST/AI/1999/6, annex). It reads:

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

10. The principle of attribution of the conduct of a peacekeeping force to the United Nations is premised on the assumption that the operation in question is conducted under United Nations command and control, and thus having the legal status of a United Nations subsidiary organ. In authorized chapter VII operations conducted under national command and control, the conduct of the operation is imputable to the State or States conducting the operation. In joint operations, namely, those conducted by a United Nations peacekeeping operation and an operation conducted under national or regional command and control, international responsibility lies where effective command and control is vested and practically exercised (see paragraphs 17–18 of the Secretary-General's report, A/51/389).

D. Materials on the practice of the United Nations regarding third-party claims

11. To assist in the study on the Responsibility of International Organizations, we attach a series of documents which provide further information on the practice of the Organization with regard to third-party claims.* They include:

(*a*) The report of the Secretary-General, "Review of the efficiency of the administrative and financial functioning of the United Nations; Procedures in place for implementation of article VIII, section 29, of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946" (A/C.5/49/65).

(*b*) The Secretary-General's reports on third-party liability arising from peacekeeping operations, A/51/389 (in particular section II) and A/51/903, as well as General Assembly resolution 52/247 of 26 June 1998, which established temporal and financial limitations on the liability of the Organization arising from peacekeeping operations (now incorporated in status-of-forces and status-of-mission agreements). It is important to note that the resolution was adopted without a vote (see A/52/PV.88).

(*c*) With regard to the arbitration and settlement of claims of a private law nature against the Organization, reference should also be made to the report of the Secretary-General on "Procurement-related arbitration" (A/54/458).

(*d*) A legal opinion addressed by the Legal Counsel on 23 February 2001 to the Controller, advising on the basis for the settlement and payment of claims against the Organization. This opinion discusses, among other things, the capacity of the Organization to incur obligations and liabilities of a private law nature, the procedures for settling such claims and the internal legal framework under the United Nations Financial Regulations and Rules.

(*e*) General Assembly resolution 49/37 of 9 December 1994 on the comprehensive review of the whole question of peacekeeping operations in all their aspects.

(*f*) "An Agenda for Peace" 1995 (A/50/60–S/1995/1).

(*g*) Model Memorandum of Understanding between the United Nations and States contributing resources to a United Nations peacekeeping operation (A/51/967).

(*h*) Report of the Secretary-General on the command and control of United Nations peacekeeping operations (A/49/681).

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* These documents are not reproduced herein.

(*i*) For an earlier practice see the study prepared by the Secretariat for the International Law Commission on the practice of the United Nations, the Specialized Agencies and the International Atomic Energy Agency concerning their status, privileges and immunities.*

3 February 2004

5. Treaty law

(*a*) Letter to a Permanent Representative to the United Nations regarding the registration of treaties pursuant to Article 102 of the Charter of the United Nations

Challenge regarding the authenticity and validity of an agreement submitted for registration pursuant to Article 102 of the Charter of the United Nations—Obligation to register treaties pursuant to Article 102 of the Charter—Administrative role of the Secretariat—Requirements relating to registration—Regulations to give effect to Article 102 of the Charter—Certified true copies—Registration of subsequent actions—Registration as a prerequisite of a treaty to be invoked before any organ of the United Nations—Registration does not add or detract from the legality or value of a treaty—A dispute relating to the validity of a treaty should be determined by an appropriate tribunal and not by the Secretariat

I refer to your letter to the Secretary-General dated 10 March 2004, transmitting a letter of the same date from the [Minister of Foreign Affairs of State A], stating that it had come to your Government's attention that [State B] was attempting to register a Convention from 1974 on the delimitation of the boundary between [State B] and [State A] (the Convention). The Minister's letter asserts that by attempting to register the Convention thirty years after its apparent conclusion [State B] was acting in bad faith. In your further letter of [date] 2004 you stated that "[State A] does not recognize the existence of such agreement."

In the letter of 10 March, the [Minister of Foreign Affairs of State A], referring to a mediation process involving the border between [State B] and [State A], formally protested the continuation of the registration process.

In this connection, I note that on 2 March 2004, [State B] submitted the Convention for registration to the Treaty Section of the Office of Legal Affairs pursuant to Article 102 of the Charter of the United Nations. The submission consisted of the following:

(*a*) Copies of the French and Spanish texts of the Convention; and

(*b*) Certification specifying, *inter alia,* that (i) the Convention was a certified true copy; (ii) the parties did not formulate any reservations or objections to the agreement; and (iii) it had entered into force on the date of signature, i.e., [date] 1974.

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* *Yearbook of the International Law Commission, 1967,* vol. II (United Nations Publication, Sales No. E.68.V.2); *Yearbook of the International Law Commission, 1985,* vol. II (United Nations Publication, Sales No. E.86.V.5 (Part I)); and *Yearbook of the International Law Commission, 1991,* vol. II (United Nations Publication, Sales No. E.93.V.9 (Part I)).

Following a review of the submission, the Treaty Section noted that the texts submitted by [State B] were not legible and requested [State B] to resubmit clearer copies. This is not an unusual practice when illegible texts are submitted for registration by Member States. On 10 March 2004, [State B] submitted the re-typed texts as an attachment to an e-mail.

Article 102 of the Charter states that:

> "Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.
>
> No party to any such treaty or international agreement, which has not been registered in accordance with the provisions of paragraph 1 of this Article, may invoke that treaty or agreement before any organ of the United Nations."

Accordingly, it is an obligation mandated by the Charter that Member States register treaties or international agreements entered into by them. The role of the Secretariat, which is purely administrative, is to verify that a treaty or international agreement submitted for registration meets the requirements for registration stipulated in the Regulations to give effect to Article 102 of the Charter (Regulations)[1]. Once it is registered, the relevant information is included in the electronic database and subsequently published in the United Nations *Treaty Series*. The detailed requirements relating to registration are contained in article 5 of the Regulations:

> "A party or a specialized agency, registering a treaty or international agreement under article 1 or 4 of these regulations, shall certify that the text is a true and complete copy thereof and includes all reservations made by parties thereto.
>
> The certified copy shall reproduce the text in all the languages in which the treaty or agreement was concluded and shall be accompanied by two additional copies and by a statement setting forth, in respect of each party:
>
> (*a*) The date on which the treaty or agreement has come into force;
>
> (*b*) The method whereby it has come into force . . ."

In most bilateral treaties, the date of entry into force is the date of signature. (Please see attached copy of the *Treaty Handbook** for the practice of the Secretariat, page 31).

Once these requirements are satisfied, a treaty or agreement submitted is duly registered by the Secretariat. In this matter, the Secretariat has no choice. The Secretariat relies on the certification submitted by the party.

So long as such certification is in proper form, the Secretariat does not question the authenticity of an agreement.

It is the long-standing practice of this Office to accept copies of agreements, including photocopies, submitted for registration, as long as the submitters certify that such copies are "certified true copies" of the originals. The submitter State did so in this case.

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[1] *Registration and Publication of Treaties and International Agreements: Regulations to give effect to Article 102 of the Charter of the United Nations,* General Assembly resolution 97 (1) of 14 December 1946, and subsequent revisions in United Nations, *Treaty Series,* vol. 859/860, p. XII; see also *Repertory of Practice of United Nations Organs.*

* United Nations Publication, Sales No. E.02.V.2. The *Treaty Handbook* is not reproduced herein.

I also note that the Secretariat, pursuant to article 2 of the Regulations, registers any subsequent actions relating to a treaty. Your communication of [date] 2004 appears to meet the requirement for article 2 as a relevant notification.

Accordingly, it will be recorded in the Secretariat database as such and published in the United Nations *Treaty Series*.

Registration is the prerequisite for a treaty or international agreement to be capable of being invoked before the International Court of Justice or any other organ of the United Nations.

It is also noted that registration does not add or detract from the legality or value of a treaty. The practice of the Secretariat in this regard could be summarized as follows:

> "Where an instrument is registered with the Secretariat, this does not imply a judgment by the Secretariat of the nature of the instrument, the status of a party, or any similar question. Thus, the Secretariat's acceptance for registration of an instrument does not confer on the instrument the status of a treaty or an international agreement if it does not already possess that status. Similarly, registration does not confer on a party to a treaty or international agreement a status that it would not otherwise have." (See *Treaty Handbook,* section 5.3.1, page 27.)

Should there be a dispute relating to the validity of a treaty, such dispute must be determined by an appropriate tribunal, not by the Secretariat. It would not be proper for the Secretariat to involve itself in such a role.

A copy of this letter will be provided to the Government of [State B].

22 March 2004

(*b*) Facsimile to the Executive Secretary, Secretariat of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989, regarding the entry into force of amendments to the Convention

LEGAL EFFECT OF A DECISION OF THE CONFERENCE OF STATE PARTIES REGARDING THE INTERPRETATION OF A TREATY PROVISION—INTERPRETATION OF TREATIES—ARTICLE 31 OF THE VIENNA CONVENTION ON THE LAW OF TREATIES, 1969*—CONCURRENCE OF ALL PARTIES—CONCLUSION OF A SUBSEQUENT AGREEMENT BETWEEN THE PARTIES CLARIFYING A TREATY PROVISION—SIMPLIFIED ENTRY INTO FORCE PROVISION—PROVISION DEALING WITH FUTURE PARTIES TO THE CONVENTION AND A SUBSEQUENT AGREEMENT

I refer to your facsimile dated 18 October 2004 concerning the above matter in which you request the opinion of the Office of Legal Affairs as to the legal effect, if any, of a decision adopted by a Conference of the Parties specifying a particular interpretation of article XVII, paragraph 5, of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989.** We note the resolution adopted by the parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973,*** interpreting the amendment provision of that Convention in a "narrow" sense to facilitate the entry into force of any amendments. As mentioned in your

* United Nations, *Treaty Series,* vol. 1155, p. 331.

** United Nations, *Treaty Series,* vol. 1673, p. 57.

*** United Nations, *Treaty Series,* vol. 993, p. 243.

facsimile, CITES is deposited with the Government of Switzerland. The Secretary-General, as you are aware, is not obliged to follow the practice of any other depositary.

The Secretary-General, in the performance of his depositary duties, is guided by (1) the provisions of a treaty; (2) his practice as depositary; (3) customary treaty law (including as it may be deemed codified by various conventions on the matter); and (4) the general principles flowing from pertinent resolutions or decisions of the General Assembly and other organs of the United Nations (*Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties,* chapter II, section b, paragraph 14*).

With regard to the matter you raised, the Vienna Convention on the Law of Treaties (VCLT), 1969, may provide some guidance on the question. The VCLT, in its article 31, sets out the general rules for interpreting treaty provisions. Article 31, paragraph 3, provides that together with the context, any *subsequent agreement* between the parties regarding the interpretation of the treaty or the application of its provisions shall be taken into account. Although the VCLT makes no reference to a resolution adopted at a Conference of the Parties, a broad interpretation of this provision might accommodate such a resolution if it had the *concurrence of all the parties.* We note in this context that article 31, paragraph 3 (a), refers to an "agreement between the parties" which suggests a need for an agreement among all the parties.

A resolution adopted at the Conference of the Parties, however, would not necessarily guarantee the concurrence of all the parties. The adoption of resolutions is governed by rule 40 of the Rules of Procedure for Meetings of the Conference of the Parties which provides that in the absence of consensus a decision shall be adopted by a majority of two thirds of the parties present and voting. Under rule 30 of the rules of procedure, however, the required participation for a decision to be taken is only two thirds of the parties of the Convention. A resolution on the interpretation of article XVII of the Convention may thus be adopted by only two thirds of two thirds of the parties, and as such, could not constitute "an agreement between the parties" within the meaning of article 31, paragraph 3 (a), of the VCLT.

In the circumstances, the best solution would be for the parties to the Basel Convention to conclude a subsequent agreement which clarifies the amendment provision of the Basel Convention as contained in its article XVII. This agreement can be a simple and straightforward instrument, however, it must be drafted in such a manner as to ensure the consent of all parties. As such, only two options are possible. The first option would be for the parties to consent to be bound in the usual fashion, i.e., by depositing instruments consenting to be bound by the agreement. However, to ensure that the subsequent agreement actually has the agreement of all the parties, the agreement would only enter into force upon the deposit of instruments by each and every party. The other option, which we would recommend, would be to use a simplified procedure whereby the agreement enters into force for all parties if within six months, for example, from its date of circulation to the parties, no objections to it are received by the depositary. Once the agreement enters into force, the depositary, guided by the VCLT, would be obliged to take the agreement into consideration in interpreting the context of article XVII.

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* United Nations Publication, Sales No. E.94.V.15.

If the simplified procedure is utilized, it would also be necessary to include an additional provision. This provision would deal with the situation whereby a State becomes a party to the Convention between the time that the subsequent agreement is circulated for approval and its entry into force. In such cases, these States would be obliged to object to the proposed subsequent agreement, if they so desire, within the same timeframe as the other States to ensure that the agreement enters into force for all parties at the same time. In addition, it would also be necessary to include a provision to make certain that the Convention and the subsequent agreement are mutually binding on future parties. Such a provision would specify that a State that becomes party to the Convention after the entry into force of the subsequent agreement is also deemed to have consented to be bound by the subsequent agreement, the subsequent agreement and the Convention entering into force for that party on the same date, in accordance with the provisions of the Convention. If the need arises, we can assist in drafting the above provisions.

26 October 2004

(*c*) Interoffice memorandum to the Director of the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, regarding a declaration by [State] pursuant to article 21, paragraph 4, of 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, (the Agreement), 1995

The role of the Secretary-General as depositary—Depositary functions as opposed to administrative functions of the Secretary-General as chief administrative officer of the Organization—Circulation of notifications by States under a treaty—Role of substantive offices in the performance of administrative functions under a treaty—Review by the Treaty Section of treaties intended to be deposited with the Secretary-General prior to their finalization—ST/SGB/2001/1*

1. I thank you for your memorandum of 3 December 2004 (reference 04–01685) concerning the above matter.

2. In your memorandum, you refer to article 21, paragraph 4, of the Agreement ** which states, *inter alia,* that "[a]t the time of becoming a Party to this Agreement, a State shall designate an appropriate authority to receive notifications pursuant to this article and shall give due publicity of such designation through the relevant subregional or regional fisheries management organization or arrangement".

3. You also note that article 49 of the Agreement designates the Secretary-General of the United Nations as the depositary of the Agreement and any amendments or revisions thereof. Due note is also taken of your reference to article 77, paragraph 1 (e), of the Vienna Convention on the Law of Treaties, 1969,*** relating to the functions of the depositary.

* For information on Secretary-General's bulletins, see note 11 in chapter V.

** United Nations, *Treaty Series,* vol. 2167, p. 3.

*** United Nations, *Treaty Series,* vol. 1155, p. 331.

4. It is our view that a notification made pursuant to article 21, paragraph 4, of the Agreement does not fall within the scope of the depositary functions of the Secretary-General. The Secretary-General in his capacity as depositary of multilateral treaties performs a legal function and not an administrative function. The notification under article 21, paragraph 4, appears to be an administrative matter. It would be inconsistent with his role as depositary to assume the role of performing administrative functions. Administrative functions assigned to the Secretary-General in his capacity as chief administrative officer of the Organization are entrusted to the relevant substantive offices. Only in exceptional circumstances in the absence of an appropriate substantive office to which administrative functions can be entrusted, will such functions be performed by the Treaty Section of the Office of Legal Affairs, which is entrusted with the performance of the Secretary-General's depositary functions. (See paragraph 31, *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties,* ST/LEG/7/Rev. 1.*)

5. Moreover, the Secretary-General, as depositary, could not fulfill the requirements of article 21, paragraph 4, from a practical perspective. This provision requires that due publicity be given of such designation through the "relevant subregional or regional fisheries management organization or arrangement". Depositary notifications are sent to the Permanent Missions in New York and treaty secretariats through a standardized process. Locating regional and subregional fisheries management organizations for the purposes of article 21, paragraph 4, would not be feasible for the depositary. In addition, we note that the obligation contained in article 21, paragraph 4, appears to be addressed to the States concerned and not to the depositary. There seems to be no reason for the depositary to get involved in this function.

6. Pursuant to ST/SGB/2001/7 of 28 August 2001, drafts of treaties intended to be deposited with the Secretary-General of the United Nations are required to be submitted to the Treaty Section for review and comment prior to finalization. In this process, the Treaty Section ensures that responsibilities assigned to the Secretary-General, as depositary, are, in fact, depositary functions and not administrative functions. This procedure not only accords with the long-standing practice of the Secretary-General, as depositary, but also reflects the reality that the Treaty Section, which currently administers the depositary functions on behalf of the Secretary-General for over 500 treaties, simply does not have the resources to effectively handle all of the functions assigned to the Secretary-General in a treaty deposited with him.

7. I would also like to draw your attention to the attached memorandum dated 9 February 1998 entitled "Functions entrusted to the Secretary-General by the United Nations Convention on the Law of the Sea and DOALOS [Division for Ocean Affairs and the Law of the Sea]—Treaty Section arrangements," and to the meeting of 20 May 1994 between the Treaty Section and DOALOS (see Treaty Section, Note for the file, copy attached**).

8. With regard to the above, it was acknowledged that many of the functions entrusted to the Secretary-General by the United Nations Convention on the Law of the Sea, 1982, are not depositary *stricto sensu* but pertain to the operation of the Convention or to the implementation of the substantive provisions thereof. Such functions were accordingly to

* United Nations Publication, Sales No. E.94.V.15.

** These documents are not reproduced herein.

be performed by DOALOS. In the same vein, the notification of designation of authorities in article 21, paragraph 4, relates to the operation of the Agreement. As such, DOALOS may wish to discharge this function as well. (But see paragraph 10 below.)

9. In the light of the above, the Treaty Section does not intend to circulate the declaration by the Government of [State] pursuant to article 21, paragraph 4, of the Agreement.

10. We also note that the communication of the notification in question may not fall upon the Secretary-General, as chief administrative officer, as none of the functions contained in the article are specifically entrusted to the Secretary-General. Article 21, paragraph 4, obliges inspecting States, prior to boarding and inspecting fishing vessels for the purpose of ensuring compliance, to inform all States whose vessels fish on the high seas in the subregion or region of the form of identification issued to their inspectors. States are also mandated to designate an authority to receive notifications pursuant to this article and give due publicity of such designation through the "relevant subregional or regional fisheries management organization or arrangement." In all such cases, it appears that the States concerned are responsible for discharging the relevant obligations.

13 December 2004

6. International Humanitarian Law

(*a*) Interoffice memorandum to the Chief, Legal Affairs Section, Executive Office, Office of the United Nations High Commissioner for Refugees, regarding the Voluntary Repatriation (Tripartite) Agreement

Treaty-making and legislative capacity of an occupying power and of entities estabished by the occupying power—Applicability of agreements concluded during occupation beyond the period of occupation—Conditioning an agreement's continued applicability on the consent of the newly independent State

1. This is in reference to [name's] e-mail message of 6 February 2004, requesting our views on the draft Voluntary Repatriation Agreement between the Office of the United Nations High Commissioner for Refugees (UNHCR), the Government of [State A], and the so-called "Authorities in [State B]" comprising the Council of Ministers of [State B] and/or the Coalition Provisional Authority (CPA). The question put to us was "under what conditions and with what restrictions the United Nations/UNHCR may sign agreements with the [State C] as occupying power".

2. The draft Agreement raises, however, a number of other issues relating to the treaty-making power of the CPA and the Governing Council, and the applicability of the Agreement beyond the period of occupation.

3. The CPA as the Occupying Power in [State B] is the sole authority having legislative or treaty-making power, however limited, for the duration of the occupation. Agreements on the operational activities of the United Nations in [State B] during the period of occupation should, therefore, be concluded with the CPA. While [State C] is a leading member of the Coalition and it would probably be advisable to secure its political support, [State C] Government, as such, is not, nor should it be a party to this Agreement, not at least as representing the [State B] authorities or the CPA. The Governing Council, on the

other hand, as an entity established by the Occupying Power to assist in the administration of [State B] lacks an international treaty-making power, a power which cannot be delegated to it by the CPA.

4. The question of who represents [State B] for the purpose of this Agreement relates also to the question of the duration of the Agreement, and its applicability beyond the period of occupation. It is a well-established principle of the law of occupation that legislative acts enacted by an Occupant, and international agreements concluded by it on behalf of the occupied territory do not automatically survive the occupation, and may continue to apply only with the consent of the newly independent Government.

5. In the circumstances, UNHCR may either await the "transfer of powers" and sign the Agreement with the newly independent Government of [State B] (as was done for example in the case of East Timor when the agreement on the Timor Gap negotiated during the period of the United Nations administration was signed eventually between Australia and independent East Timor*). If, however, the conclusion of the Agreement is at this point a matter of urgency, it should be signed between the UNHCR, [State A] and the CPA (with or without the Governing Council). On the understanding that the operation of voluntary repatriation would survive the occupation, a provision should be inserted in the Agreement conditioning its continued applicability on the consent of the newly independent Government of [State B].

19 February 2004

(*b*) Letter to the Representative/President of the Unification and National Security Central Council in the Freedom Centre (Tongil Anbo Joongang Hyeopuih) in Seoul, Republic of Korea, regarding the eligibility of prisoners of war for payments for their labour in war camps during the Korean war

Korean war—Eligibility of prisoners of war for payments under articles 60 and 62 of the Third Geneva Convention Relative to the Treatment of Prisoners of War, 1949**—Legal Status of the military operation in Korea—Security Council resolution 84 of 7 July 1950—United Nations Command—Unified command under the United States

I refer to your letter of petition addressed to the Secretary-General dated 1 March 2004, in which you wish to verify whether certain categories of prisoners of war from the Korean War are eligible for payments under articles 60 and 62 of the Third Geneva Convention Relative to the Treatment of Prisoners of War, 1949, in respect of labour performed by them during their internment in prisoner of war camps. You also seek information with respect to any wages which may have been paid to such prisoners, including details with respect to the dates thereof, the country in which payment may have been made, and the names of the individual payees.

The Secretary-General has referred your letter to the Office of Legal Affairs. We regret to advise you that the United Nations is not in a position to provide you with the informa-

* Australian Treaty Series [2003] ATS 13.

** United Nations, *Treaty Series,* vol. 75, p. 135.

tion you have requested. Although the forces in Korea may have been known as "United Nations Forces", the operation was not in fact under the control of the United Nations. The legal status of the military operation in Korea is set forth by Security Council resolution 84 (1950). By that resolution, the Security Council "recommend[ed] that all Members providing military forces and other assistance . . . make such forces and other assistance available to a *unified command under the United States of America* (emphasis added)". It further "requeste[d] the United States to designate the commander of such forces; authorize[d] the unified command at its discretion to use the United Nations flag in the course of operations against North Korean forces concurrently with the flags of the various nations participating"; and "requeste[d] the United States to provide the Security Council with reports as appropriate on the course of action taken under the unified command". As such, the Security Council did not establish the "unified command" as a United Nations body, but rather recommended a unified command under the United States.

Although the United States announced on 25 July 1950 the establishment of the "United Nations Command," this expression was used interchangeably with that of "unified command" to designate the military command of the operations. Accordingly, despite the existence of certain links between the United Nations and the armed forces operating in Korea, such as the use of the United Nations flag and use of the terms "United Nations Command" or "United Nations Forces", there was no direct involvement of the United Nations in the military operations. Rather, it was an operation conducted by the United States, which reported periodically to the Security Council on its activities.

As we do not have information on the practice which the Unified Command followed with respect to either a working pay or advances for prisoners of war under articles 62 and 60 respectively of the Third Geneva Convention Relative to the Treatment of Prisoners of War, 1949, or any records with respect to payments that may have been made, we wish to advise that we have forwarded your letter to the Permanent Mission of the United States to the United Nations so that they may direct your request to the appropriate body. We have also forwarded your letter to the International Committee of the Red Cross, which as the guardian and promoter of the Geneva Conventions, may be in a better position to advise with respect to the question of eligibility of payments under articles 60 and 62 of the Third Geneva Convention.

28 April 2004

7. Human Rights and Refugee law

Note to the members of the Senior Management Group of the United Nations regarding conditions for the granting of political asylum

Universal Declaration of Human Rights* —Customary international law—Declaration on Territorial Asylum of 1967—An individual has a right to seek asylum but not to be granted asylum—Discretion of the State to grant asylum in its territory to any person—The right of a State to grant asylum constitutes the normal exercise of territorial soverignty—The granting of asylum is not an unfriendly act against the country of origin nor interference in its internal affairs—Discretion of States to condition the granting of asylum—Minimum human rights standards and minimum standard of the Convention relating to the Status of Refugees, 1951, must however be afforded to the asylee—States must respect the principle of *non-refoulment*—Grounds for the denial of asylum

1. Although article 14, paragraph 1, of the Universal Declaration of Human Rights sets out that "[e]veryone has the right to seek and to enjoy in other countries asylum from persecution", an individual cannot claim a "right" to be granted asylum and no State is obliged to grant asylum under current customary international law.[1]

2. However, there is a general rule of customary international law that a State may grant asylum in its territory to any person at its own discretion.[2] The right of a State to grant territorial asylum implies, to use the words of the International Court of Justice, "only the normal exercise of territorial sovereignty".[3] This right is subject only to the provisions of those conventions or treaties, notably extradition treaties, to which the State is a party.

3. The granting of political asylum by a State cannot be seen as an unfriendly act against the country of origin of the asylum seeker nor does it constitute an interference with that country's internal affairs. In the Preamble to the Declaration on Territorial Asylum of 1967,[4] the General Assembly recognizes "that the grant of asylum by a State . . . is a peaceful and humanitarian act and that, as such, it cannot be regarded as unfriendly by any other State." Article 1, paragraph 1, of that Declaration reads: "Asylum granted by a State . . . shall be respected by all other States."

4. States are relatively free to enact national legislation that subjects the granting of political asylum to conditions. Under current international law the asylee must only be provided with the minimum human rights standard and the minimum standard of the

* General Assembly resolution 217 A (III) of 10 December 1948.

[1] Hailbronner in: Bothe/Dolzer/Hailbronner/Klein/Kunig/Schröder/Graf Vitzthum, *Völkerrecht* 2nd ed., 2001, De Gruyter Recht, Berlin, p. 252; *Oppenheim's International Law,* R. Jennings and A. Watts, eds., vol. 1—Peace, 9th ed., Harlow: England, Longman, 1992, p. 901.

[2] Grahl-Madsen, Atle, "Territorial Asylum", 1985 in: R. Bernhardt ed., *Encyclopedia of Public International Law,* vol. 1, Amsterdam, Elsevier Science Publisher, 1992, p. 286.

[3] *I.C.J Reports 1950,* p. 274.

[4] General Assembly resolution 2312 (XXII) of 14 December 1967.

Geneva Convention relating to the Status of Refugees.[5] In particular, States must respect the principle of "*non-refoulement*" contained in article 33 of the Geneva Convention.[6] However, Jennings and Watts write in *Oppenheim's International Law* about the asylee, that "it might be necessary to make his entry subject to conditions, to place him under surveillance, or even to intern him in some place".[7]

5. Grounds for the denial of asylum can result from extradition treaties or from treaties dealing with aspects of terrorism. Article 1, paragraph 2, of the Declaration on Territorial Asylum stipulates: "The right to seek and enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in that respect."

6. In sum, States are free to attach any conditions to granting political asylum as long as the asylee is provided with the minimum human rights standard and the minimum standard of the Geneva Convention.

5 March 2004

8. United Nations emblem and flag

Interoffice memorandum to the Senior Legal Adviser, Office of the Secretary-General, World Meteorological Organization, on guidelines on the use of the United Nations emblem

Use of United Nations emblem—General Assembly resolution 92 (I) of 7 December 1946—Paris Convention for Protection of Industrial Property* —Administrative instruction ST/AI/189/Add.21** —Prohibition of the use of United Nations name and emblem for commercial purposes—Any use requires prior authorization of the Secretary-General—Development of general principles for the use of the emblem in the context of partnerships with the private sector—Restricted use of distinctive elements of the emblem—Development of specific emblems or logo for conferences and international years

[5] Hailbronner in: Bothe/Dolzer/Hailbronner/Klein/Kunig/Schröder/Graf Vitzthum, *Völkerrecht,* 2nd ed. 2001, p. 252; *Oppenheim's International Law,* R. Jennings and A. Watts, eds., vol. 1—Peace, 9th ed., Harlow: England, Longman, 1992, p. 901; Grahl-Madsen, Atle, "Territorial Asylum," 1985 in: R. Bernhardt ed., *Encyclopedia of Public International Law,* vol. 1, Amsterdam, Elsevier Science Publisher, 1992, p. 286.

[6] Convention relating to the Status of Refugees, adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950. United Nations, *Treaty Series,* vol. 189, p. 137.

[7] *Oppenheim's International Law,* R. Jennings and A. Watts, eds., vol. 1—Peace, 9th ed., Harlow: England, Longman, 1992, p. 903.

[*] The Convention was adopted on 20 March 1883, and later revised at Brussels on 14 December 1900, at Washington on 2 June 1911, at The Hague on 6 November 1925, at London on 2 June 1934, at Lisbon on 31 October 1958, and at Stockholm on 14 July 1967, United Nations, *Treaty Series*, vol. 828, p. 306.

[**] For information on Administrative instructions, see note 4 in chapter V.

1. This is in reference to your email of 19 January 2004, requesting a copy of regulations or guidelines on the use of the United Nations emblem. The following is a summary of the guidelines on the use of the United Nations emblem.

2. The use of the United Nations emblem and name, and any abbreviation thereof, is reserved for official purposes of the Organization in accordance with General Assembly resolution 92 (I) of 7 December 1946. Furthermore, that resolution expressly prohibits the use of the United Nations name and emblem for commercial purposes or in any other way without the prior authorization of the Secretary-General, and recommends that Member States take the necessary measures to prevent the unauthorized use thereof. (For general information on the United Nations guidelines, please see www.un.org/depts/dhl/maplib/flag.htm and Administrative instruction ST/AI/189/Add.21 of 15 January 1979, providing the rules concerning the use of the United Nations emblem in documents and publications, attached.*)

3. The United Nations name and emblem are protected world-wide under article 6 *ter* of the Paris Convention for the Protection of Industrial Property on the assumption that they are not used for commercial purposes. Accordingly, the long-standing policy of the Organization is not to authorize commercial use of its name and emblem.

4. Recently, due to the United Nations' evolving relationship with the business community, the United Nations has developed general principles on the use of the name and emblem of the United Nations and its Funds and Programmes by the business community in the context of partnerships with the private sector. According to these guidelines, the private sector may, in principle, be authorized to use the United Nations name and emblem based on the following conditions:

(*a*) The use is on a non-exclusive basis;

(*b*) It is based on express approval in advance in writing, clearly stating the terms and conditions of the use;

(*c*) The principal purpose of such use is to show support for the purposes and activities of the United Nations, including the raising of funds for the Organization, and the generation of profit by the business entity is only incidental;

(*d*) Subject to certain conditions and appropriate written approval, the use of a modified United Nations emblem may be exclusively authorized to a limited number of business entities in connection with the promotion of a special event or initiative, including fund-raising for such event or initiative. (See "The United Nations and Business, Guidelines on Cooperation between the United Nations and the Business Community", at: www.un.org/partners/business/otherpages/guide.htm, attached.**)

5. Based on the established strict policy prohibiting commercial use of the United Nations name and emblem, the Organization has prohibited individuals or entities doing business with the Organization from publicizing contracts with the Organization. For this purpose, the consistent practice of the United Nations has been to include in its commercial contracts a standard clause preventing any entity contracting with the United Nations from using the United Nations name (or its abbreviation), emblem, or official seal for any

* The Administrative instruction is not reproduced herein.

** The Guidelines are not reproduced herein.

purpose, and from advertising or making public the fact that the entity provided services to the Organization. The aim of such clauses is to prevent public solicitation for business on the basis of connection with the United Nations.

6. If an outside entity, normally a reputable non-governmental organization such as the United Nations Association, is authorized to include the United Nations name in its title, it may also be authorized to use the United Nations emblem on stationery and publications in addition to its own logo. However, the Organization routinely requires that the emblem be modified by adding the words "United Nations" or "UN" above and the words "We believe" or "Our hope for mankind" below the emblem. The appearance of those words together with the emblem makes it clear that no official use of the United Nations emblem is involved and that it is being reproduced as a demonstration of support for the United Nations. The emblem should appear separately and some distance away from the insignia of the outside body.

7. In general, however, it has been the practice of the United Nations to refrain from authorizing the use of the United Nations emblem in any manner which might imply that a non-United Nations entity is part of the United Nations or that activities being carried out by a non-United Nations entity are being carried out by the United Nations or subject to its control. The two crossed olive branches are one of the essential distinctive elements of the United Nations emblem, and several Funds and Programmes of the United Nations use as their emblems or logos the crossed olive branches with various symbols amid them. In addition, a number of United Nations specialized agencies have incorporated the United Nations emblem or part thereof into their own logos. Therefore, the Office of Legal Affairs has taken the position that the use, by non-United Nations entities, of logos displaying two crossed olive branches of the same design as those displayed on the United Nations emblem are inappropriate, as it could create the misleading impression that such entities are organs of the United Nations, or are operating under the auspices of the United Nations.

8. In some instances, distinctive emblems or logos are developed for United Nations conferences and international years. These are selected in accordance with the annex and appendix to ST/AI/189/Add.21, referred to in paragraph 2 above, which states that the responsibility for the final selection and approval of such emblems/logos is vested in the Publications Board (see paragraph 2 thereof). When a distinctive emblem/logo is selected, guidelines are developed concerning its use, including use by non-United Nations entities (e.g., the Guidelines for use of the United Nations World Summit on Sustainable Development, in Johannesburg, South Africa, August 2002). Normally, the responsibility for authorizing the use of such a distinct emblem is vested with the secretariat for the United Nations conference or the international year concerned and, therefore, requests for the use thereof should be submitted to that secretariat. Normally, the use of such emblem is restricted in time.

9. In all other cases, requests for authorization to use the United Nations emblem or name or any abbreviation thereof should be referred to the Office of Legal Affairs.

19 February 2004

9. Personnel questions

Interoffice memorandum to the Recruitment Officer of the Department of Economic and Social Affairs, United Nations, on the reimbursement of United States taxes and nationality for United Nations administrative purposes

Staff members with dual nationality—Only one nationality is recognized by the Organization for administrative purposes—Staff Rules and Regulations—Discretionary decision of the Secretary-General to determine the nationality with which the staff member is the most closely associated—Relevant criteria to determine the nationality—Jurisprudence of the United Nations Administrative Tribunal (UNAT)—Delegation of authority to make such a determination of the nationality

1. I refer to your memorandum of 1 August 2003 to me, with attachments, regarding the above-mentioned matter. I also refer to telephone conversations between you and [name] of this Division . . .

Background

2. [Name], a staff member of the Department of Economic and Social Affairs (DESA), has both Italian and United States (US) nationality, and you seek advice as to which of [name's] two nationalities should be recognized by the Organization for United Nations administrative purposes, and whether her US income taxes should be reimbursed. You have also asked for advice as to how to "proceed with [name] and others in this situation with regard to choosing their nationality for appointment purposes."

3. I note that [name's] first appointment with the Organization was made on 1 September 1998, when she was appointed for one year under the 200 series of staff rules as an Italian Associate Expert in the Associate Experts Programme of DESA. In November 2001, she received an appointment in the Office of Human Resources Management (OHRM) and as of 1 April 2003 she has been engaged by DESA under the 200 series of the staff rules. Whilst she was engaged as an Associate Expert, [name's] nationality for United Nations administrative purposes was considered to be Italian and when [name] was re-engaged by the Organization in November 2001, her Italian nationality for United Nations administrative purposes was retained as this is "the nationality with which she is most closely associated."

Analysis

(i) [Name's] case

4. The issue of a staff member being eligible for reimbursement for US taxation and at the same time being entitled to international benefits was addressed in an opinion in the 1983 *United Nations Juridical Yearbook.*[1] This opinion states, *inter alia,* as follows:

[1] Opinion entitled "Determination for the purpose of the staff rules of the nationality of a staff member with dual Italian/United States nationality—implications as regards the tax liability of such determination." *United Nations Juridical Yearbook 1983* (United Nations Publication, Sales No. E.90.V.1), pp. 207–208.

"[i]f the staff member were to be considered as an Italian national for purposes of the Staff Rules, United Nations Development Programme (UNDP) would, as is perfectly proper in such cases, bear the financial consequences of Italian nationality (e.g., home leave) as well as of United States nationality (e.g., tax reimbursement). *Such financial consequences are the result of the factual determination to be made under rule 204.5*[2] *and ought not to be the deciding factor*". (Emphasis added).

5. In this regard, please find attached a copy of our memorandum* of 24 November 1999 on the case of an Associate Expert who had both US and German nationality. In that memorandum we set out the legal issues pertaining to the appointment of dual nationals to the Organization. We noted that nothing in the Staff Regulations and Rules prohibits the appointment of a dual national and that any staff member who is subject to national income taxation in respect of such staff member's official salary and emoluments must be reimbursed for such taxes by the Organization pursuant to staff regulation 3.3 (f).[3] However, we additionally noted that, in the case of Associate Experts, the sponsoring Government of such Expert "must agree to reimburse all expenses borne by the Organization in respect of that incumbent, including any obligation to provide reimbursement in respect of national income taxes."

(ii) Criteria for recognition of nationality of staff members

6. The determination of the nationality with which staff members are most closely associated, under staff rules 104.8 or 204.5, requires the exercise of the Secretary-General's discretion upon review of all the facts of each particular case in order to determine with which State a staff member has the closest ties. In 1953, the then Legal Counsel, Mr. A. B. Feller, suggested that the following criteria be taken into account in selecting the nationality to be recognized under staff rule 104.8, which criteria have been applied since that time:

(*a*) The staff member's passport;

(*b*) The country in which the staff member resided and the length of that residence prior to joining the United Nations;

(*c*) The country in which the staff member was recruited; and

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[2] Staff rule 204.5 states that:

"(a) In the application of these Rules, the United Nations shall not recognize more than one nationality for project personnel.

(b) When project personnel have been legally accorded nationality status by more than one State, nationality for the purpose of these Rules shall be the nationality of the State with which, in the opinion of the Secretary-General, the individual is most closely associated."

[3] Staff regulation 3.3 (f) states that:

"[w]here a staff member is subject both to staff assessment . . . and to national income taxation in respect of the salaries and emoluments paid to him or her by the United Nations, the Secretary-General is authorized to refund to him or her the amount of staff assessment collected from him or her provided that: . . . "

Although staff regulation 3.3 (f) states that the Secretary-General is "authorized to refund" such income taxes, the Administrative Tribunal long ago held that this requirement was intended to be mandatory to preserve equality among staff members. See Judgement No. 88, *Davidson* (1963); Judgement No. 237, *Powell* (1979).

* The memorandum is not reproduced herein.

(*d*) Such other date as would be further indicative of the country with which the staff member has the closest ties (i.e., place of birth, reimbursement by the United Nations of US income taxes paid by staff member, nationality of spouse and native language).

7. In UNAT Judgement No. 62, *Julhiard* (1955), the Tribunal dealt with the question of the Secretary-General's power to decide on the State with which a staff member with dual nationality is most closely associated pursuant to staff rule 104.8. The Tribunal did not find that it was called upon to express an opinion as to the State with which, having regard to all circumstances, the Applicant was most closely associated, but the Tribunal found that it was appropriate for it to consider whether, having regard to the circumstances, it was reasonable for the Secretary-General to conclude that the Applicant was most closely associated with one State rather than with another. The Tribunal also stated that the purpose of staff rule 104.8 "is to provide a solution to the administrative problems created by possession of more than one nationality and not to bring indirect pressure on staff members to renounce one of their nationalities."

8. In the *Julhiard* case, the Tribunal recognized the relevance or validity of certain criteria while expressly rejecting others. The criteria accepted in this manner by the Tribunal are included in the criteria set out in paragraph 9 above, and the criteria expressly rejected by the Tribunal are as follows:

(*a*) Nationality specified by the Respondent in the Applicant's contract.

(*b*) Actions taken by national authorities in granting passports or exercising their powers of taxation.

(*c*) Avoidance of obligation for the United Nations to pay for home leave and reimburse US income taxes.

(*d*) Omission of staff member to renounce citizenship of the State of which the staff member did not wish to be considered a national.

9. Pursuant to annex II of ST/AI/234/Rev.1,* the authority to make a decision as to which nationality a staff member is most closely associated in respect of staff in the professional and general service staff has been delegated to the Assistant Secretary-General for OHRM. However, in offices away from Headquarters this authority in respect of general service staff has been delegated to heads of office who in turn may delegate this authority to the chief of administration or other officials responsible for the administration of staff.

10. Should you require any further advice on this matter please do not hesitate to contact [name] of this Division.

19 January 2004

* For information on Administrative instructions, see note 4 in chapter V.

10. Miscellaneous

(*a*) Note to the Secretary-General's Special Representative for Western Sahara regarding the question of a referendum

Western Sahara—Principle of the right of self-determination—General Assembly resolution 1541 (XV) of 15 December 1960—Mechanisms to excercise self-determination may vary according to the circumstances of the case and the agreement of the parties—Requirement of an informed and democratic process by which the free and voluntary choice of the people of the territory concerned is expressed—Referendum—*Advisory Opinion on Western Sahara**—Enforcement of the results of a referendum

1. This is in reference to your note of 21 July 2004, referring to the statement made by [State A] that a referendum for Western Sahara without a political agreement will be highly destabilizing. You state that by implicitly setting aside the Baker plan, [State A] is now advocating a political agreement prior to the exercise of self-determination and de-emphasizing the referendum. You also recall that [State B] has rejected the Baker plan, or any other plan for that matter, which includes the option of "independence"; and that POLISARIO insists that as a decolonization matter, the Western Saharan problem can only be resolved by a referendum.

2. You seek our views on whether POLISARIO is right in suggesting that the question of Western Sahara must be solved by a referendum, and referendum only, or whether there are other ways in which the "free and genuine expression of the will of the people", can be exercised. More specifically, whether a referendum can be conducted as a measure of confirmation or rejection of a political agreement previously reached, and whether the lack of options somehow mars the "free and genuine expression"?

3. The right of self-determination as the right of peoples to freely determine their political status, and pursue their social, economic and cultural development, is enshrined in the United Nations Charter, the International Covenants on Economic, Social and Cultural Rights** and on Civil and Political Rights 1966,*** General Assembly resolutions 1514 (XV) of 14 December 1960, 1541 (XV) of 15 December 1960 and 2625 (XXV) of 24 October 1970, and the practice of States. While the right of self-determination is recognized as a well-established principle of international law, the means of its implementation might vary according to the circumstances of the case and the agreement of the parties. The essence of the principle of self-determination, however, is an informed and democratic process by which the "*free and voluntary choice of the people of the territory concerned*" is expressed (General Assembly resolution 1541 (XV), principle VII (a)), or, in the words of the International Court of Justice in its *Advisory Opinion on Western Sahara,* the "*free and genuine expression of the will of the peoples concerned*" (paragraph 55). In underscoring the importance of the process rather than its outcome, Judge Dillard said in his Separate Opin-

* *Western Sahara, Advisory opinion, I.C.J. Reports, 1975,* p. 12.

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

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

ion that " . . . self-determination is satisfied by a free choice not by a particular consequence of that choice or a particular method of exercising it" (page 123).

4. In practice, self-determination has been achieved through any of the following means: *a referendum* (e.g., the case of East Timor and Eritrea); *an agreement,* when the parties were willing to negotiate (the Oslo Accord between Israel and the Palestinian Liberation Organization), and in the absence of an agreement on the process of exercising the right (indeed on the right itself), *by war* (successfully in the case of Bangladesh and unsuccessfully in the case of Biafra). In his report on the situation concerning Western Sahara of 23 May 2003 (S/2003/565), the Secretary-General recalled that "there were many ways to achieve self-determination. It could be achieved through war or revolution; it could be achieved through elections, but this requires good will; or it could be achieved through agreement, as had been done by parties to other disputes" (paragraph 33).

5. A referendum is thus one of several consensual means of achieving self-determination, and if agreed to, in principle, it would also require an agreement on the territorial and personal scope (voters' eligibility), the questions put to the voters, and more importantly, perhaps, an agreement to abide by its results and a mechanism to enforce it, if necessary.

6. As long as the "referendum" reflects the "free and genuine expression of the will of the people," it can be conducted at any point in time and for any given purpose, including as a confirmation or rejection of a political agreement previously negotiated. The lack of a variety of options, in itself, does not mar "the free and genuine expression of will", on the understanding that the single option pursued is genuinely and freely agreed upon. It is on this condition also that a "popular consultation" could be dispensed with. In his Declaration in the *Advisory Opinion on Western Sahara,* Judge Singh, said in this connection the following:

> " . . . the principle of self-determination could be dispensed with only if the free expression of the will of the people was found to be axiomatic in the sense that the result was known to be a foregone conclusion or that consultations had already taken place in some form or that special features of the case rendered it unnecessary".

7. In reality, however, the choice of the process in many ways determines its outcome. While legally, therefore, a referendum is only one, and by no means the only, mechanism to achieve the right of self-determination, in the circumstances of Western Sahara, in the absence of any other agreed measure, it is the only means by which the Saharawi people can freely express their genuine will. It remains a fact, however, that the question of how to enforce the results of the referendum in the absence of a political agreement is still open.

25 August 2004

(*b*) The establishment of an International Commission of Inquiry for Darfur

I

Note to the Secretary-General regarding the establishment of an International Commission of Inquiry for Darfur: Interim advice

The establishment of an International Commission of Inquiry for Darfur—Legal and institutional framework for its establishment and operation—Establishment under Chapter VII of the Charter of the United Nations as a Subsidiary organ of the United Nations—Application of the Convention on the Privileges and Immunities of the United Nations, 1946* —Terms of reference—Cooperation with the Government—Institutional structure and composition—Reporting requirements

1. In the Interdepartmental Meeting that was chaired by the Deputy Secretary-General on 10 September 2004, the Office of Legal Affairs was tasked with taking the lead on preparing the legal and institutional framework for the establishment and operation of the International Commission of Inquiry for Darfur, should the draft resolution on the Sudan be adopted.

2. In paragraph 12 of the draft resolution,** as revised on 16 September 2004, the Security Council requests "that the Secretary-General rapidly establish an international commission of inquiry in order immediately to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable". It also "calls on all parties to cooperate fully with such a commission".

3. Set out below, on an interim basis, is an outline of the legal and institutional framework for the establishment and operation of the Commission, should the draft resolution be adopted in its present form. It might be necessary to make some adjustments to this framework in the event that the draft resolution is adopted with further changes.

A. The legal basis of the Commission

4. The International Commission would be established by a Security Council resolution adopted under Chapter VII of the Charter, and would have the legal status of a United Nations subsidiary organ.

5. As a subsidiary organ of the United Nations, the Commission would be financed through assessed contributions, and the Convention on the Privileges and Immunities of the United Nations, 1946, would apply to the members and other personnel of the Commission, its premises, documents and operational activities.

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

** The Security Council adopted on 18 September 2004 resolution 1564, requesting the Secretary-General to establish an international commission of inquiry for Darfur.

B. The terms of reference of the International Commission

6. The terms of reference of the International Commission that would be established pursuant to the resolution, as it is currently drafted, should be expanded in two respects. First, the Commission should be able not only to determine whether acts of genocide have been committed in Darfur, but also to characterize the crimes as war crimes, crimes against humanity or genocide. Secondly, United Nations commissions of inquiry are normally required to make recommendations for further actions, whether by their parent organs or by Member States.

7. With these proposed additions, the terms of reference of the International Commission should include:

(*a*) Investigation of reports of serious violations of international humanitarian law and human rights law committed in Darfur;

(*b*) Qualifying the crimes and determining whether acts of genocide have been committed;

(*c*) Identifying the perpetrators with a view to ensuring that those responsible are held accountable; and

(*d*) Making recommendations to the Security Council, through the Secretary-General, on future actions to halt or prevent further violations and address impunity.

C. Cooperation with the Government of Sudan

8. While a Commission of Inquiry, founded in a Chapter VII resolution, may, in theory, be imposed upon the Sudan regardless of its consent, in reality, unless the Council is ready to take measures to enforce compliance with its resolution, the cooperation of the Government would be required at almost every stage of the operation of the Commission. The Commission should, in particular, be guaranteed:

(*a*) Freedom of movement, including facilities of transport;

(*b*) Freedom of access to all sources of information, including contact with governmental authorities, non-governmental organizations and other institutions, and in principle, any individual whose testimony is considered necessary for the fulfilment of its mandate;

(*c*) Access to all documentary material and physical evidence;

(*d*) Privileges and immunities necessary for the independent conduct of the inquiry;

(*e*) Appropriate security arrangements for its personnel and documents;

(*f*) Protection of victims and witnesses collaborating with the Commission against any act of intimidation, ill-treatment and reprisals.

D. The institutional structure and composition of the Commission

9. The Commission would be composed of three members appointed by the Secretary-General. To command respect and credibility, in particular in the characterization of the crime of genocide, the members of the Commission would have to be eminent personalities known and recognized for their impartiality, objectivity, competence, and

their authority and expertise in human rights law, international humanitarian law and criminal law.

10. The Commissioners would be assisted by legal experts in international humanitarian law, human rights and criminal law, criminal investigation and genocide-based violence, and by administrative and technical support staff.

11. The Commission would be serviced by the Office of the High Commissioner for Human Rights (OHCHR). The budget estimates for the work of the Commission would be prepared by OHCHR.

E. Reporting requirements

12. The Commission should submit its report within a reasonable period of time and not later than thirty days from the onset of its activities, taking into account the urgency of the situation and the need to conduct a thorough investigation and make recommendations in full knowledge of the legal and practical implications involved.

17 September 2004

II

*Letter from the Secretary-General to the President of the Security Council regarding the establishment of an International Commission of Inquiry for Darfur**

Members of the Council will recall that, in its resolution 1564 (2004) of 18 September 2004, the Security Council requested me, *inter alia,* to "rapidly establish an international commission of inquiry in order immediately to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable".

I have the honour to inform you that, pursuant to the request of the Council, I have appointed a five-member Commission, to be chaired by Antonio Cassese (Italy), former President of the International Criminal Tribunal for the Former Yugoslavia (ICTY). In addition to Mr. Cassese, the other members of the Commission are: Therese Striggner Scott (Ghana), Mohamed Fayek (Egypt), Hina Jilani (Pakistan) and Diego García-Sayan (Peru).

Dumisa Ntsebeza (South Africa) will be the Executive Director of the Commission and head of the technical and administrative team providing support to the Commission.

The International Commission of Inquiry for Darfur shall:

(*a*) Investigate reports of serious violations of international humanitarian law and human rights law committed in Darfur by all parties in the current conflict;

(*b*) Qualify crimes and determine whether or not acts of genocide have occurred or are still occurring;

(*c*) Determine responsibility and identify the individual perpetrators responsible for the commission of such violations, and recommend accountability mechanisms before which those allegedly responsible would be brought to account.

* S/2004/812.

In the conduct of its inquiry, the Commission shall enjoy the full cooperation of the Government of the Sudan. It shall be provided with the necessary facilities to enable it to discharge its mandate and shall, in particular, be guaranteed freedom of movement throughout the territory, freedom of access to all sources of information, both testimonial and physical evidence, and all documentary material. Appropriate security arrangements for the personnel and documents of the Commission shall be provided, and protection of victims and witnesses and all those appearing before the Commission in connection with the inquiry shall be guaranteed.

I have asked the Commission to submit a report to me within 90 days from the start of its activities.

4 October 2004

III

Letter from the Secretary-General to the President of the Sudan regarding the establishment of an International Commission of Inquiry for Darfur

Excellency,

I have the honour to refer to Security Council resolution 1564 (2004) adopted on 18 September 2004, by which I was requested to "rapidly establish an international commission of inquiry in order immediately to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable".

I have accordingly appointed a five-member Commission to be chaired by Mr. Antonio Cassese (Italy), former President of the ICTY. In addition to Mr. Cassese, the other members of the Commission are: Justice Therese Striggner Scott, (Ghana), Mr. Mohamed Fayek (Egypt), Ms. Hina Jilani (Pakistan), and Mr. Diego Garcia-Sayan (Peru).

Mr. Dumisa Ntsebeza (South Africa) will be the Executive Director of the Commission and the head of the technical and administrative team supporting the Commission.

The International Commission of Inquiry for Darfur shall have the mandate to:

(*a*) Investigate reports of serious violations of international humanitarian law and human rights law committed in Darfur by all parties in the current conflict;

(*b*) Qualify the crimes and determine whether or not acts of genocide have occurred or are still occurring;

(*c*) Determine responsibility and identify individual perpetrators responsible for the commission of such violations, and recommend accountability mechanisms before which those allegedly responsible would be brought to account.

In this connection, I wish to recall that in paragraph 12 of its resolution, the Security Council called "on all parties to cooperate fully with such a commission". The Government of Sudan is thus requested to extend its full cooperation to the Commission and provide it with the necessary facilities to enable it to discharge its mandate. It shall, in particular guarantee the Commission:

(*a*) Freedom of movement throughout the territory of the Sudan, including facilities of transport.

(*b*) Unhindered access to all places and establishments, and freedom to meet and interview representatives of governmental and local authorities, military authorities, community leaders, nongovernmental organizations and other institutions, and any such person whose testimony is considered necessary for the fulfilment of its mandate.

(*c*) Free access to all sources of information, including documentary material and physical evidence.

(*d*) Appropriate security arrangements for the personnel and documents of the Commission.

(*e*) Protection of victims and witnesses and all those who appear before the Commission in connection with the inquiry; no such person shall, as a result of such appearance suffer harassment, threats, acts of intimidation, ill-treatment and reprisals.

(*f*) Privileges, immunities and facilities necessary for the independent conduct of the inquiry. In particular, members of the Commission shall enjoy the privileges and immunities accorded to experts on missions under article VI of the 1946 Convention on the Privileges and Immunities of the United Nations, and officials of the United Nations shall enjoy the privileges and immunities of officials under articles V and VII of the Convention.

The Commission is expected to submit to me a report within 90 days from the start of its activities.

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

7 October 2004

B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations

1. International Labour Organization

(Submitted by the Legal Adviser of the International Labour Conference)

(*a*) Provisional Record No. 16, ninety-second session, Report of the Standing Orders Committee[1]

Modifications to article 5, paragraph 2, of the Standing Orders of the International Labour Conference (Mandate of the Credentials Committee)—Possibility to examine objections relating to the failure to deposit credentials of an Employers' or Workers' delegate—Objective basis for the calculation of the commencement of the 72 hours time limit for the submission of objections to nominations of delegates or advisors—Prerogative of the Conference to accept or reject a referral by the Credentials Committee to the Committee on Freedom of Association—Examination of credentials of "any other person" accredited to the Conference

The Legal Adviser of the International Labour Conference, representing the Secretary-General, explained that the Governing Body had examined two distinct means to

[1] ILC92-PR16–181-En.doc.

attain the objectives that were submitted to the Conference: the first are modifications to the Standing Orders of the Conference; and the second are practical measures that could be carried out without modification to the existing Standing Orders framework. The Governing Body considered that, account being taken of its practical importance, this reform should be carried out on a temporary basis. Consequently, the proposals would be evaluated after a "probationary" period before they could be definitively adopted. At the end of this period, the provisions would automatically lapse unless the Conference takes a decision to renew them. If the Conference adopts the proposed provisions they would come into effect from the ninety-third session (2005) and would remain in force, in the absence of any decision to the contrary by the Conference, until the ninety-sixth session (2007). Thereafter, the Governing Body would have to evaluate the system with a view to reporting to the Conference in June 2008. It being understood that the Conference reserves the possibility to modify or annul, at any time, the provisions and practical measures that are not pertinent or that reveal themselves to be inefficient.

The Legal Adviser summarized the proposed amendments to the Standing Orders. The modification proposed to the second paragraph of article 5 of the Standing Orders concerned the mandate of the Credentials Committee. In addition to the three elements of its mandate that are contained in the initial paragraph, two had been added: firstly, in paragraph 2 (b) the possibility to examine objections relating to the failure to deposit credentials of an Employers' or Workers' delegate; and, secondly, in paragraph 2 (d) the monitoring of any situation with regard to the observance of the provisions of article 3 or article 13, paragraph 2 (a), of the Constitution* that the Credentials Committee would be able to follow up at the request of the Conference.

The Legal Adviser confirmed the necessity of an objective basis for the calculation of the commencement of the 72 hours.** The formulation of the current article 26, paragraph 4 (a), offered a certain amount of flexibility to fix the commencement of the 72-hour period, which had in turn permitted the Governing Body to request the advancement of the publication of the first official list of delegations by one week for the present session of the Conference that would serve as the basis for the submission of objections.

The Legal Adviser explained that the International Labour Conference can either accept or reject a referral by the Credentials Committee to the Committee on Freedom of Association and that it could request a vote under the Standing Orders of the Conference. Where a vote takes place, any delegate who so requests to explain his or her vote may do so, briefly, immediately after the voting.

Regarding the information to be contained in the data bank, the Legal Adviser drew the Committee's attention to the Governing Body's recommendation that the data bank be comprised of the reports of the Credentials Committee of recent sessions of the Conference. The data bank would be public and could provide constituents, through the jurisprudence of the Committee, with useful information as to good and bad practices as pertaining to credentials. In this respect, it also addresses the concern for transparency.

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* United Nations, *Treaty Series,* vol. 15, p. 40; *ibid.*, vol. 191, p. 143; and *ibid.*, vol. 958, p. 167.

** The Standing Orders provide for a 72 hours time-limit within which objections may be made to the nomination of any delegate or advisor.

Regarding the increased clarity of article 5, paragraph 2 (a), the Legal Adviser noted that if [the wording] " . . . persons accredited to the Conference" were primarily intended for the delegates and advisers nominated by the Governments, the Credentials Committee also examines the credentials of any other person accredited to the Conference as is done for the representatives of intergovernmental organizations and international non-governmental organizations.

Concerning the practical effect of the proposed provision regarding article 5, paragraph 2 (a), the Legal Adviser explained that, as compared to the current version of the Standing Orders, this modification was intended to conform the Standing Orders with the ongoing practice of the Credentials Committee, which in addition to examining the objections and complaints regarding the Employers' and Workers' delegates also examines the credentials of any person accredited to the Conference.

In view of the concerns raised in the Standing Orders Committee, the Legal Adviser proposed that article 5, paragraph 2 (a), be deleted and that in article 5, paragraph 2 (b), it be reworded as "The Credentials Committee shall examine, in accordance with the provisions of section B of Part II: (a) the credentials as well as any objection relating to the credentials of delegates and their advisers or to the failure to deposit credentials of an Employers' or Workers' delegate." The Employer and Worker members endorsed the Legal Adviser's proposal.

(*b*) Provisional record No. 20, ninety-second session, Report of the Committee on Human Resources[2]

AMENDMENT PROCEDURE FOR TEXT SUBMITTED TO A COMMITTEE BY ITS DRAFTING COMMITTEE—ARTICLE 67 OF THE STANDING ORDERS OF THE INTERNATIONAL LABOUR CONFERENCE

The Legal Adviser summarized the procedure by which an amendment, as subamended, had been adopted. He explained that it would not be possible, after the examination of the text by the drafting committee of a commission, to reopen a discussion on a paragraph of a recommendation text. A possible solution could be found in article 67 of the Standing Orders of the International Labour Conference: "Amendments to a text submitted to a committee by its drafting committee may be admitted by the Chairman after consultation with the Vice-Chairmen". If the Committee decided that there was a problem of comprehension, it could amend any portion of the text prior to final adoption of the full instrument. At the present time, paragraph 5 [of the proposed Recommendation] had to be adopted or rejected. If rejected, the entire paragraph would be deleted.

[2] ILC92-PR20–261-En.doc.

(*c*) Report of the Technical Committee No. 1 of the Preparatory Technical Maritime Conference, Geneva, 13–24 September 2004[3]

Legal consequences of a reference to the four categories of "fundamental rights" in a draft convention—Promotional character of the Declaration on Fundamental Principles and Rights at Work* (Declaration)—Reference to fundamental rights in draft article III does not create reporting obligations on the Declaration—Adoption of necessary national legislation to implement obligations under the future convention—Requirement to carry out treaty obligations in good faith—Legal consequences of including a reference to the Declaration in the preamble of a draft convention

The Legal Adviser has been requested by the Chairperson of the Committee to put in writing his replies to the issues raised concerning article III** of the draft [consolidated maritime labour] Convention:

1. With regard to the legal status and the consequences of including the "wording" of the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work in the provisions of article III [of the draft Convention], as proposed by the President of the Conference, the Legal Adviser observed that the "wording" of the Declaration was not included in the proposal; rather there was reference to the fundamental rights together with an obligation for members who ratify the future Convention to satisfy themselves that the provisions of their national legislation respect those fundamental rights in the context of the future Convention. The status of the Declaration and its "wording" reflect, through reference to the fundamental principles and rights, the promotional character of that instrument, which varies significantly from an international labour convention.

2. The reference to the fundamental rights in the text of article III of the future Convention would not create any reporting obligations on the content of the Declaration to the ILO supervisory bodies. The two instruments are different and the ILO supervisory bodies have no competence to examine the implementation of the Declaration, which has its own follow-up mechanism.

3. Article III will be, as all obligatory provisions of the Convention, subject to examination by the bodies responsible for the supervision of the implementation of ILO standards. The important issue is to identify the obligation that will be the focus of this supervision. Each member who ratifies the future Convention will be obliged, in accord-

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[3] PTMC-2004–12–0172–1-En-doc.

* The Declaration was adopted by the General Conference of the International Labour Organization at its eighty-sixth session on 18 June 1998.

** The text reads as follows:

"Each Member shall satisfy itself that the provisions of its law and regulations respect, in the context of this Convention, the fundamental rights to:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour; and

(d) the elimination of discrimination in respect of employment and occupation."

ance with article III, to satisfy itself that its legislation respects, in the context of this Convention, the four categories of fundamental rights. As with all obligations arising out of international labour Conventions, this should be carried out in good faith. Subject to what the ILO Governing Body may decide concerning the details to be requested in the report form in the framework of article 22 of the ILO Constitution, examination by the supervisory bodies will concern this specific obligation. This provision does not impose any additional obligation on States that have ratified one or more of the fundamental Conventions, because those Conventions already cover, without exception, the workers who are the subject of the future Convention.

4. With regard to the issue of whether the reference to the four categories of fundamental rights in article III would create a reporting obligation under the ILO Declaration outside the scope of its follow-up mechanism, the reply is that it would not, as explained above.

5. Finally, on the consequences of including a reference to the Declaration in the preamble to the future Convention, the Legal Adviser recalled that the inclusion of a preambular clause referring to the Declaration, similar to that which exists in the preambles to the Worst Forms of Child Labour Convention, 1999 (No. 182),* and the Maternity Protection Convention, 2000 (No. 183),** would not result in any legal obligation for Members. The preambles to international labour Conventions do not create any legal obligations.

* United Nations, *Treaty Series,* vol. 2133, p. 161.

** The Convention will be published in the United Nations, *Treaty Series,* vol. 2181.

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 Court of Justice[1]

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established in June 1945 by the Charter of the United Nations and began work in April 1946.

1. Judgments

(i) *Avena and other Mexican Nationals (Mexico* v. *United States of America)*, 31 March 2004.

(ii) *Legality of Use of Force (Serbia and Montenegro* v. *Belgium)*, 15 December 2004.

(iii) *Legality of Use of Force (Serbia and Montenegro* v. *Canada)*, 15 December 2004.

(iv) *Legality of Use of Force (Serbia and Montenegro* v. *France)*, 15 December 2004.

(v) *Legality of Use of Force (Serbia and Montenegro* v. *Germany)*, 15 December 2004.

(vi) *Legality of Use of Force (Serbia and Montenegro* v. *Italy)*, 15 December 2004.

(vii) *Legality of Use of Force (Serbia and Montenegro* v. *Netherlands)*, 15 December 2004.

(viii) *Legality of Use of Force (Serbia and Montenegro* v. *Portugal)*, 15 December 2004.

(ix) *Legality of Use of Force (Serbia and Montenegro* v. *United Kingdom)*, 15 December 2004.

2. Advisory Opinions

On 9 July 2004, the Court delivered its advisory opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* following a request by the General Assembly in its resolution ES-10/14, adopted on 8 December 2003.

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[1] The texts of the judgments, advisory opinions and orders are published in the *I.C.J Reports.* Summaries of the judgments, advisory opinions and orders of the Court are provided in English and French on its website at www.icj-cij.org. In addition, extracts of these summaries are contained in *Summaries, Advisory Opinions and Orders of the International Court of Justice* (United Nations Publication, ST/LEG/SER.F/1 and Add.1 and 2), which is published in the six official languages of the United Nations. The summaries of the decisions listed above will appear in the third addendum to this publication covering the period from 2003 to 2007. See also chapter III A, section 18 above.

3. Pending cases as at 31 December 2004

(i) *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine)* (2004-).

(ii) *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia* v. *Singapore) (2003-).*

(iii) *Certain Criminal Proceedings in France (Republic of the Congo* v. *France)* (2003-).

(iv) *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda)* (2002-).

(v) *Frontier Dispute (Benin* v. *Niger) (2002-).*

(vi) *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)* (2001-).

(vii) *Certain Property (Liechenstein* v. *Germany)* (2001-).

(viii) *Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)* (1999-).

(ix) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia and Montenegro)* (1999-).

(x) *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)* (1999-).

(xi) *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)* (1998-).

(xii) *Gabčíkovo-Nagymaros (Hungary* v. *Slovakia)* (1993-).

(xiii) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)* (1993-).

B. International Tribunal for the Law of the Sea[2]

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.[3] The Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea, signed by the Secretary-General of the United Nations and the President of the Tribunal on 18 December 1997, establishes a mechanism for cooperation between the two institutions.[4]

1. Judgments

Case No. 13 – The "Juno Trader" Case (Saint Vincent and the Grenadines v. *Guinea-Bissau), Prompt Release*, 18 December 2004.

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[2] The texts of the 2004 judgments and orders are published in the *Reports of Judgments, Advisory Opinions and Orders/Recueil des arrêts, avis consultatifs et ordonnances, Volume 8 (2004),* Martinus Nijhoff Publishers, 2005, and are also are provided in English and French on the Tribunal's website at www.itlos.org. For more information about the Tribunal's activities, see the Annual report of the International Tribunal for the Law of the Sea for 2004 (SPLOS/122).

[3] United Nations, *Treaty Series*, vol. 1833, p. 3.

[4] United Nations, *Treaty Series*, vol. 2000, p. 468.

2. Pending cases as at 31 December 2004

Case No. 7 – Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile v. *European Community)* (2000-).

C. International Criminal Court[5]

The International Criminal Court (ICC) is an independent permanent court established by the Rome Statute of the International Criminal Court, 1998.[6] The Relationship Agreement between the United Nations and the International Criminal Court, signed by the Secretary-General of the United Nations and the President of the Court on 4 October 2004, establishes a mechanism for cooperation between the two institutions.[7]

(i) *Situation in the Democratic Republic of the Congo ICC-01/04*

In March 2004, the President of the Democratic Republic of the Congo (DRC) referred to the Prosecutor the situation of crimes allegedly committed in the territory of the DRC since the entry into force of the Rome Statute, on 1 July 2002. Subsequently, in June 2004, the Prosecutor announced the opening of the first investigation of the ICC concerning this situation.

(ii) *Situation in Uganda ICC-02/04*

In July 2004, the Prosecutor announced the opening of an investigation into the situation concerning Northern Uganda, following the referral of the situation by Uganda in December 2003.

D. International Criminal Tribunal for the former Yugoslavia[8]

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.[9]

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[5] For more information about the Court's activities, see the Report of the International Criminal Court for 2004 (A/60/177). See also the Court's website at www.icc-cpi.int/.

[6] United Nations, *Treaty Series*, vol. 2187, p. 3.

[7] See chapter II A, section 3 above and United Nations, *Treaty Series*, vol. 2283, p. 195.

[8] The texts of the indictments, decisions and judgements are published in the *Judicial Reports / Recueils judiciaires* of the International Criminal Tribunal for the former Yugoslavia for each given year. The texts are also available in English and French on the Tribunal's website at www.un.org/icty/index.html. For more information about the Tribunal's activities, see 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 (A/59/215–S/2004/627 and A/60/267–S/2005/532). See also chapter IIIA, section 19 above.

[9] 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).

1. Judgements delivered by the Appeals Chamber

(i) *Prosecutor* v. *Mitar Vasiljević*, Case No. IT-98-32-T, Judgement, 25 February 2004.

(ii) *Prosecutor* v. *Radislav Krstić*, Case No. IT-98-33-T, Judgement, 19 April 2004.

(iii) *Prosecutor* v. *Tihomir Blaškić*, Case No. IT-95–14-T, Judgement, 29 July 2004.

(iv) *Prosecutor* v. *Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-T, Judgement, 17 December 2004.

2. Judgements delivered by the Trial Chambers

(i) *Prosecutor* v. *Ranko Češić*, Case No. IT-95-10/1, Sentencing Judgement, 11 March 2004.

(ii) *Prosecutor* v. *Miodrag Jokić*, Case No. IT-01-42/1, Sentencing Judgement, 18 March 2004.

(iii) *Prosecutor* v. *Darko Mrđa*, Case No. IT-02-59, Sentencing Judgement, 31 March 2004.

(iv) *Prosecutor* v. *Miroslav Deronjić*, Case No. IT-02-61, Sentencing Judgement, 30 March 2004.

(v) *Prosecutor* v. *Milan Babic,* Case No. IT-03-72, Sentencing Judgement, 29 June 2004.

(vi) *Prosecutor* v. *Radoslav Brđjanin*, Case No. IT-99-36, Judgement, 1 September 2004.

E. International Criminal Tribunal for Rwanda[10]

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.[11]

1. Judgements delivered by the Appeals Chamber

(i) *Prosecutor* v. *Eliézer Niyitegeka*, Case No. ICTR-96-14-T, Judgement, 9 July 2004.

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[10] The texts of the orders, decisions and judgements are published in the *Recueil des Ordonnances, Décisions et Arrêts/Reports of Orders, Decisions and Judgements* for the International Criminal Tribunal for Rwanda. The texts are also available in English and French in the Tribunals Judicial Records Database at www.ictr.org. For more information about the Tribunal's activities, see the annual report to the General Assembly and the Security Council: 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 (A/59/183–S/2004/601 and A/60/229–S/2005/534). See also chapter IIIA, section 19 above.

[11] The Statute of the Tribunal is contained in the annex to the resolution.

(ii) *Prosecutor* v. *Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case No. ICTR-96-10:2; ICTR-96-17, Judgement, 13 December 2004.

2. Judgements delivered by the Trial Chambers

(i) *Prosecutor* v. *Jean de Dieu Kamuhanda*, Case No. ICTR-99-54, Judgement, 22 January 2004.

(ii) *Prosecutor* v. *André Ntagerura, Samuel Imanishimwe and Emmanuel Bagambiki (the Cyangugu case),* Case No. ICTR-97-36; ICTR-99-46T, ICTR-96-10A, Judgement and Sentence, 25 February 2004.

(iii) *Prosecutor* v. *Sylvestre Gacumbitsi*, Case No. ICTR-01-64, Judgement, 17 June 2004.

(iv) *Prosecutor* v. *Emmanuel Ndindabahizi*, Case No. ICTR-01-71-I, Judgement and Sentence, 15 July 2004.

F. Special Court for Sierra Leone[12]

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.[13]

1. Judgements

No judgements were delivered by the Trial Chambers or the Appeals Chamber in 2004.

2. Decisions of the Appeals Chamber

The Appeals Chamber issued the following decisions on jurisdictional and other matters relating to the competence of the Court or the nature of the proceedings:

(i) *Prosecutor* v. *Sam Hinga Norman*, Case No. SCSL-2004–14-AR72(E), Decision on preliminary motion based on lack of jurisdiction: Judicial independence, 13 March 2004.

(ii) *Prosecutor* v. *Sam Hinga Norman*, *Morris Kallon, and Brima Bazzy Kamara,* Case No. SCSL-2004-14-AR72(E), SCSL-2004-15-AR72(E), SCSL-2004-16-AR72(E), Decision on constitutionality and lack of jurisdiction, 13 March 2004.

(iii) *Prosecutor* v. *Issa Hassan Sesay*, Case No. SCSL-2004-15-AR15, Decision on defence motion seeking the disqualification of Justice Robertson from the Appeals Chamber, 13 March 2004.

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[12] The texts of the judgements and decisions are available on the Court's website at www.sc-sl.org. For more information on the Court's activities, see the Second Annual Report of the President of the Special Court, covering the period from January 2004 to January 2005.

[13] For the text of the Agreement and the Statute of the Special Court, see United Nations, *Treaty Series*, vol. 2178, p. 137.

(iv) *Prosecutor* v. *Morris Kallon and Brima Bazzy Kamara,* Case No. SCSL-2004-15-AR72(E), SCSL-2004-16-AR72(E), Decision on challenge to jurisdiction: Lomé Accord Amnesty, 13 March 2004.

(v) *Prosecutor* v. *Augustine Gbao*, Case No. SCSL-2004-15-PT, Decision on appeal by the Truth and Reconciliation Commission (TRC) and accused against the decision of Judge Bankole Thompson delivered on 3 November 2003 to deny the TRC's request to hold a public hearing with Augustine Gbao, 7 May 2004.

(vi) *Prosecutor* v. *Augustine Gbao*, Case No. SCSL-2003-09-PT, Decision on preliminary motion on the invalidity of the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court, 25 May 2004.

(vii) *Prosecutor* v. *Allieu Kondewa*, Case No. SCSL-2004-14-AR72(E), Decision on lack of jurisdiction / abuse of process: Amnesty provided by the Lomé Accord, 25 May 2004.

(viii) *Prosecutor* v. *Moinina Fofana*, Case No. SCSL-2004-14-AR72(E), Decision on preliminary motion on lack of jurisdiction: Nature of the armed conflict, 25 May 2004.

(ix) *Prosecutor* v. *Moinina Fofana*, Case No. SCSL-2004-14-AR72(E), Decision on preliminary motion on lack of jurisdiction: Illegal delegation of jurisdiction by Sierra Leone, 25 May 2004.

(x) *Prosecutor* v. *Moinina Fofana*, Case No. SCSL-2004-14-AR72(E), Decision on preliminary motion on lack of jurisdiction *materiae*: Illegal delegation of powers by the United Nations, 25 May 2004.

(xi) *Prosecutor* v. *Santigie Borbor Kanu*, Case No. SCSL-2004-16-AR72(E), Decision on motion challenging jurisdiction and raising objections based on abuse of process, 25 May 2004.

(xii) *Prosecutor* v. *Sam Hinga Norman*, Case No. SCSL-2004–14, Decision on the motion to recuse Judge Winter from the deliberation in the preliminary motion on the recruitment of child soldiers, 28 May 2004.

(xiii) *Prosecutor* v. *Sam Hinga Norman*, Case No. SCSL-2004–14-AR72(E), Decision on preliminary motion based on lack of jurisdiction (child recruitment), 31 May 2004.

(xiv) *Prosecutor* v. *Charles Ghankay Taylor,* Case No. SCSL-2003-01-PT, Decision on immunity from jurisdiction, 31 May 2004.

(xv) *Prosecutor* v. *Issa Hassan Sesay, Morris Kallon and Augustine Gbao,* Case No. SCSL-2004-15-T, Sesay, Decision on application to withdraw motion seeking the disqualification of Justice Robertson from all judicial functions regarding the RUF, 15 October 2004.

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

A. Argentina

Supreme Court of Justice of the Nation

*Proceedings for review of leave to appeal Jorge Francisco Baca Capodónico, Plea of no action, Case No. 35.295, 27 May 2004**

Question of jurisdictional immunity of an official of the International Monetary Fund requested for extradition—Determination of the stage of the judicial proceedings in which the issue of immunity shall be raised—Issue of diplomatic immunity not included in requirements laid down by the Montevideo Treaty on International Penal Law (1889)**—Definitive nature of the injury at stake—Issue of immunity requires a special prior ruling to the extradition trial

Office of the Attorney-General

Supreme Court:

I

Jorge Francisco Baca Campodónico, a Peruvian citizen residing in our country, was summoned by the judge of the Criminal and Correctional Court No. 6 of this city to attend the hearing provided for in articles 33 and 34 of the Montevideo Treaty on International Penal Law of 1889 and article 49 of Act No. 24767, under which the judicial authorities of the Republic of Peru are requesting his handover for trial in criminal proceedings brought against him. Mr. Baca Campodónico, on this first occasion in the proceedings and invoking his status as an official of the International Monetary Fund on an official visit to Argentina, invited by the local government authorities for a technical assistance mission, invoked the right to immunity from arrest accorded to him by international treaties (folios 41/42).

In response, the federal judge decided "to declare that Baca Campodónico has no immunity and/or privilege whatsoever with respect to the conduct of the present extradition trial" (folios 75 to 90 verso).

When Mr. Baca Campodónico appealed against this decision, division I of the National Federal Criminal and Correctional Appeals Court of this city concluded that "the

* Translated from Spanish by the Secretariat of the United Nations.

** OASTS 34, p. 1.

arguments put forward by Mr. Baca Campodónico's legal counsel concerning his 'functional' immunity are pleas on the merits relevant to the debate—though limited to the feasibility of extradition, since 'his guilt or innocence in the acts giving rise to the request for extradition' cannot be analysed (see, *inter alia*, judgements 97:39; 106:20; 139:94 and 150:317)—which this Court, as appeal court with respect to the judge bringing the extradition proceedings, is prohibited by law from evaluating". It added that "the conclusion that must be drawn from joint analysis of all the arguments put forward is that this is not the appropriate stage at which to raise such questions. This conclusion is closely linked to the argument put forward by the Appellant's legal counsel and resolves any doubts that might exist as to the sphere in which the case must continue to be handled, bearing in mind the reservations expressed by Mr. Roberto Durrieu and Mr. Guillermo Arias, with the result that this is the decision taken" (folios 442/443).

As can be seen, the lower court considers that the plea of immunity must be raised in the trial proper, despite which it does not annul the decision of the federal judge in ruling—erroneously, in the Appeal Court's opinion—on the merits of the issue, in other words, on whether or not the Appellant's jurisdictional immunity should be recognized.

A special federal appeal was lodged against this decision (folios 454 to 473) and it was the ensuing refusal of leave to appeal, on grounds that the requirements of a higher court and a final judgement or its equivalent (folio 497 and verso) had not been met, that gave rise to the present Complaint.

II

1. According to the doctrine established by the Court in the precedent *Proceedings for review of leave to appeal, Martinez Adalid, Jorge Oscar, concerning fraud by means of fraudulent administration and various incidents of pleas of no action* (M. 1286.XXXVI), this case raises an important federal issue in that the Appellant's argument concerning the jurisdictional immunity to which Mr. Baca Campodónico is entitled in his capacity as an official of the International Monetary Fund, a body with legal personality under international law, involves the interpretation and application of conventions signed by Argentina and hence the State's fulfilment of its obligations in this area (judgements 318:2639; 319:2411). Furthermore, the injury is definitive since the conduct of extradition proceedings would entail effective submission to jurisdiction and deprivation of the immunity to which the Appellant considers himself entitled (judgement 319:585). These exceptional circumstances warrant a finding by Your Excellency that the requirements of a final judgement and a higher court have been met for the purposes of the special appeal.

2. Your Excellency made such a finding, *mutatis mutandis*, in the domestic sphere when, on the occasion of the discussion as to whether or not summoning two national deputies to a conciliation hearing for privately actionable offences constituted the commitment to trial referred to in articles 68, 69 and 70 of the Constitution, you said that the ruling precluding a discussion of this issue caused a present damage and could not be repaired subsequently, since once the hearing was held the damage would be irreversible (case *Alvarez, Carlos Alberto*, judgement 319:585). This argument was reiterated by this Office in its ruling in the case *Marquevich, Roberto Jose* S.C.M. 216, L.XXXVII of 18 July 2002, to which you referred for reasons of brevity in the Judgement of 3 April 2003. The ruling said that "if the issue under discussion is the constitutional validity of the institution of judicial proceedings against a judge, then the mere institution of such proceedings

would immediately infringe the guarantee, in which case it would be pointless to expect final judgement to be passed against the person, especially when immunity is not personal but protects the institution and the free exercise of judicial functions".

3. The essence of the extradition trial is the discussion on "the identity of the person whose extradition is requested and fulfilment of the requirements laid down by the applicable laws or treaties" (Judgements 139:94; 150:316; 212:5; 262:409; 265:219; 289:216; 298:138; 304:1609; and 308:887, among many others).

In the present case, this would be verification of all the requirements laid down by the Montevideo Treaty on International Penal Law of 1889: the jurisdiction of the requesting State; that the nature or gravity of the offence justifies handing the person over (it is punishable by at least two years imprisonment, does not involve political crimes or crimes against the internal or external security of a State and does not involve duelling, adultery, insults and defamation or crimes against religion); that documents are submitted which under the laws of that State authorize the imprisonment and trial of the accused; that the crime is not time-barred; and that the person has not already been punished for the same crime (articles 19 to 23). It will also be necessary to verify whether the penalty to be applied is the death penalty, in which case the substitution of a lesser penalty must be requested (article 29); whether any other requests for extradition have been made by other countries, so that the person can be handed over to the country where the most serious crime was committed (article 27); and whether the person has been granted asylum (articles 15 and 16).

As can be seen, neither the Treaty nor the corresponding law, mention that the issue of diplomatic immunity must be discussed at the extradition trial. That is only logical, since this is an issue that must be discussed prior to the debate on the merits. It is obvious that the question of whether or not the person must be committed to trial cannot be discussed in the course of the trial itself, since that would mean analysing *a posteriori* something that should have been resolved *a priori*. Such a method would be absurd, in that it would make irreparable something that could have been remedied at the outset. Judicial procedure, however, has a way of avoiding precisely this arbitrary scenario: the situation that might preclude extradition is discussed as part of the trial preliminaries, in other words, in the context of issues requiring a special prior ruling.

4. Based on these reasons and the case law cited above, the lower court should rule on the plea of immunity from jurisdiction put forward by the Appellant, in the light also of the corresponding international law (Convention on the Privileges and Immunities of the United Nations, 1946; Convention on the Privileges and Immunities of the Specialized Agencies, 1947; Articles of Agreement of the International Monetary Fund, among others).

III

Accordingly, I believe that Your Excellency, in allowing the Complaint, can declare the special appeal admissible and return the proceedings to the lower court for a new decision on the lines indicated in the preceding paragraph.

Buenos Aires, 22 March 2004

Luis Santiago Gonzalez Warcalde

*Supreme Court of Justice**

Buenos Aires, 27 May 2004

Having considered the dossier "Proceedings for review of leave to appeal brought by the defence counsel of Jorge Francisco Baca Campodónico in the case: *Baca Campodónico, Jorge Francisco, Plea of no action*, Case No. 35.295", in order to decide on its admissibility,

Whereas the issues under debate in this case have been adequately dealt with in the ruling of the deputy Attorney-General, to whose conclusions reference is made for reasons of brevity,

Therefore, the Complaint is allowed, the special appeal is declared admissible and the appealed decision is annulled. Let the Complaint be added to the main dossier. Let the proceedings be returned to the court of origin for the appropriate person to issue a new ruling in keeping with the present decision. Let this decision be communicated and implemented.

B. Austria

Supreme Court

Firma Baumeister Ing. Richard L v. *O…*

*14 December 2004, File No. 10Ob53/04y***

Question of Immunity of an international organization having its headquarters in Austria—Agreement between the Republic of Austria and the OPEC Fund for International Development regarding Headquarters of the Fund***—Immunity from any legal proceedings granted to international organizations—The purpose of immunity is to protect international organizations from interference from and the exertion of influence through the organs of individual States—Immunity more extensive for international organizations based on the functional character of their legal personality as compared to foreign States—Immunity of international organizations is considered as absolute when acting within the limits of their functions—Immunity considered as valid until expressly waived—Passive conduct not deemed to constitute a tacit waiver of immunity—Immunity constitutes a procedural barrier to enforcement of the law but does not alter the validity of the substantive law—Service of official documents, as summons of courts, to international organizations, shall be effected exclusively through the good offices of the Austrian Ministry for Foreign Affairs—Waiver of immunity shall not extend to any measure of execution

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* Composition of the Court: Enrique Santiago Petracchi , Augusto Cesar Belluscio, Carlos S. Fayt, Antonio Boggiano, Adolfo Roberto Vazquez, Juan Carlos Maqueda, and E. Raul Zaffaroni.

** Translated from German by the Secretariat of the United Nations.

*** Agreement between the Republic of Austria and the OPEC Fund for International Development regarding the Headquarters of the Fund (BGBl. 1982/248), United Nations, *Treaty Series*, vol. 1291, p. 210.

The Supreme Court,* in its capacity of court of appeal, has adopted the following decision in the case of the registered company *Firma Baumeister Ing. Richard L*, Plaintiff, represented by Dr. Hans-Georg Mondel, counsel, Vienna, *versus O…*, Defendant, concerning the sum of €13,614.70 plus interest and any incidental claims, in respect of the appeal filed by the Plaintiff, against the Decision issued on 23 July 2004 by the Higher Regional Court of Vienna, acting in its capacity of court of appeal, file number 12 R 127/04s-16, which upheld the Decision of the Regional Court for Civil Law Cases of Vienna, of 4 May 2004, file number 27 Cg 179/03x-12, subject to a proviso.

Judgement

The appeal on a point of law is rejected. The Plaintiff shall bear the costs of the appeal proceedings.

Reasoning

The Plaintiff demanded payment by the Defendant of the sum of €13,614.70 plus interest and any incidental claims, as consideration for work done as a master builder, in the Application to initiate the summary procedure for obtaining authority to levy execution, which was received by the court of first instance on 29 August 2003. The Plaintiff submitted, with regard to the jurisdiction of the national courts that, in conformity with article 3, paragraph 3, of the Headquarters Agreement, (BGBl 1982/248), the transactions of the Defendant were subject to the jurisdiction of the Austrian courts. The court of first instance issued the requested payment order which, according to the receipt of delivery dated 8 September 2003, was accepted personally by a "director" of the Defendant.

In a note verbale dated 6 October 2003 addressed to the Federal Ministry of Foreign Affairs, the Defendant contested the grounds for the Plaintiff's claim, but did not state whether, in the instant case, it waived its immunity under international law. The Federal Ministry of Foreign Affairs registered this "objection" of the Defendant on 8 October 2003. The Defendant's "objection", together with the accompanying letter of the Federal Ministry of Foreign Affairs, was received by the court of first instance on 17 October 2003.

The Judge of first instance subsequently addressed a request to the Federal Ministry of Justice for the performance of good offices under article 33 of the 1997 Decree on mutual judicial assistance in civil cases and requested that a statement be obtained from the Defendant indicating whether it waived immunity from the jurisdiction of the national courts, as provided for in article 9 of the Headquarters Agreement. In this request, the Judge of first instance likewise stated that he was proceeding on the assumption that the payment order had not yet been served in a legally effective manner. On 31 March 2004, the Defendant stated, in a note verbale addressed to the Federal Ministry of Foreign Affairs, that it did not waive its immunity.

The court of first instance thereupon rejected the Application as inadmissible and, at the same time, revoked the payment order of 3 September 2003. The payment order should not have been served directly on the Defendant. Article 11, paragraph 2, of the Service of

* Composition of the Court: Dr. Bauer, Chairman, as Presiding Judge and Dr. Hopf, Dr. Fellinger, Hon. Prof. Dr. Neumayr and Dr. Schramm, Members of the Supreme Court, as the other Judges on the Panel.

Documents Act required that use be made of the good offices of the Federal Ministry of Foreign Affairs for the service of documents on international organizations. In the instant case, it had been impossible to remedy faulty service as provided for in article 7 of the Service of Documents Act. In keeping with article 9 of the Headquarters Agreement, the Defendant enjoyed immunity from every form of legal process except insofar as in any particular case, it had expressly waived immunity. No such waiver had been given and, for that reason, the Application must be rejected in accordance with article 42, paragraph 1, of the Court Jurisdiction Act. The Court of appeal rejected the Plaintiff's appeal on points of law and upheld the impugned decision with the provis o that the payment order of 3 September 2003 be nullified and the Application rejected. It endorsed the legal opinion of the court of first instance that the payment order had not been served on the Defendant lawfully. A remedy for faulty service through the actual delivery of the document, as provided for in article 7 of the Service of Documents Act, could not be contemplated in the instant case, owing to the violation which had taken place of the rules on the service of documents contained in article 11, paragraph 2, of the Service of Documents Act, for the obligatory procedure laid down by article 11, paragraph 2, of the Service of Documents Act was designed to ensure respect for immunities and privileges under international law and the protection of persons enjoying such privileges. Similarly, the procedure laid down in article 33 of the 1997 Decree on mutual judicial assistance in civil cases, according to which it was first necessary to raise the question whether immunity was waived and service was possible only in the event of immunity being waived, argued against the possibility of there being a remedy for faulty service within the meaning of article 7 of the Service of Documents Act.

Furthermore, according to article 5, paragraph 1, of the Headquarters Agreement (BGBl 1982/248), no officer or official of the Republic of Austria, or any other person exercising any public authority within the Republic of Austria might enter the headquarters seat to perform any duties therein except with the consent of, and under conditions approved by, the Director-General. This provision also indicated that a remedy for faulty service, when such service constituted an official act, was not possible in this case. After all, the Administrative Court of Appeal had held that consideration of the generally recognized rules of international law made it impossible to interpret article 7 of the Service of Documents Act in such a way as to mean that even violations of express prohibitions on the service of documents contained in treaties, and thus impermissible interference in the sovereign rights of another State, would be remedied (VwSlg 14813 A/1997). Although this legal rule referred to another State and not to an international organization and although it was based on an express prohibition of the service of documents in a treaty and not, as in the instant case, on a comprehensive clause like article 5 of the Headquarters Agreement, the reasoning of the Administrative Court of Appeal could be applied generally and was therefore applicable to the instant case. The service of the payment order on the Defendant had not therefore been conducted in a legally effective manner and thus the proceedings had not yet been concluded.

The national courts' lack of jurisdiction on account of immunity meant that an absolute prerequisite for proceedings was missing; at the same time, irrespective of any waiving of immunity, a remedy through action by one of the parties was impossible. Even if immunity could be tacitly waived, it was clear that the filing of an objection to a payment order could not be regarded as submission to the jurisdiction of the national courts. Moreover, in

its note verbale of 31 March 2004, the Defendant had expressly stated that it did not waive its immunity. The impugned decision should therefore be upheld with the proviso that the payment order which had been issued be nullified and that the Application be rejected on the grounds of the national courts' lack of jurisdiction.

The ordinary appeal on points of law was admissible because, as far as could be seen, no previous decisions of the Supreme Court had been concerned with the legally relevant question of whether, when the provisions of article 11, paragraph 2, of the Service of Documents Act were violated, a remedy for faulty service as provided for in article 7 of the Service of Documents Act was possible through actual delivery.

The Plaintiff's appeal on points of law, which was submitted on time, raises an objection to this decision on the grounds that there were errors in procedure and that the wrong legal decision was reached. It further requests the quashing of both the impugned decision and the decision of the court of first instance and confirmation of the validity of the payment order which was issued. Alternatively it requests that the impugned decision be quashed and that the case be sent back to the court of first instance with a view to holding a fresh hearing and arriving at a fresh decision.

Legal principle

The Plaintiff's appeal on points of law is admissible but not justified. In his appeal, the Plaintiff first submits that, according to the Headquarters Agreement, the Defendant is subject to the jurisdiction of the Austrian courts insofar as the law of contract is concerned and that, for this reason, no immunity exists in this respect.

In addition, it must be noted, as a matter of principle, that the question of whether a person enjoys immunity must be examined independently by the court. In case of doubt, the court must seek the advice of the Federal Ministry of Justice in accordance with article IX, paragraph 3, of the Introductory Act to the Court Jurisdiction Act (SZ 74/20; 3 Ob 258/98g *inter alia*, with further sources). As a rule, the exemption of international organizations and their property from national jurisdiction (immunity) results from the relevant international agreements, or the agreements between them and the Republic of Austria (headquarters agreements), the purpose being to protect international organizations from interference from and the exertion of influence through the organs of individual States (cf. RIS-Justiz RS0045442). International organizations enjoy more extensive privileges than foreign States. While, under national law and prevailing international law, foreign States enjoy immunity only in respect of sovereign acts, but not in their capacity of legal entities in private law, the immunity of international organizations must, a matter of principle, be regarded as absolute when they are acting within the limits of their functions (SZ 65/87, SZ 63/206 *inter alia*, with further sources). The different treatment of foreign States and international organizations in the national legal system can be explained by the fact that, as a result of the functional character of the legal personality of each international organization, all its actions must be closely connected with its purpose (Seidl-Hohenveldern/Loibl, *Das Recht der internationalen Organisationen einschließlich der supranationalen Gemeinschaften* 7Rz 1908 *inter alia*). Thus it has already been decided that international organizations enjoy immunity deriving from leasing agreements regarding their headquarters in the event of claims from the lessor (SZ 65/87). Immunity constitutes merely a procedural barrier to the enforcement of the law; it does not, however, alter the validity of

substantive law. In a particular case, the administrative head of the international organization may waive immunity (cf. Neuhold/Humer/Schreiner, *Österreichisches Handbuch des Völkerrechts* I3 174).

The Defendant has the status of an international organization and has signed an Agreement between the Republic of Austria and the OPEC Fund for International Development regarding the Headquarters of the Fund (BGBl. 1982/248) (cf. Matscher in *Fasching 2*, Art. IX EGJN [Introductory Act to the Court Jurisdiction Act] Rz 316). As noted in the above-mentioned general submissions, article 3, paragraph 3, of the Headquarters Agreement states that, except as otherwise provided in the Agreement, the courts or other appropriate organs of the Republic of Austria shall have jurisdiction, as provided in applicable laws, over acts done and transactions taking place in the headquarters seat. The Government recognizes the legal personality of the Fund and, in particular, its capacity to contract, to acquire and dispose of movable and immovable property, to perform all its financial and other operations as defined by the Agreement Establishing the Fund and to institute legal proceedings (article 7). According to article 9, the Fund and its property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case the Fund shall have expressly waived its immunity. It is, however, understood that the waiver of immunity shall not extend to any measure of execution.

From the Defendant's written order of 13 July 1999, which was enclosed with its appeal on points of law, it appears that the construction work forming the subject of the action concerned renovation work at the permanent headquarters of the Defendant in Vienna, at the address . . . , and was therefore closely connected with the functions of the Defendant. For this reason, the Defendant indubitably enjoys immunity in the instant case, notwithstanding the Plaintiff's reference to article 3, paragraph 3, of the Headquarters Agreement for, according to this provision, the courts and other appropriate organs of the Republic of Austria have jurisdiction, as provided in applicable laws, over acts done and transactions taking place in the headquarters seat only insofar as the Agreement does not provide otherwise. However, under article 9 of the Agreement, the Fund and its property, wherever located and by whomsoever held, enjoys immunity from every form of legal process except insofar as in any particular case the Fund has expressly waived its immunity. As further submissions will show, in the instant case, the Defendant did not waive its immunity. In accordance with article 11, paragraph 2, of the Service of Documents Act, for service to persons of foreign nationality (including foreign States (cf. 9 ObA 14/03d and further sources)), or international organizations having been granted privileges and immunities under international law, no matter where they are resident or located, the service of the Federal Ministry of Foreign Affairs shall be used. Similarly, in accordance with article 23, paragraph 3, of the Court Jurisdiction Act, the good offices of the Ministry of Foreign Affairs must be used in order to carry out court orders concerning persons enjoying immunity. Article 33, paragraph 2, of the 1997 Decree on mutual judicial assistance in civil cases requires that the statement by means of which a person waives immunity from the jurisdiction of national courts must be obtained through the good offices of the Federal Ministry of Justice. When statements of a claim and other commercial documents which are to be served on this person in the event of the person having waived immunity from the jurisdiction of national courts are presented, they must be accompanied by a duly made out certificate of service. The same applies when it is necessary to obtain a declara-

tion from an intergovernmental organization whether or not it waives immunity from the jurisdiction of national courts (article 33, paragraph 2, of the 1997 Decree on mutual judicial assistance in civil cases). According to article 34, paragraph 1, of the 1997 Decree on mutual judicial assistance in civil cases, commercial documents to whose service article 11, paragraph 2, of the Service of Documents Act applies must be presented to the Federal Ministry of Justice for further transmission to the Federal Ministry of Foreign Affairs.

Previous judicial decisions have already drawn attention to the fact that article 11, paragraph 2, of the Service of Documents Act and article 32, paragraph 2, of the Court Jurisdiction Act make service solely through the good offices of the Federal Ministry of Foreign Affairs obligatory and that service in any other manner (such as, for example, in the instant case, direct service by the post) would be illegal (9 ObA 14/03d and further sources). In this connection, attention has been drawn to the fact that, in the absence of an agreement between the States concerned which regulates this operation, service abroad as a sovereign act occasions interference in the sovereign rights of the foreign State concerned. For this reason, in such cases of service on persons or international organizations enjoying privileges under international law, the good offices of the Federal Ministry of Foreign Affairs are required. The Ministry maintains close contact with the circle of persons in question and it is responsible for observing the aspects of international law involved (9 ObA 14/03d relying on the statutory material RV 162 BlgNR XV GP 10).

Above all, it is a moot point whether, in keeping with article 7 of the Service of Documents Act, this faulty service could be remedied by the fact that the payment order was actually received by a "director" of the Defendant on 8 September 2003. The answer to the question whether the procedure used to deliver a court document may be regarded as valid "service" can be determined solely by Austrian law in proceedings before an Austrian court. In particular, the question of the conditions on which faulty service of documents may subsequently be remedied must also be answered in accordance with Austrian law (RIS-Justiz RS0036434). If errors occur during the service procedure, service shall, under article 7 of the Service of Documents Act, be considered to have been made as soon as the document has actually been received by the addressee specified by the authority. The question whether an error which has occurred can be remedied, in view of article 7 of the Service of Documents Act, must be examined by the authority *ex officio*. According to the precedents of the Supreme Court, any errors in the service procedure must be regarded as remedied when the document to be served has really reached its addressee abroad (Gitschthaler in *Rechberger*, ZPO2, § 87 (§ 7 ZustG) Rz 3 with further sources; 10 Ob 99/00g *inter alia*, with further sources; RIS-Justiz RS0083735, RS0036481). For example, it was decided that direct service by the post which was impermissible in relations of mutual judicial assistance (article 121, paragraph 1, of the Code of Civil Procedure and article 11, paragraph 1, of the Service of Documents Act) was remedied within the meaning of article 7 of the Service of Documents Act by the fact that the decision had actually been received by the addressee (cf. Ob 545/84; RIS-Justiz RS0036481). In its case-law, the Higher Administrative Court also proceeds on the assumption that, in principle, article 7 of the Service of Documents Act is the authoritative text when it comes to the question of the remedying of errors in the service of a document to destinations abroad, unless otherwise expressly provided in an international agreement, or unless this would be contrary to its purpose (VwGH, 23.6.2003, Zl 2002/17/0182 and further sources). If international treaties contain express prohibitions on the service of documents, impermissible interference in

the sovereign rights of another State through service may not be remedied by relying on article 7 of the Service of Documents Act (VwSlg 14813 A/1997).

When examining the question whether, in the cases provided for by article 11, paragraph 2, of the Service of Documents Act (service on persons of foreign nationality or international organizations entitled to privileges and immunities under international law), in the event of illegal service, the possible remedy provided for in article 7 of the Service of Documents Act applies, it is necessary to bear in mind that the exercise of jurisdiction over a person enjoying immunity would be a breach of international law and might constitute an offence against international law. An application for the annulment of a procedure endowed with the effect of *res judicata*, in accordance with article 42, paragraph 2, of the Court Jurisdiction Act, serves the purpose, *inter alia,* of subsequently eliminating the consequences of such an offence against international law (Matscher op. cit Rz 119 and further sources). Immunity does not, however, preclude an immune person from appearing as plaintiff or applicant before a national court or otherwise submitting themselves voluntarily to the jurisdiction of a national court (article IX, paragraph 2, first subparagraph, of the Introductory Act to the Court Jurisdiction Act). Immune persons thus escape the jurisdiction of the national courts insofar as, in principle, they may not be either defendants or respondents, or in any other way whatsoever the addressees or object of any judicial activity of the State; this includes summonses or the service of other documents through which binding orders are issued, or subsequent coercive measures are threatened. According to the opinion of one learned author, "simple" delivery (of a statement of a claim, for example, or summons to a hearing as a witness, party or informant) is, however, permissible under international law for, in some circumstances, only from the addressees' reaction is it possible to ascertain whether these persons enjoy immunity, whether they waive the latter, or whether they are prepared to accept the invitation to appear as a witness. The right of the plaintiff or applicant to have justice administered requires such service, or the obtainment of a declaration of waiver or a declaration of willingness (Matscher, *op. cit.* Rz 120 et seq. and further sources).

In the instant case, in the opinion of the Chamber hearing the appeal, any remedy under article 7 of the Service of Documents Act of what, under article 11, paragraph 2, of the Service of Documents Act, constituted the unlawful direct service on the Defendant of the payment order entailing coercive measures could therefore be contemplated only if the Defendant had (also) waived its immunity. Attention has already been drawn to the fact that immunity may be waived pursuant to article IX, paragraph 2, first subparagraph, of the Introductory Act to the Court Jurisdiction Act. The organ competent to represent an international organization in its external relations is competent to make the declaration of waiver. The waiver must be expressly stated and is binding solely in respect of the case for which it was issued (SZ 37/94). Mere acceptance of documents issued by the court in the dispatching of its work may not be deemed to constitute a waiver of immunity (ZBl. 1926/105; VwGH, 28.10. 1981, Zl 81/13/0031 *inter alia*). The waiver may be stated before or after a legal dispute or while judicial proceedings are pending. Immunity claimed for contentious proceedings does not extend to the enforcement process (Matscher *op. cit.* Rz 151 *et seq.*). The Defendant certainly did not expressly waive immunity. In the opinion of Matscher, *op. cit.* Rz 156 and 144, immunity may be waived tacitly in order to protect persons acting in good faith, a principle which also applies in international law, but purely passive conduct (taking receipt of a statement of a claim or summons, or non-appear-

ance at a hearing) may not be deemed to constitute a tacit waiver. The conduct implying a waiver of immunity may be that of the party enjoying immunity itself or that of its attorney; the rules concerning compulsory legal representation also apply to a declaration of waiver made before the court, or while court proceedings are pending. Even according to this opinion, the objection to the payment order does not, however, imply submission to the jurisdiction of the national courts (Matscher *op. cit.* Rz 165). An effective waiver of immunity by the Defendant does not therefore exist even in the light of these arguments. The Defendant, in its note verbale of 31 March 2004, expressly states that it does not waive its immunity.

Since the Defendant has not therefore waived its immunity, a remedy of the unlawful service as provided for by article 7 of the Service of Documents Act is out of the question. It follows from this that no effective service of the payment order on the Defendant has yet taken place and that the proceedings have not yet been concluded. For this reason the Application from the lower courts was rightly rejected on the grounds of the lack of domestic jurisdiction in accordance with article 42, paragraph 1, of the Court Jurisdiction Act.

The Plaintiff's appeal therefore had to be rejected. The costs order is based on articles 40 and 50 of the Code of Civil Procedure.

ANNEX

The United Nations system

PRINCIPAL ORGANS

Trusteeship Council | Security Council | General Assembly | Economic and Social Council | International Court of Justice | Secretariat

Security Council

Subsidiary Bodies
Military Staff Committee
Standing Committee and ad hoc bodies
International Criminal Tribunal for the Former Yugoslavia
International Criminal Tribunal for Rwanda
UN Monitoring, Verification and Inspection Commission (Iraq)
United Nations Compensation Commission
Peacekeeping Operations and Missions

General Assembly

Subsidiary Bodies
Main committees
Other sessional committees
Standing committees and ad hoc bodies
Other subsidiary organs

Programmes and Funds

UNCTAD United Nations Conference on Trade and Development
ITC International Trade Centre (UNCTAD/WTO)
UNDCP United Nations Drug Control Programme[1]
UNEP United Nations Environment Programme
UNICEF United Nations Children's Fund
UNDP United Nations Development Programme
UNIFEM United Nations Development Fund for Women
UNV United Nations Volunteers
UNCDF United Nations Capital Development Fund
UNFPA United Nations Population Fund
UNHCR Office of the United Nations High Commissioner for Refugees
WFP World Food Programme
UNRWA[2] United Nations Relief and Works Agency for Palestine Refugees in the Near East
UN-HABITAT United Nations Human Settlements Programme (UNHSP)

Research and Training Institutes

UNICRI United Nations Interregional Crime and Justice Research Institute
UNITAR United Nations Institute for Training and Research
UNRISD United Nations Research Institute for Social Development
UNIDIR[2] United Nations Institute for Disarmament Research
INSTRAW International Research and Training Institute for the Advancement of Women

Other UN Entities

OHCHR Office of the United Nations High Commissioner for Human Rights
UNOPS United Nations Office for Project Services
UNU United Nations University
UNSSC United Nations System Staff College
UNAIDS Joint United Nations Programme on HIV/AIDS

Economic and Social Council

Functional Commissions
Commissions on:
Human Rights
Narcotic Drugs
Crime Prevention and Criminal Justice
Science and Technology for Development
Sustainable Development
Status of Women
Population and Development
Commission for Social Development
Statistical Commission

Regional Commissions
Economic Commission for Africa (ECA)
Economic Commission for Europe (ECE)
Economic Commission for Latin America and the Caribbean (ECLAC)
Economic and Social Commission for Asia and the Pacific (ESCAP)
Economic and Social Commission for Western Asia (ESCWA)

Other Bodies
Permanent Forum on Indigenous Issues (PFII)
United Nations Forum on Forests
Sessional and standing committees
Expert, ad hoc and related bodies

Related Organizations
WTO[3] World Trade Organization
IAEA[4] International Atomic Energy Agency
CTBTO PREP.COM[5] PrepCom for the Nuclear-Test-Ban-Treaty Organization
OPCW[5] Organization for the Prohibition of Chemical Weapons

Specialized Agencies[6]
ILO International Labour Organization
FAO Food and Agriculture Organization of the United Nations
UNESCO United Nations Educational, Scientific and Cultural Organization
WHO World Health Organization
WORLD BANK GROUP
IBRD International Bank for Reconstruction and Development
IDA International Development Association
IFC International Finance Corporation
MIGA Multilateral Investment Guarantee Agency
ICSID International Centre for Settlement of Investment Disputes
IMF International Monetary Fund
ICAO International Civil Aviation Organization
IMO International Maritime Organization
ITU International Telecommunication Union
UPU Universal Postal Union
WMO World Meterological Organization
WIPO World Intellectual Property Organization
IFAD International Fund for Agricultural Development
UNIDO United Nations Industrial Development Organization
WTO[3] World Tourism Organization

Secretariat

Departments and Offices
OSG Office of the Secretary-General
OIOS Office of Internal Oversight Services
OLA Office of Legal Affairs
DPA Department of Political Affairs
DDA Department for Disarmament Affairs
DPKO Department of Peace-keeping Operations
OCHA Office for the Coordination of Humanitarian Affairs
DESA Department of Economic and Social Affairs
DGACM Department for General Assembly and Conference Management
DPI Department of Public Information
DM Department of Management
OHRLLS Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States
UNSECOORD Office of the United Nations Security Coordinator
UNODC United Nations Office on Drugs and Crime
UNOG UN Office at Geneva
UNOV UN Office at Vienna
UNON UN Office at Nairobi

NOTES: Solid lines from a Principal Organ indicate a direct reporting relationship; dashes indicate a non-subsidiary relationship. [1]The UN Drug Control Programme is part of the UN Office on Drugs and Crime. [2]UNRWA and UNIDIR report only to the GA. [3]The World Trade Organization and World Tourism Organization use the same acronym. [4]IAEA reports to the Security Council and the General Assembly (GA). [5]The CTBTO Prep.Com and OPCW report to the GA. [6]Specialized agencies are autonomous organizations working with the UN and each other through the coordinating machinery of the ECOSOC at the intergovernmental level, and through the Chief Executives Board for coordination (CEB) at the inter-secretariat level.

Part Four

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