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FOREWORD

By its resolution 1814 (XVII) of 18 December 1962, the General Assembly requested the Secretary-General to publish a *Juridical Yearbook* which would include certain documentary materials of a legal character concerning the United Nations and related intergovernmental organizations, and by its resolution 3006 (XXVII) of 18 December 1972, the General Assembly made certain changes in the outline of the *Yearbook*. The present volume, which is the forty-fourth 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 2006.

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 2006.

In chapter VIII are found decisions given in 2006 by 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 Hammarskjöld Library, lists works and articles of a legal character relating to the work of the United Nations and related intergovernmental organizations published in 2006.

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

ACABQ	Administrative Committee on Administrative and Budgetary Questions (United Nations)
AMIS	African Union Mission in the Sudan
APB	Appointments and Promotions Board (United Nations)
APC	Appointment and Promotion Committee (UNODC)
APCICT	Asian and Pacific Training Centre for Information and Communication Technology For Development
APPC	Appointments, Promotions and Postings Committee (UNHCR)
ASEAN	Association of South East Asian Nations
ASG	Assistant Secretary-General (United Nations)
AU	African Union
BINUB	United Nations Integrated Office in Burundi
BONUCA	United Nations Peacebuilding Office in the Central African Republic
CAO	Chief Administrative Officer (United Nations)
CFMU	Central Flow Management Unit (Eurocontrol Agency)
CLCS	Commission on the Limits of the Continental Shelf
CMI	Comité Maritime International
CNS/ATM	Communications, Navigation, Surveillance/Air Traffic Management
COO	Chief Operating Officer (United Nations)
COP/MOP	Conference of the Parties/ Meeting of the Parties (UNFCCC)
CPC	Committee for Programme and Coordination (United Nations)
CRG	Senior Career Review Group (UNDP)
CSP	Conference of States Parties (OPCW)
CTBTO	Comprehensive Nuclear-Test-Ban Treaty Organization
CTED	Counter-Terrorism Committee Executive Directorate (United Nations)
DEC	Department of Environmental Conservation (United States)
DGACM	Department for General Assembly and Conference Management (United Nations)
DHRM	Division for Human Resources Management (UNOPS)
DPA	Department of Political Affairs (United Nations)
DPKO	Department of Peacekeeping Operations (United Nations)
DSRSG	Deputy Special Representative of the Secretary-General (United Nations)
EC	European Community

EC (OPCW)	Executive Council (OPCW)
ECA	Economic Commission for Africa
ECOWAS	Economic Community of West African States
EOSG	Executive Office of the Secretary-General (United Nations)
EPO	European Patent Organization
ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
ESCWA	Economic and Social Commission for Western Asia
EU	European Union
EUFOR	European Union Force
EURATOM	European Atomic Energy Community
Eurocontrol Agency	European Organization for Safety of Air Navigation
FAO	Food and Agriculture Organization of the United Nations
GAC	General Advisory Committee (EPO)
GAO	Government Accountability Office (United States of America)
GICHD	Geneva International Centre for Humanitarian Demining
GNSS	Global Navigation Satellite Systems
HCOC	Hague Code of Conduct against Ballistic Missile Proliferation
HRM	Human Resources Branch (UNIDO)
HRMS	Human Resources Management Services (UNON)
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICSC	International Civil Service Commission
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDA	International Development Association
IFAD	International Fund for Agricultural Development
IGAD	Intergovernmental Authority on Development
ILC	International Law Commission (United Nations)
ILO	International Labour Organization
IMF	International Monetary Fund

IMO	International Maritime Organization
INT	Department of Institutional Integrity (IBRD)
Interpol	International Criminal Police Organization
IRFFI	International Reconstruction Fund for Iraq
IRS	Internal Revenue Service (United States)
ISA	International Seabed Authority
ISAF	International Security Assistance Force
ITC	International Trade Center
ITER Organization	International Thermonuclear Experimental Reactor Organization
ITTO	International Tropical Timber Organization
ITU	International Telecommunications Union
JAB	Joint Appeals Board (United Nations)
JDC	Joint Disciplinary Committee (United Nations)
KFOR	Kosovo Force (North Atlantic Treaty Organization)
LDCs	Least Developed Countries
MDGs	Millenium Development Goals
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
MOU	Memorandum of Understanding
MRG	Management Review Group (UNDP)
NATO	North Atlantic Treaty Organisation
NCE	National Competitive Exam (United Nations)
OHCHR	Office of the High Commissioner for Human Rights (United Nations)
OHRM	Office of Human Resources Management (United Nations)
OIOS	Office of Internal Oversight Services (United Nations)
OLA	Office of Legal Affairs (United Nations)
OPCW	Organization for the Prohibition of Chemical Weapons
RC/HC/RR	Resident Coordinator/Humanitarian Coordinator/Resident Representative (United Nations)
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)

SCT	Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (WIPO)
SECO	State Secretariat of Economic Affairs (Switzerland)
SFOR	Stabilization Force (Bosnia and Herzegovina)
SMEs	Small and Medium-Sized Enterprises
SOFA	Status-of-forces agreement
SOMA	Status-of-mission agreement
SPEDS	State Pollutant Discharge Elimination System (United States)
SPIDER	United Nations Platform for Space-based Information for Disaster Management and Emergency Response
SRSG	Special Representative of the Secretary-General (United Nations)
UNAMA	United Nations Assistance Mission in Afghanistan
UNAMI	United Nations Assistance Mission for Iraq
UNAT	United Nations Administrative Tribunal
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDC	United Nations Disarmament Commission
UNDOF	United Nations Disengagement Observer Force
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFICYP	United Nations Peacekeeping Force in Cyprus
UNFPA	United Nations Population Fund
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
UNIFEM	United Nations Development Fund for Women
UNIFIL	United Nations Interim Force in Lebanon
UNIOSIL	United Nations Integrated Office in Sierra Leone
UNITAR	United Nations Institute for Training and Research
UNJSPF	United Nations Joint Staff Pension Fund
UN-LiREC	United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean
UNLP	United Nations *Laissez-Passer*
UNMACC	United Nations Mine Action Coordination Centre (UNMIK)
UNMAS	United Nations Mines Action Service
UNMEE	United Nations Mission in Ethiopia and Eritrea

UNMIL	United Nations Mission in Liberia
UNMIS	United Nations Mission in the Sudan
UNMIK	United Nations Interim Mission in Kosovo
UNMISET	United Nations Mission of Support in East Timor
UNMIT	United Nations Integrated Mission in Timor-Leste
UNMOGIP	United Nations Military Observer Group in India and Pakistan
UNMOVIC	United Nations Monitoring, Verification and Inspection Commission
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
UNOMIG	United Nations Observer Mission in Georgia
UNON	United Nations Office at Nairobi
UNOPS	United Nations Office for Project Services
UNOTIL	United Nations Office in Timor-Leste
UNOWA	United Nations Office for West Africa
UNPOS	United Nations Political Office for Somalia
UNREC	United Nations Regional Centre for Peace and Disarmament in Africa
UNSCO	United Nations Special Coordinator for the Middle East
UNTOP	United Nations Tajikistan Office of Peacebuilding
UNTSO	United Nations Truce Supervision Organization
UPU	Universal Postal Union
USG	Under-Secretary-General (United Nations)
VAT	Value Added tax
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization
WTO	World Trade Organization

Part One

LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter I

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

[No legislative texts concerning the legal status of the United Nations and related intergovernmental organizations to be reported for 2006.]

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. Convention on the Privileges and Immunities of the United Nations. Approved by the General Assembly of the United Nations on 13 February 1946*

During 2006, Montenegro and Namibia acceded to the Convention. The instruments of accession have been received on 23 October 2006 and on 17 July 2006, respectively.

As at 31 December 2006, there were 153 States parties to the Convention.**

2. Agreements relating to missions, offices and meetings

(*a*) Memorandum of understanding between the United Nations and the Government of the Republic of Uganda concerning the activities of the United Nations Mission in Sudan in the Republic of Uganda. New York, 27 January 2006***

Whereas the United Nations Mission in Sudan (UNMIS) has been entrusted with the mandate set out in Security Council resolution 1590 (2005) of 24 March 2005 and in subsequent resolutions of the Security Council;

Whereas, by its resolution 1590 (2005) of 24 March 2005, the Security Council called upon all Member States to ensure the free, unhindered and expeditious movement to Sudan of all personnel, as well as equipment, provisions, supplies and other goods, including vehicles and spare parts, which are for the official and exclusive use of UNMIS;

Whereas UNMIS activities within the framework of its mandate to date have demonstrated that it is necessary to route certain deployments of UNMIS personnel and the provision of certain logistical support to UNMIS through States neighbouring Sudan;

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

** For the list of the States parties, see *Multilateral Treaties Deposited with the Secretary-General* (United Nations publication, Sales No. E.07.V.3, ST/LEG/SER.E/25), vol. I, chap. III.

*** Entered into force on 27 January 2006 in accordance with article VII (2) of the memorandum of understanding.

Whereas the United Nations may need to establish a liaison office, as well other offices and staging facilities, in the Republic of Uganda in order to provide and to coordinate logistical and other general support services to UNMIS;

Whereas the United Nations wishes to recognize the excellent cooperation extended by the Government of the Republic of Uganda (the "Government") to United Nations operations in Africa in all their aspects;

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

Article 1. Privileges and Immunities

1. The Government of the Republic of Uganda (hereinafter the "Government") shall, consistently with Article 105 of the Charter of the United Nations, extend to the United Nations Mission in Sudan (hereinafter "UNMIS"), as an organ of the United Nations, its property, funds and assets and its 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 "the Convention"), to which the Republic of Uganda is party. The Government shall also extend to the members of UNMIS listed in paragraph 2 (d) below the privileges and immunities provided for in the present Memorandum of Understanding. Additional facilities as provided herein are also required for contractors and their employees engaged by the United Nations or by UNMIS to perform services exclusively for UNMIS or to supply exclusively to UNMIS equipment, provisions, supplies, materials or other goods, including spare parts and means of transport (hereinafter "United Nations contractors").

2. The Government shall extend to:

(*a*) the Special Representative of the Secretary-General for Sudan (hereinafter the "SRSG"), the commander of the military component of UNMIS and other high-ranking members of UNMIS whose names shall be communicated to the Government, as well as the Head of the UNMIS liaison office in the Republic of Uganda and other high-ranking members of that office 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*) officials of the United Nations assigned to serve with UNMIS, as well as United Nations Volunteers who shall be assimilated thereto, the privileges and immunities to which they are entitled under Articles V and VII of the Convention. Locally recruited members of UNMIS shall enjoy the immunities concerning official acts and the exemption from taxation and immunity from national service obligations provided for section 18 (a), (b) and (c) of the Convention;

(*c*) other persons assigned to perform missions for UNMIS, including United Nations civilian police and United Nations military observers, 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;

(*d*) the military personnel of national contingents assigned to the military component of UNMIS, immunity from every form of legal process in respect of any criminal offences that they may commit in the Republic of Uganda. With respect to such criminal

offences, such personnel shall be subject to the exclusive jurisdiction of their respective contributing States.

3. The members of UNMIS, as 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.

4. United Nations contractors, other than local contractors, shall be accorded repatriation facilities in time of crisis and exemption from taxes and monetary contributions in the Republic of Uganda on services, equipment, provisions, supplies, materials and other goods, including spare parts and means of transport, provided to UNMIS, including corporate, income, social security and other similar taxes arising directly from or related directly to the provision of such services or goods.

5. The privileges and immunities necessary for the fulfilment of the functions of UNMIS also include:

(*a*) unrestricted freedom of 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 UNMIS and United Nations contractors. The Government shall promptly issue to members of UNMIS and to United Nations contractors, free of charge and without any restrictions, all necessary visas, licenses and permits;

(*b*) freedom of movement throughout the country 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 UNMIS and United Nations contractors. That freedom of movement shall, as appropriate, be coordinated with the Government. UNMIS aircraft shall comply with safety regulations as issued and specifically notified to UNMIS by the Civil Aviation Authority of Uganda. The Government undertakes to supply UNMIS with the necessary information in order to facilitate its movements. UNMIS, its members, United Nations contractors and the vehicles, vessels and aircraft of UNMIS 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, airport taxes, air-navigation charges, landing fees, user fees, parking fees, overflight fees, port fees or charges, including wharfage charges. However, exemption from charges which are in fact charges for public utility services rendered will not be claimed, it being understood that such charges shall be levied at the most favourable rates. UNMIS may, in agreement with the Government, improve designated roads, bridges, canals and other waters, port facilities and airfields;

(*c*) the right of UNMIS and of United Nations contractors without undue delay to import and to clear customs and excise warehouse, free of duty, taxes, levies, 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 UNMIS;

(*d*) the right of UNMIS and of United Nations contractors to re-export equipment, provisions, supplies, materials and other goods, including spare parts and means of transport, so imported or cleared ex customs and excise warehouse, as well as the right otherwise to dispose of such equipment, provisions, supplies, materials and other goods which

are not consumed, transferred, or otherwise disposed of and which remain usable on terms and conditions to be agreed upon with the Government or an entity nominated by it;

(*e*) prompt issuance by the Government to UNMIS and to United Nations contractors of all necessary authorizations, permits and licenses for the importation, purchase or re-exportation of equipment, provisions, supplies, materials and other goods, including spare parts and means of transport, used exclusively in support of UNMIS, free of any restrictions and without payment of monetary contributions, duties, levies, fees, charges or taxes, including value-added tax;

(*f*) exemption of vehicles, vessels and aircraft of UNMIS 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 of vehicles used in support of UNMIS; 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 UNMIS; and 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 UNMIS;

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

(*h*) the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, electronic mail, facsimile and any other means and to establish the necessary facilities for effecting such communication, including communication by, with and between members and offices of UNMIS, both in the Republic of Uganda and in other States, as well as with United Nations Headquarters and other offices of the United Nations; and the right to connect with, and exchange telephone, voice, facsimile and other electronic data with the United Nations global telecommunications network. The frequencies on which communications by radio will operate shall be decided upon in cooperation with the Government;

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

(*j*) the right of members of UNMIS, while on official travel through the Republic of Uganda, to take with them such funds as the SRSG may certify were received in pay and emoluments from the United Nations or, in the case of military personnel of national contingents assigned to the military component of UNMIS, from the State contributing the contingent to which they belong and are a reasonable residue thereof.

Article II. Premises

The Government shall, to the extent possible, assist UNMIS in obtaining, for as long as is required, such areas and sites for premises or for the construction of premises as may be necessary for the conduct of the operational and administrative activities of UNMIS in the Republic of Uganda. Without prejudice to the fact that all such areas, sites and premises

remain territory of the Republic of Uganda, they shall be inviolable and subject to the exclusive control and authority of the United Nations.

Article III. Safety and Security

1. The Government shall, within its capabilities, ensure that the provisions of the Convention on the Safety of United Nations and Associated Personnel are applied to and in respect of UNMIS, its property, assets, members and associated personnel.

2. Upon the request of the SRSG or of the Head of the UNMIS liaison office, the Government shall, within the means available to it, provide such security as necessary to protect UNMIS, its property and its members during the exercise of their functions.

3. Upon the request of the SRSG or of the Head of the UNMIS liaison office the Government shall provide armed escorts to protect members of UNMIS their functions and, as necessary, to protect the movement of UNMIS stores, equipment, vehicles and vessels within the Republic of Uganda.

4. Military members of the military component of UNMIS and observers, United Nations civilian police and United Nations UNMIS may wear the national military or police uniform of their respective States, with standard United Nations accoutrements, while on official travel through the Republic of Uganda. It is also understood that such military members of the military component of UNMIS and United Nations military observers, United Nations civilian police and United Nations security officers serving with UNMIS as may be designated by the SRSG or by the Head of the UNMIS liaison office may possess and carry arms and ammunition while on official duty in accordance with their orders. Consistently with practical arrangements to be agreed between the Government and the Head of the UNMIS liaison office, UNMIS and its military and security personnel shall be permitted to transport their arms and ammunition through the Republic of Uganda.

Article IV. Compliance with local law and international humanitarian law

1. UNMIS and its members shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the spirit of the present arrangements. UNMIS and its members shall respect all local laws and regulations. The SRSG and the Head of the UNMIS liaison office shall take all appropriate measures to ensure the observance of these obligations.

2. Without prejudice to the mandate of UNMIS and its international status:

(*a*) The United Nations shall ensure that UNMIS shall conduct its activities in the Republic of Uganda with full respect for the principles and rules of the 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 on the Protection of Cultural Property in the event of armed conflict;

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

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

Article V. Third Party Claims

Operative paragraphs 5 to 11, inclusive, of General Assembly resolution 52/247 of 26 June 1998 shall apply in respect of third party claims against the United Nations resulting from or attributed to UNMIS or the activities of its members.

Article VI. Settlement of Disputes

Any dispute between the United Nations and the Government concerning the interpretation or application of this Memorandum of Understanding, 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. Any such dispute that is not settled by negotiation or any other agreed mode of settlement shall be submitted at the request of their Party for 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 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 Chairman, then such arbitrator shall be appointed 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 VII. Final Provisions

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

2. This memorandum of Understanding shall enter into force immediately upon signature by both Parties and shall remain in force until the departure of the final element of UNMIS from Sudan, except that:

(*a*) the provisions of Article I, paragraph 2, and Article VI shall remain in force; and

(*b*) the provisions of Article V shall remain in force until any and all claims falling within the scope of that Article have been settled.

Signed this 27th day of January 2006 at New York.

For the United Nations:	For the Government of the Republic of Uganda:
Mr. Hedi Annabi	Mr. Sam Kutesa
Assistant Secretary-General in charge of the Department of Peacekeeping Operations	Minister of Foreign Affairs Republic of Uganda

(*b*) Agreement between the United Nations and the Government of the Republic of Korea regarding the Headquarters of the Asian Pacific Training Centre for Information and Communication Technology for Development. Bangkok, 31 January 2006*

The United Nations and the Government of the Republic of Korea,

Aware of the need to create a critical mass of qualified and skilled information and communication technology professionals and experts and to foster effective international and regional cooperation among Governments, the private sector, civil society and other stakeholders in this regard;

Recalling the establishment of an Asian and Pacific Training Centre for Information and Communication Technology for Development (APCICT) in the Republic of Korea by the Economic and Social Council through its Resolution 2005/40 of 26 July 2005, as decided by the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) at its sixty-first session on 18 May 2005 through resolution 61/6;

Recognizing that APCICT (hereinafter referred to as "the Centre") is a subsidiary body of ESCAP and that as such the relevant resolutions, decisions, regulations, rules and policies of the competent organs of the United Nations are applicable to the Centre;

Desiring by means of this Agreement to establish the legal status and the conditions under which the Centre is established and will operate in the Republic of Korea;

Have agreed as follows:

Article I. Definitions

For the purposes of this Agreement:

1. The "Government" means the Government of the Republic of Korea;

2. "Appropriate authorities" means central and local government bodies under the laws and regulations of the Republic of Korea;

3. 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 Korea has been Party since 9 April 1992;

4. The "Parties" means the United Nations and the Government of the Republic of Korea;

5. The "Centre" means the Asian and Pacific Training Centre for Information and Communication Technology for Development;

6. "ESCAP" means the United Nations Economic and Social Commission for Asia and the Pacific;

7. "Archives" means all records, correspondence, documents, publications, manuscripts, photographs, films, recordings, computer data files and software belonging to or held by the Centre, wherever located;

8. The "Director of the Centre" means the official in charge of the Centre;

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* Entered into force on 16 March 2006, in accordance with article XXI (2) of the agreement. United Nations, Treaty Series, vol. 2363, p. 301.

9. "Officials of the Centre" means the Director of the Centre and all members of the staff employed under the Staff Rules and Regulations 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), adopted on 7 December 1946;

10. The "Governing Council" means the Governing Council of the Centre;

11. The "Secretary-General" means the Secretary-General of the United Nations;

12. "The Statute" means the Statute of the Asian and Pacific Training Centre for Information and Communication Technology for Development, adopted by ESCAP at its sixty-first session on 18 May 2005 through its resolution 61/6, and as endorsed by the Economic and Social Council, to establish the Centre in the Republic of Korea.

Article II. Location

1. The Centre shall be established at Incheon, Republic of Korea.

2. The Parties shall cooperate in ensuring the uninterrupted operation of the Centre.

Article III. Objectives, Functions, Organization and Management

The objectives, functions, organization and management of the Centre shall be as provided for in the Statute.

Article IV. Legal Capacity

The United Nations, acting through the Centre, shall have the capacity: (a) to contract; (b) to acquire and dispose of movable and immovable property; and (c) to institute legal proceedings.

Article V. Academic Freedom

The Centre shall, within the fields of its objectives and functions, decide freely on the choice of technical subjects relating to information and communication technology, methods of research and training, the selection of personnel, and the organization of meetings, seminars and exhibitions.

Article VI. Premises

1. (*a*) The premises of the Centre shall be inviolable. State or local officers or officials of the Government, whether administrative, judicial, military or police, or any other persons exercising any public authority within the Republic of Korea shall not enter the premises, except with the express consent of and under conditions approved by the Director. No service or execution of any legal process, including the seizure of private property, shall take place in the Centre except with the express consent of and under conditions approved by the Director. Without prejudice to the preceding sentence, it is understood that, as a practical matter, the Government cannot prevent all attempts at service of process in the Premises;

(*b*) In case of a fire or other emergency requiring prompt protection action, the consent of the Director or his representative to any necessary entry into the premises shall be presumed if neither of them can be reached in time;

(*c*) The premises of the Centre shall be used solely to further its purposes and activities. The Director of the Centre may also permit, in a manner compatible with the purposes and functions of the Centre, the use of the premises and facilities for meetings, seminars, exhibitions and other related purposes which are organized by the Centre, the United Nations, ESCAP and other related organizations.

2. The appropriate authorities shall exercise due diligence to ensure the security, protection and tranquility of the premises of the Centre. They shall also take all possible measures to ensure that the tranquility of the Centre is not disturbed by the unauthorized entry of persons or groups of persons from outside or by disturbances in its immediate vicinity.

3. Except as otherwise provided in the Agreement or in the Convention the laws applicable in the Republic of Korea shall apply within the premises of the Centre. The premises of the Centre shall be under the control and authority of the Centre, which may establish regulations for the execution of its functions therein.

4. (*a*) The Centre shall be entitled to fly the United Nations flag and display its emblem on the premises of the Centre;

(*b*) The Director of the Centre shall be entitled to fly the United Nations flag on the means of transport used in his official capacity;

(*c*) The Centre shall be entitled to display the United Nations emblem on the means of transport of the Centre.

Article VII. Public Services

1. The appropriate authorities shall exercise, to the extent requested by the Director, their respective powers, to ensure that the premises of the Centre are supplied with the necessary public utilities and services, including, without limitation by reasons of this enumeration, electricity, water, sewerage, gas, post, telephone, telegraph, drainage, collection of refuse and fire protection, and that such public utilities and services are supplied on equitable terms.

2. In case of any interruption or threatened interruption of any such services, the appropriate authorities shall consider the needs of the Centre as being of equal importance with the needs of diplomatic missions and other international organizations in the Republic of Korea, and shall take steps accordingly to ensure that the work of the Centre is not prejudiced.

3. The Director shall, upon request, make suitable arrangements to enable the appropriate public service bodies to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers within the premises of the Centre under conditions that shall not unreasonably disturb the carrying out of the functions of the Centre.

Article VIII. Archives

The archives of the Centre shall be inviolable.

Article IX. Legal Status of the Centre

The Convention, without prejudice to the reservation made by the Government upon accession thereto, shall be applicable to the Centre, its property, funds and assets, members of the Governing Council and the Centre's officials and experts on mission in the Republic of Korea.

Article X. Communications and Publications

1. The Centre shall enjoy, in respect of its official communications, treatment not less favourable than that accorded by the Government to any diplomatic mission or other intergovernmental organizations in matters of establishment and operation, priorities, tariffs, charges for mail, cables, telegrams, telephone and other communications, as well as rates for information to the press and radio.

2. All official communications directed to the Centre, or to any of its officials, and outward official communications of the Centre, by whatever form transmitted, shall be immune from censorship and from any other form of interference. However, the Centre may install and use wireless transmitters only on frequencies available to the general public or with the consent of the Government.

3. The Centre shall have the right to use codes and to dispatch and receive official correspondence and other official communications by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags. The bags must bear visibly the United Nations emblem and may contain only documents or articles intended for official use, and the courier should be provided with a courier certificate issued by the United Nations.

4. The Centre may produce research reports as well as academic publications within the fields of its objectives and activities. It is, however, understood that the Centre shall abide by the laws of the Republic of Korea concerning intellectual property rights in the Republic of Korea and related international conventions.

Article XI. Exemption from Taxation

1. The Centre and its funds, assets and other property shall be:

(*a*) Exempt from all direct taxes. It is understood, however, that the Centre shall not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(*b*) Exempt from customs duties in respect of articles imported by the Centre for its official use. It is understood, however, that articles imported under such exemption shall not be sold in the Republic of Korea except under conditions agreed with the appropriate authorities;

(*c*) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications. Imported publications, other than those of the United Nations, shall not be sold in the Republic of Korea except under conditions agreed with the appropriate authorities.

2. While the Centre shall 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, nevertheless, when the Centre is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, the appropriate authorities shall, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of the duty or tax.

Article XII. Funds, Assets and Other Property

1. The Centre, 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, the United Nations has expressly waived the immunity. It is, however, understood that no waiver of immunity shall extend to any measures of execution.

2. The Centre's property, funds and assets, 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. Without being restricted by financial controls, regulations, or moratoria of any kind, the Centre may:

(*a*) Hold funds or currency of any kind and operate accounts in convertible currencies;

(*b*) Transfer its funds or currency to and from the Republic of Korea or within the Republic of Korea and convert them into other freely convertible currency.

4. The Centre shall be accorded the legally available rate of exchange for its financial activities and abide by related laws.

Article XIII. Administrative, Financial and Related Arrangements

Administrative, financial and related arrangements shall be dealt with in a separate agreement to be concluded between the Parties.

Article XIV. Access, Transit and Residence

1. The Government shall take all necessary measures to facilitate the entry into and exit from, and movement and sojourn within, the Republic of Korea for all persons referred to below, traveling for the purpose of official business of the Centre without undue delay:

(*a*) Members of the Governing Council;

(*b*) The Director, officials of the Centre, as well as their spouses and relatives dependent on them;

(*c*) Experts on mission for the Centre;

(*d*) Officials of the United Nations or specialized agencies or of the International Atomic Energy Agency, having official business with the Centre;

(*e*) Personnel of the research and training Centres and programmes and associated institutions of ESCAP and persons participating in the programmes of ESCAP;

(*f*) Other persons invited by the Centre on official business.

2. The appropriate authorities shall grant facilities for speedy travel. Visas and entry permits, where required, shall be issued as promptly as possible to all persons referred to in paragraph 1.

3. No act performed by any person referred to in paragraph 1 in his/her official capacity with respect to the Centre shall constitute a reason for preventing his/her entry into or departure from, or for requiring him/her to leave, the territory of the Republic of Korea.

Article XV. Identification

1. Persons referred to in Article XIV (1) shall hold a personal identity card issued by the Centre which is equivalent to a standard United Nations identity card.

2. The relevant authorities of the Government shall issue appropriate IDs to the officials of the Centre and their spouses and relatives dependent on them after receiving their relevant information provided by the Centre.

Article XVI. Privileges, Immunities and Other Facilities of Members of the Governing Council, Officials and Experts

1. Members of the Governing Council at meetings convened by the Centre shall while exercising their functions and during their journeys to and from the place of meeting, enjoy the privileges and immunities provided for in article IV of the Convention.

2. (*a*) Officials of the Centre shall be accorded the privileges and immunities provided for in articles V and VII of the Convention, without prejudice to the reservation made by the Government upon accession thereto. They shall, *inter alia,* enjoy:

(i) Immunity from legal process in respect of words spoken or written and all acts per formed by them in their official capacity; such immunity shall continue to be accorded after termination of employment with the Centre;

(ii) Exemption from taxation on the salaries and emoluments paid to them by the Centre;

(iii) Immunity from seizure or inspection of their official baggage, except in doubtful cases, granted only to representatives of States and experts on mission;

(iv) Immunity from national service obligations;

(*b*) In addition, internationally recruited officials of the Centre shall:

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

(ii) Be accorded the same privileges in respect of exchange facilities as those enjoyed by members of comparable rank of the diplomatic staff of missions accredited to the Government;

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

(iv) Have the right to import free of duty their personal effects at the time of first taking up their posts in the Republic of Korea and to enjoy, thereafter, the same privileges as other United Nations offices in the Republic of Korea;

(*c*) Experts on mission for the Centre shall be granted the privileges and immunities and facilities provided for in articles VI and VII of the Convention.

3. Privileges and immunities are granted by this Agreement in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any individual in any case where, in the Secretary-General's opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations.

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 as well as policies of the competent organs of the United Nations, including ESCAP. Persons recruited locally and assigned to hourly rates shall be accorded the status necessary for the independent exercise of their functions for the Centre.

Article XVIII. Laissez-passer

1. The Government of the Republic of Korea shall recognize and accept the United Nations *laissez-passer* issued to officials traveling for the purpose of official business of the Centre as a valid travel document equivalent to a passport Visas and entry permits, where required, shall be granted free of charge and as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

2. Similar facilities as specified in paragraph 1 above shall be accorded to persons who, though not holders of a United Nations *laissez-passer,* have a certificate that they are traveling on the business of the United Nations.

Article XIX. Settlement of Disputes

Any dispute between the Centre and the Government relating to the interpretation and application of this Agreement which is not settled by negotiation or other agreed mode of settlement, shall be submitted for a final decision to a tribunal of three arbitrators, one of whom shall be appointed by each Party, and the third, who shall be the Chairperson, by the other two arbitrators. If within two months of either Party having notified the name of its arbitrator the other Party has not appointed an arbitrator, or if within two months 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. Except as otherwise agreed by the Parties, the procedure for the arbitration shall be fixed by the arbitrators, and the expenses for 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 XX. Respect for Local Laws and Regulations

1. Without prejudice to the privileges and immunities accorded by this Agreement, it is the duty of all persons enjoying such privileges and immunities to observe the laws and regulations of the Republic of Korea. They also have a duty not to interfere in the internal affairs of the Republic of Korea.

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

3. Should the Government consider that an abuse of a privilege or immunity conferred by this Agreement has occurred, the Director of the Centre shall, upon request, consult with the appropriate authorities to determine whether any such abuse has occurred. If such consultations fail to achieve a result satisfactory to the Government and to the Director of the Centre, the matter shall be determined in accordance with the procedure set out in article XIX.

Article XXI. General Provisions

1. The provisions of this Agreement shall be complementary to the provisions of the Convention, i.e., in so far as any provisions of this Agreement and any provisions of the Convention relate to the same subject matter, the two provisions shall be treated as complementary, so that both provisions shall be applicable and neither shall narrow the effect of the other.

2. This Agreement shall enter into force on the date when the parties have notified each other of the completion of their respective internal procedures for the entry into force of this Agreement.

3. Consultations with a view to amending this Agreement may be held at the request of either Party. Any amendments may be made by mutual consent, in writing.

4. The United Nations and the Government may, by written agreement, enter into such supplementary agreements as shall be necessary. Any relevant matter for which no provision is made in this Agreement shall be settled by the Parties in keeping with the relevant resolutions, decisions, regulations, rules and policies 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.

5. The Agreement shall cease to be in force six (6) months after either of the Parties give notice in writing to the other of its decision to terminate the Agreement, except as regards the normal cessation of the activities of the Centre and the disposal of its property in the Republic of Korea, as well as the resolution of any disputes between the Parties. In Witness Whereof, the undersigned, duly authorized thereto, have signed this Agreement in duplicate in English at Bangkok on 31 January 2006.

For the United Nations:	For the Government of the Republic of Korea:
Kim Hak-Su	Yoon Jee-joon
Executive Secretary United Nations Economic and Social Commission for Asia and the Pacifics	Ambassador Extraordinary and Plenipotentiary of the Republic of Korea to the Kingdom of Thailand

(*c*) Agreement between the United Nations and the United States of America acting through the Government Accountability Office concerning the treatment of the United Nations' confidential information relating to the United Nations Capital Master Plan. New York, 14 February 2006*

This agreement is made by and between:

The United Nations (the "UN" or "United Nations"), an international intergovernmental organization with its Headquarters in New York, New York 10017, U.S.A. (also hereinafter, "Discloser"); and,

The United States of America, acting through the Government Accountability Office (the "GAO"), an organ of the Government of the United States of America and having its principal offices located at 441 G Street, NW, Washington, DC 20548 (also hereinafter, the "Recipient").

The Discloser and Recipient are also referred to collectively as the "Parties" and individually as a "Party".

Whereas, the United Nations has planned a renovation of its facilities at the United Nations Headquarters District (the "Capital Master Plan");

Whereas, the GAO has requested certain information, and has asked to examine certain documentation, relating to the Capital Master Plan in order to facilitate its review of the state of the Capital Master Plan on behalf of the United States Congress (GAO engagement 320378);

Whereas, the United Nations in its sole discretion may choose, on a voluntary basis, and without prejudice to the privileges and immunities of the United Nations, as set forth in the Convention on the Privileges and Immunities of the United Nations, dated 13 February 1946, (hereinafter, the "Convention") and the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, dated 26 June 1947, (hereinafter, the "Headquarters Agreement"), to provide the GAO with, or give access to, certain Confidential Information, as defined in Section I below;

Whereas, the United Nations desires to maintain the confidentiality of such Confidential Information, as well as to prevent the disclosure of such Confidential Information other than as permitted in accordance with this Agreement; and,

Whereas, the Recipient acknowledges that the United Nations intends to prevent the unauthorized disclosure of such Confidential Information and that, in consideration for being provided with, or being given access to, such Confidential Information, the Recipient shall use, protect and disclose such Confidential Information in accordance with the terms and conditions of this Agreement.

Now therefore, the Parties agree as follows:

Section I

"Confidential Information", whenever used in this Agreement shall mean any information disclosed by the Discloser to the Recipient in written, oral, recorded, photographic, or any other form, and in any medium, whether now known or hereinafter invented,

* Entered into force on 15 February 2006, in accordance with article VIII (a) of the agreement.

including, but not limited to, information regarding the business processes, operations, activities, plans, financial information, data or records relating to personnel, agents, officials and representatives, and any other information that, at the time of disclosure to the Recipient, the Discloser has marked or labeled, "Confidential" or, "Restricted", or is otherwise marked, labeled or otherwise referred to by the Discloser as confidential in any other manner.

Section II

Confidential Information that is delivered or otherwise disclosed by the Discloser to the Recipient shall be held in confidence by the Recipient and shall be handled as follows:

(*a*) The Recipient shall use the same care to avoid disclosure, publication or dissemination of the Confidential Information as it uses with its own similar information that it does not disclose, publish or disseminate, and Recipient hereby represents and warrants that such degree of care is reasonably designed to protect the confidentiality of Confidential Information from disclosure, publication or dissemination other than in accordance with this Agreement; and,

(*b*) The Recipient shall use the Confidential Information solely for the purpose of reviewing the state of the Capital Master Plan or otherwise for the benefit of the Discloser.

Section III

All Confidential Information in any form and on any medium, including all copies thereof, disclosed to the Recipient shall be returned to the Discloser at the request of the Discloser.

Section IV

Without prejudice to any other provision of this Agreement, the United Nations may specify that certain information, documents and drawings may be examined by representatives of the GAO at United Nations Headquarters in New York during normal business hours, but may not be copied or removed from United Nations Headquarters.

Section V

Any dispute between the United Nations and the Recipient 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.

Section VI

Nothing in or relating to this Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs and officials under the Convention and the Headquarters Agreement.

Section VII

This Agreement shall only be amended by a written consent signed by the Parties.

Section VIII

The Parties acknowledge and agree that their representatives who have signed this Agreement had Full Powers to do so and to fully bind the Party being represented by doing so.

(*a*) This Agreement shall enter into force as from the date that this Agreement has been signed by the Parties hereto. If the Agreement is signed on different dates by the Parties, then the Agreement shall enter into force on the later date on which it has been signed by both Parties.

(*b*) The Agreement shall remain in force for an initial period of one year. The Agreement may be extended beyond the one-year period by a written consent signed by the Parties.

(*c*) Either Party may terminate this Agreement by providing written notice to the other, provided, however, that the obligations and restrictions herein regarding the Confidential Information shall remain effective following any such termination or any other termination or expiration of this Agreement.

In witness whereof, the Parties, acting through their duly authorized representatives, have caused this Agreement to be signed in duplicate at New York on the dates set forth below.

For and on behalf of United Nations:	For and on behalf of the United States of America, Acting through the Government Accountability Office:
[*Signed*] Louis Frederick Reuter, IV	[*Signed*] Jacquelyn Williams-Bridgers
Assistant Secretary-General Capital Master Plan	Managing Director International Affairs and Trade

Dates: 14 and 15 February 2006

(*d*) Exchange of letters constituting an agreement between the United Nations and the Government of the State of Kuwait concerning the activities of the United Nations Assistance Mission for Iraq (UNAMI). New York, 23 and 30 September 2004*

I. *Letter from the Under-Secretary-General for Political Affairs to the Permanent Representative of Kuwait to the United Nations*

Excellency,

1. I have the honour to refer to the activities of the United Nations Assistance Mission for Iraq (UNAMI) which was established by Security Council resolution 1500 (2003) to support the Secretary-General in the performance of his functions under Security Council resolution 1483 (2003).

2. In order to facilitate the activities of UNAMI, the United Nations needs to establish a presence in the State of Kuwait to provide transport, logistical and other support services to the Mission.

3. To that end, I wish to propose that your Government, in conformity 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 paragraph 5 below, the privileges and immunities provided for in the Convention on the Privileges and Immunities of the United Nations, to which the State of Kuwait is a Party.

4. For the purposes of this Agreement, the following terms and concepts shall have the meanings specified wherever they occur in this Agreement:

"Government" shall mean the Government of the State of Kuwait.

"Mission" shall mean the United Nations Assistance Mission for Iraq (UNAMI).

"The Convention" shall mean the 1946 Convention on the Privileges and Immunities of the United Nations.

5. High ranking members of the Mission whose names shall be communicated to the Government shall enjoy the privileges and immunities, exemptions and facilities which are granted to diplomatic envoys in accordance with international law. Officials of the United Nations and experts assigned to serve with the Mission shall enjoy the privileges and immunities to which they are entitled under Articles V, VI and VII of the Convention.

6. Locally recruited members of the Mission shall enjoy the immunities concerning official acts, exemption from taxation and immunity from national service obligations provided for in Section 18 (a), (b) and (c) of the Convention.

7. The privileges and immunities necessary for the fulfilment of the functions of the Mission in the State of Kuwait shall also include:

i. facilitating procedures for entry and exit of Mission personnel, property, supplies, equipment, spare parts and means of transport, including exemption from passport and visa regulations, provided that the Mission shall inform the Government of the names of those Mission personnel who are to be granted the right of prompt and unrestricted

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* Entered into force on 18 April 2006 in accordance with the provisions of the letters. United Nations, *Treaty Series,* vol. 2368, p. 335.

freedom of entry and exit. In the event of major movements, the Mission shall inform the Government in advance in the interest of coordination.

ii. freedom of movement throughout the State of Kuwait of Mission personnel, their property, supplies, equipment, spare parts and means of transport which shall be in coordination with the Government.

iii. without prejudice to the laws in force in the State of Kuwait, the Mission shall be exempt from customs duties and taxes and prohibitions and restrictions on imports in respect of equipment, provisions, supplies and other materials imported by the Mission for its official use. The Mission shall be entitled to re-export such items free of duty, taxes or other prohibitions and restrictions. The Government shall issue all necessary licenses and permits for the import, export or purchase of equipment, materials, supplies and other goods used in support of the Mission. However, equipment, supplies and goods which are exempt from taxes in accordance with this paragraph and which are sold in Kuwait to persons not entitled to a tax exemption shall be subject to customs and other duties in accordance with their value at the time of sale. The Mission shall not claim exemption from charges which are in fact charges for services rendered, it being understood that such charges for services for services rendered shall be charged at the most favourable rates.

iv. right to fly the United Nations flag on premises, observation posts, vehicles and aircraft and place distinctive United Nations identification on premises, vehicles, aircraft and vessels used in support of the Mission;

v. freedom of use of United Nations means of transport on land, sea and in the air and acceptance of licenses accepted by the United Nations for the operation and operators thereof;

vi. in accordance with Kuwaiti legislation in force, the right to unrestricted communication by radio, satellite or any other forms of communication within Kuwait and with United Nations Headquarters and with its various offices and to connect with the United Nations radio and satellite network, as well as communication by telephone, telefax and other electronic information systems. The frequency to be used for communication by radio shall be specified by agreement with the Government; and

vii. right to make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of the 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 Mission or its members.

8. The Government shall provide without cost to the Mission such areas for headquarters or other premises as may be necessary (by agreement between the parties) for the conduct of the operational and administrative activities of the Mission. Without prejudice to the fact that all such premises remain territory of the State of Kuwait, they shall be inviolable and subject to the exclusive control and authority of the United Nations.

9. 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 Mission, its property, assets and its members.

10. At the request of the head of the Mission, the Government shall provide the Mission, where necessary, with maps and other information which might be useful in facilitating the tasks of the Mission, subject to their availability to the Government.

11. The Mission and its members shall, in so far as it is consistent with the provisions of this Agreement, respect all the laws and regulations in force in the State of Kuwait and shall refrain from any action that is inconsistent with the impartial and international nature of their duties or with the spirit of the present arrangements.

12. General Assembly resolution 52/247 of 26 June 1998 on third party liability shall be taken into account with respect to the implementation of this Agreement.

13. Any dispute between the United Nations and the Government arising out of 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 through negotiation or any other agreed mode of settlement.

14. Without prejudice to existing agreements the present 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 present in Kuwait to perform functions in relation to the Mission, provided that prior written agreement has been obtained from the Special Representative of the Mission, the Specialized or related Agency or office, fund or programme concerned and the Government.

15. I propose that this letter and your reply confirming your acceptance of its provisions constitute an agreement between the United Nations and the State of Kuwait which shall enter into force on the date of the notification by the Government that it has fulfilled all legal requirements for its entry into force.

16. This Agreement shall remain in force for one year and shall be automatically renewed thereafter for one or more similar periods unless either party informs the other of its wish to terminate it by giving at least 60 days' notice in writing.

17. This Agreement shall be in two originals, in the Arabic and English languages. In the event of a disagreement as to its interpretation, the English text shall prevail.

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

II. *Letter from to the Permanent Representative of Kuwait to the United Nations to the Under-Secretary-General for Political Affairs*

30 September 2004

Dear Mr. Kieran Prendergast

Under-Secretary-General for Political Affairs

I have the honour to acknowledge receipt of your letter dated 23 September 2004 which reads as follows:

[*See Letter I*]

I have the honour to inform you that my Government agrees to the proposals contained in your Note. Your Note and this note reply shall constitute an Agreement between the Government of the State of Kuwait and the United Nations and shall enter into force

on the date of the notification by the Government that it has fulfilled all legal requirements for its entry Into force.

Please accept the assurances of my highest consideration.

[*Signed*] NABEELA AL MULLA
Ambassador
Permanent Representative

(*e*) Exchange of letters constituting an agreement between the United Nations and Cyprus regarding the arrangements for the Workshop on Lessons Learned from the Iraqi Elections, 18 April 2006 and 19 April 2006*

I

18 April 2006

Excellency,

I have the honour to refer to the arrangements for the "Workshop on Lessons Learned from the Iraqi Elections" that the United Nations would like to arrange in Larnaca, Republic of Cyprus, from 2 to 4 May 2006. With the present letter I wish to obtain your Government's acceptance of the following arrangements.

Workshop participants would include Commissioners and senior staff of the Independent Electoral Commission of Iraq, members of the newly elected Council of Representatives of Iraq, officials from Iraqi Ministries with linkages to the electoral process, representatives of international entities that contributed to the electoral process under the umbrella of the United Nations, and members of the International Mission of Iraq Elections. Invitations will also be issued to donor countries contributing to the electoral cluster of the International Reconstruction Fund for Iraq (IRFFI), and to representatives of the Group of Friends of Iraq. United Nations staff members will also participate in the Workshop. In total, around fifty participants will attend the Workshop.

The Workshop will be held at the Golden Tulip Golden Bay Beach Hotel, with both conference facilities and accommodation in Larnaca. The Workshop will be financed from the electoral cluster of the IRFFI.

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

(*a*)

(i) The Convention on the Privileges and Immunities of the United Nations, to which Cyprus is a party since 5 November 1963, shall be applicable in respect of the Workshop. The participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by Article VI of the Convention. Officials of the United Nations participating in or performing functions in connexion 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;

* Entered into force on 19 April 2006, in accordance with the provisions of the letters.

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

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

(*b*) All participants and all persons performing functions in connexion with the Workshop shall have the right of unimpeded entry into and exit from Cyprus. Visas and entry permits, where required, shall be granted free of charge and as speedily as possible, but 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 were unable to obtain them prior to their arrival.

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

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

(*d*) The Government shall furnish, at its own expense, such police protection as is required to ensure the efficient functioning of the Workshop in an atmosphere of security and tranquility free from interference of any kind. While such police services shall be under the direct supervision or control of a senior officer designated by the Government, this officer shall work in close cooperation with a designated senior official of the United Nations.

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

I further propose that upon receipt of your confirmation in writing of the above this Exchange of letters shall constitute an Agreement between the United Nations and the Government of the Republic of Cyprus regarding the provision of host facilities by your Government for the Workshop.

Accept, Excellency, the assurances of my highest consideration.

[*Signed*] FOR IBRAHIM GAMBARI
Under-Secretary-General for Political Affairs
United Nations Focal Point
for Electoral Assistance Activities

II

19 April 2006

Excellency,

I have the honour to acknowledge receipt of your letter dated 18 April 2006 with which you wish to obtain my Government's acceptance of the arrangements proposed for the United Nations "Workshop on Lessons Learned from the Iraqi Elections" to be held in Larnaca, Cyprus between 2 and 4 May 2006 and of the terms that shall apply to this Workshop.

I am pleased to convey to you my Government's acceptance of the proposed terms as well as its understanding that your letter and this letter of acceptance, when received by you, shall constitute an Agreement between the Government of Cyprus and the United Nations concerning the arrangements for the aforementioned "Workshop".

Accept, Excellency, the assurances of my highest consideration.

[*Signed*] ANDREAS D. Mavroyiannis

(*f*) Agreement between the United Nations and the Italian Republic on the enforcement of sentences of the International Criminal Tribunal for Rwanda. Rome, 17 March 2006*

The Government of the Italian Republic (hereinafter called the "requested State") and the United Nations acting through the International Criminal Tribunal for Rwanda (hereinafter called "the Tribunal"),

Recalling Article 26 of the Statute of the Tribunal annexed to Security Council resolution 955 (1994) of 8 November 1994, according to which imprisonment of persons sentenced by the Tribunal shall be served in Rwanda or in any of the States on a list of States which have indicated to the Security Council their willingness to accept convicted persons;

Considering Italian Law n. 181 of 2 August 2002 relating to cooperation between the Government of Italy and the Tribunal;

Noting the willingness of the requested State to enforce sentences imposed by the Tribunal;

* Entered into force on 25 May 2006, in accordance with article 12 of the agreement.

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

In order to give effect to the judgments and sentences of the Tribunal;

Have agreed as follows:

Article 1. Purpose and Scope of the Agreement

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

Article 2. Procedure

1. A request to the Government of Italy to enforce a sentence shall be made by the Registrar of the Tribunal (hereinafter "the Registrar") with the approval of the President of the Tribunal (hereinafter "the President").

2. When making the request, the Registrar shall provide the following documents to the Minister of Justice of the requested State (hereinafter "the Minister of Justice"):

a) a certified copy of the final judgment;

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

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

3. The Minister of Justice shall submit the request to the competent national authorities, in accordance with Italian laws and particularly in conformity with Article 7, par. 1. of "Provision on Cooperation with the International Tribunal having the required capacity to judge for heavy violations of the humanitarian law committed on the Rwanda territory and its nearby States" (Law of 2 August 2002, n. 181, hereinafter designated as "Provisions on cooperation matters").

4. The competent national authorities of the requested State shall promptly decide upon the request of the Registrar, in accordance with Article 7, par. 2, 3 and 4 of the "Provisions on cooperation matters".

Article 3. Enforcement

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

2. The conditions of imprisonment shall be governed by the law of the requested State, in accordance with Article 8, par. 1, of the "Provisions on cooperation matters", subject to the supervision of the Tribunal, as provided for in Article 8, par. 2, of the already

mentioned "Provisions on cooperation matters" and in Articles 6, 7, 8 and 9, par. 2 and 3, of this Agreement.

3. If, pursuant to the applicable national law of the requested State, the convicted person is eligible for non-custodial measures or working activities outside the prison or is entitled to benefit from conditional release, the Minister of Justice shall notify the President of the Tribunal.

4. If the President of the Tribunal, in consultation with the judges, does not consider that the application to the convicted person of one of the measures mentioned in paragraph 3 above is appropriate, the Registrar shall immediately notify the Minister of Justice who, pursuant to Article 10 of this Agreement, will provide for the transfer of the convicted person to the Tribunal.

5. Conditions of imprisonment shall be compatible with the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the protection of all persons under any form of detention or imprisonment and the Basic Principles for the Treatment of Prisoners.

Article 4. Transfer of the convicted person

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

Article 5. Non-bis-in-idem

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

Article 6. Inspection

1. Following arrangements with the competent authorities of the Ministry of Justice according to Article 8, par. 2, of the "Provisions on cooperation matters", the Minister of Justice shall allow the inspection of the conditions of detention and treatment of the convicted persons at any time and on a periodic basis by the International Committee of the Red Cross (ICRC). The frequency of such visits shall be determined by the ICRC. The ICRC shall submit a confidential report based on the findings of these inspections to the Minister of Justice and to the President of the Tribunal.

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

Article 7. Information

1. The Minister of Justice shall immediately notify the President:

a) If the convicted person has deceased;

b) If the convicted person has escaped from custody;

c) Two months prior to the completion of the sentence.

2. Notwithstanding the previous paragraph, the President of the Tribunal and the Minister of Justice shall consult each other on all matters relating to the enforcement of the sentence, upon the request of either party.

Article 8. Pardon and Commutation of sentence

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

2. If the President of the Tribunal, in consultation with the judges, does not consider that the application to the convicted person of one of the measures mentioned in paragraph 1 above is appropriate, the Registrar shall immediately notify the Minister of Justice who, pursuant to Article 10 of this Agreement, will provide for the transfer of the convicted person to the Tribunal.

Article 9. Termination of enforcement

1. The enforcement of the sentence shall cease:

a) When the sentence has been completed;

b) Upon the decease of the convicted person;

c) Upon pardon of the convicted person;

d) Following a decision of the Tribunal, as referred to in paragraph 2.

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

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

Article 10. Impossibility to enforce sentence

If, at any time after the decision has been taken to enforce a sentence, further enforcement has, for any legal or practical reason, become impossible, the Minister of Justice shall promptly so inform the Registrar. The Registrar shall make the appropriate arrangements for the transfer of the convicted person. The competent authorities of the requested State shall allow for at least sixty (60) days following the notification before taking other measures on the matter.

Article 11. Costs

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

Article 12. Entry into force

This Agreement shall enter into force after the Government of the Italian Republic has notified the United Nations of completion of all its relevant internal procedures.

Article 13. Duration of the Agreement

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

2. Upon consultation, either of the parties may terminate this Agreement, with two months' prior notice. This Agreement shall not be terminated before the sentences to which this Agreement applies have been completed or terminated and, if applicable, before the transfer of the convicted person as provided for in Article 10 has been effected.

In witness whereof, the undersigned, duly authorized thereto, have signed this Agreement.

Done in Rome this 17th day of March in duplicate, in English and Italian, the English text being authoritative.

(*g*) Exchange of letters constituting an agreement between the United Nations and Egypt regarding the arrangements for the United Nations seminar on Assistance to the Palestinian People. 20 April 2006*

I

20 April 2006

Excellency,

1. I have the honour to refer to resolution 60/37 on the "Question of Palestine" adopted by the General Assembly on 1 December 2005, in particular to its paragraph 3, by which the General Assembly requested the Secretary-General to ensure that the Division for Palestinian Rights of the Secretariat "continues to carry out its programme of work as detailed in relevant earlier resolutions, in consultation with the Committee on the Exercise of the Inalienable Rights of the Palestinian People and under its guidance". Accordingly, the Committee included the organization of meetings and conferences in various regions in its annual programme of work.

2. The Committee has received with appreciation the acceptance of Your Excellency's Government to hold the United Nations Seminar on Assistance to the Palestinian People on 26 and 27 April 2006 in Cairo. The Seminar will be organized jointly by the United Nations, represented by the Department of Political Affairs ("the United Nations") and the Government of the Arab Republic of Egypt ("the Government"). The venue of the Seminar is the Conrad Hotel in Cairo. With the present letter, I wish to obtain your Government's acceptance of the arrangements set out below.

3. The number of persons who will participate in the Seminar is expected to be about 150–200. They will include representatives of States, including Members and Observers of the Committee, United Nations officials, eminent personalities, parliamentarians, rep-

* Entered into force on 20 April 2006 in accordance with the provisions of the letters.

resentatives of interested intergovernmental organizations, individuals drawn from the academic community and others interested in the subject, as well as representatives of non-governmental and other civil society organizations. All participants will be invited by the United Nations.

4. The public sessions of the Seminar shall be opened to representatives of information media accredited by the United Nations at its discretion.

5. The official languages of the Seminar will be Arabic, English and French. Simultaneous interpretation from and into these languages will be provided by the United Nations.

6. The United Nations shall be responsible for the preparation and conduct of the Seminar, invitation of participants, travel and Daily Subsistence Allowance (DSA) for United Nations officials servicing the Seminar, rental of conference facilities and office space, as well as necessary conference and office equipment, recruitment of local staff, preparation and distribution of meetings' documentation, preparation and publication of the reports of the Seminar.

7. The Government shall be responsible for the availability of the required equipment.

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

9. As the Seminar will be convened by the United Nations, the following terms shall apply:

(*a*) The Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946 ("the Convention"), to which the Government is a party, shall be applicable in respect of the Seminar. The representatives of States invited by the United Nations to participate in the Seminar, including Members and Observers of the Committee on the Exercise of the Inalienable Rights of the Palestinian People shall enjoy the privileges and immunities accorded by Article IV of the Convention. All other participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on missions 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 Seminar shall enjoy the privileges and immunities provided under Articles V and VII of the Convention. Officials of the Specialized Agencies participating in the Seminar shall be accorded the privileges and immunities provided under Articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies adopted by the General Assembly on 21 November 1947;

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

(*c*) Without prejudice to the provisions in paragraphs (a) and (b) above, all persons performing functions in connection with the Seminar, and all those invited to the Seminar shall enjoy the privileges, immunities and facilities necessary for the independent exercise of their functions in connection with the Seminar;

(*d*) All participants invited by the United Nations and all persons performing functions in connection with the Seminar shall have the right of unimpeded entry into and exit from Egypt, and no impediment shall be imposed on their transit to and from the Seminar area. Visas and entry/exit 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 Seminar, visas shall be granted no later than two weeks before the opening of the Seminar. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible and no later than three days before the opening. Arrangements shall also be made to ensure that visas for the duration of the Seminar are delivered at the airport of arrival to those who were unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge, as speedily as possible, and in any case not later than three days before the closing of the Seminar;

(*e*) 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:

(i) injury to persons or damage to or loss of property in meeting or office premises provided for the Seminar;

(ii) injury to persons, or damage to or loss of property caused by or incurred in using the transportation provided by or under the control of the Government; and

(iii) the employment for the Seminar of personnel provided or arranged by the Government;

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

(*f*) The Government shall allow the temporary importation, tax-free and duty-free, of all equipment, including technical equipment accompanying representatives of the information media duly accredited by the United Nations, and shall waive import duties and taxes on supplies necessary for the official use of the United Nations for the Seminar. It shall issue without delay, to the United Nations and the above-mentioned representatives of the information media any necessary import and export permits for this purpose.

10. 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. 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.

11. I further propose that upon receipt of your Government's written acceptance of this proposal, the present letter and the letter in reply from your Government shall constitute an Agreement between the United Nations and the Government of the Arab Republic of Egypt regarding the arrangements for the United Nations Seminar on Assistance to the Palestinian People. It shall enter into force on the date of your reply and shall remain in force for the duration of the Seminar and for such additional period as is necessary for the preparation and completion of its work and for the resolution of matters arising out of the Agreement.

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

[*Signed*] FOR I. A. Gambari
Under-Secretary-General for Political Affairs

II

20 April 2006

Excellency,

With reference to your draft Letter of Agreement between the United Nations and the Government of Egypt regarding the arrangements for the United Nations Seminar on Assistance to the Palestinian People to be held on 26 and 27 April 2006 in Cairo (CPR/SEM/2006 dated 28 March 2006), I have the honour to inform you that the Government of Egypt accepts the proposal contained in your draft Letter of Agreement referred to above.

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

Sincerely,

[*Signed*] MAGED A. ABDELAZIZ
Ambassador
Permanent Representative

(*h*) Protocol amending the Agreement between the United Nations and the Democratic Republic of the Congo on the status of the United Nations Mission in the Democratic Republic of the Congo. Kinshasa, 6 June 2006*

Whereas, on 4 May 2000, the United Nations and the Government of the Democratic Republic of the Congo signed the Agreement between the United Nations and the Democratic Republic of the Congo concerning the status of the United Nations Mission in the Democratic Republic of the Congo ("the Agreement");

Whereas, in its resolution 1503 (2003) dated 26 August 2003, the Security Council requested the Secretary-General of the United Nations to seek the inclusion of, and that host countries include, key provisions of the Convention on the Safety of United Nations and Associated Personnel, among others, those regarding the prevention of attacks against members of United Nations operations, the establishment of such attacks as crimes pun-

* Entered into force on 6 June 2006 in accordance with Article 2 of the Protocol.

ishable by law and the prosecution or extradition of offenders, in future as well as, if necessary, in existing status-of-forces, status-of-missions and host country agreements negotiated between the United Nations and those countries,

Wishing to amend the Agreement so as to include in it key provisions of the Convention on the Safety of United Nations and Associated Personnel,

The United Nations and the Government of the Democratic Republic of the Congo have agreed as follows:

1. Paragraphs 48 and 49 of the Agreement shall be deleted and replaced by the following provisions:

"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 in respect of MONUC, its property, assets and members. In particular:

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

(ii) If members of MONUC 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 Convention of 1949;

(iii) The Government undertakes to prosecute, without exception and without delay, persons subject to its criminal jurisdiction who are accused of having committed the acts listed below against MONUC or its members:

(a) A murder, kidnapping or other attack upon the person or liberty of any members of MONUC;

(b) A violent attack upon the official premises, the private accommodation or the means of transportation of any member of MONUC 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 reaffirms 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 MONUC, is present in its territory, unless it has extradited such person to the State in 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 also undertakes to ensure the prosecution without exception and without delay of persons subject to its criminal jurisdiction who are accused of having committed, in respect of MONUC or of its members, other acts which, if committed in respect of the forces of the Government or the local civilian population, would have rendered the perpetrators liable to prosecution.

49. Upon the request of the Special Representative of the Secretary-General, the Government shall provide any security necessary to protect MONUC, its property and its members during the exercise of their duties."

2. The present Protocol shall enter into force on the date of its signature by both Parties.

In witness whereof, the undersigned, being duly authorized to do so by the United Nations and by the Government of the Democratic Republic of the Congo, have signed this Protocol.

Done at Kinshasa, Democratic Republic of the Congo, on 6 June 2006, in two copies in French.

[*Signed*] WILLIAM LACEY SWING	[*Signed*] RAYMOND RAMAZAN BAYA
Special Representative of the Secretary-General for the Democratic Republic of the Congo	Minister for Foreign Affairs and International Cooperation

(*i*) Exchange of letters constituting an agreement between the United Nations and Cambodia concerning the organization of the ASEAN Meeting on the 2010 World Programme on Population and Housing Censuses. 29 June and 20 July 2006*

I

29 June 2006

Excellency,

I have the honour to refer to the arrangements concerning the "ASEAN (Association of South East Asian Nations) Meeting on the 2010 Round of Population and Housing Censuses" (hereinafter referred to as "the Meeting"). The Meeting 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 Kingdom of Cambodia represented by the National Statistical Institute of Cambodia (hereinafter referred to as "the Government"). The Meeting will be held in Siem Reap, Cambodia from 31 July to 2 August 2006, at the Prince D'Angkor Hotel.

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

1. The Meeting will be attended by the following participants invited by the United Nations:

* Entered into force on 20 July 2006, in accordance with the provisions of the letters.

(*a*) up to 18 international participants from member countries of ASEAN;

(*b*) local government officials selected by the Government;

(*c*) up to 2 officials from the ASEAN Secretariat;

(*d*) up to 3 officials from the United Nations;

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

2. The total number of participants will be approximately 32. The list of participants will be determined by the United Nations in consultation with the Government prior to the holding of the Meeting.

3. The Meeting will be conducted in English.

4. The United Nations will be responsible for:

(*a*) the planning and running of the Meeting and the preparation of the appropriate documentation;

(*b*) the invitations as well as the selection of the international participants, as specified in sub- paragraphs 1a) , 1 c) , 1 d) and 1 e);

(*c*) conference facilities for the Meeting;

(*d*) the reproduction of the Meeting materials;

(*e*) any necessary office supplies and equipment, including stationery, personal computers, printers and photocopiers;

(*f*) substantive support during and after the Meeting;

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

5. The Government will be responsible for:

(*a*) local counterpart staff to assist with the planning and any necessary administrative support during the Meeting;

(*b*) the invitation as well as any costs related to the participation of national participants specified in sub-paragraph 1 c) above, beyond those covered under sub-paragraph 4g).

6. The cost of transportation and daily subsistence allowance for observers, as specified in sub-paragraph 1 d) above, will be the responsibility of their organizations.

7. The Government will ensure the effective functioning of Symposium in an atmosphere of security and tranquility from interference of any kind.

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

(*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 Meeting;

(*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 Meeting shall enjoy the privileges and immunities provided

under articles V and VII of the Convention. The Government shall apply to officials of the Specialized Agencies participating in the Meeting the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies;

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

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

(*e*) All participants and all persons performing functions in connection with the Meeting shall have the right of unimpeded entry into and exit from Cambodia. Visas and entry permits, where required, shall be granted free of charge and issued as speedily as possible. When applications are made four weeks before the opening of the Meeting, visas shall be granted not later than two weeks before the opening of the Meeting. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible and not later than three days before the opening. Arrangements shall also be made to ensure that visas for the duration of the Meeting 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 Meeting.

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

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

(*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 Meeting by or under the control of the Government;

(*c*) The employment for the Meeting 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.

10. 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 or of any other applicable agreement, shall, unless the Parties otherwise agree, 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 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 Kingdom of Cambodia regarding the hosting of the Meeting, which shall enter into force on the date of your reply and shall remain in force for the duration of the Meeting and for such additional period as is necessary for its preparation and for 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 for
Economic and Social Affairs

II

20 July 2006

Dear Mr. Under-Secretary-General,

I have the honour to refer to your letter reference DESA/06/162 of 29 June 2006 relating to the proposed arrangements for the hosting of the ASEAN meeting on the 2010 World Programme on Population and Housing Censuses to be held in Siem Reap, Cambodia from 31 July to 2 August 2006.

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

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

Yours sincerely,

[*Signed*] Dr. Widhya Chem
Ambassador Permanent Representative
Permanent Mission of the Kingdom of Cambodia
to the United Nations

(*j*) Memorandum of Understanding between the United Nations and the African Union for the provision of support by the United Nations Mission in the Sudan (UNMIS) to the African Union Mission in the Sudan (AMIS). Addis Ababa, 25 November 2006*

Whereas, the African Union Mission in the Sudan ("AMIS") was established, on 28 May 2004, as a Peace Support Operation Mission of the African Union, and whereas its current mandate includes implementation of the Darfur Peace Agreement signed on 5 May 2006;

Whereas, on 4 June 2004 the African Union and the Government of the Sudan signed a Status of Mission Agreement (SOMA) on the establishment and management of the Ceasefire Commission in the Darfur area of the Sudan which covers the activities of AMIS in that area;

Whereas, the United Nations Mission in the Sudan (UNMIS) was established pursuant to United Nations Security Council resolution 1590 (2005) of 24 March 2005, as a subsidiary organ of the United Nations;

Whereas, the Agreement between the United Nations and the Government of the Sudan concerning the Status of the United Nations Mission in Sudan (the "UNMIS SOFA"), concluded on 28 December 2005, applies to UNMIS' operations throughout the territory of the Sudan;

Whereas, by a series of decisions and particularly by its decisions of 10 March 2006 and of 20 September 2006, the Peace and Security Council of the African Union appealed to the United Nations for assistance in supporting the activities of AMIS;

Recalling, United Nations Security Council resolution 1679 (2006) of 16 May 2006 which called upon the African Union and the United Nations to agree on requirements necessary to strengthen the capacity of AMIS to enforce the security arrangements of the Darfur Peace Agreement;

Whereas, based on the findings of the African Union-United Nations joint technical assessment mission of June 2006 the two organizations identified a number of specific areas where the United Nations could provide concrete support to AMIS;

Whereas, in his reports dated 28 July 2006 (S/2006/591) and 28 August 2006 (S/2006/591/Add.1), the Secretary-General outlined the areas in which the United Nations could provide significant support to AMIS;

Whereas, by its resolution 1706 (2006) of 31 August 2006, the Security Council decided that those elements outlined in paragraphs 40 to 58 of the Secretary-General's report of 28 July 2006 and which relate to the United Nations Support Package for AMIS shall begin to be deployed not later than 1 October 2006;

Whereas, by a letter dated 25 September 2006 the Secretary-General of the United Nations and the Chairperson of the African Union Commission jointly informed the President of the Republic of the Sudan that the two organizations have agreed on a package of immediate United Nations support to AMIS;

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* Entered into force on 25 November 2006 in accordance with article 16.1 of the Memorandum of Understanding.

Now, therefore, the United Nations and the African Union (the "Parties"), acting through UNMIS and AMIS, respectively, agree as follows:

Article I. Purpose

1. This Memorandum of Understanding (the "MOU") sets out the modalities for the provision of support by UNMIS to AMIS pursuant to paragraphs 5 and 7 of Security Council resolution 1706 (2006) and relevant Peace and Security Council decisions of the African Union.

Article 2. Basic Principles

2.1 UNMIS shall provide the support set forth in this MOU to AMIS in consultation and coordination with the Government of National Unity of the Sudan and in a spirit of transparency.

2.2 The provision of the support by UNMIS to AMIS shall not affect the legal status of AMIS, as a Peace Support Operation Mission of the African Union, or the independence of AMIS in the implementation of its mandate.

Article 3. Coordination

3.1 UNMIS shall designate an official (the "UNMIS Coordinator") to coordinate the provision of support to AMIS. The UNMIS Coordinator, or his/her authorized delegate, shall be the point of contact in UNMIS for all matters arising in connection with this MOU.

3.2 AMIS shall designate an official (the "AMIS Coordinator") to coordinate the provision of support from UNMIS. The AMIS Co-ordinator, or his or her authorized delegate, shall be the point of contact in AMIS for all matters arising in connection with this MOU. The AMIS Co-ordinator shall be based in El Fasher.

3.3 The UNMIS Coordinator shall be based in El Fasher and will report directly to the Head of Mission for UNMIS.

Article 4. Deployment of UNMIS Personnel

4.1 UNMIS shall in consultation with AMIS, deploy the Military Personnel, Police Advisers and civilian personnel (hereinafter collectively referred to as "UNMIS Personnel") to or in support of AMIS to perform the functions described in Annex 1 or such other functions or tasks as may be agreed in writing between UNMIS and AMIS.

4.2 UNMIS Personnel deployed to AMIS shall provide dedicated full-time support to AMIS in the performance of the functions described in Annex 1, or such other functions or tasks as may be agreed in writing between UNMIS and AMIS.

Article 5. Status of UNMIS Personnel

5.1 UNMIS Personnel deployed to AMIS shall, at all times during the period of their deployment to AMIS, remain members of UNMIS.

5.2 UNMIS Personnel deployed to AMIS shall, at all times during the period of their deployment to AMIS, continue to enjoy the status, privileges, immunities, facilities

and exemptions provided for in the UNMIS SOFA and in the Convention on the Privileges and Immunities of the United Nations.

5.3 UNMIS Military Personnel and Police Advisers deployed to AMIS shall, while performing their official duties, wear their national military or police uniform, with standard United Nations accoutrements, clearly identifying them as UNMIS Military and Police personnel, respectively. In addition, UNMIS Military Personnel and Police Advisers deployed to AMIS shall, while performing their official duties wear an AMIS arm band clearly identifying them as UNMIS personnel assigned to AMIS.

Article 6. Command and Control

6.1 All UNMIS Personnel deployed to AMIS shall at all times remain under the overall command and authority of the United Nations, represented by the Head of Mission of UNMIS.

6.2 The UNMIS Force Commander is vested with United Nations Operational Control of all UNMIS Military Personnel in Sudan. However, the AMIS Force Commander shall exercise Operational Control of the UNMIS Military Personnel assigned to AMIS to the extent required to facilitate the effective performance, on the ground of the functions described in Annex 1, in accordance with the terms of this MOU.

6.3 All UNMIS Personnel deployed to AMIS shall be administered by and accountable to the United Nations, in accordance with United Nations regulations, rules, policies, directives and administrative instructions, and standard operating procedures including but not limited to, those relating to performance, conduct and discipline.

6.4 UNMIS Police Advisers and civilian personnel deployed to AMIS shall provide advice and support to AMIS as described in Annex 1. UNMIS civilian personnel shall at all times be under the overall authority of the UNMIS Coordinator. UNMIS Police Advisers shall at all times remain under the operational control of the UNMIS Police Commissioner. However, the AMIS Police Commissioner can make recommendations to the UNMIS Police Commissioner concerning any matter pertaining to the deployment of UNMIS Police Advisers to support the evolving operational requirements of AMIS police. To this end the UNMIS Police Commissioner will closely liaise and consult with the AMIS Police Commissioner and the UNMIS and AMIS Support Package Coordinators, respectively to ensure a coordinated and consistent approach.

Article 7. Discipline

7.1 UNMIS Personnel deployed to AMIS shall at all times remain subject to United Nations standards of conduct, including, *inter alia,* directives, standard operating procedures, policies and issuances issued by, or on behalf of, the Head of Mission of UNMIS.

7.2 The Head of Mission of UNMIS shall continue at all times to be responsible for ensuring discipline and good order among UNMIS Personnel deployed to AMIS during the period of their deployment with AMIS.

7.3 Without prejudice to Article 6.2 above, all UNMIS Personnel deployed to AMIS shall remain solely accountable to the United Nations in respect of all matters relating to conduct and discipline. The military police of AMIS shall have the power of arrest over UNMIS Military Personnel deployed to AMIS in respect of the commission or attempted

commission of a criminal offence. Any UNMIS Military Personnel arrested by AMIS military police shall be transferred to UNMIS without undue delay and where possible within twenty-four (24) hours for appropriate disciplinary action.

Article 8. Reporting

8.1 UNMIS Personnel deployed to AMIS shall comply with AMIS routine internal reporting procedures.

8.2 UNMIS Personnel deployed to AMIS shall report to UNMIS through the UNMIS Coordinator, or his/her authorized delegate.

Article 9. Safety and Security

9.1 Subject to the primary responsibility of the Government of National Unity of the Sudan, UNMIS in accordance with the United Nations security management system shall be responsible for the safety and security of UNMIS Personnel deployed to AMIS. UNMIS Personnel deployed to AMIS may be withdrawn at any time, at the sole discretion of UNMIS, for reasons of safety and security. AMIS shall be notified concerning any decision relating to withdrawal.

9.2 The UNMIS Coordinator and the AMIS Coordinator shall consult regularly and cooperate on all matters relating to the safety and security of UNMIS Personnel deployed to AMIS.

9.3 The locations including duty-related travel to which UNMIS Personnel assigned to AMIS are deployed shall be subject to the prior written consent of the UNMIS Coordinator. UNMIS Personnel deployed to AMIS shall not be required to travel to any areas of increased threat as identified by the UNMIS Coordinator, without the prior written authorization of the UNMIS Coordinator.

9.4 AMIS shall take the necessary steps, as required by the AMIS Rules of Engagement, to ensure that members of AMIS authorized to carry firearms are both authorized and instructed to use force, up to and including deadly force, if necessary, to defend UNMIS Personnel deployed to AMIS against actual or imminent attack.

9.5 The AMIS Coordinator shall immediately notify the UNMIS Coordinator in the event that any UNMIS Personnel deployed to AMIS is arrested, detained, abducted, or missing, or if any UNMIS Personnel assigned to AMIS is taken ill, injured, dies or is killed and what action is being taken by AMIS.

Article 10. Logistics Support

10.1 UNMIS shall provide the following logistics support to UNMIS Personnel deployed to AMIS:

- Accommodation and meals, or subsistence allowance(s) in lieu thereof, in accordance with United Nations established procedures;
- Office accommodation (save to the extent that UNMIS Personnel deployed to AMIS are located in AMIS facilities) and office equipment;
- Communications Equipment;
- Vehicles, together with maintenance and fuelling;

- Air Transport;
- Camp facilities;
- Medical support, including MEDEVAC.

10.2 AMIS shall ensure that UNMIS personnel deployed to AMIS in locations where UNMIS logistics support is not available are provided with at least the same level of logistics support, medical and medevac facilities, as is provided to AMIS personnel. AMIS shall ensure that its medical staff at the hospital, including but not limited to doctors, specialists and surgeons, have the requisite certification and accreditation.

10.3 AMIS Personnel may travel on UNMIS aircraft, subject to and in accordance with relevant United Nations procedures including the signature of appropriate waivers, of liability. UNMIS Personnel deployed to AMIS shall not travel on AMIS aircraft without the prior written authorization of the UNMIS Coordinator. However, in cases of emergencies the AMIS co-ordinator may, at his discretion authorize the travel of UNMIS personnel deployed to AMIS on AMIS aircraft, which decision shall as soon as possible be communicated to the UNMIS Coordinator.

Article 11. United Nations Equipment

11.1 UNMIS shall provide to AMIS, on a temporary basis, the item(s) of United Nations-owned equipment described in Annex 2 ("UN Equipment"). Title to the UN Equipment shall at all times remain with UNMIS.

11.2 Requests for the provision of UN Equipment as set out in Annex 2 to AMIS shall be submitted, in writing, to the UNMIS Coordinator, or his/her authorized delegate. The AMIS Coordinator shall execute an "Agreement for Temporary Possession", as set out by Annex 4, in respect of all item(s) of UN Equipment provided to AMIS.

11.3 AMIS shall be fully responsible and accountable for the custody and safekeeping of all UN Equipment provided to it and shall return such UN Equipment to UNMIS in the same condition as when it was provided to AMIS, reasonable wear and tear excepted. AMIS shall compensate UNMIS for the loss of, or damage to, any item(s) of UN Equipment beyond reasonable wear and tear, in accordance with established United Nations procedures.

11.4 AMIS shall implement all necessary control procedures to ensure that UN Equipment provided to it is operated and used in a safe and responsible manner, by duly authorized AMIS personnel. AMIS shall not part with or share possession of any UN Equipment to, or with, any third party, nor shall AMIS permit any third party to use any UN Equipment.

11.5 AMIS shall take the necessary steps to ensure that all items of UN Equipment provided to AMIS pursuant to this MOU remain and are kept at all times in the Sudan. AMIS shall ensure that in no case shall any such item be removed from the Sudan without the written permission of the UNMIS Coordinator.

11.6 AMIS shall ensure that adequate security measures are in place to protect and preserve all UN Equipment against damage, theft or loss. The AMIS Coordinator shall notify the UNMIS Coordinator, as soon as practicable and in writing of the loss of, or damage to any UN Equipment provided to AMIS and shall cooperate with UNMIS in any investigation into the cause of such loss and/or damage.

11.7 UNMIS shall carry out the routine maintenance and repair and, where necessary, the installation and de-commissioning of, UN Equipment temporarily provided to AMIS. AMIS shall not carry out any repairs, alterations or other works to any UN Equipment provided to it without the prior written consent of the UNMIS Coordinator.

11.8 AMIS shall afford UNMIS access, at all reasonable times, to any premises in which any UN Equipment is located for the purpose of inspecting, maintaining, spot-checking, stocktaking, installing or removing any item(s) of UN Equipment provided to it pursuant to this MOU.

11.9 AMIS shall return to a location to be designated by the UNMIS Coordinator all or any item(s) of UN Equipment provided to it within fourteen (14) days of a written request by the UNMIS Coordinator to do so.

11.10 AMIS shall return all UN Equipment provided to it within fourteen (14) days of the termination of this MOU, including if AMIS transitions to a United Nations operation, as contemplated by Security Council resolution 1706 (2006). Under no circumstances shall any UN Equipment provided to AMIS be charged back to the United Nations under any contingent-owned equipment reimbursement arrangements.

11.11 All UN Equipment provided to AMIS pursuant to this MOU shall be provided on an "as is" basis. AMIS acknowledges that neither UNMIS, nor the United Nations, make any warranties or representations, express or implied, as to the condition of any UN Equipment or as to its suitability for any intended use.

11.12 AMIS undertakes to provide bi-monthly reports to the UNMIS Coordinator or his/her designated representative based on physical counts of UN equipment provided to AMIS pursuant to this MOU. AMIS shall provide an annual inventory report to the UNMIS Coordinator or his/her designated representative as at 30 June, no later than 30 July, to enable the UN to meet its financial reporting obligations.

Article 12. United Nations Supplies

12.1 At the request of AMIS, UNMIS shall provide to AMIS the consumable supplies described in Annex 3 ("UN Supplies").

12.2 Requests for the provision of UN Supplies as set out in Annex 3 shall be submitted in writing by the AMIS Coordinator to the UNMIS Coordinator. The volume of UN Supplies provided to AMIS shall not exceed the consumption rates established for UNMIS personnel.

12.3 All UN Supplies provided to AMIS pursuant to this MOU shall be provided on an "as is" basis. AMIS acknowledges that neither UNMIS, nor the United Nations, make any warranties or representations, express or implied, as to the condition of any UN Supplies or as to their suitability for any intended use.

Article 13. Indemnity

13.1 Each Party shall be responsible for resolving and shall indemnify, hold and save harmless, and defend the other Party, its officials, personnel, servants and agents from and against, all claims and demands in respect of the death, injury or illness of their respective officials, personnel, servants or agents, or for the loss of or damage to their respective property, or the property of their respective officials, personnel, servants or agents, arising from

or in connection with the implementation of this MOU unless such claims or demands result from the negligence or wilful misconduct of the other Party or of the other Party's officials, personnel, servants or agents.

13.2 AMIS, as a Peace Support Operation Mission of the African Union, shall be responsible for resolving, and shall indemnify, hold and save harmless, and defend the United Nations, including UNMIS, and its officials, personnel, servants and agents from and against, all claims, demands, losses and liability of any nature or kind brought or asserted by third parties, based on, arising of, related to, or in connection with the implementation of this MOU, unless such claims, demands, losses or liability results from the gross negligence or wilful misconduct of the United Nations, including UNMIS, or its officials, personnel, servants or agents.

Article 14. Consultation and Dispute Resolution

14.1 The Parties shall keep the implementation of this MOU under close review and shall regularly and closely consult with each other for that purpose.

14.2 The Parties shall consult with each other at the request of either Party on any difficulties, problems or matters of concern that may arise in the course of the implementation of this MOU.

14.3 Any differences between the Parties arising out of or in connection with the implementation of this MOU shall be resolved by consultations between the Head of Mission of UNMIS and the AMIS Head of Mission. Any differences that are not settled by such consultations shall be referred to the Chairperson of the AU Commission and to the Secretary-General of the United Nations for settlement.

Article 15. Privileges and Immunities

Nothing in or relating to this MOU shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs and its personnel or that of the African Union.

Article 16. Final Provisions

16.1 This MOU shall enter into force on the date of its signature by the Parties.

16.2 This MOU may be modified, supplemented or amended at any time by written agreement between the Parties.

16.3 This MOU may be terminated at any time by either Party giving thirty (30) days notice to the other. This MOU shall terminate immediately upon the termination of the mandate of either UNMIS or AMIS, or if AMIS transitions to a United Nations operation, as contemplated by Security Council resolution 1706 (2006). Notwithstanding the termination of this MOU, the provisions of Articles 11, 12, 13, 14 and 15 shall remain in force.

16.4 All requests, notices and other communications provided for or contemplated in this MOU shall be in writing.

16.5 The Annexes to this MOU are an integral part of this MOU.*

In witness whereof, the duly authorized representatives of the United Nations and the African Union have affixed their signatures, this 25th day of November 2006 at Addis Ababa.

For and on behalf of United Nations:	For and on behalf of the African Union:
[*Signed*] Taye Brook Zerihoun	[*Signed*] Ambassador Said Djinnit
Officer-In-Charge United Nations Mission in Sudan	Commissioner Peace and Security

(*k*) Agreement between the United Nations and the Kingdom of Spain concerning the establishment of the United Nations Office to Support the International Decade for Action "Water for Life" (2005–2015). New York, 22 December 2006**

The United Nations and the Kingdom of Spain,

Whereas the General Assembly of the United Nations by its resolution 58/217 of 23 December 2003, proclaimed the years 2005–2015 as the International Decade for Action, "Water for Life";

Whereas Spain has informed the United Nations of its willingness to provide facilities and funds necessary for carrying out the project and in order to establish the United Nations Office to Support the International Decade for Action, "Water for Life" in Zaragoza, and for that purpose Spain and the United Nations concluded a Technical Cooperation Trust Fund Agreement on 19 September 2006;

Whereas Spain agrees to grant the Office all the necessary privileges, immunities, exemptions and facilities to enable the Office to perform its functions, including its programmes of work, projects and other relevant activities;

Bearing in mind that the Convention on the Privileges and Immunities of the United Nations adopted by the United Nations General Assembly on 13 February 1946, to which Spain acceded on 31 July 1974, is applicable to the Office;

Desiring to conclude an Agreement defining the arrangements necessary for the effective discharge of the functions by the Office.

Have agreed as follows:

Article 1. Definitions

In this Agreement:

(*a*) The expression "Office" means the United Nations Office to Support the International Decade for Action, "Water for Life", 2005–2015;

(*b*) The expression "Spain" means the Kingdom of Spain;

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* The Annexes are not reproduced in the present publication.

** Provisionally applied as from 22 December 2006, in accordance with article 22 (1) of the agreement.

(*c*) The expression "appropriate authorities" means the competent authorities of Spain in accordance with its laws;

(*d*) The expression "Office premises" means the premises, being the buildings and structures, equipment and other installation facilities, as well as the surrounding grounds and any other premises occupied or used by the Office in Spain, in accordance with this Agreement or any other supplementary agreement with the competent Spanish authorities;

(*e*) The expression "the General 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 Spain acceded on 31 July 1974;

(*f*) The expression "Secretary-General" means the Secretary-General of the United Nations or his/her authorized representative;

(*g*) The expression "officials of the Office" means the Head of Office and all members of the staff of the Office, coming within the scope of Article V of the General Convention;

(*h*) The expression "experts on missions" means persons, other than officials of the Office, undertaking missions for the United Nations and coming within the scope of Articles VI and VII of the General Convention.

(*i*) The term "Decade" refers to the International Decade for Action, "Water for Life", 2005-2015, which was proclaimed by the United Nations General Assembly in its resolution 58/217, of 23 December 2003;

(*j*) The expression "Trust Fund Agreement" means the Technical Cooperation Trust Fund Agreement concluded on 19 September 2006 between the United Nations and Spain.

Article 2. Establishment of the Office

United Nations Office to support the International Decade for Action, "Water for Life", 2005–2015 shall be established in the city of Zaragoza, Spain, to carry out the functions assigned to it by the Secretary General, within the framework of the Decade.

Article 3. Status of the Office

1. The Office premises shall be under the authority and control of the United Nations.

2. The Office premises shall be inviolable. No Spanish authorities shall enter the Office premises except upon the agreement or at the request of the Head of Office and under conditions agreed to by him/her.

Article 4. Security and protection

1. The appropriate authorities shall ensure the security and protection of the Office premises and exercise due diligence to ensure that the tranquility of the Office premises is not disturbed by the unauthorized entry of persons or groups of persons from outside or by disturbances in its immediate vicinity. If so requested by the Head of Office, the appropriate authorities shall provide adequate police force necessary for the preservation of law and order in the Office premises or in its immediate vicinity, and for the removal of persons therefrom.

2. The appropriate authorities shall take effective and adequate action which may be required to ensure the appropriate security, safety and protection of persons referred to in this Agreement, indispensable for the proper functioning of the Office free from interference of any kind.

Article 5. Public services

1. The appropriate authorities shall facilitate, upon request of the Head of Office and under terms and conditions not less favourable than those accorded by Spain to any diplomatic mission, access to the public services needed by the Office such as, but not limited to, postal, telephone and telegraphic services, electricity, water, gas, sewage, collection of waste, fire protection, local transportation and cleaning of public streets.

2. In case where electricity, water, gas or other services referred to in paragraph 1 above are made available to the Office by the appropriate authorities, or where the prices thereof are under their control, the rate for such services shall not exceed the lowest comparable rates accorded to diplomatic missions.

3. In case of *force majeure,* resulting in a complete or partial disruption of the abovementioned services, the Office shall, for the performance of its functions, be accorded the same priority given to essential governmental agencies and organs.

4. The provisions of this Article shall not prevent the reasonable application of fire protection or sanitary regulations of Spain.

Article 6. Communications facilities

1. For postal, telephone, satellite, telegraph, telephoto, television, radio and other communications, the Office shall enjoy treatment not less favourable than that accorded to the diplomatic missions accredited to Spain with regard to any priorities, rates and charges on mail, telephone calls, satellite, telegraph, telephoto and other communications, as well as rates as may be agreed upon for news reported to the press, television and radio.

2. The Office shall have the right to operate radio, satellite and other telecommunications equipment for data, voice and other types of transmissions, on United Nations registered frequencies and those allocated by the appropriate authorities, between its Offices, within and outside Spain and in particular with Headquarters in New York, in accordance with the regulations in force.

Article 7. Freedom of access

1. The appropriate authorities shall not impede the transit to or from the Office premises and sojourn in Spain.

2. Visas, entry permits, where required, shall be granted to the officials of the Office, their dependents and persons invited thereto in connection with the official work and activities of the Office as promptly as possible and without charge.

Article 8. Funds, assets and other property

1. The Office, its funds, assets and other property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any

particular case the United Nations has expressly waived the immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.

2. The property and assets of the Office shall be exempt from restrictions, regulations, controls and moratoria of any nature.

3. Without being restricted by financial controls, regulations or moratoria of any kind, the Office:

(*a*) May hold and use funds 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*) Shall be free to transfer its funds or currency from Spain to another country, or within Spain, to the United Nations or any other agency;

(*c*) Shall enjoy the most favourable, legally available rate of exchange for its financial transactions.

Article 9. Exemption from taxes, duties, import or export restrictions

The Office, its assets, funds and other property shall enjoy:

(*a*) Exemption from all direct and indirect taxes and levies; it being understood, however, that the Office shall not request exemption from taxes which are in fact no more than charges for public utility services rendered by the appropriate authorities or by a corporation under Spanish laws and regulations at a fixed rate according to the amount of services rendered, and which can be specifically identified, described and itemized;

(*b*) Exemption from customs charges, as well as limitations and restrictions on the import or export of materials imported or exported by the Office for its official use, it being understood that tax free imports cannot be sold in Spain except under conditions agreed to by the appropriate authorities;

(*c*) Exemption from all limitations and restrictions on the import or export of publications, still and moving pictures, films, tapes, diskettes and sound recordings imported, exported or published by the Office within the framework of its official activities.

Article 10. Inviolability of archives and all documents of the Office.

The archives of the Office, and in general all documents and materials made available, belonging to or used by it, wherever located in Spain and by whomsoever held, shall be inviolable.

Article 11. Officials of the Office

1. The officials of the Office shall enjoy in Spain the following privileges, immunities and facilities:

(*a*) Immunity from legal process in respect of words spoken and written and all acts performed by them in their official capacity. Such immunity shall continue in force after termination of employment with the United Nations;

(*b*) Immunity from personal detention and from seizure of their personal and official effects and baggage for acts performed in the discharge of their functions except in

case of *flagrante delicto,* and in such cases the appropriate authorities shall immediately inform the Head of Office of the detention or seizure;

(*c*) Exemption from taxation on the salaries and emoluments paid to them by the United Nations; exemption from taxation on all income and property, for themselves and for their spouses and dependent members of their families, in so far as such income derives from sources, or in so far as such property is located, outside Spain;

(*d*) Exemption from any military service obligations or any other obligatory service in Spain;

(*e*) Exemption, for themselves and for their spouses and dependent members of their families, from immigration restrictions or alien registration procedures;

(*f*) Exemption for themselves for the purpose of official business from any restriction on movement and travel inside Spain and a similar exemption for themselves and for their spouses and dependent members of their families for recreation in accordance with arrangements agreed upon between the Head of Office and the appropriate authorities;

(*g*) In regard to foreign exchange, including holding accounts in foreign currencies, enjoyment of the same facilities as are accorded to members of diplomatic missions accredited to Spain;

(*h*) Enjoyment, for themselves and for their spouses and dependent members of their families, of the same repatriation facilities granted in time of international crises to members of diplomatic missions accredited to Spain;

(*i*) If they have been previously residing abroad, the right to import their furniture, personal effects including their automobiles and all household appliances in their possession intended for personal use free of duty when they come to reside in Spain;

(*j*) The right to import for personal use, free of duty, taxes and other levies, prohibitions and restrictions on imports, one automobile and reasonable quantities of articles for personal consumption, provided that automobiles imported in accordance with this Article may be sold in Spain at any time after their importation, subject to the pertinent regulations in Spain. Internationally recruited staff shall also be entitled, on the termination of their functions in Spain, to export their furniture and personal effects, including automobiles, without duties and taxes.

2. Officials of Spanish nationality or with permanent residency status in Spain, shall enjoy only those privileges and immunities provided for in Section 18 of the General Convention.

3. In accordance with the provisions of Section 17 of the General Convention, the appropriate authorities shall be periodically informed of the names of the officials of the Office.

Article 12. Head of Office and senior officials

1. Without prejudice to the provisions of Article 11, the Head of Office shall enjoy during his/her residence in Spain the privileges, immunities and facilities granted to heads of diplomatic missions accredited to Spain. The name of the Head of Office shall be included in the diplomatic list.

2. The privileges, immunities and facilities referred to in paragraph 1 above shall also be accorded to a spouse and dependent members of the family of the Office officials concerned.

Article 13. Experts on missions

1. Experts on missions shall be granted the privileges, immunities and facilities specified in Articles VI and VII of the General Convention.

2. Experts on missions shall be granted exemption from taxation on the salaries and other emoluments paid to them by the Office, and may be accorded such additional privileges, immunities and facilities as may be agreed upon between the Parties.

3. Experts on mission of Spanish nationality or with permanent residency status in Spain shall enjoy only those privileges and immunities that come within the scope of Articles VI and VII of the General Convention.

Article 14. Personnel recruited locally and assigned to hourly rates

Personnel recruited by the Office locally and assigned to hourly rates shall be accorded immunity from legal process in respect of words spoken or written and acts performed by them in their official capacity for the Office. Such immunity shall continue to be accorded after termination of employment with the Office. They shall also be accorded such other facilities as may be necessary for the independent exercise of their functions for the Office. The terms and conditions of their employment shall be in accordance with the relevant United Nations resolutions, decisions, regulations, rules and policies.

Article 15. Waiver of Immunity

Privileges and immunities referred to in Articles 11, 12, 13 and 14 above are granted to officials of the Office, experts on missions and personnel recruited locally and assigned to hourly rates in the interest of the United Nations and not for their personal benefit. The right and the duty to waive the immunity of these persons, in any case where it can be waived without prejudice to the interests of the United Nations, shall lie with the Secretary-General of the United Nations.

Article 16. United Nations laissez-passer *and certificate*

1. The appropriate authorities shall recognize and accept the United Nations *laissez-passer* issued to officials of the Office as a valid travel document.

2. In accordance with the provisions of Section 26 of the General Convention, the appropriate authorities shall recognize and accept the United Nations certificate issued to experts and other persons traveling on the business of the United Nations.

3. The appropriate authorities further agree to issue any required visas on United Nations *laissez-passers* and certificates.

Article 17. Identification cards

1. At the request of the Head of Office, the appropriate authorities shall issue identification cards to persons referred to in this Agreement certifying their status under this Agreement.

2. Upon the demand of an authorized official of the appropriate authorities, persons referred to in paragraph 1 above shall be required to present, but not to surrender, their identification cards.

Article 18. Flag, emblem and markings

The United Nations shall be entitled to display its flag, emblem and markings in the Office premises and on vehicles used for official purposes.

Article 19. Social Security

1. The Parties agree that, owing to the fact that officials of the United Nations are subject to the United Nations Staff Regulations and Rules, including Article VI thereof, which establish a comprehensive social security scheme, the United Nations and its officials, irrespective of nationality, shall be exempt from the laws of Spain on mandatory coverage and compulsory contributions to the social security schemes of Spain during their employment with the United Nations.

2. The provisions of paragraph 1 above shall apply *mutatis mutandis* to the members of families forming part of the household of persons referred to in paragraph 1 above, unless they are employed or self-employed in Spain or receive Spanish social security benefits.

Article 20. Access to the labor market for family members and issuance of visas and residence permits to household employees

1. The appropriate authorities shall consider granting, when appropriate and to the extent possible, working permits for spouses of officials of the Office whose duty station is in Spain, and their children forming part of their household who are under 21 years of age or economically dependent.

2. The appropriate authorities shall consider applications for visas and residence permits and any other documents, where required, to household employees of officials of the Office as speedily as possible.

Article 21. Settlement of Disputes

1. The United Nations shall make provisions for appropriate modes of settlement of:

(*a*) Disputes resulting from contracts and other disputes of a private law character to which the Office is a party;

(*b*) Disputes involving an official of the Office who, by reason of his/her official position, enjoys immunity, if such immunity has not been waived by the Secretary-General of the United Nations.

2. Any dispute between the Parties concerning the interpretation or implementation of this Agreement, which is not settled amicably, shall be submitted, at the request of either Party, to a tribunal of three arbitrators, one to be named by Spain, one to be named

by the Secretary-General of the United Nations and the third to be chosen by the two so named. If one of the Parties fails to appoint an arbitrator within 60 days after an invitation from the other Party to make such an appointment, 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. 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, even if rendered in default of one of the Parties.

Article 22. Entry into Force

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

2. The provisions of this Agreement shall be applied provisionally as from the date of signature, pending the fulfillment of the formal requirements for its entry into force referred to in paragraph 1 above.

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

Article 23. Final Provisions

1. It is the understanding of the Parties that if Spain enters into any agreement with an intergovernmental organization containing terms and conditions more favourable than those extended to the United Nations under this present Agreement, such terms and conditions shall be extended to the United Nations at its request, by means of a supplemental agreement.

2. The seat of the Office shall not be removed from the Office premises unless the United Nations so decides.

3. The provisions of this Agreement shall be complementary to the provisions of the General Convention and the Trust Fund Agreement. In so far as any provisions of this Agreement and any provisions of the General Convention and the Trust Fund Agreement related to the same subject matter, each of these provisions shall be applicable and neither shall narrow the effect of the other.

4. This 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. This Agreement shall, however, remain in force for such an additional period as might be necessary for the orderly cessation of the Office's activities in Spain and the disposition of its property therein, and the resolution of any dispute between the Parties.

In witness whereof, the undersigned, duly authorized thereto, have signed this Agreement.

Done in New York on 22 December 2006, in duplicate in the English and the Spanish languages, both texts being equally authentic.

For the United Nations:

[*Signed*] José Antonio Ocampo

Under-Secretary-General for Economic and Social Affairs

For the Kingdom of Spain:

[*Signed*] Juan Antonio Yánez-Barnuevo

Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Spain to the United Nations

(*1*) Agreement between the United Nations and the State of Guatemala on the establishment of an International Commission against Impunity in Guatemala ("CICIG"). New York, 12 December 2006

The United Nations and the State of Guatemala,

Considering that it is the duty of the State of Guatemala to protect the right to life and personal integrity of and provide effective judicial redress for all the inhabitants of the country,

Considering that the State of Guatemala has assumed international human rights commitments to establish effective mechanisms for the protection of human rights pursuant to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,

Considering that illegal security groups and clandestine security organizations seriously threaten human rights as a result of their criminal activities and capacity to act with impunity, defined as the *de facto* or *de jure* absence of criminal, administrative, disciplinary or civil responsibility and the ability to avoid investigation or punishment, all of which weaken the rule of law, impeding the ability of the State to fulfil its obligation to guarantee the protection of the life and physical integrity of its citizens and provide full access to justice, with the resulting loss of confidence of citizens in the democratic institutions of the country,

Considering that the Government of the Republic of Guatemala undertook under the Comprehensive Agreement on Human Rights of 22 March 1994 to combat illegal security groups and clandestine security organizations with the aim of assuring that such forces and organizations no longer exist and, additionally, assumed the obligation to "effectively guarantee and protect the work of human rights defenders and organizations" and that, in accordance with the Framework Law of the Peace Agreements, the State is legally bound to honour these commitments,

Considering that pursuant to articles 55 and 56 of its Charter, the United Nations promotes respect for human rights and fundamental freedoms for all and Member States pledge themselves to take action in cooperation with the Organization for the achievement of that purpose,

Considering the political agreement of 13 March 2003 and its addendum between the Minister of Foreign Affairs of Guatemala and the Human Rights Ombudsman on the

establishment of a Commission to Investigate Illegal Groups and Clandestine Security Organizations in Guatemala,

Considering the 4 April 2003 letter of the Government of Guatemala requesting assistance from the United Nations for the establishment and operation of an investigatory commission to assist with the investigation and dismantling of illegal security groups and clandestine security organizations,

Considering the above, therefore, it is necessary to implement an international agreement on human rights that would establish mechanisms to effectively combat the impunity produced by illegal security groups and clandestine security organizations that seriously undermines fundamental human rights,

Considering that the establishment of an International Commission Against Impunity in Guatemala (CICIG) will strengthen the capacity of the State of Guatemala to effectively fulfil its obligations under the human rights conventions to which it is a party and its commitments under the Comprehensive Agreement on Human Rights of 29 March 1994,

Further considering that the Secretary-General and the Government of Guatemala have carried out negotiations towards the establishment of CICIG, as a non-United Nations organ, functioning solely in accordance with the provisions of this agreement,

Have therefore agreed as follows:

Article 1. Purpose of the Agreement

1. The fundamental objectives of this Agreement are:

(*a*) To support, strengthen and assist institutions of the State of Guatemala responsible for investigating and prosecuting crimes allegedly committed in connection with the activities of illegal security forces and clandestine security organizations and any other criminal conduct related to these entities operating in the country, as well as identifying their structures, activities, modes of operation and sources of financing and promoting the dismantling of these organizations and the prosecution of individuals involved in their activities;

(*b*) To establish such mechanisms and procedures as may be necessary for the protection of the right to life and to personal integrity pursuant to the international commitments of the State of Guatemala with respect to the protection of fundamental rights and to international instruments to which Guatemala is a party;

(*c*) To that end, an International Commission Against Impunity in Guatemala shall be established pursuant to the provisions of this Agreement and the commitments of the State under national and international human rights instruments, in particular the Comprehensive Agreement on Human Rights, sections IV, paragraph 1, and VII, paragraph 3;

(*d*) For the purposes of this Agreement, illegal security groups and clandestine security organizations shall mean those groups that:

(i) commit illegal acts in order to affect the full enjoyment and exercise of civil and political rights and

(ii) are linked directly or indirectly to agents of the State or have the capacity to generate impunity for their illegal actions.

2. CICIG shall carry out the activities mentioned in the above section in accordance with Guatemalan law and the provisions of this Agreement.

Article 2. Functions of the Commission

1. In order for this instrument to achieve the above-mentioned purposes and objectives, the Commission shall have the following functions:

(*a*) Determine the existence of illegal security groups and clandestine security organizations, their structure, forms of operation, sources of financing and possible relation to State entities or agents and other sectors that threaten civil and political rights in Guatemala, in conformity with the objectives of this Agreement;

(b) Collaborate with the State in the dismantling of illegal security groups and clandestine security organizations and promote the investigation, criminal prosecution and punishment of those crimes committed by their members;

(c) Recommend to the State the adoption of public policies for eradicating clandestine security organizations and illegal security groups and preventing their re-emergence, including the legal and institutional reforms necessary to achieve this goal.

2. CICIG shall enjoy complete functional independence in discharging its mandate.

Article 3. Powers of the Commission

1. In order to discharge its mandate, the Commission shall have the power to:

(a) Collect, evaluate and classify information provided by any person, official or private entity, non-governmental organization, international organization and the authorities of other States;

(*b*) Promote criminal prosecutions by filing criminal complaints with the relevant authorities. The Commission may also, in accordance with this Agreement and the Code of Criminal Procedure, join a criminal proceeding as a private prosecutor (*querellante adhesivo*) with respect to all cases within its jurisdiction;

(*c*) Provide technical advice to the relevant State institutions in the investigation and criminal prosecution of crimes committed by presumed members of illegal security groups and clandestine security organizations and advise State bodies in the implementation of such administrative proceedings as may be required against state officials allegedly involved in such organizations;

(*d*) Report to the relevant administrative authorities the names of civil servants who in the exercise of their duties have allegedly committed administrative offences so that the proper administrative proceedings may be initiated, especially those civil servants or public employees accused of interfering with the Commission's exercise of its functions or powers, without prejudice to any criminal proceedings that may be instituted through the Office of the Public Prosecutor;

(*e*) Act as an interested third party in the administrative disciplinary proceedings referred to above;

(*f*) Enter into and implement cooperation agreements with the Office of the Public Prosecutor, the Supreme Court, the Office of the Human Rights Ombudsman, the National

Civilian Police and any other State institutions for the purposes of carrying out its mandate;

(*g*) Guarantee confidentiality to those who assist the Commission in discharging its functions under this article, whether as witnesses, victims, experts or collaborators;

(*h*) Request, under the terms of its mandate, statements, documents, reports and cooperation in general from any official or administrative authority of the State and any decentralized autonomous or semi-autonomous State entity, and such officials or authorities are obligated to comply with such request without delay;

(*i*) Request the Office of the Public Prosecutor and the Government to adopt measures necessary to ensure the safety of witnesses, victims and all those who assist in its investigations, offer its good offices and advice to the relevant State authorities with respect to the adoption of such measures, and monitor their implementation;

(*j*) Select and supervise an investigation team made up of national and foreign professionals of proven competence and moral integrity, as well as such administrative staff as is required to accomplish its tasks;

(*k*) Take all such measures it may deem necessary for the discharge of its mandate, subject to and in accordance with the provisions of the Guatemalan Constitution; and

(*l*) Publish general and thematic reports on its activities and the results thereof, including recommendations pursuant to its mandate;

Article 4. Legal personality and capacity

1. Upon ratification of this Agreement, CICIG shall have the legal personality and capacity to:

(*a*) Enter into contracts;

(*b*) Acquire and dispose of movable and immovable property;

(*c*) Institute legal proceedings; and

(*d*) Take such other action as may be authorized under Guatemalan law in order to carry out its activities and fulfil its mandate.

2. CICIG shall have the capacity to enter into agreements with other States and international organizations to the extent that they may be necessary for the implementation of its activities and fulfilment of its functions under this Agreement.

Article 5. Composition and organizational structure

1. CICIG shall be composed of a Commissioner, such specialized staff as may be required and a secretariat.

(*a*) The Commissioner, appointed by the Secretary-General of the United Nations, shall have overall responsibility for the activities of CICIG and represent the Commission before the Government of Guatemala, other States and local and international organizations. He or she shall be a jurist with a high level of professional competence in the areas directly related to the mandate of CICIG, particularly human rights, criminal law and international law, and must also have extensive experience in the investigation of and

fight against impunity. The Commissioner shall submit periodic reports on the activities of CICIG to the United Nations Secretary-General.

(*b*) The international and national personnel recruited by the Commissioner shall include professionals and specialized technicians with expertise in carrying out investigations in the field of human rights and may include, *inter alia*, investigators, forensic experts and experts in information technology.

(*c*) The secretariat shall be headed by an international official, who shall be responsible for the general administration. The secretariat shall operate under the overall authority and direction of the Commissioner.

Article 6. Cooperation with CICIG

1. The Government of Guatemala shall provide CICIG with all the assistance necessary for the discharge of its functions and activities, in conformity with Guatemalan law, and shall ensure, in particular, that its members enjoy:

(*a*) Freedom of movement without restriction throughout Guatemalan territory;

(*b*) Freedom of access without restriction to all State locations, establishments and installations, both civilian and military, as well as to all penitentiaries and detention facilities without prior notice, in accordance with and subject to the relevant provisions of Guatemalan Constitution;

(*c*) Freedom to meet and interview any individual or group of individuals, including State officials, military and police personnel, community leaders, non-governmental organizations, private institutions and any persons whose testimony is deemed necessary for the discharge of its mandate;

(*d*) Free access to information and documentary material that has a bearing on its investigations, official archives, databases and public records and any similar report, archive, document or information in possession of the relevant persons or entities, whether civilian or military, in accordance with and subject to the relevant provisions of the Guatemalan Constitution.

2. In order to fulfil the purposes of this Agreement, and in accordance with Guatemalan legislation and bilateral cooperation agreements in force:

(*a*) The Public Prosecutor shall appoint such special prosecutors and take all other relevant actions as may be necessary to carry out investigations and criminal prosecutions, in particular in order to:

(i) Rely upon professional staff qualified to carry out the activities which are the subject of this Agreement;

(ii) Carry out relevant procedures for criminal investigations and prosecutions;

(iii) Receive technical assistance and other support from CICIG to strengthen the capacity of the Office of the Public Prosecutor;

(iv) Maintain adequate coordination with CICIG for the purposes of this Agreement, in particular facilitating CICIG's exercise of its role as private prosecutor (*querellante adhesivo*);

(*b*) The National Civilian Police will facilitate the creation of special police units to support the investigations of the Public Prosecutor.

3. The Executive Branch shall submit to the Congress of Guatemala and shall promote a series of legislative reforms required to ensure the proper functioning of the Guatemalan criminal investigation and judicial prosecution system. Such proposals for legislative reform shall be developed in consultation with representatives of institutions of the Guatemalan State and the United Nations in order to bring the Guatemalan legal system in line with international conventions on human rights.

Article 7. CICIG expenditures

1. The expenditures of CICIG shall be met from voluntary contributions by the international community.

2. The Executive Branch will provide to CICIG the offices and other installations required for CICIG to appropriately carry out its functions.

Article 8. Security and protection of CICIG staff

1. The Government of Guatemala shall take such effective and adequate measures as may be required to ensure the security and protection of the persons referred to in this Agreement.

2. The Government shall also ensure the security of the victims, witnesses and any other person who cooperates with CICIG for the duration of its mandate and after it completes its work in Guatemala.

Article 9. Inviolability of premises and documents; tax exemptions

1. The premises, documents and materials of CICIG shall be inviolable. The real property, funds and assets of the Commission shall be immune from search, confiscation, attachment, requisition and expropriation.

2. CICIG, its funds, assets, income and other property shall be:

(*a*) exempt from all direct taxes. It is understood, however, that CICIG will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(*b*) exempt from all types of duties in respect of goods imported by CICIG for its official use. It is understood, however, that articles imported under such exemption will not be sold in Guatemala except under conditions agreed with the Government;

(*c*) exempt also from import and export duties in respect of its publications.

Article 10. Privileges and immunities of CICIG personnel

1. The Commissioner shall enjoy the privileges and immunities, exemptions and facilities granted to diplomatic agents in conformity with the 1961 Vienna Convention on Diplomatic Relations. He shall, in particular, enjoy:

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

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

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

(*d*) Exemption from immigration restrictions and other alien registrations;

(*e*) The same immunities and facilities in respect of his or her personal baggage as are accorded to diplomatic agents by the Vienna Convention;

(*f*) Exemption from taxation in Guatemala on his or her salary, emoluments and allowances.

2. International personnel shall enjoy the privileges and immunities granted to experts on missions for the United Nations coming within the scope of article VI of the United Nations Convention on Privileges and Immunities. They shall, in particular, enjoy:

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

(*b*) Immunity from legal process in respect of words spoken or written and acts done by them in the course of the performance of their mission. This immunity from legal process shall continue to be accorded after the completion of their employment with CICIG;

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

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

(*e*) Exemption from taxation in Guatemala on his or her salary, emoluments and allowances.

3. Privileges and immunities are granted to the Commissioner and officials of CICIG in the interest of the Commission and not for the personal benefit of the individuals themselves. The right and the duty to waive immunity whenever it may be relevant without prejudice to the purpose for which it is granted, shall require, in the case of the Commissioner, authorization from the Secretary-General of the United Nations and, in the case of CICIG staff, authorization from the Commissioner.

4. The Government agrees to provide to CICIG and its personnel the security necessary for the effective completion of CICIG's activities throughout Guatemala, and to protect the personnel of CICIG, whether international or national, from abuse, threats, reprisals or acts of intimidation in virtue of their status as personnel of, or their work for CICIG.

Article 11. Withdrawal of cooperation

The United Nations reserves the right to terminate its cooperation with the State if:

(*a*) The State fails to provide full cooperation with CICIG in a manner that will interfere with its activities;

(*b*) The State fails to adopt legislative measures to disband clandestine security organizations and illegal security groups during the mandate of CICIG;

(*c*) CICIG does not receive adequate financial support from the international community.

Article 12. Settlement of disputes

Any dispute between the parties concerning the interpretation or application of this Agreement shall be settled by negotiation between the parties or by any other mutually agreed mode of settlement.

Article 14. Entry into force

This Agreement shall enter into force on the date on which the State of Guatemala officially notifies the United Nations that it has completed its internal procedures for approval and ratification. It shall have a duration of two (2) years and may be extended by a written agreement between the parties.

Article 15. Amendment

This instrument may be amended by written agreement between the parties.

In witness whereof, the following representatives, duly authorized by the United Nations and by the State of Guatemala, have signed this Agreement.

Done in the city of New York on 12 December 2006, in two originals in English and Spanish, both texts being equally authentic.

B. TREATIES CONCERNING THE LEGAL STATUS OF INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS

1. Convention on the Privileges and Immunities of the Specialized Agencies. Approved by the General Assembly of the United Nations on 21 November 1947*

During 2006, the following States acceded to the Convention:**

State	*Date of receipt of instrument of accession*	*Specialized Agencies*
Iceland	17 January 2006	ILO, FAO, ICAO, UNESCO, IMF, IBRD, WHO, UPU, ITU, WMO, IMO, IFC, IDA, WIPO, IFAD
Montenegro	23 October 2006	ILO, FAO, UNESCO, IMF, IBRD, WHO, UPU, ITU, WMO, IMO, IFC, IDA, WIPO, IFAD
Paraguay	13 January 2006	ILO, FAO, ICAO, UNESCO, IMF, IBRD, WHO, UPU, ITU, WMO, IMO, IFC, IDA

As at 31 December 2006, there were 114 States parties to the Convention.

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

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

** For the list of the States parties, see *Multilateral Treaties Deposited with the Secretary-General* (United Nations publication, Sales No. E.07.V.3, ST/LEG/SER.E/25), vol. I, chap. III.

State	*Date of receipt of instrument of application*	*Specialized agencies*
Republic of Korea	22 March 2006	ILO
Belarus	31 March 2006	FAO

2. Food and Agriculture Organization of the United Nations

Agreements concerning specific sessions held outside the Food and Agriculture Organization (FAO) Headquarters, containing provisions on privileges and immunities of FAO and participants similar to the standard text (published in *Juridical Yearbook,* 1972, page 32), were concluded in 2006 with the Governments of the following countries acting as hosts to such sessions: Argentina*, China, Cyprus, Finland, India, Iran (Islamic Republic of), Israel, Jordan, Kenya, Mexico, Qatar, Republic of Korea*, Samoa, Spain, Sweden*, Thailand and United States of America*.

3. United Nations Educational, Scientific and Cultural Organization (UNESCO)

(*a*) Exchange of notes constituting an agreement between the Kingdom of the Netherlands and UNESCO concerning the privileges and immunities of the staff of UNESCO-IHE and their family members. The Hague, 22 November 2005, and Delft, 29 November 2005**

I

The Hague, 22 November 2005

The Ministry of Foreign Affairs of the Kingdom of the Netherlands presents its compliments to the United Nations Educational, Scientific and Cultural Organisation concerning the UNESCO-IHE Institute for Water Education and, with reference to the Agreement between the Kingdom of the Netherlands and the United Nations Educational, Scientific and Cultural Organisation concerning the UNESCO-IHE Institute for Water Education of 18 March 2003 and to the Cabinet Decision of 22 April 2005 on the Policy Framework on Attracting and Hosting International Organisations, has the honour to propose the following in respect of the privileges and immunities of the staff of the United Nations Educational, Scientific and Cultural Organisation concerning the UNESCO-IHE Institute for Water Education:

1. Use of terms

For the purpose of this Agreement:

* Certain departures from the standard texts or amendments thereto were introduced at the request of the host government.

** Entered into force on 1 January 2006, in accordance with the provisions of the notes.

a) "the parties" means the United Nations Educational, Scientific and Cultural Organisation concerning the UNESCO-IHE Institute for Water Education and the host State;

b) "the Organisation" means the United Nations Educational, Scientific and Cultural Organisation concerning the UNESCO-IHE Institute for Water Education;

c) "the host State" means the Kingdom of the Netherlands;

d) "the Vienna Convention" means the Vienna Convention on Diplomatic Relations of 18 April 1961.

2. Privileges and immunities

a) The Head of the Organisation, together with members of his family forming part of his household, shall enjoy the same privileges and immunities as the host State accords to heads of diplomatic missions accredited to the host State in accordance with the Vienna Convention.

b) The highest ranking staff of the Organisation, together with members of their family forming part of their household, shall enjoy the same privileges and immunities as the host State accords to diplomatic agents of the diplomatic missions established in the host State in accordance with the Vienna Convention.

c) Administrative and technical staff of the Organisation, together with members of their family forming part of their household, shall enjoy the same privileges and immunities as the host State accords to administrative and technical staff of the diplomatic missions established in the host State in accordance with the Vienna Convention, provided that immunity from criminal jurisdiction and personal inviolability shall not extend to acts performed outside the course of their official duties.

d) Service staff of the Organisation, together with members of their family forming part of their household, shall enjoy the same privileges and immunities as the host State accords to service staff of the diplomatic missions established in the host State in accordance with the Vienna Convention.

3. Determination of categories

The host State shall, in cooperation with the Organisation, determine which categories of personnel will be covered by each of the four groups as laid down in paragraph 2 of this Agreement.

4. Scope of the Agreement

a) This Agreement does not apply to persons who are nationals or permanent residents of the host State.

b) This Agreement shall not detract from any existing arrangements in the Headquarters Agreement or other bilateral or multilateral agreements.

c) This agreement shall not extend to issues concerning admission and residence.

If this proposal is acceptable to the United Nations Educational, Scientific and Cultural Organisation concerning the UNESCO-IHE Institute for Water Education, the Ministry proposes that this Note and the United Nations Educational, Scientific and Cultural Organisation concerning the UNESCO-IHE Institute for Water Education's affirmative reply to it shall together constitute an Agreement between the Kingdom of the Netherlands and the United Nations Educational, Scientific and Cultural Organisation concerning the

UNESCO-IHE Institute for Water Education. This Agreement shall enter into force on 1 January 2006.

The Ministry of Foreign Affairs of the Kingdom of the Netherlands avails itself of this opportunity to renew to the United Nations Educational, Scientific and Cultural Organisation concerning the UNESCO-IHE Institute for Water Education the assurances of its highest consideration.

II

Delft, 29 November 2005

The United Nations Educational, Scientific and Cultural Organisation concerning the UNESCO-IHE Institute for Water Education presents its compliments to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and has the honour to acknowledge receipt of the Ministry's Note DJZ/VE-1044/05 of 22 November 2005, which reads as follows:

[*See Note I*]

The United Nations Educational, Scientific and Cultural Organisation concerning the UNESCO-IHE Institute for Water Education has the honour to inform the Ministry of Foreign Affairs that the proposal is acceptable to the United Nations Educational, Scientific and Cultural Organisation concerning the UNESCO-IHE Institute for Water Education. The United Nations Educational, Scientific and Cultural Organisation concerning the UNESCO-IHE Institute for Water Education accordingly agrees that the Ministry's Note and this reply shall constitute an Agreement between the United Nations Educational, Scientific and Cultural Organisation concerning the UNESCO-IHE Institute for Water Education and the Kingdom of the Netherlands, which shall enter into force on 1 January 2006.

The United Nations Educational, Scientific and Cultural Organisation concerning the UNESCO-IHE Institute for Water Education avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Kingdom of the Netherlands the assurances of its highest consideration.

Minister of Foreign Affairs
The Hague

(*b*) Exchange of notes constituting an agreement between the Kingdom of the Netherlands and UNESCO concerning the ITC UNESCO Centre for Integrated Surveys regarding the privileges and immunities of the staff of ITC UNESCO and their family members. The Hague, 22 November 2005, and Enschede, 7 December 2005*

I

The Hague, 22 November 2005

The Ministry of Foreign Affairs of the Kingdom of the Netherlands presents its compliments to the United Nations Educational, Scientific and Cultural Organisation concerning the ITC UNESCO Centre for Integrated Surveys and, with reference to the Agreement

* Entered into force on 1 January 2006, in accordance with the provisions of the notes.

between the Kingdom of the Netherlands and the United Nations Educational, Scientific and Cultural Organisation concerning the ITC UNESCO Centre for Integrated Surveys of 5 September 1977 and 1 June 1978 and to the Cabinet Decision of 22 April 2005 on the Policy Framework on Attracting and Hosting International Organisations, has the honour to propose the following in respect of the privileges and immunities of the staff of the United Nations Educational, Scientific and Cultural Organisation concerning the ITC UNESCO Centre for Integrated Surveys:

1. Use of terms

For the purpose of this Agreement:

a) "the parties" means the United Nations Educational, Scientific and Cultural Organisation concerning the ITC UNESCO Centre for Integrated Surveys and the host State;

b) "the Organisation" means the United Nations Educational, Scientific and Cultural Organisation concerning the ITC UNESCO Centre for Integrated Surveys;

c) "the host State" means the Kingdom of the Netherlands;

d) "the Vienna Convention" means the Vienna Convention on Diplomatic Relations of 18 April 1961.

2. Privileges and immunities

a) The Head of the Organisation, together with members of his family forming part of his household, shall enjoy the same privileges and immunities as the host State accords to heads of diplomatic missions accredited to the host State in accordance with the Vienna Convention.

b) The highest ranking staff of the Organisation, together with members of their family forming part of their household, shall enjoy the same privileges and immunities as the host State accords to diplomatic agents of the diplomatic missions established in the host State in accordance with the Vienna Convention.

c) Administrative and technical staff of the Organisation, together with members of their family forming part of their household, shall enjoy the same privileges and immunities as the host State accords to administrative and technical staff of the diplomatic missions established in the host State in accordance with the Vienna Convention, provided that immunity from criminal jurisdiction and personal inviolability shall not extend to acts performed outside the course of their official duties.

d) Service staff of the Organisation, together with members of their family forming part of their household, shall enjoy the same privileges and immunities as the host State accords to service staff of the diplomatic missions established in the host State in accordance with the Vienna Convention.

3. Determination of categories

The host State shall, in cooperation with the Organisation, determine which categories of personnel will be covered by each of the four groups as laid down in paragraph 2 of this Agreement.

4. Scope of the Agreement

a) This Agreement does not apply to persons who are nationals or permanent residents of the host State.

b) This Agreement shall not detract from any existing arrangements in the Headquarters Agreement or other bilateral or multilateral agreements.

c) This agreement shall not extend to issues concerning admission and residence.

If this proposal is acceptable to the United Nations Educational, Scientific and Cultural Organisation concerning the ITC UNESCO Centre for Integrated Surveys, the Ministry proposes that this Note and the United Nations Educational, Scientific and Cultural Organisation concerning the ITC UNESCO Centre for Integrated Surveys affirmative reply to it shall together constitute an Agreement between the Kingdom of the Netherlands and the United Nations Educational, Scientific and Cultural Organisation concerning the ITC UNESCO Centre for Integrated Surveys. This Agreement shall enter into force on 1 January 2006.

The Ministry of Foreign Affairs of the Kingdom of the Netherlands avails itself of this opportunity to renew to the United Nations Educational, Scientific and Cultural Organisation concerning the ITC UNESCO Centre for Integrated Surveys the assurances of its highest consideration.

II

Enschede, 7 December 2005

The United Nations Educational, Scientific and Cultural Organisation concerning the ITC UNESCO Centre for Integrated Surveys presents its compliments to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and has the honour to acknowledge receipt of the Ministry's Note DJZ/VE 1047/05 of 22 November 2005, which reads as follows:

[*See Note No.* I]

The United Nations Educational, Scientific and Cultural Organisation concerning the ITC UNESCO Centre for Integrated Surveys has the honour to inform the Ministry of Foreign Affairs that the proposal is acceptable to the United Nations Educational, Scientific and Cultural Organisation concerning the ITC UNESCO Centre for Integrated Surveys. The United Nations Educational, Scientific and Cultural Organisation concerning the ITC UNESCO Centre for Integrated Surveys accordingly agrees that the Ministry's Note and this reply shall constitute an Agreement between the United Nations Educational, Scientific and Cultural Organisation concerning the ITC UNESCO Centre for Integrated Surveys and the Kingdom of the Netherlands, which shall enter into force on 1 January 2006.

The United Nations Educational, Scientific and Cultural Organisation concerning the ITC UNESCO Centre for Integrated Surveys avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Kingdom of the Netherlands the assurances of its highest consideration.

Treaties Division
Ministry of Foreign Affairs
The Hague

4. World Health Organization

(*a*) Basic agreement between the World Health Organization (WHO) and the Government of the Republic of Bulgaria for the establishment of technical advisory cooperation relations. Sofia, 1 December 2004*

The World Health Organization (hereinafter referred to as "the Organization"); and

The Government of the Republic of Bulgaria (hereinafter referred to as "the Government"),

Desiring to give effect to the resolutions and decisions of the United Nations and of the Organization relating to technical advisory cooperation, and to obtain mutual agreement concerning its purpose and scope as well as the responsibilities which shall be assumed and the services which shall be provided by the Government and the Organization;

Declaring that their mutual responsibilities shall be fulfilled in a spirit of friendly cooperation,

Have agreed as follows:

Article I. Establishment of Technical Advisory Cooperation

1. The Organization shall establish technical advisory cooperation with the Government, subject to budgetary limitation or the necessary funds. The Organization and the Government shall cooperate in arranging, on the basis of the requests received from the Government and approved by the Organization, mutually agreeable plans of operation for the carrying out of the technical advisory cooperation.

2. Such technical advisory cooperation shall be established in accordance with the relevant resolutions and decisions of the World Health Assembly, the Executive Board and other organs of the Organization.

3. Such technical advisory cooperation may consist of:

a) making available the services of advisers in order to render advice and cooperate with the Government or with other parties;

b) organizing and conducting seminars, training programmes, demonstration projects, expert working groups and related activities in such places as may be mutually agreed;

c) awarding scholarships and fellowships or making other arrangements under which candidates nominated by the Government and approved by the Organization shall study or receive training outside the country;

d) preparing and executing pilot projects, tests, experiments or research in such places as may be mutually agreed upon;

e) carrying out any other form of technical advisory cooperation which may be agreed upon by the Organization and the Government.

4. *a*) Advisers who are to render advice to and cooperate with the Government or with other parties shall be selected by the Organization in consultation with the Government. They shall be responsible to the Organization;

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* Entered into force on 26 January 2006 in accordance with article VI(1) of the agreement.

b) in the performance of their duties, the advisers shall act in close consultation with the Government and with persons or bodies so authorized by the Government, and shall comply with instructions from the Government as may be appropriate to the nature of their duties and the cooperation in view and as may be mutually agreed upon between the Organization and the Government;

c) the advisers shall, in course of their advisory work, make every effort to instruct any technical staff the Government may associate with them, in their professional methods, techniques and practices, and in the principles on which these are based.

5. Any technical equipment or supplies which may be furnished by the Organization shall remain its property unless and until such time as title may be transferred in accordance with the policies determined by the World Health Assembly and existing at the date of transfer.

6. The Government shall be responsible for dealing with any claims which may be brought by third parties against the Organization and its advisers, agents and employees and shall hold harmless the Organization and its advisers, agents and employees in case of any claims or liabilities resulting from operations under this Agreement, except when that such claims or liabilities arise from the gross negligence or wilful misconduct of such advisers, agents or employees.

Article II. Participation of the Government in Technical Advisory Cooperation

1. The Government shall do everything in its power to ensure the effective development of the technical advisory cooperation.

2. The Government and the Organization shall consult together regarding the publication, as appropriate, of any findings and reports of advisers that may prove of benefit to other countries and to the Organization.

3. The Government shall actively collaborate with the Organization in the furnishing and compilation of findings, data, statistics and such other information as will enable the Organization to analyse and evaluate the results of the programmes of technical advisory cooperation.

Article III. Administrative and Financial Obligations of the Organization

1. The Organization shall defray, in full or in part, as may be mutually agreed upon, the costs necessary to the technical advisory cooperation which are payable outside the country, as follows:

a) the salaries and subsistence (*including duty travel per diem*) of the advisers;

b) the costs of transportation of the advisers during their travel to and from the point of entry into the country;

c) the cost of any other travel outside the country;

d) insurance of the advisers;

e) purchase and transport to and from the point of entry into the country of any equipment or supplies provided by the Organization;

f) any other expenses outside the country approved by the Organization.

2. The Organization shall defray such expenses in local currency as are not covered by the Government pursuant to Article IV, paragraph 1, of this Agreement.

Article IV. Administrative and Financial Obligations of the Government

1. The Government shall contribute to the cost of technical advisory cooperation by paying for, or directly furnishing, the following facilities and services:

a) local personnel services, technical and administrative, including the necessary local secretarial help, interpreter-translators and related assistance;

b) the necessary office space and other premises;

c) equipment and supplies produced within the country;

d) transportation of personnel, supplies and equipment for official purposes within the country;

e) postage and telecommunications for official purposes;

f) facilities for receiving medical care and hospitalization by the international personnel.

2. The Government shall defray such portion of expenses to be paid outside the country as are not covered by the Organization, and as may be mutually agreed upon.

3. In mutually agreed upon cases the Government shall put at the disposal of the Organization such labor, equipment, supplies and other services or property as may be needed for the execution of its work.

Article V. Facilities, Privileges and Immunities

1. The Government, insofar as it is not already bound to do so, shall apply to the Organization, its staff, funds, properties and assets the appropriate provisions of the Convention on Privileges and Immunities of Specialized Agencies.

2. Staff of the Organization, including advisers engaged by it as members of the staff assigned to carry out the purposes of this Agreement, shall be deemed to be officials within the meaning of the above Convention. The WHO Programme Coordinator/Representative appointed to The Government of the Republic of Bulgaria shall be afforded the treatment provided for under Section 21 of the said Convention.

Article VI.

1. This Basic Agreement is subject to ratification by the Parliament of the Republic of Bulgaria and shall enter into force on the date when the Government notifies the Organization that it has implemented all procedures in accordance with its national legislation.

2. This Basic Agreement may be modified by mutual agreement between the Organization and the Government. The Amendments shall enter into force under the same terms, as in paragraph 1 in this Article.

3. This Basic Agreement is concluded for undefined period. It may be denounced by either party upon written notice through diplomatic channels. The operation of the Agreement will terminate sixty days after the receipt of such notice.

In witness whereof the undersigned, duly appointed representatives of the Organization and the Government respectively, have, on behalf of the Parties, signed the present Agreement at this First day of December 2004 in the English language in three copies.

For the Government of the Republic of Bulgaria:	For the World Health Organization:
[Signed]	[Signed] Marc Danzon, M.D.
The Minister of Health	Regional Director

(*b*) Basic agreement between the World Health Organization and the Government of the Republic of Croatia for the establishment of technical advisory cooperation relations*. Zagreb, 7 February 2005

The World Health Organization (hereinafter referred to as "the Organization"), and

The Government of the Republic of Croatia (hereinafter referred to as "the Government"),

Desiring to give effect to the resolutions and decisions of the United Nations and of the Organization relating to technical advisory cooperation, and to obtain mutual agreement concerning its purpose and scope as well as the responsibilities which shall be assumed and the services which shall be provided by the Government and the Organization;

Declaring that their mutual responsibilities shall be fulfilled in a spirit of friendly cooperation,

Have agreed as follows:

Article I. Establishment of Technical Advisory Cooperation

1. The Organization shall establish technical advisory cooperation with the Government, subject to budgetary limitation or the availability of the necessary funds. The Organization and the Government shall cooperate in arranging, on the basis of the requests received from the Government and approved by the Organization, mutually agreeable plans of operation and programmes for the carrying out of the technical advisory cooperation.

2. Such technical advisory cooperation shall be established in accordance with the relevant resolutions and decisions of the World Health Assembly, the Executive Board and other organs of the Organization.

3. Such technical advisory cooperation may consist of:

(*a*) making available the services of advisers in order to render advice and cooperate with the government or with other parties;

(*b*) organizing and conducting seminars, training programmes, demonstration projects, expert working groups and related activities in such places as may be mutually agreed;

(*c*) awarding scholarships and fellowships or making other arrangements under which candidates nominated by the Government and approved by the Organization shall study or receive training outside the country;

* Entered into force on 30 June 2006 in accordance with article VI(1) of the agreement.

(*d*) preparing and executing pilot projects, tests, experiments or research in such places as may be mutually agreed;

(*e*) carrying out any other form of technical advisory cooperation which may be agreed upon by the Organization and the Government.

4. (*a*) Advisers who are to render advice to and cooperate with the Government or with other parties shall be selected by the Organization in consultation with the Government. They shall be responsible to the Organization;

(*b*) in the performance of their duties, the advisers shall act in close consultation with the Government and with persons or bodies so authorized by the Government, and shall comply with instructions from the Government as may be appropriate to the nature of their duties and the cooperation in view as may be mutually agreed upon between the Organization and the Government;

(*c*) the advisers shall as far as possible, in the course of their advisory work, instruct any technical staff the Government may associate with them, in their professional methods, techniques and practices, and in the principles on which these are based.

5. Any technical equipment or supplies which may be furnished by the Organization shall remain its property unless and until such time as title may be transferred in accordance with the policies determined by the World Health Assembly and existing at the date of transfer.

6. The Government shall be responsible for dealing with any claims which may be brought by third parties against the Organization and its advisers, agents and employees and shall hold harmless the Organization and its advisers, agents and employees in case of any claims or liabilities resulting from operations under this agreement, except where it is agreed by the Government and the Organization that such claims or liabilities arise from the gross negligence or willful misconduct of such advisers, agents or employees.

Article II. Participation of the Government in Technical Advisory Cooperation

1. The Government shall consistently with its possibilities ensure the effective development of the technical advisory cooperation.

2. The Government and the Organization shall consult together regarding the publication of and reports of advisers that may prove of benefit to other countries and to the Organization.

3. The Government shall actively collaborate with the Organization in the furnishing and compilation of findings, data, statistics and such other information as will enable the Organization in collaboration with the Government to analyze and evaluate the results of the programmes of technical advisory cooperation.

Article III. Administrative and Financial Obligations of the Organization

1. The Organization shall defray, in full or in part, as may be mutually agreed upon, the costs to the technical advisory cooperation which are payable outside the country, as follows:

(*a*) the salaries and subsistence (including duty travel per diem) of the advisers;

(*b*) the costs of transportation of the advisers during their travel to and from the point of entry into the country;

(*c*) the costs of any other travel outside the country;

(*d*) insurance of the advisers;

(*e*) purchase and transport to and from the point of entry into the country of any equipment or supplies provided by the Organization;

(*f*) any other expenses outside the country approved by the Organization.

2. The Organization shall defray such expenses in local currency as are not covered by the Government pursuant to Article IV, paragraph 1, of this Agreement.

Article IV. Administrative and Financial Obligations of the Government

In accordance to mutual agreement between the Government and the Organization, the Government shall, subject to the availability of the necessary funds, for each and every project agreed upon under this Agreement contribute to the costs of technical advisory cooperation, including by paying for, or directly furnishing, the following:

(*a*) local personnel services, technical and administrative including interpreter-translators;

(*b*) the necessary office space and parking;

(*c*) office equipment and supplies produced within the country;

(*d*) transportation of personnel, supplies and equipment for official purposes within the country;

(*e*) facilities for receiving medical care and hospitalisation by the international personnel.

Article V. Facilities, Privileges and Immunities

1. The Organization may establish and maintain an office in the Republic of Croatia with the purpose of carrying out the technical advisory cooperation foreseen by this Basic Agreement and the mutually agreed programs and plans of cooperation concluded on the basis of this Basic Agreement.

2. The Government shall apply to the Organization, its Office, staff, funds, properties and assets the appropriate provisions of the Convention on the Privileges and Immunities of the Specialized Agencies.

3. The Staff of the Organization and the advisers engaged by the Organization as members of the staff assigned to carry out the technical advisory cooperation in accordance with this Basic Agreement, shall be deemed to be officials within the meaning of the above Convention and shall be afforded the privileges and immunities provided for under Sections 19 and 20 of the said Convention. The WHO Programme Coordinator/Representative appointed to the Government of Croatia shall be afforded the treatment also provided for under Section 21 of the said Convention.

4. WHO shall periodically provide the Ministry of Foreign Affairs of the Republic of Croatia with the list of the names, place and date of birth, country of origin, photographs and title or rank of the officials referred to in paragraph 3 of this Article.

Article VI. Entry into force, amendments and termination

1. This Basic Agreement shall enter into force on the day of the receipt of the last written notification by which the Parties have notified each other, through diplomatic channels, that their legal requirements for its entry into force have been fulfilled.

2. This Basic Agreement may be amended at any time by written agreement between the Government and the Organization.

3. Either Party may denounce this Basic Agreement by written notification to the other Party. In that case the Basic Agreement terminates sixty (60) days from the day of receipt of such notification.

In witness whereof the undersigned, duly authorised representatives of the Government and the Organization, have signed this Basic Agreement in Zagreb on 7th February 2005 in two originals, each in the English language.

For the World Health Organization:	For the Government of the Republic of Croatia:
[Signed]	[Signed]
Marc Danzon, M.D. Regional Director	Prof. Dr. Andrija Hebrang, M.D. PhD Minister of Health and Social Welfare

5. United Nations Industrial Development Organization

Provisions relating to privileges and immunities in agreements concluded between the United Nations Industrial Development Organization and other entities:

(*a*) Cooperation Arrangement between the United Nations Industrial Development Organization and the Federal Agency for Management of Special Economic Zones, Ministry of Economic Development and Trade, Russian Federation, concluded on 1 February 2006*

3.4 Nothing in or relating to this Cooperation Arrangement will be deemed a waiver of any of the privileges and immunities of UNIDO.**

* Entered into force upon signature on 1 February 2006.

** Similar provisions were included in agreements between the United Nations Industrial Development Organizations and the Ibero-American General Secretariat (SEGIB) (concluded and entered into force on 6 April 2006), the United Nations Institute for Training and Research (UNITAR) (concluded and entered into force on 10 May 2006), the United Nations Department for Safety and Security (UNDSS) (concluded and entered into force on 21 June 2006), the Food and Agriculture Organization of the United Nations (concluded and entered into force on 6 November 2006) and the Office of the United Nations High Commissioner for Refugees (UNHCR) (concluded and entered into force on14 December 2006).

(*b*) Agreement between the United Nations Industrial Development Organization and the Kingdom of Belgium on the Establishment in Belgium of a Liaison Office of this Organization, concluded on 20 February 2006*

Article 1

1. The Director of the Office shall be granted the privileges and immunities accorded to the members of the diplomatic personnel of diplomatic missions. His/her spouse and minor dependent children, living under the same roof, shall enjoy the status given to the spouse and minor dependent children of personnel of diplomatic missions.

2. Without prejudice to Article VI, Section 19 of the Convention[1], the provisions of the first paragraph shall not be applicable to Belgian nationals.

(*c*) Agreement between the United Nations Industrial Development Organization and the Government of the Republic of South Africa on Establishing a Sub-Regional Office in South Africa, concluded on 19 April 2006**

Article 8. Officials of UNIDO

Section 16

The Government shall accord to officials of UNIDO the privileges and immunities set forth in Article VI, Sections 19 and 20 of the Convention.*** In addition, the Director of the Sub-Regional Office, including any official acting on his behalf during his absence from duty, and any official of UNIDO assigned to the Sub-Regional Office having the rank P-5 and above, shall be accorded the privileges and immunities, exemptions and facilities as Ambassadors who are heads of mission.

Section 17

For the purposes of this Agreement the term "spouses and relatives dependent on" as utilised in Section 19(c) and (e) of the Convention shall mean:

(i) the spouse;

(ii) any unmarried child under the age of 21 years;

(iii) any unmarried child between the ages of 21 and 23 years who is undertaking full-time studies at an education institution; and

(iv) any other unmarried child or other family member officially recognised as a dependant member of the family by the United Nations

and who is issued with a diplomatic or official passport or the United Nations *laissez-passer.*

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* Entered into force upon signature on 20 February 2006.

** Entered into force upon signature on 19 April 2006.

*** "Convention" means the Convention on the Privileges and Immunities of the Specialized Agencies approved by the United Nations General Assembly on 21 November 1947.

Section 18

Privileges and immunities are granted to officials of UNIDO in the interests of UNIDO only and not for the personal benefit of the individuals themselves. The Director-General of UNIDO shall have the right and the duty to waive the immunity of any official in any case where, in his/her opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of UNIDO.

Section 19

UNIDO shall co-operate at all times with the appropriate Republic of South Africa authorities to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuses in connection with the privileges, immunities and facilities mentioned or referred to in this Article.

Article 9. Representatives of Members

Section 20

Representatives of members of UNIDO at meetings convened by the Sub-Regional Office shall, while exercising their functions and during their journeys to and from the place of meeting, enjoy the privileges and immunities as set out in Article V, Sections 13, 14 and 15 of the Convention.

Article 10. Experts on Mission for UNIDO

Section 21

Experts, other than officials of UNIDO, performing missions for UNIDO in the Country shall be accorded the privileges and immunities as set out in Annex XVII of the Convention[1].

(*d*) Agreement between the United Nations Industrial Development Organization and the Government of the Arab Republic of Egypt regarding Arrangements for Convening the Seventeenth Meeting of the Conference of African Ministers of Industry, 19–21 June 2006, Cairo, Egypt, concluded on 10 May 2006*

Article XI. Privileges and Immunities

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, shall be applicable in respect of the meet-

* Entered into force upon signature on 10 May 2006.

ings. In particular, the representatives of Member States referred to in Article II above[1] shall enjoy the privileges and immunities provided under Article IV of the Convention; officials of UNIDO, ECA and AU performing functions in connection with the meetings shall enjoy the privileges and immunities provided under Article V and VII; and experts on mission for UNIDO, ECA and AU shall, in connection with the meetings, enjoy the privileges and immunities provided under Article VI of the Convention. Personal baggage of participants should carry distinctive signs in order to accelerate customs formalities. The Government shall designate custom and immigration officers whom the staff of the Joint Secretariat could refer to for all necessary information and assistance.

2. The observers referred to in Article II d), f), g) and h) 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 meetings.

3. For the purposes of the application of the Convention on Privileges and Immunities of the United Nations, the premises designated for the meetings shall be deemed to constitute the premises of the Organization in the sense of Article II, Section 3 of the Convention, and access thereto shall be subject to the authority and control of the Organization. The premises shall be inviolable for the duration of the meetings, including the preparatory stage and the winding-up.

4. The property of each institution represented in the Joint Secretariat shall enjoy the privileges and immunities provided under Article II of the Convention.

5. The personnel provided by the Government under Article VIII of this Agreement shall enjoy immunity from legal process in respect of any act performed by them in their official capacity in connection with the meetings.

6. The observers of the United Nations specialized agencies and of the IAEA shall enjoy the privileges and immunities provided by the Convention on the Privileges and Immunities of the Specialized Agencies and the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, respectively.

7. Without prejudice to the preceding paragraphs of this article, all persons performing functions in connection with or invited to the meetings shall enjoy the privileges,

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[1] Article II of the Agreement reads as follows :

Participation

1. The meetings shall be open to the following participants and observers, upon the invitation of the Director-General of UNIDO and/or the Government:

a) Representatives of African Member States of the Organization, the Economic Commission for Africa (ECA), the African Union (AU) and the New Partnership for Africa's Development (NEPAD);

b) Representatives of other Member States of the Organization;

c) Observers of the United Nations specialized agencies, the International Atomic Energy Agency (IAEA), ECA and AU;

d) Observers of other intergovernmental organizations;

e) Observers of other appropriate United Nations bodies;

f) Observers from non-governmental organizations;

g) Observers from the private sector; and

h) Other persons.

immunities and facilities necessary for the independent exercise of their functions in connection with the meetings.

8. All persons referred to in Article II of this Agreement, and all officials of UNIDO, ECA and AU servicing the meetings and experts on mission for UNIDO, ECA and AU in connection with the meetings shall have the right of entry into and exit from Egypt, and no impediment shall be imposed on their entry into and exit from the meeting area. Visas shall be granted free of charge as speedily as possible, and at least two (2) weeks before the beginning of the meetings. Should the visa be requested less than two and half (2½) weeks before the opening of the Conference, the visa will be delivered within three (3) days following receipt of the visa request.

9. Arrangements shall also be made to ensure that visas for the duration of the meetings are delivered on arrival at the airport to participants who are unable to obtain them prior to their arrival.

10. All persons referred to in Article II of this Agreement, and all officials of UNIDO, ECA and AU servicing the meetings and experts on mission for UNIDO, ECA and AU in connection with the meetings shall have the right to take out from Egypt at the time of their departure, without any restrictions, any unexpended portions of the funds brought into the country in connection with the meetings at the official rate of exchange prevailing at that time in Egypt. Participants may avail themselves of the facilities of the Bureau for foreign exchange.

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

12. Attendance at public meetings shall also be open to representatives of information media duly accredited to the meetings after consultation between the Organization and the Government.

6. Organization for the Prohibition of Chemical Weapons

Memorandum of Understanding (MoU) on Cooperation between the Commission of the African Union and the Technical Secretariat of the Organization for the Prohibition of Chemical Weapons. Khartoum, 24 January 2006*

Preamble:

The Commission of the African Union (AU), (hereinafter referred to as "the Commission") and the Technical Secretariat of the Organisation for the Prohibition of Chemical Weapons (OPCW) (hereinafter referred to as "the Technical Secretariat");

* Entered into force on 24 January 2006 in accordance with article VII(1) of the memorandum of understanding.

Whereas the Chemical Weapons Convention (CWC) adopted in Geneva in 1992, called for the total and indiscriminate ban on the development, production, stockpiling and use of chemical weapons and their destruction;

Whereas decision AHG/Dec. 181 (XXXVIII) adopted by the 38th Ordinary Session of the Assembly of Heads of State and Government of the Organisation of African Unity (OAU), held in Durban, South Africa, in July 2002, welcomed the recommendation for an effective implementation of the CWC in Africa through sustained technical assistance from the Technical Secretariat;

Whereas the conclusions and recommendations of the OPCW Workshop devoted to Africa, on the implementation of the chemical Weapons Convention, held in Khartoum, Sudan, from 9 to 11 March 2002, recognised and stressed the importance and the universality of the CWC and its effective implementation in Africa;

Whereas the Statute of the Commission of the African Union mandates the Commission to, *inter alia,* represent the Union and defend its interests under guidance of and as mandated by the Assembly and the Executive Council, as well as to implement decisions taken by other organs of the Union; and Bearing in Mind that the Department for Peace and Security is responsible for coordinating the activities of the Commission in the areas of peace, security and stability, and to, among other things, implement the decisions of the Union on arms control, disarmament and non-proliferation, through the development of strong partnerships with the United Nations and its Agencies, international organisations and institutions as well as with civil society organisations;

Whereas the Technical Secretariat of the OPCW has the primary responsibility to follow up and ensure the implementation of all aspects of the Chemical Weapons Convention;

Whereas the international cooperation programmes of the Technical Secretariat as of direct economic and technological benefit to AU Member States;

Convinced that the shared objectives of the AU and the OPCW in the field of peace, security and disarmament are fundamental for the achievement of economic and technological development of Member States of the two Organisations, and recognising the imperative for the AU and OPCW to strengthen bilateral cooperation and mutually reinforcing activities in the implementation of decisions adopted by the two bodies on disarmament, particularly in the area of chemical weapons;

Desirous of establishing an effective mechanism for collaboration and joint actions between the Commission and the Technical Secretariat in all areas of mutual interests;

Have agreed as follows:

Article I. Areas of Cooperation

1. The Commission and the technical Secretariat, constituting the Parties to this MoU, agree that in order to facilitate effective cooperation, they shall act in close consultation with each other in all areas of mutual interests with due regard to the objectives and principles set out in their respective constitutional frameworks.

2. The Commission shall recognize the responsibilities of the Technical Secretariat as set out in the CWC and in various decisions adopted by the Conference of States Parties (CSP) and the Executive Council (EC) of the OPCW.

3. The Technical Secretariat shall recognise the responsibilities of the Commission as set out in the Constitutive Act of the African Union and in various decisions adopted by the organs of the AU.

4. The Commission and the Technical Secretariat shall cooperate in order to achieve an effective utilisation of existing expertise whenever this is appropriate in the light of their respective responsibilities.

5. The Commission and the Technical Secretariat shall cooperate closely and undertake joint actions in the implementation of the Chemical Weapons Convention and decision AHG/Dec. 181 (XXXVIII), the Decisions on the Plan of Action Regarding the Implementation of Article VII Obligations (C-8/DEC.16 of 24 October 2003) adopted by the Eighth Session of the CSP and the Action Plan Universality of the CWC (EC-M-23/DEC.3 of 24 October 2003), which emphasise, among other things, the urgency of achieving the other decisions that may be adopted by the policy organs of the two institutions relating to arms control and chemical weapons disarmament. In this context, the Technical Secretariat shall provide the necessary expertise.

6. The Commission shall facilitate, as requires and whenever feasible, the organisation of joint workshops/briefings aimed at sensitising the AU Organs and Member States, on the implementation and universality of the CWC in Africa. These facilities will include, wherever feasible, conference room and interpretation services. The Parties shall jointly issue letter of invitation.

Article II. Consultations, Conferences and Seminars

1. The parties shall consult each other on all projected activities and initiatives related to the implementation of this MoU;

2. The Parties shall meet as often as deemed necessary, in working sessions to decide and plan how best to implement the objectives of this MoU;

3. The Parties shall, to the extent possible, invite each other to participate in conferences, seminars and workshops relating to the implementation of the instruments mentioned in Article 1 above;

4. Each party shall designate a Focal Point for the maintenance of close and continuing collaboration and coordination of activities relating to the implementation of this MoU.

Article III. Exchange of information and documents

1. Subject to such arrangements as may be necessary for the safeguarding of confidential material, the Parties shall keep each other informed of all projected activities and programmes of work which are of mutual interest.

2. The Parties shall safeguard confidential and privileged information furnished to them. They therefore agree that nothing in this MoU shall be construed as requiring either of them to furnish such information, constitute a violation of the confidence of any of its Members or anyone from whom it has received such information, or otherwise interfere with the orderly conduct of its operations.

3. The exchange of information shall be in the areas of capacity building, expertise, and initiatives relating to the implementation of this MoU for the two Organisations, to

enable them to provide efficient and effective technical assistance to their Member States in areas of mutual interest.

Article IV. Mutual assistance

1. The Parties shall, upon request of either party, agree that where appropriate they shall assist one another in undertaking technical studies on subjects of interest to both parties.

2. Any such request for assistance shall be examined by both parties and, where feasible, they shall use their best endeavours to provide assistance in such forms and on such conditions as shall be agreed upon between them.

Article V. Funding

1. This MoU sets out a framework for cooperation by the Parties and does not obligate any funds. The parties recognise the importance of the availability of financial resources in funding projects under this MoU. They shall document and agree in writing to specific projects and any associated funding or resources.

2. The Parties shall negotiate and agree on modalities for funding projects under specific agreements.

3. Nothing in this MoU shall obligate wither of the Parties to appropriate funds or enter into any contract, agreement or other obligation except as they may mutually agree.

Article VI. Administrative Arrangements

The Chairperson of the Commission and the Director-General of the technical Secretariat or their duly authorized representatives, may, from time to time, agree on administrative arrangements designed to promote effective collaboration and liaison between their respective organisations.

Article VII. Entry into Force, Amendment and Duration

1. This MoU shall come into force as soon as it has been signed by the Chairperson of the Commission and by the Director-General of the Technical Secretariat.

2. This MoU may be amended with the consent of both Parties.

3. This MoU may be terminated by mutual consent or may be terminated by either Party after giving the other party a six month's notice in writing.

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 and appointments of the United Nations

(*a*) Membership

In 2006, the Republic of Montenegro joined the United Nations as a Member State. As of 31 December 2006, the number of Member States was 192.

(*b*) Appointments

On 9 October 2006, the Security Council, having considered the question of the recommendation for the appointment of the Secretary-General of the United Nations, adopted resolution 1715 (2006) and recommended to the General Assembly that Mr. Ban Ki-moon be appointed Secretary-General of the United Nations for a term of office from 1 January 2007 to 31 December 2011. On 13 October 2006, the General Assembly, having considered the Security Council's recommendation, adopted resolution 61/3 and appointed Mr. BAN Ki-moon for the proposed term.

2. Peace and security

(*a*) Peacekeeping missions and operations

(i) *Peacekeeping missions and operations established in 2006*

a. Timor-Leste

On 25 August 2006, the Security Council adopted resolution 1704 (2006) and decided to establish the United Nations Integrated Mission in Timor-Leste (UNMIT) for an initial period of six months.

The Council decided that UNMIT would be headed by a Special Representative of the Secretary-General and that its mandate should include, *inter alia,* to support the Government of Timor-Leste and relevant institutions in bringing about a process of national reconciliation, and to support Timor-Leste in all aspects of the 2007 presidential and parliamentary electoral process, including through technical and logistical support, electoral

policy advice and verification. The mandate of UNMIT also included to ensure, through the presence of United Nations police, the restoration and maintenance of public security in Timor-Leste through the provision of support to the Timorese national police, as well as to support the Government of Timor-Leste to liaise on security tasks and to establish a continuous presence in three border districts and to conduct a comprehensive review of the future role and needs of the security sector. Furthermore, among the tasks assigned to UNMIT were the provision of assistance in building the capacity of State and Government institutions, including mechanisms for the monitoring, promotion and protection of human rights; the facilitation of the provision of relief and recovery assistance and access to Timorese people in need; and cooperation and coordination with United Nations agencies and partners in supporting the Government and relevant institutions in designing poverty reduction and economic growth policies and strategies. UNMIT was also assigned to assist the Office of the Prosecutor-General of Timor-Leste, through the provision of a team of experienced investigative personnel, to resume investigative functions of the former Serious Crimes Unit, with a view to completing investigations into outstanding cases of serious human rights violations committed in the country in 1999.

The Security Council further requested the Secretary-General and the Government of Timor-Leste to conclude a status-of-forces agreement within 30 days of the adoption of resolution 1704 (2006), taking into consideration General Assembly resolution 60/123 on the safety and security of humanitarian personnel and protection of United Nations personnel. The Security Council also decided that pending its conclusion, the agreement between Timor-Leste and the United Nations concerning the status of the United Nations Mission of Support in East Timor (UNMISET), dated 20 May 2002,[1] should apply provisionally, *mutatis mutandis,* in respect of UNMIT.

(ii) *Changes in the mandate and/or extensions of time limits of ongoing peacekeeping missions or operations in 2006*

a. Cyprus

The United Nations Peacekeeping Force in Cyprus (UNFICYP) was established by Security Council resolution 186 (1964) of 4 March 1964. The Council, by resolution 1687 (2006) of 15 June 2006 and resolution 1728 (2006) of 15 December 2006, extended the mandate of UNFICYP until 15 December 2006 and 15 June 2007, respectively.

b. Syria and Israel

The United Nations Disengagement Observer Force (UNDOF) was established by Security Council resolution 350 (1974) of 31 May 1974. The Security Council, by resolution 1685 (2006) of 13 June 2006 and resolution 1729 (2006) of 15 December 2006, renewed the mandate of UNDOF until 31 December 2006 and 30 June 2007, respectively.

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[1] United Nations, *Treaty Series,* vol. 2185, p. 367.

c. Lebanon

The United Nations Interim Force in Lebanon (UNIFIL) was established by Security Council resolutions 425 (1978) and 426 (1978) of 19 March 1978. By resolutions 1655 (2006) of 31 January 2006, 1697 (2006) of 31 July 2006 and 1701 (2006) of 11 August 2006, the Security Council extended the mandate of UNIFIL until 31 July 2006, 31 August 2006 and 31 August 2007, respectively.

In resolution 1701 (2006),[2] the Security Council authorized an increase of UNIFIL troops and decided that the mandate should also include monitoring of the cessation of hostilities; accompaniment and support of the Lebanese armed forces and coordination of related activities; extension of its assistance to help ensure humanitarian access to civilian populations and voluntary and safe return of displaced persons; as well as the assistance to Lebanese armed forces to, *inter alia,* implement a permanent ceasefire and to the Government of Lebanon to secure its borders.

In the same resolution, the Council authorized UNIFIL to take all necessary action in areas of deployment of its forces to ensure that its area of operations was not utilized for hostile activities of any kind; to resist attempts by forceful means to prevent it from discharging its duties under the mandate of the Security Council; to protect United Nations personnel, facilities, installations and equipment; to ensure the security and freedom of movement of United Nations personnel and humanitarian workers; and to protect civilians under imminent threat of physical violence.

Furthermore, the Security Council requested that the Secretary-General develop and present within thirty days, in liaison with relevant international actors and the concerned parties, proposals to implement the relevant provisions of the Taif Accords and resolutions 1559 (2004) and 1680 (2006), including disarmament, and for delineation of the international borders of Lebanon, especially in those areas where the border was disputed or uncertain, including by dealing with the Shebaa farms area.

d. Western Sahara

The United Nations Mission for the Referendum in Western Sahara (MINURSO) was established by Security Council resolution 690 (1991) of 29 April 1991. The Security Council, by resolutions 1675 (2006) of 28 April 2006 and 1720 (2006) of 31 October 2006, extended the mandate of MINURSO until 31 October 2006 and 30 April 2007, respectively.

e. Georgia

The United Nations Observer Mission in Georgia (UNOMIG) was established by Security Council resolution 858 (1993) of 24 August 1993. The Security Council, by resolutions 1656 (2006) of 31 January 2006, 1666 (2006) of 31 March 2006 and 1716 (2006) of 13 October 2006, extended the mandate of UNOMIG until 31 March 2006, 15 October 2006 and 15 April 2007, respectively.

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[2] See also subsection III (e) (iv), below, dealing with "Sanctions imposed under Chapter VII of the Charter of the United Nations".

f. 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) of 30 November 1999. On 29 September 2006, the Security Council adopted resolution 1711 (2006) and decided to extend the mandate of MONUC until 15 February 2007. In addition, by resolutions 1693 (2006) of 30 June 2006 and resolution 1711 (2006), the Council also decided to extend the increase in the military and civilian police strength of MONUC authorized by resolutions 1621 (2005) and 1635 (2005) until 30 September 2006 and 15 February 2007, respectively.

The Security Council, acting under Chapter VII of the Charter of the United Nations, further authorized the Secretary-General, by resolutions 1669 (2006) of 10 April 2006 and 1711 (2006), to temporarily redeploy, until 1 July 2006 and 31 December 2006, respectively, an additional infantry battalion, a military hospital and additional military observers from the United Nations Operation in Burundi (ONUB) to MONUC. On 22 December 2006, the Security Council adopted resolution 1736 (2006) and, acting under Chapter VII of the Charter of the United Nations, it authorized from 1 January 2007 until 15 February 2007, an increase in the military strength of MONUC and the continued deployment to MONUC of the infantry battalion and the military hospital currently authorized under the ONUB mandate.

g. Ethiopia and Eritrea

The United Nations Mission in Ethiopia and Eritrea (UNMEE) was established by Security Council resolution 1312 of 31 July 2000. By resolutions 1661 (2006) of 14 March 2006, 1670 (2006) of 13 April 2006, 1678 (2006) of 15 May 2006, 1681 (2006) of 31 May 2006 and 1710 (2006) of 29 September 2006, the Security Council extended the mandate of UNMEE until 15 April 2006, 15 May 2006, 31 May 2006, 30 September 2006 and 31 January 2007, respectively.

In resolution 1681 (2006), the Security Council authorized the reconfiguration of the military component of UNMEE and approved the deployment of troops and military observers within the Mission.

In resolutions 1681 (2006) and 1710 (2006), the Security Council demanded that the parties provide UNMEE with the access, assistance, support and protection required for the performance of its duties, including its mandated task to assist the Eritrea-Ethiopia Boundary Commission in the implementation of the Delimitation Decision, in accordance with resolutions 1430 (2002) and 1466 (2003), and it demanded that any restrictions be lifted immediately.

h. Liberia

The United Nations Mission in Liberia (UNMIL) was established by Security Council resolution 1509 (2003) of 19 September 2003. The Security Council adopted resolution 1667 (2006) on 31 March 2006 and resolution 1712 (2006) on 29 September 2006, by which it extended the mandate of UNMIL until 30 September 2006 and 31 March 2007, respectively.

In resolution 1667 (2006), acting under Chapter VII of the Charter of the United Nations, the Security Council extended until 30 September 2006 the provisions of paragraph 6 of resolution 1626 (2005), which authorized a temporary increase in the military personnel of UNMIL in order to ensure that the support provided to the Special Court for Sierra Leone did not reduce the capabilities of UNMIL in Liberia during its political transition period.

The Security Council adopted resolution 1694 (2006) on 13 July 2006 and, acting under Chapter VII of the Charter of the United Nations, decided to increase the size of the civilian police component of UNMIL, while decreasing the size of its military component. The Council also noted the Secretary-General's recommendations regarding changes to the configuration of UNMIL in view of the completion by the mission of a number of tasks, and in the context of a review of the appropriate mandates for and composition of the mission.

In resolution 1712 (2006), the Security Council, acting under Chapter VII of the Charter of the United Nations, reaffirmed its intention to authorize the Secretary-General to redeploy troops between UNMIL and the United Nations Operation in Côte d'Ivoire (UNOCI) on a temporary basis in accordance with the provisions of resolution 1609 (2005), as may be needed. The Council further endorsed the Secretary-General's recommendations for a phased, gradual consolidation, drawdown and withdrawal of troop contingent of UNMIL. Lastly, the Security Council requested that the Secretary-General monitor progress on the stabilization of Liberia and continue to keep the Security Council informed, with particular reference to the broad benchmarks laid out in the Secretary-General's report of 12 September 2006,[3] in particular regarding the restructuring of the security sector, the reintegration of former combatants, the facilitation of political and ethnic reconciliation, the consolidation of State authority throughout the country, judicial reform, restoration of effective Government control over the country's natural and mineral resources, and establishment of a stable and secure environment necessary to foster economic growth.

i. Côte d'Ivoire

The United Nations Operation in Côte d'Ivoire (UNOCI) was established by Security Council resolution 1528 (2004) of 27 February 2004. By resolutions 1652 (2006) of 24 January 2006 and 1726 (2006) of 15 December 2006, the Security Council extended the mandate of UNOCI and the French forces supporting it until 15 December 2006 and 10 January 2007, respectively.

In resolution 1652 (2006), acting under Chapter VII of the Charter of the United Nations, the Security Council decided to extend until 15 December 2006 the provisions of paragraph 3 of resolution 1609 (2005), which, *inter alia,* authorized an increase in the military and civilian police components of UNOCI. On 6 February 2006, the Security Council adopted resolution 1657 (2006) by which it authorized the Secretary-General to redeploy, until 31 March 2006, an infantry company from UNMIL to UNOCI in order to provide extra security coverage for United Nations personnel and property and to perform other tasks mandated to UNOCI, without prejudice to any future decision by the Security

[3] S/2006/743.

Council concerning the renewal of the mandate and level of the troops of UNMIL and a further extension of the redeployment mentioned above. Furthermore, on 2 June 2006, the Security Council adopted resolution 1682 (2006) and, acting under Chapter VII of the Charter of the United Nations, authorized yet another increase in the military and civilian components of UNOCI, until 15 December 2006.

On 1 November 2006, the Security Council adopted resolution 1721 (2006) and, acting under Chapter VII of the Charter of the United Nations, requested UNOCI, consistent with its mandate in resolution 1609 (2005), to protect United Nations personnel and to provide security to the High Representative for the Elections, within its capabilities and its areas of deployment.[4]

j. Haiti

The United Nations Stabilization Mission in Haiti (MINUSTAH) was established by Security Council resolution 1542 (2004) of 30 April 2004. By resolutions 1658 (2006) of 14 February 2006 and 1702 (2006) of 15 August 2006, the Security Council extended the mandate of MINUSTAH until 15 August 2006 and 15 February 2007, respectively.

In resolution 1702 (2006), the Security Council, acting under Chapter VII of the Charter of the United Nations, *inter alia,* authorized MINUSTAH to deploy correction officers seconded from Member States in support of the Government of Haiti to address the shortcomings of the prison system. It also decided that MINUSTAH, consistent with its existing mandate under resolution 1542 (2004) to provide assistance with the restructuring and maintenance of the rule of law, public safety and public order, provide assistance and advice to the Haitian authorities in the monitoring, restructuring, reforming and strengthening of the justice sector, through a variety of measures.

k. The Sudan

The United Nations Mission in the Sudan (UNMIS) was established by Security Council resolution 1590 (2005) of 24 March 2005. By resolutions 1663 (2006) of 24 March 2006, 1709 (2006) of 22 September 2006 and 1714 (2006) of 6 October 2006, the Security Council extended the mandate of UNMIS until 24 September 2006, 8 October 2006 and 30 April 2007, respectively.

On 31 August 2006, the Security Council adopted resolution 1706 (2006) and decided to expand the mandate of UNMIS in Darfur to support implementation of the Darfur Peace Agreement of 5 May 2006 and the N'djamena Agreement on Humanitarian Cease-fire on the Conflict in Darfur (the Agreements). The expanded mandate included, *inter alia,* monitoring the implementation of the Agreements; monitoring the movement of armed groups and the redeployment of forces in accordance with the Agreements; investigating violations of the Agreements and reporting violations to the Cease-fire Commission; maintaining a presence in key areas, such as buffer zones and internally displaced persons camps; monitoring transborder activities of armed groups along the Sudanese borders; assisting in the development and implementation of a comprehensive and sustainable programme for disarmament, demobilization and reintegration of former combatants

[4] For additional information on resolution 1721 (2006), see subsection 2 (g) (v) of the present chapter on "Human rights and humanitarian law in the context of peace and security".

and women and children associated with combatants in accordance with the Agreements and resolutions 1556 (2004) and 1564 (2004); cooperating with and providing support and technical assistance to the Chairperson of the Darfur-Darfur Dialogue and Consultation; and assisting the parties to the Agreements in restructuring the police service, promoting the rule of law and protecting human rights.

The Security Council decided further that the mandate of UNMIS in Darfur should also include to facilitate and coordinate with relevant United Nations agencies the voluntary return of refugees and internally displaced persons, and humanitarian assistance by helping to establish the necessary security conditions in Darfur; to contribute towards international efforts to protect, promote and monitor human rights in Darfur; to assist the parties to the Agreements, in cooperation with other international partners in the mine action sector, by providing humanitarian demining assistance, technical advice and coordination, as well as mine awareness programmes targeted at all sectors of society; and to assist in addressing regional security issues to improve the security situation in the neighbouring regions along the borders between the Sudan and Chad and between the Sudan and the Central African Republic.

The Security Council also decided, acting under Chapter VII of the Charter of the United Nations, to authorize UNMIS to use all necessary means:

- to protect United Nations personnel, facilities, installations and equipment, to ensure the security and freedom of movement of United Nations personnel, humanitarian workers, assessment and evaluation commission personnel, to prevent disruption of the implementation of the Darfur Peace Agreement by armed groups and to protect civilians under threat of physical violence,
- in order to support early and effective implementation of the Darfur Peace Agreement, to prevent attacks and threats against civilians,
- to seize or collect arms or related material whose presence in Darfur is in violation of the Agreements and of the measures imposed by paragraphs 7 and 8 of resolution 1556 (2004).[5]

In the same resolution, the Security Council requested that the Secretary-General arrange the rapid deployment of additional capabilities for UNMIS and decided that military and civilian components of UNMIS be increased. The Security Council also authorized the Secretary-General to implement longer-term support to the African Union Mission in the Sudan, as outlined in the report of the Secretary-General of 28 July 2006,[6] including the provision of air assets, ground mobility packages, training, engineering and logistics, mobile communications capacity and broad public information assistance.

The Security Council also requested that the Secretary-General and the Governments of Chad and the Central African Republic conclude status-of-forces agreements as soon as possible, taking into consideration General Assembly resolution 58/82 of 9 December 2003

[5] In paragraphs 7 and 8 of resolution 1556 (2004), the Security Council decided that all States should take the necessary measures to prevent the sale or supply, to all non-governmental entities and individuals operating in the states of North Darfur, South Darfur and West Darfur, of arms and related materiel of all types, as well as any provision of technical training or assistance related to the provision, manufacture, maintenance or use of such items.

[6] S/2006/591.

on the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel,[7] and decided that pending the conclusion of such an agreement with either country, the model status-of-forces agreement dated 9 October 1990[8] should apply provisionally with respect to UNMIS forces operating in that country.

(iii) *Other ongoing peacekeeping missions or operations in 2006*

During 2006, there were a number of other ongoing peacekeeping missions or operations, including the United Nations Truce Supervision Organization (UNTSO) in Israel, established by Security Council resolution 50 (1948) of 29 May 1948; the United Nations Military Observer Group in India and Pakistan (UNMOGIP), established by Security Council resolution 91 (1951) of 30 March 1951; and the United Nations Interim Mission in Kosovo (UNMIK), established by Security Council resolution 1244 (1999) of 12 June 1999.

(iv) *Peacekeeping missions or operations concluded in 2006*

a. Burundi

The United Nations Operation in Burundi (ONUB) was established by the Security Council in its resolution 1545 (2004) of 21 May 2004. The Council, by resolution 1692 (2006) adopted on 30 June 2006 and, acting under Chapter VII of the Charter of the United Nations, extended the mandate of ONUB for a final period of six months until 31 December 2006, at which date it successfully completed its mandate and was succeeded by the United Nations Integrated Office in Burundi (BINUB).[9]

In resolution 1692 (2006), the Security Council authorized the temporary redeployment of an infantry battalion, military hospital and additional military observes from ONUB to MONUC, in accordance with resolution 1669 (2006).

(*b*) Political and peacebuilding missions

(i) *Political and peacebuilding missions established in 2006*

a. Sierra Leone

On 1 January 2006, the United Nations Integrated Office in Sierra Leone (UNIOSIL) began operating for an initial period of twelve months.[10] The task assigned to the Office included assisting the Government of Sierra Leone in building the capacity of State institutions to address further the root causes of the conflict, providing basic services and accelerate progress towards the Millennium Development Goals through poverty reduction and sustainable economic growth, including through the creation of an enabling framework for private investment and systematic efforts to address HIV/AIDS. The mandate also

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[7] United Nations, *Treaty Series,* vol. 2051, p. 363.

[8] A/45/594.

[9] Security Council resolution 1719 (2006) of 25 October 2006. See also the subsection on Burundi below, under section 2 (b) (i) of this chapter "Political and peacebuilding missions".

[10] Established by Security Council resolution 1620 (2005) of 31 August 2005.

included developing a national action plan for human rights and establishing a national human rights commission; building the capacity of the National Electoral Commission to conduct a free, fair and credible electoral process in 2007; enhancing good governance, transparency and accountability of public institutions, including through anti-corruption measures and improved fiscal management; strengthening the rule of law, including by developing the independence and capacity of the justice system and the capacity of the police and corrections system; strengthening the Sierra Leonean security sector; and promoting a culture of peace, dialogue, and participation in critical national issues through a strategic approach to public information and communication. Finally, UNIOSIL was also requested to coordinate with United Nations missions and offices and regional organizations in West Africa in dealing with cross-border challenges, such as the illicit movement of small arms, human trafficking and smuggling, and illegal trade in natural resources, as well as with the Special Court for Sierra Leone.

On 22 December 2006, the Security Council extended the mandate of UNIOSIL until 31 December 2007.[11] Additionally, the Council endorsed the increase in the number of personnel of UNIOSIL, particularly police and military officers, as recommended in paragraph 70 of the report of the Secretary-General of 28 November 2006,[12] for a period from 1 January 2007 to 31 October 2007, in order to enhance the support provided by UNIOSIL for the elections and its ability to carry out its functions elsewhere in Sierra Leone.

b. Burundi

On 25 October 2006, the Security Council adopted resolution 1719 (2006) by which it decided to establish the United Nations Integrated Office in Burundi (Bureau Intégré des Nations Unies au Burundi (BINUB)) as of 1 January 2007, for an initial period of 12 months.[13]

(ii) *Changes in the mandate and/or extensions of the time limits of ongoing political and peacebuilding missions in 2006*

a. Somalia

The United Nations Political Office in Somalia (UNPOS) was established by the Secretary-General on 15 April 1995.[14] On 20 April 2006, in a letter addressed to the President of the Security Council, the Secretary-General informed of his intention to extend the mandate of his Special Representative for Somalia until 8 May 2007, and the Council took note of the Secretary-General's intention.[15]

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[11] Security Council resolution 1734 (2006).

[12] S/2006/922.

[13] For additional information on resolution 1719 (2006), see the subsection on Burundi below, under section 2 (g) (iv) of this chapter "Human rights and humanitarian law in the context of peace and security".

[14] See the exchange of letters between the Secretary-General and the President of the Security Council dated 18 and 21 April 1995 (S/1995/322 and S/1995/323).

[15] See the exchange of letters between the Secretary-General and the President of the Security Council, dated 20 and 25 April 2006 (S/2006/261 and S/2006/262).

b. Great Lakes region

The Office of the Special Representative of the Secretary-General for the Great Lakes region was established by the Secretary-General on 19 December 1997.[16] On 15 March 2006 and 4 October 2006, in letters addressed to the President of the Security Council, the Secretary-General informed the Council of his intention to extend the mandate of his Special Representative until 30 September 2006 and 31 December 2006, respectively. The Council took note of the Secretary-General's intention.[17]

c. 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.[18] On 8 December 2006, in a letter addressed to the President of the Security Council, the Secretary-General recommended that the mandate of UNOGBIS be extended until 31 December 2007. The Secretary-General also informed the Council that he intended to revise the mandate of UNOGBIS to include, *inter alia,* support for national reconciliation and dialogue; assistance to security sector reforms; promotion of respect for the rule of law and human rights; mainstreaming of a gender perspective into peacebuilding; promotion of the peaceful settlement of disputes; helping with the mobilization of international assistance reconstruction efforts; facilitation of efforts to curb proliferation of small arms and light weapons; and enhancement of cooperation with the African Union, the Economic Community of West African States, the Community of Portuguese-speaking Countries, the European Union and other international partners. The Council took note of the Secretary-General's recommendation.[19]

d. Central African Republic

The United Nations Peacebuilding Office in the Central African Republic (BONUCA) was established by the Secretary-General on 15 February 2000.[20] In a Presidential Statement dated 22 November 2006,[21] the Security Council decided to renew the mandate of BONUCA for a period of one year, until 31 December 2007, and invited the Secretary-General to submit to it the new modalities of the mission of BONUCA for the new period no later than 30 November 2006. In a letter addressed to the President of the Security Council dated 30 November 2006, the Secretary-General informed the Council that the

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[16] See the exchange of letters between the Secretary-General and the President of the Security Council dated 12 and 19 December 1997 (S/1997/994 and S/1997/995).

[17] See the exchange of letters between the Secretary-General and the President of the Security Council dated 15 and 29 March 2006 (S/2006/192 and S/2006/193) and 4 and 13 October 2006 (S/2006/811 and S/2006/812).

[18] See the exchange of letters between the Secretary-General and the President of the Security Council dated 26 February 1999 and 3 March 1999 (S/1999/232 and S/1999/233).

[19] See the exchange of letters between the Secretary-General and the President of the Security Council dated 8 and 13 December 2006 (S/2006/974 and S/2006/975).

[20] Ninth report of the Secretary-General on the United Nations Mission in the Central African Republic dated 14 January 2000 (S/2000/24) and the Statement by the President of the Security Council dated 10 February 2000 (S/PRST/2000/5).

[21] S/PRST/2006/47.

activities of BONUCA would include, *inter alia,* support for national reconciliation and dialogue; assistance to efforts to strengthen democratic institutions; facilitation of the mobilization of resources for national reconstruction, economic recovery, poverty alleviation and good governance; mainstreaming a gender perspective into peacebuilding; and reinforcement of cooperation between the United Nations and member States of the Central African Economic and Monetary Community and other regional entities with a view to facilitating and strengthening initiatives aimed at addressing transborder insecurity in the subregion.[22]

e. Tajikistan

The United Nations Tajikistan Office of Peacebuilding (UNTOP) was established by the Secretary-General on 1 June 2000.[23] On 26 May 2006, in a letter addressed to the President of the Security Council, the Secretary-General informed the Council of his intention to continue the activities of UNTOP for a further period of one year, until 1 June 2007. The Council took note of the Secretary-General's intention.[24]

f. Afghanistan

The United Nations Mission in Afghanistan (UNAMA) was established by Security Council resolution 1401 (2002) of 28 March 2002. On 23 March 2006, the Security Council, in resolution 1662 (2006), decided to extend the mandate of UNAMA for an additional period of 12 months.[25]

g. Iraq

The United Nations Assistance Mission for Iraq (UNAMI) was established by Security Council resolution 1500 (2003) of 14 August 2003. On 1 August 2006, in a letter addressed to the President of the Security Council, the Secretary-General recommended that the mandate of UNAMI be extended further for 12 months.[26] On 10 August 2006, the Security Council, in resolution 1700 (2006), decided to extend the mandate of UNAMI as recommended.

On 28 November 2006, the Security Council adopted resolution 1723 (2006) and, acting under Chapter VII of the Charter of the United Nations, noted that the presence of the multinational force in Iraq was at the request of the Government of Iraq, reaffirmed

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[22] See the letter from the Secretary-General to the President of the Security Council dated 30 November 2006 (S/2006/934).

[23] See the exchange of letters between the Secretary-General and the President of the Security Council dated 26 May 2000 and 1 June 2000 (S/2000/518 and S/2000/519).

[24] See the exchange of letters between the Secretary-General and the President of the Security Council dated 26 and 31 May 2006 (S/2006/355 and S/2006/356).

[25] See also the report of the Secretary-General on the Situation in Afghanistan and its implications for international peace and security—Emergency international assistance for peace, normalcy and reconstruction of war-stricken Afghanistan (S/2006/145), in which the Secretary-General recommended that the mandate of UNAMA be extended for 12 months.

[26] See also the letter from the Secretary-General addressed to the President of the Security Council dated 1 August 2006 (S/2006/601).

the authorization for the multinational force as set forth in resolution 1546 (2004) and decided to extend the mandate of the multinational force until 31 December 2007, taking into consideration the letters[27] of the Iraqi Prime Minister and the United States Secretary of State dated 11 November 2006 and 17 November 2006, respectively. The Council further decided that the mandate for the multinational force should be reviewed at the request of the Government of Iraq or no later than 15 June 2007, and declared that it would terminate this mandate earlier if requested by the Government of Iraq.

In the same resolution, the Security Council decided to extend until 31 December 2007 the arrangements established in paragraph 20 of resolution 1483 (2003) for the deposit of proceeds from export sales of petroleum, petroleum products, and natural gas into the Development Fund for Iraq and the arrangements referred to in paragraph 12 of resolution 1483 (2003) and paragraph 24 of resolution 1546 (2004) for the monitoring of the Development Fund for Iraq by the International Advisory and Monitoring Board. It further decided that the deposit of proceeds and the role of the International Advisory and Monitoring Board should be reviewed at the request of the Government of Iraq or no later than 15 June 2007.

(iii) *Other ongoing political and peacebuilding missions in 2006*

The following political and peacebuilding missions were also operating in 2006: the Office of the United Nations Special Coordinator for the Middle East (UNSCO), since October 1999;[28] the United Nations Office for West Africa (UNOWA), since January 2002;[29] and the Office of the Personal Representative of the Secretary-General for Lebanon since November 2005.[30]

(iv) *Political and peacebuilding missions concluded in 2006*

Timor-Leste

The United Nations Office in Timor-Leste (UNOTIL) was established by the Security Council in its resolution 1599 (2005) of 28 April 2005. By resolutions 1677 (2006) of 12 May 2006, 1690 (2006) of 20 June 2006 and 1703 (2006) of 18 August 2006,[31] the Security Council extended the mandate of UNOTIL until 20 June 2006, 20 August 2006, and 25 August 2006, respectively, at which date it successfully completed its mandate.

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[27] Annexed to Security Council resolution 1723 (2006).

[28] See the exchange of letters between the Secretary-General and the President of the Security Council dated 10 and 16 September 1999 (S/1999/983 and S/1999/984).

[29] See the exchange of letters between the Secretary-General and the President of the Security Council dated 26 and 29 November 2001 (S/2001/1128 and S/2001/1129).

[30] See the exchange of letters between the Secretary-General and the President of the Security Council dated 14 and 17 November 2005 (S/2005/725 and S/2005/726) by which the Secretary-General decided to expand to the whole country the mandate of the Office of the Personal Representative of the Secretary-General for Southern Lebanon, that had been established by an earlier exchange of letters (S/2005/216 and S/2005/217).

[31] See also the exchange of letters between the Secretary-General and the Prime Minister of Timor-Leste dated 4 and 9 August 2006 (S/2006/620, annex, and S/2006/651, annex).

(*c*) Other peacekeeping matters

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

At its sixtieth session, the General Assembly adopted on 6 June 2006 its resolution 60/263 entitled "Comprehensive review of the whole question of peacekeeping operations in all their aspects." In the said resolution, the Assembly welcomed the report of the Special Committee of Peacekeeping Operations,[32] 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. The General Assembly also decided that the Special Committee, in accordance with its mandate, should continue its efforts for a comprehensive review of the whole question of peacekeeping operations in all their aspects and should review the implementation of its previous proposals and consider any new proposals so as to enhance the capacity of the United Nations to fulfil its responsibilities in this field.

(ii) *Question of sexual exploitation and abuse in peacekeeping operations*

a. General Assembly

On 8 September 2006, the General Assembly adopted, on the recommendation of the Fourth Committee, resolution 60/289 and affirmed the need for a comprehensive strategy of assistance to victims of sexual exploitation and abuse by United Nations staff or related personnel. The General Assembly also welcomed the report of the Special Committee on Peacekeeping Operations during its 2006 resumed session,[33] endorsed the proposals, recommendations and conclusions of the Special Committee contained in the report, and urged Member States, the Secretariat and the relevant organs of the United Nations to take all necessary steps to implement these proposals, recommendations and conclusions.

b. Security Council

In a Presidential Statement[34] delivered in connection with its consideration of the item "Women, peace and security" on 26 October 2006, the Security Council reiterated its condemnation, in the strongest terms, of all acts of sexual misconduct by all categories of personnel in United Nations Peacekeeping Missions and urged the Secretary-General and troop-contributing countries to ensure the full implementation of the recommendations of the Special Committee on Peacekeeping operations.

In resolutions 1675 (2006) and 1720 (2006) relating to MINURSO and resolution 1704 (2006) on UNMIT, the Security Counsel requested the Secretary-General to continue to take the necessary measures to achieve actual compliance in MINURSO and UNMIT, respectively, with the United Nations zero-tolerance policy on sexual exploitation and abuse, including the development of strategies and appropriate mechanisms to prevent,

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[32] *Official Records of the General Assembly, Sixtieth Session, Supplement No. 19* (A/60/19).

[33] *Ibid., Supplement No. 19* (A/60/19/Add.1).

[34] S/PRST/2006/42.

identify and respond to all forms of misconduct, including sexual exploitation and abuse, and the enhancement of training for personnel to prevent misconduct and ensure full compliance with the United Nations code of conduct, requested the Secretary-General to take all necessary action in accordance with the Secretary-General's Bulletin on special measures for protection from sexual exploitation and sexual abuse.[35] It also urged troop-contributing countries to take appropriate preventive action including the conduct of pre-deployment awareness training, and to take disciplinary action and other action to ensure full accountability in cases of such conduct involving their personnel.

In several other resolutions, the Security Council also welcomed the efforts undertaken by the different United Nations mandated peacekeeping operations to implement the Secretary-General's zero tolerance policy on sexual exploitation and abuse and to ensure full compliance of its personnel with the United Nations code of conduct. In these resolutions, the Council also urged troop-contributing countries to take preventive and disciplinary actions to ensure full accountability.[36]

(iii) *Criminal accountability of United Nations officials and experts on mission*

A Group of Legal Experts was established pursuant to General Assembly resolution 59/300 of 22 June 2005 for the purpose of advising on means to ensure the accountability of United Nations staff and experts on mission in respect of criminal acts committed by them while serving in peacekeeping operations. In August 2006, the report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations was transmitted to the General Assembly.[37] The recommendations by the Group of Legal Experts related to, *inter alia,* the identification of criminal conduct; the accountability of persons other than the primary offender; the exercise of jurisdiction over serious crimes committed by United Nations peacekeeping personnel; the need for a thorough and professional investigation process; and the advantages and disadvantages of adopting an international convention with respect to this matter. Additionally, and as a result of their findings and recommendations, the Group of Legal Experts presented a text of a draft convention on the criminal accountability of United Nations officials and experts on mission.

On 4 December 2006, the General Assembly adopted, on the recommendation of the Sixth Committee, resolution 61/29 and, noting the report of the Group of Legal Experts, decided to establish an Ad Hoc Committee, open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, for the purpose of considering the report of the Group of Legal Experts, in particular its legal aspects.[38]

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[35] ST/SGB/2003/13.

[36] Security Council resolutions 1655 (2006), 1666 (2006), 1685 (2006), 1687 (2006), 1712 (2006), 1716 (2006), 1728 (2006) and 1729 (2006).

[37] A/60/980.

[38] See also chapter III 17 (a) relating to the legal questions dealt with by the Sixth Committee and other related subsidiary bodies of the General Assembly.

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

(i) *Action of Member States authorized in 2006*

a. Bosnia and Herzegovina

On 21 November 2006, the Security Council adopted resolution 1722 (2006) and, acting under Chapter VII of the Charter of the United Nations, authorized the Member States acting through or in cooperation with the European Union to establish for a further period of 12 months, a multinational stabilization force (EUFOR) as the legal successor of the Stabilization Force in Bosnia and Herzegovina (SFOR) under unified command and control. EUFOR would fulfil its missions in relation to the implementation of the Peace Agreement in cooperation with the North Atlantic Treaty Organization (NATO) Headquarters presence, in accordance with the arrangements agreed between NATO and the European Union, as communicated to the Security Council in their letters on 19 November 2004.[39]

The Council further authorized Member States to continue to maintain a NATO Headquarters, Sarajevo, as a legal successor to SFOR under unified command and control, and to take all necessary measures to effect the implementation of and to ensure compliance with Annex 1-A and 2 of the Peace Agreement and with the rules and procedures governing command and control of airspace over Bosnia and Herzegovina with respect to all civilian and military air traffic. Furthermore, the Council authorized them to take all necessary measures, at the request of either EUFOR or NATO Headquarters, in defense of the EUFOR or NATO presence respectively, and to assist both organizations in carrying out their missions. The Council also recognized the right of both EUFOR and the NATO presence to take all necessary measures to defend themselves from attack or threat of attack.

b. Somalia

On 6 December 2006, the Security Council adopted resolution 1725 (2006) and, acting under Chapter VII of the Charter of the United Nations, authorized the Intergovernmental Authority on Development (IGAD) and Member States of the African Union to establish a protection and training Mission in Somalia, to be reviewed after an initial period of six months by the Security Council with a briefing by IGAD. The mandate given to the Mission included monitoring progress by the Transitional Federal Institutions and the Union of Islamic Courts in implementing agreements reached in their dialogue; ensuring free movement and safe passage of all those involved with the dialogue process; maintaining and monitoring security in Baidoa; protecting members of the Transitional Federal Institutions and Government as well as their key infrastructure; and training the Transitional Federal Institutions' security forces to enable them to provide their own security and to help facilitate the re-establishment of national security forces of Somalia. The Security Council also endorsed the specification in the IGAD Deployment Plan that bordering States of Somalia would not deploy troops to Somalia.

In the same resolution, the Security Council decided that the measures imposed by resolution 733 (1992) and further elaborated in resolution 1425 (2002), which deal with the implementation of an arms embargo and the prohibition of the supply of technical advice and other assistance relating to military activities, should not apply to supplies of weapons

[39] S/2004/915 and S/2004/916.

and military equipment and technical training and assistance intended solely for the support of or use by the Mission.

c. Democratic Republic of the Congo

On 25 April 2006, the Security Council adopted resolution 1671 (2006) and, acting under Chapter VII of the Charter of the United Nations, authorized for a period ending four months after the date of the first round of presidential and parliamentary elections, the temporary deployment of a European force in the Democratic Republic of the Congo, "Eufor R.D.Congo".[40] The Council also decided that the authorization for the deployment should not exceed the term of the mandate of MONUC and would be subject, beyond 30 September 2006, to the extension of the mandate of MONUC. The Council decided that Eufor R.D.Congo was authorized to take all necessary measures to carry out, *inter alia,* the following tasks, in accordance with the agreement to be reached between the European Union and the United Nations: to support MONUC to stabilize a situation, in case it faces serious difficulties in fulfilling its mandate; to contribute to the protection of civilians under imminent threat of physical violence; to ensure security and freedom of movement of the personnel as well as the protection of the installations of Eufor R.D.Congo; and to execute operations of limited character in order to extract individuals in danger.

In the same resolution, the Security Council decided that the measures imposed by paragraph 20 of resolution 1493 (2003) and paragraph 1 of resolution 1596 (2005), which deal with the prevention of the supply, sale or transfer of arms and the provision of any assistance related to military activities, should not apply to supplies of arms and related material or technical training and assistance intended solely for the support of or the use by Eufor R.D.Congo. The Security Council also urged the Government of the Democratic Republic of the Congo and the European Union to conclude a status-of-forces agreement before the deployment of advance elements of Eufor R.D.Congo, and decided that until such agreement was concluded, the terms of the status-of-forces agreement for MONUC dated 4 May 2000[41] should apply *mutatis mutandis* between the European Union and the Government of the Democratic Republic of the Congo in respect of Eufor R.D.Congo, including possible third-country contributors. The Security Council also authorized MONUC, within the limit of its capacities, to provide all necessary logistical support for Eufor R.D.Congo, on a cost reimbursement basis.

(ii) *Changes in authorization and/or extension of time limits in 2006*

Afghanistan

On 12 September 2006, the Security Council adopted resolution 1707 (2006) and, acting under Chapter VII of the Charter of the United Nations, decided to extend, for a period of 12 months beyond 13 October 2006, the authorization of the International

[40] See also the letter dated 30 March 2006 from the Permanent Representative of the Democratic Republic of the Congo to the United Nations addressed to the President of the Security Council (S/2006/203).

[41] United Nations, *Treaty Series,* vol. 2106, p. 357.

Security Assistance Force (ISAF), as defined in resolutions 1386 (2001) and 1510 (2003).[42] The Council also authorized the Member States participating in ISAF to take all necessary measures to fulfil its mandate.

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

(i) *Liberia*

On 13 June 2006, the Security Council adopted resolution 1683 (2006) and, acting under Chapter VII of the Charter of the United Nations, decided that the measures imposed by resolution 1521 (2003) dealing with the prevention of the supply, sale or transfer of arms and the provision of any assistance, advice or training related to military activities, should not apply to the weapons and ammunition already provided to members of the Special Security Service for training purposes pursuant to advance approval[43] by the Committee established by resolution 1521 (2003)[44] and that those weapons and ammunition could remain in the custody of SSS for unencumbered operational use. Additionally, the Council decided that the measures aforementioned should not apply to limited supplies of weapons and ammunition, as approved in advance on a case-by-case basis by the Committee, which were intended for members of the Government of Liberia police and security forces who had been vetted and trained since the inception of the United Nations Mission in Liberia (UNMIL) in October 2003. It was specified that the Government of Liberia should mark those weapons and ammunition, maintain a registry of them, and formally notify the Committee that these steps have been taken.

The Security Council, by resolution 1689 (2006) adopted on 20 June 2006, acting under Chapter VII of the Charter of the United Nations, decided not to renew the obligation of Member States to prevent the import of all round log and timber products originating in Liberia into their territories as put forth in resolution 1521 (2003) and to review this decision after a period of 90 days.

The Security Council, however, decided to renew for an additional period of six months, the obligation imposed by resolution 1521 (2003), that all States take the necessary measures to prevent the import of all rough diamonds from Liberia to their territory. This measure should be reviewed by the Council after four months, to allow the Government of Liberia sufficient time to establish an effective Certificate of Origin regime for trade in Liberian rough diamonds that was transparent and internationally verifiable, with a view to joining the Kimberley Process.

Still in the same resolution, the Security Council requested that the Secretary-General renew the mandate of the Panel of Experts re-established according to resolution 1647 (2005) for an additional period of six months, and further requested that the Panel of

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[42] Security Council resolutions 1386 (2001) and 1510 (2003) deal with the assistance to the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas, as well as the support to the Afghan Transitional Authority and its successors with respect to security matters.

[43] See paragraph 2 (e) of Security Council resolution 1521 (2003).

[44] See paragraph 21 of Security Council resolution 1521 (2003).

Experts report to the Council through the Committee its observations and recommendations no later than 15 December 2006.

On 20 December 2006, the Security Council adopted resolution 1731 (2006) and, acting under Chapter VII of the Charter of the United Nations, decided, on the basis of its assessment of progress made towards meeting the conditions for lifting the measures imposed by resolution 1521 (2003), to further renew the measures on arms, travel and diamonds. In addition, the Council also decided to extend the mandate of the Panel of Experts to include conducting a follow-up assessment mission to Liberia and neighbouring States to investigate and report on the implementation, and any violations, of the ban on arms and related military training,[45] including any information relevant to the designation by the Committee of individuals who constitute a threat to the peace process in Liberia;[46] assessing the impact and effectiveness of the measures involving the freezing of funds, financial assets and economic resources, particularly with respect to the assets of former President Charles Taylor;[47] assessing the implementation of forestry legislation enacted by the Liberian authorities in 2006 and the progress and humanitarian and socio-economic impact of the arms embargo, travel ban and ban on the importation of diamonds;[48] cooperating with other relevant groups of experts, in particular that established on Côte d'Ivoire by resolution 1708 (2006), and with the Kimberley Process Certification Scheme; and identifying and making recommendations regarding areas where the capacity of States in the region could be strengthened to facilitate the implementation of the travel ban and the freezing of funds, financial assets and economic resources.[49]

(ii) *Côte d'Ivoire*

On 14 September 2006, the Security Council adopted resolution 1708 (2006) and, acting under Chapter VII of the Charter of the United Nations, decided to extend the mandate of the Group of Experts established pursuant resolution 1643 (2005) until 15 December 2006.

On 15 December 2006, the Security Council adopted resolution 1727 (2006) and, acting under Chapter VII of the Charter of the United Nations, decided to renew until 31 October 2007 certain provisions of resolution 1572 (2004), which provides, *inter alia,* that all States should prevent the direct or indirect supply, sale or transfer of arms as well as the provision of any assistance, advice or training related to military activities to Côte d'Ivoire, as well as the entry into their territories of all persons designated by the Committee established by resolution 1572 (2004) as constituting a threat to the peace or being responsible for serious violations of human rights or humanitarian law, and any other person who publicly incites hatred and violence or who is determined by the Committee

[45] See Security Council resolution 1521 (2003) and paragraphs 1 and 2 of Security Council resolution 1731 (2006).

[46] See paragraph 4 (a) of Security Council resolution 1521 (2003) and paragraph 1 of Security Council resolution 1532 (2004).

[47] See paragraph 1 of Security Council resolution 1532 (2004).

[48] See paragraphs 2, 4 and 6 of Security Council resolution 1521 (2003) and paragraph 1 of Security Council resolution 1647 (2005).

[49] See paragraph 4 of Security Council resolution 1521 (2003) and paragraph 1 of Security Council resolution 1532 (2004).

to be in violation of the measures imposed on the sale of arms and military equipment. The measures renewed by resolution 1727 (2006) also included the obligation of States to freeze funds and other financial assets that were on their territories, owned or controlled directly or indirectly by the persons or entities designated pursuant to resolution 1572 (2004), and to ensure that such resources were 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. [50] Furthermore, the Security Council also decided to renew certain measures of resolution 1643 (2005) relating to the prevention of import of all rough diamonds from Côte d'Ivoire.[51]

In the same resolution, the Security Council decided to further extend the mandate of the Group of Experts for six months.

(iii) *The Sudan*

The Security Council, by resolutions 1665 (2006) of 29 March 2006 and 1713 (2006) of 29 September 2006, acting under Chapter VII of the Charter of the United Nations, decided to extend the mandate of the Panel of Experts, appointed pursuant to resolution 1591 (2005), for a further period until 29 September 2006 and 29 September 2007, respectively.

On 25 April 2006, the Security Council adopted resolution 1672 (2006) and, acting under Chapter VII of the Charter of the United Nations, decided that all States should implement the measures specified in resolution 1591 (2005), which include preventing entry into or transit through their territories of all persons designated by the Committee established by resolution 1591 (2005) as subject to such measures; freezing all funds and economic resources on their territories that were owned or controlled by the persons designated by the Committee; and ensuring that no funds or economic resources were made available by their nationals or by any persons within their territories to or for the benefit of such persons or entities, with respect to certain individuals.

(iv) *Lebanon*

On 11 August 2006, the Security Council adopted resolution 1701 (2006)[52] and decided that all States should take the necessary measures to prevent, by their nationals or from their territories or using their flag vessels or aircraft, the sale or supply to any entity or individual in Lebanon of arms and related materiel of all types, whether or not originating in their territories; and the provision of any technical training or assistance related to the provision, manufacture, maintenance or use of the aforementioned items, with the exception of arms, related material, training or assistance authorized by the Government of Lebanon or by UNIFIL.

In the same resolution, the Security Council called for Israel and Lebanon to support, *inter alia,* a permanent ceasefire and a long-term solution based on: full respect for the Blue Line by both parties; security arrangements to prevent the resumption of hostilities,

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[50] See paragraphs 7 to 12 of Security Council resolution 1572 (2004).

[51] See paragraph 6 of Security Council resolution 1643 (2005).

[52] See also subsection III (a) (ii) c, above, on "Peacekeeping missions and operations".

including the establishment between the Blue Line and the Litani river of an area free of any armed personnel, assets and weapons other than those of the Government of Lebanon and of UNIFIL; full implementation of the relevant provisions of the Taif Accords, and of resolutions 1559 (2004) and 1680 (2006), that require the disarmament of all armed groups in Lebanon; no foreign forces in Lebanon without the consent of its Government; no sale or supply of arms and related materiel to Lebanon except as authorized by its Government; and the provision to the United Nations of all remaining maps of landmines in Lebanon in Israel's possession.

(v) *Somalia*

The Security Council, by resolutions 1676 (2006) of 10 May 2006 and 1724 (2006) of 29 November 2006, acting under Chapter VII of the Charter of the United Nations, stressed the obligation of all States to comply fully with the measures imposed by resolution 733 (1992), concerning the implementation of an arms embargo and the prohibition of the supply of technical advice and other assistance relating to military activities. In the said resolutions, the Council also requested the Secretary-General to re-establish for periods of six months, in consultation with the Committee established pursuant to resolution 751 (1992), the Monitoring Group referred to in resolution 1558 (2004).[53] The mandate of the Monitoring Group included, *inter alia,* the investigation of all activities which generated revenues used to commit arms embargo violations; the investigation of any means of transport, routes, seaports, airports and other facilities used in connection with arms embargo violations; and the refining and updating of information on the draft list of those individuals and entities who violate the arms embargo inside and outside Somalia, and their active supporters, for possible future measures by the Council.

(vi) *Democratic Republic of the Congo*

On 31 January 2006, the Security Council adopted resolution 1654 (2006) and, acting under Chapter VII of the Charter of the United Nations, requested the Secretary-General, in consultation with the Committee established in accordance with resolution 1533 (2004),[54] to re-establish the Group of Experts referred to in resolutions 1533 (2004) and 1596 (2005),[55] for a period expiring on 31 July 2006. The Council also requested the Group of Experts to continue to fulfil its mandate as defined in resolutions 1533 (2004), 1596 (2005) and 1649 (2005), with respect to the prevention of the flow of arms and related materiel.

On 31 July 2006, the Security Council adopted resolution 1698 (2006) and, acting under Chapter VII of the Charter of the United Nations, decided, in light of the failure by the parties to comply with the demands of the Council, to renew until 31 July 2007 the provisions of resolution 1493 (2003) dealing with the prevention of the supply, sale or transfer of arms or any related materiel and the provision of any assistance, advice or train-

[53] See paragraph 3 of Security Council resolution 1558 (2004).

[54] See paragraph 8 of Security Council resolution 1533 (2004).

[55] See paragraph 10 of Security Council resolution 1533 (2004) and paragraph 21 of Security Council resolution 1596 (2005).

ing related to military activities, as amended and expanded by resolutions 1596 (2005) and 1649 (2005) to pertain to a larger group of persons.

The Council also requested the Secretary-General to take the necessary administrative measures with a view to extending once more the mandate of the Group of Experts for a period expiring on 31 July 2007, drawing on the expertise of the members of the Group of Experts and appointing new members as necessary in consultation with the Committee.

Recalling its strong condemnation for the continued use and recruitment of children in the hostilities in the Democratic Republic of the Congo, the Security Council further decided that, for a period expiring on 31 July 2007, the provisions of resolution 1596 (2005) dealing with the prevention of travel and the freezing of funds, other financial assets and economic resources of certain individuals, should extend to the following individuals operating in the Democratic Republic of the Congo and designated by the Committee: (i) political and military leaders recruiting or using children in armed conflict in violation of applicable international law; and (ii) individuals committing serious violations of international law involving the targeting of children in situations of armed conflict. The Council also decided that the tasks of the Committee set out in resolution 1596 (2005) dealing with the investigation and designation of persons, entities and related assets subject to the imposed measures, should also extend to the aforementioned individuals.

(vii) *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*

On 22 December 2006, the Security Council adopted resolution 1735 (2006) and, acting under Chapter VII of the Charter of the United Nations, decided that all States should take the measures previously imposed in resolutions 1267 (1999),[56] 1333 (2000)[57] and 1390 (2002)[58] with respect to Al-Qaida, Usama bin Laden, the Taliban and other individuals, groups, undertakings and entities associated with them, as referred to in the list created pursuant to resolutions 1267 (1999) and 1333 (2000) (Consolidated List).

Furthermore, the Council decided that, when proposing names for the Consolidated List, States should act in accordance with resolutions 1526 (2004) and 1617 (2005) and provide a statement of case that should include as much detail as possible on the basis for the listing, and the nature of the information and supporting information or documents that can be provided. States should also include details of any connection between the proposed designee and any currently listed individual or entity.

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[56] In paragraph 4 of Security Council resolution 1267 (1999), the Council obligated all States to deny permission for any aircraft owned, leased or operated by or on behalf of the Taliban from taking off or landing in their territory. The Council also froze those funds derived or generated from property owned or controlled by the Taliban.

[57] In paragraph 8 of Security Council resolution 1333 (2000), the Council imposed financial sanctions on Usama bin Laden and individuals and entities associated with him as designated by the Committee.

[58] In paragraph 2 of Security Council resolution 1390 (2002), the Council imposed financial sanctions, a travel ban and an arms embargo on Usama bin Laden, members of the Al-Qaida organization and the Taliban, and other individuals or groups associated with them.

The Security Council also decided that the Secretariat should, after publication but within two weeks after a name is added to the Consolidated List, notify the Permanent Mission of the country or countries where the individual or entity was believed to be located and, in the case of individuals, the country of which the person was a national. The notification should be accompanied by a copy of the publicly releasable portion of the statement of case and a description of the effects of designation, as set forth in the relevant resolutions, the Committee's procedures for considering delisting requests, and the provisions of resolution 1452 (2002).

The Council also decided that the Committee should continue to develop, adopt and apply guidelines regarding the de-listing of individuals and entities on the Consolidated List. The Committee, in determining whether to remove names from the Consolidated List, may consider, among other things, whether the individual or entity was placed on the Consolidated List due to a mistake of identity; whether the individual or entity still met the criteria set out in relevant resolutions, in particular resolution 1617 (2005); and whether it has been affirmatively shown that the individual or entity had severed all association, as defined in resolution 1617 (2005),[59] with Al-Qaida, Usama bin Laden, the Taliban, and their supporters, including all individuals and entities on the Consolidated List.

With respect to exemptions to the imposed measures, the Security Council decided to extend the period for consideration by the Committee of notifications submitted pursuant to resolution 1452 (2002) from 48 hours to 3 working days.

(viii) *General issues related to sanctions*

On 8 August 2006, the Security Council adopted resolution 1699 (2006) and requested the Secretary-General to take the necessary steps to increase cooperation between the United Nations and Interpol in order to provide the sanctions committees established by the Security Council with better tools, to fulfil their mandates more effectively and to give Member States better optional tools to implement those measures adopted by the Security Council and monitored by the committees, as well as similar measures that might be adopted by the Security Council in the future. The Council also encouraged Member States to use the tools offered by Interpol, particularly the I-24/7 global police communications system, to reinforce the implementation of such measures that might be adopted by the Security Council in the future.

On 19 December 2006, by resolution 1730 (2006), the Security Council adopted the de-listing procedure contained in the document annexed to the resolution, which, *inter alia,* established a focal point to receive de-listing requests with regard to sanctions, and directed the sanctions committees established by the Security Council to revise their guidelines accordingly.

On 21 December 2006, the Security Council adopted resolution 1732 (2006) and decided that the Informal Working Group on General Issues of Sanctions had fulfilled its mandate, which included the development of general recommendations on how to improve the effectiveness of United Nations sanctions.[60] The Security Council took note

[59] See paragraph 2 of Security Council resolution 1617 (2005).

[60] See the note dated 29 December 2005 by the President of the Security Council (S/2005/841).

with interest of the best practices and methods contained in the Working Group's report[61] and requested its subsidiary bodies to take note as well.

(*f*) Terrorism

(i) *The United Nations Global Counter-Terrorism Strategy*[62]

At its sixtieth session, on 8 September 2006, the General Assembly adopted the United Nations Global Counter-Terrorism Strategy and a Plan of Action annexed thereto.[63] In this regard, the General Assembly decided, without prejudice to the continuation of the discussion in its relevant committees of all their agenda items related to terrorism and counter-terrorism, to undertake the following steps for the effective follow-up of the Strategy: (a) launching of the Strategy at a high-level segment of its sixty-first session; (b) examination of progress in the implementation of the Strategy in two years, and consideration in updating it to respond to changes; (c) invitation to the Secretary-General to contribute to the future deliberations of the General Assembly on the review of the implementation and updating of the Strategy; (d) encouraging Member States, the United Nations and other appropriate international, regional and subregional organizations to support the implementation of the Strategy, including through mobilizing resources and expertise; and (e) further encouraging non-governmental organizations and civil society to engage on how to enhance efforts to implement the Strategy.

The Plan of Action consists of four parts and over fifty concrete measures to address the conditions conducive to the spread of terrorism and to strengthen the capacity of States and the United Nations to prevent and combat terrorism, while ensuring the protection of human rights and upholding the rule of law:

I. Measures to address the conditions conducive to the spread of terrorism;

II. Measures to prevent and combat terrorism;

III. Measures to build States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard; and

IV. Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.

While the primary responsibility for the implementation of the Strategy lies with the Member States, the United Nations is given a role in coordinating with other international, regional and subregional organizations in facilitating coherence in the implementation of the Strategy at the national, regional and global levels and in providing assistance.

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[61] See the note dated 22 December 2006 by the President of the Security Council (S/2006/997).

[62] For more information on the Strategy, see http://www.un.org/terrorism/strategy.

[63] General Assembly resolution 60/288.

(ii) *Security Council Committees*

a. Lebanon[64]

On 7 April 2005, the Security Council adopted resolution 1595 (2005) and decided to establish an international independent investigation Commission based in Lebanon to assist the Lebanese authorities in their investigation of all aspects of the 2005 terrorist bombing in Beirut, Lebanon, that killed former Lebanese Prime Minister Rafiq Hariri and others, including to help to identify its perpetrators, sponsors, organizers and accomplices. On 15 June 2006, the Security Council adopted resolution 1686 (2006) and decided to extend the mandate of the Commission until 15 June 2007.

b. Al-Qaida and Taliban Sanctions Committee[65]

On 22 December 2006, the Security Council adopted resolution 1735 (2006) and decided to extend the mandate of the New York-based Monitoring Team, appointed pursuant to resolution 1617 (2005), for a period of 18 months, under the direction of the Al-Qaida and Taliban Sanctions Committee (1267 Committee), with responsibilities, *inter alia,* to: collate, assess, monitor, report and make recommendations regarding the implementation of the sanctions measures; pursue case studies; submit a comprehensive programme of work to the 1267 Committee for its approval and review; and submit three comprehensive and independent reports on the implementation by States of the measures referred to in this resolution. Furthermore, the Monitoring Team should engage in analysing reports submitted pursuant to resolution 1455 (2003), the checklists submitted pursuant to resolution 1617 (2005), and other information submitted by Member States to the 1267 Committee as instructed by the 1267 Committee; and work closely and share information with the Counter-Terrorism Committee[66] Executive Directorate (CTED) and the 1540 Committee's Group of Experts[67] in order to identify areas of convergence and to help facilitate concrete coordination among the three Committees.

Finally, the Security Council decided that the Monitoring Team should develop a plan to assist the 1267 Committee with addressing non-compliance with the measures referred to in this resolution; present the 1267 Committee with recommendations which could be used by Member States to assist them with the implementation of the said measures and in preparing proposed additions to the list created by resolution 1267 (1999) of individuals subject to the related sanctions measures (Consolidated List); and encourage Member States to submit names and additional identifying information for inclusion on

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[64] See also subsection (iv) on Lebanon under section 3 (e) above on "Sanctions imposed under Chapter VII of the Charter of the United Nations".

[65] See also subsection (vii) on "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" under section 3 (e) above on "Sanctions imposed under Chapter VII of the Charter of the United Nations".

[66] The Counter-Terrorism Committee was established by Security Council resolution 1373 (2001) of 28 September 2001 to monitor implementation of that resolution.

[67] The 1540 Committee (non-proliferation of weapons of mass destruction) was established by Security Council resolution 1540 (2004) of 28 April 2004 to report to the Council on the implementation of that resolution by Member States.

the Consolidated List. Furthermore, the Monitoring Team should study and report to the 1267 Committee on the changing nature of the threat of Al-Qaida and the Taliban and the best measures to confront it; consult with Member States' intelligence and security services in order to facilitate the sharing of information and to strengthen enforcement of the measures; consult with relevant representatives of the private sector to learn about the practical implementation of the assets freeze and to develop recommendations for the strengthening of that measure; and assist other subsidiary bodies of the Security Council and their expert panels.

c. Counter-Terrorism Committee

In a Presidential Statement dated 20 December 2006,[68] the Security Council recognized the importance of cross-United Nations cooperation on counter-terrorism issues, and confirmed that it stood ready to play its part in the implementation of the United Nations Global Counter-Terrorism Strategy.[69] The Council also called upon the relevant United Nations departments, programmes and specialized agencies to consider, within their existing mandates, how to pursue counter-terrorism objectives. The Security Council welcomed the renewed focus of the Counter-Terrorism Committee on enhancing the implementation of resolution 1373 (2001) through a proactive fulfilment of its mandate to promote and monitor States implementation, and called on the Counter-Terrorism Committee to report on the status of implementation of resolution 1373 (2001) and, in particular, encouraged it to report to the Council on any outstanding issues, when necessary and on a regular basis, in order to receive strategic guidance from the Council. Lastly, the Council noted with appreciation the enhanced cooperation among its three Committees (1267 Committee, Counter-Terrorism Committee and 1540 Committee) dealing with counter-terrorism and their expert teams.

d. 1540 Committee (non-proliferation of weapons of mass destruction)

On 27 April 2006, the Security Council extended the mandate of the 1540 Committee for a further two years and emphasized the importance of States meeting their reporting obligations on the implementation of Security Council resolution 1540 (2004) on the non-proliferation of weapons of mass destruction.[70] In 2006, the 1540 Committee received 133 reports by Member States with 59 reports still outstanding. In addition, the Committee established a legislative database that provides information on the national implementation of laws pursuant to resolution 1540 (2004).

(iii) *Establishment of a special tribunal for Lebanon*

In its resolution 1664 (2006) adopted on 29 March 2006, the Security Council, expressing its willingness to continue to assist Lebanon in the search for the truth and in holding accountable all those involved in the terrorist attack that killed former Lebanese Prime Minister Rafiq Hariri and others, endorsed the report of the Secretary-General prepared

[68] S/PRST/2006/56.

[69] General Assembly resolution 60/288.

[70] Security Council resolution 1673 (2006).

pursuant to paragraph 6 of Council resolution 1644 (2005),[71] in which he put forward the general principles of a tribunal of an international character. The Council also requested the Secretary-General to negotiate an agreement with the Government of Lebanon with a view to establishing such a tribunal, based on the highest international standards of criminal justice, and taking into account the recommendations of his report and the views that had been expressed by members of the Security Council.

On 15 November 2006, as requested by the Security Council in its resolution 1664 (2006), the Secretary-General submitted a report on the establishment of a special tribunal for Lebanon,[72] in which he analyzed the agreement between the United Nations and the Government of Lebanon,[73] as well as the main features of the statute of the special tribunal,[74] including the legal nature and specificities of the tribunal, its temporal, personal and subject matter jurisdiction, its organizational structure and composition, the conduct of the trial process, the location of the seat, the funding mechanism and cooperation with third States.

(*g*) Human rights and humanitarian law in the context of peace and security

(i) *Protection of civilians during armed conflict*

a. General Assembly

On 19 December 2006, the General Assembly, on the recommendation of the Third Committee, adopted resolution 61/155 entitled "Missing persons", in which, *inter alia,* it called upon States that are parties to an armed conflict to take all appropriate measures to prevent persons from going missing in connection with armed conflict and account for persons reported missing as a result of such a situation. The Assembly also reaffirmed that each party to an armed conflict, as soon as circumstances permit, should search for the persons reported missing by an adverse party and called upon the parties to take all necessary measures to determine the identity and fate of persons reported missing and, to the greatest possible extent, provide their family members with all relevant information they have on their fate. Moreover, the Assembly recognized in this regard the need for the collection, protection and management of data on missing persons according to international and national legal norms and standards, and urged States to cooperate with each other and with other concerned actors working in this area, as well as to pay the utmost attention to cases of children reported missing. Finally, it invited States that are parties to an armed conflict to cooperate fully with the International Committee of the Red Cross in establishing the fate of missing persons.

b. Security Council

The Security Council adopted resolution 1674 (2006) on 28 April 2006 and recalled that the deliberate targeting of civilians and other protected persons in situations of armed

[71] S/2006/176.

[72] S/2006/893.

[73] *Ibid.*, annex I.

[74] *Ibid.*, attachment.

conflict was a flagrant violation of international humanitarian law. It further reaffirmed its condemnation of all acts of violence or abuses committed against civilians in such situations in violation of applicable international obligations, with respect in particular to torture, gender-based and sexual violence, violence against children, recruitment and use of child soldiers, trafficking in humans, forced displacement and intentional denial of humanitarian assistance.

In the same resolution, the Security Council also called upon all parties concerned to ensure that all peace processes, peace agreements, post-conflict recovery and reconstruction planning have regard for the special needs of women and children and include specific measures for the protection of civilians, including the cessation of attacks on civilians. The Council also reaffirmed its practice of ensuring that the mandates of United Nations peacekeeping, political and peacebuilding missions include provisions regarding the protection of civilians.

The Council also condemned all sexual and other forms of violence committed against civilians in armed conflict, in particular women and children, as well as all acts of sexual exploitation, abuse and trafficking of women and children by military, police and civilian personnel involved in United Nations operations. Lastly, it condemned all attacks deliberately targeting United Nations and associated personnel involved in humanitarian missions, as well as other humanitarian personnel.

Furthermore, the Council, in resolution 1738 (2006) adopted on 23 December 2006, condemned intentional attacks against journalists, media professionals and associated personnel in situations of armed conflict, and called upon all parties to put an end to such practices. The Council reaffirmed its condemnation of all incitements to violence against civilians in situations of armed conflict and the need to bring to justice, in accordance with applicable international law, individuals who engage in such practices. It also indicated its willingness, when authorizing missions, to consider steps to respond to media broadcasts inciting genocide, crimes against humanity and serious violations of international humanitarian law. Finally, the Security Council recalled its demand that all parties to an armed conflict comply fully with the obligations applicable to them under international law relating to the protection of civilians in armed conflict, including journalists, media professionals and associated personnel.

(ii) *Women and peace and security*

Security Council

In a Presidential Statement dated 8 November 2006,[75] the Security Council reaffirmed its commitment to the full and effective implementation of resolution 1325 (2000) and recalled the previous Presidential Statements on this matter.[76]

The Council further encouraged Member States in post-conflict situations to ensure that gender perspectives are mainstreamed in its institutional reform, and in particular that the reforms of the security sector, justice institutions and restoration of the rule of

[75] S/PRST/2006/42.

[76] See Presidential Statements of 31 October 2001 (S/PRST/2001/31), 31 October 2002 (S/PRST/2002/32), 28 October 2004 (S/PRST/2004/40) and 27 October 2005 (S/PRST/2005/52).

law provide for the protection of women's rights and safety. The Council also requested the Secretary-General to ensure that United Nations assistance in this context appropriately addresses the needs and priorities of women in the post-conflict process and that disarmament, demobilization and reintegration programmes take specific account of the situation of women ex-combatants and women associated with combatants, as well as their children, and provide them full access to these programmes. It also welcomed the role that the Peacebuilding Commission could play in mainstreaming gender perspectives into the peace consolidation process.

Lastly, the Security Council requested the Secretary-General to include in his reports to the Security Council progress in gender mainstreaming throughout United Nations peacekeeping missions, as well as on other aspects relating specifically to women and girls. It also emphasized the need for the inclusion of gender components in peacekeeping operations and further encouraged Member States and the Secretary-General to increase the participation of women in all areas and all levels of peacekeeping operations, civilian, police and military.

(iii) *Great Lakes region*

Security Council

In its resolution 1653 (2006), adopted on 27 January 2006, the Security Council, *inter alia,* reiterated its condemnation of the genocide in Rwanda of 1994 and the armed conflicts which have plagued the Great Lakes region of Africa during the past decade and expressed its profound concern regarding the violations of human rights and international humanitarian law resulting in wide-scale loss of life, human suffering and destruction of property.

The Security Council encouraged and supported the countries of the Great Lakes region, individually and collectively, to strengthen and institutionalize respect for human rights and humanitarian law, including respect for women's rights and protection of children affected by armed conflict, good governance, rule of law, democratic practices as well as development cooperation, and urged all States concerned to take action to bring to justice perpetrators of grave violations of human rights and international humanitarian law and to take appropriate measures of international cooperation and judicial assistance in this regard.

The Council also strongly condemned the activities of militias and armed groups operating in the Great Lakes region, which continued to attack civilians and United Nations and humanitarian personnel, commit human rights abuses against local populations and threaten the stability of individual States and the region as a whole. It reiterated its demand that all such armed groups lay down their arms and engage voluntarily and without any delay or preconditions in their disarmament and in their repatriation and resettlement.

Lastly, the Security Council requested the Secretary-General to make recommendations to the Council on how to support efforts by States in the region to put an end to the activities of illegal armed groups, and to recommend how United Nations agencies and missions could help, including through further support for the efforts of the Governments concerned to ensure protection of, and humanitarian assistance to, civilians in need.

(iv) *Burundi*

Security Council

By its resolution 1719 (2006) adopted on 25 October 2006, the Security Council, requested that the United Nations Integrated Office in Burundi focus on and support the Government of Burundi in, *inter alia,* the promotion and protection of human rights and measures to end impunity, including by building national institutional capacity in that area, particularly with regard to the rights of women, children and other vulnerable groups; assisting with the design and implementation of a national human rights action plan, including the establishment of an independent national human rights commission; and supporting efforts to combat impunity, particularly through the establishment of transitional justice mechanisms, including a truth and reconciliation commission and a special tribunal. The Council also expressed its deep concern at reports of continuing human rights violations and urged the Government to investigate all such reports, take the necessary steps to prevent further violations and ensure that those responsible for such violations were brought to justice.

(v) *Côte d'Ivoire*

Security Council

The Security Council adopted resolution 1721 (2006) on 1 November 2006, by which it, *inter alia,* expressed its serious concern at the persistence of the crisis and the deterioration of the situation in Côte d'Ivoire, including its grave humanitarian consequences causing large-scale civilian suffering and displacement, and reiterated its firm condemnation of all violations of human rights and international humanitarian law in the country. The Council also reiterated its serious concern at all violations of human rights and international humanitarian law in Côte d'Ivoire, and urged the Ivorian authorities to investigate these violations without delay in order to put an end to impunity. The Council also underlined that it was fully prepared to impose targeted measures against persons to be designated by the Committee of the Security Council established pursuant resolution 1572 (2004), who are determined to be blocking the implementation of the peace process, responsible for serious violations of human rights and international humanitarian law committed in Côte d'Ivoire since 19 September 2002, publicly inciting hatred and violence or in violation of the arms embargo, as provided in resolutions 1572 (2004) and 1643 (2005).

3. Disarmament and related matters[77]

(*a*) Disarmament machinery

(i) *Disarmament Commission*

The United Nations Disarmament Commission (UNDC), a subsidiary organ of the General Assembly with a general mandate on disarmament questions, is composed of all

[77] For more detailed information refer to *The United Nations Disarmament Yearbook,* vol. 31, 2006 (United Nations publication, Sales No. E.07.IX.1).

Member States of the United Nations.[78] To permit in-depth consideration, UNDC focuses on a limited number of agenda items at each session. In 1998, the General Assembly decided that the agenda of UNDC, as of 2000, would normally consist of two substantive items.

After two years without an agreement on a substantive agenda for its deliberations, UNDC reached consensus on the programme of work for its 2006 session and adopted two agenda items: (i) recommendations for achieving the objective of nuclear disarmament and non-proliferation of nuclear weapons; and (ii) practical confidence-building measures in the field of conventional weapons.[79] During its session, held from 10 to 28 April 2006 in New York, UNDC agreed upon recommendations for improving the effectiveness of its methods of work.[80]

(ii) *Conference on Disarmament*[81]

In the absence of a consensus on the programme of work at the beginning of the Conference's consultations in January 2006, the President of the Conference on Disarmament submitted a joint presidential proposal of the six rotating Presidents to introduce structured discussions on substantial issues into the traditional general debates, including a timetable of such debates, whereby each President would focus on two agenda items. Therefore, substantive plenary debates were held on the twelve topics contained in the joint presidential proposal.[82] However, some disagreements over the drafting of the Conference's report to the General Assembly remained, particularly with regard to the reflection of "new issues",[83] and for the first time, the Conference adopted only the procedural parts of the report.[84]

(iii) *General Assembly*

On 6 December 2006, the General Assembly, on the recommendation of the First Committee, adopted eight resolutions[85] concerning the institutional make-up of the efforts of the United Nations in the field of disarmament, particularly concerning the Disar-

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[78] General Assembly resolution S-10/2 of 30 June 1978.

[79] Report of the Disarmament Commission 2005, *Official Records of the General Assembly, Sixtieth Session, Supplement No. 42* (A/60/42).

[80] Report of the Disarmament Commission 2006, *Official Records of the General Assembly, Sixty-first Session, Supplement No. 42* (A/61/42).

[81] The Conference on Disarmament was established in 1979, as a result of the First Special Session on Disarmament of the General Assembly in 1978, as the single multilateral disarmament negotiating forum of the international community.

[82] Report of the Conference on Disarmament, 23 January-31 March, 15 May-30 June, 31 July-15 September 2006, *Official Records of the General Assembly, Supplement No. 27* (A/61/27), para. 14.

[83] Several "new issues" were introduced by some Member States, such as threats to the critical civil infrastructure or man-portable air defence systems (MANPADS) addressed under the agenda item "Transparency in armaments"; see Conference on Disarmament, Agenda for the 2006 session, CD/1764.

[84] Report of the Conference on Disarmament, 23 January-31 March, 15 May-30 June, 31 July-15 September 2006, *Official Records of the General Assembly, Supplement No. 27* (A/61/27).

[85] General Assembly resolutions 61/60, 61/67, 61/90, 61/92, 61/93, 61/94, 61/98 and 61/99.

mament Commission, the Conference on Disarmament and the United Nations regional centres,[86] of which four are highlighted below.

In resolution 61/60, "Convening of the fourth special session of the General Assembly devoted to disarmament", the Assembly established an open-ended working group to consider the objectives and agenda for the fourth special session of the General Assembly devoted to disarmament.

In resolution 61/67, "Declaration of a fourth disarmament decade", the General Assembly recalled its previous resolutions on arms control, disarmament and non-proliferation and directed the Disarmament Commission during its 2009 session to prepare elements of a draft declaration proclaiming the 2010s as the fourth disarmament decade, to be submitted to the General Assembly during its sixty-fourth session.

In resolution 61/98 entitled "Report of the Disarmament Commission", the General Assembly took note of the developments at the Commission meetings and adopted the procedural recommendations made in its report.

In resolution 61/99 on the "Report of the Conference on Disarmament", the General Assembly took note of the developments at the Conference and requested all States to cooperate with the current and successive Presidents of the Conference to achieve an early commencement of substantive work in 2007.

(*b*) Nuclear disarmament and non-proliferation issues

The Conference on Disarmament paid particular attention to the issue of nuclear disarmament, during formal as well as informal plenary debates, including discussions relating to the negotiation of a treaty to prohibit the production of fissile material for nuclear weapons and other explosive devices. Nevertheless, since the Conference had not been able to reach consensus on its programme of work, no progress was made on the substantive work.

Regarding the Treaty on the Non-Proliferation of Nuclear Weapons (NPT),[87] the States Parties to the Treaty decided to hold the first session of the Preparatory Committee for the for the 2010 NPT Review Conference in Vienna from 30 April to 11 May 2007.[88]

The year 2006 marked the tenth anniversary of the opening for signature of the Comprehensive Nuclear-Test-Ban Treaty (CTBT), which has reached near universal adherence with 176 signatories and 137 ratifications, although it has not yet entered into force.[89] On 20 October 2006, the Executive Secretary of the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization reported to the General Assembly under the agenda item "Cooperation between the United Nations and the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization" on its activities

[86] For more detail on the United Nations regional efforts see chapter 4 (e) below.

[87] United Nations, *Treaty Series,* vol. 729, p.161.

[88] See also General Assembly resolution 61/70.

[89] For the text of the CTBT, see A/50/1027. Of the 44 States whose ratification is necessary for the entry into force of the CTBT, 41 States had signed it and 34 had ratified it at the end of 2006.

undertaken in 2005, particularly with regard to the preparatory work for the envisioned monitoring and verification regime of the Treaty.[90]

Regarding the verification activities of the International Atomic Energy Agency (IAEA), comprehensive safeguards agreements entered into force for six additional States in 2006, bringing the total number of States with IAEA safeguard agreements to 162.[91] Additional protocols to the safeguards agreements entered into force for seven States.

Iran (Islamic Republic of), however, informed IAEA with a letter dated 6 February 2006 that it would no longer apply the additional protocol to the safeguards agreement between Iran and IAEA and, henceforth, the verification work of the Agency would be based solely on its comprehensive safeguards agreement with Iran. On 4 February 2006, the IAEA Board of Governors adopted a resolution on the implementation of the comprehensive safeguards agreement in Iran which, *inter alia,* called on Iran to re-establish full suspension of all enrichment and reprocessing activities, to promptly ratify and implement the additional protocol and to resolve all outstanding issues and requested the Director General to report thereon to the Security Council.[92] On 31 July and 23 December 2006, the Security Council adopted resolutions 1696 (2006) and 1737 (2006) demanding Iran to fulfil the demands of IAEA. In a subsequent report, the Director General reported to the Security Council that Iran had failed to comply with the afore-mentioned demands.[93]

Since 2002, IAEA has not been allowed to undertake any verification activities in the Democratic People's Republic of Korea and, consequently, could not issue any report on the nuclear test that the State concerned declared to have carried out on 9 October 2006.

In the area of ballistic missile proliferation, the signatory States to The Hague Code of Conduct against Ballistic Missile Proliferation (HCOC)[94] held their fifth Regular Conference in Vienna from 22 to 23 June 2006. The Conference considered, *inter alia,* the strengthening of confidence-building measures, including pre-launch notification of ballistic missiles, space launch vehicle launches, annual declaration of ballistic missiles, and space launch vehicle policies. In addition, the Conference also discussed outreach activities to support the universal acceptance of the HCOC.

By the end of the year, HCOC had 125 subscribing States.

(i) *General Assembly*

On 6 December 2006, the General Assembly, on the recommendation of the First Committee, adopted 18 resolutions and 2 decisions[95] concerning nuclear weapons and non-proliferation concerns, of which five are highlighted below.

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[90] See the note of the Secretary-General on the report of the Executive Secretary of the CTBTO Preparatory Commission for 2005 (A/61/184).

[91] At the end of 2006, 30 non-nuclear-weapon States parties to the NPT had yet to bring IAEA safeguards agreements into force as required under article III of the Treaty.

[92] GOV/2006/14.

[93] GOV/2006/53.

[94] For the text of The Hague Code of Conduct, see A/57/724, enclosure.

[95] See General Assembly resolutions 61/56, 61/57, 61/59, 61/62, 61/65, 61/67, 61/69, 61/70, 61/73, 61/74, 61/78, 61/83, 61/85, 61/87, 61/88, 61/97, 61/103, 61/104 and decisions 61/514 and 61/515.

In resolution 61/57 entitled "Conclusion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons", the Assembly called upon States to strive for a common approach to include in an international, legally-binding instrument, taking advantage of those approaches discussed in the Conference on Disarmament.

In resolution 61/65, "Towards a nuclear-weapon-free world: accelerating the implementation of nuclear disarmament commitments", the Assembly condemned the announced nuclear-weapon test by DPRK on 9 October 2006 and all nuclear-weapons tests by States not yet party to NPT, stressing the central role of the said Treaty, and urged DPRK to rescind its announced withdrawal from the Treaty.

The General Assembly, in resolution 61/83 entitled "Follow-up to the advisory opinion of the International Court of Justice on the *Legality of the Threat or Use of Nuclear Weapons*", called on all States to immediately fulfil the obligations under the Advisory Opinion[96] by starting multilateral negotiations for a nuclear weapons convention prohibiting the development, production, testing, deployment, stockpiling, transfer, threat or use of nuclear weapons and providing for their elimination.

Finally, in resolution 61/97 on the "Convention on the Prohibition of the Use of Nuclear Weapons", the Assembly reiterated its requests to the Conference on Disarmament to commence negotiations in order to reach agreement on an international convention prohibiting the use or threat of use of nuclear weapons under any circumstances.

In its resolution 61/104 on the "Comprehensive Nuclear-Test-Ban Treaty", the General Assembly urged all States to maintain their moratoriums on nuclear-weapon test explosions while stressing that those measures did not have the same permanent legally-binding effect as the entry into force of the Treaty which should be the priority for all States.

The General Assembly also welcomed the various regional efforts to promote nuclear-weapon-free zones, such as the nuclear-weapon free zones of Central Asia and the Southern hemisphere and adjacent areas.[97]

Furthermore, on 31 October and 4 December 2006, respectively, the General Assembly also adopted two resolutions without reference to a Main Committee, namely resolution 61/8 on the report of the International Atomic Energy Agency and resolution 61/47 concerning the cooperation between the United Nations and the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization

(ii) *Security Council*

The Security Council adopted several resolutions concerning the launching by the DPRK of ballistic missiles and its announcement regarding the undertaking of a nuclear-weapons test,[98] as well as on the nuclear programme of Iran (Islamic Republic of).[99]

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[96] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996,* p. 226.

[97] See General Assembly resolutions 61/56, 61/69, 61/87, 61/88 and 61/103.

[98] Security Council resolutions 1695 (2006) and 1718 (2006).

[99] Security Council resolutions 1696 (2006) and 1737 (2006).

(*c*) Biological and chemical weapons issues

In 2006, the sixth Review Conference of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BWC)[100] was held in Geneva, Switzerland, from 20 November to 8 December. The Conference succeeded in comprehensively reviewing the Convention and adopted a Final Document[101] by consensus consisting of three parts: Organization and work of the Conference; Final Declaration; and Decisions and Recommendations listing concrete measures to strengthen the implementation of the Convention. The Final Declaration, *inter alia,* established an International Support Unit to assist State parties in implementing the Convention. In addition, the Review Conference reaffirmed that BWC was applicable to all relevant scientific and technological developments and that it effectively prohibited the use of biological weapons.

Also in 2006, the eleventh session of the Conference of State Parties to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC)[102] was held in The Hague, Netherlands, from 5 to 8 December, approving six extension requests by State parties of the date for the destruction of their declared chemical weapons stockpiles.[103]

The United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), which was established by Security Council resolution 1284 (1999) to verify Iraq's compliance with its obligation to be rid of its weapons of mass destruction and to operate a system of ongoing monitoring and verification to ascertain that Iraq does not reacquire the same weapons prohibited by the Security Council, has been inactive in the field since March 2003. Nevertheless, UNMOVIC continued to carry out those of its activities which could be implemented outside of Iraq.[104]

General Assembly

On 6 December 2006, the General Assembly, on the recommendation of the First Committee, adopted three resolutions concerning biological and chemical weapons. In resolution 61/61 "Measures to uphold the authority of the 1925 Geneva Protocol", the Assembly called upon those States that maintained reservations to the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, 1925,[105] to withdraw them. In resolution 61/68 concerning the implementation of CWC, the Assembly urged all States parties to CWC to meet their obligations under the Convention and to support the Organization for the Prohibition of

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[100] United Nations, *Treaty Series,* vol. 1015, p. 163.

[101] For the final document of the Conference, see BWC/CONF.VI/6.

[102] United Nations, *Treaty Series,* vol. 1974, p. 45.

[103] For the report of the Conference of States Parties, see C-11/5.

[104] For the quarterly reports on the activities of UNMOVIC, see S/2006/133, S/2006/342, S/2006/701 and S/2006/912, respectively.

[105] League of Nations, *Treaty Series,* vol. XCIV (1929), No. 2138.

Chemical Weapons (OPCW).[106] In resolution 61/102 on the BWC, the Assembly welcomed the convening of the Sixth Review Conference.

(*d*) Conventional weapons issues

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 (CCW),[107] the Group of Governmental Experts to the CCW held its thirteenth, fourteenth and fifteenth sessions in March, June and August/September 2006, respectively, in Geneva, Switzerland. During these sessions, the Group of Governmental Experts undertook preparatory work for the third Review Conference of the CCW, which was held in Geneva, Switzerland, from 7 to 17 November 2006. It made several recommendations for the third Review Conference on both procedural and substantive issues.[108] The Group also agreed to recommend that a compliance mechanism be created for the Convention and its Protocols; that a sponsorship programme be established under the Convention;[109] and that a Plan of Action to promote the universality of the Convention and its Protocols be adopted.[110]

In 2006, the third Review Conference of the CCW was held in Geneva, Switzerland, from 7 to 17 November.[111] Its Main Committee I deliberated on the scope and operation of the Convention and its Protocols as well as on questions of compliance and universal acceptance of the Convention. Main Committee II focused on explosive remnants of war, particularly cluster munitions, and mines other than anti-personnel mines, based on the report by the Group of Governmental Experts. The Conference welcomed the entry into force on 12 November 2006 of Protocol V on Explosive Remnants of War[112] and adopted a Final Report outlining the preparatory and conference schedule for 2007.[113] In addition, the Conference adopted a Final Declaration[114] relating to four areas: (i) Declaration on the Occasion of the Entry into Force of the Protocol on Explosive Remnants of War (Protocol V); (ii) Decision on a Compliance Mechanism Applicable to the CCW; (iii) Plan of Action to Promote Universality of CCW; and (iv) Decision on the Establishment of a Sponsorship Programme within the Framework of the CCW.

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[106] Regarding the cooperation between the United Nations and OPCW, see General Assembly resolution 61/224 of 20 December 2006.

[107] United Nations, *Treaty Series,* vol. 1341, p. 137.

[108] For the reports of the Group of Governmental Experts, see CCW/GGE/XIII/7, CCW/GGE/XIV/5 and CCW/CONF.III/7-CCW/GGE/XV/6 and Adds 1 to 8, respectively.

[109] CCW/GGE/XIII/6.

[110] CCW/GGE/XIII/5.

[111] Prior to the Review Conference, on 6 November 2006, the eighth Annual Conference of the State Parties to the CCW Amended Protocol II also met in Geneva. For the report, see CCW/AP.II.CONF.8/2.

[112] For the text of the Protocol, see CCW/MSP/2003/2.

[113] For the report of the Review Conference and the final document, see CCW/CONF.III/11 (Parts I, II and III).

[114] *Ibid.,* Part II.

Regarding the topic small arms and light weapons, the Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Lights Weapons in All Its Aspects[115] took place in New York from 26 June to 7 July 2006. Discussions proved particularly contentious on the following issues, including civilian possession of small arms and light weapons, the issue of ammunition and the transfer of small arms and light weapons to non-State actors. The Conference was not able to reach consensus on a final outcome document, nor did it agree on convening another Review Conference. The participating States still reaffirmed their full support for the Programme of Action and adopted the procedural report of the Conference.[116]

The first session of the Group of Governmental Experts to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons, which had been established by the Secretary-General in accordance with General Assembly resolution 60/81 of 8 December 2005, was held in Geneva, Switzerland, from 27 November to 1 December 2006. A final report on the Group's work is expected to be submitted to the General Assembly at its sixty-second session.

The third session of the Conference of the Parties to the Convention against Transnational Organized Crime was held in Vienna, Austria, from 9 to 18 October 2006,[117] reviewing, *inter alia,* the implementation of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.[118]

The seventh Meeting of States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction (Mine Ban Convention)[119] took place in Geneva, Switzerland, from 18 to 22 September 2006. Based on the Geneva Progress Report,[120] the Conference focused on assessing progress made in the implementation of the Nairobi Action Plan (NAP 2005–2009) and on the fulfilment of the mine-clearance obligations under article 5, paragraph 3, of the Convention. The Meeting adopted a Final Report containing a series of decisions and recommendations, particularly with regard to article 5 obligations and deadlines.[121]

(i) *General Assembly*

On 6 December 2006, the General Assembly adopted, on the recommendation of the First Committee, nine resolutions concerning the issues of conventional weapons,[122] arms

[115] For the text of the Programme of Action, see A/CONF.192/15.

[116] A/CONF.192/2006/RC/9.

[117] For the report of the Conference, see CTOC/COP/2006/14.

[118] For the text of the Protocol, see A/55/383/Add.2.

[119] United Nations, *Treaty Series*, vol. 2056, p. 211.

[120] APLC/MSP.7/2006/L.2.

[121] APLC/MSP.7/2006/5.

[122] General Assembly resolution 61/100.

trade,[123] small arms and light weapons,[124] practical disarmament measures,[125] transparency[126] and mines,[127] of which three are highlighted below.

In resolution 61/66 entitled "The illicit trade in small arms and light weapons in all its aspects", the Assembly called on States to implement the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons[128] and recalled that the Governmental Group of Experts to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons was to submit a report to the Assembly at its sixty-second session.

The General Assembly, in its resolution 61/77 on "Transparency in armaments", widened the scope of the United Nations Register on Conventional Arms following the recommendations made in the report of the Secretary-General on its continuing operation and further development.[129]

In resolution 61/89, "Towards an arms trade treaty; establishing common international standards for the import, export, and transfer of conventional arms", the Assembly cleared the first formal step towards an arms trade treaty by requesting the Secretary-General to seek the views of Member States on the feasibility, scope and draft parameters for a comprehensive, legally-binding instrument establishing common standards for the import, export and transfer of conventional arms and report to the Assembly at its sixty-second session.

(ii) Security Council

The Security Council considered the report of the Secretary-General on small arms[130] during an open debate held on 20 March 2006. During the debate, some members of the Council proposed to adopt a resolution on the threat posed by the illicit trade in small arms, yet as others held the view that it would infringe on the competencies of the General Assembly, no agreement was reached.[131]

(*e*) Regional disarmament activities of the United Nations

(i) *Africa*

In accordance with General Assembly resolution 60/86, a Consultative Mechanism was established in 2006 for the reorganization of the United Nations Regional Centre for

[123] General Assembly resolution 61/89.

[124] General Assembly resolutions 61/71 61/66.

[125] General Assembly resolutions 61/72 and 61/76.

[126] General Assembly resolution 61/79.

[127] General Assembly resolution 61/84.

[128] A/60/88.

[129] A/61/261.

[130] S/2006/109.

[131] S/PV.5390.

Peace and Disarmament in Africa (UNREC). The Consultative Mechanism held three meetings, on 5 May, 5 June and 12 June in New York, but did not agree on any outcome. In resolution 61/93 of 6 December 2006, adopted on the recommendation of the First Committee, the General Assembly thus requested the Consultative Mechanism to continue its work, including reviewing the mandate and programmes of UNREC in the light of developments in the field of peace and security in Africa since its establishment, with a view to identifying concrete measures to revitalize the Centre.

During 2006, UNREC continued to implement the Small Arms Transparency and Control Regime in Africa, which included, *inter alia,* the maintenance of the Small Arms and Light Weapons Register in Africa. In addition, UNREC also assisted in organizing the 24th Ministerial Meeting of the United Nations Standing Advisory Committee for Security Questions in Central Africa, held from 26 to 29 September in Kigali, Rwanda.

(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 its efforts to promote regional disarmament in 2006. Among other things, UN-LiREC assisted States in promoting the development of the Chemical Weapons—Regional Assistance and Protection Network. In the area of small arms and light weapons, the Centre also assisted in organizing the Regional Preparatory Meeting of the Programme of Action Review Conference,[132] held from 2 to 4 May 2006, during which 28 Latin American and Caribbean States signed the Antigua Declaration in La Antigua, Guatemala.[133]

(iii) *Asia and the Pacific*

During the year under review, the United Nations Regional Centre for Peace and Development in Asia and the Pacific organized various conferences and seminars, including the eighteenth United Nations Conference on Disarmament Issues in Yokohama, Japan, from 21 to 23 August 2006, and the fifth Joint Conference between the United Nations and the Republic of Korea in Jeju, Republic of Korea, from 13 to 15 December 2006, which focused on non-proliferation issues of weapons of mass destruction, and a seminar in Bangkok, Thailand, from 17 to 19 May 2006, for South and Southeast Asian countries to prepare for the Programme of Action Review Conference.

Negotiations with Nepal continued during the year on the issue of the relocation of the Centre to Nepal and a Host Country Agreement and a Memorandum of Understanding were sent to the Nepalese authorities in November 2006.

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[132] For the Programme of Action Review Conference, see subsection (d), above, dealing with conventional weapons issues.

[133] A/60/876, annex.

(iv) General Assembly

The General Assembly adopted, on the recommendation of the First Committee, fourteen resolutions on 6 December 2006 concerning regional disarmament issues,[134] of which one is highlighted below.

In its resolution 61/80 entitled "Regional disarmament", the General Assembly stressed the importance of regional cooperation in disarmament, and called on all States to conclude agreements, wherever possible, for nuclear non-proliferation, disarmament and confidence-building measures at the regional and subregional levels.

(v) *Security Council*

On 20 September 2006, the Security Council held a ministerial-level meeting on maintaining international peace and security through cooperation between the United Nations and regional organizations. The Council considered, *inter alia,* the report of the Secretary-General[135] on progress achieved since the adoption of Security Council resolution 1631 (2005) and issued a presidential statement on this matter.[136] With regard to disarmament issues, the Council urged regional and subregional organizations to assist States in implementing existing agreements and enhancing efforts to eradicate the illicit trade in small arms and light weapons, including via more effective regional mechanisms.

(*f*) Other issues

(i) *Terrorism and disarmament*[137]

a. General Assembly

On 6 December 2006, the General Assembly adopted, on the recommendation of the First Committee, resolution 61/86, "Measures to prevent terrorists from acquiring weapons of mass destruction", in which it took note of the report of the Secretary-General on this matter[138] and called upon Member States to support international efforts to prevent terrorists from acquiring weapons of mass destruction and urged them to strengthen national measures in this area. It further 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 and to seek the views of Member States on additional measures for tackling the global threat posed by the acquisition by terrorists of such weapons.

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[134] See General Assembly resolutions 61/53, 61/56, 61/69, 61/80, 61/81, 61/82, 61/87, 61/88, 61/90, 61/92, 61/93, 61/94, 61/96 and 61/101.

[135] See the report of the Secretary-General "A regional-global security partnership: challenges and opportunities", 28 July 2006 (A/61/204).

[136] S/PRST/2006/39.

[137] See also the section on the work of the Security Council Committee established by resolution 1540 (2004) (non-proliferation of weapons of mass destruction), under section 2 (f) (ii), above, dealing with the issue of terrorism.

[138] A/61/171 and Add.1.

(ii) *Outer space*

During the 2006 Conference on Disarmament, the question of the prevention of an arms race in outer space, particularly the scope and desirability of a future legal instrument, was debated in formal and informal plenary meetings, both under this item and under related sub-items.[139]

General Assembly

On 6 December 2006, the General Assembly adopted, on the recommendation of the First Committee, two resolutions on disarmament and outer space. In resolution 61/58 entitled "Prevention of an arms race in outer space", the General Assembly invited the Conference on Disarmament to complete the examination and updating of the mandate contained in its decision of 13 February 1992,[140] and to re-establish an Ad Hoc Committee on the prevention of an arms race in outer space as soon as possible during 2007. In its resolution 61/75, "Transparency and confidence-building measures in outer space activities", the General Assembly invited all Member States to submit proposals on international outer space transparency and confidence-building measures.

(iii) *Human rights, human security and disarmament*

Subcommission on the Promotion and Protection of Human Rights

During its fifty-eighth session in 2006, the Subcommission on the Promotion and Protection of Human Rights endorsed, in its resolution 2006/22, the draft principles on the prevention of human rights violations committed with small arms and light weapons prepared by the Special Rapporteur on this topic.[141] It transmitted to the Human Rights Council the draft principles to be considered for adoption, comprising regulations over the use of small arms and light weapons by Governments and State officials, and measures to prevent human rights abuses by private actors using small arms and light weapons.

(iv) *Role of science and technology in the context of international security and disarmament*

General Assembly

On 6 December 2006, the General Assembly adopted, on the recommendation of the First Committee, resolution 61/55 entitled "Role of science and technology in the context of international security and disarmament", in which it, *inter alia,* urged Member States to undertake multilateral negotiations in order to establish universally acceptable, non-discriminatory guidelines for the international transfer of dual-use goods and technologies and high technology with military applications.

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[139] CD/PV.1024–CD/PV.1027.

[140] Conference on Disarmament decision CD/1125.

[141] For the text of the draft principles, see resolution 2006/22, annex, reproduced in the report of the Subcommission (A/HRC/2/2—A/HRC/Sub.1/58/36).

(v) *Multilateralism and disarmament*

General Assembly

On 6 December 2006, the General Assembly adopted, on the recommendation of the First Committee, resolution 61/62, "Promotion of multilateralism in the area of disarmament and non-proliferation", in which the Assembly took note of the report of the Secretary-General containing replies of Member States on this question.[142] It further reaffirmed multilateralism as the core principle in disarmament and non-proliferation and called again on Member States to fulfil their commitments to multilateral cooperation with a view to achieving their common disarmament and non-proliferation objectives.

(vi) *Environmental norms and disarmament agreements*

General Assembly

Also on 6 December 2006, the General Assembly adopted, on the recommendation of the First Committee, resolution 61/63, "Observance of the environmental norms in the drafting and implementation of agreements on disarmament and arms control", in which it called upon States to adopt unilateral, bilateral, regional and multilateral measures so as to contribute to ensuring the application of scientific and technological progress within the framework of international security, disarmament and other related spheres.

4. Legal aspects of peaceful uses of outer space

(*a*) The Legal Subcommittee on the Peaceful Uses of Outer Space

The Legal Subcommittee on the Peaceful Uses of Outer Space held its forty-fifth session in Vienna from 3 to 13 April 2006.[143]

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,[144] the Subcommittee took note of their status and reconvened its Working Group under this item. The Subcommittee endorsed the report of the Working Group[145] and the recommendations contained therein, including that Member States provide information on any measures adopted at the national level as a result of receiving a letter from the Secretary-General encouraging participation in the outer space treaties and that the mandate of the Working Group be

[142] A/61/114.

[143] For the report of the Legal Subcommittee, see A/AC.105/871.

[144] 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 (United Nations, *Treaty Series*, vol. 610, p. 205); Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, 1968 (United Nations, *Treaty Series*, vol. 672, p. 119); Convention on International Liability for Damage Caused by Space Objects, 1972 (United Nations, *Treaty Series*, vol. 961, p. 187); 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).

[145] A/AC.105/871, annex I.

extended for one additional year. The Subcommittee also agreed that it would review the need to extend the mandate of the Working Group beyond that period at its forty-sixth session in 2007.

Under the agenda item concerning information on the activities of international organizations relating to space law, the Subcommittee noted, *inter alia,* that there was a need for higher education institutions to include in their curricula subjects related to space law and commended the work of the Office for Outer Space Affairs in compiling a directory of education opportunities in space law[146] and in preparing the electronic publication "Space law update".[147]

In connection with the item relating to the definition and delimitation of outer space and the character and utilization of the geostationary orbit,[148] the Legal Subcommittee had before it, among other things, replies from States to a questionnaire prepared by the Secretariat on possible legal issues with regard to aerospace objects[149] and a note by the Secretariat entitled "National legislation and practice relating to definition and delimitation of outer space".[150] 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.[151]

Referring to the agenda item "Review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space", the Legal Subcommittee noted with satisfaction the progress made by the Scientific and Technical Subcommittee at its forty-third session to establish the objectives, scope and attributes of an international, technically based framework of goals and recommendations for the safety of nuclear power source applications in outer space and its cooperation with the International Atomic Energy Agency, and agreed that it was necessary to continue examining the issue.

Regarding the agenda item entitled "Examination and review of the developments concerning the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment", the Legal Subcommittee noted that the Convention on International Interests in Mobile Equipment and the Aircraft Protocol[152] had entered into force on 2 November 2005 and that, in accordance with article 16 of the Convention, the International Registry on aircraft equipment had been established and had begun operating on 1 March 2006, with the International Civil Aviation Organization (ICAO) assuming the role of Supervisory Authority. The Legal Subcommittee also noted

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[146] A/AC.105/C.2/2006/CRP.3.

[147] http://www.unoosa.org

[148] The full title reads "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."

[149] A/AC.105/635 and Add.1–13, Add.7/Corr.1 and Add.11/Corr.1.

[150] A/AC.105/865 and Add.1.

[151] A/AC.105/871, annex II.

[152] The Convention was adopted after a five-year negotiating process under the auspices of Unidroit in Cape Town, 2001. For the texts of the Convention and the Protocol, see United Nations, *Treaty Series*, vol. 2307, p. 285 and *ibid.*, vol. 2367, No. I-41143, respectively.

that the International Institute for the Unification of Private Law (Unidroit) remained fully committed to the timely completion of work on the draft space assets protocol.

For the deliberations on the agenda item entitled "Practice of States and international organizations in registering space objects" the Legal Subcommittee had before it three notes by the Secretariat on: (i) the harmonization of practices, non-registration of space objects, transfer of ownership and registration/non-registration of "foreign" space objects;[153] (ii) the practice of States and international organizations in registering space objects: benefits of becoming a party to the Convention on Registration of Objects Launched into Outer Space;[154] and (iii) on States and intergovernmental organizations that operate or have operated space objects in Earth orbit or beyond.[155] The Subcommittee agreed that it was important to urge greater adherence to the Convention on Registration of Objects Launched into Outer Space. It reconvened its Working Group under this item and, subsequently, endorsed its report.[156]

The Committee on the Peaceful Uses of Outer Space held its forty-ninth session in Vienna from 7 to 16 June 2006. The Committee took note of the Legal Subcommittee's report and a number of views were expressed concerning the work of the Subcommittee.[157]

(*b*) General Assembly

In 2006, the General Assembly adopted four resolutions relating to the topic of legal uses of outer space.

In resolution 61/58, "Prevention of an arms race in outer space", adopted on 6 December on the recommendation of the First Committee, the General Assembly, *inter alia,* reaffirmed its recognition that the legal regime applicable to outer space did not in and of itself guarantee the prevention of an arms race in outer space, that the regime played a significant role in the prevention of an arms race in that environment, that there was a need to consolidate and reinforce that regime and enhance its effectiveness and that it was important to comply strictly with existing agreements, both bilateral and multilateral. The Assembly also invited the Conference on Disarmament to complete the examination and updating of the mandate contained in its decision of 13 February 1992,[158] and to re-establish an Ad Hoc Committee on the prevention of an arms race in outer space as soon as possible during 2007.

On the same date, the General Assembly also adopted, on the recommendation of the First Committee, resolution 61/75 on "Transparency and confidence-building measures in outer space activities", in which it, *inter alia,* invited all Member States to submit proposals on international outer space transparency and confidence-building measures.

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[153] A/AC.105/867.

[154] A/AC.105/C.2/L.262.

[155] A/AC.105/C.2/2006/CRP.5.

[156] A/AC.105/871, annex III.

[157] For the report of the Committee on the Peaceful Uses of Outer Space, see *Official Records of the General Assembly, Sixty-first Session, Supplement No. 20* (A/61/20).

[158] Conference on Disarmament decision CD/1125.

In resolution 61/110 entitled "United Nations Platform for Space-based Information for Disaster Management and Emergency Response", adopted on 14 December 2006 on the recommendation of the Fourth Committee, the General Assembly, *inter alia,* recognized the important role that coordinated applications of space technology could play in the implementation of the Hyogo Declaration and the Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disaster.[159] It further decided to establish the United Nations Platform for Space-based Information for Disaster Management and Emergency Response (SPIDER) that would be implemented as a programme within the United Nations, administered by the Office of Outer Space Affairs with offices in Beijing (China) and Bonn (Germany).

Equally on 14 December 2006, the General Assembly adopted, on the recommendation of the Fourth Committee, resolution 61/111 entitled "International cooperation in the peaceful uses of outer space", in which it endorsed the report of the Committee on the Peaceful Uses of Outer Space on the work of its forty-ninth session.

5. Human Rights[160]

(*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[161] 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, lan-

[159] Adopted by the World Conference on Disaster Reduction, held at Kobe, Hyogo, Japan from 18 to 22 January 2005; for the text of the Declaration and the Framework for Action, see A/CONF.206/6 and Corr.1, chap. I, resolutions 1 and 2.

[160] This section covers the resolutions adopted, if any, by the Security Council, the General Assembly and the Economic and Social Council. This section also includes a selective coverage of the legal activities of the Human Rights Council, the Commission on Human Rights and the Sub-Commission for the Promotion and Protection of Human Rights. Other legal developments in human rights may be found under the sections in the present chapter entitled "Peace and security" and "Women". 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 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 the Protection of the Rights of All Migrant Workers and Members of Their Families). 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 http://www.ohchr.org, as well as in the reports of the respective bodies. For complete lists 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, Status as at 31 December 2006* (United Nations publications, Sales No. E.07.V.3, (ST/LEG/SER.E/25)), vol. I, chap. IV.

[161] Economic and Social Council resolution adopted on 16 February 1946 (E/20).

guage or religion. At its second session[162] 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.

On 15 March 2006, the General Assembly adopted, without reference to a Main Committee, resolution 60/251, establishing the Human Rights Council to replace the Commission on Human Rights. Accordingly, the Commission on Human Rights concluded its sixty-second and final session, held on 16 January 2006 and from 13 to 27 March 2006, during which it adopted resolution 2006/1, "Closure of the work of the Commission on Human Rights", in which the Commission referred all reports for further review to the Human Rights Council.[163]

(ii) *Human Rights Council*

In 2005, at the World Summit held in September, the Heads of State and Government resolved to establish a Human Rights Council that would replace the Commission on Human Rights.[164] This resolve was the outcome of negotiations on the proposal made on the matter by the Secretary-General,[165] following the report of the High-level Panel on Threats, Challenges and Change.[166] As a result, the Human Rights Council was established as a subsidiary organ of the General Assembly by resolution 60/251 of 15 March 2006. The resolution specifies the mandate, modalities, functions, size, composition, working methods and procedures of the Council. The resolution provides that the Council should meet for at least three regular sessions annually and may hold special sessions as needed. The main responsibilities of the Council comprise promoting human rights, addressing situations of human rights violations and making recommendation thereon to the General Assembly. Resolution 60/251 also establishes a new universal periodic review mechanism under which the Council is requested to review the fulfilment of human rights obligations of all countries.[167]

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[162] Economic and Social Council resolution adopted on 21 June 1946 (E/56/Rev.1 and E/84, para. 4).

[163] Report of the Commission on Human Rights, Sixty-second Session, *Official Records of the Economic and Social Council 2006, Supplement No. 3* (E/2006/23-E/CN.4/2006/122).

[164] General Assembly resolution 60/1 of 16 September 2005 on the "2005 World Summit Outcome".

[165] In larger freedom: towards development, security and human rights for all, (A/59/2005 and Add.1 (Explanatory note by the Secretary-General on the establishment of the Human Rights Council)).

[166] Report of the High-level Panel on Threats, Challenges and Change, "A more secure world: our shared responsibility" (A/59/565).

[167] The first session of review cycle 2008–20011 was scheduled to be held from 7 to 18 April 2008. For a list of countries included and calendar for the full cycle, please refer to the website of the Human Rights Council at http://www.ohchr.org.

The Human Rights Council began its work in 2006 and held three regular sessions which were largely dedicated to negotiating issues relating to its own institution, and four special sessions dedicated to the human rights situation in specific countries.[168]

During its first session, the Council decided to extend exceptionally for one year, subject to the review to be undertaken by the Council, the mandates and the mandate holders of all the special procedures of the Commission on Human Rights, of the Sub-commission on the Promotion and Protection of Human Rights as well as the procedure established in accordance with Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970.[169]

(iii) *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.[170] Pursuant to General Assembly resolution 60/251, a Human Rights Council Advisory Committee is to be established to support the work of the Council providing expertise and advice and conducting substantive research and studies on thematic issues of interest to the Council at its request, thus replacing the Sub-Commission on the Promotion and Protection of Human Rights. Meanwhile, the Human Rights Council, in its decision 1/102 of 30 June 2006, decided to extend exceptionally for one year, subject to the review undertaken by the Council, the mandates and mandate-holders of the Sub-Commission. The Sub-Commission consequently held its fifty-eighth session from 7 to 25 August 2006 in Geneva, Switzerland.[171]

(iv) *Human Rights Committee*

The Human Rights Committee was established under the International Covenant on Civil and Political Rights, 1966,[172] to monitor the implementation of the Covenant and its Optional Protocols in the territory of States parties. In 2006, the Committee held its eighty-sixth session from 13 to 31 March in New York, and its eighty-seventh and eighty-

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[168] Report of the Human Rights Council, First session (19 to 30 June 2006), First special session (5 to 6 July 2006), Second special session (11 August 2006), *Official Records of the General Assembly, Sixty-first Session, Supplement No. 53* (A/61/53) and report of the Human Rights Council, Second session (18 September to 6 October and 27 to 29 November 2006), Third session (29 November to 8 December 2006), Third special session (15 November 2006), Fourth special session (12 to 13 December 2006), *ibid., Sixty-second Session, Supplement No. 53* (A/62/53).

[169] See Human Rights Council decision 1/102 of 30 June 2006 on "Extension by the Human Rights Council of all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights".

[170] Economic and Social Council resolution 46 (IV) of 28 March 1947 (E/325).

[171] For the report of the Sub-Commission, see A/HRC/2/2—A/HRC/Sub.1/58/36.

[172] United Nations, *Treaty Series*, vol. 999, p. 171.

eighth sessions from 10 to 28 July and from 16 October to 3 November, respectively, in Geneva, Switzerland.[173]

(v) *Committee on Economic, Social and Cultural Rights*

The Committee on Economic, Social and Cultural Rights was established by the Economic and Social Council[174] to monitor the implementation of the International Covenant on Economic, Social and Cultural Rights, 1966[175] by its States parties. In 2006, the Committee held its thirty-sixth and thirty-seventh sessions from 1 to 19 May and from 6 to 24 November respectively, in Geneva, Switzerland.[176]

(vi) *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,[177] to monitor the implementation of this Convention by its States parties. In 2006, the Committee held its sixty-eighth and sixty-ninth sessions from 20 February to 10 March and from 31 July to 18 August in Geneva, Switzerland.[178]

(vii) *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,[179] to monitor the implementation of this Convention by its States parties. In 2006, the Committee held its thirty-fourth session from 16 January to 3 February, its thirty-fifth session from 15 May to 2 June and its thirty-sixth session from 7 to 25 August in New York.[180]

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[173] The reports of the eighty-sixth and eighty-seventh sessions can be found in *Official Records of the General Assembly, Sixty-first Session, Supplement No. 40* (A/61/40 and A/61/40 Corr.1) and the report of the eighty-eighth session can be found in *ibid., Sixty-second Session, Supplement No. 40* (A/62/40).

[174] Economic and Social Council resolution 1985/17 of 28 May 1985.

[175] United Nations, *Treaty Series*, vol. 993, p. 3.

[176] The reports of the thirty-sixth and thirty-seventh sessions can be found in *Official Records of the Economic and Social Council, 2007, Supplement No. 2* (E/2007/22-E/C.12/2006/1).

[177] United Nations, *Treaty Series*, vol. 660, p. 195.

[178] The reports of the sixty-eighth and sixty-ninth sessions can be found in *Official Records of the General Assembly, Sixty-first Session, Supplement No. 18* (A/61/18).

[179] United Nations, *Treaty Ser*ies, vol. 1249, p. 13.

[180] The reports of the thirty-fourth, thirty-fifth and thirty-sixth sessions can be found in *Official Records of the General Assembly, Sixty-first Session, Supplement No. 38* (A/61/38).

(viii) *Committee against Torture*

The Committee against Torture was established under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984,[181] to monitor the implementation of this Convention by its States parties. In 2006, the Committee held its thirty-sixth and thirty-seventh sessions from 1 to 19 May and from 6 to 24 November, respectively, in Geneva, Switzerland.[182]

On 22 June 2006, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002,[183] entered into force, providing for a system of regular visits by independent international and national bodies to places where people are deprived of their liberty to prevent torture and other cruel, inhuman or degrading treatment or punishment. Pursuant to the Optional Protocol, a Subcommittee on the Prevention of Torture was established in October 2006 and is composed of ten independent experts elected by the States parties. The Subcommittee is a new kind of United Nations treaty body with a unique mandate, namely to undertake visits to places where people are or may be deprived of their liberty, to advise and assist States parties in their establishment of national preventive mechanisms, and to maintain direct contact with these mechanisms and offer them training and technical assistance. Further, it is also requested to cooperate with relevant United Nations bodies as well as with other international, regional and national bodies for the prevention of torture.

(ix) *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,[184] to monitor the implementation of this Convention by its States parties. In 2006, the Committee held its forty-first, forty-second and forty-third sessions in Geneva, Switzerland, from 9 to 27 January, from 15 May to 2 June and from 11 to 29 September, respectively.[185] During its fortieth session, the Committee on the Rights of the Child adopted its General Comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, and General Comment No. 9 on the rights of children with disabilities, in which the Committee offers its interpretation of relevant provisions of the Convention on the Rights of the Child.[186]

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[181] United Nations, *Treaty Series*, vol. 1465, p. 85.

[182] The reports of the thirty-sixth and thirty-seventh sessions can be found in *Official Records of the General Assembly, Sixty-first Session, Supplement No. 44* (A/61/44) and *ibid., Sixty-second Session, Supplement No. 44* (A/62/44).

[183] The Optional Protocol was adopted by General Assembly resolution 57/199 on 18 December 2002.

[184] United Nations, *Treaty Series*, vol. 1577, p. 3.

[185] The reports of the forty-first, forty-second and forty-third sessions can be found in documents CRC/C/41/3, CRC/C/42/3 and CRC/C/43/3, respectively.

[186] For more detail on General Comments Nos. 8 and 9 refer to the section on the rights of the child, section 5 (h) (i), below. The text of the General Comments is available at the homepage of the Office of the United Nations High Commissioner for Human Rights (http://www.ohchr.org).

(x) *Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families*

The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families was established under the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990,[187] to monitor the implementation of this Convention by its States parties in their territories. In 2006, the Committee held its fourth and fifth sessions from 24 to 28 April and from 30 October to 3 November, respectively, in Geneva, Switzerland.[188]

(*b*) Racism, racial discrimination, xenophobia and related intolerance

(i) *Human Rights Council*

On 8 December 2006, the Human Rights Council adopted decision 3/103[189] entitled "Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the effective implementation of the Durban Declaration and Programme of Action", in which it decided to establish an Ad Hoc Committee of the Human Rights Council on the Elaboration of Complementary Standards with the mandate to elaborate complementary standards in the form of either a convention or additional protocol(s) to the International Convention on the Elimination of all Forms of Racial Discrimination.

(ii) *General Assembly*

On 19 December 2006, the General Assembly adopted, on the recommendation of the Third Committee, resolution 61/147, "Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance", and, *inter alia,* expressed concern over the ongoing glorification of the Nazi movement and the increase in racist incidents, and reaffirmed that such acts represented a clear and manifest abuse of the rights to freedom of peaceful assembly and of association as well as the rights to freedom of opinion and expression within the meaning of those rights. It further reaffirmed the obligations of States parties under article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

On the same date and on the recommendation of the Third Committee, the General Assembly, in resolution 61/148 on the "International Convention on the Elimination of All Forms of Racial Discrimination", *inter alia,* took note of the reports of the Committee on the Elimination of Racial Discrimination and expressed its concern about the great number of overdue country reports to the Committee, calling on all States parties to abide by their obligation under article 9 of the Convention.

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[187] United Nations, *Treaty Series*, vol. 2220, p. 3.

[188] The reports of the fourth and fifth sessions can be found in Official *Records of the General Assembly, Sixty-first Session, Supplement No. 48* (A/61/48) and *ibid., Sixty-second Session, Supplement No. 48* (A/62/48).

[189] For the text of the decision, see document A/HRC/3/7, chapter I B.

Also on that date, the Assembly adopted, on the recommendation of the Third Committee, resolution 61/149 entitled "Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action", in which it acknowledged that no derogation from the prohibition of racial discrimination, genocide, the crime of apartheid or slavery was permitted and expressed its deep concern at recent attempts to establish hierarchies among emerging and resurgent forms of racism, racial discrimination, xenophobia and related intolerance. The Assembly stressed that States and international organizations had a responsibility to ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent or national or ethnic origin, and urged all States to rescind or refrain from all forms of racial profiling. Furthermore, the Assembly emphasized that it was the responsibility of States to adopt effective measures to combat criminal acts motivated by racism, including measures to ensure that such motivations were considered as an aggravating factor in sentencing and urged all States to review and, where necessary, revise their immigration laws, policies and practices so that they are free of racial discrimination and compatible with their obligations under international human rights instruments.

Furthermore, reaffirming that universal adherence to and full implementation of the Convention on the Elimination of All Forms of Racial Discrimination are of paramount importance, the Assembly reiterated the call made by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, in paragraph 75 of the Durban Programme of Action,[190] to achieve universal ratification of the Convention, and urged all States to implement the Durban Programme of Action. The Assembly also decided to convene a review conference on the implementation of the Durban Declaration and Durban Programme of Action in the framework of the General Assembly in 2009, and requested the Human Rights Council to undertake the necessary preparations to that effect.

(*c*) Right to development

(i) *Sub-Commission for the Promotion and Protection of Human Rights*

On 24 August 2006, the Sub-Commission for the Promotion and Protection of Human Rights adopted resolution 2006/9 entitled "Implementation of existing human rights norms and standards in the context of the fight against extreme poverty". In the said resolution, the Sub-Commission welcomed the draft guiding principles on extreme poverty and human rights: the rights of the poor.[191] The draft guiding principles provide definitions of extreme poverty, provisions on the participation of the poor in decision-making processes and in activities that concern them and provisions on stigmatization and discrimination. The draft guiding principles also stipulate individual political and civil rights as well as economic and social rights, such as the right to food, drinkable water or housing. They also contain provisions on obligations for States parties and for international cooperation in this regard.

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[190] A/CONF.189/12 and Corr.1, chapter I.

[191] For the text of the decision and the draft guiding principles, see document A/HRC/2/2—A/HRC/Sub.1/58/36, chapter II A.

(ii) *Commission on Human Rights / Human Rights Council*

The independent expert on human rights and extreme poverty, Mr. Arjun Sengupta, submitted his report to the Commission on Human Rights at its sixty-second session pursuant to Commission resolution 2005/16.[192] The report underlined that "viewing extreme poverty as a deprivation of human rights would add a further value to efforts to combat extreme poverty, making poverty eradication a social objective which would 'trump' other policy objectives." The independent expert argued that, "apart from appealing to moral entitlements to a life in dignity, it [was] possible to appeal to 'legal obligations', as poverty could be identified with the deprivation of human rights recognized in international human rights instruments." Furthermore, discussing the difference between "core rights" and rights which may be implemented progressively over time, Mr. Sengupta suggested that "removing the conditions of extreme poverty should be treated as a core obligation which should be realized immediately and given the same high priority as other human rights objectives."

On 27 November 2006, the Human Rights Council adopted resolution 2/2 on "Human rights and extreme poverty",[193] in which it took note of the draft guiding principles on extreme poverty and human rights: the rights of the poor, elaborated by the Sub-Commission for the Promotion and Protection of Human Rights.

(iii) *General Assembly*

On 19 December 2006, the General Assembly adopted, on the recommendation of the Third Committee, resolution 61/156 entitled "Globalization and its impact on the full enjoyment of all human rights". In the said resolution, the General Assembly recognized that, while globalization may affect human rights, the promotion and protection of all human rights was first and foremost the responsibility of the State. The Assembly reaffirmed that development should be at the centre of the international economic agenda and that only through broad and sustained efforts, including policies at a global level to create a shared future based upon common humanity in all its diversity, could globalization be made fully inclusive and equitable and have a human face, thus contributing to the full enjoyment of all human rights.

In resolution 61/157, "Human rights and extreme poverty", adopted on the same day and also on the recommendation of the Third Committee, the Assembly reaffirmed that extreme poverty and exclusion from society constituted a violation of human dignity and that urgent international and national action was therefore required to eliminate them.

Still on the same date, the General Assembly adopted, on the recommendation of the Third Committee, resolution 61/169 entitled "Right to development", in which it, *inter alia,* endorsed the agreed conclusions and recommendations adopted by the Working Group on the Right to Development at its seventh session,[194] and called for their full, immediate and effective implementation. Furthermore, the Assembly reaffirmed the primary responsibility of States to create national and international conditions favourable to the realization

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[192] E/CN.4/2006/43 and Add.1.

[193] For the text of the decision, see document A/HRC/2/9, chapter I A.

[194] E/CN.4/2006/26.

of the right to development. It also highlighted the need to strive for greater acceptance, operationalization and realization of the right to development at the international and national levels. The Assembly recognized the important link between the international economic, commercial and financial spheres and the realization of the right to development. It stressed in this regard the need for good governance and for broadening the base of decision-making at the international level on issues of development concerns and the need to fill organizational gaps, strengthen the United Nations system and other multilateral institutions, as well as strengthen and broaden the participation of developing countries and countries with economies in transition in international economic decision-making and norm-setting.

(*d*) Right to self-determination

(i) *Commission on Human Rights / Human Rights Council*

Pursuant to Commission on Human Rights resolution 2005/2, the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination submitted its report[195] to the General Assembly for consideration. In the report, the Working Group noted that only 28 States had ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 1989.[196] The Working Group was alarmed by the fact that private military and security companies operating and providing military and security services were often not held accountable for human rights violations. It therefore recommended, *inter alia,* the application to those companies of normative provisions of the draft Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights,[197] in particular, those dealing with the right to security of the person, the rights of workers and respect for national sovereignty, territorial integrity and human rights.

(ii) *General Assembly*

On 10 December 2006, the General Assembly adopted, on the recommendation of the Third Committee, resolution 61/150 entitled "Universal realization of the right of peoples to self-determination", in which it took note of the report of the Secretary-General on this item.[198] The said report contained a summary of the developments relating to the consideration by the former Commission on Human Rights of the subject matter and the referral of the relevant reports by the final session of the Commission to the Human Rights Council for consideration. It also outlined the relevant jurisprudence of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights regarding the treaty-based human rights norms relating to the realization of the right of peoples to self-determination.

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[195] A/61/341.

[196] United Nations, *Treaty Series*, vol. 2163, p. 96.

[197] E/CN.4/Sub.2/2003/12/Rev.2.

[198] A/61/333.

In resolution 61/150, the General Assembly further reaffirmed that the universal realization of the right of all peoples to self-determination, including those under colonial, foreign and alien dominations, was a fundamental condition for the effective guarantee and observance of human rights and for the preservation and promotion of such rights.

On the same day, the General Assembly also adopted, on the recommendation of the Third Committee, resolution 61/151 entitled "Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination", in which it, *inter alia,* took note of the report of the Working Group on the use of mercenaries. The Assembly urged States to take legislative measures to ensure that their territories or nationals are not used for the recruitment, assembly, financing, training and transit of mercenaries for the planning of activities designed to impede the right of peoples to self-determination, to destabilize or overthrow the Government of any State or to dismember or impair the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the right of peoples to self-determination. It further called upon States to cooperate with and assist the judicial prosecution of those accused of mercenary activities in transparent, open and fair trials.

In addition, the Assembly requested the Working Group to continue the work of the previous Special Rapporteurs on the strengthening of the international legal framework for the prevention and imposition of sanctions against the recruitment, use, financing and training of mercenaries, taking into account the proposal for a new legal definition of a mercenary drafted by the Special Rapporteur in his report to the Commission on Human Rights at its sixtieth session.[199]

(*e*) Economic, social and cultural rights

(i) *Right to food*

a. Human Rights Council

Pursuant to General Assembly resolution 60/165, the Special Rapporteur on the right to food, Mr. Jean Ziegler, submitted his interim report to the Assembly, in which he expressed his grave concern that the right to food was still not a reality in many parts of the world.[200] Referring to the Committee on Economic, Social and Cultural Rights' General Comment No. 12 (1999), the Special Rapporteur defined the right to food as:

> "the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear".

In his report, the Special Rapporteur focused in part on the impact of drought, desertification and land degradation on the right to food. Concluding that hunger was still a primarily rural problem, the Rapporteur strongly encouraged substantial investment towards rural development and expressed his belief that fighting hunger should include

[199] E/CN.4/2004/15, para. 47.

[200] Note by the Secretary-General, General Assembly, Sixty-first session, A/61/306.

fighting desertification and, to this end, he urged all States parties to implement the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994.[201] He further recommended, among other things, that protection under international law be instituted for people forced to flee their lands for environmental reasons; that a United Nations Declaration on the Rights of Indigenous Peoples be elaborated as a first step towards the adoption of a new binding instrument on the rights of indigenous peoples; and that the right to food be ensured through the strengthening of the judiciaries and ensuring the justiciability of the right to food.

b. General Assembly

On 19 December 2006, the General Assembly adopted, on the recommendation of the Third Committee, resolution 61/163 entitled "The right to food". In the said resolution, the Assembly, among other things, reaffirmed the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger, so as to be able to fully develop and maintain their physical and mental capacities. The Assembly also stressed the importance of international development cooperation and assistance, in particular in emergency situations such as natural and man-made disasters, diseases and pests, for the realization of the right to food and the achievement of sustainable food security, while recognizing that each country had the primary responsibility for ensuring the implementation of national programmes and strategies in this regard. It encouraged all States to take steps with a view to progressively achieving the full realization of the right to food. The Assembly also recognized that the promises made at the World Food Summit in 1996 to halve the number of persons who are undernourished were not being fulfilled. In this context, it recalled the importance of the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.[202]

(ii) *Right to travel and family reunification*

General Assembly

On 19 December 2006, the General Assembly adopted, on the recommendation of the Third Committee, resolution 61/162 entitled "Respect for the right to universal freedom of travel and the vital importance of family reunification", in which it called on all States to guarantee the universally recognized freedom of travel to all foreign nationals residing legally in their territory and reaffirmed that all Governments, in particular those of receiving countries, had to recognize the vital importance of family reunification and to promote its incorporation into national legislation.

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[201] United Nations, *Treaty Series*, vol. 1954, p. 3.

[202] Report of the Council of the Food and Agriculture Organization of the United Nations, 127th session, Rome, 22–27 November 2004 (CL 127/REP), appendix D. See also E/CN.4/2005/131.

(iii) *Right to education*

Commission on Human Rights / Human Rights Council

The Special Rapporteur on the right to education, Mr. Vernor Muñoz Villalobos, presented his report[203] to the Commission on Human Rights at its sixty-second session pursuant to Commission resolution 2005/21, focusing on girls' right to education. The Special Rapporteur drew attention to aggravating factors and highlighted the key role of human rights education and its concrete implementation at the classroom level to combat gender discrimination and stereotypes. He further provided a set of recommendations based on the four elements identified as components of the right to education, namely, availability, accessibility, acceptability and adaptability.

(iv) *Right to an adequate standard of living, including adequate housing*

Commission on Human Rights / Human Rights Council

The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Mr. Miloon Kothari, submitted, in accordance with Commission on Human Rights resolution 2004/21, his last report[204] in which he reviewed his main activities since his appointment. He has also attempted to draw conclusions therefrom, highlighted progress made and issues of concern. The Special Rapporteur further confirmed his approach of stressing the indivisibility of human rights without which the right to adequate housing would lose its meaning. In this context, the Special Rapporteur stressed the many inter-linkages between the right to adequate housing and other economic and social rights as well as relevant political and civil rights. He requested the Commission on Human Rights, *inter alia,* to adopt the guidelines on forced eviction that he had proposed in his report,[205] to consider recognition of land as a human right and to control unbridled property speculation and land confiscations.

(v) *Right to be free from adverse effects of toxic waste*

Commission on Human Rights / Human Rights Council

The Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Mr. Okechukwu Ibeanu, submitted his annual report[206] to the Commission on Human Rights at its sixty-second session, in accordance with Commission resolution 2005/15. In his report, the Rapporteur explored the impact on human rights of the widespread exposure of individuals and communities to toxic chemicals in everyday household goods and food with regard to the right to life, the right to health, the right to access of information and participation in decision-making processes. Among his various recommendations, the Rapporteur

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[203] E/CN.4/2006/45.

[204] E/CN.4/2006/41.

[205] *Ibid.,* appendix.

[206] E/CN.4/2006/42.

urged regulatory bodies at the international, regional and national levels to adopt a human rights approach to the management of chemicals.

(vi) *Right to health*

Human Rights Council

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr. Paul Hunt, submitted his report[207] to the Human Rights Council in accordance with Human Rights Council decision 1/102. In his report, the Rapporteur explored, among other things, two major obstacles to the health and human rights movement, namely, the inadequate engagement within the established human rights communities in the struggle for the right to health of (i) non-governmental organizations and (ii) health professionals. The Special Rapporteur noted an increasingly rich case law in the area of the right to health and stressed that judicial accountability had enhanced the protection and promotion of the right to health, which could be understood as a right to an effective and integrated health system, encompassing health care and the underlying determinants of health. Finally, the Rapporteur presented recommendations as to how to implement and operationalize the right to an effective integrated health system, accessible to all, and a human rights-based approach to the use of health indicators, setting out a methodology for such an approach.

(*f*) Civil and political rights

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

a. Commission on Human Rights / Human Rights Council

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Manfred Nowak, submitted his interim report to the General Assembly, pursuant to resolution 60/148.[208] In the said report, the Rapporteur maintained a focus on the absolute prohibition of torture in the context of counter-terrorism measures, and recalled that in the light of well-founded allegations of torture under article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984[209] the burden of proof shifted to the State to establish that evidence invoked against an individual had not been obtained under torture. Noting that the most effective way of preventing torture was to expose all places of detention to public scrutiny, the Special Rapporteur called on all States to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002[210] and to establish effective prevention mechanisms against torture, including unannounced *in situ* visits.

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[207] A/HRC/4/28.

[208] A/61/259.

[209] United Nations, *Treaty Series*, vol. 1465, p. 85.

[210] General Assembly resolution 57/199 of 18 December 2002.

b. General Assembly

On the recommendation of the Third Committee, the General Assembly adopted, on 19 December 2006, resolution 61/153 entitled "Torture and other cruel, inhuman or degrading treatment or punishment", in which it emphasized that States had to take determined, persistent and effective measures to prevent and combat torture and other cruel, inhuman or degrading treatment or punishment. The Assembly condemned any actions or attempts by States to legalize, authorize or acquiesce in torture under any circumstances, including on grounds of national security or through judicial decisions. The Assembly also urged States, among other things, to ensure that any statement that is established to have been made as a result of torture should not be invoked as evidence in proceedings and not to expel, return or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being tortured. The Assembly further called upon States to take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export and use of equipment that is specifically designed to inflict torture. Finally, it also urged States that had not yet done so to become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, as a matter of priority and to comply strictly with the obligations contained therein. In this context, the Assembly also acknowledged with appreciation the entry into force of the Optional Protocol to the Convention.

(ii) *Enforced or involuntary disappearances*

a. Human Rights Council

The Working Group on Enforced or Involuntary Disappearances presented its 2006 report to the Human Rights Council,[211] in which it, *inter alia,* reiterated its concern that the enactment of amnesty laws and the implementation of other measures leading to impunity were contrary to article 18 of the Declaration on the Protection of All Persons from Enforced Disappearance,[212] and might perpetuate continuing human rights abuses. It also reminded States of their obligation under article 13, paragraph 3, of the Declaration to protect all persons involved in the investigation of disappearances against ill-treatment, intimidation or reprisal.

The Human Rights Council adopted at its first session resolution 1/1 entitled "International Convention for the Protection of All Persons from Enforced Disappearance", in which it adopted the said Convention and recommended it to the General Assembly for adoption.[213]

b. General Assembly

On 20 December 2006, the General Assembly adopted, on the recommendation of the Third Committee, resolution 61/177 entitled "International Convention for the Protection

[211] A/HRC/4/41.

[212] General Assembly resolution 47/133.

[213] Report of the Human Rights Council, *Official Records of the General Assembly, Sixty-first Session, Supplement No. 53* (A/61/53), chapter I. 1.

of All Persons from Enforced Disappearance", in which it adopted the said Convention and opened it for signature, ratification or accession.[214]

(iii) *Freedom of religion or belief*

a. Human Rights Council

The Special Rapporteur on freedom of religion or belief, Ms. Asma Jahangir, submitted her report to the Human Rights Council[215] on the activities she undertook in 2006. In her report, the Rapporteur noted that the number and seriousness of mandate-related allegations received lead to the conclusion that the protection of freedom of religion or belief and the implementation of the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief[216] was far from being a reality. Therefore, she recommended, *inter alia,* that Governments redouble their efforts to uphold the provisions in their everyday work and that non-governmental organizations continue to exercise their role as public watchdogs and inform on national best practices. She also reiterated that most situations of religious intolerance stem either from ignorance or from misleading information and noted that the right orientation to education was crucial for promoting religious harmony.

Furthermore, the Special Rapporteur, together with Mr. Doudou Diène, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, prepared a thematic report "Incitement to racial and religious hatred and the promotion of tolerance" for the second session of the Human Rights Council, held in September 2006.[217]

b. General Assembly

The Special Rapporteur on freedom of religion and belief, Ms. Asma Jahangir, submitted her interim report[218] to the General Assembly in accordance with its resolution 60/166 of 16 December 2005. In her report, the Rapporteur noted that the right to freedom of religion and belief continued to be challenged in many contexts, often due to a lack of awareness on the part of Government officials and ordinary citizens, and was frequently further compounded by a lack of transparency concerning the national legal and policy frameworks. The Rapporteur recommended that the United Nations consider developing a common global strategy to deal with rising religious intolerance and reiterated the recommendation that interreligious communities give serious consideration to developing an agreed code of ethics in the pursuit of missionary work.

On 19 December 2006, the General Assembly adopted, on the recommendation of the Third Committee, resolution 61/161 entitled "Elimination of all forms of intolerance and discrimination based on religion or belief", in which it took note of the work and the report

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[214] For the text of the Convention, see General Assembly resolution 61/177, annex. See also chapter IV, section A (d) below.

[215] A/HRC/4/21.

[216] General Assembly resolution 36/55 of 25 November 1981, annex.

[217] A/HRC/2/3.

[218] A/61/340.

of the Special Rapporteur on freedom of religion or belief. The Assembly urged States, *inter alia,* to ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of religion to all without distinction by providing effective remedies in conformity with international human rights law in cases where these rights are violated. The Assembly also emphasized that equating any religion with terrorism should be avoided as this may have adverse consequences on the enjoyment of the right to freedom of religion of all members of the religious communities concerned.

On the same date, the Assembly also adopted, on the recommendation of the Third Committee, resolution 61/164 entitled "Combating defamation of religions", in which it, *inter alia,* stressed the need to effectively combat defamation of all religions, Islam and Muslims in particular, and urged States to provide, within their respective legal and constitutional systems, adequate protection against acts of hatred, discrimination, intimidation and coercion resulting from defamation of religions.

On 20 December 2006, the Assembly further adopted, on the recommendation of the Third Committee, resolution 61/221 entitled "Promotion of interreligious and intercultural dialogue, understanding and cooperation for peace", in which it, *inter alia,* decided to convene a high-level dialogue on interreligious and intercultural cooperation in 2007.

(iv) *Administration of justice, arbitrary detention and extrajudicial, summary or arbitrary executions*

a. Sub-Commission on the Promotion and Protection of Human Rights

On 24 August 2006, the Sub-Commission on the Promotion and Protection of Human Rights adopted resolution 2006/5, "Sessional working group on the administration of justice",[219] in which it reaffirmed the importance of full and effective implementation of all United Nations standards on human rights in the administration of justice. The Sub-Commission reiterated its call to Member States to spare no efforts in providing for legislative and other mechanisms and procedures to ensure full implementation of those standards. It further reaffirmed the importance of combating impunity as a fundamental obstacle of the observance of human rights and, in that respect, recalled the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.[220]

b. Commission on Human Rights / Human Rights Council

The Working Group on Arbitrary Detention presented its report[221] to the Commission on Human Rights pursuant to Commission resolution 2003/31, containing its Deliberation No. 8 on the deprivation of liberty linked to/resulting from the use of the Internet. The Working Group urged States to stop running secret prisons and to make efforts to avoid over-incarceration, as well as to mitigate the over-representation of vulnerable groups among the prison population. Finally, it invited States to guarantee the effective-

[219] A/HRC/2/2—A/HRC/Sub.1/58/36 and Corrigendum.

[220] See General Assembly, resolution 60/147, annex.

[221] E/CN.4/2006/7.

ness of the right to challenge the lawfulness of detention by any foreign national detained under immigration laws.

In March 2006, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Philip Alston, submitted his annual report[222] in accordance with Commission on Human Rights resolution 2005/34. In his report, the Rapporteur highlighted opportunities to make the special procedures system more effective noting that some of the countries with the most serious human rights problems were also those least likely to be visited. He paid close attention to the principle of transparency as being closely related to the right to life, addressing key areas in which transparency was often lacking: commissions of inquiry into extrajudicial executions, the administration of the death penalty and violations committed during armed conflict. The Rapporteur also made recommendations for measures aimed at increasing transparency and reducing extrajudicial executions. Furthermore, he reiterated, in the context of the "shoot-to-kill" policies employed in some States, that there was no legal basis for shooting to kill for any reason other than near certainty that to do otherwise would lead to loss of life and that law enforcement officers should be instructed to that effect.

c. General Assembly

On 19 December 2006, the General Assembly adopted, on the recommendation of the Third Committee, resolution 61/173 on "Extrajudicial, summary or arbitrary executions", in which it, *inter alia,* strongly condemned all the extrajudicial, summary or arbitrary executions that continued to occur throughout the world. The Assembly stressed the obligations of States to prevent and combat such executions and welcomed in this regard the International Criminal Court as an important contribution to end impunity concerning these practices.

(*g*) Integration of human rights of women and the gender perspective

(i) *Violence against women*

a. Commission on Human Rights / Human Rights Council

The Special Rapporteur on violence against women, its causes and consequences, Ms. Yakin Ertürk, submitted her report[223] to the Commission on Human Rights pursuant to Commission resolution 2005/41. In the said report, she examined the due diligence standard, adopted in the 1993 Declaration on the Elimination of Violence against Women,[224] as a tool for the effective implementation of women's human rights, including the right to live a life free from violence. She stressed that the potential of the due diligence standard lay in a renewed interpretation of the standard, mapping out the parameters of responsibility for State and non-State actors alike in responding to violence. In this context, she recommended not to limit the due diligence concept to an element of State responsibility, but to push the boundaries of due diligence in demanding the full compliance of States

[222] E/CN.4/2006/53 and Add. 1 to 5.

[223] E/CN.4/2006/61.

[224] General Assembly resolution 48/104 of 20 December 1993.

with international law, including the obligation to address root causes of violence against women and to hold non-State actors accountable for their acts.

b. Economic and Social Council

The Economic and Social Council, in resolution 2006/29 of 27 July 2006 entitled "Crime prevention and criminal justice responses to violence against women and girls", urged Member States to consider using the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice[225] in developing and undertaking strategies and practical measures to eliminate violence against women and in promoting women's equality within the criminal justice system. The Council also encouraged Member States to promote an active and visible policy for integrating a gender perspective into the development and implementation of policies and programmes in the field of crime prevention and criminal justice, in order to assist with the elimination of violence against women and girls.

c. General Assembly

On 19 December 2006, the General Assembly adopted, on the recommendation of the Third Committee, resolution 61/143, "Intensification of efforts to eliminate all forms of violence against women", in which it, *inter alia,* recognized that violence against women and girls persisted in every country in the world as a pervasive violation of the enjoyment of human rights and a major impediment to achieving gender equality, development and peace. The Assembly stressed the need to treat all forms of violence against women and girls as a criminal offence, punishable by law and that States have an obligation to promote and protect all human rights and fundamental freedoms of women and girls. It urged States to take action to eliminate all forms of such violence by means of a more systematic, comprehensive, multisectoral and sustained approach through national action plans to, among other things, end impunity, protect women and girls in armed conflict and integrate a gender perspective into national plans of action.

In resolution 61/145, "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", adopted on 19 December 2006 on the recommendation of the Third Committee, the Assembly, *inter alia,* reaffirmed that States have an obligation to exercise due diligence to prevent violence against women and girls, provide protection to the victims and investigate, prosecute and punish the perpetrators of violence against women and girls, and that failure to do so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms.[226]

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[225] General Assembly resolution 52/86, annex.

[226] See also section 6 (c) of the present chapter on "Women".

(ii) *Victims of trafficking in persons, especially women and children*

a. Commission on Human Rights / Human Rights Council

The Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Ms. Sigma Huda, submitted her report[227] to the Commission on Human Rights pursuant to Commission on Human Rights decision 2004/110. In her report, the Rapporteur sought to offer clarifications with regard to the definition of trafficking adopted in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000,[228] and to provide a legal interpretation of the definition. She also focused on exploring the relationship between trafficking and the demand for commercial sexual exploitation, as the factor which had received least attention in anti-trafficking initiatives. In this context, the Rapporteur stressed that a human rights approach to sex trafficking meant that the human rights of trafficking victims had to prevail where these rights conflicted with the legal rights granted to prostitute-users. She further stressed that men had no human rights to engage in the use of prostituted persons and recommended States to criminalize such use.

b. General Assembly

On 19 December 2006, the General Assembly adopted, on the recommendation of the Third Committee, resolution 61/144, "Trafficking in women and girls", in which it called upon all States to eliminate the demand for trafficked women and girls for all forms of exploitation and urged Governments to criminalize all forms of trafficking in persons, to take measures to ensure that victims of trafficking are not penalized for being trafficked and that the treatment of victims of trafficking pay particular attention to the special needs of women and girls. The Assembly also invited Governments to ensure that criminal justice procedures and witness protection programmes are sensitive to the particular situation of trafficked women and girls and to encourage media providers, including Internet service providers, to adopt or strengthen self-regulatory measures to promote the responsible use of media with a view to eliminating the exploitation of women and children, in particular girls.

(*h*) Rights of the child

(i) *Committee on the Rights of the Child*

The Committee on the Rights of the Child adopted during its forty-second session General Comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.[229] The General Comment provides a definition of "corporal" or "physical" punishment as "any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light." It affirms that the Convention on the Rights of the Child, 1989,[230] left no ambiguity that all

[227] E/CN.4/2006/62.

[228] For the Protocol, see General Assembly resolution 55/25 of 15 November 2000.

[229] CRC/C/GC/8.

[230] United Nations, *Treaty Series*, vol. 1577, p. 3.

forms of physical or mental violence were prohibited. Hence, the Convention left no room for any level of legalized violence against children, including traditionally accepted forms of corporal punishment by parents or through school discipline. However, on the issue of implementation of the prohibition of corporal punishment, the General Comment stresses that the principle of equal protection of children and adults from assault, including within the family, does not mean that all cases of corporal punishment of children by their parents should lead to prosecution of parents and refers to the *de minimis* principle—that the law does not concern itself with trivial matters—which ensures that minor assaults only come to courts in exceptional circumstances. The General Comment also describes educational and other measures to raise awareness for the prohibition of corporal punishment and emphasizes the need for monitoring and evaluation mechanisms.

During the same session, the Committee also adopted General Comment No. 9 on the rights of children with disabilities.[231] The General Comment was designed to provide guidance in the interpretation of the Convention on the Rights of the Child, 1989, in light of the special needs and situations of children with disabilities. It provides an in-depth analysis of the key provisions for children with disabilities, namely articles 2 and 23 of the Convention, stressing the uniqueness of the reference to disability as a prohibited ground for discrimination and the core message of maximum inclusion of children with disabilities in the society. The General Comment furthermore offers general recommendations on the implementation of the obligations under the Convention, including with regard to data and statistics, budgeting, focal points for disabilities and international cooperation and technical assistance, prior to providing an article by article interpretation of the Convention in light of the particular needs of children with disabilities.

(ii) *General Assembly*

On 19 December 2006, the General Assembly adopted, on the recommendation of the Third Committee, resolution 61/146, "Rights of the child", in which, *inter alia,* it urged States that had not yet done so to become parties to the Convention on the Rights of the Child and the Optional Protocols thereto,[232] and to implement them fully by putting in place effective national legislation. It also urged States to intensify their efforts to preserve the child's identity, including nationality and family relations, to address cases of international parental child abduction and to take all necessary measures to prevent and combat illegal adoptions. Furthermore, the Assembly urged States to end impunity for perpetrators of crimes against children, investigate and prosecute all acts of violence and impose appropriate penalties. It also called upon all States to create an environment in which the well-being of the child is ensured, to translate into concrete action their commitment to the progressive and effective elimination of child labour that is likely to be hazardous or harmful and to promote education. Finally, the Assembly strongly condemned any recruitment or use of children in armed conflicts.

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[231] CRC/C/GC/9.

[232] Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 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, United Nations, *Treaty Series*, vol. 2171, p. 227.

(iii) *Security Council*

The Security Council, through the Presidential Statements of 24 July and 28 November 2006 on children in armed conflicts,[233] reiterated its determination to ensure respect and implementation of its resolution 1612 (2005) that provides a comprehensive framework for addressing the protection of children affected by armed conflict, and noted with appreciation the positive developments in this respect as reflected in the sixth report of the Secretary-General on children and armed conflicts.[234]

(*i*) Persons with disabilities

General Assembly

On 13 December 2006, the General Assembly adopted, on the recommendation of the Third Committee, resolution 61/106, "Convention on the Rights of Persons with Disabilities", in which it adopted and opened for signature the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention.[235]

(*j*) Migrants

(i) *Commission on Human Rights / Human Rights Council*

The Special Rapporteur on the human rights of migrants, Mr. Jorge Bustamante, submitted his first annual report[236] pursuant to Commission on Human Rights resolution 2005/47. In the said report, the Rapporteur highlighted that the reluctance to recognize the demand for the labour of migrant workers, a common issue among host countries, was one of the main factors that lead to irregular migration, a situation at the core of much of the abuse and numerous human rights violations suffered by migrants, and vowed to devote particular attention to the question of demand. However, the Rapporteur also pointed out that abuse and human rights violations also occurred in the context of legal migration, particularly in situations of temporary migration.

(ii) *General Assembly*

On 19 December 2006, the General Assembly adopted, on the recommendation of the Third Committee, resolution 61/165, "Protection of migrants", in which it, *inter alia,* took note of the interim report of the Special Rapporteur on the human rights of migrants[237] and requested States to effectively promote and protect the human rights and fundamental freedoms of all migrants, regardless of their immigration status, especially those of women and children. The Assembly urged States to accede to all relevant international instruments

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[233] S/PRST/2006/33 and S/PRST/2006/48, respectively.

[234] S/2006/826.

[235] For the text of the Convention and the Optional Protocol, see General Assembly resolution 61/106, annex.

[236] E/CN.4/2006/73.

[237] A/61/324.

and expressed concern about legislation and measures adopted by some States that may restrict the human rights and fundamental freedoms of migrants, and reaffirmed that, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law.

(*k*) Minorities

Commission on Human Rights / Human Rights Council

The independent expert on minority issues, Ms. Gay McDougall, submitted her first report[238] to the Commission on Human Rights pursuant to Commission resolution 2005/79. In her report, the independent expert stressed that respect for minority rights benefited States and societies in terms of securing the richness of cultural diversity, reflecting their full heritage and contributing to social cohesion. She reiterated the principle provided in the commentary to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities[239] that States had positive obligations not only to tolerance but to a positive attitude towards cultural pluralism, and were required to respect the distinctive characteristics and contribution of minorities to the life of the national society as a whole.

(*l*) Indigenous people

(i) *Commission on Human Rights / Human Rights Council*

In his report[240] submitted to the General Assembly pursuant to Commission on Human Rights resolution 2005/51, the Special Rapporteur on the situation of human rights of indigenous people, Mr. Rodolfo Stavenhagen, made particular reference to the draft United Nations Declaration on the Rights of Indigenous Peoples[241] and stressed the importance of the General Assembly endorsing it. In his view, the draft Declaration would serve as a useful guide for the human rights treaty bodies in interpreting the scope of the provisions of these treaties in relation to States parties, thus enhancing and consolidating international case law in this area. It would also be a valuable contribution in the discussion about future international standards in indigenous matters and provide a momentum in clarifying emerging or existing customary law regarding the rights of indigenous peoples at the international level.

On 29 June 2006, the Human Rights Council adopted resolution 1/2 entitled "Working group of the Commission on Human Rights to elaborate a draft declaration in accordance with paragraph 5 of General Assembly resolution 49/214 of 23 December 1994", in

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[238] E/CN.4/2006/74.

[239] General Assembly resolution 47/135 of 18 December 1992, annex.

[240] A/61/490.

[241] For the text of the declaration, see the report of the Human Rights Council, *Official Records of the General Assembly, Sixty-first Session, Supplement No. 53* (A/61/53), part one, chap. II, sect. A, resolution 1/2, annex.

which it adopted the United Nations Declaration on the Rights of Indigenous Peoples and recommended the said Declaration for adoption by the General Assembly.[242]

(ii) General Assembly

On 20 December 2006, the General Assembly adopted, on the recommendation of the Third Committee, resolution 61/178 entitled "Working Group of the Commission on Human Rights to elaborate a draft declaration in accordance with paragraph 5 of General Assembly resolution 49/214 of 23 December 1994", in which it expressed appreciation to the Working Group of the Commission on Human Rights for the work done in the elaboration of a draft declaration on the rights of indigenous people and decided to defer consideration of and action on the Declaration, as contained in the annex to the resolution, to allow further consultations thereon.

(*m*) Terrorism and human rights

(i) *Commission on Human Rights / Human Rights Council*

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr. Martin Scheinin, submitted his first report[243] to the Commission on Human Rights pursuant to Commission on Human Rights resolution 2005/80. In the said report, the Rapporteur, *inter alia,* provides an analysis of the role of human rights in the review of Member States' reports to the Counter-Terrorism Committee of the Security Council and made some preliminary observations on elements of a definition of terrorism as to the relevance of this issue for human-rights-conform responses to terrorism. He concluded that in the absence of a of a universal, comprehensive and precise definition of terrorism, "'Terrorist offences' should be confined to instances where the following three conditions cumulatively meet: (a) acts committed with the intention of causing death or serious bodily injury, or the taking of hostages; (b) for the purpose of provoking a state of terror, intimidating a population, or compelling a Government or international organization to do or abstain from doing any act; and (c) constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism. Similarly, any criminalization of conduct in support of terrorist offences should be restricted to conduct in support of offences having all these characteristics."[244] The report further discusses certain other issues, such as the rights of victims of terrorism, "root causes" of terrorism and whether non-State actors can violate human rights.

The Human Rights Council, in its decision 2/112 of 27 November 2006, "Persons deprived of liberty in the context of counter-terrorism measures", urged all States to take all necessary steps to ensure that persons deprived of liberty, regardless of their place of arrest or of detention, benefit from the guarantees that they are entitled to under international law, including, *inter alia,* protection against torture, cruel, inhuman or degrading treatment or punishment, protection against *refoulement* and fundamental judicial guarantees.

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[242] *Ibid.*

[243] E/CN.4/2006/98 and Add.1 and 2.

[244] *Ibid.*, para. 72.

(ii) *General Assembly*

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism also submitted a report to the General Assembly,[245] in which he draws attention to the report submitted to the Commission on Human Rights. In his report, the Rapporteur also provides an overview of the activities he has carried out since the end of 2005, and reflects upon the impact of the war on terror on the freedom of association and peaceful assembly and relevant international standards, as well as on some general issues relating to his mandate.

In resolution 61/171, "Protection of human rights and fundamental freedoms while countering terrorism", adopted on 19 December 2006, on the recommendation of the Third Committee, the General Assembly reaffirmed that States must ensure that any measure taken to combat terrorism comply with their obligations under international law, in particular international human rights, refugee and humanitarian law, and that it was imperative that while countering terrorism, all States worked to uphold and protect the dignity of individuals and their fundamental freedoms, as well as democratic practices and the rule of law. The Assembly opposed any form of deprivation of liberty that amounted to placing a detained person outside the protection of the law and urged States to respect the safeguards concerning liberty, security and dignity of the person and to treat all prisoners in all places of detention in accordance with international law, including human rights law and international humanitarian law.

(*n*) Promotion and protection of human rights

(i) *International cooperation and universal implementation of international human rights instruments*

a. Sub-Commission on the Promotion and Protection of Human Rights

By resolution 2006/1 of 24 August 2006, entitled "The universal implementation of international human rights treaties",[246] the Sub-Commission on the Promotion and Protection of Human Rights welcomed the final report[247] of the Special Rapporteur to conduct a detailed study of the universal implementation of international human rights treaties, Mr. Emmanuel Decaux, and strongly encouraged all States to implement the Vienna Declaration and Programme of Action, with a view to the universal and effective implementation of the international human rights instruments.[248]

b. Human Rights Council

The Human Rights Council adopted, on 28 November 2006, its resolution 2/5 on the "Effective implementation of international instruments on human rights", in which it noted with appreciation the continuing efforts of Member States, relevant United Nations entities and human rights treaty bodies to improve the effectiveness of the treaty body

[245] A/61/267.

[246] A/HRC/Sub.1/58/36 and A/HRC/2/2.

[247] A/HRC/Sub.1/58/5 and Add.1.

[248] A/CONF/157/23.

system and encouraged further efforts in this regard. It also encouraged the High Commissioner on Human Rights to undertake a study on various options for reforming the treaty body system, and to seek the views of States and other stakeholders in this regard and to report thereon to the Human Rights Council.

c. General Assembly

In resolution 61/166, "Promotion of equitable and mutually respectful dialogue on human rights", adopted on 19 December 2006, on the recommendation of the Third Committee, the General Assembly, *inter alia,* urged Member States to further strengthen international cooperation in promoting and encouraging respect for human rights in order to enhance dialogue and broaden understanding among civilizations, cultures and religions and stressed the need to avoid politically motivated and biased country-specific resolutions on the situation of human rights, confrontational approaches, exploitation of human rights for political purposes and selective targeting of individual countries for extraneous considerations and double standards in the work of the United Nations on human rights issues.

On the same day, the General Assembly also adopted, on the recommendation of the Third Committee, resolutions 61/167 and 61/168 entitled "Regional arrangements for the promotion and protection of human rights" and "Enhancement of international cooperation in the field of human rights", respectively.

In resolution 61/167, the Assembly, among other things, took note of the report of the Secretary-General on regional arrangements for the promotion and protection of human rights[249] and recognized that progress in promoting and protecting all human rights depended primarily on efforts made at the national and local levels, and that a regional approach should imply intensive cooperation and coordination with all partners involved. The Assembly further welcomed the progress achieved in the establishment of regional and subregional arrangements for the promotion and protection of human rights and invited States, in areas in which such arrangements did not yet exist, to consider, with the support and advice of national human rights institutions and civil society organizations, concluding agreements with a view to establishing suitable regional machinery for the promotion and protection of human rights.

In resolution 61/168, the Assembly, *inter alia,* reaffirmed that States had a collective responsibility to uphold the principles of human dignity, equality and equity at the global level and invited all States to further strengthen international cooperation in the field of human rights to make an effective and practical contribution to the urgent task of preventing violations of human rights and fundamental freedoms.

(ii) *Human rights defenders*

Commission on Human Rights / Human Rights Council

The Special Representative of the Secretary-General on human rights defenders, Ms. Hina Jilani, submitted her sixth and final report[250] to the Commission on Human Rights

[249] A/61/513.

[250] E/CN.4/2006/95 and Add. 1 to 5 and Add.1/Corr. 1 and 2.

pursuant to Commission on Human Rights resolutions 2000/61 and 2003/64. In her report, the Special Representative noted the need for an activity-based definition of human rights defence and to guarantee the right to defend rights, and assessed the implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders).[251] The report further noted the overall trend among States to adopt new laws restricting the space for human rights activities, particularly in the context of counter-terrorism measures. The Special Representative concluded her report by reiterating several of her previously made recommendations, including calling for the adoption of laws as well as security and public order policies, in the absence of adequate legal frameworks for the enforcement of economic, social and cultural rights, that recognize the legitimacy of peaceful action to attain these rights. She further recommended that Governments ensure that laws and policies reflect the right of defenders to access information and sites of alleged violations, and the introduction of a procedure at the Human Rights Council that would use the evaluation of the situation of human rights defenders as an essential indicator for the assessment of compliance with human rights standards and the respect for the rule of law.

(iii) *Transnational corporations*

Sub-Commission on the Promotion and Protection of Human Rights

The Sub-Commission on the Promotion and Protection of Human Rights adopted on 24 August 2006, resolution 2006/7 on "The effects of the working methods and activities of transnational corporations on the enjoyment of human rights",[252] in which it thanked Mr. El-Hadji Guissé, Chairperson-Rapporteur of the sessional working group set up to examine the working methods and activities of transnational corporations, for his report on the work of the eighth session of the working group.[253] It further recommended that the Human Rights Council adopt the draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights, previously adopted by the Sub-Commission,[254] and consider establishing a monitoring body.

(*o*) Miscellaneous

(i) *Democratic and equitable international order*

General Assembly

In resolution 61/160, adopted on 19 December 2006, on the recommendation of the Third Committee, entitled "Promotion of a democratic and equitable international order", the General Assembly, *inter alia,* affirmed that everyone was entitled to a democratic and equitable international order that would foster the full realization of all human rights for

[251] For the text of the Declaration, see General Assembly resolution 53/144, annex, of 9 December 1998.

[252] A/HRC/2/2-A/HRC/Sub.1/58/36.

[253] A/HRC/Sub.1/58/11.

[254] E/CN.4/2003/112.Rev.2.

all. While stressing the importance of preserving the rich and diverse nature of the international community of nations and peoples, as well as respecting national and regional particularities and various historical, cultural and religious backgrounds in the enhancement of international cooperation in the field of human rights, the Assembly also reaffirmed the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms. In this context, it also stressed that all human rights are universal, indivisible, interdependent and interrelated and that the international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis.

(ii) *Unilateral coercive measures*

General Assembly

In resolution 61/170 entitled "Human rights and unilateral coercive measures", adopted on 19 December 2006, on the recommendation of the Third Committee, the General Assembly urged all States to refrain from adopting or implementing any unilateral measures not in accordance with international law and the Charter of the United Nations, in particular those of a coercive nature with all their extraterritorial effects, which create obstacles to trade relations among States, thus impeding the full realization of the rights set forth in the Universal Declaration of Human Rights[255] and other human rights instruments. It stressed in particular the right of individuals and peoples to development, noting that unilateral coercive measures were one of the obstacles to the implementation of the Declaration on the Right to Development.[256]

(iii) *Human rights violations and small arms and light weapons*

Sub-Commission on the Promotion and Protection of Human Rights

The Special Rapporteur on the prevention of human rights violations with small arms and light weapons, Ms. Barbara Frey, submitted her final report[257] to the Sub-Commission on the Promotion and Protection of Human Rights pursuant to Sub-Commission resolution 2002/25. In her report, she addressed two fundamental legal principles with respect to the nature and extent of a State's obligation to prevent human rights violations with small arms and light weapons, namely the due diligence responsibility of States to prevent small arms abuses by private actors and the significance of the principle of self-defence. The Rapporteur, *inter alia,* stressed that the minimum effective measures that States had to adopt to comply with their due diligence obligations had to go beyond criminalization of acts of armed violence and had to include the enforcement of minimum licensing requirements. The Special Rapporteur referred to the draft principles on the prevention of human rights violations committed with small arms and light weapons[258] for other effective measures to

[255] General Assembly resolution 217 A (III).

[256] General Assembly resolution 41/128, annex.

[257] A/HRC/Sub.1/58/27 and Add.1.

[258] For the text of the draft principles, see A/HRC/Sub.1/58/27/Add.1, annex, or A/ HRC/2/2—A/ HRC/Sub.1/58/36, annex to resolution 2006/22.

be undertaken. On the principle of self-defence, she stressed, among other things, that this principle did not provide an independent, supervening right to small arms possession and, hence, regulating the possession of firearms was not inconsistent with the principle of self-defence. She further noted that international law did not support an international legal obligation requiring States to provide civilians access to small arms for self-defence and stressed that Article 51 of the Charter of the United Nations did not apply to situations of self-defence for individuals.

The Sub-Commission on the Promotion and Protection of Human Rights adopted on 24 August 2006, resolution 2006/22 entitled "Prevention of human rights violations committed with small arms and light weapons",[259] in which it, *inter alia,* welcomed the final report of the Special Rapporteur, Ms. Barbara Frey, on the prevention of human rights violations committed with small arms and light weapons and endorsed the draft principles on the prevention of human rights violations committed with small arms and light weapons contained therein. It further decided to transmit the draft principles to the Human Rights Council for consideration and adoption.

(iv) *Hostage-taking*

General Assembly

On 19 December 2006, the General Assembly adopted, on the recommendation of the Third Committee, resolution 61/172 on "Hostage-taking", in which it recalled all relevant resolutions of the Commission on Human Rights on the subject, including its most recent, resolution 2005/31 of 19 April 2005,[260] as well as the statement by the President of the Human Rights Council of 30 June 2006 on the same subject.[261] It further condemned all acts of hostage-taking anywhere in the world and reaffirmed that it is a serious crime, aimed at the destruction of human rights and is under no circumstances, justifiable.

6. Women[262, 263]

(*a*) Commission on the Status of Women[264]

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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[259] A/HRC/2/2—A/HRC/Sub.1/58/36.

[260] *Official Records of the Economic and Social Council, 2005, Supplement No. 3 and corrigendum* (E/2005/23 and Corr.1), chap. II, sect. A.

[261] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 53* (A/61/53), part one, chap. II, sect. C.

[262] For complete lists of signatories and States parties to the 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, Status as at 31 December 2006* (United Nations publications, Sales No. E.07.V.3, (ST/LEG/SER.E/25)), vol. I, chap. IV, and vol. II, chap. XVI.

[263] For more information, see also section 6 of the present chapter on human rights.

[264] For more information on the Commission on the Status of Women, see http://www.un.org/womenwatch/daw/csw/.

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 fiftieth session from 27 February to 10 March 2006 and on 16 March 2006 at United Nations Headquarters in New York.[265] In 2006, the Commission considered the following two themes: "Enhanced participation of women in development: an enabling environment for achieving gender equality and the advancement of women, taking into account, *inter alia,* the fields of education, health and work"; and "Equal participation of women and men in decision-making processes at all levels". A high-level panel discussion on the gender dimensions of international migration was also held.[266]

During its fiftieth session, the Commission adopted and recommended to the attention of the Economic and Social Council a number of resolutions, decisions and agreed conclusions, of which three are highlighted below.

In resolution 50/1 entitled "Release of women and children taken hostage, including those subsequently imprisoned, in armed conflict", the Commission, *inter alia,* urged all parties to armed conflicts to fully respect the norms of international humanitarian law, 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 condemned the consequences of hostage-taking, in particular torture and other cruel, inhumane or degrading treatment or punishment, murder, rape, slavery and trafficking in women and children. It further 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.

In resolution 50/2 entitled "Women, the girl child and HIV/AIDS", the Commission stressed that the HIV/AIDS pandemic reinforces gender inequalities and that women and girls bear a disproportionate share of the burden imposed by the HIV/AIDS crisis. It 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 protect themselves from HIV/AIDS infection. It further urged Governments to strengthen legal, policy, administrative and other measures for the prevention and elimination of all forms of violence against women and girls, including harmful traditional and customary practices, abuse, early and forced marriage, rape, including marital rape, and other forms of sexual violence, battering and trafficking in women and girls, and to ensure that violence against women is addressed as an integral part of the national HIV/AIDS response.

In resolution 50/3 entitled "Advisability of the appointment of a special rapporteur on laws that discriminate against women", the Commission noted the concerns expressed that legislative and regulatory gaps, as well as lack of implementation and enforcement of laws and regulations, perpetuate *de jure* as well as *de facto* inequality and discrimination against women. It took note of the report of the Secretary-General on the advisability

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[265] For the report of the fiftieth session, see *Official Records of the Economic and Social Council, 2006, Supplement No. 7* (E/2006/27—E/CN.6/2006/15).

[266] *Ibid.*, chap. I A and chap. II, paras. 41–46.

of the appointment of a special rapporteur on laws that discriminate against women,[267] invited the Secretary-General to bring to the attention of the Committee on the Elimination of Discrimination against Women and other relevant treaty bodies his report with a view to eliciting their views on ways and means that could best complement the work of the existing mechanisms and invited the Office of the United Nations High Commissioner for Human Rights to provide its views thereon. It further invited Member States and observers to submit to the Secretary-General their views on his report and decided to consider the item at its fifty-first session.

(*b*) Economic and Social Council

On 25 July 2006, the Economic and Social Council adopted, on the recommendation of the Commission on the Status of Women, resolution 2006/7 entitled "Situation of women and girls in Afghanistan", and resolution 2006/8 on the "Situation of and assistance to Palestinian Women".

(*c*) General Assembly[268]

In resolution 61/145, "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", adopted on 19 December 2006 on the recommendation of the Third Committee, the Assembly, *inter alia,* welcomed the report of the Secretary-General[269] and the ministerial declaration of the high-level segment of the substantive session of 2006 of the Economic and Social Council, "Creating an environment at the national and international levels conducive to generating full and productive employment and decent work for all, and its impact on sustainable development.[270] The Assembly recognized that the implementation of the Beijing Declaration and Platform for Action and the fulfilment of the obligations under the Convention on the Elimination of All Forms of Discrimination against Women, 1979,[271] were mutually reinforcing in achieving gender equality and the empowerment of women. Further, it reaffirmed that States have an obligation to exercise due diligence to prevent violence against women and girls, provide protection to the victims and investigate, prosecute and punish the perpetrators of violence against women and girls, and that failure to do so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms.

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[267] E/CN.6/2006/8.

[268] See also General Assembly resolutions 61/143 and 61/144 dealing with the rights of women, which are covered under section 5 of the present chapter "Human Rights".

[269] A/61/174.

[270] Report of the Economic and Social Council for 2006, *Official Records of the General Assembly, Sixty-first Session, Supplement No. 3* (A/61/3/Rev.1)

[271] United Nations, *Treaty Series*, vol. 1249, p. 13.

7. Humanitarian matters

(*a*) Economic and Social Council

On 18 July 2006, the Economic and Social Council adopted resolution 2006/5 entitled "Strengthening of the coordination of emergency humanitarian assistance of the United Nations", in which it took note of the report of the Secretary-General[272] on this item and of the reports of the Secretary-General on humanitarian assistance and rehabilitation for El Salvador and Guatemala,[273] on strengthening emergency relief, rehabilitation, reconstruction and prevention in the aftermath of the South Asian earthquake disaster—Pakistan,[274] as well as of his report on strengthening emergency relief, rehabilitation, reconstruction, recovery and prevention in the aftermath of the Indian Ocean tsunami disaster.[275]

The Council, *inter alia,* requested the organizations of the United Nations system to continue to systematically engage with relevant authorities and organizations at the regional and national levels to support efforts to strengthen humanitarian response capacities at all levels, in particular through preparedness programmes, with a view to improving the overall adequacy of the deployment of resources. The Council further requested the Secretary-General to continue to develop more systematic links with Member States offering military assets for natural disaster response. The Council also welcomed the establishment of the Central Emergency Response Fund.[276]

(*b*) General Assembly

On 14 December 2006, the General Assembly adopted, without reference to a Main Committee, four resolutions on humanitarian matters, of which three are highlighted below.[277]

In resolution 61/131, "International cooperation on humanitarian assistance in the field of natural disasters, from relief to development", the General Assembly took note of the reports of the Secretary-General entitled "International cooperation on humanitarian assistance in the field of natural disasters, from relief to development",[278] "Strengthening of the coordination of emergency humanitarian assistance of the United Nations",[279] "Strengthening emergency relief, rehabilitation, reconstruction, recovery and prevention in the aftermath of the Indian Ocean tsunami disaster"[280] and "Central Emergency Response Fund".[281] The Assembly, among other things, called upon States to fully imple-

[272] A/61/85-E/2006/81.

[273] A/61/78-E/2006/61.

[274] A/61/79-E/2006/67.

[275] A/61/87-E/2006/77.

[276] See General Assembly resolution 60/124 of 15 December 2005.

[277] See also General Assembly resolutions 61/132 of 14 December 2006 and 61/198 and 61/220 of 20 December 2006.

[278] A/61/314.

[279] A/61/85-E/2006/81.

[280] A/61/87-E/2006/77.

[281] A/61/85/Add.1-E/2006/81/Add.1.

ment the Hyogo Declaration[282] and the Hyogo Framework of Action 2005–2015: Building the Resilience of Nations and Communities to Disasters,[283] in particular commitments related to assistance for developing countries that are prone to natural disasters and for disaster-stricken States in the transition phase towards sustainable physical, social and economic recovery, for risk-reduction activities in post-disaster recovery and for rehabilitation processes. The Assembly also encouraged all States that had not yet done so to accede to or ratify the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 1998.[284]

In resolution 61/133 entitled "Safety and security of humanitarian personnel and protection of United Nations personnel", the Assembly welcomed the report of the Secretary-General on this item.[285] It strongly urged all States to take the necessary measures to ensure the safety and security of humanitarian personnel and United Nations and associated personnel and to respect and ensure respect for the inviolability of United Nations premises, which were all essential for the continuation and successful implementation of United Nations operations. The Assembly further welcomed the adoption of the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel, 2005,[286] and called upon all States to ensure its rapid entry into force. It also called upon all Governments and parties in complex humanitarian emergencies, in particular in armed conflicts and in post-conflict situations, where humanitarian personnel were operating, to cooperate fully with the United Nations and other humanitarian agencies and organizations. Finally, the Assembly strongly condemned all threats and acts of violence against humanitarian personnel and United Nations and associated personnel and called upon all parties involved in armed conflicts to refrain from abducting humanitarian personnel or United Nations and associated personnel, or detaining them and to speedily release, without harm or requirement of concession, any abducted person or detainee.

In resolution 61/134, "Strengthening of the coordination of emergency humanitarian assistance of the United Nations", the Assembly, *inter alia,* emphasized the fundamentally civilian character of humanitarian assistance and affirmed the need, in situations where military capacity and assets are used to support the implementation of humanitarian assistance, for their mode of use to be in conformity with international humanitarian law and humanitarian principles. It reaffirmed the obligation of all States and parties to an armed conflict to protect civilians in accordance with international humanitarian law, and invited States to promote a culture of protection, taking into account the particular needs of women, children, older persons and persons with disabilities. The Assembly also called upon States to adopt preventive measures and effective responses to acts of violence committed against civilian populations in armed conflicts as well as to ensure that those responsible are promptly brought to justice. Finally, it further recognized the Guiding Principles on Internal Displacement[287] as an important international framework for the protection of internally displaced persons.

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[282] A/CONF.206/6 and Corr.1, chap. 1, resolution 1.

[283] *Ibid*., resolution 2.

[284] United Nations, *Treaty Series*, vol. 2296, p. 5.

[285] A/61/463.

[286] For the text of the Optional Protocol see General Assembly resolution 60/42, annex.

[287] E/CN.4/1998/53/Add.2, annex.

8. Environment

General Assembly

On 20 December 2006, the General Assembly adopted, on the recommendation of the Second Committee, several resolutions related to the environment, of which four are highlighted below.

In resolution 61/195 entitled "Implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development", the General Assembly noted the report of the Secretary-General on the activities undertaken in the implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development.[288] The Assembly further called for the effective implementation of the commitments, programmes and time-bound targets adopted at the World Summit on Sustainable Development[289] and for the fulfilment of the provisions relating to the means of implementation, as contained in the Johannesburg Plan of Implementation.[290]

In resolution 61/201 entitled "Protection of global climate for present and future generations of mankind", the General Assembly called upon States to work cooperatively towards achieving the ultimate objective of the United Nations Framework Convention on Climate Change, 1992.[291] The Assembly welcomed the entry into force of the Kyoto Protocol, 1997, on 16 February 2005,[292] and took note of the outcome of the eleventh[293] and twelfth[294] sessions of the Conference of the Parties to the Framework Convention and the first[295] and second[296] sessions of the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol.

In resolution 61/202 entitled "Implementation of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa", the General Assembly took note of the report of the Secretary-General[297] on this item. The Assembly also reaffirmed its resolve to strengthen the implementation of the Convention to address causes of desertification and land degradation, as well as poverty resulting from land degradation, through, among other things, the mobilization of adequate and predictable financial resources, the transfer of technology and capacity-building at all levels.

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[288] A/61/258.

[289] *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 1, annex.

[290] *Ibid.*, resolution 2, annex.

[291] United Nations, *Treaty Series*, vol. 1771, p. 107.

[292] *Ibid.*, vol. 2303, p. 148.

[293] FCCC/CP/2005/5/Add.1.

[294] FCCC/CP/2006/4- FCCC/KP/CMP/2006/8.

[295] FCCC/CP/2005/5/Add.1.

[296] FCCC/CP/2006/4- FCCC/KP/CMP/2006/8.

[297] A/61/225, sect. II.

Finally, in resolution 61/204 entitled "Convention on Biological Diversity", the General Assembly, *inter alia,* took note of the report of the Executive Secretary of the Convention on Biological Diversity[298] and further noted the outcomes of the eighth meeting of the Conference of the Parties to the Convention on Biological Diversity[299] and of the third meeting of the Conference of the Parties to the Convention serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety.[300] The Assembly further reiterated the commitment[301] of States parties to the Convention on Biological Diversity,1992,[302] and the Cartagena Protocol on Biosafety, 2000,[303] to support the implementation of the Convention and the Protocol, as well as other biodiversity-related agreements and the Johannesburg commitment to a significant reduction in the rate of loss of biodiversity by 2010, and to continue to negotiate within the framework of the Convention, bearing in mind the Bonn Guidelines,[304] an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources. It also urged all States to continue ongoing efforts to elaborate and negotiate an international regime on access to genetic resources and benefit-sharing.

9. Law of the sea

(*a*) Reports of the Secretary-General[305]

The Secretary-General, in his reports to the General Assembly at its sixty-first and sixty-second sessions under the agenda item entitled "Oceans and the Law of the Sea", provided an overview of developments relating to the implementation of the United Nations Convention on the Law of the Sea, 1982, (Convention)[306] and the work of the Organization, its specialized agencies and other institutions in the field of ocean affairs and the law of the sea during the year 2006. The reports contain updates on the status of the Convention and its implementing Agreements, as well as on declarations and statements made by States under articles 287, 298 and 310 of the Convention.

In relation to the topic of maritime space, the reports provide an overview of State practice, maritime claims and delimitation of maritime zones.

They also outline the work carried out in 2006 by the three institutions established by the Convention, namely, the International Seabed Authority (ISA), the International

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[298] *Ibid.*, sect. III.

[299] UNEP/CBD/COP/8/31.

[300] UNEP/CBD/BS/COP-MOP/3/15.

[301] UNEP/CBD/ExCOP/1/3 and Corr.1, part two, annex.

[302] United Nations, *Treaty Series* , vol. 1760, p. 79.

[303] *Ibid.*, vol. 2226, p. 208.

[304] UNEP/CBD/COP/6/20, annex I, decision VI/24A.

[305] A/61/63 and Add.1 and A/62/66. Information contained in the reports of the Secretary-General on the law of the sea with regard to the work of other related international organizations within the United Nations system are not covered in this chapter, see chapter III B below.

[306] United Nations, *Treaty Series*, vol. 1833, p. 3.

Tribunal for the Law of the Sea[307] and the Commission on the Limits of the Continental Shelf (CLCS).

ISA held its twelfth session from 7 to 18 August 2006 in Kingston, Jamaica, during which it continued its work on the draft regulations on prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts deciding that two separate regulations should be drafted, one on polymetallic sulphides and the other on cobalt-rich ferromanganese crusts.[308]

CLCS held its seventeenth and eighteenth sessions from 20 March to 21 April and from 21 August to 15 September 2006, respectively,[309] at United Nations Headquarters, New York, during which it continued the examination of the submissions made by Brazil, Australia and Ireland and began consideration of the submission made by New Zealand, as well as the joint submission made by France, Ireland, Spain and the United Kingdom. CLCS also received a submission from Norway, the consideration of which, however, would begin in 2007. In addition, at its seventeenth session, CLCS adopted amendments to section IV (10) of annex III to its rules of procedure (CLCS/40) concerning the attendance by the coastal State at the consideration of its submission.

The Secretary-General also reported on the training courses which the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, given in 2006. Those training courses were organized to promote and facilitate the implementation of article 76 of the Convention on the part of developing States, which may have a continental shelf extending beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

In his reports, the Secretary-General paid special attention to ecosystem-approaches, one of the topics chosen for the seventh meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, held from 12 to 16 June 2006, at United Nations Headquarters, New York, outlining the applicable legal framework.[310]

Furthermore, the Secretary-General provided an update on the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities.[311] The second session of the Intergovernmental Review Meeting on the Implementation of the Global Programme of Action was held in Beijing, from 16 to 20 October 2006, to consider progress in implementation of the Global Programme of Action and to identify options

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[307] For the work of the Tribunal, see chapter VII below.

[308] For more information on the twelfth session of ISA, see A/62/66, paras. 13–18. See also the Statements of the President on the work of the Assembly (ISBA/12/A/13) and of the Council (ISBA/12/C/12) at the twelfth session.

[309] For more information on the seventeenth and eighteenth sessions of CLCS, see CLCS/50 and CLCS/52.

[310] See A/61/63, chapter X. For more information on the work of the seventh meeting of the Open-ended Informal Consultative Process on Oceans and the Law of the Sea, see A/61/156.

[311] GPA is designed to assist States in taking action which will lead to the prevention, reduction, control and/or elimination of the degradation of the marine environment, and to its recovery from the impacts of land-based activities.

for strengthening its implementation. The Meeting adopted the Beijing Declaration on furthering the implementation of the Global Programme of Action.[312]

Pursuant to General Assembly resolution 59/24 of 17 November 2004, the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction met in New York from 13 to 17 February 2006.[313]

With regard to the marine environment, the Secretary-General reported[314] that the General Assembly had decided to launch the "assessment of assessments" as the start-up phase of the regular process for the global reporting and assessment of the state of the marine environment, including socio-economic aspects, to be overseen by an *ad hoc* steering group and executed by a group of experts. The *ad hoc* steering group held its first meeting from 7 to 9 June 2006 and considered, *inter alia,* criteria for the appointment of the group of experts (i.e., regional representation) and the preparation of the "assessment of assessments". [315]

The Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995, (Fish Stocks Agreement)[316] was held in New York from 22 to 26 May 2006. The Review Conference was organized in accordance with General Assembly resolution 59/25 of 17 November 2004 and pursuant to article 36 of the Fish Stocks Agreement, which required the Secretary-General to convene such a conference in order to assess the effectiveness of the Fish Stocks Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks by reviewing and assessing the adequacy of its provisions and, if necessary, proposing means of strengthening the substance and methods of implementation of those provisions in order to better address any continuing problems in the conservation and management of the two types of stocks. The Conference reviewed the state of implementation of the Fish Stocks Agreement by States and by regional fisheries management organizations and arrangements, recognized as the primary mechanism for international cooperation in the conservation and management of straddling fish stocks and highly migratory fish stocks. As a result of the review, it adopted recommendations addressed to States individually and collectively through regional fisheries management organizations to strengthen implementation of the provisions of the Fish Stocks Agreement. Those recommendations related to the conservation and management of stocks; mechanisms for international cooperation; monitoring, control and surveillance

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[312] See UNEP/GPA/IGR.2/7, para. 68 and annex V. The Beijing Declaration endorses the programme of work of the UNEP/Global Programme of Action Coordination Office for the period 2007–2011, which will focus on promoting the Programme at the international, regional, and national levels, strengthening implementation of the Global Programme of Action through the UNEP Regional Seas Programme (UNEP/RSP) and other regional mechanisms, and mainstreaming its implementation into national development planning and public sector budgetary mechanisms.

[313] Discussions were based on the information contained in document A/60/63/Add.1. The report of the discussion is contained in document A/61/65.

[314] Report submitted pursuant to General Assembly resolution 60/30 of 29 November 2005.

[315] For the report of the first meeting, see http://www.unep.org/DEWA/assessments.

[316] United Nations, *Treaty Series*, vol. 2167, p. 3.

and compliance and enforcement; adherence to the Agreement and assistance to developing States for this purpose; and keeping the Fish Stocks Agreement under review.[317]

With regard to whaling, the Secretary-General reported that the fifty-eighth annual meeting of the International Whaling Commission was held in Saint Kitts and Nevis from 16 to 20 June 2006. The meeting adopted the Saint Kitts and Nevis Declaration, which contained a commitment to normalizing the functions of the Commission based on the terms of the International Convention for the Regulation of Whaling, 1946,[318] and other relevant international law; respecting cultural diversity and traditions of coastal peoples and the fundamental principles of sustainable use of resources; and attaining science-based policy and rule making that are accepted as the world standard for the management of marine resources. The Commission also adopted a resolution on the safety of vessels engaged in whaling and whale research-related activities.[319]

The Secretary-General further reported on the settlement of disputes relating to law of the sea matters by the International Tribunal for the Law of the Sea,[320] the International Court of Justice[321] and the Arbitral Tribunal established in the case between Barbados and Trinidad and Tobago, which rendered its award on 11 April 2006.[322] In the said award, after a finding of jurisdiction to consider the parties' maritime delimitation claims, the Arbitral Tribunal established a single maritime boundary between Barbados and Trinidad and Tobago that differed from the boundary claimed by each of the parties. For the most part, the boundary established by the Tribunal followed the equidistance line between the parties. The Tribunal also held that it lacked jurisdiction to render a substantive decision regarding fisheries inside the exclusive economic zone of Trinidad and Tobago. Nonetheless, it found that the parties were under a duty to agree upon measures necessary to coordinate and ensure the conservation and development of flying fish stocks, and to negotiate in good faith and conclude an agreement according Barbados fisherfolk access to fisheries in the exclusive economic zone of Trinidad and Tobago, subject to limitations and conditions of that eventual agreement and to the right and duty of Trinidad and Tobago to conserve and manage the living resources of the waters within its jurisdiction.

The Secretary-General also published his annual report on fisheries issues, which, in 2006, focuses on the impacts of fishing on vulnerable marine ecosystems.[323] The report provides an overview of the actions taken by States and regional fisheries management organizations and arrangements to give effect to paragraphs 66 to 69 of General Assembly resolution 59/25 of 17 November 2004 on sustainable fisheries, regarding the impacts of fishing on vulnerable marine ecosystems.

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[317] For more information on the Review Conference, see A/CONF.210/2006/15.

[318] United Nations, *Treaty Series*, vol. 161, p. 72.

[319] Resolution 2006/1. For more details, visit http://www.iwcoffice.org/meetings/meeting2006.htm.

[320] See chapter VII below.

[321] See chapter VII below

[322] See http://www.pca-cpa.org/showpage.asp?pag_id=1152.

[323] A/61/154.

(*b*) Consideration by the General Assembly

On 20 December 2006, the General Assembly adopted, without reference to a Main Committee, resolution 61/222 entitled "Oceans and the law of the sea".

With regard to CLCS, the Assembly endorsed the call by the Meeting of States Parties to the Convention to strengthen the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs, serving as the secretariat of CLCS, for the purpose of enhancing its technical support for CLCS.

The General Assembly took note of the report of the 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, established by resolution 59/24, which met from 13 to 17 February 2006.[324] The General Assembly requested the Secretary-General to convene another meeting of the Working Group in 2008 to consider the environmental impacts of anthropogenic activities on marine biological diversity beyond areas of national jurisdiction; the coordination and cooperation among States, as well as relevant intergovernmental organizations and bodies for the conservation and management of marine biological diversity beyond areas of national jurisdiction; the role of area-based management tools; genetic resources beyond areas of national jurisdiction; and whether there is a governance or regulatory gap, and if so, how it should be addressed. It also requested the Secretary-General, in order to assist the Working Group, to report on those issues in the context of his report on oceans and the law of the sea to the General Assembly at its sixty-second session.

With regard to the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, the General Assembly decided that, in its deliberations on the report of the Secretary-General on oceans and the law of the sea at its forthcoming meetings in 2007 and 2008, the Consultative Process would focus its discussions on the topics "Marine genetic resources" and "Maritime security and safety", respectively.

On 8 December 2006, the General Assembly also adopted, without reference to a Main Committee, resolution 61/105 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 this resolution, the Assembly, *inter alia,* noted with appreciation the report of the Review Conference on the Fish Stocks Agreement and welcomed the adoption of the recommendations contained therein. The Assembly also placed particular emphasis on monitoring, control and surveillance and compliance and enforcement of the Fish Stocks Agreement.

10. Economic, social, cultural and related questions

Culture

On 4 December 2006, the General Assembly adopted, without reference to a Main Committee, resolution 61/52 entitled "Return or restitution of cultural property to the

[324] A/61/65.

countries of origin", in which it, *inter alia,* expressed concern over the illicit traffic in cultural property as well as the destruction and illicit movement of such property during armed conflict. Furthermore, the Assembly welcomed the efforts made by the United Nations Educational, Scientific and Cultural Organization (UNESCO) to protect cultural heritage of countries in conflict, and to safely return cultural property to those countries. It also welcomed the launch of the Cultural Heritage Laws Database by UNESCO and urged States to regularly provide their legislation for inclusion in the database.

11. Crime prevention and criminal justice[325]

(*a*) International instruments[326]

The first session of the Conference of the States Parties to the United Nations Convention against Corruption[327] was held in Jordan from 10 to 14 December 2006, during which an open-ended intergovernmental expert working group was established to make recommendations to the Conference, at its second session, on appropriate mechanisms or bodies for reviewing the implementation of the Convention, and on the establishment of a mechanism for asset recovery.[328]

(*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 to deal with a broad scope of policy matters in this field, including combating national and transnational crime, 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, as well as 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 fifteenth session of the Commission on Crime Prevention and Criminal Justice was held in Vienna, Austria, on 27 May 2005 and from 24 to 28 April 2006.[329] 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 maximizing

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[325] 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 http://www.unodc.org.

[326] For complete lists 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 2006* (United Nations publications, Sales No. E.07.V.3 (ST/LEG/SER.E/25)), vol. II, chap. XVIII.

[327] For the text of the Convention, see United Nations, *Treaty Series*, vol. 2349, p. 41.

[328] For the report of the first session of the Conference, see CAC/COSP/2006/12.

[329] For the report of the fifteenth session of the Commission, see *Official Records of the Economic and Social Council, 2006, Supplement No. 10 and Corrigendum* (E/2006/30 and Corr. 1).

the effectiveness of technical assistance provided to Member States in crime prevention and criminal justice. The Commission, *inter alia,* also considered several other agenda items, including "Follow-up to the Eleventh United Nations Congress on Crime Prevention and Criminal Justice"; "International cooperation in combating transnational crime"; "Strengthening international cooperation and technical assistance in preventing and combating terrorism"; and "Use and application of United Nations standards and norms in crime prevention and criminal justice".[330] Furthermore, the Executive Director of UNODC presented to the Commission the *Counter-Kidnapping Manual* developed by the Office pursuant to General Assembly resolution 59/154 of 20 December 2004.

(*c*) Economic and Social Council

On 27 July 2006, the Economic and Social Council adopted, on the recommendation of the Commission on Crime Prevention and Criminal Justice, eleven resolutions relating to crime prevention and criminal justice,[331] of which four are highlighted below.

In resolution 2006/20 entitled "United Nations standards and norms in crime prevention", the Council, *inter alia,* welcomed the work done by the Intergovernmental Expert Group Meeting on Crime Prevention, held in Vienna, Austria, from 20 to 22 March 2006. It approved an information-gathering instrument on United Nations standards and norms related primarily to the prevention of crime, contained in the annex to the said resolution, for information purposes, and invited Member States to reply to the information-gathering instrument and to include any comments or suggestions they may have in relation to it. The Council further requested the Secretary-General to convene an intergovernmental expert group meeting to design an information-gathering instrument in relation to United Nations standards and norms related primarily to victim issues and to study ways and means to promote their use and application, and to report on progress made in that connection to the Commission at its sixteenth session.

In resolution 2006/23, "Strengthening basic principles of judicial conduct", the Council invited Member States to encourage their judiciaries to take into account the Bangalore Principles of Judicial Conduct, contained in the annex to the said resolution, when reviewing or developing rules with respect to the professional and ethical conduct of members of the judiciary. The Council emphasized that the Bangalore Principles of Judicial Conduct represented a further development and were complementary to the Basic Principles on the

[330] For the documents before the Commission, its deliberations and actions taken, see the report of the fifteenth session of the Commission (E/2006/30 and Corr.1).

[331] Economic and Social Council resolutions 2006/19 on "International cooperation in the prevention, combating and elimination of kidnapping and in providing assistance to victims", 2006/21 on the "Implementation of the Programme of Action, 2006–2010, on strengthening the rule of law and the criminal justice system in Africa", 2006/22 on "Providing technical assistance for prison reform in Africa and the development of viable alternatives to imprisonment"; 2006/24 on "International cooperation in the fight against corruption"; 2006/25 entitled "Strengthening the rule of law and the reform of the criminal justice institutions, including in post-conflict reconstruction", 2006/26 entitled "Follow-up to the Eleventh United Nations Congress on Crime Prevention and Criminal Justice"; and 2006/28 "International Permanent Observatory on Security Measures during Major Events".

Independence of the Judiciary.[332] It invited Member States to submit their views regarding the Principles and suggest revisions, and requested UNODC to convene an open-ended intergovernmental expert group, in cooperation with the Judicial Group on Strengthening Judicial Integrity and other international and regional judicial forums, to develop a technical guide to be used in providing technical assistance aimed at strengthening judicial integrity and capacity, as well as prepare commentary on the Bangalore Principles of Judicial Conduct.

In resolution 2006/27 entitled "Strengthening international cooperation in preventing and combating trafficking in persons and protecting victims of such trafficking", the Council, *inter alia,* urged Member States to adopt a range of legislative and law enforcement measures to prevent trafficking in persons, including to criminalize trafficking in persons and to establish that offence as a predicate offence for money-laundering offences. It also invited them to fight sexual exploitation and to provide assistance and protection to victims of trafficking in persons, including their reintegration into society. The Council further invited Member States to set up mechanisms for the coordination and collaboration between governmental and non-governmental organizations and other members of civil society with a view to responding to the immediate needs of victims.

In resolution 2006/29, "Crime prevention and criminal justice responses to violence against women and girls", the Council urged Member States to consider using the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice[333] in developing and undertaking strategies and practical measures to eliminate violence against women and in promoting women's equality within the criminal justice system. It further strongly encouraged them to promote an active and visible policy for integrating a gender perspective into the development and implementation of policies and programmes in the field of crime prevention and criminal justice. The Council also welcomed the development by UNODC of a handbook for law enforcement officials on effective responses to violence against women.

(*d*) General Assembly

On 20 December 2006, the General Assembly adopted, on the recommendation of the Third Committee, four draft resolutions on crime prevention and criminal justice, of which three are highlighted below.[334]

In resolution 61/179 entitled "International cooperation in the prevention, combating and elimination of kidnapping and in providing assistance to victims", the General Assembly condemned and rejected once again the offence of kidnapping and noted with satisfaction the publication of the operational manual against kidnapping prepared pursuant to its resolution 59/154. The Assembly further encouraged Member States to foster international cooperation, especially on extradition, mutual legal assistance and collaboration between law enforcement authorities, with a view to preventing, combating and eradicating kidnap-

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[332] *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August–6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex.

[333] General Assembly resolution 52/86, annex.

[334] General Assembly resolutions 61/179 to 61/182.

ping, and called upon Member States to take appropriate measures to provide adequate assistance to victims of kidnapping and their families.

In resolution 61/180, "Improving the coordination of efforts against trafficking in persons",[335] the Assembly, *inter alia,* recognized the need to arrive at a better understanding of what constituted demand in human trafficking and how to combat it. The Assembly also welcomed the report of UNODC entitled "Trafficking in persons: global patterns".[336]

In resolution 61/181, "Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity", the Assembly reaffirmed the importance of the United Nations Crime Prevention and Criminal Justice Programme, and urged States and relevant international organizations to develop national and regional strategies and other necessary measures to complement the work of the Programme in addressing effectively transnational organized crime, including trafficking in persons and related criminal activities such as kidnapping and the smuggling of migrants, as well as corruption and terrorism. It further took note with appreciation of the report of the Secretary-General on the progress made in the implementation of General Assembly resolution 60/175.[337]

Furthermore, on 20 December 2006, the General Assembly adopted, on the recommendation of the Second Committee, resolution 61/209 entitled "Preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets, in particular to the countries of origin, consistent with the United Nations Convention Against Corruption", in which it, *inter alia,* welcomed the report of the Secretary-General on this topic.[338]

12. International drug control[339,340]

(*a*) Commission on Narcotic Drugs

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

[335] General Assembly resolution 61/180.

[336] The report is available at http://www.unodc.org.

[337] A/61/179.

[338] A/61/177.

[339] This section covers the sessions of the General Assembly, the Economic and Social Council and the Commission on Narcotic Drugs. 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 Crime at http://www.unodc.org and the *World Drug Report 2006* (United Nations Publication Sales No. E.06.XI.10).

[340] For complete lists 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 2006* (United Nations publications, Sales No. E.07.V.3 (ST/LEG/SER.E/25)), vol. I, chap. VI.

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-ninth session in Vienna, which was held on 8 December 2005 and from 13 to 17 March 2006, the Commission held a thematic debate on alternative development as an important drug control strategy and establishing alternative development as a cross-cutting issue.[341] In addition, the Commission on Narcotic Drugs, *inter alia,* considered several other agenda items, including "Drug demand reduction"; "Illicit drug traffic supply"; "Implementation of the international drug control treaties"; and "Strengthening the drug programme of the United Nations Office on Drugs and Crime and the role of the Commission on Narcotic Drugs as its governing body".[342]

The Commission adopted, among others, eight resolutions to be brought to the attention of the Economic and Social Council, of which two are highlighted below.[343]

In resolution 49/5, "Paris Pact initiative", the Commission expressed support for the proposal of the Russian Federation to convene an international conference at the ministerial level on drug routes from Central Asia to Europe[344] in continuation of the Paris Pact initiative [345] and encouraged the conference to take stock of the progress made under the Paris Pact initiative and to explore measures to improve existing structures to disrupt the flow of illicit drugs from Afghanistan to Europe.

In resolution 49/8, "Strengthening cooperative international arrangements at the operational law enforcement level in order to disrupt the manufacture of and trafficking in illicit drugs", the Commission called upon Member States to continue to place emphasis on cooperative arrangements at the operational level to disrupt the manufacture of and trafficking in illicit drugs at their source. It further urged Member States to maintain impetus with a view to entering into bilateral and, where appropriate, multilateral arrangements between national law enforcement agencies and to continue to strengthen their commitment to multijurisdictional law enforcement investigations.

(*b*) Economic and Social Council

On 27 July 2006, the Economic and Social Council adopted five resolutions and two decisions on drug-related issues,[346] of which two are highlighted below.

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[341] For the report of the Commission, see *Official Records of the Economic and Social Council, 2006, Supplement No. 8* (E/2006/28).

[342] For the documents before the Commission, its deliberations and actions taken, see the report of its forty-ninth session (E/2006/28).

[343] For a complete overview of resolutions 49/1 to 49/8, see *ibid*, chap. I. C.

[344] The Conference was held in Moscow from 26 to 28 June 2006 under the title "Second Ministerial Conference on Drug Trafficking Routes from Afghanistan". For the Final Document of the Conference, see A/61/208-S/2006/598, annex.

[345] The Paris Pact initiative emerged from the Paris Pact Statement (S/2003/641, annex), which was initiated at the end of the Conference on Drug Routes from Central Asia to Europe, held in Paris on 21 and 22 May 2003.

[346] See Economic and Social Council resolutions 2006/30 to 2006/34 and decisions 2006/241 and 2006/250.

In resolution 2006/30 entitled "Baku Accord on Regional Cooperation against Illicit Drugs and Related Matters: a Vision for the Twenty-First Century", the Council took note of the Baku Accord, which is annexed to the said resolution, and urged Member States to take appropriate measures to combat the traffic in narcotic drugs and psychotropic substances in accordance with it and relevant resolutions of the Commission on Narcotic Drugs, the Economic and Social Council and the General Assembly.

In resolution 2006/34 entitled "The need for a balance between demand for and supply of opiates used to meet medical and scientific needs", the Council, *inter alia,* urged all Governments to continue to contribute to maintaining a balance between the licit supply of and demand for opiate raw materials used for medical and scientific purposes, and to cooperate in preventing the proliferation of sources of production of opiate raw materials. The Council also urged Governments of all producer countries to adhere strictly to the provisions of the Single Convention on Narcotic Drugs of 1961[347] and that Convention as amended by the 1972 Protocol,[348] and to take effective measures to prevent the illicit production or diversion of opiate raw materials to illicit channels.

Furthermore, the Council endorsed the concern expressed by the International Narcotics Control Board in its report for 2005[349] regarding the advocacy by a non-governmental organization of legalization of opium poppy cultivation in Afghanistan, and urged all Governments to resist such proposals and to continue to strengthen drug control in compliance with their obligations emanating from the international drug control treaties.

(*c*) General Assembly

On 20 December 2006, the General Assembly adopted, on the recommendation of the Third Committee, resolution 61/183 entitled "International cooperation against the world drug problem". In this resolution, the Assembly, *inter alia,* called upon all States to strengthen international cooperation among judicial and law enforcement authorities at all levels in order to prevent and combat illicit drug trafficking and to share and promote best operational practices in order to interdict illegal drug trafficking, 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.

In addition, the Assembly urged States to strengthen action, in particular international cooperation and technical assistance aimed at preventing and combating the laundering of proceeds derived from drug trafficking and related criminal activities, with the support of the United Nations system, as well as regional development banks and, where appropriate, the Financial Action Task Force on Money Laundering and similarly styled regional bodies, to develop and strengthen comprehensive international regimes to combat money-laundering and its possible links with organized crime and the financing of terrorism, and to improve information-sharing among financial institutions and agencies in charge of preventing and detecting the laundering of those proceeds.

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[347] United Nations, *Treaty Series*, vol. 520, p. 151.

[348] *Ibid*., vol. 976, p. 105.

[349] *Report of the International Narcotics Control Board for 2005* (United Nations publication, Sales No. E.06.XI.2), para. 208.

The Assembly further urged Member States to cooperate with a view to enhancing the effectiveness of law enforcement action in relation to the use of the Internet to combat drug-related crime, and to consider including provisions in their national drug control plans for the establishment of national networks to enhance their respective capabilities to prevent, monitor, control and suppress serious offences connected with money-laundering and the financing of terrorism.

13. Refugees and displaced persons[350]

(*a*) Executive Committee of the Programme of the United Nations High Commissioner for Refugees[351]

The Executive Committee of the Programme of the United Nations High Commissioner for Refugees was established by the Economic and Social Council in 1958[352] 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), to advise it on international protection issues and to discuss a wide range of other items with UNHCR and its intergovernmental and non-governmental partners. The fifty-seventh plenary session of the Executive Committee was held in Geneva, Switzerland, from 2 to 6 October 2006, during which it adopted two conclusions.[353]

In its first conclusion, entitled "Conclusion on women and girls at risk", the Executive Committee noted that this Conclusion applies to women and girls who are refugees, asylum-seekers or internally displaced persons, assisted and protected by UNHCR, who find themselves in situations of heightened risk, and further that it could also be applied, as appropriate, to returnees of concern to UNHCR. The Executive Committee adopted the Conclusion regarding the identification of women and girls at risk, prevention strategies and individual responses and solutions and recommended, *inter alia,* that UNHCR include a more detailed elaboration of these issues in the UNHCR Handbook on the Protection of Women and Girls.

The Committee also recommended preventive strategies to be adopted by States, UNHCR and other relevant agencies and partners that may include the identification, assessment and monitoring of risks and further listed recommended actions to be taken to respond to the situation of individual women and girls at risk in the short, medium and longer term. It noted that these actions could greatly benefit from partnerships and the development of relevant public policies, supported as appropriate by the international community.

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[350] For complete lists 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 2006* (United Nations publications, Sales No. E.07.V.3 (ST/LEG/SER.E/25)), vol. I, chap. V.

[351] For detailed information and documents relating to this topic generally, see the website of the United Nations Office of the High Commissioner for Refugees at http://www.unhcr.org.

[352] Economic and Social Council resolution 672 (XXV) of 30 April 1958.

[353] For the report of the fifty-seventh session of the Executive Committee, see *Official Records of the General Assembly, Sixty-first Session, Supplement No. 12A* (A/61/12/Add.1).

In its second conclusion, entitled "Conclusion on identification, prevention and reduction of statelessness and protection of stateless persons", the Executive Committee, *inter alia,* urged UNHCR, in cooperation with Governments, international and non-governmental organizations, to strengthen its efforts to support the identification, prevention and reduction of statelessness and to further the protection of stateless persons. On the issue of the identification of statelessness, the Committee, among other things, called on UNHCR to establish a more formal and systematic methodology for information gathering, updating and sharing. The Committee also took note of the cooperation established with the Inter-Parliamentary Union in the field of nationality and statelessness and of the *Nationality and Statelessness: a Handbook for Parliamentarians*[354] which is being used in national and regional parliaments to raise awareness and build capacity among State administrations and civil society.

The Committee also encouraged States to consider examining their nationality laws and other relevant legislation with a view to preventing the occurrence of statelessness and noted the factors from which statelessness may arise. The Committee further stressed the responsibility of the concerned States in the event of State succession to put in place appropriate measures to prevent statelessness. It also encouraged States to accede to the Convention on the Reduction of Statelessness, 1961,[355] and to safeguard the right of every child to acquire a nationality, particularly where the child might otherwise be stateless, bearing in mind article 7 of the Convention on the Rights of the Child, 1989.[356]

Furthermore, the Committee encouraged States to accede to the Convention relating to the Status of Stateless Persons, 1954,[357] and encouraged those States not yet parties to it to treat stateless persons lawfully residing on their territory in accordance with international human rights law, and to consider facilitating their naturalization. Finally, the Committee called on States not to detain persons on the sole basis of their stateless status.

(*b*) Commission on Human Rights / Human Rights Council

In accordance with General Assembly resolution 60/251, the Human Rights Council, which succeeded the Commission on Human Rights, assumed the thematic and country-specific special procedures of the Commission, including on the topic human rights and internally displaced persons.

In January 2006, the Representative of the Secretary-General on the human rights of internally displaced persons, Mr. Walter Kälin, submitted his report[358] to the Commission pursuant to Commission on Human Rights resolution 2005/46, in which he welcomed the recognition of internal displacement by the High-level Plenary Meeting of the sixtieth ses-

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[354] *Nationality and Statelessness: a Handbook for Parliamentarians*, Published by the Inter-Parliamentary Union with the United Nations High Commissioner for Refugees, 2005 (ISBN 92–9142–262–2 (IPU)). For more information on the Inter-Parliamentary Union and its publications, see http://www.ipu.org.

[355] United Nations, *Treaty Series*, vol. 989, p.176.

[356] *Ibid*., vol. 1577, p.3.

[357] *Ibid*., vol. 360, p.130.

[358] E/CN.4/2006/71.

sion of the General Assembly[359] as an issue requiring priority action by the international community and one that should be addressed in accordance with the Guiding Principles on Internal Displacement.[360] The Representative encouraged Governments to prevent and minimize internal displacement on the basis of the Guiding Principles, and in particular to refrain from arbitrary displacement.

(*c*) General Assembly

On 19 December 2006, the General Assembly adopted, on the recommendation of the Third Committee, resolution 61/139 entitled "Assistance to refugees, returnees and displaced persons in Africa", in which it reaffirmed that host States had the primary responsibility to ensure the civilian and humanitarian character of asylum. The Assembly further called upon States to take all necessary measures to ensure respect for the principles of refugee protection and, in particular, to ensure that the civilian and humanitarian nature of refugee camps was not compromised by the presence or the activities of armed elements, or used for purposes that would be incompatible with their civilian character. The Assembly also reiterated the importance of the full implementation of standards and procedures, including the monitoring and reporting mechanism outlined in Security Council resolution 1612 (2005), to better address the specific needs of refugee children and adolescents. Furthermore, the Assembly reaffirmed the right of return and the principle of voluntary repatriation and expressed grave concern at the increasing numbers of internally displaced persons in Africa, recalling in this regard the Guiding Principles on Internal Displacement.

On the same date and on the recommendation of the Third Committee, the General Assembly also adopted resolution 60/137 entitled "Office of the United Nations High Commissioner for Refugees", in which it endorsed the report of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees on the work of its fifty-seventh session. The Assembly reaffirmed the Convention relating to the Status of Refugees, 1951,[361] and the 1967 Protocol thereto[362] as the foundation of the international refugee protection regime and re-emphasized that the protection of refugees, stateless and internally displaced persons was primarily the responsibility of States. The Assembly deplored the *refoulement* and unlawful expulsion of refugees and asylum-seekers, and called upon all States to ensure respect for the principles of refugee protection and human rights. Furthermore, the Assembly affirmed the importance of mainstreaming the protection needs of women and children in the planning and programming of UNHCR, acknowledging that forcibly displaced women and girls could be exposed to particular protection problems. Finally, the Assembly also emphasized the obligation of all States to accept the return of their nationals and urged them to facilitate it.

Equally on 19 December 2006, the General Assembly adopted, on the recommendation of the Third Committee, resolution 61/136, "Enlargement of the Executive Committee of the Programme of the United Nations Office of the High Commissioner for Refugees",

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[359] See General Assembly resolution 60/1 of 16 September 2005 on the "2005 World Summit Outcome", para. 132.

[360] E/CN.4/1998/53/Add.2, annex.

[361] United Nations, *Treaty Series*, vol. 189, p. 137..

[362] *Ibid*., vol. 606, p. 267.

in which the Assembly decided to increase the number of members of the Executive Committee from seventy to seventy-two States.

14. International Court of Justice[363]

(*a*) Organization of the Court

As from 6 February 2006,[364] the composition of the Court is as follows:

President: Rosalyn Higgins (United Kingdom);

Vice-President: Awn Shawkat Al-Khasawneh (Jordan);

Judges: Raymond Ranjeva (Madagascar); Shi Jiuyong (China); Abdul G. Koroma (Sierra Leone); Gonzalo Parra-Aranguren (Venezuela); Thomas Buergenthal (United States); Hisashi Owada (Japan); Bruno Simma (Germany); Peter Tomka (Slovakia); Ronny Abraham (France); Kenneth Keith (New Zealand); Bernardo Sepúlveda-Amor (Mexico); Mohamed Bennouna (Morocco); and Leonid Skotnikov (Russian Federation).

The Registrar of the Court, elected for a term of seven years on 10 February 2000, is Mr. Philippe Couvreur; the Deputy-Registrar, re-elected on 19 February 2001, also for a term of seven years, is Mr. Jean-Jacques Arnaldez.

The Chamber of Summary Procedure, which is established annually in accordance with Article 29 of the Statute to ensure the speedy dispatch of business, is composed as follows:

Members

President Higgins
Vice-President Al-Khasawneh
Judges Parra-Aranguren, Buergenthal and Skotnikov

Substitute Members
Judges Koroma and Abraham.

Regarding the Chamber for Environmental Matters, President Higgins indicated in the annual report of the Court to the General Assembly that since States saw environmental law as part of international law as a whole, and given that no use had been made of the separate Chamber, no elections had been held for its Bench. Nevertheless, parties would still be able to request a chamber under Article 26, paragraph 2, of the Statute of the Court.[365]

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[363] For more information about the Court, see the reports of the International Court of Justice to the General Assembly, *Official Records of the General Assembly, Sixty-first Session, Supplement No. 4* (A/61/4) and *ibid.*, *Sixty-second Session, Supplement No. 4* (A/62/4). Information about the cases before the International Court of Justice during 2006 is contained in chapter VII below.

[364] Following the election held on 7 November 2005 to fill one third of the seats left vacant, Judge Thomas Buergenthal (United States) was re-elected with effect from 6 February 2006; Messrs. Mohamed Bennouna (Morocco), Kenneth Keith (New Zealand), Bernardo Sepúlveda-Amor (Mexico) and Leonid Skotnikov (Russian Federation) were elected with effect from 6 February 2006.

[365] Report of the International Court of Justice to the General Assembly, *Official Records of the General Assembly, Sixty-second Session, Supplement No. 4* (A/62/4), para. 241.

(*b*) Jurisdiction of the Court[366]

On 24 March 2006, Dominica deposited with the Secretary-General of the United Nations a declaration recognizing the compulsory jurisdiction of the Court, which reads as follows:

"The Commonwealth of Dominica hereby accepts the compulsory jurisdiction of the International Court of Justice and makes this Declaration under article 36 (2) of the Statute of the Court.

This seventeenth day of March 2006.

Signature:

[*Signed*] The Honorable Ian DOUGLAS

Attorney General of the Commonwealth of Dominica

and Minister for Legal Affairs

[*Signed*] The Honorable Charles SAVARIN

Minister for Foreign Affairs of the Commonwealth of Dominica"

(*c*) General Assembly

At its sixty-first session, the General Assembly adopted on 26 October 2006, without reference to a Main Committee, decision 61/507, in which it took note of the report of the International Court of Justice for the period from 1 August 2005 to 31 July 2006.

15. International Law Commission[367]

(*a*) Membership of the Commission

The membership of the International Law Commission during the 2002–2006 quinquennium, for the fifty-eighth session of the Commission, is Mr. Emmanuel Akwei Addo (Ghana); Mr. Husain M. Al-Baharna (Bahrain); Mr. Ali Mohsen Fetais Al-Marri (Qatar); Mr. João 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); Ms. Paula Escarameia (Portugal); Mr. Salifou Fomba (Mali); Mr. Giorgio Gaja (Italy); Mr. Zdzislaw Galicki (Poland); Mr. Peter C. R. Kabatsi (Uganda); Mr. Maurice Kamto (Cameroon); Mr. James Lutabanzibwa Kateka (United Republic of Tanzania); Mr. Fathi Kemicha (Tunisia); Mr. Roman Anatolyevitch Kolodkin (Russian Federation); Mr. Martti Koskenniemi (Finland); Mr. William Mansfield (New Zealand); Mr. Michael J. Matheson (United States); Mr. Theodor Viorel Melescanu (Romania); Mr. Djamchid Momtaz (Islamic Republic of

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[366] For more information regarding the States that have made declarations recognizing the compulsory jurisdiction of the Court, see *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2006* (United Nations publications, Sales No. E.07.V.3 (ST/LEG/SER.E/25)), vol. I, chap. I.

[367] Detailed information and documents regarding the work of he Commission may be found on the Commission's website at http://www.un.org/law/ilc/index.htm.

Iran); Mr. Bernd H. Niehaus (Costa Rica); Mr. Didier Opertti Badan (Uruguay); Mr. Guillaume Pambou-Tchivounda (Gabon); Mr. Alain Pellet (France); Mr. Pemmaraju Sreenivasa Rao (India); Mr. Víctor Rodríguez Cedeño (Venezuela); Mr. Eduardo Valencia-Ospina (Colombia);[368] Ms. Hanqin Xue (China); and Mr. Chusei Yamada (Japan).

(*b*) Fifty-eighth session of the Commission

In 2006, the International Law Commission held the first part of its fifty-eighth session from 1 May to 9 June and the second part of the session from 3 July to 11 August 2006 at its seat at the United Nations Office at Geneva.[369] The Commission considered the following topics.

As regards the topic "Diplomatic protection", the Commission considered the seventh report[370] of the Special Rapporteur (Mr. John Dugard), as well as comments and observations received from Governments on the draft articles adopted on first reading in 2004.[371] The Commission subsequently completed the second reading on the topic and decided, in accordance with article 23 of its statute, to recommend to the General Assembly the elaboration of a convention on the basis of the draft articles on Diplomatic Protection.

With regard 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 third report[372] of the Special Rapporteur (Mr. Pemmaraju Sreenivasa Rao). The Commission also had before it comments and observations received form Governments.[373] The Commission decided to refer the draft principles adopted in 2004, on first reading, to the Drafting Committee for a second reading, taking into account the various views on the topic. Subsequently, the Commission adopted on second reading the text of the preamble and a set of eight draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, as well as the commentaries to the aforementioned draft principles. The Commission submitted the draft preamble and principles to the General Assembly and recommended, in accordance with article 23 of its statute, that the Assembly endorse the draft principles by a resolution and urge States to take national and international action to implement them.

Concerning the topic "Shared natural resources", the Commission established a Working Group on Transboundary Groundwaters chaired by Mr. Enrique Candioti, to complete the consideration of the draft articles presented by the Special Rapporteur in his third report.[374] The Commission referred 19 revised draft articles to the Drafting Committee and subsequently adopted on first reading a set of draft articles on the law of trans-

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[368] Elected by the Commission in 2006 to fill the casual vacancy arising from the election of Mr. Bernardo Sepúlveda (Mexico) to the International Court of Justice.

[369] For the report of the International Law Commission on the work of its fifty-eighth session, see *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10).

[370] A/CN.4/567.

[371] A/CN.4/561 and Add.1 and 2. See also A/CN.4/575.

[372] A/CN.4/566.

[373] A/CN/4/562 and Add.1.

[374] A/CN.4/551 and Corr.1 and Add.1.

boundary aquifers, together with commentaries. It decided to transmit the draft articles to Governments for comments and observations. In particular, the Commission would welcome Governments' comments on all aspects of the draft articles and on the commentaries thereto, as well as on the final form of the draft articles.

As regards the topic "Responsibility of international organizations", the Commission considered the fourth report[375] of the Special Rapporteur (Mr. Giorgio Gaja), as well as written comments received from international organizations and Governments.[376] The Commission referred draft articles 17 to 24 and 25 to 29 to the Drafting Committee. Subsequently, the Commission adopted 14 draft articles together with commentaries thereto, dealing with circumstances precluding wrongfulness and with the responsibility of a State in connection with the act of an international organization. The Commission stated that it would welcome comments and observations from Governments and international organizations on draft articles 17 to 30, and their views on a set of questions relating to compensation to an injured party and to breaches by an international organization of an obligation under a peremptory norm of general international law. [377]

Concerning the topic "Reservations to treaties", the Commission considered the second part of the tenth report[378] of the Special Rapporteur (Mr. Alain Pellet) on validity of reservations and the concept of the object and purpose of the treaty, and referred to the Drafting Committee 16 draft guidelines relating to this matter. The Commission also adopted five draft guidelines dealing with validity of a reservation, together with commentaries. Furthermore, the Commission reconsidered two draft guidelines dealing with the scope of definitions and the procedure in case of manifestly invalid reservations, which had been previously adopted, in the light of new terminology. The Rapporteur also submitted its eleventh report[379] and the Commission decided to consider it at its fifty-ninth session in 2007. Furthermore, the Commission recommended that the Secretariat organize a meeting with United Nations experts in the field of human rights to hold a discussion on issues relating to reservations to human rights treaties. In this context, the Commission stated that it would welcome receiving the views of Governments on adjustments that they would consider necessary or useful to introduce in the "Preliminary conclusions of the International Law Commission on Reservations to Normative Multilateral Treaties including Human Rights Treaties", adopted by the Commission at its forty-ninth session.[380]

With regard to the topic "Unilateral acts of States", the Commission considered the ninth report[381] of the Special Rapporteur (Mr. Víctor Rodríguez-Cedeño), which contained 11 draft principles. It reconstituted the Working Group on Unilateral Acts, under the chairmanship of Mr. Alain Pellet, with the mandate to elaborate conclusions and principles on the topic. The Commission adopted a set of 10 Guiding Principles together with commen-

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[375] A/CN.4/564 and Add.1 and 2.

[376] A/CN.4/545, A/CN.4/547, A/CN.4/556 and A/CN.4/568 and Add.1.

[377] See the report of the International Law Commission on the work of its fifty-eighth session, see *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), para. 28.

[378] A/CN.4/558/Add.1 and Corr. 1 and Corr. 2 and Add.2.

[379] A/CN.4/574.

[380] *Yearbook of the International Law Commission, 1997*, vol. II (Part Two) (United Nations publication, Sales No. 99.V.7), p. 57, para. 157.

[381] A/CN.4/569 and Add.1.

taries relating to unilateral declarations of States capable of creating legal obligations, and commended the "Guiding Principles" to the attention of the General Assembly.

Concerning the topic "Effects of armed conflicts on treaties", the Commission considered the second report[382] of the Special Rapporteur (Mr. Ian Brownlie).

Concerning the topic "The obligation to extradite or prosecute (*aut dedere aut judicare*), the International Law Commission considered the preliminary report[383] of the Special Rapporteur (Mr. Zdzislaw Galicki). The Commission stated that it would welcome receiving information from Governments concerning their legislation and practice with regard to this topic, particularly more contemporary ones, including on international treaties, domestic legal regulations, judicial practice and crimes or offences to which the principle is applied.

In relation to the topic "Fragmentation of international law: difficulties arising from the diversification and expansion of international law", the Commission considered the report of the Study Group and took note of its 42 conclusions, which it commended to the attention of the General Assembly. The report and its conclusions were prepared on the basis of an analytical Study finalized by the Chairman of the Study Group (Mr. Martti Koskenniemi), which summarized and analyzed the phenomenon of fragmentation taking account of studies prepared by various members of the Study Group, as well as discussions within the Study Group itself. The Commission requested that the analytical study be made available on its website and be published in its *Yearbook*.

(*c*) Sixth Committee

The Sixth Committee considered the agenda item entitled "Report of the International Law Commission on the work of its fifty-eighth session", at its 9th to 19th and 21st meetings, on 23 October, from 25 to 27 October, on 30 and 31 October and on 1, 3 and 9 November 2006.[384]

The Chairman of the International Law Commission at its fifty-eighth session, Mr. Guillaume Pambou-Tchivounda (Gabon), introduced the various chapters of the Commission's report at the Committee's 9th, 13th, 17th and 18th meetings.

A summary of the discussions on this agenda item may be found in the Topical summary of the discussion held in the Sixth Committee of the General Assembly, during its sixty-first session, prepared by the Secretariat.[385]

At the Committee's 21st meeting, on 9 November 2006, the representative of Romania, on behalf of the Bureau, introduced a draft resolution entitled "Report of the International Law Commission on the work of its fifty-eighth session",[386] which was adopted by the Committee at the same meeting. Furthermore, the representative of Romania, on behalf of

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[382] A/CN.4/570 and Corr.1.

[383] A/CN.4/571.

[384] For the report of the Sixth Committee, see A/61/454. For the summary records, see A/C.6/61/SR.9–19 and 21.

[385] A/CN.4/577 and Add.1 and 2.

[386] A/C.6/61/L.14.

the Bureau, also introduced two draft resolutions entitled "Diplomatic protection"[387] and "Allocation of loss in the case of transboundary harm arising out of hazardous activities",[388] respectively, which were adopted by the Committee at the same meeting.

(*d*) General Assembly

On 4 December 2006, the General Assembly adopted, on the recommendation of the Sixth Committee, three resolutions relating to the work of the International Law Commission, namely resolution 61/34 entitled "Report of the International Law Commission on the work of its fifty-eighth session", resolution 61/35 on "Diplomatic protection" and resolution 61/36 on "Allocation of loss in the case of transboundary harm arising out of hazardous activities".

(*a*) In resolution 61/34, the Assembly took note of the report of the International Law Commission and of the Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations and commended their dissemination. It also took note of the forty-two conclusions of the Commission's Study Group on the topic "Fragmentation of international law: difficulties arising from diversification and expansion of international law", together with the analytical study on which they were based. It invited Governments to provide to the Commission, information on legislation and practice regarding the topic "The obligation to extradite or prosecute (*aut dedere aut judicare*)" and drew their attention to the importance for the Commission of having their views on the various aspects involved in the topics on its agenda, including in particular on the draft articles and commentaries on the law of transboundary aquifers. Furthermore, the Assembly noted that the Commission envisaged a meeting during its fifty-ninth session with United Nations experts in the field of human rights in order to hold a discussion on issues relating to human rights treaties. It also took note of the decision of the Commission to include five topics in its long-term programme of work (Immunity of State officials from foreign criminal jurisdiction; Jurisdictional immunity of international organizations; Protection of persons in the event of disasters; Protection of personal data in the transborder flow of information; and Extraterritorial jurisdiction).

(*b*) In resolution 61/35 entitled "Diplomatic protection", the General Assembly took note of the draft articles on diplomatic protection presented by the Commission, and invited Governments to submit comments concerning the recommendation by the Commission to elaborate a convention on the basis of these draft articles. Furthermore, the Assembly decided to include in the provisional agenda of its sixty-second session an item entitled "Diplomatic protection".

(*c*) The General Assembly, in its resolution 61/36 on "Allocation of loss in the case of transboundary harm arising out of hazardous activities", took note of the principles on the topic presented by the Commission, the text of which is annexed to the said resolution, and commended them to the attention of Governments. The Assembly also decided to include in the provisional agenda of its sixty-second session an item entitled "Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm".

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[387] A/C.6/61/L.15.

[388] A/C.6/61/L.16.

16. United Nations Commission on International Trade Law[389]

(*a*) United Nations Commission on International Trade Law[390]

The General Assembly established the United Nations Commission on International Trade Law (UNCITRAL) at its twenty-first session in 1966,[391] to promote the progressive harmonization and unification of the law of international trade, and requested the Commission to submit an annual report to the Assembly. The Commission began its work in 1968. It originally consisted of 29 Member States representing the various geographic regions and the principal legal systems of the world. Later on, the General Assembly increased the membership of the Commission from 29 to 36 States,[392] and from 36 to 60 States.[393]

Thirty-ninth session of the Commission

UNCITRAL held its thirty-ninth session in New York from 19 June to 7 July 2006.[394]

During the session, the Commission finalized and adopted revised articles[395] of the Model Law on International Commercial Arbitration[396] regarding the interpretation of the Model Law, the form of the arbitration agreement and interim measures, and a recommendation[397] regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.[398] The Commission recommended that all States give favourable consideration to the enactment of the revised articles of the Model Law, when enacting or revising their national laws, and requested the Secretary-General to make all efforts to ensure that the revised articles of the Model Law and the recommendation become generally known and available. The Commission agreed that Working Group II (International arbitration and conciliation) should include the topic of online dispute resolution on its agenda, commence work on a revision of the UNCITRAL Arbitration Rules[399] and consider the implications of electronic communications in the context of the revision of the UNCITRAL Arbitration Rules.

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[389] Detailed information and documents regarding the work of the Commission may be found on the Commission's website at http://www.uncitral.org/.

[390] For the membership of the Commission, see *Official Records of the General Assembly, Sixty-first Session, Supplement No. 17* (A/61/17), chapter II, section B.

[391] General Assembly resolution 2205 (XXI) of 17 December 1966.

[392] General Assembly resolution 3108 (XXVIII) of 12 December 1973.

[393] General Assembly resolution 57/20 of 19 November 2002.

[394] For the report of the Commission's thirty-ninth session, see *Official Records of the General Assembly, Sixty-first Session, Supplement No. 17* (A/61/17).

[395] *Ibid*., annex I.

[396] *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I. The Model Law has been published as a United Nations publication (Sales No. E.95.V.18).

[397] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 17* (A/61/17), annex II.

[398] United Nations, *Treaty Series*, vol. 330, p. 3.

[399] *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17* (A/31/17), para 57.

The Commission took note of the reports of Working Group I (Procurement) on its eighth and the ninth sessions,[400] during which the Working Group had continued its elaboration of proposals for the revision of the Model Law on Procurement of Goods, Construction and Services.[401] The Working Group had considered the topics related to the use of electronic communications and technologies in the procurement process and agreed on the draft revisions to the Model Law and its Guide to Enactment that would be necessary in this context. The Commission noted that the Working Group had decided first to proceed with an in-depth consideration of the proposed revisions to the Model Law and the Guide, addressing the remaining aspects of electronic reverse auctions and the investigation of abnormally low tenders; secondly to take up the lists of framework agreements and suppliers' lists; and thirdly to consider the remaining topics in its work programme. The Commission commended the Working Group for the progress made and the inclusion of novel procurement practices in the Model Law.

With regard to its work on security interests, the Commission took note of the reports of Working Group VI (Security interests) on its eighth, ninth and tenth sessions,[402] during which the Group had continued developing a legislative guide on secured transactions. The Commission approved the substance of the recommendations relating to the draft legislative guide on secured transactions and commended Working Group VI on the progress made in this area. The Commission also requested the Secretariat to prepare, in cooperation with relevant organizations and in particular the World Intellectual Property Organization, a note discussing the scope of possible future work by the Commission on intellectual property financing. It also requested the Secretariat to organize a colloquium on intellectual property financing, ensuring to the maximum extent possible the participation of relevant international organizations and experts from various regions of the world.

The Commission also considered the reports of Working Group III (Transport law) on its sixteenth and seventeenth sessions.[403] During those sessions, the Working Group had proceeded with a second reading of the draft convention on the carriage of goods wholly or partly by sea. It had made progress on issues such as jurisdiction, arbitration obligations of the shipper, delivery of goods, including the period of responsibility of the carrier, the right of control, delivery to the consignee, scope of application and freedom of contract, transport documents and electronic transport records. The Commission took note of concerns raised during its consideration of this topic relating to the treatment in the draft convention of the issues of scope of application and freedom of contract and considered the Working Group to be the proper forum for discussing those substantive points. Furthermore, the Commission agreed that 2008 would be a desirable goal for completion of the draft convention, but that it was not desirable to establish a firm deadline. Due to the complexities and magnitude of the work involved in the preparation of the draft convention, the Commission authorized the Working Group to continue to hold its sessions on the basis of two-week sessions.

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[400] A/CN.9/590 and A/CN.9/595, respectively.

[401] *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 17 and corrigendum* (A/49/17 and Corr. 1), annex I.

[402] A/CN.9/588, A/CN.9/593 and A/CN.9/603, respectively.

[403] A/CN.9/591 and Corr.1 and A/CN.9/594, respectively.

Under the ongoing project approved by the Commission in 1995 to monitor the legislative implementation of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, it agreed that the project should be directed towards the development of a legislative guide to promote a uniform interpretation of the Convention. It reaffirmed that the Secretariat should have flexibility in determining the time frame for completion of the project.

(*b*) Sixth Committee

The Sixth Committee considered the item entitled "Report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session" at its 1st, 2nd and 15th meetings, on 10, 11 and 30 October 2006, respectively.

At the 1st meeting, Mr. Stephen Karangizi (Uganda), Chairman of UNCITRAL at its thirty-ninth session, presented the report of the Commission.

During the debate on this item,[404] several speakers commended the Commission on the progress it had achieved with regard to several topics, in particular on the draft legislative guide on secured transactions, the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, and the adoption of the revised articles of the Model Law on International Commercial Arbitration.

The speakers expressed support for the continuing efforts of the Commission on other topics under consideration and welcomed the work accomplished by its working groups, including those on procurement and transport law. Delegations also welcomed the possible future areas of work, namely, intellectual property law, electronic commerce, insolvency law and commercial fraud.

Several speakers welcomed the convening of an UNCITRAL congress in 2007 to review the results of the past and current work programmes as well as to elaborate topics for future work.

At the 15th meeting, the representative of Austria, on behalf of other sponsor delegations, introduced a draft resolution entitled "Report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session".[405] Furthermore, the representative of Malaysia, on behalf of the Bureau, introduced a draft resolution entitled "Revised articles of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, and the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York on 10 June 1958".[406]

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[404] For a more exhaustive summary of the debate of the Sixth Committee with regard to this topic, see the website of the Sixth Committee (http://www.un.org/ga/sixth/) and the summary records (A/C.6/61/SR.1, 2 and 15).

[405] A/C.6/61/L.7.

[406] A/C.6/61/L.8.

At the same meeting, after orally revising the former draft resolution, the Committee adopted the two draft resolutions.[407]

(*c*) General Assembly

On 4 December 2006, the General Assembly adopted, on the recommendation of the Sixth Committee, resolution 61/32 entitled "Report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session", in which it took note of the report of the Commission on the work of its thirty-ninth session, commended UNCITRAL for the progress made in its work on arbitration, secured transactions, procurement law, transport law and insolvency law and reaffirmed the importance, in particular for developing countries, of the technical assistance work of the Commission in the area of international trade law reform and development. Furthermore, the Committee also adopted resolution 61/33, "Revised articles of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, and the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958", in which it recommended that all States give favourable consideration to the enactment of the revised articles of the Model Law, or the revised Model Law on International Commercial Arbitration, when they enact or revise their laws. It further requested the Secretary-General to make all efforts to ensure that the revised articles of the Model Law and the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the 1958 Convention become generally known and available.

17. Legal questions dealt with by the Sixth Committee and other related subsidiary bodies of the General Assembly

During the sixty-first 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 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 2006.[408] The resolutions of the General Assembly described in this section were all adopted during its sixty-first session on 4 December 2006 on the recommendation of the Sixth Committee.[409]

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[407] For the report of the Sixth Committee, see A/61/453.

[408] 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 http://www.un.org/ga/sixth and http:// www.un.org/law/lindex.htm. For a more exhaustive summary of the debate of the Sixth Committee with regard to the various topics, see the website of the Sixth Committee http://www.un.org/ga/sixth/ and the summary records.

[409] The Sixth Committee adopts drafts 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 under the various agenda items. The Sixth Committee reports also contain information concerning the relevant documentation on the consideration of the items by the Sixth Committee.

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

The item entitled "Comprehensive review of the whole question of peacekeeping operations in all their aspects" was included in the agenda of the General Assembly at its nineteenth session, in February 1965, when the Assembly established the Special Committee on Peacekeeping Operations that was to undertake a comprehensive review of this issue.[410]

At its resumed fifty-ninth session, in June 2005, the General Assembly requested the Special Committee to include the issue of a comprehensive review of a strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations in its report to the General Assembly at its sixtieth session.[411]

In June 2006, at its resumed sixtieth session, the General Assembly decided, *inter alia,* to defer to the sixty-first session the consideration of the report of the Group of Legal Experts,[412] which had been established by the Secretary-General to provide advice on how to ensure that United Nations staff and experts on mission would never be effectively exempt from the consequences of criminal acts committed at their duty station, or unjustly penalized, in accordance with due process. This was to provide the Sixth Committee with the opportunity to consider the report submitted pursuant to resolutions 59/300 of 22 June 2005 and 60/263 of 6 June 2006.

(i) *Sixth Committee*

The Sixth Committee considered this agenda item at its 20th and 21st meetings, on 6 and 9 November 2006, respectively.

During the debate,[413] delegations commended the Group of Legal Experts for its report on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations. While some favoured a holistic approach to the topic, others were of the view that the Sixth Committee should focus on the recommendations contained in chapter IV of the report of the Group of Legal Experts, relating to the jurisdiction of States other than the host State and, in particular, on issues concerning the draft convention annexed to the report.

Several speakers stressed the importance of providing peacekeeping personnel with adequate protection, including by bringing to justice perpetrators of crimes against such personnel. The need to ensure accountability for serious crimes committed by peacekeeping personnel, while respecting the human rights of the alleged offender was also stressed. It was suggested that clear regulations be adopted so as to ensure that peacekeepers' immunities would not lead to impunity.

Further, several delegations expressed support for a draft convention addressing jurisdictional and related issues, including the establishment of a Working Group to that effect. The view was expressed that priority should be given to the jurisdiction of the host State,

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[410] General Assembly resolution 2006 (XIX) of 18 February 1965.

[411] General Assembly resolution 59/300 of 22 June 2005.

[412] A/60/980.

[413] For the summary records, see A/C.6/61/SR.20 and 21.

whose legal capacity should be developed if necessary, while others urged States to enact extraterritorial legislation allowing the prosecution of crimes committed by their nationals in peacekeeping operations. Reference was further made to the difficulty in gathering sufficient evidence for prosecution and the need to improve coordination and transparency between the host country, the United Nations and the troop-contributing countries was stressed. Further suggestions included: encouraging the development of United Nations investigative capability; emphasizing the importance of preventive measures, and providing appropriate training for peacekeepers. The view was expressed that recommendations and policies in this context should have universal application and not be limited to peacekeepers from developing countries.

At the 21st meeting, on 9 November 2006, the representative of Liechtenstein, on behalf of the Sixth Committee Bureau, introduced a draft resolution entitled "Criminal accountability of United Nations officials and experts on mission",[414] and orally revised it. On the same day, the Committee adopted the draft resolution, as orally revised.[415]

(ii) *General Assembly*

In its resolution 61/29 entitled "Criminal accountability of United Nations officials and experts on mission", the General Assembly decided to establish an Ad Hoc Committee open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency, for the purpose of considering the report of the Group of Legal Experts, in particular its legal aspects. It was also decided that the Ad Hoc Committee would meet from 9 to 13 April 2007 and would report on its work to the General Assembly at its sixty-second session, under the item entitled "Criminal accountability of United Nations officials and experts on mission".

(*b*) Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts

This item was included in the agenda of the thirty-seventh session of the General Assembly, in 1982, at the request of Denmark, Finland, Norway and Sweden[416] and is considered by the General Assembly on a biennial basis.

(i) *Sixth Committee*

The Sixth Committee considered this item at its 8th and 21st meetings, on 18 October and 9 November 2006.

During the debate,[417] delegations recalled the importance of the Geneva Conventions and the Protocols Additional thereto. States were encouraged to accept the competence of the International Fact-Finding Commission, pursuant to article 90 of the First Additional

[414] A/C.6/61/L.13.

[415] For the report of the Sixth Committee, see A/61/450.

[416] A/37/142.

[417] For the summary records, see A/C.6/61/SR.8 and 21.

Protocol.[418] Some delegations welcomed the adoption of the Third Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem, 2005.[419] They also commended the International Committee of the Red Cross (ICRC) on its role in the codification, development and dissemination of international humanitarian law, as well as its activities in providing technical assistance and monitoring compliance with international humanitarian law.

Some delegations welcomed the study of ICRC on customary international humanitarian law,[420] while others expressed concern about its methodology, and in particular its conclusion that certain rules contained in the Additional Protocols have become customary international law for all States. It was cautioned that political considerations should not impede the impartial development or application of international humanitarian law.

Finally, some speakers referred to and welcomed the report of the Secretary-General, containing information regarding national initiatives designed to implement and disseminate international humanitarian law.[421]

At the 21st meeting, on 9 November 2006, the representative of Sweden introduced a draft resolution entitled "Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts",[422] which was adopted on the same day.[423]

(ii) *General Assembly*

In its resolution 61/30 entitled "Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts", the General Assembly, *inter alia,* welcomed the universal acceptance of the Geneva Conventions of 1949, and noted the trend towards a similarly wide acceptance of the two Additional Protocols of 1977. Furthermore, the Assembly called upon all States that had not yet done so, to consider becoming parties to the Convention for the Protection of Cultural Property in the Event of Armed Conflict[424] and the two Protocols thereto, and to other relevant treaties on international humanitarian law relating to the protection of victims of armed conflicts. It also welcomed the advisory service activities of ICRC in supporting efforts made by Member States to take legislative and administrative action to implement international humanitarian law and in promoting the exchange of information on those efforts between Governments. Finally, it called upon States to consider becoming parties to the Optional

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[418] United Nations, *Treaty Series*, vol. 1125, p. 3.

[419] Adopted on 8 December 2005 at the Diplomatic Conference on the adoption of the Third Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the adoption of an Additional Distinctive Emblem (Protocol III).

[420] Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict. *International Review of the Red Cross*, vol. 87, No. 857, March 2005.

[421] A/61/222 and Add.1.

[422] A/C.6/61/L.9.

[423] For the report of the Sixth Committee, see A/61/451.

[424] United Nations, *Treaty Series*, vol. 249, p. 215.

Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts.[425]

(*c*) Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives

This item was included in the agenda of the thirty-fifth session of the General Assembly, in 1980, at the request of Denmark, Finland, Iceland, Norway and Sweden.[426] The General Assembly considered the item annually at its thirty-sixth to forty-third sessions, and biennially thereafter.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 8th and 20th meetings, on 18 October and 6 November 2006.[427]

During the debate, delegations welcomed the report of the Secretary-General containing information on the status of instruments relevant to the protection, security and safety of diplomatic and consular missions and representatives, a summary of the information received from States on serious violations involving diplomatic and consular missions and representatives and actions taken against offenders, as well as views of States with respect to any measures needed to enhance the protection, security and safety of diplomatic and consular missions and representatives.[428] States condemned the continuing acts of violence against the security and safety of diplomatic and consular missions and their representatives and pledged to respect their obligations under international law and to continue to take all the necessary measures in order to protect those missions and representatives within their territories. A point was also made that the General Assembly, in its resolution on the topic, should call upon States to take the necessary preventive measures, including in cases of armed conflict, and to ensure proper investigation, with the United Nations participation, of such acts of violence.

At its 20th meeting, on 6 November 2006, the representative of Finland, on behalf of other sponsor delegations, introduced a draft resolution entitled "Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives",[429] which was adopted on the same day.[430]

(ii) *General Assembly*

In resolution 61/31 entitled "Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives", the

[425] *Ibid*., vol. 2173, p. 222.

[426] A/35/142.

[427] For the summary records, see A/C.6/61/SR.8 and 20.

[428] A/61/119 and Add.1 and 2.

[429] A/C.6/61/L.5.

[430] For the report of the Sixth Committee, see A/61/452.

Assembly, *inter alia,* urged States to strictly observe, implement and enforce the applicable principles and rules of international law governing diplomatic and consular relations, including during a period of armed conflict, and, in particular, to ensure, the protection, security and safety of the missions and representatives, including of international intergovernmental organizations, officially present in territories under their jurisdiction. States were also urged to prevent any acts of violence against them and to ensure, with the participation of the United Nations where appropriate, that such acts are fully investigated with a view to bringing offenders to justice. Furthermore, it urged States to take all appropriate measures to prevent any abuse of diplomatic or consular privileges and immunities, in particular serious abuses, including those involving acts of violence.

Finally, the Assembly requested all States to report to the Secretary-General serious violations of the protection, security and safety of diplomatic and consular missions and representatives as well as missions and representatives with diplomatic status to international intergovernmental organizations. Furthermore, the State in which the violation took place—and, to the extent possible, the State where the alleged offender is present—was requested to report to the Secretary-General on measures taken to bring the offender to justice and to communicate the final outcome of the proceedings.

(*d*) 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, in 1974, the General Assembly decided to establish an Ad Hoc Committee on the Charter of the United Nations to consider any specific proposal 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.[431] At its thirtieth session, in 1975, the General 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.[432] Since its thirtieth session, the General Assembly has reconvened the Special Committee every year.

The Special Committee met at United Nations Headquarters from 3 to 13 April 2006. The issues considered by the Special Committee during this session were: maintenance of international peace and security, in particular the questions of sanctions, the legal basis for United Nations peacekeeping operations, and the strengthening of the role of the Organization; peaceful settlement of disputes; proposals concerning the abolition of the Trusteeship Council; the publications *Repertory of Practice of United Nations Organs* and

[431] General Assembly resolution 3349 (XXIX) of 17 December 1974.

[432] General Assembly resolution 3499 (XXX) of 15 December 1975.

the *Repertoire of the Practice of the Security Council;* and working methods of the Special Committee and the identification of new subjects.

In its report, the Special Committee made several recommendations to the General Assembly.[433] The Special Committee recommended, *inter alia,* that, at its sixty-first session, the General Assembly adopt a draft resolution relating to the commemoration of the sixtieth anniversary of the International Court of Justice,[434] and that the value of considering measures with a view to ensuring the revitalization of the General Assembly in order to effectively and efficiently exercise the functions assigned to it under the Charter be recognized.[435] It further recommended that the Assembly encourage voluntary contributions to the trust funds concerning the *Repertory* and the *Repertoire* and that cooperation with academic institutions for the preparation of studies for both publications be enhanced.[436] Finally, the Special Committee also submitted to the General Assembly its decision to adopt a proposal relating to the question of its working methods.[437]

At its 250th meeting, on 12 April 2006, the Special Committee adopted the report of its 2006 session.

(ii) *Sixth Committee*

The Committee considered the item at its 5th, 6th, 12th and 22nd meetings, on 16 and 27 October and on 16 November 2006. The Chairman of the Special Committee during its 2006 session introduced its report.

During the debate,[438] speakers commended the important role played by the International Court of Justice on the peaceful settlement of disputes and welcomed the adoption by the Special Committee of a draft resolution on the commemoration of the sixtieth anniversary of the Court. The adoption by the Special Committee of the proposal on the working methods of the Special Committee was also generally welcomed.

Regarding the question of sanctions, some delegations expressed the view that sanctions constituted an important tool for the maintenance of international peace and security. However, it was emphasized that sanctions should be clearly defined, targeted, limited in duration and periodically reviewed. Moreover, some delegations emphasized that sanctions should only be imposed in conformity with rules of international law, including the Charter, and as a last resort after all peaceful means of settlement of disputes under Chapter VI of the Charter have been exhausted. Some delegations noted with approval that all Security Council sanctions are currently targeted and that no State had requested assistance during the previous year. However, some delegations stressed the need to establish an effective mechanism for listing and de-listing procedures, while acknowledging the efforts already made inside and outside the United Nations in this regard.

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[433] *Official Records of the General Assembly, Sixty-first session, Supplement No. 33* (A/61/33), para. 15.

[434] *Ibid.*, para. 51.

[435] *Ibid.*, para 38.

[436] *Ibid.*, para 60.

[437] *Ibid.*, para. 73.

[438] For the summary records, see A/C.6/61/SR.5, 6, 12 and 22.

Some delegations called for the effective implementation of Article 50 of the Charter by the establishment of a compensation mechanism for third States affected by the application of sanctions. Other delegations noted that while Article 50 allowed affected States to present their concerns, it did not require any specific action by the Council. Nonetheless, they noted that some other measures could be envisioned to address these concerns, including by international financial institutions.

At the 12th meeting, on 27 October 2006, the representative of Egypt, on behalf of the Bureau, introduced a draft resolution entitled "Commemoration of the sixtieth anniversary of the International Court of Justice",[439] which was adopted on the same day by acclamation.

At the 22nd meeting, on 16 November 2006, the representative of Egypt introduced a draft resolution entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization",[440] which was adopted at the same meeting.[441]

(iii) *General Assembly*

In its resolution 61/37 entitled "Commemoration of the sixtieth anniversary of the International Court of Justice", the General Assembly solemnly commended the Court for the important role that it has played as the principal judicial organ of the United Nations over the past sixty years in adjudicating disputes among States, and recognized the value of its work. The Assembly also encouraged States to continue considering recourse to the Court by means available under its Statute, and called upon States that had not yet done so to consider accepting the jurisdiction of the Court in accordance with its Statute.

The General Assembly also adopted resolution 61/38 entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization", in which it took note of the report of the Special Committee. Furthermore, the Assembly requested, *inter alia,* that during its next session in 2007, the Special Committee continue its consideration of all proposals concerning the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the Organization, continue to consider, on a priority basis, the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter, keep on its agenda the question of the peaceful settlement of disputes between States, and continue to consider, on a priority basis, ways and means of improving its working methods and enhancing its efficiency with a view to identifying widely acceptable measures for future implementation. Furthermore, the Assembly requested the Special Committee to consider, as appropriate, any proposal referred to it by the General Assembly in the implementation of the decisions of the High-level Plenary Meeting of the sixtieth session of the Assembly in September 2005 that concern the Charter and any amendments thereto.

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[439] A/C.6/61/L.6.

[440] A/C.6/61/L.10 and Corr.1.

[441] For the report of the Sixth Committee, see A/61/455.

(*e*) The rule of law at the national and international levels

The item entitled "The rule of law at the national and international levels" was included in the provisional agenda of the sixty-first session of the General Assembly at the request of Liechtenstein and Mexico.[442]

(i) *Sixth Committee*

The Sixth Committee considered the item at its 6th, 7th, 20th and 22nd meetings, on 16 and 17 October and on 6 and 16 November 2006, respectively.

During the debate,[443] delegations expressed support for the decision to include this item on the agenda. It was considered, however, that the Committee should be cautious not to duplicate work undertaken elsewhere. Some delegations stressed the importance of defining the concept of "rule of law" and determining its scope, in particular at the international level.

Delegations emphasized the important role of the International Court of Justice, as well as of other international tribunals, in the peaceful settlement of disputes. They called for a wider acceptance by States of the compulsory jurisdiction of the Court and for increased contributions to the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice. It was suggested that the Organization should make more extensive use of the power to request advisory opinions, and that the Secretary-General should be authorized to request such opinions. Some delegations also urged the Court to consider ways and means of conducting its work in a more efficient manner.

Some delegations expressed concern that there had been no follow-up on the proposals made in the 2004 report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict situations,[444] in particular with a view to securing adequate resources for post-conflict rule of law activities.

The Secretary-General was also urged by some delegations to create a dedicated rule of law assistance unit, as suggested in the 2005 World Summit Outcome,[445] which should be established at an adequately high level in the Secretariat, taking into account the central role and function of the Office of Legal Affairs in this field. It was suggested that its responsibilities could include disseminating information regarding rule of law initiatives, coordinating technical assistance, identifying new trends in international law and studying areas for follow-up action by the Sixth Committee from the 2005 World Summit Outcome.

Some delegations considered that, during the current session, the Committee should focus on establishing modalities for the consideration of the item, with a view to examining it next year. While some delegations considered that the Committee should continue its comprehensive debate on the scope of this item, others supported the proposal that one or two specific subtopics be chosen for discussion for the following session.

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[442] A/61/142.

[443] For the summary records, see A/C.6/61/SR.6, 7, 20 and 22.

[444] S/2004/616.

[445] General Assembly resolution 60/1 of 16 September 2005, para. 134 (e).

At the 22nd meeting, on 16 November 2006, the Chairman of the Sixth Committee, on behalf of the Bureau, introduced a draft resolution entitled "The rule of law at the national and international levels",[446] which was orally revised and subsequently adopted on the same day.[447]

(ii) *General Assembly*

In its resolution 61/39 entitled "The rule of law at the national and international levels", the General Assembly requested the Secretary-General to prepare an inventory of the current activities of the various organs, bodies, offices, departments, funds and programmes within the United Nations system devoted to the promotion of the rule of law at the national and international levels for submission at its sixty-third session, and to submit an interim report thereon to the General Assembly for its consideration at its sixty-second session. Furthermore, the Assembly also requested the Secretary-General to prepare and submit, at its sixty-third session, a report identifying ways and means for strengthening and coordinating the activities listed in the inventory, with special regard to the effectiveness of assistance that may be requested by States in building capacity for the promotion of the rule of law at the national and international levels. It also urged the Secretary-General, as a matter of priority, to submit the report on the establishment of a rule of law assistance unit within the Secretariat, in conformity with the 2005 World Summit Outcome, and recommended that, as from the sixty-second session and after consultations among Member States, the Sixth Committee annually choose one or two subtopics to facilitate a focused discussion for the subsequent session, without prejudice to the consideration of the item as a whole.

(*f*) **Measures to eliminate international terrorism**

(i) *Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996*

In 1996, the General Assembly, in resolution 51/210, decided to establish an Ad Hoc Committee to elaborate an international convention for the suppression of terrorist bombings and, subsequently, an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments, and thereafter to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism.

In accordance with General Assembly resolution 60/43 of 8 December 2005, the Ad Hoc Committee held its tenth session from 27 February to 3 March 2006 in order to continue to elaborate the draft comprehensive convention on international 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.

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[446] A/C.6/61/L.18.

[447] For the report of the Sixth Committee, see A/61/456.

At its 37th plenary meeting, on 3 March 2006, the Ad Hoc Committee adopted its report, containing, *inter alia,* an informal summary of the Chairman of the Ad Hoc Committee on the consultations and contacts held during the session in relation to the two items on its agenda and a proposal made in connection with the elaboration of a draft comprehensive convention on international terrorism.[448]

(ii) *Sixth Committee*

The item relating to the elimination of international terrorism was included in the agenda of the twenty-seventh session of the General Assembly, in 1972, further to an initiative of the Secretary-General.[449] The General Assembly continued its consideration of the item biennially at its thirty-fourth to forty-eighth sessions, and annually thereafter.

The Sixth Committee considered this item at its 2nd to 5th, 7th, 21st and 23rd meetings, on 11, 12, 13, 16 and 17 October and on 9 and 21 November 2006. At the 2nd meeting, on 11 October 2006, the Chairman of the Ad Hoc Committee introduced the report of the Ad Hoc Committee. At its 7th meeting, on 17 October 2006, the Committee decided to establish a Working Group to continue to carry out the mandate of the Ad Hoc Committee as contained in General Assembly resolution 60/43 of 8 December 2005. The Working Group held one plenary meeting, as well as informal contacts with interested delegations. At the 21st meeting of the Sixth Committee, on 9 November, the Chairman of the Working Group gave an oral report on the meeting of the Working Group and on the results of his bilateral contacts with delegations.[450]

During the debate in the Sixth Committee,[451] delegations reiterated their unequivocal and strong condemnation of terrorism in all its forms and manifestations, by whomsoever, wherever and for whatever purposes committed. The respect for the rule of law, in particular international humanitarian law, human rights law and refugee law, in the fight against terrorism was emphasized. Some delegations stressed the fact that there was no link between terrorism and a particular religion, culture or society, and that the underlying causes of terrorism should be addressed. Several delegations emphasized the necessity for States to ratify and implement the various existing international counter-terrorism instruments and recalled initiatives undertaken on a national and regional basis as part of the global fight against terrorism.

Furthermore, delegations welcomed the adoption of the United Nations Global Counter-Terrorism Strategy[452] and called for its effective implementation. This important step reaffirmed the pivotal role of the General Assembly in countering terrorism. In addition, some delegations also welcomed the report of the Secretary-General "Uniting against terrorism: recommendations for a Global Counter-Terrorism Strategy"[453] and noted the continuing value of some recommendations contained therein. It was also emphasized by

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[448] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 37* (A/61/37).

[449] A/8791 and Add.1 and Add.1/Corr.1

[450] A/C.6/61/SR.21.

[451] For the summary records, see A/C.6/61/SR.2 to 5, 7, 21 and 23.

[452] General Assembly resolution 60/288 of 8 September 2006.

[453] A/60/825.

some delegations that the Strategy would have to be updated on a regular basis, and that the role of the General Assembly in this regard remained ongoing. It was noted that the Strategy represented a compromise text and could be further strengthened.

Several delegations also commented on the draft comprehensive convention on international terrorism and on the proposal concerning the convening of 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 manifestation. In addition, references were made to other proposals, including the establishment of an international counter-terrorism centre.

At the 23rd meeting, on 21 November 2006, the representative of Canada, on behalf of the Bureau, introduced a draft resolution entitled "Measures to eliminate international terrorism",[454] which was orally revised and amended and subsequently adopted on the same day.[455]

(iii) *General Assembly*

In its resolution 61/40, "Measures to eliminate international terrorism", the General Assembly, *inter alia,* called upon all Member States, the United Nations and other appropriate international organizations to implement the United Nations Global Counter-Terrorism Strategy in all its aspects at the international and national levels without delay, including through mobilizing resources and expertise. It also recalled the pivotal role of the Assembly in following up the implementation and updating of the Strategy.

In addition, the Assembly reiterated that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that might be invoked to justify them.

Furthermore, the Assembly also reiterated its call upon States to refrain from financing, encouraging, providing training for or otherwise supporting terrorist activities, and urged States to ensure that any person within their territory that wilfully provides or collects funds for the benefit of persons who commit, or facilitate in the commission of terrorist acts are punished by penalties consistent with the grave nature of such acts. The Assembly also reminded States of their obligations under relevant international conventions and protocols and Security Council resolutions, to ensure that perpetrators of terrorist acts are brought to justice. It called upon all States to enact, as appropriate, the domestic legislation necessary to implement those conventions and protocols, to ensure that the jurisdiction of their courts enables them to bring to trial perpetrators of terrorist acts, and to cooperate with and provide support and assistance to other States and relevant international and regional organizations to that end.

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[454] A/C.6/61/L.17.

[455] For the report of the Sixth Committee, see A/61/457.

(*g*) Administration of justice at the United Nations

The item "Administration of justice at the United Nations" was included in the agenda of the sixty-first session of the General Assembly pursuant to Assembly resolution 59/283 of 13 April 2005 and decision 60/551 B of 8 May 2006.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 5th and 22nd meetings, on 16 October and 16 November 2006.

During the debate,[456] delegations commended the report of the Redesign Panel on the United Nations system of administration of justice[457] and looked forward to the report of the Secretary-General on this issue. The need to reform the United Nations system of administration of justice was generally recognized, although the view was also expressed that changes should be considered carefully and should enjoy wide support.

Delegations stressed the inefficiency of the current system, in particular its slowness, its complexity and its costs, and favoured the creation of a transparent, effective and timely system of administration of justice that would comply with internationally recognized standards of justice, thus ensuring the protection of employees' rights while enhancing accountability. It was also suggested that the Sixth Committee continue its consideration of the item during a resumed session in March 2007, after the publication of the Secretary-General's report.

At the 22nd meeting, on 16 November 2006, the Chairman of the Sixth Committee read out a revised version of a draft decision entitled "Administration of justice at the United Nations",[458] which was adopted, as orally revised by the Chairman, on the same day.[459]

(ii) *General Assembly*

In its decision 61/511, the Assembly took note of the fact that the Sixth Committee had decided to hold a resumed session of 10 meetings in March 2007, to continue the consideration of the report of the Redesign Panel on the United Nations system of administration of justice, taking into account the comments that were to be made by the Secretary-General on that report.

(*h*) 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 was established by the General Assembly at its twenty-sixth session in 1971 to deal with a wide range of issues concerning the relationship between the United Nations and the United States as the host country,

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[456] For the summary records, see A/C.6/61/SR.5 and 22.

[457] A/61/205 and Corr. 1 (Arabic only).

[458] A/C.6/61/L.12.

[459] For the report of the Sixth Committee, see A/61/460.

including questions pertaining to security of the missions and their personnel, privileges and immunities, immigration and taxation, housing, transportation and parking, insurance, education and health, as well as public relations issues with New York as the host city.[460] In 2006, the Committee was composed of the following 19 Member States: Bulgaria, Canada, China, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, France, Honduras, Hungary, Iraq, Libyan Arab Jamahiriya, Malaysia, Mali, Russian Federation, Senegal, Spain, United Kingdom and United States.

In accordance with General Assembly resolution 60/24 of 23 November 2005, the Committee reconvened in 2006 and held five meetings: its 227th meeting, on 18 January 2006; its 228th meeting, on 17 May 2006; its 229th meeting, on 2 August 2006; its 230th meeting, on 29 September 2006; and its 231st meeting, on 30 October 2006.

During its 2006 session, the Committee dealt with the following topics: transportation (use of motor vehicles, parking and related matters), acceleration of immigration and customs procedures, entry visas issued by the host country, host country travel regulations and questions of privileges and immunities. At its 231st meeting, the Committee approved various recommendations and conclusions dealing with the said matters.[461]

(ii) *Sixth Committee*

The Sixth Committee considered this item at its 21st meeting, on 9 November 2006. The Chairman of the Committee on Relations with the Host Country introduced the report of the Committee.

During the debate,[462] appreciation was expressed for the work and the report of the Host Country Committee as well as for the continued efforts of the host country to fulfil its obligations under the Convention on the Privileges and Immunities of the United Nations[463] and the Headquarters Agreement,[464] to accord full facilities for the normal functioning of the missions accredited to the United Nations. Hope was expressed that various issues raised in the Committee would be resolved consistent with international law. With respect to the Parking Programme for Diplomatic Vehicles adopted in 2002, support was expressed for a review of its implementation. Reference was also made to instances of travel restrictions and delay in the issuance of entry visas.

The host country confirmed its commitment to fulfil its obligations under international law and highlighted, in particular, the success achieved in the implementation of the Parking Programme. It was also pointed out that restrictions on private non-official travel of members of certain missions did not violate international law and that the host country had modified or removed some restrictions.

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[460] General Assembly resolution 2819 (XXVI) of 15 December 1971.

[461] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 26* (A/61/26).

[462] For the summary records, see A/C.6/61/SR.21.

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

[464] See resolution 169 (II) of 31 October 1947.

At the same meeting, the representative of Cyprus, on behalf of other sponsor delegations, introduced a draft resolution entitled "Report of the Committee on Relations with the Host Country",[465] which was adopted on the same day.[466]

(iii) *General Assembly*

In its resolution 61/41, the General Assembly endorsed the recommendations and conclusions made by the Committee on Relations with the Host Country in its report.[467]

The Assembly, *inter alia,* considered that the maintenance of appropriate conditions for the delegations and missions accredited to the United Nations was in the interest of the United Nations and all Member States, and appreciated the efforts made by the host country to that end. The Assembly urged the host country to continue to take appropriate action, such as training of police, security, customs and border control officers, with a view to maintaining respect for diplomatic privileges and immunities. If violations occurred, the host country was urged to ensure that such cases were properly investigated and remedied, in accordance with applicable law.

In addition, the Assembly noted the problems experienced by some permanent missions in connection with the implementation of the Parking Programme and decided to remain seized of the matter, with a view to continuously ensuring the proper implementation of the Programme in a manner that was fair, non-discriminatory, effective and therefore consistent with international law. The Assembly also took note of the decision of the Committee to conduct another review of the implementation of the Programme during the sixty-first session of the General Assembly.

Furthermore, the General Assembly 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 had been removed, and requested the host country to consider removing the remaining travel restrictions.

The General Assembly also noted that the Committee anticipated that the host country would enhance its efforts to ensure the issuance, in a timely manner, of entry visas to representatives of Member States to travel to New York on United Nations business, as well as to facilitate the participation of representatives of Member States in other United Nations meetings.

Finally, it noted that a number of delegations had requested shortening the time frame applied by the host country for issuance of entry visas to representatives of Member States, since this time frame posed difficulties for the full-fledged participation of Member States in United Nations meetings.

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[465] A/C.6/61/L.11.

[466] For the report of the Sixth Committee, see A/61/461.

[467] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 26* (A/61/26), para. 86.

(*i*) Observer status in the General Assembly

(i) *Sixth Committee*

The Committee considered requests for observer status in the General Assembly for the Organization of the Petroleum Exporting Countries (OPEC) Fund for International Development, for the Indian Ocean Commission and for the Association of Southeast Asian Nations at its 5th, 10th and 20th meetings, on 16 and 25 October and on 6 November 2006.[468]

At the 5th meeting of the Sixth Committee, the delegation of Saudi Arabia, on behalf of other sponsor delegations, introduced a draft resolution on the "Observer status for the OPEC Fund for International Development in the General Assembly";[469] the representative of Mauritius, on behalf of other sponsor delegations, introduced a draft resolution entitled "Observer status for the Indian Ocean Commission in the General Assembly";[470] and the representative of the Philippines, on behalf of other sponsor delegations, introduced a draft resolution entitled "Observer status for the Association of Southeast Asian Nations in the General Assembly",[471] which were all adopted at the 10th meeting.[472]

(ii) *General Assembly*

In its resolutions 61/42, 61/43 and 61/44, the General Assembly granted observer status to the OPEC Fund for International Development, the Indian Ocean Commission and the Association of Southeast Asian Nations, respectively.

18. Ad hoc international criminal tribunals[473]

(*a*) Organization of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)

(i) *Organization of ICTY*

The Chambers were composed of 16 permanent judges, including 2 judges of ICTR, serving in the Tribunal's Appeal Chamber and 12 *ad litem* Judges.

The 14 permanent judges were: Fausto Pocar (President, Italy), Kevin Parker (Vice-President, Australia), Patrick Lipton Robinson (Presiding Judge, Jamaica), Carmel A. Agius (Presiding Judge, Malta), Alphonsus Martinus Maria Orie (Presiding Judge, the

[468] For the summary records, see A/C.6/61/SR.5, 10 and 20.

[469] A/C.6/61/L.3.

[470] A/C.6/61/L.2.

[471] A/C.6/61/L.4.

[472] For the report of the Sixth Committee, see A/61/462.

[473] 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 Judgments and Decisions of the ICTY and ICTR is contained in chapter VII below.

Netherlands), Mohamed Shahabuddeen (Guyana), Liu Daqun (China), Theodor Meron (United States of America), Wolfgang Schomburg (Germany), O-gon Kwon (Republic of Korea), Jean-Claude Antonetti (France), Iain Bonomy (United Kingdom), Christine Van den Wyngaert (Belgium) and Bakone Melema Moloto (South Africa).

The *ad litem* judges reporting during this period were Joaquín Martín Canivell (Spain), Vonimbolana Rasoazanany (Madagascar), Bert Swart (Netherlands), Krister Thelin (Sweden), Hans Henrik Brydensholt (Denmark), Albin Eser (Germany), Claude Hanoteau (France), Janet Nosworthy (Jamaica), Frank Höpfel (Austria), Stefan Trechsel (Switzerland), Árpád Prandler (Hungary), Antoine Kesia-Mbe Mindua (Democratic Republic of the Congo), Ali Nawaz Chowhan (Pakistan), Tsvetana Kamenova (Bulgaria), Kimberly Prost (Canada) and judge Ole Bjorn Støle (Norway).

(ii) *Organization of ICTR*

The Chambers were composed of 16 permanent judges and a maximum of 9 *ad litem* judges.

The composition of the Tribunal during 2006 was as follows:

President: Erik Møse (Norway).
Vice-President: Arlette Ramaroson (Madagascar)

Trial Chamber I: Erik Møse (Norway), Jai Ram Reddy (Fiji) and Sergei Alekseevich Egorov (Russian Federation);

Trial Chamber II: William H. Sekule (United Republic of Tanzania), Arlette Ramaroson (Madagascar) and Asoka J. N. de Silva (Sri Lanka);

Trial Chamber III: Khalida Rashid Khan (Pakistan), Inés Mónica Weinberg de Roca (Argentina) and Dennis C. M. Byron (Saint Kitts and Nevis).

The *ad litem* judges reporting during this period were Florence Rita Arrey (Cameroon); Solomy Balungi Bossa (Uganda); Robert Fremr (Czech Republic); Taghreed Hikmat (Jordan); Karin Hökborg (Sweden); Gberdao Gustave Kam (Burkina Faso); Flavia Lattanzi (Italy); Lee Gacuiga Muthoga (Kenya); Seon Ki Park (Republic of Korea); and Emile Francis Short (Ghana).

(iii) *Composition of the Appeals Chamber*

In 2006, the seven-member bench of the shared Appeals Chamber of the two Tribunals was composed of Fausto Pocar (Italy), Mohamed Shahabuddeen (Guyana), Mehmet Güney (Turkey), Liu Daqun (China), Andrésia Vaz (Senegal), Theodor Meron (United States), and Wolfgang Schomburg (Germany).

(*b*) General Assembly

On 9 October 2006, the Assembly adopted decisions 61/505 and 61/506 in which it took note of the respective annual reports of ICTR[474] and ICTY.[475]

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[474] A/61/265-S/2006/658.

[475] A/61/271-S/2006/666.

On 22 December 2006, the General Assembly also adopted, on the recommendation of the Fifth Committee, resolution 61/241 entitled "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" and resolution 61/242 entitled "Financing 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".

(*c*) Security Council

On 28 February 2006, the Security Council, adopted resolution 1660 (2006) in which it decided to amend article 12 and article 13 *quater* of the Statute of the International Tribunal for the Former Yugoslavia, allowing the Secretary-General, at the request of the President, to appoint reserve judges from among the *ad litem* judges, to be present at each stage of a trial to which they have been appointed and to replace a judge if that judge is unable to continue sitting. In this context, it also increased the number of serving *ad litem* judges from 9 to 12.

During 2006, the Security Council also adopted several other resolutions by which it extended the term of office of some permanent and *ad litem* judges in the two Tribunals.[476]

19. 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 Jerusalem* — Establishment of a registrar of damage

On 17 October 2006, the Secretary-General submitted his report[477] pursuant to General Assembly resolution ES-10/15 relating to the "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 Jerusalem*" of 24 March 2004. In the said report, the Secretary-General described the institutional framework required for the establishment of a register of damage caused to all natural or legal persons concerned in connection with paragraphs 152 and 153 of the Advisory Opinion,[478] as requested by the Assembly in resolution ES-10/15, including the purpose, legal nature and lifespan of the Register, the legal status, structure and functions of the office of the Register, as well as the process of registration.

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[476] ICTY: Security Council resolution 1668 (2006). ICTR: Security Council resolutions 1684 (2006), 1705 (2006) and 1717 (2006).

[477] A/ES-10/361.

[478] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136.

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

1. Universal Postal Union

During the Council of Administration session held from 9 to 20 October 2006, guidelines on cooperation between the Universal Postal Union (UPU) and the business community were adopted.[479] These guidelines should serve to prevent or limit the risks involved in cooperation with businesses and to clarify the roles of the UPU International Bureau and other UPU bodies in this connection. They also supplement the United Nations guidelines in this area.[480]

In accordance with the decisions of the 23rd Universal Postal Congress, held in Bucharest (Romania) from 15 September to 5 October 2004,[481] the Seventh Additional Protocol to the Constitution and the new versions of the General Regulations, the Convention and the Postal Payment Services Agreement came into force on 1 January 2006.

An agreement was signed on 6 April 2006 with Kenya on the organization of the next Universal Postal Congress, to be held in Nairobi in 2008.

In 2006, UPU obtained observer status with the International Organization for Migration, making it possible to strengthen cooperation between the two organizations, particularly on the question of migrants' international fund transfers (remittances). UPU also received *ad hoc* observer status in the World Trade Organization (WTO), making it a recognized partner of WTO on matters relating to postal services.

Lastly, in September 2006, UPU signed a Memorandum of Understanding with the United Nations Development Programme (UNDP) for the management of its participation in the United Nations Junior Professional Officers Programme.

2. International Labour Organization

(*a*) Resolutions adopted by the International Labour Conference (Maritime) during its 94th session

At the 94th session of the International Labour Conference (Maritime), held in Geneva, Switzerland, from 7 to 23 February 2006, the following resolutions were adopted:

(a) Resolution concerning the promotion of the Maritime Labour Convention;

(b) Resolution concerning the promotion of opportunities for women seafarers;

(c) Resolution concerning the Joint International Maritime Organization/ International Labour Organization (IMO/ILO) Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers;

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[479] CA C 2 2006–Doc 11.

[480] Guidelines on Cooperation between the United Nations and the Business Community. Issued by the Secretary-General of the United Nations, 17 July 2000 (http://www.un.org/partners/business/otherpages/guide.htm).

[481] UPU 23rd Congress, Bucharest, Romania, 2004.

(d) Resolution concerning the development of guidelines for port State control;

(e) Resolution concerning the development of international standards of medical fitness for crew members and other seafarers;

(f) Resolution concerning the promotion of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185);

(g) Resolution concerning information on occupational groups;

(h) Resolution concerning seafarers' welfare;

(i) Resolution concerning maintenance of the Joint Maritime Commission;

(j) Resolution concerning addressing the human element through international cooperation between United Nations specialized agencies;

(k) Resolution concerning recruitment and retention of seafarers;

(1) Resolution concerning the effects on the industry of piracy and armed robbery;

(m) Resolution concerning the development of guidelines for flag State inspection;

(n) Resolution concerning occupational safety and health;

(o) Resolution concerning search and rescue capability;

(p) Resolution concerning social security; and

(q) Resolution concerning the practical implementation of the issues of certificates on entry into force.

(*b*) Recommendations and resolutions adopted by the International Labour Conference during its 95th session

At the 95th session of the International Labour Conference, held in Geneva, Switzerland, from 31 May to 16 June 2006, the following recommendations and resolutions were adopted:

(i) Recommendations[482]

(a) R197: Promotional Framework for Occupational Safety and Health Recommendation, 15 June 2006; and

(b) R198: Employment Relationship Recommendation, 15 June 2006.

(ii) Resolutions

(a) Resolution concerning asbestos;

(b) Resolution concerning the employment relationship;

(c) Resolution concerning the role of ILO in technical cooperation;

(d) Resolution concerning an amendment to the Standing Orders of the International Labour Conference;

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[482] For the text of the Recommendations, see http://www.ilo.org/ilolex/english/recdisp1.htm.

(e) Resolution concerning the Financial Report and Audited Financial Statements for 2004–2005;

(f) Resolution concerning the arrears of contributions of Azerbaijan;

(g) Resolution concerning the scale of assessments of contributions to the budget for 2007; and

(h) Resolution concerning the composition of the Administrative Tribunal of the International Labour Organization.

3. International Civil Aviation Organization

(*a*) Membership

Following the Declaration of Independence adopted by the National Assembly of Montenegro on 3 June 2006, Serbia advised the International Civil Aviation Organization (ICAO) by a note dated 7 June that the membership of the state union of Serbia and Montenegro in ICAO was continued by the Republic of Serbia. Serbia subsequently advised ICAO by a note dated 13 July that the Republic of Serbia continued to exercise its rights and honour its commitments deriving from international treaties concluded by Serbia and Montenegro and requested that the Republic of Serbia be considered a party to all international agreements in force instead of Serbia and Montenegro. As a result, Serbia is continuing as a party to the Convention on International Civil Aviation, 1944,[483] and related Protocols (effective from 13 January 2001), as well as other treaties to which Serbia and Montenegro was party.

(*b*) Conventions and agreements

On 1 March 2006, the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment, signed at Cape Town on 16 November 2001 (Cape Town Protocol),[484] entered into force, and the Convention on International Interests in Mobile Equipment, signed at Cape Town on 16 November 2001 (Cape Town Convention),[485] became effective at the same time, as applied to aircraft equipment.

(*c*) Major legal developments

(i) Work programme of the Legal Committee and legal meetings

Pursuant to a decision of the ICAO Council taken on 6 December, the general work programme of the Legal Committee was as follows:

(a) Compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks. The initial title of this item (Consideration

[483] 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, vol. 2216, p. 483 and vol. 2320, p. 79.

[484] ICAO Doc. 9794.

[485] ICAO Doc. 9793.

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[486]) was modified by the Council to better reflect the actual work of the Special Group on the Modernization of the Rome Convention of 1952. The latter held its third, fourth and fifth meetings from 13 to 17 February, 19 to 23 June and 30 October to 3 November 2006, respectively.

(b) Acts or offences of concern to the international aviation community and not covered by existing air law instruments. The Secretariat Study Group on Aviation Security Conventions held two meetings, the first from 28 to 29 June 2006 and the second from 25 to 27 October 2006. The Study Group identified a number of issues which could be addressed through appropriate ICAO legal provisions or measures. It will hold its third meeting in January 2007. Furthermore, the Secretariat continued to closely observe the law-making process within the United Nations in this field.

(c) Consideration, with regard to communications, navigation, surveillance/air traffic management (CNS/ATM) systems, including global navigation satellite systems (GNSS), of the establishment of a legal framework. In line with ICAO Assembly resolution A35–3, which invites Contracting States to consider using regional organizations to develop mechanisms necessary to address any legal or institutional issues, some regions continued their study on their respective initiatives, but no concrete results were formally communicated to ICAO. The Secretariat continued to monitor this item.

(d) International interests in mobile equipment (aircraft equipment). The International Registry entered into operation on 1 March 2006, the date on which the Convention on International Interests in Mobile Equipment and the Protocol thereto on Matters specific to Aircraft Equipment, signed at Cape Town on 16 November 2001, entered into force. Also on the same date, the Council assumed its role as Supervisory Authority of the International Registry. In June, the members of the Commission of Experts of the Supervisory Authority of the International Registry were appointed, and the Commission held its first meeting from 6 to 8 November. The Commission, *inter alia,* prepared its Rules of Procedure and reviewed a number of changes proposed by the Registrar to the Regulations and Procedures for the International Registry,487 and recommended their approval by the Council. The Council approved them in December, during its 179th session.

(e) Review of the question of the ratification of international air law instruments. The Secretariat continued to take administrative action necessary to encourage ratification, 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. To assist States in their ratification of these treaties, administrative packages were updated and posted on the ICAO-Net.

(f) United Nations Convention on the Law of the Sea—Implications, if any, for the application of the Chicago Convention, 1944, its annexes and other international air law instruments. The Secretariat pursued its monitoring activities in this area. By invitation of the Government of the Republic of Korea, a regional legal seminar was held in Seoul from 8 to 12 May 2006.

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[486] ICAO Doc. 7364. United Nations, *Treaty Series,* vol. 310, p. 181.

[487] ICAO Doc. 9864.

(ii) *Assistance in the field of aviation war risk insurance*

By the end of the year, Contracting States representing 46.24 per cent of annual contribution rates had indicated their intention to participate in Globaltime, among which 34.06 per cent under certain conditions.[488] 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.[489] The Secretariat continued monitoring developments in this area.

4. Food and Agricultural Organization of the United Nations

(*a*) Constitutional and general legal matters

The Council of the Food and Agriculture Organization of the United Nations (FAO), after considering the report of the eightieth session of the Committee on Constitutional and Legal Matters,[490] adopted at its hundred and thirty-first session resolution 1/131,[491] by which it approved the revised Statutes of the Western Central Atlantic Fishery Commission with a view to strengthening the Commission to promote the effective conservation, management and development of living marine resources throughout the Western Central Atlantic region.

(*b*) Legislative matters

(i) Activities connected with international meetings

- Pre-Conference Workshop and Conference Sharing the Fish (Freemantle, Australia, January 2006);
- Workshop on Urban and Peri-urban Forestry and Greening in West and Central Asia (FAO, Rome, 5–7 April 2006);
- Review Conference on the United Nations Fish Stock Agreement (New York, May 2006);
- 10th session of the Sub-Committee on Fish Trade of the Committee on Fisheries (Santiago de Compostela, 30 May-2 June 2006);
- IMO/FAO Secretariats Meeting on Cooperation Matters (London, May-June 2006);
- FAO Workshop on Marine Protected Areas and Fisheries Management–Review of Issues and Considerations (FAO, Rome, June 2006);
- World Water Week (Stockholm, 20–26 August 2006);
- "The Right to Water", International Development Law Organization session as part of a course on the Legal Framework of Water Resource Management (Rome, September 2006);

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[488] ICAO Assembly resolution A35–24.

[489] ICAO Assembly resolution A33–20 and State letter LE 4/64–03/65 dated 30 June 2003.

[490] For the report of the eightieth session of the Committee on Constitutional and Legal Matters, CL 131/5.

[491] Report of the hundred and thirty-first session of the FAO Council (Rome, 20–25 November 2006) (CL 131/REP), para. 95.

- Committee on Fisheries Sub-Committee on Aquaculture (New Delhi, September 2006);
- Expert Seminar on the Right to Food organized by the Max Planck Institute on Comparative Public and International Law jointly with FAO and the Food first Information and Action Network (Heidelberg, September 2006);
- FAO Expert Consultation on the Use of Monitoring Systems and Satellites for Fishing, Monitoring and Surveillance (FAO, Rome, October 2006);
- Workshop on Small Islands Developing States groundwater and inter-linkages (Port of Spain, 6–9 November 2006);
- FAO Expert Consultation on Deep Sea Fisheries (Bangkok, 21–23 November 2006);
- Conference on Institutions for Sustainable Development in the Face of Global Environmental Change (Nusa Dua, 4–8 December 2006);
- Conference on Food Safety and Dietary Risk Assessment (Institut Fresenius, Cologne, 11–12 December 2006); and
- United Nations—Water Decade Office for Capacity Development Scoping Workshop (Bonn, 13–14 December 2006).

(ii) Legislative assistance and advice

During 2006, legislative assistance and advice were given to the following countries and entities on the following topics:

Agrarian legislation

Angola, Barbados, Bolivia, Brazil, Burkina Faso, Cape Verde, Chile, China, Timor-Leste, Ghana, Guinea-Bissau, Liberia, Lithuania, Madagascar, Malawi, Mauritania, Mozambique, Nepal, Nicaragua, Paraguay, Peru, Sao Tome and Principe, Serbia, Sierra Leone, the Sudan, Tanzania and Uruguay.

Water legislation

Ghana, Kyrgyzstan, Lebanon and Malta. In addition, legal assistance was provided through a regional project in the Nile Basin countries (Burundi, Democratic Republic of the Congo, Egypt, Eritrea, Ethiopia, Kenya, Rwanda, Sudan, Tanzania and Uganda), and through a regional project in the Iullemeden Aquifer System (Mali, Niger and Nigeria).

Veterinary legislation

Belize, Benin, Burkina Faso, Côte d'Ivoire, El Salvador, Ghana, Guinea-Bissau, Kenya, Lithuania, Mali, Niger, Togo, Uganda and Viet Nam.

Plant protection legislation, including pesticides control

Belize, Benin, Burkina Faso, Cambodia, Côte d'Ivoire, Ecuador, El Salvador, Ghana, Guinea-Bissau, Kenya, Kyrgyzstan, Lao People's Democratic Republic, Mali, Mozambique, Myanmar, Namibia, Niger, Panama, Swaziland, Togo, Uganda and Viet Nam.

Seed legislation and plant variety protection

Benin, Burkina Faso, Cameroon, Cape Verde, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo and Uzbekistan.

Food legislation

Albania, Antigua and Barbuda, Azerbaijan, Bahamas, Barbados, Belize, Benin, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Cambodia, Cook Islands, Côte d'Ivoire, Croatia, Democratic Republic of the Congo, Dominica, El Salvador, Fiji, Ghana, Grenada, Guatemala, Guinea-Bissau, Guyana, Haiti, Jamaica, Kenya, Kiribati, Lao People's Democratic Republic, Macedonia, Mali, Marshall Islands, Nauru, Niger, Nigeria, Niue, Palau, Papua New Guinea, Republic of Moldova, Romania, Saint Kitts and Nevis, Saint Lucia, Samoa, Viet Nam and Kosovo.

Fisheries and aquaculture legislation

Cameroon, Chad, Chile, Colombia, Costa Rica, Cuba, Ecuador, Gabon, Guatemala, Indonesia, Kiribati, Marshall Islands, Mexico, Micronesia (Federated States of), Nauru, Nigeria, Pakistan, Palau, Papua New Guinea, Philippines, Trinidad and Tobago, Venezuela and Viet Nam.

Forestry and wildlife legislation

Afghanistan, Algeria, Angola, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Costa Rica, Croatia, Cyprus, Democratic Republic of the Congo, Timor-Leste, Equatorial Guinea, Gabon, Honduras, Hungary, Kenya, Macedonia, Niger, Panama, Senegal, Serbia and the Sudan.

Biodiversity and genetic resources legislation

Armenia, Bolivia, Jamaica, Madagascar, Sri Lanka and Uzbekistan.

Biotechnology legislation

Democratic Republic of the Congo and Nicaragua.

General agricultural issues (trade, markets and economic reform)

Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Georgia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe and the African Caribbean and Pacific countries Secretariat.

(iii) *Legislative research and publications*

In 2006, the following legislative studies were published by the FAO Legal Office:

- *Integrated coastal management law—Establishing and strengthening national legal frameworks for integrated coastal management;*
- Modern water rights—Theory and practice;
- Directrices en materia de legislación alimentaria (nuevo modelo de ley de alimentos para países de tradición jurídica romano-germánica); and
- Marco analítico para el desarrollo de un sistema legal de la seguridad de la biotecnología moderna (bioseguridad).

The FAO Legal Office also published the following legal papers online in 2006:

- *The impact of agriculture-related WTO agreements on the domestic legal framework in Tanzania;*
- The "genuine link" concept in responsible fisheries: legal aspects and recent developments;
- *International mechanisms for the protection of local agricultural brands in Central and Eastern Europe;*
- Reforma agraria y evolución del marco jurídico del agua en Chile;
- The impact of agriculture-related WTO agreements on the domestic legal framework in the Kingdom of Nepal;
- The impact of agriculture-related WTO agreements on the domestic legal framework of the Republic of Kazakhstan;
- Legal issues in international agricultural trade: WTO compatibility and negotiations on economic partnership agreements between the European Union and the African, Caribbean and Pacific States;
- Legal issues in international agricultural trade: the evolution of the WTO Agreement on agriculture from its Uruguay Round origins to its post-Hong Kong directions;
- Le texte révisé de la Convention africaine sur la conservation de la nature et des ressources naturelles: petite histoire d'une grande rénovation;
- Cadre juridique international et national de protection des mangroves;
- La Convention-cadre sur la protection et le développement durable des Carpates;
- Le droit forestier du Vietnam; and
- Estudio técnico-legal sobre las capacidades fitosanitarias de los países miembros del organismo internacional regional de sanidad agropecuaria.

(iv) *Collection, translation and dissemination of legislative information*

The FAO Legal Office maintains a database (FAOLEX) of national legislation and international agreements concerning food and agriculture, including fisheries, forestry and water. FAOLEX is designed to provide online access to the full texts of food and agriculture legislation worldwide and offers access to legislation, regulations and international agreements in sixteen different areas related to fields of expertise of FAO. It is a compre-

hensive research tool which can be used to identify the state of national laws on natural resource management and, at the same time, compare legislation in different countries. In 2006, the search system in FAOLEX was enriched by introducing Arabic as the fourth language in addition to English, French and Spanish, for keyword and category search. Records in the database are provided in English, French or Spanish according to the language of communication used by the originating country. In 2006, 7,000 records were entered into FAOLEX.

Together with FAOLEX, the FISHLEX (Coastal State Requirements for Foreign Fishing) and WATERLEX (International agreements on international water sources) databases were also updated in 2006. The collection of the world's constitutions was updated under the FAOLEX website. With regard to ECOLEX (information service on environmental law, operated jointly by FAO, the International Union for Conservation of Nature and the United Nations Environment Programme), the bases of the new portal were further developed for the successful merger of the different systems and the updating of the cross-database search covering all databases included in the portal.

5. United Nations Educational, Scientific and Cultural Organization

(*a*) International regulations[492]

(i) Entry into force of instruments previously adopted

Within the period covered by this review, the Convention for the Safeguarding of the Intangible Cultural Heritage, adopted in Paris on 17 October 2003, entered into force on 20 April 2006.[493]

(ii) Proposal concerning the preparation of new instruments

In accordance with 33 C/Resolution 45 of the 33rd session of the General Conference and 174 EX/Decision 43 of the 174th session of the Executive Board, the 1st session of the Intergovernmental meeting (category II) was held to draw up a draft of the declaration of principles relating to cultural objects displaced in connection with the Second World War (United Nations Educational, Scientific and Cultural Organization (UNESCO) Headquarters, 19 to 21 July 2006). This meeting amended and adopted in a first reading the draft of the principles to be contained in the draft declaration, which had been elaborated and adopted by the 13th session of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation.[494] Owing to time constraints the preamble was not examined.[495]

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[492] The text of all UNESCO standard-setting instruments, as well as the list of States parties to the conventions and agreements, can be found on the website of UNESCO at: http://www.unesco.org/legal instruments.

[493] United Nations, *Treaty Series,* vol. 2368, p. 3.

[494] For the report of the 13th session of the Intergovernmental Committee, see doc. 33 C/REP/15.

[495] For the report of the 1st session of the Intergovernmental meeting, see doc. 175 EX/17.

(*b*) Human rights

Examination of cases and questions concerning the exercise of human rights coming within the fields of competence of UNESCO

The Committee on Conventions and Recommendations met in private sessions at UNESCO Headquarters from 28 to 31 March 2006 and from 27 to 30 September 2006, in order to examine communications which had been transmitted to it in accordance with decision 104 EX/3.3 of the Executive Board.[496]

At its April 2006 session, the Committee examined 31 communications of which 4 were examined with a view to determining their admissibility or otherwise, 21 as to their substance, and 6 were examined for the first time. Two communications were struck from the list because they were considered as having been settled. The examination of 29 communications was deferred. The Committee presented its report to the Executive Board at its 174th session.[497]

At its September 2006 session, the Committee examined 29 communications of which 4 were examined with a view to determining their admissibility, 25 as to their substance. No new communications were submitted to the Committee. Nine communications were struck from the list because they were considered as having been settled. Two communications were suspended. The examination of 18 communications was deferred. The Committee presented its report to the Executive Board at its 175th session.[498]

(*c*) Copyright activities[499]

In 2006 the activities of UNESCO in the field of copyright and related rights concentrated mainly on:

(i) Information and public awareness activities

(a) E-Copyright bulletin. The online publication of *UNESCO Copyright Bulletin* in six languages—Arabic, Chinese, English, French, Russian and Spanish—is a free-of-charge electronic legal journal. The *Copyright Bulletin* contains doctrinal articles, information on national laws (new laws, revisions and updates), and on the activities of UNESCO in this field (meeting reports, summaries of undertaken actions, etc.), participation of States in various conventions and recently published specialised books.

(b) Collection of national copyrights laws. This tool, essential for professionals, students and researchers, endeavours to provide access to legal texts. It comprises more than 120 national copyright and related rights legislations of UNESCO member States.

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[496] 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.

[497] For the Committee's report, see doc. 174 EX/44.

[498] For the Committee's report, see doc. 175 EX/19.

[499] For more information on copyright activities, see http://www.unesco.org/culture/copyright.

(ii) *Training and teaching activities*

Teaching of copyright law has been pursued by the existing network of UNESCO Copyright Chairs. UNESCO has contributed to the reinforcement of some Chairs and to the development of national expertise in the field of copyright law by supplying the Chairs with pedagogical material on this topic or supporting them in publishing their own work.

Furthermore, copyright training seminars were organized in different parts of the world.

(iii) Prevention of privacy through training

In the framework of the Anti-Piracy Training for Trainers project, launched in 2004, UNESCO organised a subregional seminar for copyright enforcement officials from ten countries in Southern Africa in Windhoek, Namibia, in September 2006, and contributed to the organisation of national follow-up anti-piracy seminars in some of the beneficiary countries. The objective of these events was to provide knowledge and expertise in the field of copyright law and intellectual piracy to large circles of national enforcement officers involved in anti-piracy activities, such as police, customs and the judiciary, etc., as well as Government officials and law-makers.

6. International Maritime Organization

(*a*) Membership

Montenegro became a member of the International Maritime Organization (IMO) in 2006. As of 31 December 2006, the membership of the Organization stood at 167.

(*b*) Review of legal activities of IMO

The Legal Committee (the Committee) held its ninety-first session from 24 to 28 April 2006[500] and its ninety-second session from 16 to 20 October 2006.[501]

(i) *Draft convention on wreck removal*

The Committee, at its ninety-first and ninety-second sessions, worked on this item as a priority and concluded its consideration of a draft convention on the removal of wrecks, using as a basis for discussion, a revised draft text prepared at the Committee's request by the Secretariat, in consultation with the lead delegation (the Netherlands).

At its ninety-second session, the Committee concentrated its attention on unresolved issues, and in particular on the provisions on scope of application, settlement of disputes, compulsory insurance, liability in respect of acts of terrorism and application of the convention to non-party States. The Committee, thereafter, undertook an article-by-article

[500] For the report of the ninety-first session of the Legal Committee, see doc. LEG 91/12.

[501] For the report of the ninety-second session of the Legal Committee, see doc. LEG 92/13.

reading of the draft convention, with the aim of finalizing the draft text for submission to a diplomatic conference.

With respect to the scope of application, a slight majority of delegations that spoke favoured retaining the basic text, which provides for application in the exclusive economic zone, but which allows States parties to extend the provisions of the convention relating to compulsory insurance or evidence of financial security to "waters subject to their jurisdiction" (draft article 13, paragraph 2). Some delegations favoured amending the scope of application of the convention as a whole by including the territorial sea in the definition of "Convention area" on the basis, *inter alia,* that most wrecks are located there. Still, other delegations stated their view in favour of an "opt-in" extension of the entire convention to the territorial sea, on grounds, *inter alia,* that this would promote uniformity and facilitate the implementation of the convention, while allowing States freedom of choice.

After considering several further options, without reaching a consensus in respect of any of them, the Committee decided to retain the basic text in draft article 13, paragraph 2, in square brackets.

The Committee noted that negotiations among interested delegations would continue with a view to achieving the widest possible consensus on this issue at the Diplomatic Conference. In particular, it noted a proposal to continue negotiations by correspondence and at a meeting to be hosted by the United Kingdom in March 2007.

The Committee replaced article 16 of the basic text on settlement of disputes with the text contained in document LEG 92/WP.6/Rev.1, as amended. Several delegations, however, expressed their opposition to this on the grounds that the task of the working group had merely been to explore alternative solutions and that they preferred retention of the basic text.

The Committee decided to incorporate gross tonnage as the unit of measurement of ships required to maintain compulsory insurance. On the basis that small ships could represent a significant security and environmental risk, several delegations suggested a figure of either 300 or 500 gross tonnage as a threshold for ships to be included under the compulsory insurance provisions.

The Committee also decided to incorporate the model certificate of insurance as an annex to the draft convention and to insert, in the model certificate, a reference to the gross tonnage of the ship.

The Committee discussed whether terrorism should be explicitly included as a blanket defence exonerating the liability of the registered owner from liability under the draft convention. Although some delegations supported this inclusion, the Committee decided to retain the basic text unchanged.

The Committee was unable to adopt a proposal to add an additional paragraph to article 17 to the effect that nothing in the prospective convention should prejudice the rights and obligations of non-party States, in accordance with the United Nations Convention on the Law of the Sea[502] and under the customary international law of the sea. Nevertheless, the Committee agreed to include in the report of the session its understand-

[502] United Nations, *Treaty Series,* vol. 1833, p. 3.

ing that, in accordance with the Vienna Convention on the Law of Treaties of 1969,[503] the wreck removal convention will not bind, and will not be applicable to, non-party States which have not consented to be bound by it.

The Committee undertook an article-by-article reading of the basic text, focusing on editorial changes developed intersessionally by the Secretariat, in conjunction with the lead delegation.

The Committee approved the basic text of the draft convention on the removal of wrecks, as amended by the decisions adopted by the Committee at this session, and instructed the Secretariat to prepare and circulate the text of the draft convention to enable its consideration by a diplomatic conference, to be held at the Headquarters of the United Nations Office at Nairobi, from 14 to 18 May 2007.

The Committee authorized the Secretariat to edit the text in line with the style and language of other treaties adopted by the Organization.

(ii) Provision of financial security

Progress report on the work of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers

The Committee, at its ninety-first and ninety-second sessions, took note of the information submitted by the Secretariat regarding the progress report on the work of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers.

The Committee, at its ninety-second session, also took note of the information provided by the representative of the ILO Secretariat to the effect that ILO, with the active cooperation of IMO and the financial assistance of the International Ship Suppliers' Association, had begun to operate the Abandonment Database. The Database contained 40 reported cases, 22 of which had been agreed as resolved, including three fishing vessels. None of the reported cases appeared to have found a solution during the last months prior to the Committee's session.

In connection to this, the Committee concurred with the recommendation of the Joint Working Group that maritime administrations of the vessels listed in the Abandonment Database should do their utmost, as a matter of urgency, to facilitate the resolution of those cases.

The Committee further noted information provided to it by the Chairman of the Joint Working Group concerning the outcome of the International Labour Conference, which, at its 94th (Maritime) session in February 2006, had adopted the Maritime Labour Convention of 2006, accompanied by a resolution in which it considered that the Convention did not address many of the provisions set out in the Guidelines on Ship-owners' Responsibilities in respect of Contractual Claims for Personal Injury to or Death of Seafarers and the Guidelines on Provision of Financial Security in case of Abandonment, adopted by both the IMO Assembly and the ILO Governing Body, and which recommended to

[503] United Nations, *Treaty Series,* vol. 1155, p. 331.

both IMO and ILO that the way forward would be for the Group to develop a standard, accompanied by guidelines, which could be included in the Convention, or another existing instrument, at a later date.

The Legal Committee encouraged the Joint Working Group to continue its work. The Joint Secretariat was invited to fix a date for the seventh session of the Joint Working Group, in consultation with the Chairman.

(iii) *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*[504]

a. Athens Protocol–development of guidelines to implement resolution A.988 (24)

The Committee, at its ninety-second session, considered submissions aimed at providing an alignment between liability and insurance in respect of terrorism-related claims, with a view to encouraging the P&I Clubs to meet their non-war liabilities, and allay some of the concerns of Club boards about the potential effects of entry into force of the 2002 Athens Protocol on market capacity.

The Committee adopted a relevant reservation and associated Guidelines for implementation of the Athens Convention, which were developed pursuant to Assembly resolution A.988 (24), aimed at enabling States to ratify the 2002 Athens Protocol[505] with a reservation concerning a limitation of liability for carriers and a limitation for compulsory insurance for acts of terrorism, taking into account the current state of the insurance market.

The Committee noted that, although this was not a perfect solution, the reservation and Guidelines would put States in a position to ratify the 2002 Protocol and would afford passengers a better cover.

b. Bareboat chartered vessels

The Committee, at its ninety-first session, noted a submission by the Comité Maritime International (CMI) advising against amending the definition of "owner" and "registered owner" in the 1992 Protocol[506] to amend the International Convention on Civil Liability for Oil Pollution Damage of 1969[507] and the 1992 Protocol[508] amending the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND Convention) of 1971,[509] the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous

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[504] United Nations, *Treaty Series,* vol. 1463, p. 19.

[505] 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, is contained in Doc. LEG/CONF 13/20 of 19 November 2002.

[506] United Nations, *Treaty Series,* vol. 1956, p. 255.

[507] United Nations, *Treaty Series,* vol. 973, p. 3.

[508] United Nations, *Treaty Series,* vol. 1953, p. 330.

[509] United Nations, *Treaty Series,* vol. 1110, p. 57.

and Noxious Substances by Sea (HNS Convention),[510] and the Draft Wreck Removal Convention to include bareboat charterers as this might create unforeseen problems arising out of the channelling of liability.

(iv) *Fair treatment of seafarers in the event of a maritime accident*

The Committee, at its ninety-second session, considered several submissions on the revision of the Guidelines on fair treatment of seafarers in the event of a maritime accident, adopted by the Committee at its ninety-first session.

In line with its decision at LEG 91 to establish an *Ad Hoc* Working Group to review the Guidelines, taking into account concerns expressed by some delegations about their application and interpretation, the Committee established an *Ad Hoc* Working Group to review the Guidelines.

In reviewing the report of the Group, the Committee noted that it had generally been divided in its conclusions. It also noted that, while one delegation had expressed disappointment that the proposals contained in document LEG 92/6/2 had not been agreed to, since the Guidelines contained legal errors and ambiguities, which meant that its country would be unable to implement them in full and seafarers might be misled about their rights, several other delegations had expressed the view that, while improvements could be made to the Guidelines, it was premature at this time to introduce amendments, the circulation of which might send a confusing signal to the maritime industry. Experience with the existing Guidelines was needed before a full review and revision could be undertaken.

The Committee took note of the suggestion by some delegations that the Joint IMO/ILO *Ad Hoc* Expert Working Group was the body which should monitor the implementation of the Guidelines and address concerns, by identifying where there may be a compelling need to make an amendment. The proposals of that Group could be reported back to both the IMO Legal Committee and the ILO Governing Body, which could then review the proposals in light of their unique expertise.

Taking into account the lack of consensus in the *Ad Hoc* Working Group, and in the absence of sufficient time to examine the issues and the terms of reference for the Joint IMO/ILO *Ad Hoc* Expert Working Group in more detail, and the apparent lack of urgency to reconvene that Joint Group, the Committee decided to retain this matter on its agenda for its next session.

(v) Places of refuge

The Committee, at its ninety-first session, noted the information provided by the CMI on work underway by the International Working Group of the CMI on the preparation of a draft instrument which would create a rebuttable presumption, first, that a ship in distress had a right of access to a place of refuge, and secondly, that a coastal State which granted access to a place of refuge should have immunity from suit.

Some delegations restated the view that there was no need at present to draft a convention dedicated to places of refuge; and that the more urgent priority would be to imple-

[510] LEG/CONF.10/8/2 of 9 May 1996.

ment all the existing IMO liability and compensation conventions. Others expressed the view that existing liability and compensation regimes already adequately covered places of refuge and that the subject should be removed from the Committee's agenda. Other delegations, however, were of the view that, because of the importance of the subject matter, this item should be retained on the Committee's agenda.

The Committee agreed to revisit this issue at its ninety-second session in October when it would be considering its planned outputs for the next biennium.

(vi) *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)*[511]

The Committee, at its ninety-second session, noted information provided by the Secretariat to the effect that there had been no change in the status of the Convention since the last session and that, with one exception, it had received no information on contributing cargo received by the eight contracting States to the HNS Convention.

The Secretariat, once again, drew the attention of all States to the obligation, pursuant to article 43 of the Convention, to submit information on contributing cargo received or, in the case of Liquefied Natural Gas, discharged in that State, when depositing their instruments of ratification or acceptance with the Secretary General and annually thereafter, until the HNS Convention enters into force.

The Committee noted that the Marine Environment Protection Committee, at its fifty-fifth session, had adopted resolution MEPC.160(55), on "Implications for the reference in article 1.5(a)(ii) of the HNS Convention to 'noxious liquid substances carried in bulk'". Mirroring resolution LEG.4(91), adopted by the Legal Committee at its ninety-first session, that resolution stated that, as of 1 January 2007, substances referred to in Appendix II of Annex II of MARPOL 73/78 would remain covered by regulation 1.10 of the revised Annex II of MARPOL.

The Committee agreed to dedicate, in future, more time to the subject of implementation of treaties.

(vii) *Technical co-operation activities related to maritime legislation*

The Committee, at its ninety-second session, noted the outcome of two seminar workshops on maritime legislation held in Colombia and the Philippines, respectively, as well as the outcome of technical co-operation activities on maritime legislation from January to June 2006.

The Committee also noted a suggestion by the Secretariat to report on a biennial, instead of a semi-annual basis, on the Technical co-operation sub-programme related to maritime legislation, but expressed its preference, for the time being, to continue receiving reports on the Technical co-operation sub-programme related to maritime legislation on a semi-annual, rather than biennial basis.

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[511] *Ibid.*

(viii) *Biennium activities within the context of the Organization's strategic plan*

The Committee, at its ninety-second session, considered high-level actions identified by the Secretariat as relevant to the work of the Committee. It also considered amendments to the Legal Committee's Guidelines on Work Methods and Organization of Work, prepared by the Secretariat, taking into account resolutions A.970 (24) and A.971 (24). Several comments and observations were made by members of the Committee in connection with this agenda item.

The Committee also approved a progress report on outputs planned for the 2006–2007 biennium, for submission to the Council, as well as the proposed outputs planned for the 2008–2009 biennium, and requested the Secretariat to prepare a document on the status of outputs for the 2006–2007 biennium, and the planned output of the Committee for the 2008–2009 biennium, for submission to the ninety-eighth session of the Council.

Furthermore, the Committee approved proposed revisions to the Guidelines on Work Methods and Organization of Work of the Legal Committee relating to the Strategic Plan. It also approved proposals submitted by one delegation relating to the establishment of intersessional groups, in order to allow full participation by delegations wishing to participate in the discussions.

Finally, the Committee invited Members to submit any new work programme item, which they believed to be justified, for consideration at its next session, taking into account the Guidelines on Work Methods and Organization of Work of the Legal Committee, as revised at the present session.

(ix) *Any other business*

a. Abandonment of ships

The Committee, at its ninety-first session, noted the information submitted by the Secretariat informing it about a decision adopted by the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 1989[512] related to the abandonment of ships on land and in ports and the concerns expressed by the Conference of the Parties to the Basel Convention about the effects that such abandonment might have on human health and environment.

The Committee noted further that the Marine Environment Protection Committee had considered the issue of abandonment of ships on land and in ports, at its fifty-third session, and had expressed concern that this matter had not been adequately covered by a binding legal instrument. The Marine Environment Protection Committee, therefore, had invited the Legal Committee to consider this issue with a view to assisting in the development of an effective solution.

The Committee confirmed the accuracy of the information contained in the document prepared by the Secretariat, noting, however, that the document should be amended to reflect the fact that the 1996 Protocol to the London Convention of 1972 had now entered into force.

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[512] United Nations, *Treaty Series,* vol. 1673, p. 57.

b. Criminal offences committed on foreign-flagged ships

The Committee, at its ninety-first session, noted a submission by CMI reporting on its work on drafting a Model National Law on Maritime Criminal Acts, taking into account not only the problem of criminal offences committed on board foreign-flagged vessels, but also the International Ship and Port Facility Security Code, the 2005 Protocols to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988[513] and updated guidelines developed by the Maritime Safety Committee relating to piracy and other criminal acts.

The Committee encouraged CMI to continue its work on this subject-matter and to report to the Committee at its next session.

(*c*) Amendments to treaties

(i) *2006 amendments to the annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973*[514] *(MARPOL) (amendments to regulation 1, addition to regulation 12A, consequential amendments to the IOPP Certificate and amendments to regulation 21 of the revised Annex 1 of MARPOL 73/78)*

These amendments were adopted by the Marine Environment Protection Committee on 24 March 2006 by resolution MEPC.141(54). At the time of their adoption, the Marine Environment Protection Committee determined that the amendments shall be deemed to have been accepted on 1 February 2007 and shall enter into force on 1 August 2007 unless, prior to 1 February 2007, not less than one-third of MARPOL Parties or Parties, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As of 31 December 2006, no such notification of objection had been received.

(ii) *2006 amendments to the annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (addition of regulation 13 to annex IV of MARPOL 73/78)*

These amendments were adopted by the Marine Environment Protection Committee on 24 March 2006, by resolution MEPC.143(54). At the time of their adoption, the Marine Environment Protection Committee determined that the amendments shall be deemed to have been accepted on 1 February 2007 and shall enter into force on 1 August 2007 unless, prior to 1 February 2007, not less than one-third of MARPOL Parties or Parties, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As of 31 December 2006, no such notification of objection had been received.

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[513] United Nations, *Treaty Series,* vol. 1678, p. 201.

[514] United Nations, *Treaty Series,* vol. 1340, p. 61.

(iii) *2006 amendments to the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (under MARPOL 73/78)*

These amendments were adopted by the Marine Environment Protection Committee on 24 March 2006, by resolution MEPC.144(54). At the time of their adoption, the Marine Environment Protection Committee determined that the amendments shall be deemed to have been accepted on 1 February 2007 and shall enter into force on 1 August 2007 unless, prior to 1 February 2007, not less than one-third of MARPOL Parties or Parties, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As of 31 December 2006, no such notification of objection had been received.

(iv) *2006 amendments to the Convention on the International Mobile Satellite Organization (IMSO)*

Amendments to the IMSO Convention, whereby IMSO is the oversight body of all GMDSS service providers worldwide, which are, or may be approved by IMO in the future, and for the appointment of IMSO as LRIT Coordinator were adopted on 29 September 2006 by the Assembly of the International Mobile Satellite Organization at its eighteenth session. At its nineteenth (extraordinary) session, the IMSO Assembly decided on the provisional application of the amendments, with effect from 7 March 2007, pending their formal entry into force. The amendments will enter into force 120 days after notices of acceptance have been received from two-thirds of those States which, at the time of adoption by the Assembly, were Parties to the Convention. The number of Parties to the Convention at the time of the adoption of the amendments was 91. The number of acceptances necessary for entry into force is, therefore, 60. As of 31 December 2006, no such notice of acceptance had been received.

(v) *2006 (chapter II-2) amendments to the International Convention for the Safety of Life at Sea, 1974 (SOLAS)*[515]

These amendments were adopted by the Maritime Safety Committee on 18 May 2006 by resolution MSC.201(81). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 January 2010 and shall enter into force on 1 July 2010 unless, prior to 1 January 2010, more than one-third of the Contracting Governments to the Convention, or Contracting Governments, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As at 18 August 2006, no such notification of objection had been received.

[515] United Nations, *Treaty Series,* vol. 1184, p. 2.

(vi) *2006 (chapter V) amendments to the International Convention for the Safety of Life at Sea, 1974*

These amendments were adopted by the Maritime Safety Committee on 19 May 2006 by resolution MSC.202(81). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 July 2007 and shall enter into force on 1 January 2008 unless, prior to 1 July 2007, more than one-third of the Contracting Governments to the Convention, or Contracting Governments, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As of 31 December 2006, no such notification of objection had been received.

(vii) *2006 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978*[516]

These amendments were adopted by the Maritime Safety Committee on 18 May 2006 by resolution MSC.203(81). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 July 2007 and shall enter into force on 1 January 2008 unless, prior to 1 July 2007, more than one-third of the Contracting Governments to the Convention, or Contracting Governments, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As of 31 December 2006, no such notification of objection had been received.

(viii) *2006 amendments (to the annex) to the Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974*

These amendments were adopted by the Maritime Safety Committee on 18 May 2006 by resolution MSC.204(81). In accordance with article VIII (b) (iv) of the International Convention for the Safety of Life at Sea, 1974, and article VI (b) of the Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974, the amendments shall be deemed to have been accepted on the date on which they have been accepted by two-thirds of the Parties to the Protocol and shall enter into force six months after that date. As of 31 December 2006, no acceptances of the amendments had been received.

(ix) *2006 amendments to the International Maritime Dangerous Goods Code (under SOLAS 1974)*

These amendments were adopted by the Maritime Safety Committee on 18 May 2006 by resolution MSC.205(81). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 July 2007 and shall enter into force on 1 January 2008 unless, prior to 1 July 2007, more than one-third of SOLAS Contracting Governments, or Contracting Governments, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage

[516] United Nations, *Treaty Series,* vol. 1361, p. 190.

of the world's merchant fleet, have notified their objections to the amendments. As of 31 December 2006, no such notification of objection had been received.

(x) *2006 amendments to the International Code for Fire Safety Systems Code (under SOLAS 1974)*

a. May 2006 amendments

These amendments were adopted by the Maritime Safety Committee on 18 May 2006 by resolution MSC.206(81). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 January 2010 and shall enter into force on 1 July 2010 unless, prior to 1 January 2010, more than one-third of SOLAS Contracting Governments, or Contracting Governments, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As of 31 December 2006, no such notification of objection had been received.

b. December 2006 amendments

These amendments were adopted by the Maritime Safety Committee on 8 December 2006 by resolution MSC.217(82). At the time of their adoption, the Maritime Safety Committee determined that the amendments to Chapters 4, 6, 7 and 9 set out in Annex 1 to the resolution shall be deemed to have been accepted on 1 January 2008; that the amendments to Chapter 9 set out in Annex 2 to the resolution shall be deemed to have been accepted on 1 January 2010; and that the aforementioned amendments shall enter into force on 1 July 2008 and 1 July 2010, respectively, unless, prior to the former dates, more than one-third of the Contracting Governments to SOLAS 1974 or Contracting Governments, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As of 31 December 2006, no such notification of objection had been received.

(xi) 2006 amendments to the International Life-Saving Appliance Code (under SOLAS 1974)

These amendments were adopted by the Maritime Safety Committee on 18 May 2006 by resolution MSC.207(81). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 January 2010 and shall enter into force on 1 July 2010 unless, prior to 1 January 2010, more than one-third of SOLAS Contracting Governments, or Contracting Governments, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As of 31 December 2006, no such notification of objection had been received.

(xii) *2006 amendments to the Guidelines for the Authorization of Organizations acting on behalf of the Administration (resolution A.739 (18)) (under SOLAS 1974)*

These amendments were adopted by the Maritime Safety Committee on 18 May 2006 by resolution MSC.208(81). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 January 2010 and shall enter into force on 1 July 2010 unless, prior to 1 January 2010, more than one-third of the Contracting Governments, or Contracting Governments, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As of 31 December 2006, no such notification of objection had been received.

(xiii) *2006 amendments to the Seafarers' Training, Certification and Watchkeeping (STCW) Code*

These amendments were adopted by the Maritime Safety Committee on 18 May 2006 by resolution MSC.209(81). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 July 2007 and shall enter into force on 1 January 2008 unless, prior to 1 July 2007, more than one-third of STCW Contracting Governments, or Contracting Governments, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant shipping of 100 gross tonnage or more, have notified their objections to the amendments. As of 31 December 2006, no such notification of objection had been received.

(xiv) *2006 amendments to the annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (amendments to regulation 1 of annex I of MARPOL 73/78—Designation of the Southern African Waters as a Special Area)*

These amendments were adopted by the Marine Environment Protection Committee on 13 October 2006 by resolution MEPC.154(55). At the time of their adoption, the Marine Environment Protection Committee determined that the amendments shall be deemed to have been accepted on 1 September 2007 and shall enter into force on 1 March 2008 unless, prior to 1 September 2007, not less than one-third of the Parties to MARPOL 73/78 or Parties, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified to the Organization their objections to the amendments. As of 31 December 2006, no such notification of objection had been received.

(xv) *2006 amendments to the Condition Assessment Scheme (under MARPOL 73/78)*

These amendments were adopted by the Marine Environment Protection Committee on 13 October 2006 by resolution MEPC.155(55). At the time of their adoption, the Marine Environment Protection Committee determined that the amendments shall be

deemed to have been accepted on 1 September 2007 and shall enter into force on 1 March 2008 unless, prior to 1 September 2007, not less than one-third of the Parties to MARPOL 73/78 or Parties, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified to the Organization their objections to the amendments. As of 31 December 2006, no such notification of objection had been received.

(xvi) *2006 amendments to the annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (revised annex III of MARPOL 73/78)*

These amendments were adopted by the Marine Environment Protection Committee on 13 October 2006 by resolution MEPC.156(55). At the time of their adoption, the Marine Environment Protection Committee determined that the amendments shall be deemed to have been accepted on 1 July 2009 and shall enter into force on 1 January 2010 unless, prior to 1 July 2009, not less than one-third of the Parties to MARPOL 73/78 or Parties, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified to the Organization their objections to the amendments. As of 31 December 2006, no such notification of objection had been received.

(xvii) *2006 Performance standard for protective coatings for dedicated seawater ballast tanks in all types of ships and double-side skin spaces of bulk carriers (under SOLAS 1974)*

This Performance standard was adopted by the Maritime Safety Committee on 8 December 2006 by resolution MSC.215(82). At the time of its adoption, the Maritime Safety Committee determined that it would take effect on 1 July 2008, upon the entry into force of the amendments to regulations II-1/3–2 and XII/6 of the International Convention on the Safety of Life at Sea, 1974, adopted by resolution MSC.216(82).

(xviii) *2006 amendments to the International Convention for the Safety of Life at Sea, 1974 (chapters II-1, II-2, III and XII and appendix)*

These amendments were adopted by the Maritime Safety Committee on 8 December 2006 by resolution MSC.216(82). At the time of their adoption, the Maritime Safety Committee determined that the amendments to chapters II-1, II-2, III and XII and appendix, set out in Annex 1 to the resolution shall be deemed to have been accepted on 1 January 2008; that the amendments to chapter II-1, set out in Annex 2 to the resolution shall be deemed to have been accepted on 1 July 2008; that the amendments to chapters II-1, II-2 and III set out in Annex 3 to the resolution shall be deemed to have been accepted on 1 January 2010; and that the aforementioned amendments shall enter into force on 1 July 2008, 1 January 2009 and 1 July 2010 respectively unless, prior to the former dates, more than one-third of the Contracting Governments to the Convention or Contracting Governments, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of

the world's merchant fleet, have notified their objections. As of 31 December 2006, no such notification of objection had been received.

(xix) *2006 amendments to the International Life-Saving Appliance Code (under SOLAS 1974)*

These amendments were adopted by the Maritime Safety Committee on 8 December 2006 by resolution MSC.218(82). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 January 2008 and shall enter into force on 1 July 2008 unless, prior to 1 January 2008, more than one-third of the Contracting Governments to SOLAS 1974, or Contracting Governments, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As of 31 December 2006, no such notification of objection had been received.

(xx) *2006 amendments to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (under SOLAS 1974)*

These amendments were adopted by the Maritime Safety Committee on 8 December 2006 by resolution MSC.219(82). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 July 2008 and shall enter into force on 1 January 2009 unless, prior to 1 July 2008, more than one-third of the Contracting Governments to SOLAS 1974, or Contracting Governments, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As of 31 December 2006, no such notification of objection had been received.

(xxi) *2006 amendments to the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (under SOLAS 1974)*

These amendments were adopted by the Maritime Safety Committee on 8 December 2006 by resolution MSC.220(82). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 January 2008 and shall enter into force on 1 July 2008 unless, prior to 1 January 2008, more than one-third of the Contracting Governments to SOLAS 1974, or Contracting Governments, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As of 31 December 2006, no such notification of objection had been received.

(xxii) *2006 amendments to the 1994 International Code of Safety for High-Speed Craft (under SOLAS 1974)*

These amendments were adopted by the Maritime Safety Committee on 8 December 2006 by resolution MSC.221(82). At the time of their adoption, the Maritime Safety Com-

mittee determined that the amendments shall be deemed to have been accepted on 1 January 2008 and shall enter into force on 1 July 2008 unless, prior to 1 January 2008, more than one-third of the Contracting Governments to SOLAS 1974, or Contracting Governments, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As of 31 December 2006, no such notification of objection had been received.

(xxiii) *2006 amendments to the 2000 International Code of Safety for High-Speed Craft, (under SOLAS 1974)*

These amendments were adopted by the Maritime Safety Committee on 8 December 2006 by resolution MSC.222(82). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 January 2008 and shall enter into force on 1 July 2008 unless, prior to 1 January 2008, more than one-third of the Contracting Governments to SOLAS 1974, or Contracting Governments, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As of 31 December 2006, no such notification of objection had been received.

(xxiv) *2006 amendments to the Protocol of 1988 relating to the International Convention on Load Lines, 1966*[517]

These amendments were adopted by the Maritime Safety Committee on 8 December 2006 by resolution MSC.223(82). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 January 2008 and shall enter into force on 1 July 2008 unless, prior to 1 January 2008, more than one-third of the Contracting Governments to the 1988 Load Lines Protocol, or Contracting Governments, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As of 31 December 2006, no such notification of objection had been received.

(xxv) *2006 amendments to the Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974*

These amendments were adopted by the Maritime Safety Committee on 8 December 2006 by resolution MSC.227(82). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 January 2008 and shall enter into force on 1 July 2008 unless, prior to 1 January 2008, more than one-third of the Contracting Governments to the 1988 SOLAS Protocol, or Contracting Governments, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As of 31 December 2006, no such notification of objection had been received.

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[517] United Nations, *Treaty Series,* vol. 640, p. 134.

7. World Health Organization

(*a*) Constitutional Developments

On 29 August 2006, Montenegro became a new member of World Health Organization (WHO), and thus, at the end of 2006, there were 193 Member States.

In 2006, no new amendments to the Constitution were proposed or adopted, and no current amendments entered into force.

(*b*) Other normative developments and activities

(i) *International Health Regulations (2005)*

Pursuant to resolution WHA 59.2, adopted on 26 May 2006, the World Health Assembly called upon Member States to comply immediately, on a voluntary basis, with provisions of the International Health Regulations (IHR) considered relevant to the risk posed by avian influenza and pandemic influenza. The Assembly decided that relevant provisions of IHR shall include the following:

(*1*) Annex 2, in so far as it requires prompt notification to WHO of human influenza caused by a new virus subtype;

(*2*) Article 4 pertaining to the designation or establishment of a National IHR Focal Point within countries and the designation of WHO IHR Contact Points, and the definition of their functions and responsibilities;

(*3*) Articles in Part II pertaining to surveillance, information-sharing, consultation, verification and public health response;

(*4*) Articles 23 and 30–32 in Part V pertaining to general provisions for public health measures for travellers on arrival or departure and special provisions for travellers;

(*5*) Articles 45 and 46 in Part VIII pertaining to the treatment of personal data and the transport and handling of biological substances, reagents and materials for diagnostic purposes.

(ii) Codex Alimentarius Commission

On 27 May 2006, the Fifty-ninth World Health Assembly approved an amendment to Article 1 of the Statutes of the *Codex Alimentarius* Commission, which now reads as follows:

> "The *Codex Alimentarius* Commission shall, subject to Article 5 below, be responsible for making proposals to, and shall be consulted by, the Directors-General of FAO and WHO on all matters pertaining to the implementation of the Joint FAO/WHO Food Standards Programme, the purpose of which is:
>
> *(a)* protecting the health of the consumers and ensuring fair practices in the food trade;
>
> *(b)* promoting coordination of all food standards work undertaken by international governmental and nongovernmental organizations;

(c) determining priorities and initiating and guiding the preparation of draft standards through and with the aid of appropriate organizations;

(d) finalizing standards elaborated under *(c)* above and publishing them in a *Codex Alimentarius* either as regional or worldwide standards, together with international standards already finalized by other bodies under *(b)* above, wherever this is practicable;

(e) amending published standards, as appropriate, in the light of developments."

(iii) *Amendments to Basic Documents*

The Fifty-ninth World Health Assembly decided on 27 May 2006 to amend rule 14 of the Rules of Procedure of the Health Assembly, in accordance with rule 121 of those same rules, so that rule 14 shall now read as follows:

"Rule 14—Copies of all reports and other documents relating to the provisional agenda of any session shall be made available on the Internet and sent by the Director-General to Members and Associate Members and to participating intergovernmental organizations at the same time as the provisional agenda or not less than six weeks before the commencement of a regular session of the Health Assembly; appropriate reports and documents shall also be sent to nongovernmental organizations admitted into relationship with the Organization in the same manner."

(iv) *Intergovernmental Working Group on Public Health, Innovation and Intellectual Property*

In May 2006, the World Health Assembly decided to establish an intergovernmental working group pursuant to resolution WHA 59.24 and in accordance with Rule 42 of the Rules of Procedure of the Health Assembly. This Intergovernmental Working Group on Public Health, Innovation and Intellectual Property held its first session from 4 to 8 December 2006 in Geneva. The task of the Working Group was to draw up a draft global strategy and plan of action in order to provide a medium-term framework based on the recommendations of the Commission on Intellectual Property Rights, Innovation and Public Health. The framework would aim, *inter alia,* at securing an enhanced and sustainable basis for needs-driven, essential health research and development relevant to diseases that disproportionately affect developing countries.

The Working Group considered eight elements of a draft plan of action: prioritizing research and development needs; promoting research and development; building and improving innovative capacity; transfer of technology; management of intellectual property; improving delivery and access; ensuring sustainable financing mechanisms; and establishing monitoring and reporting systems. It also discussed elements of a global strategy based on the Constitution of WHO, the Commission's report, resolution WHA59.24 and other recent resolutions and previous work in relevant subject areas. A recommendation was made for a process to allow nongovernmental organizations which met the requirements for admission into official relations with WHO, but have not yet been so admitted, to participate in the second session of the Working Group.

(v) *WHO Conference of the Parties to the Framework Convention on Tobacco Control*[518]

The first session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control was held in Geneva from 6 to 17 February 2006. By the end of the session, the Convention had entered into force for 113 Parties. During this session, the Rules of Procedure and Financial Rules for the Conference of the Parties were adopted by consensus.

A number of other substantive decisions were made by the Conference, such as to initiate the development of possible protocols on cross-border advertising, promotion and sponsorship and on illicit trade in tobacco products and to initiate the elaboration of guidelines on Articles 8 (protection from exposure to tobacco smoke) and 9 (regulation of the contents of tobacco products) of the Convention. A draft reporting instrument was adopted for provisional use by Parties in order to meet their obligations under Article 21 of the Convention. In addition, the Conference adopted the budget and work plan for the period 2006–2007, financed through voluntary assessed contributions from Parties.

The Conference of the Parties also decided that a permanent secretariat, the Convention Secretariat, shall be established within WHO and located in Geneva. The head of the Convention Secretariat would be responsible and accountable to the Conference of the Parties for technical and treaty activities and also to the Director-General of WHO for administrative and staff management matters, as well as for technical activities where appropriate. At its 59th session, the World Health Assembly requested the Director-General of WHO to establish a permanent secretariat of the Convention within WHO and located in Geneva (resolution WHA59.17).

8. International Atomic Energy Agency

(*a*) Membership

In 2006, Belize, Malawi, Montenegro and Mozambique became Member States of the International Atomic Energy Agency (IAEA). By the end of the year, there were 143 Member States.

(*b*) Privileges and immunities

In 2006, Portugal and Senegal became party to the Agreement on Privileges and Immunities of the International Atomic Energy Agency, 1959.[519] By the end of the year, there were 75 parties.

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[518] United Nations, *Treaty Series,* vol. 2302, p. 166.

[519] United Nations, *Treaty Series,* vol. 374, p. 147.

(*c*) Legal instruments

(i) *Convention on the Physical Protection of Nuclear Material, 1979*[520]

In 2006, Andorra, Cambodia, Georgia, Togo and the United Republic of Tanzania became party to the Convention. By the end of the year, there were 121 parties.

(ii) *Amendment to the Convention on the Physical Protection of Nuclear Material, 2005*

In 2006, Austria, Bulgaria, Croatia, Libyan Arab Jamahiriya and Seychelles adhered to the Amendment. By the end of the year, there were 6 Contracting States.

(iii) *Convention on Early Notification of a Nuclear Accident, 1986*[521]

In 2006, Cameroon and EURATOM became party to the Convention. By the end of the year, there were 99 parties.

(iv) *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986*[522]

In 2006, Cameroon, Iceland and EURATOM became party to the Convention. By the end of the year, there were 97 parties.

(v) *Convention on Nuclear Safety, 1994*[523]

In 2006, Estonia, Kuwait and the former Yugoslav Republic of Macedonia became party to the Convention. By the end of the year, there were 59 parties.

(vi) *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 1997*[524]

In 2006, Brazil, China, Estonia, Iceland, Italy, the Russian Federation, Uruguay and EURATOM became party to the Joint Convention. By the end of the year, there were 42 parties.

(vii) *Vienna Convention on Civil Liability for Nuclear Damage, 1963*[525]

In 2006, the status of the Convention remained unchanged with 33 parties.

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[520] United Nations, *Treaty Series,* vol. 1456, p. 101.

[521] United Nations, *Treaty Series,* vol. 1439, p. 275.

[522] United Nations, *Treaty Series,* vol. 1678, p. 201.

[523] United Nations, *Treaty Series,* vol. 1963, p. 293.

[524] United Nations, *Treaty Series,* vol. 1063, p. 265.

[525] United Nations, *Treaty Series,* vol. 2153, p. 303.

(viii) *Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage, 1997*[526]

In 2006, the status of the Protocol remained unchanged with 5 parties.

(ix) *Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention, 1988*[527]

In 2006, the status of the Joint Protocol remained unchanged with 24 parties.

(x) *Convention on Supplementary Compensation for Nuclear Damage, 1997*[528]

In 2006, the status of the Convention remained unchanged with 3 Contracting States.

(xi) *Optional Protocol Concerning the Compulsory Settlement of Disputes to the Vienna Convention on Civil Liability for Nuclear Damage, 1963*[529]

In 2006, the status of the Protocol remained unchanged with 2 parties.

(xii) *Revised Supplementary Agreement Concerning the Provision of Technical Assistance by IAEA*[530]

In 2006, Belize, Botswana, Kyrgyzstan, Seychelles, Slovenia and South Africa concluded the Revised Supplementary Agreement Concerning the Provision of Technical Assistance by IAEA (RSA). By the end of the year, there were 107 Member States which concluded the RSA Agreement with the Agency.

(xiii) *Third Agreement to Extend the 1987 Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology*[531]

In 2006, the status of the Agreement remained unchanged with 16 parties.

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[526] INFCIRC/566.

[527] United Nations, *Treaty Series*, vol. 1672, p. 293.

[528] INFCIRC/567.

[529] INFCIRC/500/Add.1.

[530] INFCIRC/267.

[531] INFCIRC/167 and Add.20 (Third Extension).

(xiv) *African Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology–(Third Extension)*[532]

In 2006, the Sudan and Zimbabwe became party to the Third Extension. By the end of the year, there were 26 parties.

(xv) *Co-operation Agreement for the Promotion of Nuclear Science and Technology in Latin America and the Caribbean*[533]

In 2006, Bolivia and Brazil became party to the Agreement. By the end of the year, there were 13 parties.

(xvi) *Co-operative Agreement for Arab States in Asia for Research, Development and Training Related to Nuclear Science and Technology*[534]

In 2006, the status of the Agreement remained unchanged with 7 parties.

(xvii) *Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project*[535]

China, India, Japan, Republic of Korea, the Russian Federation, the United States of America and EURATOM signed the Agreement on 21 November 2006.

(xviii) *Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project*[536]

China, India, Japan, Republic of Korea, the Russian Federation and EURATOM signed the Agreement on 21 November 2006.

(*d*) IAEA legislative assistance activities

During 2006, the Agency provided assistance by means of written comments and advice in drafting national nuclear legislation to 12 Member States. In addition, at the request of Member States, individual training on issues related to nuclear legislation was provided to 17 fellows. As a new initiative to provide legislative assistance to Member States in Africa, a fellowship programme was established in 2006 for individuals from these States to receive training at Agency Headquarters in order to acquire practical and international nuclear law experience.

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[532] INFCIRC/377 and Add.18 (Third Extension).

[533] INFCIRC/582.

[534] INFCIRC/613/Add.1.

[535] *INFCIRC/702.*

[536] *INFCIRC/703.*

A training course for lawyers, held in April, provided information on the Agency's nuclear security activities, as well as the relevant international nuclear security instruments, with the aim of establishing a pool of legal experts that would be available to participate in the Agency's various nuclear security advisory, evaluation and response missions and reviews.

At a workshop held in October, diplomats were provided with an introduction to nuclear law that included presentations on international law for nuclear safety and security, as well as safeguards and non-proliferation. In addition, participants were given an overview of the Agency's legislative assistance programme and its safety, security and safeguards missions.

A regional meeting for senior government officials, held in November in Kuala Lumpur, Malaysia, provided an overview of nuclear law and legislation, as well as information on the international instruments concerning nuclear safety, security and safeguards, including recent developments in these areas. The meeting was attended by representatives from 12 Member States in the Asia-Pacific region, as well as participants from non-Member States in the region.

A Regional Seminar on the Assessment of National Nuclear Legislation was held in December, at IAEA Headquarters for Member States of the Africa region. The purpose of the seminar was to provide further assistance to, and allow for an in-depth self-assessment of the national nuclear legislation of, the participating Member States. The seminar was attended by 46 participants from 26 French and English speaking Member States of the region.

A new IAEA International Law Series was established in 2006. The first two publications in this series bring together in a more convenient format the official records and other relevant documents relating to the negotiations of the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management and the Amendment to the Convention on the Physical Protection of Nuclear Material.

(*e*) Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 1997

The Second Review Meeting of the Contracting Parties of the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (the Joint Convention), in which 41 Contracting parties participated, including 8 for the first time, was held from 15 to 24 May 2006.[537]

During the meeting, Contracting Parties conducted a thorough peer review of the national reports which Contracting Parties had submitted in 2005. The Contracting Parties shared the view that progress had been made since the First Review Meeting, held in November 2003. Moreover, they noted improvements in and a commitment to, improving policies and practices in the areas of national strategies for spent fuel and radioactive waste management, engagement with stakeholders and the public, and the control of disused sealed sources. Further, the Contracting Parties recognized the need to ensure that their financial commitments are consistent with the extent of liabilities. Finally, Contracting

[537] For the summary report of the Second Review Meeting, see Doc. JC/RM.2/03/Rev.1.

Parties saw the benefit of enhancing international cooperation through the exchange of information, experience and technology. In particular, Contracting Parties with limited radioactive waste management and research programmes emphasised the need to share knowledge and assistance.

(*f*) Code of Conduct on the Safety and Security of Radioactive Sources and the supplementary Guidance on the Import and Export of Radioactive Sources[538]

The Code of Conduct on the Safety and Security of Radioactive Sources (the Code of Conduct) is a non-binding international legal instrument which applies to civilian radioactive sources that may pose a significant risk to individuals, society and the environment. The Code of Conduct's objectives are to achieve and maintain a high level of safety and security of radioactive sources. Further to IAEA General Conference resolution GC(47)/RES/7.B, the number of commitments by States to work towards following the Code of Conduct increased to 88 States as of the end of 2006.

Throughout 2006, work has continued to facilitate the implementation of the Code's supplementary Guidance on the Import and Export of Radioactive Sources. Further to General Conference resolution GC(48)/RES/10.D, 37 States had written to the IAEA Director General by the end of 2006, indicating their commitment to follow the Guidance.

In September 2006, the IAEA Board of Governors endorsed and the General Conference recognized the value of the agreement reached at the open-ended meeting of technical and legal experts held from 31 May to 2 June 2006, for a formal mechanism for a voluntary, periodic exchange of information for all Member States to share experiences and lessons learned in implementing the Code of Conduct and its supplementary Guidance. The first such international meeting open to all States, will be held from 25 to 29 June 2007.

(*g*) Code of Conduct on the Safety of Research Reactors

The Code of Conduct on the Safety of Research Reactors (the Code of Conduct) was approved by the Board of Governors in March 2004[539] and subsequently endorsed by the General Conference in September 2004.[540]

In response to the request of the Third Review Meeting of the Contracting Parties to the Convention on Nuclear Safety, the Secretariat convened in December 2005 an Open-Ended Meeting on Effective Application of the Code of Conduct. At that meeting it was, *inter alia,* recommended that the Secretariat organize triennial meetings to exchange experience and lessons learned, identify good practices and discuss plans, difficulties and assistance needed in applying the Code of Conduct.

During 2006 and further to the December 2005 meeting's recommendations, the Secretariat organized, with the aim of assisting States prepare for participation in periodic international meetings, regional meetings on the Code of Conduct in Morocco and Roma-

[538] IAEA/CODEOC/2004 (2004).

[539] GC(48)/7.

[540] GC(48)/RES/10, A 8.

nia. These meetings provided an opportunity to explain the background, content and legal status of the Code of Conduct and to provide the Secretariat's views on the benefits to be derived from applying it. The meetings also examined the status of research reactor safety in the participating States.

(*h*) Safeguards Agreements

During 2006, Safeguards Agreements pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) with Botswana[541], Haiti[542], Moldova[543], Oman[544], Turkmenistan[545], and Uganda[546] have entered into force. In addition, Slovenia[547] acceded to the Safeguards Agreement between the IAEA, EURATOM and the Non-Nuclear-Weapon States of the European Community. A Safeguards Agreement with Central African Republic pursuant to the NPT was approved by the IAEA Board of Governors. In addition, an agreement with Pakistan[548] for the application of safeguards in connection with the supply of a nuclear power station was approved by the Board on 23 November 2006 and it entered into force on 22 February 2007.

In 2006, Protocol Additional to the Safeguards Agreements between IAEA and Botswana[549], Fiji[550], Haiti[551], Libya[552], Turkmenistan[553], Uganda[554] and Ukraine[555], entered into force. In addition, Slovenia[556] acceded to the Protocol Additional to the Safeguards Agreement between IAEA, EURATOM and the non-nuclear-weapon States of the European Community. Additional Protocol were signed by Liechtenstein and Senegal but had not entered into force as of December 2006. Additional Protocol with the Central African Republic, the Dominican Republic, the Kyrgyz Republic[557], Malawi and Moldova were approved by the IAEA Board of Governors in 2006.

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[541] Reproduced in IAEA Document: INFCIRC/694.
[542] Reproduced in IAEA Document: INFCIRC/681.
[543] Reproduced in IAEA Document: INFCIRC/690.
[544] Reproduced in IAEA Document: INFCIRC/691.
[545] Reproduced in IAEA Document: INFCIRC/673.
[546] Reproduced in IAEA Document: INFCIRC/674.
[547] Reproduced in IAEA Document: INFCIRC/193/Add.11.
[548] Reproduced in IAEA Document: INFCIRC/705.
[549] Reproduced in IAEA Document: INFCIRC/694/Add.1.
[550] Reproduced in IAEA Document: INFCIRC/192/Add.1.
[551] Reproduced in IAEA Document: INFCIRC/681/Add.1.
[552] Reproduced in IAEA Document: INFCIRC/282/Add.1.
[553] Reproduced in IAEA Document: INFCIRC/673/Add.1.
[554] Reproduced in IAEA Document: INFCIRC/674/Add.1.
[555] Reproduced in IAEA Document: INFCIRC/550/Add.1.
[556] Reproduced in IAEA Document: INFCIRC/193/Add.12.
[557] Additional Protocol signed on 29 January 2007.

9. United Nations Industrial Development Organization

(*a*) Membership

With the accession of Montenegro to the Constitution of the United Nations Industrial Development Organization (UNIDO), 172 States were Members of UNIDO by the end of 2006.

(*b*) Agreements and other arrangements

(i) *Agreements with States*[558]

Belgium

Agreement between the United Nations Industrial Development Organization and the Kingdom of Belgium on the establishment in Belgium of a Liaison Office of this Organization, signed on 20 February 2006.

Burundi

Agreement between the United Nations Industrial Development Organization and the Government of the Republic of Burundi regarding the settlement of outstanding assessed contributions under a payment plan, signed on 7 and 26 June 2006.

China

Memorandum of understanding between the United Nations Industrial Development Organization and the Ministry of Commerce of the People's Republic of China on enhancing South-South industrial cooperation, signed on 11 September 2006.

Congo

Integrated Programme for post-conflict industrial rehabilitation in the Republic of the Congo, signed on 17 March 2006.

Ecuador

Amendment to the trust fund agreement between the United Nations Industrial Development Organization and the Government of Ecuador, revising the Integrated Programme by including an additional "Component 5: Trade Capacity-Building Programme for Industrial Competitiveness", signed on 7 and 10 August 2006.

Egypt

Agreement between the United Nations Industrial Development Organization and the Government of the Arab Republic of Egypt regarding arrangements for convening the seventeenth meeting of the Conference of African Ministers of Industry, 19–21 June 2006, Cairo, Egypt, signed on 10 May 2006.

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[558] This list contains signed Agreements deposited with the Legal Service of UNIDO for safekeeping.

Guinea

Memorandum of understanding between the United Nations Industrial Development Organization and the Ministry of Social Affairs and the Promotion of Women and Children for the development and implementation of training programmes in appropriate technologies for the textile industry, signed on 10 October 2006.

Italy

Agreement between the United Nations Industrial Development Organization and the Directorate General for Development Cooperation of the Italian Ministry of Foreign Affairs, signed on 10 May 2006.

Liberia

Memorandum of understanding between the United Nations Industrial Development Organization and the Government of Liberia, signed on 25 October 2006.

Mongolia

Integrated Programme of Technical Cooperation between the United Nations Industrial Development Organization and the Government of Mongolia regarding a programme entitled "Contributing to poverty reduction through the development of a competitive and sustainable export-oriented agro-industrial sector", signed on 29 November 2006.

Norway

Framework agreement on financing of technical cooperation between the United Nations Industrial Development Organization and the Norwegian Agency for Development Cooperation, signed on 16 and 20 March 2006.

Russian Federation

Cooperation arrangement between the United Nations Industrial Development Organization and the Federal Agency for Management of Special Economic Zones, Ministry of Economic Development and Trade, Russian Federation, signed on 1 February 2006.

Trust fund agreement between the United Nations Industrial Development Organization and the Government of the Republic of Bashkortostan, Russian Federation, regarding the implementation of a project in the Republic of Bashkortostan, entitled "Enhancing industrial performance and competitiveness in the global market", signed on 26 April 2006.

Rwanda

Trust fund agreement between the United Nations Industrial Development Organization and the Government of Rwanda—Ministry of Infrastructure regarding the implementation of a project in Rwanda entitled "Rural energy development: Mini hydro demonstration projects—Learning by doing, promoting an affordable approach to rural energy", signed on 29 January 2006.

South Africa

Agreement between the United Nations Industrial Development Organization and the Government of the Republic of South Africa on establishing a subregional office in South Africa, signed on 19 April 2006.

Switzerland

Letter of agreement between the United Nations Industrial Development Organization and the State Secretariat of Economic Affairs (SECO) concerning project US/LEB/06/002 "Increase access to export markets for Lebanese products and improvement of its quality infrastructure to increase TBT/SPS compliance", signed on 7 and 20 July 2006.

Letter of agreement between the United Nations Industrial Development Organization and the State Secretariat of Economic Affairs (SECO) concerning project UE/BUL106/001 "Programme for the sustainable development of enterprises in Bulgaria with a focus on enhancing the local expertise in CP, EST and CRS methodologies", signed on 14 December 2006.

Letter of agreement between the United Nations Industrial Development Organization and the State Secretariat of Economic Affairs (SECO) concerning project UE/EGY/06/005 "Support to the Egyptian Cleaner Production Centre", signed on 14 December 2006.

Letter of agreement between the United Nations Industrial Development Organization and the State Secretariat of Economic Affairs (SECO) concerning project US/GHA/06/005 "Trade capacity-building in Ghana", signed on 14 December 2006.

Letter of agreement between the United Nations Industrial Development Organization and the State Secretariat of Economic Affairs (SECO) concerning project UE/ROM/06/006 "Programme for the sustainable development of enterprises in Romania with a focus on enhancing the local expertise in CP, EST and CSR methodologies", signed on 14 December 2006.

Uruguay and the Ibero-American General Secretariat

Letter of intent between the United Nations Industrial Development Organization, the Government of the Eastern Republic of Uruguay and the Ibero-American General Secretariat, signed on 6 April 2006.

Yemen

Trust fund agreement between the United Nations Industrial Development Organization and the Ministry of Industry and Trade of the Republic of Yemen regarding the implementation of the Integrated Programme for Yemen entitled "Creating sustainable sources of livelihoods and employment in an internationally competitive environment: An industrial agenda for achieving the Millennium Development Goals 1, 3 and 8", signed on 17 March and 30 April 2006.

(ii) *Agreements within the United Nations system*

Economic and Social Commission for Western Asia

Inter-agency agreement on cooperation between the United Nations Industrial Development Organization and the Economic and Social Commission for Western Asia on the Smart Community Project in Iraq, signed on 14 December 2005 and 17 March 2006.

Food and Agriculture Organization of the United Nations

Inter-agency letter of agreement between the United Nations Industrial Development Organization and the Food and Agriculture Organization of the United Nations regarding the implementation of a project in Iraq entitled "Community livelihoods and micro-industry support project in rural and urban areas of North Iraq", signed on 13 June and 19 July 2006.

Memorandum of understanding on working arrangements between the United Nations Industrial Development Organization and the Food and Agriculture Organization of the United Nations, signed on 6 November 2006.

Food and Agriculture Organization of the United Nations (and the World Health Organization

Inter-agency agreement among the World Health Organization, the United Nations Industrial Development Organization and the Food and Agriculture Organization of the United Nations regarding the implementation of the United Nations Development Group Iraq Trust Fund funded project No. D2–17 entitled "Rebuilding food safety and food processing industry capacity in Iraq", signed on 25 August and 25 October 2006.

International Finance Corporation

Administration Agreement between the United Nations Industrial Development Organization and the International Finance Corporation for the Financial Support of the Activities undertaken by the Donor Committee for Enterprise Development, signed on 7 December 2006.

International Fund for Agricultural Development

Financing agreement between the United Nations Industrial Development Organization and the International Fund for Agricultural Development regarding the participatory control of desertification and poverty reduction in the arid and semi-arid high plateau ecosystems of Eastern Morocco, signed on 18 May 2006.

United Nations

Agreement between the United Nations Industrial Development Organization and the United Nations regarding the funding of a project in Sri Lanka, entitled "Support for sustainable livelihood recovery among the conflict affected population in the North and East regions through improved agricultural productivity and community-based entrepreneurship", signed on 24 August and 4 September 2006.

Agreement between the United Nations Industrial Development Organization and the United Nations regarding the funding of a project in Ghana entitled "Assistance to the refugees of the UNHCR settlements in Buduburam and Krisan for their repatriation, local integration and resettlement through micro- and small-scale enterprise development", signed on 24 November and 12 December 2006.

Agreement between the United Nations Industrial Development Organization and the United Nations regarding the funding of a project in the Lao People's Democratic Republic entitled "Social and economic rehabilitation of former opium poppy-growing communities—Alternative livelihood development in Lao People's Democratic Republic", signed on 24 November and 15 December 2006.

United Nations Department for Safety and Security

Memorandum of understanding between the United Nations Industrial Development Organization and the United Nations Department for Safety and Security, signed on 21 June 2006.

United Nations High Commissioner for Refugees

Memorandum of understanding between the United Nations Industrial Development Organization and the Office of the United Nations High Commissioner for Refugees on the joint project for empowerment of returnees and other communities in the Sardauna Local Government, signed on 14 December 2006.

United Nations Institute for Training and Research

Memorandum of understanding between the United Nations Industrial Development Organization and the United Nations Institute for Training and Research, signed on 10 May 2006.

(iii) Agreements with intergovernmental organizations

African Union

Agreement between the United Nations Industrial Development Organization and the Commission of the African Union, signed on 21 June 2006.

Economic Community of West African States

Memorandum of understanding between the United Nations Industrial Development Organization and the Economic Community of West African States, signed on 22 September 2006.

Gulf Organization for Industrial Consulting

Trust fund agreement between the United Nations Industrial Development Organization and the Gulf Organization for Industrial Consulting regarding the implementation of a project entitled "Assistance in strengthening the Gulf Organization for Industrial

Consulting, Phase II: Industrial subcontracting and partnership exchange", signed on 17 February 2006.

Ibero-American General Secretariat

Memorandum of understanding between the United Nations Industrial Development Organization and the Ibero-American General Secretariat, signed on 6 April 2006.

Islamic Corporation for the Insurance of Investment and Export Credit

Memorandum of understanding between the United Nations Industrial Development Organization and the Islamic Corporation for the Insurance of Investment and Export Credit, signed on 17 July 2006.

OPEC Fund for International Development

Grant agreement between the United Nations Industrial Development Organization and the OPEC Fund for International Development, signed on 3 and 28 April 2006.

(iv) *Agreements with other entities*

Alexander von Humboldt Biological Resources Research Institute

Agreement between the United Nations Industrial Development Organization and the Alexander von Humboldt Biological Resources Research Institute, Colombia, regarding the implementation of a project in Colombia entitled "UNIDO collaboration programme for biosafety training capacity building in Colombia", signed on 4 October 2006.

African Business Roundtable

Memorandum of understanding between the United Nations Industrial Development Organization and the African Business Roundtable, signed on 22 September 2006.

Austrian Development Agency

Agreement between the United Nations Industrial Development Organization and the Austrian Development Agency regarding the implementation of a project in Nicaragua entitled "Promoting 'sustainable industrial resource management' in selected national priority sectors", signed on 17 and 24 March 2006.

Crans Montana Forum SAM

Memorandum of understanding between the United Nations Industrial Development Organization and the Crans Montana Forum SAM, signed on 27 November 2006.

Livestock, Meat and Fish Economic Commission (CEBEVIHRA)

Trust fund agreement between the United Nations Industrial Development Organization and the Livestock, Meat and Fish Economic Commission, regarding the implementa-

tion of a project entitled "Technical assistance for a feasibility study on a support centre for the fishing industry", signed on 24 April 2006.

Microsoft Corporation

Memorandum of understanding between the United Nations Industrial Development Organization and Microsoft Corporation, signed on 9 July 2006.

Renewable Energy and Energy Efficiency Partnership

Grant agreement between the United Nations Industrial Development Organization and the Renewable Energy and Energy Efficiency Partnership, signed on 24 and 27 February 2006.

University of Wales, Aberystwyth

Memorandum of understanding between the United Nations Industrial Development Organization and the University of Wales, Aberystwyth, signed on 4 October 2006.

10. World Intellectual Property Organization

(*a*) Introduction

In the year 2006, the World Intellectual Property Organization (WIPO) continued to address its activities on the implementation of substantive work programs through three sectors: Cooperation with Member States, the international registration of intellectual property rights, and intellectual property treaty formulation and normative development.

(*b*) Cooperation for development activities

In 2006, WIPO Technical Assistance and Capacity Building activities were directed towards the integration of Intellectual Property in national development polices and programs in accordance with Strategic Goal Two of WIPO, created within the framework of the United Nations Millennium Development Goals. In this respect a reorientation of the approach to development activities of WIPO was initiated in order to face the changing Intellectual Property rights environment and for responding to the new development expectation and strategic needs of developing countries. In this direction a close cooperation was maintained with Member States, International Organizations and Non-Governmental Organizations and a particular attention was given to new and specific needs of the Least Developed Countries (LDCs).

During the period under review, legislative advice was provided to countries that were in the process of upgrading their legislative framework and several countries have included Intellectual Property in national public policies. Awareness raising programs were organized in cooperation with the World Trade Organization (WTO) for the LDCs in relation to the importance of Intellectual Property and its use for the promotion of trade as well as

promoting the various flexibilities offered by the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement).[559]

In 2006, substantive legislative and technical assistance was provided in different areas such as: Intellectual Property infrastructure and exploitation of Intellectual Property systems; human resources development; information technology; genetic resources; traditional knowledge and folklore and protection of traditional cultural expressions; small and medium-sized enterprises (SMEs); and the establishment of collective management societies.

The WIPO Worldwide Academy's major challenge consisted in responding to more sophisticated and diverse training demands which considerably increased in 2006, registering a growth of 5,000 new participants to the programs proposed in eight new languages. In this context, four additional advanced courses were completed (Patents, Patent Search, Patent Drafting, and Arbitration and Mediation) and the development of four new courses (Copyright Licensing, Trademarks, SMEs and Intellectual Property and Intellectual Property for Kids) was initiated.

(*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 and administration of intellectual property rights. In this respect, three WIPO Standing Committees on legal matters—one dealing with copyright and related rights, one dealing with patents and one dealing with trademarks, industrial designs and geographical indications—help Member States to centralize the discussions, coordinate efforts and establish priorities in these areas.

(i) *Standing Committee of the Law of Patents*

In line with the decision taken by the Member States in 2005 to continue the efforts at enhancing international cooperation in the area of patent law and practice, the Standing Committee of the Law of Patents held in April 2006 a three-day informal session before its ordinary session. The scope of this informal meeting was mainly to consider the diverse options and proposals made by the delegations and the proposals of the Member States for the future work plan of the Committee on the draft of the Substantive Patent Law Treaty.

In this respect, the discussions on the draft Substantive Patent Law Treaty were constructive and enabled the delegations to reach a clear understanding of the respective objectives for the work program. Nonetheless, the debate revealed that some existing differences could not be resolved and thus the negotiations to finalize the future program of the Committee continue.

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[559] United Nations, *Treaty Series,* vol. 1869, p. 299 (annex I C).

(ii) *Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications*

On 27 March 2006, the Diplomatic Conference for the Adoption of a Revised Trademark Law Treaty adopted the Singapore Treaty on the Law of Trademarks and the resolution supplementary to the Singapore Treaty.

The Standing Committee at its sixteenth session, held in November 2006, decided to concentrate its work in the area of new types of marks, focusing on the trademark opposition procedure, the trademarks and their relation with literary and artistic works, and on industrial design protection issues. These new objectives established by the Committee aim to modernize the international legal framework for trademark office administrative procedures and find a common working field from diverging national and regional approach in the area of trademark industrial designs and geographical indications law, including the law of unfair competition.

(iii) *Standing Committee on Copy Right and Related Rights*

In view of the preparation of a possible diplomatic conference on the protection of broadcasting organizations, the Standing Committee, held in May and September 2006, its fourteenth and its fifteenth session, respectively.

On this occasion the Standing Committee decided to report at a later time the discussions concerning the question of a possible protection of webcasting (or netcasting) as well as simultaneous transmission over the air and the Internet (simulcasting). The Standing Committing submitted to the Assemblies of WIPO Member States, at their 2006 sessions, the request of a recommendation on the eventual convening of a Diplomatic Conference. The Assemblies responded in turn requesting the Standing Committee to schedule two special sessions to agree and finalize, on a signal-based approach, the objectives, the scope and the object of protection to be integrated in a revised basic proposal.

(iv) *Standing Committee on Information Technologies*

The Standards and Documentation Working Group of the Standing Committee on Information Technologies held its seventh session from 19 May to 22 June 2006,[560] and adopted certain revisions to WIPO standards facilitating access to and use of publicly available industrial property information associated with the grant of patents, trademarks and industrial designs.

(*d*) International registration activities

(i) *Patents*

The year 2006 was significantly marked by the entry into force, on 1 April 2006, of the amendments to the Patent Cooperation Treaty[561] (PCT) Regulations, adopted by the PCT

[560] For the report of the Working Group, see SCIT/SDWG/7.

[561] United Nations, *Treaty Series,* Vol. 1160, p. 231.

Assembly in September 2004, in order to harmonize and streamline formal procedures in respect of national and regional patent applications and patents.

At its eighth session held in May 2006, the Working Group on Reform of PCT approved a number of amendments to the PCT Regulations, proposed and finally adopted by the PCT Union Assembly, with effect from 1 April 2007. Eleven Rules were amended.

During the period under review, a total of 148,772 international patent applications were received and processed reporting an increase of 11.4 per cent compared to the previous year. Significant growth came from East Asian countries, which represented 25 per cent of applications filed.

Eight new States adhered in 2006 to PCT, namely Bahrain, El Salvador, Guatemala, Honduras, Lao People's Democratic Republic, Malaysia, Malta and Montenegro, bringing the total number of contracting parties to 137.

(ii) *Trademarks*

The demand for services under the international trademark registration system continued to significantly grow in 2006. The Secretariat received 36,471 new international trademark applications (an increase of 8.6 per cent over the previous year). While international registrations recorded, notified and published were 37,224 (reporting an increase of 12.2 per cent), the number of renewals processed reached 15,205 units (with a growth of 102.8 per cent) together with 10,978 subsequent designations.

In 2006, with the adherence of Botswana, Montenegro, Uzbekistan and Viet Nam to the Madrid Protocol, the number of contracting parties rose to 71.

(iii) *Industrial Designs*

In 2006, 5,949 new international registrations were filed under The Hague System reporting a small decrease compared to the previous year when the total number of designs amounted to 6,806.

During the same year, Botswana, Mali and Montenegro became party to the Geneva Act of the Hague Agreement, bringing the total number of contracting parties to 47.

(iv) *Appellations of origin*

In 2006, the Secretariat received two new appellations of origins, which brought to 869 the total number of appellations of origin registered under the Lisbon Agreement for the Protection of Appellations of Origins and their International Registration, 795 of which were still in force in 2006.

The electronic database of appellations of origin "Lisbon express" made available online at the beginning of 2005 was expanded during 2006 with additional information provided to the users concerning the refusals as recorded in the International Register.

The adherence of Montenegro and Nicaragua to the Lisbon Agreement brought the total number of contracting parties to 26.

(*e*) Intellectual property and global issues

(i) *Genetic resources, traditional knowledge and folklore*

The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, at its ninth session held in April 2006, consolidated ongoing work on two sets of draft provisions on policy objectives and core principles for capacity building, legal and policy guidance and defensive protection against illegitimate patenting of Traditional Knowledge. In particular, the work of the Committee focused mainly on cooperation with other international and regional organizations, national authorities and other stakeholders.

In this respect, following the decision of the General Assemblies of WIPO Member States taken at their thirty-second session in 2005 to establish a WIPO Voluntary Fund, the Intergovernmental Committee successfully launched the activities of the Voluntary Fund to further facilitate the participation of indigenous and local communities. The United Nations Permanent Forum on Indigenous Issues welcomed the WIPO Voluntary Fund to which over 150 organizations were accredited during the period under review.

(ii) *The WIPO Arbitration and Mediation Center*

In June 2006, the WIPO Arbitration and Mediation Center (the Center) received its 10,000th case under the Uniform Domain Name Dispute Resolution Policy.

The Center continued its tasks as the leading Internet domain name dispute resolution provider. The core domain name policy administered by the Center remained the Uniform Domain Name Dispute Resolution Policy with procedures administered in 12 languages involving parties from 137 countries. In addition to its work in the generic top-level domains in 2006, the Center administered 38 new cases involving names registered in country code top-level domains. During the period under review, the total number of country code top-level domains registration authorities designating the Center as a dispute resolution provider rose to 47. The Center also drafted start-up dispute policies for the new ".mobi" generic top-level domains,[562] pursuant to which the Center has already processed 123 new cases.

The WIPO Electronic Case Facility, a WIPO-developed case management tool, introduced by the Center in 2005 to further enhance the time and cost efficient administration of WIPO mediation and arbitration proceedings, has reported a substantial success, and a customized version has also begun to be used under Jury procedure.

(iii) *New members and accessions*

In 2006, 60 new instruments of ratification and accession were received and processed 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 2006.

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[562] Compared to the most commonly-used ".com" generic top-level domains.

- Convention Establishing the World Intellectual Property Organization: 1 (184);
- Paris Convention for the Protection of Industrial Property: 1 (171);
- Berne Convention for the Protection of Literary and Artistic Works: 3 (163);
- Patent Cooperation Treaty: 4 (137);
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks: 4 (71);
- Trademark Law Treaty: 4 (38);
- Patent Law Treaty: 1 (14);
- Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods: 1 (35);
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks: 3 (80);
- Locarno Agreement Establishing an International Classification for Industrial Designs: 3 (49);
- Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks: 3 (23);
- WIPO Copyright Treaty: 6 (64);
- WIPO Performances and Phonograms Treaty: 5 (62);
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration: 3 (26);
- Strasbourg Agreement Concerning the International Patent Classification: 2 (57);
- Nairobi Treaty on the Protection of the Olympic Symbol: 2 (46);
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure: 5 (67);
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations: 3 (86);
- The Hague Agreement Concerning the International Registration of Industrial Designs: 3 (19);
- Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite: 2 (30);
- Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms: 1 (76).

11. Organization for the Prohibition of Chemical Weapons

(*a*) Membership

During 2006, six States became party to the Convention on the Prohibition of the Development, Production and Stockpiling and Use of Chemical Weapons and on their

Destruction of 1992 (CWC)[563]: the Central African Republic, Comoros, Djibouti, Haiti, Liberia and Montenegro. At the end of the year, there were 181 States parties.

(*b*) Destruction of chemical weapons

The Eleventh Session of the Conference of the States Parties of the Organization for the Prohibition of chemical Weapons (OPCW) was held from 5 to 8 December 2006.[564] At the session the States parties approved requests for extensions of the final date for the destruction of the declare chemical weapons stockpiles, and stipulated that each State party shall eliminate all of the chemical weapons declared to OPCW by no later than 29 April 2012.

(*c*) Legal status, privileges and immunities and international agreements

During 2006, OPCW signed two international agreements on the privileges and immunities of the Organization. The first agreement, concluded with the State of Kuwait, was signed on the 9 March 2006 and the second agreement, concluded with the Republic of Colombia, was signed on 12 September 2006.

The European Community concluded a Contribution Agreement with OPCW, in support of the OPCW activities within the framework of the implementation of the European Union Strategy against Proliferation of Weapons of Mass Destruction. This agreement was signed on 7 March 2006.

A memorandum of understanding on Co-operation between the Technical Secretariat of OPCW and the Commission of the African Union on Co-operation between the two organisations was signed on 29 January 2006.[565]

During the reporting period three memoranda of understanding, concluded between OPCW and three States parties to CWC, entered into force. In addition, pursuant to paragraph 3 of Part III of the Verification annex to CWC, each State party must conclude a facility agreement with OPCW for each facility declared and subject to on-site inspections. During the reporting period two facility agreements regarding on-site inspections at a Schedule 1 protective purposes facility were concluded. The first was signed between OPCW and the Kingdom of Norway on 2 February 2006 and entered into force on the same day. The second facility agreement concluded during 2006 was between OPCW and the Government of Japan; this agreement was signed on 3 May 2006 and entered into force on the same day. A facility agreement regarding on-site inspections at a chemical weapons destruction facility was signed between OPCW and the Government of Albania on 26 July 2006 and entered into force on the same day.

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[563] United Nations, *Treaty Series,* vol. 1974, p. 45.

[564] Report of the Eleventh session of the Conference of the States parties, Doc. C-11/5.

[565] See this publication, Chapter II.B.

(*d*) Review of the Chemical Weapons Convention

The Conference of the States Parties at its Tenth Session recommended the establishment of an open-ended working group to begin, in cooperation with the Secretariat, preparations for the Second Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons Convention, which is to be convened in accordance with Article VIII, paragraph 22. This Article provides that no later than one year after the expiry of the tenth year after the entry into force of the Convention, a review conference shall be convened. The Executive Council of OPCW, at its Forty-Third Session in December 2005, decided to establish such working group.

The Open-Ended Working Group for the Second Review Conference held four meetings in 2006, at which it considered issues including, among others, the contribution of civil society to the review process, the role of CWC in enhancing international peace and security, the importance of the destruction of declared chemical weapons stockpiles within the applicable deadlines, the importance of achieving universal adherence to, and full and prompt implementation of CWC, and its role in responding to the threat of international terrorism.

(*e*) OPCW legislative assistance activities

Throughout 2006, the Technical Secretariat of OPCW, upon request, continued to render assistance in a tailored and systematic manner to States parties that had yet to adopt measures to implements their obligations under the Convention.

In its implementation support efforts, the Technical Secretariat of OPCW was guided by the decision on the plan of action regarding the implementation of Article VII obligations adopted by the Conference of the States Parties, on 24 October 2003[566] and its follow-up decision, dated 11 November 2005.[567] These decisions focused amongst other things on the obligations for States parties to designate or establish a National Authority to serve as a national focal point for effective liaison with OPCW and other States parties, as required by article VII, paragraph 4, of the Convention, and to take the steps necessary to enact national implementing legislation, including penal legislation, as required by article VII, paragraph 1, of the Convention. During its Eleventh Session, the Conference of the States Parties agreed to sustain for a further year the follow-up decision on the plan of action regarding the implementation of article VII obligations.

The Technical Secretariat contributed to training courses, workshops, technical assistance visits and other activities related to national implementation, for officials in 38 States parties, including those from National Authorities, national parliaments and industry. Practical aspects of national implementation have been discussed, including bilaterally with participants in regional and sub-regional meetings and workshops for National Authorities from Africa, Asia, Eastern Europe, and Latin America and the Caribbean. Three drafting workshops on legislation were organised for experts from the Andean Community, the Caribbean, and Central and West Africa, and three training courses were held for customs officials in Latin America and the Caribbean, and in South Asia. Two thematic

[566] Doc. C-8/DEC.16.

[567] Doc. C-10/DEC.16.

workshops on industry-verification issues were conducted for Latin America and Asia. Training courses for personnel involved in the national implementation of the Convention were organised in cooperation with the governments of France, Portugal, Spain, and the United Kingdom of Great Britain and Northern Ireland. The Technical Secretariat also reviewed and commented on 64 drafts of implementing legislation that had been submitted by 45 States parties.

In developing its implementation support plan for 2006, the Technical Secretariat took account of the particular requirements of those States parties that had recently joined the Chemical Weapons Convention and had requested such assistance. The Secretariat continued to maintain informal working contacts with States parties with which it had built a relationship through technical assistance visits and consultations, in order to identify additional needs for assistance, to follow up on assistance already provided and to coordinate future assistance activities.

As of 1 November 2006, 172 out of 181 States parties (95 per cent) had designated or established a National Authority (25 more National Authorities than in the previous year) while 72 States parties (40 per cent) had comprehensive implementing legislation in place (13 more States parties than in the previous year).

12. World Trade Organization

(*a*) Membership

Applications for World Trade Organization (WTO) membership are the subject of individual working parties. Terms and conditions related to market access such as tariff levels and commercial presence for foreign service suppliers are the subject of bilateral negotiations.

(i) *Recently completed accessions*

The General Council approved Viet Nam's accession package on 7 November 2006. Viet Nam became the 150th member of WTO on 11 January 2007. The accession package of the Kingdom of Tonga was adopted at the Sixth WTO Ministerial Conference on 15 December 2006.

(ii) *Accession of Tonga—Extension of time limit for acceptance of protocol of accession*

In a communication,[568] Tonga indicated that due to unforeseen domestic circumstances, it would not be able to accomplish all of its ratification procedures within the time-limit of 31 July 2006 provided for in paragraph 7 of its Protocol of Accession to the WTO. Accordingly, Tonga requested that the time-limit for accomplishment of all necessary procedures for its ratification of the Protocol of Accession to WTO be extended to 1 July 2007. The General Council adopted the draft decision[569] in accordance with the

[568] WT/GC/107.

[569] Contained in document WT/GC/W/567.

Decision-Making Procedures under articles IX and XII of the WTO Agreement agreed in November 1995. [570]

Tonga will become a member of WTO 30 days after notifying WTO of the domestic ratification of the accession package.

(iii) *Ongoing accessions*

As of the end of the year 2006, the following governments were in the process of accession to WTO (in alphabetical order):

Afghanistan
Algeria
Andorra
Azerbaijan
Bahamas
Belarus
Bhutan
Bosnia and Herzegovina
Cape Verde
Ethiopia
Iran (Islamic Republic of)
Iraq
Kazakhstan
Lao People's Democratic Republic
Lebanon
Libyan Arab Jamahiriya
Montenegro
Russian Federation
Samoa
Sao Tomé and Principe
Serbia
Seychelles
Sudan
Tajikistan
Ukraine
Uzbekistan
Vanuatu[571]
Yemen

[570] WT/L/93.

[571] The final meeting of the Working Party on the Accession of Vanuatu was held on 29 October 2001.

(*b*) Dispute settlement

During 2006, 20 requests for consultations were received pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes.[572] The Dispute Settlement Body established panels in the following cases:

- Brazil—Measures affecting imports of retreaded tyres (WT/DS332);
- Mexico—Anti-dumping duties on steel pipes and tubes from Guatemala (WT/DS331);
- Turkey—Measures Affecting the Importation of Rice (WT/DS334);
- Japan—Countervailing duties on dynamic random access memories from Korea (WT/DS336);
- United States of America—Anti-dumping measure on shrimp from Ecuador (WT/DS335);
- European Communities and certain member States—Measures affecting trade in large civil aircraft (second complaint) (WT/DS347);
- European Communities—Anti-dumping measure on farmed salmon from Norway (WT/DS337);
- China—Measures affecting imports of automobile parts (WT/DS339, WT/DS340, WT/DS342);
- United States of America—Measures relating to shrimp from Thailand (WT/DS343);
- United States of America—Final anti-dumping measures on stainless steel from Mexico (WT/DS344);
- United States of America—Customs bond directive for merchandise subject to anti-dumping/countervailing duties (WT/DS345);
- United States of America—Measures affecting trade in large civil aircraft (second complaint), (WT/DS353).

During 2006, the Dispute Settlement Body adopted panel and Appellate Body reports in the following cases:

- Mexico—Tax measures on soft drinks and other beverages (WT/DS308) (Appellate Body and Panel reports);
- United States of America—Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") (WT/DS294) (Appellate Body and Panel reports);
- European Communities—Measures Affecting the Approval and Marketing of Biotech Products WT/DS291/R, WT/DS292/R, WT/DS293/R, Corr.1 and Add.1, 2, 3, 4, 5, 6, 7, 8 and 9 (panel report);
- European Communities—Selected Customs Matters (WT/DS315) (Appellate Body and panel reports).

(*c*) Waivers under article IX of the WTO Agreement

During the period under review, the General Council granted the following waivers from obligations under the WTO Agreements, which are still in effect.

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[572] United Nations, *Treaty Series,* vol. 1869, p. 401 (annex 2).

MEMBER	TYPE	DECISION OF	EXPIRY	DOCU-MENT
Argentina	Introduction of Harmonized System 1996 changes into WTO Schedules of Tariff Concessions—Extension of Time-Limit	28 July 2006	30 April 2007	WT/L/653
European Com-munities	European Communities' preferences for Albania, Bosnia and Herzegovina, Croatia, Serbia and Montenegro, and the Former Yugoslav Republic of Macedonia—Extension of waiver	28 July 2006	31 Decem-ber 2011	WT/L/654
Panama	Introduction of Harmonized System 1996 changes into WTO Schedules of Tariff Concessions—Extension of Time-Limit	28 July 2006	30 April 2007	WT/L/652
Senegal	Minimum values in regard to the Agreement on the Imple-mentation of Article VII of General Agreement on Tariffs and Trade 1994—Extension of waiver	28 July 2006	30 April 2007	WT/L/655

MEMBER	TYPE	DECISION OF	EXPIRY	DOCUMENT
Argentina; Australia; Brazil; Bulgaria; Canada; China; Costa Rica; Croatia; El Salvador; European Communities; Hong Kong, China; Iceland; India; Republic of Korea; Macao, China; Mexico; New Zealand; Nicaragua; Norway; Romania; Singapore; Switzerland; Chinese Taipei; Thailand; United States of America; Uruguay	Introduction of Harmonized System 2002 changes into WTO Schedules of Tariff Concessions	15 December 2006	15 December 2007	WT/L/674

MEMBER	TYPE	DECISION OF	EXPIRY	DOCU-MENT
Argentina; Australia; Brazil; Canada; Costa Rica; Croatia; El Salvador; European Communities; Guatemala; Honduras; Hong Kong, China; India; Republic of Korea; Macao, China; Malaysia; New Zealand; Nicaragua; Norway; Switzerland; United States of America; Uruguay	Introduction of Harmonized System 2007 Changes into WTO Schedules of Tariff Concessions	15 December 2006	15 December 2007	WT/L/675
Australia; Botswana, Brazil; Canada; Croatia; India; Israel; Japan; Korea; Mauritius; Mexico; Norway; Philippines; Sierra Leone; Chinese Taipei; Thailand; United Arab Emirates; United States; Venezuela	Kimberley Process Certification Scheme for rough diamonds—Extension of waiver	15 December 2006	31 December 2012	WT/L/676

MEMBER	TYPE	DECISION OF	EXPIRY	DOCU-MENT
Canada	CARIBCAN—Extension of waiver	15 December 2006	31 December 2011	WT/L/677
Cuba	Article XV:6 of GATT 1994—Extension of waiver	15 December 2006	31 December 2011	WT/L/678

13. Preparatory Commission for the Comprehensive Nuclear Test-Ban-Treaty

In 2006, the Preparatory Commission decided to allow for access to verification data to be given to tsunami warning organizations approved as such by the Intergovernmental Oceanographic Commission of UNESCO. However, strict conditions of confidentiality apply and the provided data can be used for the purpose of tsunami warning only.

The Secretariat of the Preparatory Commission continued to provide legal support to signature, ratification and national implementation of the Comprehensive Nuclear-Test-Ban Treaty of 1996 (CTBT).[573] By the end of 2006, CTBT had 177 States Signatories and 138 ratifications.

Finally, it should be noted that the Preparatory Commission is tasked with arranging for facility agreements for the hosting of the 337 monitoring stations and laboratories foreseen under CTBT. In 2006, facility agreements with Cameroon, Cape Verde, Iceland, Italy, Paraguay, the Russian Federation and Senegal were concluded or entered into force. The status at the end of 2006 was 36 concluded facility agreements, out of which 29 have entered into force.

[573] United Nations document A/50/1027.

Chapter IV

TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Treaties concerning international law concluded under the auspices of the United Nations

1. International Tropical Timber Agreement*

Preamble

The Parties to this Agreement,

(*a*) *Recalling* the Declaration and the Programme of Action on the Establishment of a New International Economic Order; the Integrated Programme for Commodities; the New Partnership for Development; and the Spirit of São Paulo and São Paulo Consensus, as adopted by UNCTAD XI;

(*b*) *Also recalling* the International Tropical Timber Agreement, 1983, and the International Tropical Timber Agreement, 1994, and recognizing the work of the International Tropical Timber Organization and its achievements since its inception, including a strategy for achieving international trade in tropical timber from sustainably managed sources;

(*c*) *Further recalling* the Johannesburg Declaration and Plan of Implementation as adopted by the World Summit on Sustainable Development in September 2002, the United Nations Forum on Forests established in October 2000 and the associated creation of the Collaborative Partnership on Forests, of which the International Tropical Timber Organization is a member, as well as the Rio Declaration on Environment and Development, the Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests, and the relevant Chapters of Agenda 21 as adopted by the United Nations Conference on Environment and Development in June 1992, the United Nations Framework Convention on Climate Change, the United Nations Convention on Biological Diversity and the United Nations Convention to Combat Desertification;

(*d*) *Recognizing* that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies and have the responsibility to ensure that activities within their jurisdiction and control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction, as set

* Adopted in Geneva, on 27 January 2006, by the United Nations Conference for the Negotiation of a successor Agreement to the International Tropical Timber Agreement of 1994; see TD/TIMBER.3/12.

forth in principle 1(a) of the Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests;

(*e*) *Recognizing* the importance of timber and related trade to the economies of timber producer countries;

(*f*) *Also recognizing* the importance of the multiple economic, environmental and social benefits provided by forests, including timber and non-timber forest products and environmental services, in the context of sustainable forest management, at local, national and global levels and the contribution of sustainable forest management to sustainable development and poverty alleviation and the achievement of internationally agreed development goals, including those contained in the Millennium Declaration;

(*g*) *Further recognizing* the need to promote and apply comparable criteria and indicators for sustainable forest management as important tools for all members to assess, monitor and promote progress toward sustainable management of their forests;

(*h*) *Taking into account* the linkages of the tropical timber trade and the international timber market and wider global economy and the need to take a global perspective in order to improve transparency in the international timber trade;

(*i*) *Reaffirming* their commitment to moving as rapidly as possible toward achieving exports of tropical timber and timber products from sustainably managed sources (ITTO Objective 2000) and recalling the establishment of the Bali Partnership Fund;

(*j*) *Recalling* the commitment made by consumer members in January 1994 to maintain or achieve the sustainable management of their forests;

(*k*) *Noting* the role of good governance, clear land tenure arrangements and cross-sectoral coordination in achieving sustainable forest management and legally sourced timber exports;

(*l*) *Recognizing* the importance of collaboration among members, international organizations, the private sector and civil society, including indigenous and local communities, and other stakeholders in promoting sustainable forest management;

(*m*) *Also recognizing* the importance of such collaboration for improving forest law enforcement and promoting trade from legally harvested timber;

(*n*) *Noting that* enhancing the capacity of forest-dependent indigenous and local communities, including those who are forest owners and managers, can contribute to achieving the objectives of this Agreement;

(*o*) *Also noting* the need to improve the standard of living and working conditions within the forest sector, taking into account relevant internationally recognized principles on these matters, and relevant International Labour Organization Conventions and instruments;

(*p*) *Noting* that timber is an energy-efficient, renewable and environmentally friendly raw material compared with competing products;

(*q*) *Recognizing* the need for increased investment in sustainable forest management, including through reinvesting revenues generated from forests, including from timber-related trade;

(*r*) *Also recognizing* the benefits of market prices that reflect the costs of sustainable forest management;

(*s*) *Further recognizing* the need for enhanced and predictable financial resources from a broad donor community to help achieve the objectives of this Agreement;

(*t*) *Noting* the special needs of least developed tropical timber producer countries.

Have agreed as follows;

Chapter I. Oblectives

Article 1. Objectives

The objectives of the International Tropical Timber Agreement, 2006 (hereinafter referred to as "this Agreement") are to promote the expansion and diversification of international trade in tropical timber from sustainably managed and legally harvested forests and to promote the sustainable management of tropical timber producing forests by:

(*a*) Providing an effective framework for consultation, international cooperation and policy development among all members with regard to all relevant aspects of the world timber economy;

(*b*) Providing a forum for consultation to promote non-discriminatory timber trade practices;

(*c*) Contributing to sustainable development and to poverty alleviation;

(*d*) Enhancing the capacity of members to implement strategies for achieving exports of tropical timber and timber products from sustainably managed sources;

(*e*) Promoting improved understanding of the structural conditions in international markets, including long-term trends in consumption and production, factors affecting market access, consumer preferences and prices, and conditions leading to prices which reflect the costs of sustainable forest management;

(*f*) Promoting and supporting research and development with a view to improving forest management and efficiency of wood utilization and the competitiveness of wood products relative to other materials, as well as increasing the capacity to conserve and enhance other forest values in timber producing tropical forests;

(*g*) Developing and contributing towards mechanisms for the provision of new and additional financial resources with a view to promoting the adequacy and predictability of funding and expertise needed to enhance the capacity of producer members to attain the objectives of this Agreement;

(*h*) Improving market intelligence and encouraging information sharing on the international timber market with a view to ensuring greater transparency and better information on markets and market trends, including the gathering, compilation and dissemination of trade related data, including data related to species being traded;

(*i*) Promoting increased and further processing of tropical timber from sustainable sources in producer member countries, with a view to promoting their industrialization and thereby increasing their employment opportunities and export earnings;

(*j*) Encouraging members to support and develop tropical timber reforestation, as well as rehabilitation and restoration of degraded forest land, with due regard for the interests of local communities dependent on forest resources;

(*k*) Improving marketing and distribution of tropical timber and timber product exports from sustainably managed and legally harvested sources and which are legally traded, including promoting consumer awareness;

(*l*) Strengthening the capacity of members for the collection, processing and dissemination of statistics on their trade in timber and information on the sustainable management of their tropical forests;

(*m*) Encouraging members to develop national policies aimed at sustainable utilization and conservation of timber producing forests, and maintaining ecological balance, in the context of the tropical timber trade;

(*n*) Strengthening the capacity of members to improve forest law enforcement and governance, and address illegal logging and related trade in tropical timber;

(*o*) Encouraging information sharing for a better understanding of voluntary mechanisms such as, inter alia, certification, to promote sustainable management of tropical forests, and assisting members with their efforts in this area;

(*p*) Promoting access to, and transfer of, technologies and technical cooperation to implement the objectives of this Agreement, including on concessional and preferential terms and conditions, as mutually agreed;

(*q*) Promoting better understanding of the contribution of non-timber forest products and environmental services to the sustainable management of tropical forests with the aim of enhancing the capacity of members to develop strategies to strengthen such contributions in the context of sustainable forest management, and cooperating with relevant institutions and processes to this end;

(*r*) Encouraging members to recognize the role of forest-dependent indigenous and local communities in achieving sustainable forest management and develop strategies to enhance the capacity of these communities to sustainably manage tropical timber producing forests; and

(*s*) Identifying and addressing relevant new and emerging issues.

Chapter II. Definitions

Article 2. Definitions

For the purposes of this Agreement:

1. "Tropical timber" means tropical wood for industrial uses, which grows or is produced in the countries situated between the Tropic of Cancer and the Tropic of Capricorn. The term covers logs, sawnwood, veneer sheets and plywood;

2. "Sustainable forest management" will be understood according to the Organization's relevant policy documents and technical guidelines;

3. "Member" means a Government, the European Community or any intergovernmental organization referred to in article 5, which has consented to be bound by this Agreement whether it is in force provisionally or definitively;

4. "Producer member" means any member situated between the Tropic of Cancer and the Tropic of Capricorn with tropical forest resources and/or a net exporter of tropical timber in volume terms which is listed in Annex A and which becomes a party to this Agreement, or any member with tropical forest resources and/or a net exporter of tropical timber in volume terms which is not so listed and which becomes a party to this Agreement and which the Council, with the consent of that member, declares to be a producer member;

5. "Consumer member" means any member which is an importer of tropical timber listed in Annex B which becomes a party to this Agreement, or any member which is an importer of tropical timber not so listed which becomes a party to this Agreement and which the Council, with the consent of that member, declares to be a consumer member;

6. "Organization" means the International Tropical Timber Organization established in accordance with article 3;

7. "Council" means the International Tropical Timber Council established in accordance with article 6;

8. "Special vote" means a vote requiring at least two thirds of the votes cast by producer members present and voting and at least 60 per cent of the votes cast by consumer members present and voting, counted separately, on condition that these votes are cast by at least half of the producer members present and voting and at least half of the consumer members present and voting.

9. "Simple distributed majority vote" means a vote requiring more than half of the votes cast by producer members present and voting and more than half of the votes cast by consumer members present and voting, counted separately;

10. "Financial biennium" means the period from 1 January of one year to 31 December of the following year.

11. "Freely convertible currencies" means the euro, the Japanese yen, the pound sterling, the Swiss franc, the United States dollar, and any other currency which has been designated from time to time by a competent international monetary organization as being in fact widely used to make payments for international transactions and widely traded in the principal exchange markets.

12. For purposes of the calculation of the distribution of votes under article 10, paragraph 2(b), "tropical forest resources" means natural closed forests and forest plantations located between the Tropic of Cancer and the Tropic of Capricorn.

Chapter III. Organization and Administration

Article 3. Headquarters and structure of the International Tropical Timber Organization

1. The International Tropical Timber Organization established by the International Tropical Timber Agreement, 1983 shall continue in being for the purposes of administering the provisions and supervising the operation of this Agreement.

2. The Organization shall function through the Council established under article 6, the committees and other subsidiary bodies referred to in article 26 and the Executive Director and staff.

3. The headquarters of the Organization shall at all times be located in the territory of a member.

4. The headquarters of the Organization shall be in Yokohama, unless the Council, by special vote in accordance with article 12, decides otherwise.

5. Regional offices of the Organization may be established if the Council so decides by special vote in accordance with article 12.

Article 4. Membership in the Organization

There shall be two categories of membership in the Organization, namely:

(a) Producer; and

(b) Consumer.

Article 5. Membership by intergovernmental organizations

1. Any reference in this Agreement to "Governments" shall be construed as including the European Community and other intergovernmental organizations having comparable responsibilities in respect of the negotiation, conclusion and application of international agreements, in particular commodity agreements. Accordingly, any reference in this Agreement to signature, ratification, acceptance or approval, or to notification of provisional application, or to accession shall, in the case of such organizations, be construed as including a reference to signature, ratification, acceptance or approval, or to notification of provisional application, or to accession, by such organizations.

2. In the case of voting on matters within their competence, the European Community and other intergovernmental organizations referred to in paragraph 1 shall vote with a number of votes equal to the total number of votes attributable to their member States which are parties to the Agreement in accordance with article 10. In such cases, the member States of such organizations shall not be entitled to exercise their individual voting rights.

Chapter IV. International Tropical Timber Council

Article 6. Composition of the International Tropical Timber Council

1. The highest authority of the Organization shall be the International Tropical Timber Council, which shall consist of all the members of the Organization.

2. Each member shall be represented in the Council by one representative and may designate alternates and advisers to attend sessions of the Council.

3. An alternate shall be empowered to act and vote on behalf of the representative during the latter's absence or in special circumstances.

Article 7. Powers and functions of the Council

The Council shall exercise all such powers and perform or arrange for the performance of all such functions as are necessary to carry out the provisions of this Agreement. In particular, it shall:

(*a*) By special vote in accordance with article 12, adopt such rules and regulations as are necessary to carry out the provisions of this Agreement and as are consistent therewith, including its own rules of procedure and the financial rules and staff regulations of the Organization. Such financial rules and regulations shall, inter alia, govern the receipt and expenditure of funds under the accounts established in article 18. The Council may, in its rules of procedure, provide for a procedure whereby it may, without meeting, decide specific questions;

(*b*) Take such decisions as are necessary to ensure the effective and efficient functioning and operation of the Organization; and

(*c*) Keep such records as are required for the performance of its functions under this Agreement.

Article 8. Chairman and Vice-chairman of the Council

1. The Council shall elect for each calendar year a Chairman and a Vice-Chairman, whose salaries shall not be paid by the Organization.

2. The Chairman and the Vice-Chairman shall be elected, one from among the representatives of producer members and the other from among the representatives of consumer members.

3. These offices shall alternate each year between the two categories of members, provided, however, that this shall not prohibit the re-election of either or both, under exceptional circumstances.

4. In the temporary absence of the Chairman, the Vice-Chairman shall assume the functions of the Chairman. In the temporary absence of both the Chairman and the Vice-Chairman, or in the absence of one or both of them for the rest of the term for which they were elected, the Council may elect new officers from among the representatives of the producer members and/or from among the representatives of the consumer members, as the case may be, on a temporary basis or for the rest of the term for which the predecessor or predecessors were elected.

Article 9. Sessions of the Council

1. As a general rule, the Council shall hold at least one regular session a year.

2. The Council shall meet in special session whenever it so decides or at the request of any member or the Executive Director, in agreement with the Chairman and Vice-Chairman of the Council, and:

(*a*) A majority of producer members or a majority of consumer members; or

(*b*) A majority of members.

3. Sessions of the Council shall be held at the headquarters of the Organization unless the Council, by special vote in accordance with article 12, decides otherwise. In this regard, the Council shall seek to convene alternate sessions of the Council outside headquarters, preferably in a producer country.

4. In considering the frequency and location of its sessions, the Council shall seek to ensure the availability of sufficient funds.

5. Notice of any sessions and the agenda for such sessions shall be communicated to members by the Executive Director at least six weeks in advance, except in cases of emergency, when notice shall be communicated at least seven days in advance.

Article 10. Distribution of votes

1. The producer members shall together hold 1,000 votes and the consumer members shall together hold 1,000 votes.

2. The votes of the producer members shall be distributed as follows:

(*a*) Four hundred votes shall be distributed equally among the three producing regions of Africa, Asia-Pacific and Latin America and the Caribbean. The votes thus allocated to each of these regions shall then be distributed equally among the producer members of that region;

(*b*) Three hundred votes shall be distributed among the producer members in accordance with their respective shares of the total tropical forest resources of all producer members; and

(*c*) Three hundred votes shall be distributed among the producer members in proportion to the average of the values of their respective net exports of tropical timber during the most recent three-year period for which definitive figures are available.

3. Notwithstanding the provisions of paragraph 2 of this article, the total votes allocated to the producer members from the African region, calculated in accordance with paragraph 2 of this article, shall be distributed equally among all producer members from the African region. If there are any remaining votes, each of these votes shall be allocated to a producer member from the African region: the first to the producer member which is allocated the highest number of votes calculated in accordance with paragraph 2 of this article, the second to the producer member which is allocated the second highest number of votes, and so on until all the remaining votes have been distributed.

4. Subject to paragraph 5 of this article, the votes of the consumer members shall be distributed as follows: each consumer member shall have 10 initial votes; the remaining votes shall be distributed among the consumer members in proportion to the average volume of their respective net imports of tropical timber during the five-year period commencing six calendar years prior to the distribution of votes.

5. The votes distributed to a consumer member for a given biennium shall not exceed 5 per cent over and above the votes distributed to that member for the previous biennium. Excess votes shall be redistributed among the consumer members in proportion to the average volume of their respective net imports of tropical timber during the five-year period commencing six calendar years prior to the distribution of votes.

6. The Council may, by special vote in accordance with article 12, adjust the minimum percentage required for a special vote by consumer members if it deems it necessary.

7. The Council shall distribute the votes for each financial biennium at the beginning of its first session of that biennium in accordance with the provisions of this article. Such distribution shall remain in effect for the rest of that biennium, except as provided for in paragraph 8 of this article.

8. Whenever the membership of the Organization changes or when any member has its voting rights suspended or restored under any provision of this Agreement, the Council shall redistribute the votes within the affected category or categories of members in accordance with the provisions of this article. The Council shall, in that event, decide when such redistribution shall become effective.

9. There shall be no fractional votes.

Article 11. Voting procedure of the Council

1. Each member shall be entitled to cast the number of votes it holds, and no member shall be entitled to divide its votes. A member may, however, cast differently from such votes any votes that it is authorized to cast under paragraph 2 of this article.

2. By written notification to the Chairman of the Council, any producer member may authorize, under its own responsibility, any other producer member, and any consumer member may authorize, under its own responsibility, any other consumer member, to represent its interests and to cast its votes at any meeting of the Council.

3. When abstaining, a member shall be deemed not to have cast its votes.

Article 12. Decisions and recommendations of the Council

1. The Council shall endeavour to take all decisions and to make all recommendations by consensus.

2. If consensus cannot be reached, the Council shall take all decisions and make all recommendations by a simple distributed majority vote, unless this Agreement provides for a special vote.

3. Where a member avails itself of the provisions of article 11, paragraph 2, and its votes are cast at a meeting of the Council, such member shall, for the purposes of paragraph 1 of this article, be considered as present and voting.

Article 13. Quorum for the Council

1. The quorum for any meeting of the Council shall be the presence of a majority of members of each category referred to in article 4, provided that such members hold at least two thirds of the total votes in their respective categories.

2. If there is no quorum in accordance with paragraph 1 of this article on the day fixed for the meeting and on the following day, the quorum on the subsequent days of the session shall be the presence of a majority of members of each category referred to in article 4, provided that such members hold a majority of the total votes in their respective categories.

3. Representation in accordance with article 11, paragraph 2, shall be considered as presence.

Article 14. Executive Director and staff

1. The Council shall, by special vote in accordance with article 12, appoint the Executive Director.

2. The terms and conditions of appointment of the Executive Director shall be determined by the Council.

3. The Executive Director shall be the chief administrative officer of the Organization and shall be responsible to the Council for the administration and operation of this Agreement in accordance with decisions of the Council.

4. The Executive Director shall appoint staff in accordance with regulations to be established by the Council. The staff shall be responsible to the Executive Director.

5. Neither the Executive Director nor any member of the staff shall have any financial interest in the timber industry or trade, or associated commercial activities.

6. In the performance of their duties, the Executive Director and staff shall not seek or receive instructions from any member or from any authority external to the Organization. They shall refrain from any action which might reflect adversely on their positions as international officials ultimately responsible to the Council. Each member shall respect the exclusively international character of the responsibilities of the Executive Director and staff and shall not seek to influence them in the discharge of their responsibilities.

Article 15. Cooperation and coordination with other organizations

1. In pursuing the objectives of the Agreement, the Council shall make arrangements as appropriate for consultations and cooperation with the United Nations and its organs and specialized agencies, including the United Nations Conference on Trade and Development (UNCTAD) and other relevant international and regional organizations and institutions, as well as the private sector, non-governmental organizations and civil society.

2. The Organization shall, to the maximum extent possible, utilize the facilities, services and expertise of intergovernmental, governmental or non-governmental organizations, civil society and the private sector in order to avoid duplication of efforts in achieving the objectives of this Agreement and to enhance the complementarity and the efficiency of their activities.

3. The Organization shall take full advantage of the facilities of the Common Fund for Commodities.

Article 16. Admission of observers

The Council may invite any member or observer State of the United Nations which is not party to this Agreement, or any organization referred to in article 15 interested in the activities of the Organization, to attend as observers the sessions of the Council.

Chapter V. Privileges and Immunities

Article 17. Privileges and immunities

1. The Organization shall have legal personality. It shall in particular have the capacity to contract, to acquire and dispose of movable and immovable property, and to institute legal proceedings.

2. The status, privileges and immunities of the Organization, of its Executive Director, its staff and experts, and of representatives of members while in the territory of Japan shall continue to be governed by the Headquarters Agreement between the Government of

Japan and the International Tropical Timber Organization signed at Tokyo on 27 February 1988, with such amendments as may be necessary for the proper functioning of this Agreement.

3. The Organization may conclude, with one or more countries, agreements to be approved by the Council relating to such capacity, privileges and immunities as may be necessary for the proper functioning of this Agreement.

4. If the headquarters of the Organization is moved to another country, the member in question shall, as soon as possible, conclude with the Organization a headquarters agreement to be approved by the Council. Pending the conclusion of such an Agreement, the Organization shall request the new host Government to grant, within the limits of its national legislation, exemption from taxation on remuneration paid by the Organization to its employees, and on the assets, income and other property of the Organization.

5. The Headquarters Agreement shall be independent of this Agreement. It shall, however, terminate:

(*a*) By agreement between the host Government and the Organization;

(*b*) In the event of the headquarters of the Organization being moved from the country of the host Government; or

(*c*) In the event of the Organization ceasing to exist.

Chapter VI. Finance

Article 18. Financial accounts

1. There shall be established:

(*a*) The Administrative Account, which is an assessed contribution account;

(*b*) The Special Account and The Bali Partnership Fund, which are voluntary contribution accounts; and

(*c*) Other accounts that the Council might consider appropriate and necessary.

2. The Council shall establish, in accordance with article 7, financial rules that provide transparent management and administration of the accounts, including rules covering the settlement of accounts on termination or expiry of this Agreement.

3. The Executive Director shall be responsible for, and report to the Council on the administration of the financial accounts.

Article 19. Administrative account

1. The expenses necessary for the administration of this Agreement shall be brought into the Administrative Account and shall be met by annual contributions paid by members in accordance with their respective constitutional or institutional procedures and assessed in accordance with paragraphs 4, 5 and 6 of this article.

2. The Administrative Account shall include:

(*a*) Basic administrative costs such as salaries and benefits, installation costs, and official travel; and

(*b*) Core operational costs such as those related to communication and outreach, expert meetings convened by the Council and preparation and publication of studies and assessments pursuant to articles 24, 27 and 28 of this Agreement.

3. The expenses of delegations to the Council, the committees and any other subsidiary bodies of the Council referred to in article 26 shall be met by the members concerned. In cases where a member requests special services from the Organization, the Council shall require that member to pay the costs of such services.

4. Before the end of each financial biennium, the Council shall approve the budget for the Administrative Account of the Organization for the following biennium and shall assess the contribution of each member to that budget.

5. Contributions to the Administrative Account for each financial biennium shall be assessed as follows:

(*a*) The costs referred to in paragraph 2 (a) of this article shall be shared equally among producer and consumer members and assessed in the proportion the number of each member's votes bears to the total votes of the member's group;

(*b*) The costs referred to in paragraph 2 (b) of this article shall be shared among members in the proportions of 20 per cent for producers and 80 per cent for consumers and assessed in the proportion the number of each member's votes bears to the total votes of the member's group;

(*c*) The costs referred to in paragraph 2 (b) of this article shall not exceed one third of the costs referred to in paragraph 2 (a) of this article. The Council may, by consensus, decide to vary this limit for a specific financial biennium;

(*d*) The Council may review how the Administrative Account and the voluntary accounts contribute to the efficient and effective operation of the Organization in the context of the evaluation referred to in article 33; and

(*e*) In assessing contributions, the votes of each member shall be calculated without regard to the suspension of any member's voting rights or any redistribution of votes resulting therefrom.

6. The initial contribution of any member joining the Organization after the entry into force of this Agreement shall be assessed by the Council on the basis of the number of votes to be held by that member and the period remaining in the current financial biennium, but the assessment made upon other members from the current financial biennium shall not thereby be altered.

7. Contributions to the Administrative Account shall become due on the first day of each financial year. Contributions of members in respect of the financial biennium in which they join the Organization shall be due on the date on which they become members.

8. If a member has not paid its full contribution to the Administrative Account within four months after such contribution becomes due in accordance with paragraph 7 of this article, the Executive Director shall request that member to make payment as quickly as possible. If that member has still not paid its contribution within two months after such request, that member shall be requested to state the reasons for its inability to make payment. If at the expiry of seven months from the due date of contribution, that member has still not paid its contribution, its voting rights shall be suspended until such time as it has paid in full its contribution, unless the Council, by special vote in accordance

with article 12, decides otherwise. If a member has not paid its contribution in full for two consecutive years, taking into account the provisions contained in article 30, that member shall become ineligible to submit project or pre-project proposals for funding consideration under article 25, paragraph 1.

9. If a member has paid its full contribution to the Administrative Account within four months after such contribution becomes due in accordance with paragraph 7 of this article, that member's contribution shall receive a discount as may be established by the Council in the financial rules of the Organization.

10. A member whose rights have been suspended under paragraph 8 of this article shall remain liable to pay its contribution.

Article 20. Special account

1. The Special Account shall comprise two sub-accounts:

(*a*) The Thematic Programmes Sub-Account; and

(*b*) The Project Sub-Account.

2. The possible sources of finance for the Special Account shall be:

(*a*) The Common Fund for Commodities;

(*b*) Regional and international financial institutions;

(*c*) Voluntary contributions from members; and

(*d*) Other sources.

3. The Council shall establish criteria and procedures for the transparent operation of the Special Account. Such procedures shall take into account the need for balanced representation among members, including contributing members, in the operation of the Thematic Programmes Sub-Account and the Project Sub-Account.

4. The purpose of the Thematic Programmes Sub-Account shall be to facilitate unearmarked contributions for the financing of approved pre-projects, projects and activities consistent with Thematic Programmes established by the Council on the basis of the policy and project priorities identified in accordance with articles 24 and 25.

5. The donors may allocate their contributions to specific Thematic Programmes or may request the Executive Director to make proposals for allocating their contributions.

6. The Executive Director shall report regularly to the Council on the allocation and expenditure of funds within the Thematic Programmes Sub-Account and on the implementation, monitoring and evaluation of pre-projects, projects and activities and the financial needs for the successful implementation of the Thematic Programmes.

7. The purpose of the Project Sub-Account shall be to facilitate earmarked contributions for the financing of pre-projects, projects and activities approved in accordance with articles 24 and 25.

8. Earmarked contributions to the Project Sub-Account shall be used only for the pre-projects, projects and activities for which they were designated, unless otherwise decided by the donor in consultation with the Executive Director. After the completion or termination of a pre-project, project or activity, the use of any remaining funds shall be decided by the donor.

9. To ensure the necessary predictability of funds for the Special Account, taking into consideration the voluntary nature of contributions, members shall strive to replenish it to attain an adequate resource level to fully carry out the pre-projects, projects and activities approved by Council.

10. All receipts pertaining to specific pre-projects, projects and activities under the Project Sub-Account or the Thematic Programmes Sub-Account shall be brought into the respective Sub-Account. All expenditures incurred on such pre-projects, projects or activities, including remuneration and travel expenses of consultants and experts, shall be charged to the same Sub-Account.

11. No member shall be responsible by reason of its membership in the Organization for any liability arising from any actions by any other member or entity in connection with pre-projects, projects or activities.

12. The Executive Director shall provide assistance in the development of proposals for pre-projects, projects and activities in accordance with articles 24 and 25 and endeavour to seek, on such terms and conditions as the Council may decide, adequate and assured finance for approved pre-projects, projects and activities.

Article 21. The Bali Partnership Fund

1. A Fund for sustainable management of tropical timber producing forests is hereby established to assist producer members to make the investments necessary to achieve the objective of article 1 (d) of this Agreement.

2. The Fund shall be constituted by:

(*a*) Contributions from donor members;

(*b*) Fifty per cent of income earned as a result of activities related to the Special Account;

(*c*) Resources from other private and public sources which the Organization may accept consistent with its financial rules; and

(*d*) Other sources approved by the Council.

3. Resources of the Fund shall be allocated by the Council only for pre-projects and projects for the purpose set out in paragraph 1 of this article and that have been approved in accordance with articles 24 and 25.

4. In allocating resources of the Fund, the Council shall establish criteria and priorities for use of the Fund, taking into account:

(*a*) The needs of members for assistance in achieving exports of tropical timber and timber products from sustainably managed sources;

(*b*) The needs of members to establish and manage significant conservation programmes in timber producing forests; and

(*c*) The needs of members to implement sustainable forest management programmes.

5. The Executive Director shall provide assistance in the development of project proposals in accordance with article 25 and endeavour to seek, on such terms and condi-

tions as the Council may decide, adequate and assured finance for projects approved by the Council.

6. Members shall strive to replenish the Bali Partnership Fund to an adequate level to further the objectives of the Fund.

7. The Council shall examine at regular intervals the adequacy of the resources available to the Fund and endeavour to obtain additional resources needed by producer members to achieve the purpose of the Fund.

Article 22. Forms of payment

1. Financial contributions to accounts established under article 18 shall be payable in freely convertible currencies and shall be exempt from foreign-exchange restrictions.

2. The Council may also decide to accept other forms of contributions to the accounts established under article 18, other than the administrative account, including scientific and technical equipment or personnel, to meet the requirements of approved projects.

Article 23. Audit and publications of accounts

1. The Council shall appoint independent auditors for the purpose of auditing the accounts of the Organization.

2. Independently audited statements of the accounts established under article 18 shall be made available to members as soon as possible after the close of each financial year, but not later than six months after that date, and be considered for approval by the Council at its next session, as appropriate. A summary of the audited accounts and balance sheet shall thereafter be published.

Chapter VII. Operational Activities

Article 24. Policy work of the Organization

1. In order to achieve the objectives set out in article 1, the Organization shall undertake policy work and project activities in an integrated manner.

2. The policy work of the Organization should contribute to achieving the objectives of this Agreement for ITTO members broadly.

3. The Council shall establish on a regular basis an action plan to guide policy activities and identify priorities and the thematic programmes referred to in article 20, paragraph 4, of this Agreement. Priorities identified in the action plan shall be reflected in the work programmes approved by the Council. Policy activities may include the development and preparation of guidelines, manuals, studies, reports, basic communication and outreach tools, and similar work identified in the Organization's action plan.

Article 25. Project activities of the Organization

1. Members and the Executive Director may submit pre-project and project proposals which contribute to the achievement of the objectives of this Agreement and one or more of the priority areas for work or thematic programmes identified in the action plan approved by the Council pursuant to article 24.

2. The Council shall establish criteria for approving projects and pre-projects, taking into account inter alia their relevance to the objectives of this Agreement and to priority areas for work or thematic programmes, their environmental and social effects, their relationship to national forest programmes and strategies, their cost effectiveness, technical and regional needs, the need to avoid duplication of efforts, and the need to incorporate lessons learned.

3. The Council shall establish a schedule and procedure for submitting, appraising, approving and prioritizing pre-projects and projects seeking funding from the Organization, as well as for their implementation, monitoring and evaluation.

4. The Executive Director may suspend disbursement of the Organization's funds to a pre-project or project if they are being used contrary to the project document or in cases of fraud, waste, neglect or mismanagement. The Executive Director will provide to the Council at its next session a report for its consideration. The Council shall take appropriate action.

5. The Council may establish, according to agreed criteria, limits on the number of projects and pre-projects that a member or the Executive Director may submit in a given project cycle. The Council may also take appropriate measures, including suspension or termination of its sponsorship of any pre-project or project, following the report of the Executive Director.

Article 26. Committees and subsidiary bodies

1. The following are hereby established as Committees of the Organization, which shall be open to all members:

(*a*) Committee on Forest Industry;

(*b*) Committee on Economics, Statistics and Markets;

(*c*) Committee on Reforestation and Forest Management; and

(*d*) Committee on Finance and Administration.

2. The Council may, by special vote in accordance with article 12, establish or dissolve committees and subsidiary bodies as appropriate.

3. The Council shall determine the functioning and scope of work of the committees and other subsidiary bodies. The Committees and other subsidiary bodies shall be responsible to and work under the authority of the Council.

Chapter VIII. Statistics, Studies and Information

Article 27. Statistics, studies and information

1. The Council shall authorize the Executive Director to establish and maintain close relationships with relevant intergovernmental, governmental and non-governmental organizations in order to help ensure the availability of recent and reliable data and information, including on production and trade in tropical timber, trends and data discrepancies, as well as relevant information on non-tropical timber and on the management of timber producing forests. As deemed necessary for the operation of this Agreement, the Organization, in cooperation with such organizations, shall compile, collate, analyse and publish such information.

2. The Organization shall contribute to efforts to standardize and harmonize international reporting on forest-related matters, avoiding overlapping and duplication in data collection from different organizations.

3. Members shall, to the fullest extent possible not inconsistent with their national legislation, furnish, within the time specified by the Executive Director, statistics and information on timber, its trade and activities aimed at achieving sustainable management of timber producing forests, as well as other relevant information as requested by the Council. The Council shall decide on the type of information to be provided under this paragraph and on the format in which it is to be presented.

4. Upon request or where necessary, the Council shall endeavour to enhance the technical capacity of member countries, in particular developing member countries, to meet the statistics and reporting requirements under this Agreement.

5. If a member has not furnished, for two consecutive years, the statistics and information required under paragraph 3 and has not sought the assistance of the Executive Director, the Executive Director shall initially request an explanation from that member within a specified time. In the event that no satisfactory explanation is forthcoming, the Council shall take such action as it deems appropriate.

6. The Council shall arrange to have any relevant studies undertaken of the trends and of short and long-term problems of the international timber markets and of the progress towards the achievement of sustainable management of timber producing forests.

Article 28. Annual report and biennial review

1. The Council shall publish an annual report on its activities and such other information as it considers appropriate.

2. The Council shall biennially review and assess:

(*a*) The international timber situation; and

(*b*) Other factors, issues and developments considered relevant to achieving the objectives of this Agreement.

3. The review shall be carried out in the light of:

(*a*) Information supplied by members in relation to national production, trade, supply, stocks, consumption and prices of timber;

(*b*) Other statistical data and specific indicators provided by members as requested by the Council;

(*c*) Information supplied by members on their progress towards the sustainable management of their timber-producing forests;

(*d*) Such other relevant information as may be available to the Council either directly or through the organizations in the United Nations system and intergovernmental, governmental or non-governmental organizations; and

(*e*) Information supplied by members on their progress towards the establishment of control and information mechanisms regarding illegal harvesting and illegal trade in tropical timber and non-timber forest products.

4. The Council shall promote the exchange of views among member countries regarding:

(*a*) The status of sustainable management of timber-producing forests and related matters in member countries; and

(*b*) Resource flows and requirements in relation to objectives, criteria and guidelines set by the Organization.

5. Upon request, the Council shall endeavour to enhance the technical capacity of member countries, in particular developing member countries, to obtain the data necessary for adequate information-sharing, including the provision of resources for training and facilities to members.

6. The results of the review shall be included in the corresponding Council session reports.

Chapter IX. Miscellaneous

Article 29. General obligations of Members

1. Members shall, for the duration of this Agreement, use their best endeavours and cooperate to promote the attainment of its objectives and avoid any action contrary thereto.

2. Members undertake to accept and carry out the decisions of the Council under the provisions of this Agreement and shall refrain from implementing measures that would have the effect of limiting or running counter to them.

Article 30. Relief from obligations

1. Where it is necessary on account of exceptional circumstances or emergency or *force majeure* not expressly provided for in this Agreement, the Council may, by special vote in accordance with article 12, relieve a member of an obligation under this Agreement if it is satisfied by an explanation from that member regarding the reasons why the obligation cannot be met.

2. The Council, in granting relief to a member under paragraph 1 of this article, shall state explicitly the terms and conditions on which, and the period for which, the member is relieved of such obligation, and the reasons for which the relief is granted.

Article 31. Complaints and disputes

Any member may bring to the Council any complaint that a member has failed to fulfil its obligations under this Agreement and any dispute concerning the interpretation or application of this Agreement. Decisions by the Council on these matters shall be taken by consensus, notwithstanding any other provision of this Agreement, and be final and binding.

Article 32. Differential and remedial measures and special measures

1. Consumer members that are developing countries whose interests are adversely affected by measures taken under this Agreement may apply to the Council for appropriate differential and remedial measures. The Council shall consider taking appropriate meas-

ures in accordance with section III, paragraphs 3 and 4, of resolution 93 (IV) of the United Nations Conference on Trade and Development.

2. Members in the category of least developed countries as defined by the United Nations may apply to the Council for special measures in accordance with section III, paragraph 4, of resolution 93 (IV) and with paragraphs 56 and 57 of the Paris Declaration and Programme of Action for the Least Developed Countries for the 1990s.

Article 33. Review

The Council may evaluate the implementation of this Agreement, including the objectives and financial mechanisms, five years after its entry into force.

Article 34. Non-discrimination

Nothing in this Agreement authorizes the use of measures to restrict or ban international trade in, and in particular as they concern imports of, and utilization of, timber and timber products.

Chapter X. Final Provisions

Article 35. Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Agreement.

Article 36. Signature, ratification, acceptance and approval

1. This Agreement shall be open for signature, at United Nations Headquarters from 3 April 2006 until one month after the date of its entry into force, by Governments invited to the United Nations Conference for the Negotiation of a Successor Agreement to the International Tropical Timber Agreement, 1994.

2. Any Government referred to in paragraph 1 of this article may:

(*a*) At the time of signing this Agreement, declare that by such signature it expresses its consent to be bound by this Agreement (definitive signature); or

(*b*) After signing this Agreement, ratify, accept or approve it by the deposit of an instrument to that effect with the depositary.

3. Upon signature and ratification, acceptance or approval, or accession, or provisional application, the European Community or any intergovernmental organization referred to in article 5, paragraph 1, shall deposit a declaration issued by the appropriate authority of such organization specifying the nature and extent of its competence over matters governed by this Agreement, and shall inform the depositary of any subsequent substantial change in such competence. Where such organization declares exclusive competence over all matters governed by this Agreement, the member States of such organization shall not take the actions under article 36, paragraph 2, article 37 and article 38, or shall take the action under article 41 or withdraw notification of provisional application under article 38.

Article 37. Accession

1. This Agreement shall be open for accession by Governments upon conditions established by the Council, which shall include a time-limit for the deposit of instruments of accession. These conditions shall be transmitted by the Council to the Depositary. The Council may, however, grant extensions of time to Governments which are unable to accede by the time-limit set in the conditions of accession.

2. Accession shall be effected by the deposit of an instrument of accession with the depositary.

Article 38. Notification of provisional application

A signatory Government which intends to ratify, accept or approve this Agreement, or a Government for which the Council has established conditions for accession but which has not yet been able to deposit its instrument may, at any time, notify the depositary that it will apply this Agreement provisionally in accordance with its laws and regulations, either when it enters into force in accordance with article 39 or, if it is already in force, at a specified date.

Article 39. Entry into force

1. This Agreement shall enter into force definitively on 1 February 2008 or on any date thereafter, if 12 Governments of producers holding at least 60 per cent of the total votes as set out in Annex A to this Agreement and 10 Governments of consumers as listed in Annex B and accounting for 60 per cent of the global import volume of tropical timber in the reference year 2005 have signed this Agreement definitively or have ratified, accepted or approved it pursuant to article 36, paragraph 2, or article 37.

2. If this Agreement has not entered into force definitively on 1 February 2008, it shall enter into force provisionally on that date or on any date within six months thereafter if 10 Governments of producers holding at least 50 per cent of the total votes as set out in Annex A to this Agreement and seven Governments of consumers as listed in Annex B and accounting for 50 per cent of the global import volume of tropical timber in the reference year 2005 have signed this Agreement definitively or have ratified, accepted or approved it pursuant to article 36, paragraph 2, or have notified the depositary under article 38 that they will apply this Agreement provisionally.

3. If the requirements for entry into force under paragraph 1 or paragraph 2 of this article have not been met on 1 September 2008, the Secretary-General of the United Nations shall invite those Governments which have signed this Agreement definitively or have ratified, accepted or approved it pursuant to article 36, paragraph 2, or have notified the depositary that they will apply this Agreement provisionally, to meet at the earliest time practicable to decide whether to put this Agreement into force provisionally or definitively among themselves in whole or in part. Governments which decide to put this Agreement into force provisionally among themselves may meet from time to time to review the situation and decide whether this Agreement shall enter into force definitively among themselves.

4. For any Government which has not notified the depositary under article 38 that it will apply this Agreement provisionally and which deposits its instrument of ratification,

acceptance, approval or accession after the entry into force of this Agreement, this Agreement shall enter into force on the date of such deposit.

5. The Executive Director of the Organization shall convene the Council as soon as possible after the entry into force of this Agreement.

Article 40. Amendments

1. The Council may, by special vote in accordance with article 12, recommend an amendment of this Agreement to members.

2. The Council shall fix a date by which members shall notify the depositary of their acceptance of the amendment.

3. An amendment shall enter into force 90 days after the depositary has received notifications of acceptance from members constituting at least two thirds of the producer members and accounting for at least 75 per cent of the votes of the producer members, and from members constituting at least two thirds of the consumer members and accounting for at least 75 per cent of the votes of the consumer members.

4. After the depositary informs the Council that the requirements for entry into force of the amendment have been met, and notwithstanding the provisions of paragraph 2 of this article relating to the date fixed by the Council, a member may still notify the depositary of its acceptance of the amendment, provided that such notification is made before the entry into force of the amendment.

5. Any member which has not notified its acceptance of an amendment by the date on which such amendment enters into force shall cease to be a party to this Agreement as from that date, unless such member has satisfied the Council that its acceptance could not be obtained in time owing to difficulties in completing its constitutional or institutional procedures and the Council decides to extend for that member the period for acceptance of the amendment. Such member shall not be bound by the amendment before it has notified its acceptance thereof.

6. If the requirements for the entry into force of the amendment have not been met by the date fixed by the Council in accordance with paragraph 2 of this article, the amendment shall be considered withdrawn.

Article 41. Withdrawal

1. A member may withdraw from this Agreement at any time after the entry into force of the Agreement by giving written notice of withdrawal to the depositary. That member shall simultaneously inform the Council of the action it has taken.

2. Withdrawal shall become effective 90 days after the notice is received by the depositary.

3. Financial obligations to the Organization incurred by a member under this Agreement shall not be terminated by its withdrawal.

Article 42. Exclusion

If the Council decides that any member is in breach of its obligations under this Agreement and decides further that such breach significantly impairs the operation of

this Agreement, it may, by special vote in accordance with article 12, exclude that member from this Agreement. The Council shall immediately so notify the depositary. Six months after the date of the Council's decision, that member shall cease to be a party to this Agreement.

Article 43. Settlements of accounts with withdrawing of excluded Members or Members unable to accept amendment

1. The Council shall determine any settlement of accounts with a member that ceases to be a party to this Agreement owing to:

(*a*) Non-acceptance of an amendment to this Agreement under article 40;

(*b*) Withdrawal from this Agreement under article 41; or

(*c*) Exclusion from this Agreement under article 42.

2. The Council shall retain any assessments or contributions paid to the financial accounts established under article 18 by a member that ceases to be a party to this Agreement.

3. A member that has ceased to be a party to this Agreement shall not be entitled to any share of the proceeds of liquidation or the other assets of the Organization. Nor shall such member be liable for payment of any part of the deficit, if any, of the Organization upon termination of this Agreement.

Article 44. Duration, extension and termination

1. This Agreement shall remain in force for a period of 10 years after its entry into force unless the Council, by special vote in accordance with article 12, decides to extend, renegotiate or terminate it in accordance with the provisions of this article.

2. The Council may, by special vote in accordance with article 12, decide to extend this Agreement for two periods, an initial period of five years and an additional one of three years.

3. If, before the expiry of the 10-year period referred to in paragraph 1 of this article, or before the expiry of an extension period referred to in paragraph 2 of this article, as the case may be, the new Agreement to replace this Agreement has been negotiated but has not yet entered into force either definitively or provisionally, the Council may, by special vote in accordance with article 12, extend this Agreement until the provisional or definitive entry into force of the new Agreement.

4. If the new Agreement is negotiated and enters into force during any period of extension of this Agreement under paragraph 2 or paragraph 3 of this article, this Agreement, as extended, shall terminate upon the entry into force of the new Agreement.

5. The Council may at any time, by special vote in accordance with article 12, decide to terminate this Agreement with effect from such date as it may determine.

6. Notwithstanding the termination of this Agreement, the Council shall continue in being for a period not exceeding 18 months to carry out the liquidation of the Organization, including the settlement of accounts, and, subject to relevant decisions to be taken by special vote in accordance with article 12, shall have during that period such powers and functions as may be necessary for these purposes.

7. The Council shall notify the depositary of any decision taken under this article.

Article 45. Reservations

Reservations may not be made with respect to any of the provisions of this Agreement.

Article 46. Supplementary and transitional provisions

1. This Agreement shall be the successor to the International Tropical Timber Agreement, 1994.

2. All acts by or on behalf of the Organization or any of its organs under the International Tropical Timber Agreement, 1983, and/or the International Tropical Timber Agreement, 1994, which are in effect on the date of entry into force of this Agreement and the terms of which do not provide for expiry on that date shall remain in effect unless changed under the provisions of this Agreement.

Done at Geneva on 27 January 2006, the texts of this Agreement in the Arabic, Chinese, English, French, Russian and Spanish languages being equally authentic.

ANNEX A

List of Governments attending the United Nations Conference for the Negotiation of a Successor Agreement to the International Tropical Timber Agreement, 1994 that are potential producer members as defined in article 2 (Definitions) and indicative allocation of votes as per article 10 (Distribution of Votes)

Members	Total votes
AFRICA	249
Angola	18
Benin	17
Cameroon*	18
Central African Republic*	18
Côte d'Ivoire*	18
Democratic Republic of the Congo*	18
Gabon*	18
Ghana*	18
Liberia*	18
Madagascar	18
Nigeria*	18
Republic of Congo*	18
Rwanda	17
Togo*	17
ASIA-PACIFIC	389
Cambodia*	15
Fiji*	14
India*	22
Indonesia*	131
Malaysia*	105
Myanmar*	33
Papua New Guinea*	25
Philippines*	14
LATIN AMERICA AND THE CARIBBEAN	362
Barbados	7
Bolivia*	19
Brazil*	157
Colombia*	19
Costa Rica	7
Dominican Republic	7
Ecuador*	11
Guatemala*	8
Guyana*	12
Haiti	7
Honduras*	8
Mexico*	15
Nicaragua	8
Panama*	8
Paraguay	10
Peru*	24
Suriname*	10
Trinidad & Tobago*	7
Venezuela*	18
TOTAL:	1000

ANNEX B

List of Governments attending the United Nations Conference for the Negotiation of a Successor Agreement to the International Tropical Timber Agreement, 1994 that are potential consumer members as defined in article 2 (Definitions)

Albania
Algeria
Australia*
Canada*
China*
Egypt*
European Community*
- Austria*
- Belgium*
- Czech Republic
- Estonia
- Finland*
- France*
- Germany*
- Greece*
- Ireland*
- Italy*
- Lithuania
- Luxembourg*
- Netherlands*
- Poland
- Portugal*
- Slovakia
- Spain*
- Sweden*
- United Kingdom of Great Britain and Northern Ireland*

Iran (Islamic Republic of)
Iraq
Japan*
Lesotho
Libyan Arab Jamahiriya
Morocco
Nepal*
New Zealand*
Norway*
Republic of Korea*
Switzerland*
United States of America*

* Member of the International Tropical Timber Agreement, 1994

2. Convention on the Rights of Persons with Disabilities*

Preamble

The States Parties to the present Convention,

(*a*) *Recalling* the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,

(*b*) *Recognizing* that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,

(*c*) *Reaffirming* the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,

(*d*) *Recalling* the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

(*e*) *Recognizing* that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others,

(*f*) *Recognizing* the importance of the principles and policy guidelines contained in the World Programme of Action concerning Disabled Persons and in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in influencing the promotion, formulation and evaluation of the policies, plans, programmes and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities,

(*g*) *Emphasizing* the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development,

(*h*) *Recognizing also* that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person,

(*i*) *Recognizing further* the diversity of persons with disabilities,

(*j*) *Recognizing* the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support,

(*k*) *Concerned* that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world,

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* Adopted at the seventy-sixth plenary meeting of the General Assembly by resolution 61/106 of 13 December 2006.

(*l*) *Recognizing* the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries,

(*m*) *Recognizing* the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty,

(*n*) *Recognizing* the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,

(*o*) *Considering* that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them,

(*p*) *Concerned* about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status,

(*q*) *Recognizing* that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,

(*r*) *Recognizing* that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,

(*s*) *Emphasizing* the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,

(*t*) *Highlighting* the fact that the majority of persons with disabilities live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities,

(*u*) *Bearing in mind* that conditions of peace and security based on full respect for the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation,

(*v*) *Recognizing* the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,

(*w*) *Realizing* that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights,

(*x*) *Convinced* that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities,

(*y*) *Convinced* that a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,

Have agreed as follows:

Article 1. Purpose

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Article 2. Definitions

For the purposes of the present Convention:

"Communication" includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

"Language" includes spoken and signed languages and other forms of non spoken languages;

"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

"Universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

Article 3. General principles

The principles of the present Convention shall be:

(*a*) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

(*b*) Non-discrimination;

(*c*) Full and effective participation and inclusion in society;

(*d*) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

(*e*) Equality of opportunity;

(*f*) Accessibility;

(*g*) Equality between men and women;

(*h*) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Article 4. General obligations

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

(*a*) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;

(*b*) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;

(*c*) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;

(*d*) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;

(*e*) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;

(*f*) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;

(*g*) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;

(*h*) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;

(*i*) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in the present Convention so as to better provide the assistance and services guaranteed by those rights.

2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.

5. The provisions of the present Convention shall extend to all parts of federal States without any limitations or exceptions.

Article 5. Equality and non-discrimination

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

Article 6. Women with disabilities

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

Article 7. Children with disabilities

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

Article 8. Awareness-raising

1. States Parties undertake to adopt immediate, effective and appropriate measures:

(*a*) To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;

(*b*) To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;

(*c*) To promote awareness of the capabilities and contributions of persons with disabilities.

2. Measures to this end include:

(*a*) Initiating and maintaining effective public awareness campaigns designed:

(i) To nurture receptiveness to the rights of persons with disabilities;

(ii) To promote positive perceptions and greater social awareness towards persons with disabilities;

(iii) To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;

(*b*) Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;

(*c*) Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;

(*d*) Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

Article 9. Accessibility

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with

disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

(*a*) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;

(*b*) Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures:

(*a*) To develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;

(*b*) To ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;

(*c*) To provide training for stakeholders on accessibility issues facing persons with disabilities;

(*d*) To provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;

(*e*) To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;

(*f*) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;

(*g*) To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;

(*h*) To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

Article 10. Right to life

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

Article 11. Situations of risk and humanitarian emergencies

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

Article 12. Equal recognition before the law

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

Article 13. Access to justice

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Article 14. Liberty and security of person

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(*a*) Enjoy the right to liberty and security of person;

(*b*) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with

the objectives and principles of the present Convention, including by provision of reasonable accommodation.

Article 15. Freedom from torture or cruel, inhuman or degrading treatment or punishment

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

Article 16. Freedom from exploitation, violence and abuse

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

Article 17. Protecting the integrity of the person

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

Article 18. Liberty of movement and nationality

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

(*a*) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;

(*b*) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;

(*c*) Are free to leave any country, including their own;

(*d*) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

Article 19. Living independently and being included in the community

States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

(*a*) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;

(*b*) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

(*c*) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

Article 20. Personal mobility

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

(*a*) Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;

(*b*) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;

(*c*) Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;

(*d*) Encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.

Article 21. Freedom of expression and opinion, and access to information

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

(*a*) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;

(*b*) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;

(*c*) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;

(*d*) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;

(*e*) Recognizing and promoting the use of sign languages.

Article 22. Respect for privacy

1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

Article 23. Respect for home and the family

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:

(*a*) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;

(*b*) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information,

reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;

(*c*) Persons with disabilities, including children, retain their fertility on an equal basis with others.

2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

Article 24. Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

(*a*) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

(*b*) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

(*c*) Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

(*a*) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;

(*b*) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

(*c*) Reasonable accommodation of the individual's requirements is provided;

(*d*) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

(*e*) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

(*a*) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

(*b*) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

(*c*) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

Article 25. Health

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

(*a*) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;

(*b*) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;

(*c*) Provide these health services as close as possible to people's own communities, including in rural areas;

(*d*) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;

(*e*) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;

(*f*) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

Article 26. Habilitation and rehabilitation

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:

(*a*) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;

(*b*) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

Article 27. Work and employment

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

(*a*) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

(*b*) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remunera-

tion for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

(*c*) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;

(*d*) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;

(*e*) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;

(*f*) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;

(*g*) Employ persons with disabilities in the public sector;

(*h*) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;

(*i*) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

(*j*) Promote the acquisition by persons with disabilities of work experience in the open labour market;

(*k*) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

Article 28. Adequate standard of living and social protection

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

(*a*) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;

(*b*) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;

(*c*) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;

(*d*) To ensure access by persons with disabilities to public housing programmes;

(*e*) To ensure equal access by persons with disabilities to retirement benefits and programmes.

Article 29. Participation in political and public life

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:

(*a*) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:

(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

(ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;

(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(*b*) To promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

(i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

(ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

Article 30. Participation in cultural life, recreation, leisure and sport

1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

(*a*) Enjoy access to cultural materials in accessible formats;

(*b*) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;

(*c*) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.

2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.

3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.

5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:

(*a*) To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;

(*b*) To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;

(*c*) To ensure that persons with disabilities have access to sporting, recreational and tourism venues;

(*d*) To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;

(*e*) To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.

Article 31. Statistics and data collection

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:

(*a*) Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;

(*b*) Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.

2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.

3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.

Article 32. International cooperation

1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:

(*a*) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;

(*b*) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;

(*c*) Facilitating cooperation in research and access to scientific and technical knowledge;

(*d*) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.

Article 33. National implementation and monitoring

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.

2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.

Article 34. Committee on the Rights of Persons with Disabilities

1. There shall be established a Committee on the Rights of Persons with Disabilities (hereafter referred to as "the Committee"), which shall carry out the functions hereinafter provided.

2. The Committee shall consist, at the time of entry into force of the present Convention, of twelve experts. After an additional sixty ratifications or accessions to the Convention, the membership of the Committee shall increase by six members, attaining a maximum number of eighteen members.

3. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence and experience in the field covered by the present Convention. When nominating their candidates, States Parties are invited to give due consideration to the provision set out in article 4, paragraph 3, of the present Convention.

4. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities.

5. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties from among their nationals at meetings of the Conference of States Parties. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The initial election shall be held no later than six months after the date of entry into force of the present Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit the nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the State Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

7. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of six of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these six members shall be chosen by lot by the chairperson of the meeting referred to in paragraph 5 of this article.

8. The election of the six additional members of the Committee shall be held on the occasion of regular elections, in accordance with the relevant provisions of this article.

9. If a member of the Committee dies or resigns or declares that for any other cause she or he can no longer perform her or his duties, the State Party which nominated the member shall appoint another expert possessing the qualifications and meeting the requirements set out in the relevant provisions of this article, to serve for the remainder of the term.

10. The Committee shall establish its own rules of procedure.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention, and shall convene its initial meeting.

12. With the approval of the General Assembly of the United Nations, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

13. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 35. Reports by States Parties

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of the present Convention for the State Party concerned.

2. Thereafter, States Parties shall submit subsequent reports at least every four years and further whenever the Committee so requests.

3. The Committee shall decide any guidelines applicable to the content of the reports.

4. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports, repeat information previously provided. When preparing reports to the Committee, States Parties are invited to consider doing so in an open and transparent process and to give due consideration to the provision set out in article 4, paragraph 3, of the present Convention.

5. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 36. Consideration of reports

1. Each report shall be considered by the Committee, which shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned. The State Party may respond with any information it chooses to the Committee. The Committee may request further information from States Parties relevant to the implementation of the present Convention.

2. If a State Party is significantly overdue in the submission of a report, the Committee may notify the State Party concerned of the need to examine the implementation of the present Convention in that State Party, on the basis of reliable information available to the Committee, if the relevant report is not submitted within three months following the notification. The Committee shall invite the State Party concerned to participate in such examination. Should the State Party respond by submitting the relevant report, the provisions of paragraph 1 of this article will apply.

3. The Secretary-General of the United Nations shall make available the reports to all States Parties.

4. States Parties shall make their reports widely available to the public in their own countries and facilitate access to the suggestions and general recommendations relating to these reports.

5. The Committee shall transmit, as it may consider appropriate, to the specialized agencies, funds and programmes of the United Nations, and other competent bodies, reports from States Parties in order to address a request or indication of a need for technical advice or assistance contained therein, along with the Committee's observations and recommendations, if any, on these requests or indications.

Article 37. Cooperation between States Parties and the Committee

1. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate.

2. In its relationship with States Parties, the Committee shall give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention, including through international cooperation.

Article 38. Relationship of the Committee with other bodies

In order to foster the effective implementation of the present Convention and to encourage international cooperation in the field covered by the present Convention:

(*a*) The specialized agencies and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite specialized agencies and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(*b*) The Committee, as it discharges its mandate, shall consult, as appropriate, other relevant bodies instituted by international human rights treaties, with a view to ensuring the consistency of their respective reporting guidelines, suggestions and general recommendations, and avoiding duplication and overlap in the performance of their functions.

Article 39. Report of the Committee

The Committee shall report every two years to the General Assembly and to the Economic and Social Council on its activities, and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

Article 40. Conference of States Parties

1. The States Parties shall meet regularly in a Conference of States Parties in order to consider any matter with regard to the implementation of the present Convention.

2. No later than six months after the entry into force of the present Convention, the Conference of States Parties shall be convened by the Secretary-General of the United Nations. The subsequent meetings shall be convened by the Secretary-General biennially or upon the decision of the Conference of States Parties.

Article 41. Depositary

The Secretary-General of the United Nations shall be the depositary of the present Convention.

Article 42. Signature

The present Convention shall be open for signature by all States and by regional integration organizations at United Nations Headquarters in New York as of 30 March 2007.

Article 43. Consent to be bound

The present Convention shall be subject to ratification by signatory States and to formal confirmation by signatory regional integration organizations. It shall be open for accession by any State or regional integration organization which has not signed the Convention.

Article 44. Regional integration organizations

1. "Regional integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by the present Convention. Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the present Convention. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.

2. References to "States Parties" in the present Convention shall apply to such organizations within the limits of their competence.

3. For the purposes of article 45, paragraph 1, and article 47, paragraphs 2 and 3, of the present Convention, any instrument deposited by a regional integration organization shall not be counted.

4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the Conference of States Parties, with a number of votes equal to the number of their member States that are Parties to the present Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 45. Entry into force

1. The present Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession.

2. For each State or regional integration organization ratifying, formally confirming or acceding to the present Convention after the deposit of the twentieth such instrument, the Convention shall enter into force on the thirtieth day after the deposit of its own such instrument.

Article 46. Reservations

1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.

2. Reservations may be withdrawn at any time.

Article 47. Amendments

1. Any State Party may propose an amendment to the present Convention and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a conference of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly of the United Nations for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

3. If so decided by the Conference of States Parties by consensus, an amendment adopted and approved in accordance with paragraph 1 of this article which relates exclusively to articles 34, 38, 39 and 40 shall enter into force for all States Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.

Article 48. Denunciation

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

Article 49. Accessible format

The text of the present Convention shall be made available in accessible formats.

Article 50. Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention shall be equally authentic.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

3. Optional Protocol to the Convention on the rights of persons with disabilities*

The States Parties to the present Protocol have agreed as follows:

Article 1

1. A State Party to the present Protocol ("State Party") recognizes the competence of the Committee on the Rights of Persons with Disabilities ("the Committee") to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention.

2. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.

Article 2

The Committee shall consider a communication inadmissible when:

(*a*) The communication is anonymous;

(*b*) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the Convention;

(*c*) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;

(*d*) All available domestic remedies have not been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief;

(*e*) It is manifestly ill-founded or not sufficiently substantiated; or when

(*f*) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

Article 3

Subject to the provisions of article 2 of the present Protocol, the Committee shall bring any communications submitted to it confidentially to the attention of the State Party. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 4

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may

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* Adopted at the seventy-sixth plenary meeting of the General Assembly by resolution 61/106 of 13 December 2006.

be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.

2. Where the Committee exercises its discretion under paragraph 1 of this article, this does not imply a determination on admissibility or on the merits of the communication.

Article 5

The Committee shall hold closed meetings when examining communications under the present Protocol. After examining a communication, the Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

Article 6

1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end submit observations with regard to the information concerned.

2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

Article 7

1. The Committee may invite the State Party concerned to include in its report under article 35 of the Convention details of any measures taken in response to an inquiry conducted under article 6 of the present Protocol.

2. The Committee may, if necessary, after the end of the period of six months referred to in article 6, paragraph 4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 8

Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 6 and 7.

Article 9

The Secretary-General of the United Nations shall be the depositary of the present Protocol.

Article 10

The present Protocol shall be open for signature by signatory States and regional integration organizations of the Convention at United Nations Headquarters in New York as of 30 March 2007.

Article 11

The present Protocol shall be subject to ratification by signatory States of the present Protocol which have ratified or acceded to the Convention. It shall be subject to formal confirmation by signatory regional integration organizations of the present Protocol which have formally confirmed or acceded to the Convention. It shall be open for accession by any State or regional integration organization which has ratified, formally confirmed or acceded to the Convention and which has not signed the Protocol.

Article 12

1. "Regional integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by the Convention and the present Protocol. Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the Convention and the present Protocol. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.

2. References to "States Parties" in the present Protocol shall apply to such organizations within the limits of their competence.

3. For the purposes of article 13, paragraph 1, and article 15, paragraph 2, of the present Protocol, any instrument deposited by a regional integration organization shall not be counted.

4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the meeting of States Parties, with a number of votes equal to the number of their member States that are Parties to the present Protocol. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 13

1. Subject to the entry into force of the Convention, the present Protocol shall enter into force on the thirtieth day after the deposit of the tenth instrument of ratification or accession.

2. For each State or regional integration organization ratifying, formally confirming or acceding to the present Protocol after the deposit of the tenth such instrument, the Protocol shall enter into force on the thirtieth day after the deposit of its own such instrument.

Article 14

1. Reservations incompatible with the object and purpose of the present Protocol shall not be permitted.

2. Reservations may be withdrawn at any time.

Article 15

1. Any State Party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a meeting of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly of the United Nations for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

Article 16

A State Party may denounce the present Protocol by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

Article 17

The text of the present Protocol shall be made available in accessible formats.

Article 18

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Protocol shall be equally authentic.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

4. International Convention for the Protection of All Persons from Enforced disappearance*

Preamble

The States Parties to this Convention,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to the Universal Declaration of Human Rights,

Recalling the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the other relevant international instruments in the fields of human rights, humanitarian law and international criminal law,

Also recalling the Declaration on the Protection of All Persons from Enforced Disappearance adopted by the General Assembly of the United Nations in its resolution 47/133 of 18 December 1992,

Aware of the extreme seriousness of enforced disappearance, which constitutes a crime and, in certain circumstances defined in international law, a crime against humanity,

Determined to prevent enforced disappearances and to combat impunity for the crime of enforced disappearance,

Considering the right of any person not to be subjected to enforced disappearance, the right of victims to justice and to reparation,

Affirming the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, and the right to freedom to seek, receive and impart information to this end,

Have agreed on the following articles:

Part I

Article 1

1. No one shall be subjected to enforced disappearance.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.

Article 2

For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

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* Adopted at the eighty-second plenary meeting of the General Assembly by resolution 61/177 of 20 December 2006.

Article 3

Each State Party shall take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.

Article 4

Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.

Article 5

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.

Article 6

1. Each State Party shall take the necessary measures to hold criminally responsible at least:

(*a*) Any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance;

(*b*) A superior who:

(i) Knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance;

(ii) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and

(iii) Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution;

(*c*) Subparagraph (*b*) above is without prejudice to the higher standards of responsibility applicable under relevant international law to a military commander or to a person effectively acting as a military commander.

2. No order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of enforced disappearance.

Article 7

1. Each State Party shall make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness.

2. Each State Party may establish:

(*a*) Mitigating circumstances, in particular for persons who, having been implicated in the commission of an enforced disappearance, effectively contribute to bringing the disappeared person forward alive or make it possible to clarify cases of enforced disappearance or to identify the perpetrators of an enforced disappearance;

(*b*) Without prejudice to other criminal procedures, aggravating circumstances, in particular in the event of the death of the disappeared person or the commission of an enforced disappearance in respect of pregnant women, minors, persons with disabilities or other particularly vulnerable persons.

Article 8

Without prejudice to article 5,

1. A State Party which applies a statute of limitations in respect of enforced disappearance shall take the necessary measures to ensure that the term of limitation for criminal proceedings:

(*a*) Is of long duration and is proportionate to the extreme seriousness of this offence;

(*b*) Commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature.

2. Each State Party shall guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation.

Article 9

1. Each State Party shall take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance:

(*a*) When the offence is committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(*b*) When the alleged offender is one of its nationals;

(*c*) When the disappeared person is one of its nationals and the State Party considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its competence to exercise jurisdiction over the offence of enforced disappearance when the alleged offender is present in any territory under its jurisdiction, unless it extradites or surrenders him or her to another State in accordance with its international obligations or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognized.

3. This Convention does not exclude any additional criminal jurisdiction exercised in accordance with national law.

Article 10

1. Upon being satisfied, after an examination of the information available to it, that the circumstances so warrant, any State Party in whose territory a person suspected of having committed an offence of enforced disappearance is present shall take him or her into custody or take such other legal measures as are necessary to ensure his or her presence. The custody and other legal measures shall be as provided for in the law of that State Party but may be maintained only for such time as is necessary to ensure the person's presence at criminal, surrender or extradition proceedings.

2. A State Party which has taken the measures referred to in paragraph 1 of this article shall immediately carry out a preliminary inquiry or investigations to establish the facts. It shall notify the States Parties referred to in article 9, paragraph 1, of the measures it has taken in pursuance of paragraph 1 of this article, including detention and the circumstances warranting detention, and of the findings of its preliminary inquiry or its investigations, indicating whether it intends to exercise its jurisdiction.

3. Any person in custody pursuant to paragraph 1 of this article may communicate immediately with the nearest appropriate representative of the State of which he or she is a national, or, if he or she is a stateless person, with the representative of the State where he or she usually resides.

Article 11

1. The State Party in the territory under whose jurisdiction a person alleged to have committed an offence of enforced disappearance is found shall, if it does not extradite that person or surrender him or her to another State in accordance with its international obligations or surrender him or her to an international criminal tribunal whose jurisdiction it has recognized, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State Party. In the cases referred to in article 9, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 9, paragraph 1.

3. Any person against whom proceedings are brought in connection with an offence of enforced disappearance shall be guaranteed fair treatment at all stages of the proceedings. Any person tried for an offence of enforced disappearance shall benefit from a fair trial before a competent, independent and impartial court or tribunal established by law.

Article 12

1. Each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.

2. Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities referred to in paragraph 1 of this article shall undertake an investigation, even if there has been no formal complaint.

3. Each State Party shall ensure that the authorities referred to in paragraph 1 of this article:

(*a*) Have the necessary powers and resources to conduct the investigation effectively, including access to the documentation and other information relevant to their investigation;

(*b*) Have access, if necessary with the prior authorization of a judicial authority, which shall rule promptly on the matter, to any place of detention or any other place where there are reasonable grounds to believe that the disappeared person may be present.

4. Each State Party shall take the necessary measures to prevent and sanction acts that hinder the conduct of an investigation. It shall ensure in particular that persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of the disappeared person or their defence counsel, or at persons participating in the investigation.

Article 13

1. For the purposes of extradition between States Parties, the offence of enforced disappearance shall not be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition based on such an offence may not be refused on these grounds alone.

2. The offence of enforced disappearance shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties before the entry into force of this Convention.

3. States Parties undertake to include the offence of enforced disappearance as an extraditable offence in any extradition treaty subsequently to be concluded between them.

4. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the necessary legal basis for extradition in respect of the offence of enforced disappearance.

5. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offence of enforced disappearance as an extraditable offence between themselves.

6. Extradition shall, in all cases, be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including, in particular, conditions relating to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition or make it subject to certain conditions.

7. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin, political opinions or membership of a particular social group, or that compliance with the request would cause harm to that person for any one of these reasons.

Article 14

1. States Parties shall afford one another the greatest measure of mutual legal assistance in connection with criminal proceedings brought in respect of an offence of enforced disappearance, including the supply of all evidence at their disposal that is necessary for the proceedings.

2. Such mutual legal assistance shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable treaties on mutual legal assistance, including, in particular, the conditions in relation to the grounds upon which the requested State Party may refuse to grant mutual legal assistance or may make it subject to conditions.

Article 15

States Parties shall cooperate with each other and shall afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.

Article 16

1. No State Party shall expel, return ("refouler"), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law.

Article 17

1. No one shall be held in secret detention.

2. Without prejudice to other international obligations of the State Party with regard to the deprivation of liberty, each State Party shall, in its legislation:

(*a*) Establish the conditions under which orders of deprivation of liberty may be given;

(*b*) Indicate those authorities authorized to order the deprivation of liberty;

(*c*) Guarantee that any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty;

(*d*) Guarantee that any person deprived of liberty shall be authorized to communicate with and be visited by his or her family, counsel or any other person of his or her choice, subject only to the conditions established by law, or, if he or she is a foreigner, to communicate with his or her consular authorities, in accordance with applicable international law;

(*e*) Guarantee access by the competent and legally authorized authorities and institutions to the places where persons are deprived of liberty, if necessary with prior authorization from a judicial authority;

(*f*) Guarantee that any person deprived of liberty or, in the case of a suspected enforced disappearance, since the person deprived of liberty is not able to exercise this right, any persons with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, shall, in all circumstances, be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful.

3. Each State Party shall assure the compilation and maintenance of one or more up-to-date official registers and/or records of persons deprived of liberty, which shall be made promptly available, upon request, to any judicial or other competent authority or institution authorized for that purpose by the law of the State Party concerned or any relevant international legal instrument to which the State concerned is a party. The information contained therein shall include, as a minimum:

(*a*) The identity of the person deprived of liberty;

(*b*) The date, time and place where the person was deprived of liberty and the identity of the authority that deprived the person of liberty;

(*c*) The authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty;

(*d*) The authority responsible for supervising the deprivation of liberty;

(*e*) The place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty;

(*f*) Elements relating to the state of health of the person deprived of liberty;

(*g*) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains;

(*h*) The date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.

Article 18

1. Subject to articles 19 and 20, each State Party shall guarantee to any person with a legitimate interest in this information, such as relatives of the person deprived of liberty, their representatives or their counsel, access to at least the following information:

(*a*) The authority that ordered the deprivation of liberty;

(*b*) The date, time and place where the person was deprived of liberty and admitted to the place of deprivation of liberty;

(*c*) The authority responsible for supervising the deprivation of liberty;

(*d*) The whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer;

(*e*) The date, time and place of release;

(*f*) Elements relating to the state of health of the person deprived of liberty;

(*g*) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains.

2. Appropriate measures shall be taken, where necessary, to protect the persons referred to in paragraph 1 of this article, as well as persons participating in the investigation, from any ill-treatment, intimidation or sanction as a result of the search for information concerning a person deprived of liberty.

Article 19

1. Personal information, including medical and genetic data, which is collected and/or transmitted within the framework of the search for a disappeared person shall not be used or made available for purposes other than the search for the disappeared person. This is without prejudice to the use of such information in criminal proceedings relating to an offence of enforced disappearance or the exercise of the right to obtain reparation.

2. The collection, processing, use and storage of personal information, including medical and genetic data, shall not infringe or have the effect of infringing the human rights, fundamental freedoms or human dignity of an individual.

Article 20

1. Only where a person is under the protection of the law and the deprivation of liberty is subject to judicial control may the right to information referred to in article 18 be restricted, on an exceptional basis, where strictly necessary and where provided for by law, and if the transmission of the information would adversely affect the privacy or safety of the person, hinder a criminal investigation, or for other equivalent reasons in accordance with the law, and in conformity with applicable international law and with the objectives of this Convention. In no case shall there be restrictions on the right to information referred to in article 18 that could constitute conduct defined in article 2 or be in violation of article 17, paragraph 1.

2. Without prejudice to consideration of the lawfulness of the deprivation of a person's liberty, States Parties shall guarantee to the persons referred to in article 18, paragraph 1, the right to a prompt and effective judicial remedy as a means of obtaining without delay the information referred to in article 18, paragraph 1. This right to a remedy may not be suspended or restricted in any circumstances.

Article 21

Each State Party shall take the necessary measures to ensure that persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released. Each State Party shall also take the necessary measures to assure the physical integrity of such persons and their ability to exercise fully their rights at the time of release, without prejudice to any obligations to which such persons may be subject under national law.

Article 22

Without prejudice to article 6, each State Party shall take the necessary measures to prevent and impose sanctions for the following conduct:

(*a*) Delaying or obstructing the remedies referred to in article 17, paragraph 2 (*f*), and article 20, paragraph 2;

(*b*) Failure to record the deprivation of liberty of any person, or the recording of any information which the official responsible for the official register knew or should have known to be inaccurate;

(*c*) Refusal to provide information on the deprivation of liberty of a person, or the provision of inaccurate information, even though the legal requirements for providing such information have been met.

Article 23

1. Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty includes the necessary education and information regarding the relevant provisions of this Convention, in order to:

(*a*) Prevent the involvement of such officials in enforced disappearances;

(*b*) Emphasize the importance of prevention and investigations in relation to enforced disappearances;

(*c*) Ensure that the urgent need to resolve cases of enforced disappearance is recognized.

2. Each State Party shall ensure that orders or instructions prescribing, authorizing or encouraging enforced disappearance are prohibited. Each State Party shall guarantee that a person who refuses to obey such an order will not be punished.

3. Each State Party shall take the necessary measures to ensure that the persons referred to in paragraph 1 of this article who have reason to believe that an enforced disappearance has occurred or is planned report the matter to their superiors and, where necessary, to the appropriate authorities or bodies vested with powers of review or remedy.

Article 24

1. For the purposes of this Convention, "victim" means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.

2. Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.

3. Each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.

4. Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.

5. The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as:

(*a*) Restitution;

(*b*) Rehabilitation;

(*c*) Satisfaction, including restoration of dignity and reputation;

(*d*) Guarantees of non-repetition.

6. Without prejudice to the obligation to continue the investigation until the fate of the disappeared person has been clarified, each State Party shall take the appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights.

7. Each State Party shall guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance.

Article 25

1. Each State Party shall take the necessary measures to prevent and punish under its criminal law:

(*a*) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance;

(*b*) The falsification, concealment or destruction of documents attesting to the true identity of the children referred to in subparagraph (*a*) above.

2. Each State Party shall take the necessary measures to search for and identify the children referred to in paragraph 1 (*a*) of this article and to return them to their families of origin, in accordance with legal procedures and applicable international agreements.

3. States Parties shall assist one another in searching for, identifying and locating the children referred to in paragraph 1 (*a*) of this article.

4. Given the need to protect the best interests of the children referred to in paragraph 1 (*a*) of this article and their right to preserve, or to have re-established, their identity, including their nationality, name and family relations as recognized by law, States Parties which recognize a system of adoption or other form of placement of children shall have legal procedures in place to review the adoption or placement procedure, and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance.

5. In all cases, and in particular in all matters relating to this article, the best interests of the child shall be a primary consideration, and a child who is capable of forming his or her own views shall have the right to express those views freely, the views of the child being given due weight in accordance with the age and maturity of the child.

PART II

Article 26

1. A Committee on Enforced Disappearances (hereinafter referred to as "the Committee") shall be established to carry out the functions provided for under this Convention. The Committee shall consist of ten experts of high moral character and recognized competence in the field of human rights, who shall serve in their personal capacity and be independent and impartial. The members of the Committee shall be elected by the States Parties according to equitable geographical distribution. Due account shall be taken of the

usefulness of the participation in the work of the Committee of persons having relevant legal experience and of balanced gender representation.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties from among their nationals, at biennial meetings of the States Parties convened by the Secretary-General of the United Nations for this purpose. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

3. The initial election shall be held no later than six months after the date of entry into force of this Convention. Four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the State Party which nominated each candidate, and shall submit this list to all States Parties.

4. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 2 of this article.

5. If a member of the Committee dies or resigns or for any other reason can no longer perform his or her Committee duties, the State Party which nominated him or her shall, in accordance with the criteria set out in paragraph 1 of this article, appoint another candidate from among its nationals to serve out his or her term, subject to the approval of the majority of the States Parties. Such approval shall be considered to have been obtained unless half or more of the States Parties respond negatively within six weeks of having been informed by the Secretary-General of the United Nations of the proposed appointment.

6. The Committee shall establish its own rules of procedure.

7. The Secretary-General of the United Nations shall provide the Committee with the necessary means, staff and facilities for the effective performance of its functions. The Secretary-General of the United Nations shall convene the initial meeting of the Committee.

8. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations, as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

9. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate, to the extent of the Committee's functions that the State Party has accepted.

Article 27

A Conference of the States Parties will take place at the earliest four years and at the latest six years following the entry into force of this Convention to evaluate the functioning of the Committee and to decide, in accordance with the procedure described in article 44, paragraph 2, whether it is appropriate to transfer to another body—without excluding any

possibility—the monitoring of this Convention, in accordance with the functions defined in articles 28 to 36.

Article 28

1. In the framework of the competencies granted by this Convention, the Committee shall cooperate with all relevant organs, offices and specialized agencies and funds of the United Nations, with the treaty bodies instituted by international instruments, with the special procedures of the United Nations and with the relevant regional intergovernmental organizations or bodies, as well as with all relevant State institutions, agencies or offices working towards the protection of all persons against enforced disappearances.

2. As it discharges its mandate, the Committee shall consult other treaty bodies instituted by relevant international human rights instruments, in particular the Human Rights Committee instituted by the International Covenant on Civil and Political Rights, with a view to ensuring the consistency of their respective observations and recommendations.

Article 29

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a report on the measures taken to give effect to its obligations under this Convention, within two years after the entry into force of this Convention for the State Party concerned.

2. The Secretary-General of the United Nations shall make this report available to all States Parties.

3. Each report shall be considered by the Committee, which shall issue such comments, observations or recommendations as it may deem appropriate. The comments, observations or recommendations shall be communicated to the State Party concerned, which may respond to them, on its own initiative or at the request of the Committee.

4. The Committee may also request States Parties to provide additional information on the implementation of this Convention.

Article 30

1. A request that a disappeared person should be sought and found may be submitted to the Committee, as a matter of urgency, by relatives of the disappeared person or their legal representatives, their counsel or any person authorized by them, as well as by any other person having a legitimate interest.

2. If the Committee considers that a request for urgent action submitted in pursuance of paragraph 1 of this article:

(*a*) Is not manifestly unfounded;

(*b*) Does not constitute an abuse of the right of submission of such requests;

(*c*) Has already been duly presented to the competent bodies of the State Party concerned, such as those authorized to undertake investigations, where such a possibility exists;

(*d*) Is not incompatible with the provisions of this Convention; and

(*e*) The same matter is not being examined under another procedure of international investigation or settlement of the same nature;

it shall request the State Party concerned to provide it with information on the situation of the persons sought, within a time limit set by the Committee.

3. In the light of the information provided by the State Party concerned in accordance with paragraph 2 of this article, the Committee may transmit recommendations to the State Party, including a request that the State Party should take all the necessary measures, including interim measures, to locate and protect the person concerned in accordance with this Convention and to inform the Committee, within a specified period of time, of measures taken, taking into account the urgency of the situation. The Committee shall inform the person submitting the urgent action request of its recommendations and of the information provided to it by the State as it becomes available.

4. The Committee shall continue its efforts to work with the State Party concerned for as long as the fate of the person sought remains unresolved. The person presenting the request shall be kept informed.

Article 31

1. A State Party may at the time of ratification of this Convention or at any time afterwards declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by this State Party of provisions of this Convention. The Committee shall not admit any communication concerning a State Party which has not made such a declaration.

2. The Committee shall consider a communication inadmissible where:

(*a*) The communication is anonymous;

(*b*) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of this Convention;

(*c*) The same matter is being examined under another procedure of international investigation or settlement of the same nature; or where

(*d*) All effective available domestic remedies have not been exhausted. This rule shall not apply where the application of the remedies is unreasonably prolonged.

3. If the Committee considers that the communication meets the requirements set out in paragraph 2 of this article, it shall transmit the communication to the State Party concerned, requesting it to provide observations and comments within a time limit set by the Committee.

4. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party will take such interim measures as may be necessary to avoid possible irreparable damage to the victims of the alleged violation. Where the Committee exercises its discretion, this does not imply a determination on admissibility or on the merits of the communication.

5. The Committee shall hold closed meetings when examining communications under the present article. It shall inform the author of a communication of the responses

provided by the State Party concerned. When the Committee decides to finalize the procedure, it shall communicate its views to the State Party and to the author of the communication.

Article 32

A State Party to this Convention may at any time declare that it recognizes the competence of the Committee to receive and consider communications in which a State Party claims that another State Party is not fulfilling its obligations under this Convention. The Committee shall not receive communications concerning a State Party which has not made such a declaration, nor communications from a State Party which has not made such a declaration.

Article 33

1. If the Committee receives reliable information indicating that a State Party is seriously violating the provisions of this Convention, it may, after consultation with the State Party concerned, request one or more of its members to undertake a visit and report back to it without delay.

2. The Committee shall notify the State Party concerned, in writing, of its intention to organize a visit, indicating the composition of the delegation and the purpose of the visit. The State Party shall answer the Committee within a reasonable time.

3. Upon a substantiated request by the State Party, the Committee may decide to postpone or cancel its visit.

4. If the State Party agrees to the visit, the Committee and the State Party concerned shall work together to define the modalities of the visit and the State Party shall provide the Committee with all the facilities needed for the successful completion of the visit.

5. Following its visit, the Committee shall communicate to the State Party concerned its observations and recommendations.

Article 34

If the Committee receives information which appears to it to contain well-founded indications that enforced disappearance is being practised on a widespread or systematic basis in the territory under the jurisdiction of a State Party, it may, after seeking from the State Party concerned all relevant information on the situation, urgently bring the matter to the attention of the General Assembly of the United Nations, through the Secretary-General of the United Nations.

Article 35

1. The Committee shall have competence solely in respect of enforced disappearances which commenced after the entry into force of this Convention.

2. If a State becomes a party to this Convention after its entry into force, the obligations of that State vis-à-vis the Committee shall relate only to enforced disappearances which commenced after the entry into force of this Convention for the State concerned.

Article 36

1. The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

2. Before an observation on a State Party is published in the annual report, the State Party concerned shall be informed in advance and shall be given reasonable time to answer. This State Party may request the publication of its comments or observations in the report.

PART III

Article 37

Nothing in this Convention shall affect any provisions which are more conducive to the protection of all persons from enforced disappearance and which may be contained in:

(*a*) The law of a State Party;

(*b*) International law in force for that State.

Article 38

1. This Convention is open for signature by all Member States of the United Nations.

2. This Convention is subject to ratification by all Member States of the United Nations. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention is open to accession by all Member States of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

Article 39

1. This Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the twentieth instrument of ratification or accession, this Convention shall enter into force on the thirtieth day after the date of the deposit of that State's instrument of ratification or accession.

Article 40

The Secretary-General of the United Nations shall notify all States Members of the United Nations and all States which have signed or acceded to this Convention of the following:

(*a*) Signatures, ratifications and accessions under article 38;

(*b*) The date of entry into force of this Convention under article 39.

Article 41

The provisions of this Convention shall apply to all parts of federal States without any limitations or exceptions.

Article 42

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation or by the procedures expressly provided for in this Convention shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. A State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a declaration.

3. Any State Party having made a declaration in accordance with the provisions of paragraph 2 of this article may at any time withdraw this declaration by notification to the Secretary-General of the United Nations.

Article 43

This Convention is without prejudice to the provisions of international humanitarian law, including the obligations of the High Contracting Parties to the four Geneva Conventions of 12 August 1949 and the two Additional Protocols thereto of 8 June 1977, or to the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 44

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to this Convention with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.

2. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all the States Parties for acceptance.

3. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to this Convention have accepted it in accordance with their respective constitutional processes.

4. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendment which they have accepted.

Article 45

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States referred to in article 38.

B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to United Nations

1. International Labour Organization

(*a*) Maritime Labour Convention, 23 February 2006*

General Obligations

Article I

1. Each Member which ratifies this Convention undertakes to give complete effect to its provisions in the manner set out in Article VI in order to secure the right of all seafarers to decent employment.

2. Members shall cooperate with each other for the purpose of ensuring the effective implementation and enforcement of this Convention.

Definitions and Scope of Application

Article II

1. For the purpose of this Convention and unless provided otherwise in particular provisions, the term:

(*a*) *competent authority* means the minister, government department or other authority having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provision concerned;

(*b*) *declaration of maritime labour compliance* means the declaration referred to in Regulation 5.1.3;

(*c*) *gross tonnage* means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on

* Adopted by the General Conference of the International Labour Organization on 23 February 2003, during the ninety-fourth (Maritime) Session of the International Labour Conference, held in Geneva from 7 to 23 February 2006.

Tonnage Measurement of Ships, 1969, or any successor Convention; for ships covered by the tonnage measurement interim scheme adopted by the International Maritime Organization, the gross tonnage is that which is included in the REMARKS column of the International Tonnage Certificate (1969);

(*d*) *maritime labour certificate* means the certificate referred to in Regulation 5.1.3;

(*e*) *requirements of this Convention* refers to the requirements in these Articles and in the Regulations and Part A of the Code of this Convention;

(*f*) *seafarer* means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies;

(*g*) *seafarers' employment agreement* includes both a contract of employment and articles of agreement;

(*h*) *seafarer recruitment and placement service* means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners;

(*i*) *ship* means a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply;

(*j*) *shipowner* means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Convention, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.

2. Except as expressly provided otherwise, this Convention applies to all seafarers.

3. In the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Convention, the question shall be determined by the competent authority in each Member after consultation with the shipowners' and seafarers' organizations concerned with this question.

4. Except as expressly provided otherwise, this Convention applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks. This Convention does not apply to warships or naval auxiliaries.

5. In the event of doubt as to whether this Convention applies to a ship or particular category of ships, the question shall be determined by the competent authority in each Member after consultation with the shipowners' and seafarers' organizations concerned.

6. Where the competent authority determines that it would not be reasonable or practicable at the present time to apply certain details of the Code referred to in Article VI, paragraph 1, to a ship or particular categories of ships flying the flag of the Member, the relevant provisions of the Code shall not apply to the extent that the subject matter is dealt with differently by national laws or regulations or collective bargaining agreements or other measures. Such a determination may only be made in consultation with the shipowners' and seafarers' organizations concerned and may only be made with respect to ships of less than 200 gross tonnage not engaged in international voyages.

7. Any determinations made by a Member under paragraph 3 or 5 or 6 of this Article shall be communicated to the Director-General of the International Labour Office, who shall notify the Members of the Organization.

8. Unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to the Regulations and the Code.

Fundamental Rights and Principles

Article III

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.

Seafarers' Employment and Social Rights

Article IV

1. Every seafarer has the right to a safe and secure workplace that complies with safety standards.

2. Every seafarer has a right to fair terms of employment.

3. Every seafarer has a right to decent working and living conditions on board ship.

4. Every seafarer has a right to health protection, medical care, welfare measures and other forms of social protection.

5. Each Member shall ensure, within the limits of its jurisdiction, that the seafarers' employment and social rights set out in the preceding paragraphs of this Article are fully implemented in accordance with the requirements of this Convention. Unless specified otherwise in the Convention, such implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice.

Implementation and Enforcement Responsibilities

Article V

1. Each Member shall implement and enforce laws or regulations or other measures that it has adopted to fulfil its commitments under this Convention with respect to ships and seafarers under its jurisdiction.

2. Each Member shall effectively exercise its jurisdiction and control over ships that fly its flag by establishing a system for ensuring compliance with the requirements of this Convention, including regular inspections, reporting, monitoring and legal proceedings under the applicable laws.

3. Each Member shall ensure that ships that fly its flag carry a maritime labour certificate and a declaration of maritime labour compliance as required by this Convention.

4. A ship to which this Convention applies may, in accordance with international law, be inspected by a Member other than the flag State, when the ship is in one of its ports, to determine whether the ship is in compliance with the requirements of this Convention.

5. Each Member shall effectively exercise its jurisdiction and control over seafarer recruitment and placement services, if these are established in its territory.

6. Each Member shall prohibit violations of the requirements of this Convention and shall, in accordance with international law, establish sanctions or require the adoption of corrective measures under its laws which are adequate to discourage such violations.

7. Each Member shall implement its responsibilities under this Convention in such a way as to ensure that the ships that fly the flag of any State that has not ratified this Convention do not receive more favourable treatment than the ships that fly the flag of any State that has ratified it.

Regulations and Parts A and B of the Code

Article VI

1. The Regulations and the provisions of Part A of the Code are mandatory. The provisions of Part B of the Code are not mandatory.

2. Each Member undertakes to respect the rights and principles set out in the Regulations and to implement each Regulation in the manner set out in the corresponding provisions of Part A of the Code. In addition, the Member shall give due consideration to implementing its responsibilities in the manner provided for in Part B of the Code.

3. A Member which is not in a position to implement the rights and principles in the manner set out in Part A of the Code may, unless expressly provided otherwise in this Convention, implement Part A through provisions in its laws and regulations or other measures which are substantially equivalent to the provisions of Part A.

4. For the sole purpose of paragraph 3 of this Article, any law, regulation, collective agreement or other implementing measure shall be considered to be substantially equivalent, in the context of this Convention, if the Member satisfies itself that:

(a) it is conducive to the full achievement of the general object and purpose of the provision or provisions of Part A of the Code concerned; and

(b) it gives effect to the provision or provisions of Part A of the Code concerned.

Consultation with Shipowners' and Seafarers' Organizations

Article VII

Any derogation, exemption or other flexible application of this Convention for which the Convention requires consultation with shipowners' and seafarers' organizations may, in cases where representative organizations of shipowners or of seafarers do not exist within a Member, only be decided by that Member through consultation with the Committee referred to in Article XIII.

Entry into Force

Article VIII

1. The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

2. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered by the Director-General.

3. This Convention shall come into force 12 months after the date on which there have been registered ratifications by at least 30 Members with a total share in the world gross tonnage of ships of 33 per cent.

4. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Denunciation

Article IX

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which does not, within the year following the expiration of the period of ten years mentioned in paragraph 1 of this Article, exercise the right of denunciation provided for in this Article, shall be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each new period of ten years under the terms provided for in this Article.

Effect of Entry into Force

Article X

This Convention revises the following Conventions:

- Minimum Age (Sea) Convention, 1920 (No. 7)
- Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)
- Placing of Seamen Convention, 1920 (No. 9)
- Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)
- Seamen's Articles of Agreement Convention, 1926 (No. 22)
- Repatriation of Seamen Convention, 1926 (No. 23)
- Officers' Competency Certificates Convention, 1936 (No. 53)
- Holidays with Pay (Sea) Convention, 1936 (No. 54)
- Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)
- Sickness Insurance (Sea) Convention, 1936 (No. 56)
- Hours of Work and Manning (Sea) Convention, 1936 (No. 57)
- Minimum Age (Sea) Convention (Revised), 1936 (No. 58)

- Food and Catering (Ships' Crews) Convention, 1946 (No. 68)
- Certification of Ships' Cooks Convention, 1946 (No. 69)
- Social Security (Seafarers) Convention, 1946 (No. 70)
- Paid Vacations (Seafarers) Convention, 1946 (No. 72)
- Medical Examination (Seafarers) Convention, 1946 (No. 73)
- Certification of Able Seamen Convention, 1946 (No. 74)
- Accommodation of Crews Convention, 1946 (No. 75)
- Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76)
- Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91)
- Accommodation of Crews Convention (Revised), 1949 (No. 92)
- Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93)
- Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109)
- Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133)
- Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)
- Continuity of Employment (Seafarers) Convention, 1976 (No. 145)
- Seafarers' Annual Leave with Pay Convention, 1976 (No. 146)
- Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)
- Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)
- Seafarers' Welfare Convention, 1987 (No. 163)
- Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164)
- Social Security (Seafarers) Convention (Revised), 1987 (No. 165)
- Repatriation of Seafarers Convention (Revised), 1987 (No. 166)
- Labour Inspection (Seafarers) Convention, 1996 (No. 178)
- Recruitment and Placement of Seafarers Convention, 1996 (No. 179)
- Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180).

Depositary Functions

Article XI

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications, acceptances and denunciations under this Convention.

2. When the conditions provided for in paragraph 3 of Article VIII have been fulfilled, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

Article XII

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102

of the Charter of the United Nations full particulars of all ratifications, acceptances and denunciations registered under this Convention.

Special Tripartite Committee

Article XIII

1. The Governing Body of the International Labour Office shall keep the working of this Convention under continuous review through a committee established by it with special competence in the area of maritime labour standards.

2. For matters dealt with in accordance with this Convention, the Committee shall consist of two representatives nominated by the Government of each Member which has ratified this Convention, and the representatives of Shipowners and Seafarers appointed by the Governing Body after consultation with the Joint Maritime Commission.

3. The Government representatives of Members which have not yet ratified this Convention may participate in the Committee but shall have no right to vote on any matter dealt with in accordance with this Convention. The Governing Body may invite other organizations or entities to be represented on the Committee by observers.

4. The votes of each Shipowner and Seafarer representative in the Committee shall be weighted so as to ensure that the Shipowners' group and the Seafarers' group each have half the voting power of the total number of governments which are represented at the meeting concerned and entitled to vote.

Amendment of this Convention

Article XIV

1. Amendments to any of the provisions of this Convention may be adopted by the General Conference of the International Labour Organization in the framework of article 19 of the Constitution of the International Labour Organisation and the rules and procedures of the Organization for the adoption of Conventions. Amendments to the Code may also be adopted following the procedures in Article XV.

2. In the case of Members whose ratifications of this Convention were registered before the adoption of the amendment, the text of the amendment shall be communicated to them for ratification.

3. In the case of other Members of the Organization, the text of the Convention as amended shall be communicated to them for ratification in accordance with article 19 of the Constitution.

4. An amendment shall be deemed to have been accepted on the date when there have been registered ratifications, of the amendment or of the Convention as amended, as the case may be, by at least 30 Members with a total share in the world gross tonnage of ships of at least 33 per cent.

5. An amendment adopted in the framework of article 19 of the Constitution shall be binding only upon those Members of the Organization whose ratifications have been registered by the Director-General of the International Labour Office.

6. For any Member referred to in paragraph 2 of this Article, an amendment shall come into force 12 months after the date of acceptance referred to in paragraph 4 of this Article or 12 months after the date on which its ratification of the amendment has been registered, whichever date is later.

7. Subject to paragraph 9 of this Article, for Members referred to in paragraph 3 of this Article, the Convention as amended shall come into force 12 months after the date of acceptance referred to in paragraph 4 of this Article or 12 months after the date on which their ratifications of the Convention have been registered, whichever date is later.

8. For those Members whose ratification of this Convention was registered before the adoption of an amendment but which have not ratified the amendment, this Convention shall remain in force without the amendment concerned.

9. Any Member whose ratification of this Convention is registered after the adoption of the amendment but before the date referred to in paragraph 4 of this Article may, in a declaration accompanying the instrument of ratification, specify that its ratification relates to the Convention without the amendment concerned. In the case of a ratification with such a declaration, the Convention shall come into force for the Member concerned 12 months after the date on which the ratification was registered. Where an instrument of ratification is not accompanied by such a declaration, or where the ratification is registered on or after the date referred to in paragraph 4, the Convention shall come into force for the Member concerned 12 months after the date on which the ratification was registered and, upon its entry into force in accordance with paragraph 7 of this Article, the amendment shall be binding on the Member concerned unless the amendment provides otherwise.

Amendments to the Code

Article XV

1. The Code may be amended either by the procedure set out in Article XIV or, unless expressly provided otherwise, in accordance with the procedure set out in the present Article.

2. An amendment to the Code may be proposed to the Director-General of the International Labour Office by the government of any Member of the Organization or by the group of Shipowner representatives or the group of Seafarer representatives who have been appointed to the Committee referred to in Article XIII. An amendment proposed by a government must have been proposed by, or be supported by, at least five governments of Members that have ratified the Convention or by the group of Shipowner or Seafarer representatives referred to in this paragraph.

3. Having verified that the proposal for amendment meets the requirements of paragraph 2 of this Article, the Director-General shall promptly communicate the proposal, accompanied by any comments or suggestions deemed appropriate, to all Members of the Organization, with an invitation to them to transmit their observations or suggestions concerning the proposal within a period of six months or such other period (which shall not be less than three months nor more than nine months) prescribed by the Governing Body.

4. At the end of the period referred to in paragraph 3 of this Article, the proposal, accompanied by a summary of any observations or suggestions made under that para-

graph, shall be transmitted to the Committee for consideration at a meeting. An amendment shall be considered adopted by the Committee if:

(*a*) at least half the governments of Members that have ratified this Convention are represented in the meeting at which the proposal is considered; and

(*b*) a majority of at least two-thirds of the Committee members vote in favour of the amendment; and

(*c*) this majority comprises the votes in favour of at least half the government voting power, half the Shipowner voting power and half the Seafarer voting power of the Committee members registered at the meeting when the proposal is put to the vote.

5. Amendments adopted in accordance with paragraph 4 of this Article shall be submitted to the next session of the Conference for approval. Such approval shall require a majority of two-thirds of the votes cast by the delegates present. If such majority is not obtained, the proposed amendment shall be referred back to the Committee for reconsideration should the Committee so wish.

6. Amendments approved by the Conference shall be notified by the Director-General to each of the Members whose ratifications of this Convention were registered before the date of such approval by the Conference. These Members are referred to below as the ratifying Members. The notification shall contain a reference to the present Article and shall prescribe the period for the communication of any formal disagreement. This period shall be two years from the date of the notification unless, at the time of approval, the Conference has set a different period, which shall be a period of at least one year. A copy of the notification shall be communicated to the other Members of the Organization for their information.

7. An amendment approved by the Conference shall be deemed to have been accepted unless, by the end of the prescribed period, formal expressions of disagreement have been received by the Director-General from more than 40 per cent of the Members which have ratified the Convention and which represent not less than 40 per cent of the gross tonnage of the ships of the Members which have ratified the Convention.

8. An amendment deemed to have been accepted shall come into force six months after the end of the prescribed period for all the ratifying Members except those which had formally expressed their disagreement in accordance with paragraph 7 of this Article and have not withdrawn such disagreement in accordance with paragraph 11. However:

(*a*) before the end of the prescribed period, any ratifying Member may give notice to the Director-General that it shall be bound by the amendment only after a subsequent express notification of its acceptance; and

(*b*) before the date of entry into force of the amendment, any ratifying Member may give notice to the Director-General that it will not give effect to that amendment for a specified period.

9. An amendment which is the subject of a notice referred to in paragraph 8 (a) of this Article shall enter into force for the Member giving such notice six months after the Member has notified the Director-General of its acceptance of the amendment or on the date on which the amendment first comes into force, whichever date is later.

10. The period referred to in paragraph 8 (b) of this Article shall not go beyond one year from the date of entry into force of the amendment or beyond any longer period determined by the Conference at the time of approval of the amendment.

11. A Member that has formally expressed disagreement with an amendment may withdraw its disagreement at any time. If notice of such withdrawal is received by the Director-General after the amendment has entered into force, the amendment shall enter into force for the Member six months after the date on which the notice was registered.

12. After entry into force of an amendment, the Convention may only be ratified in its amended form.

13. To the extent that a maritime labour certificate relates to matters covered by an amendment to the Convention which has entered into force:

(*a*) a Member that has accepted that amendment shall not be obliged to extend the benefit of the Convention in respect of the maritime labour certificates issued to ships flying the flag of another Member which:

(i) pursuant to paragraph 7 of this Article, has formally expressed disagreement to the amendment and has not withdrawn such disagreement; or

(ii) pursuant to paragraph 8 (a) of this Article, has given notice that its acceptance is subject to its subsequent express notification and has not accepted the amendment; and

(b) a Member that has accepted the amendment shall extend the benefit of the Convention in respect of the maritime labour certificates issued to ships flying the flag of another Member that has given notice, pursuant to paragraph 8 (b) of this Article, that it will not give effect to that amendment for the period specified in accordance with paragraph 10 of this Article.

Authoritative Languages

Article XVI

The English and French versions of the text of this Convention are equally authoritative.

(*b*) Promotional Framework for Occupational Safety and Health Convention, 15 June 2006*

I. Definitions

Article 1

For the purpose of this Convention:

* Adopted by the General Conference of the International Labour Organization on 15 June 2006, during the Ninety-fifth Session of the International Labour Conference, held in Geneva from 31 May to 16 June 2006.

(*a*) the term *national policy* refers to the national policy on occupational safety and health and the working environment developed in accordance with the principles of Article 4 of the Occupational Safety and Health Convention, 1981 (No. 155);

(*b*) the term *national system for occupational safety and health* or *national system* refers to the infrastructure which provides the main framework for implementing the national policy and national programmes on occupational safety and health;

(*c*) the term *national programme on occupational safety and health* or *national programme* refers to any national programme that includes objectives to be achieved in a predetermined time frame, priorities and means of action formulated to improve occupational safety and health, and means to assess progress;

(*d*) the term *a national preventative safety and health culture* refers to a culture in which the right to a safe and healthy working environment is respected at all levels, where government, employers and workers actively participate in securing a safe and healthy working environment through a system of defined rights, responsibilities and duties, and where the principle of prevention is accorded the highest priority.

II. Objective

Article 2

1. Each Member which ratifies this Convention shall promote continuous improvement of occupational safety and health to prevent occupational injuries, diseases and deaths, by the development, in consultation with the most representative organizations of employers and workers, of a national policy, national system and national programme.

2. Each Member shall take active steps towards achieving progressively a safe and healthy working environment through a national system and national programmes on occupational safety and health by taking into account the principles set out in instruments of the International Labour Organization (ILO) relevant to the promotional framework for occupational safety and health.

3. Each Member, in consultation with the most representative organizations of employers and workers, shall periodically consider what measures could be taken to ratify relevant occupational safety and health Conventions of the ILO.

III. National Policy

Article 3

1. Each Member shall promote a safe and healthy working environment by formulating a national policy.

2. Each Member shall promote and advance, at all relevant levels, the right of workers to a safe and healthy working environment.

3. In formulating its national policy, each Member, in light of national conditions and practice and in consultation with the most representative organizations of employers and workers, shall promote basic principles such as assessing occupational risks or hazards; combating occupational risks or hazards at source; and developing a national preventative safety and health culture that includes information, consultation and training.

IV. National System

Article 4

1. Each Member shall establish, maintain, progressively develop and periodically review a national system for occupational safety and health, in consultation with the most representative organizations of employers and workers.

2. The national system for occupational safety and health shall include among others:

(*a*) laws and regulations, collective agreements where appropriate, and any other relevant instruments on occupational safety and health;

(*b*) an authority or body, or authorities or bodies, responsible for occupational safety and health, designated in accordance with national law and practice;

(*c*) mechanisms for ensuring compliance with national laws and regulations, including systems of inspection; and

(*d*) arrangements to promote, at the level of the undertaking, cooperation between management, workers and their representatives as an essential element of workplace-related prevention measures.

3. The national system for occupational safety and health shall include, where appropriate:

(*a*) a national tripartite advisory body, or bodies, addressing occupational safety and health issues;

(*b*) information and advisory services on occupational safety and health;

(*c*) the provision of occupational safety and health training;

(*d*) occupational health services in accordance with national law and practice;

(*e*) research on occupational safety and health;

(*f*) a mechanism for the collection and analysis of data on occupational injuries and diseases, taking into account relevant ILO instruments;

(*g*) provisions for collaboration with relevant insurance or social security schemes covering occupational injuries and diseases; and

(*h*) support mechanisms for a progressive improvement of occupational safety and health conditions in micro-enterprises, in small and medium-sized enterprises and in the informal economy.

V. National Programme

Article 5

1. Each Member shall formulate, implement, monitor, evaluate and periodically review a national programme on occupational safety and health in consultation with the most representative organizations of employers and workers.

2. The national programme shall:

(*a*) promote the development of a national preventative safety and health culture;

(*b*) contribute to the protection of workers by eliminating or minimizing, so far as is reasonably practicable, work-related hazards and risks, in accordance with national law

and practice, in order to prevent occupational injuries, diseases and deaths and promote safety and health in the workplace;

(*c*) be formulated and reviewed on the basis of analysis of the national situation regarding occupational safety and health, including analysis of the national system for occupational safety and health;

(*d*) include objectives, targets and indicators of progress; and

(*e*) be supported, where possible, by other complementary national programmes and plans which will assist in achieving progressively a safe and healthy working environment.

3. The national programme shall be widely publicized and, to the extent possible, endorsed and launched by the highest national authorities.

Final VI. Final Provisions

Article 6

This Convention does not revise any international labour Conventions or Recommendations.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification is registered.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention within the first year of each new period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations that have been communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification that has been communicated, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and denunciations that have been registered.

Article 12

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision.

Article 13

1. Should the Conference adopt a new Convention revising this Convention, then, unless the new Convention otherwise provides:

(*a*) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

(*b*) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

2. Food and Agriculture Organization

(*a*) Southern Indian Ocean Fisheries Agreement, 7 July 2006*

The Contracting Parties

Having a mutual interest in the proper management, long-term conservation and sustainable use of fishery resources in the Southern Indian Ocean, and desiring to further the attainment of their objectives through international cooperation;

Taking into consideration that the coastal States have waters under national jurisdiction in accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 and general principles of international law, within which they exercise their sovereign rights for the purpose of exploring and exploiting, conserving and managing fishery resources and conserving living marine resources upon which fishing has an impact;

Recalling the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, 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 of 4 December 1995, and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 24 November 1993 and taking into account the Code of Conduct for Responsible Fisheries adopted by the 28th Session of the Conference of the Food and Agriculture Organization of the United Nations on 31 October 1995;

Recalling further Article 17 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 1995, and the need for non-Contracting Parties to this Southern Indian Ocean Fisheries Agreement to apply the conservation and management measures adopted hereunder and not to authorise vessels flying their flag to engage in fishing activities inconsistent with the conservation and sustainable use of the fishery resources to which this Agreement applies;

Recognizing economic and geographical considerations and the special requirements of developing States, in particular the least-developed among them and small island developing States and their coastal communities, for equitable benefit from fishery resources;

Desiring cooperation between coastal States and all other States, organizations and fishing entities having an interest in the fishery resources of the Southern Indian Ocean to ensure compatible conservation and management measures;

Bearing in mind that the achievement of the above will contribute to the realization of a just and equitable economic order in the interests of all humankind, and in particular the special interests and needs of developing States, in particular the least-developed among them and small island developing States;

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* Adopted at the Conference for the Adoption of the Southern Indian Ocean Fisheries Agreement on 7 July 2006 at the Headquarters of the Food and Agriculture Organization of the United Nations in Rome, Italy.

Convinced that the conclusion of a multilateral agreement for the long-term conservation and sustainable use of fishery resources in waters beyond national jurisdiction in the Southern Indian Ocean would best serve these objectives;

Agree as follows:

Article 1. Definitions

For the purposes of this Agreement:

(*a*) "1982 Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982;

(*b*) "1995 Agreement" means 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 of 4 December 1995;

(*c*) "Area" means the area to which this Agreement applies, as prescribed in Article 3;

(*d*) "Code of Conduct" means the Code of Conduct for Responsible Fisheries adopted by the 28th Session of the Conference of the Food and Agriculture Organization of the United Nations on 31 October 1995;

(*e*) "Contracting Party" means any State or regional economic integration organization which has consented to be bound by this Agreement and for which the Agreement is in force;

(*f*) "fishery resources" means resources of fish, molluscs, crustaceans and other sedentary species within the Area, but excluding:

(i) sedentary species subject to the fishery jurisdiction of coastal States pursuant to Article 77 (4) of the 1982 Convention; and

(ii) highly migratory species listed in Annex I of the 1982 Convention;

(*g*) "fishing" means:

(i) the actual or attempted searching for, catching, taking or harvesting of fishery resources;

(ii) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fishery resources for any purpose including scientific research;

(iii) placing, searching for or recovering any aggregating device for fishery resources or associated equipment including radio beacons;

(iv) any operation at sea in support of, or in preparation for, any activity described in this definition, except for any operation in emergencies involving the health or safety of crew members or the safety of a vessel; or

(v) the use of an aircraft in relation to any activity described in this definition except for flights in emergencies involving the health or safety of crew members or the safety of a vessel;

(h) "fishing entity" means a fishing entity as referred to in Article 1 (3) of the 1995 Agreement;

(*i*) "fishing vessel" means any vessel used or intended for fishing, including a mother ship, any other vessel directly engaged in fishing operations, and any vessel engaged in transhipment;

(*j*) "nationals" includes both natural and legal persons;

(*k*) "regional economic integration organization" means a regional economic integration organization to which its member States have transferred competence over matters covered by this Agreement, including the authority to make decisions binding on its member States in respect of those matters;

(*l*) "transhipment" means the unloading of all or any of the fishery resources on board a fishing vessel onto another vessel whether at sea or in port.

Article 2. Objectives

The objectives of this Agreement are to ensure the long-term conservation and sustainable use of the fishery resources in the Area through cooperation among the Contracting Parties, and to promote the sustainable development of fisheries in the Area, taking into account the needs of developing States bordering the Area that are Contracting Parties to this Agreement, and in particular the least-developed among them and small island developing States.

Article 3. Area of application

1. This Agreement applies to the Area bounded by a line joining the following points along parallels of latitude and meridians of longitude, excluding waters under national jurisdiction:

Commencing at the landfall on the continent of Africa of the parallel of 10° North; from there east along that parallel to its intersection with the meridian of 65° East; from there south along that meridian to its intersection with the equator; from there east along the equator to its intersection with the meridian of 80° East; from there south along that meridian to its intersection with the parallel of 20° South; from there east along that parallel to its landfall on the continent of Australia; from there south and then east along the coast of Australia to its intersection with the meridian of 120° East; from there south along that meridian to its intersection with the parallel of 55° South; from there west along that parallel to its intersection with the meridian of 80° East; from there north along that meridian to its intersection with the parallel of 45° South; from there west along that parallel to its intersection with the meridian of 30° East; from there north along that meridian to its landfall on the continent of Africa.

2. Where for the purpose of this Agreement it is necessary to determine the position on the surface of the Earth of a point, line or area, that position shall be determined by reference to the International Terrestrial Reference System maintained by the International Earth Rotation Service, which for most practical purposes is equivalent to the World Geodetic System 1984 (WGS84).

Article 4. General principles

In giving effect to the duty to cooperate in accordance with the 1982 Convention and international law, the Contracting Parties shall apply, in particular, the following principles:

(*a*) measures shall be adopted on the basis of the best scientific evidence available to ensure the long-term conservation of fishery resources, taking into account the sustainable use of such resources and implementing an ecosystem approach to their management;

(*b*) measures shall be taken to ensure that the level of fishing activity is commensurate with the sustainable use of the fishery resources;

(*c*) the precautionary approach shall be applied in accordance with the Code of Conduct and the 1995 Agreement, whereby the absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures;

(*d*) the fishery resources shall be managed so that they are maintained at levels that are capable of producing the maximum sustainable yield, and depleted stocks of fishery resources are rebuilt to the said levels;

(*e*) fishing practices and management measures shall take due account of the need to minimize the harmful impact that fishing activities may have on the marine environment;

(*f*) biodiversity in the marine environment shall be protected; and

(*g*) the special requirements of developing States bordering the Area that are Contracting Parties to this Agreement, and in particular the least-developed among them and small island developing States, shall be given full recognition.

Article 5. Meeting of the Parties

1. The Contracting Parties shall meet periodically to consider matters pertaining to the implementation of this Agreement and to make all decisions relevant thereto.

2. The ordinary Meeting of the Parties shall, unless the Meeting otherwise decides, take place at least once a year and, to the extent practicable, back-to-back with meetings of the South West Indian Ocean Fisheries Commission. The Contracting Parties may also hold extraordinary meetings when deemed necessary.

3. The Meeting of the Parties shall, by consensus, adopt and amend its own Rules of Procedure and those of its subsidiary bodies.

4. The Contracting Parties, at their first meeting, shall consider the adoption of a budget to fund the conduct of the Meeting of the Parties and the exercise of its functions and accompanying financial regulations. The financial regulations shall set out the criteria governing the determination of the amount of each Contracting Party's contribution to the budget, giving due consideration to the economic status of Contracting Parties which are developing States, and in particular the least-developed among them and small island developing States, and ensuring that an adequate share of the budget is borne by Contracting Parties that benefit from fishing in the Area.

Article 6. Functions of the meeting of the Parties

1. The Meeting of the Parties shall:

(*a*) review the state of fishery resources, including their abundance and the level of their exploitation;

(*b*) promote and, as appropriate, co-ordinate research activities as required on the fishery resources and on straddling stocks occurring in waters under national jurisdiction adjacent to the Area, including discarded catch and the impact of fishing on the marine environment;

(*c*) evaluate the impact of fishing on the fishery resources and on the marine environment, taking into account the environmental and oceanographic characteristics of the Area, other human activities and environmental factors;

(*d*) formulate and adopt conservation and management measures necessary for ensuring the long-term sustainability of the fishery resources, taking into account the need to protect marine biodiversity, based on the best scientific evidence available;

(*e*) adopt generally recommended international minimum standards for the responsible conduct of fishing operations;

(*f*) develop rules for the collection and verification of scientific and statistical data, as well as for the submission, publication, dissemination and use of such data;

(*g*) promote cooperation and coordination among Contracting Parties to ensure that conservation and management measures for straddling stocks occurring in waters under national jurisdiction adjacent to the Area and measures adopted by the Meeting of the Parties for the fishery resources are compatible;

(*h*) develop rules and procedures for the monitoring, control and surveillance of fishing activities in order to ensure compliance with conservation and management measures adopted by the Meeting of the Parties including, where appropriate, a system of verification incorporating vessel monitoring and observation, and rules concerning the boarding and inspection of vessels operating in the Area;

(*i*) develop and monitor measures to prevent, deter and eliminate illegal, unreported and unregulated fishing;

(*j*) in accordance with international law and any applicable instruments, draw the attention of any non-Contracting Parties to any activities which undermine the attainment of the objectives of this Agreement;

(*k*) establish the criteria for and rules governing participation in fishing; and

(*l*) carry out any other tasks and functions necessary to achieve the objectives of this Agreement.

2. In determining criteria for participation in fishing, including allocation of total allowable catch or total level of fishing effort, the Contracting Parties shall take into account, inter alia, international principles such as those contained in the 1995 Agreement.

3. In applying the provisions of paragraph 2, the Contracting Parties may, *inter alia:*

(*a*) designate annual quota allocations or fishing effort limitations for Contracting Parties;

(*b*) allocate catch quantities for exploration and scientific research; and

(*c*) set aside fishing opportunities for non-Contracting Parties to this Agreement, if necessary.

4. The Meeting of Parties shall, subject to agreed rules, review quota allocations and fishing effort limitations of Contracting Parties and participation in fishing opportunities of non-Contracting Parties taking into account, inter alia, information on the implementation by Contracting and non-Contracting Parties of the conservation and management measures adopted by the Meeting of the Parties.

Article. 7. Subsidiary bodies

1. The Meeting of the Parties shall establish a permanent Scientific Committee, which shall meet, unless the Meeting of the Parties otherwise decides, at least once a year, and preferably prior to the Meeting of the Parties, in accordance with the following provisions:

(*a*) the functions of the Scientific Committee shall be:

(i) to conduct the scientific assessment of the fishery resources and the impact of fishing on the marine environment, taking into account the environmental and oceanographic characteristics of the Area, and the results of relevant scientific research;

(ii) to encourage and promote cooperation in scientific research in order to improve knowledge of the state of the fishery resources;

(iii) to provide scientific advice and recommendations to the Meeting of the Parties for the formulation of the conservation and management measures referred to in Article 6 (1)(d);

(iv) to provide scientific advice and recommendations to the Meeting of the Parties for the formulation of measures regarding the monitoring of fishing activities;

(v) to provide scientific advice and recommendations to the Meeting of the Parties on appropriate standards and format for fishery data collection and exchange; and

(vi) any other scientific function that the Meeting of the Parties may decide;

(*b*) in developing advice and recommendations the Scientific Committee shall take into consideration the work of the South West Indian Ocean Fisheries Commission as well as that of other relevant research organizations and regional fisheries management organizations.

2. Once the measures referred to in Article 6 are taken, the Meeting of the Parties shall establish a Compliance Committee, to verify the implementation of and compliance with such measures. The Compliance Committee shall meet, in conjunction with the Meeting of the Parties, as provided for in the Rules of Procedure and shall report, advise and make recommendations to the Meeting of the Parties.

3. The Meeting of the Parties may also establish such temporary, special or standing committees as may be required, to study and report on matters pertaining to the implementation of the objectives of this Agreement, and working groups to study, and submit recommendations on, specific technical problems.

Article 8. Decision making

1. Unless otherwise provided in this Agreement, decisions of the Meeting of the Parties and its subsidiary bodies on matters of substance shall be taken by the consensus of the Contracting Parties present, where consensus means the absence of any formal objection made at the time a decision is taken. The question of whether a matter is one of substance shall be treated as a matter of substance.

2. Decisions on matters other than those referred to in paragraph 1 shall be taken by a simple majority of the Contracting Parties present and voting.

3. Decisions adopted by the Meeting of the Parties shall be binding on all Contracting Parties.

Article 9. Secretariat

The Meeting of the Parties shall decide on arrangements for the carrying out of secretariat services, or the establishment of a Secretariat, to perform the following functions:

(*a*) implementing and coordinating the administrative provisions of this Agreement, including the compilation and distribution of the official report of the Meeting of the Parties;

(*b*) maintaining a complete record of the proceedings of the Meeting of the Parties and its subsidiary bodies, as well as a complete archive of any other official documents pertaining to the implementation of this Agreement; and

(*c*) any other function that the Meeting of the Parties may decide.

Article 10. Contracting Party duties

1. Each Contracting Party shall, in respect of its activities within the Area:

(*a*) promptly implement this Agreement and any conservation, management and other measures or matters which may be agreed by the Meeting of the Parties;

(*b*) take appropriate measures in order to ensure the effectiveness of the measures adopted by the Meeting of the Parties;

(*c*) collect and exchange scientific, technical and statistical data with respect to the fishery resources and ensure that:

(i) data is collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfil the requirements set forth in the rules adopted by the Meeting of the Parties;

(ii) appropriate measures are taken to verify the accuracy of such data;

(iii) such statistical, biological and other data and information as the Meeting of the Parties may decide is provided annually; and

(iv) information on steps taken to implement the conservation and management measures adopted by the Meeting of the Parties is provided in a timely manner.

2. Each Contracting Party shall make available to the Meeting of the Parties a statement of implementing and compliance measures, including imposition of sanctions for any violations, it has taken in accordance with this Article and, in the case of coastal States that are Contracting Parties to this Agreement, as regards the conservation and

management measures they have taken for straddling stocks occurring in waters under their jurisdiction adjacent to the Area.

3. Without prejudice to the primacy of the responsibility of the flag State, each Contracting Party shall, to the greatest extent possible, take measures, or cooperate, to ensure that its nationals and fishing vessels owned or operated by its nationals fishing in the Area comply with the provisions of this Agreement and with the conservation and management measures adopted by the Meeting of the Parties.

4. Each Contracting Party shall, to the greatest extent possible, at the request of any other Contracting Party, and when provided with the relevant information, investigate any alleged serious violation within the meaning of the 1995 Agreement by its nationals, or fishing vessels owned or operated by its nationals, of the provisions of this Agreement or any conservation and management measure adopted by the Meeting of the Parties. A reply, including details of any action taken or proposed to be taken in relation to the alleged violation, shall be provided to all Contracting Parties as soon as practicable and in any case within two (2) months of such request. A report on the outcome of the investigation shall be provided to the Meeting of the Parties when the investigation is completed.

Article 11. Flag State duties

1. Each Contracting Party shall take such measures as may be necessary to ensure that:

(*a*) fishing vessels flying its flag operating in the Area comply with the provisions of this Agreement and the conservation and management measures adopted by the Meeting of the Parties and that such vessels do not engage in any activity which undermines the effectiveness of such measures;

(*b*) fishing vessels flying its flag do not conduct unauthorized fishing within waters under national jurisdiction adjacent to the Area; and

(*c*) it develops and implements a satellite vessel monitoring system for fishing vessels flying its flag and fishing in the Area.

2. No Contracting Party shall allow any fishing vessel entitled to fly its flag to be used for fishing in the Area unless it has been authorised to do so by the appropriate authority or authorities of that Contracting Party.

3. Each Contracting Party shall:

(*a*) authorize the use of vessels flying its flag for fishing in waters beyond national jurisdiction only where it is able to exercise effectively its responsibilities in respect of such vessels under this Agreement and in accordance with international law;

(*b*) maintain a record of fishing vessels entitled to fly its flag and authorized to fish for the fishery resources, and ensure that, for all such vessels, such information as may be specified by the Meeting of the Parties is entered in that record. Contracting Parties shall exchange this information in accordance with such procedures as may be agreed by the Meeting of the Parties;

(*c*) in conformity with the rules determined by the Meeting of the Parties, make available to each annual Meeting of the Parties a report on its fishing activities in the Area;

(*d*) collect and share in a timely manner, complete and accurate data concerning fishing activities by vessels flying its flag operating in the area, in particular on vessel position, retained catch, discarded catch and fishing effort, where appropriate maintaining confidentiality of data as it relates to the application of relevant national legislation; and

(*e*) to the greatest extent possible, at the request of any other Contracting Party, and when provided with the relevant information, investigate any alleged serious violation within the meaning of the 1995 Agreement by fishing vessels flying its flag of the provisions of this Agreement or any conservation and management measure adopted by the Meeting of the Parties. A reply, including details of any action taken or proposed to be taken in relation to such alleged violation, shall be provided to all Contracting Parties as soon as practicable and in any case within two (2) months of such request. A report on the outcome of the investigation shall be provided to the Meeting of the Parties when the investigation is completed.

Article 12. Port State Duties

1. Measures taken by a port State Contracting Party in accordance with this Agreement shall take full account of the right and the duty of a port State to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures. When taking such measures, a port State Contracting Party shall not discriminate in form or in fact against the fishing vessels of any State.

2. Each port State Contracting Party shall:

(*a*) in accordance with the conservation and management measures adopted by the Meeting of the Parties, inter alia, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals;

(*b*) not permit landings, transhipment, or supply services in relation to fishing vessels unless they are satisfied that fish on board the vessel have been caught in a manner consistent with the conservation and management measures adopted by the Meeting of the Parties; and

(*c*) provide assistance to flag State Contracting Parties, as reasonably practical and in accordance with its national law and international law, when a fishing vessel is voluntarily in its ports or at its offshore terminals and the flag State of the vessel requests it to provide assistance in ensuring compliance with the provisions of this Agreement and with the conservation and management measures adopted by the Meeting of the Parties.

3. In the event that a port State Contracting Party considers that a vessel of another Contracting Party making use of its ports or offshore terminals has violated a provision of this Agreement or a conservation and management measure adopted by the Meeting of the Parties, it shall draw this to the attention of the flag State concerned and of the Meeting of the Parties. The port State Contracting Party shall provide the flag State and the Meeting of the Parties with full documentation of the matter, including any record of inspection.

4. Nothing in this Article affects the exercise by Contracting Parties of their sovereignty over ports in their territory in accordance with international law.

Article 13. Special requirements of developing states

1. The Contracting Parties shall give full recognition to the special requirements of developing States bordering the Area, in particular the least-developed among them and small island developing States, in relation to the conservation and management of fishery resources and the sustainable development of such resources.

2. The Contracting Parties recognize, in particular:

(*a*) the vulnerability of developing States bordering the Area, in particular the least-developed among them and small island developing States, that are dependent on the exploitation of fishery resources, including for meeting the nutritional requirements of their populations or parts thereof;

(*b*) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and fishworkers; and

(*c*) the need to ensure that conservation and management measures adopted by the Meeting of the Parties do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States bordering the Area, in particular the least-developed among them and small island developing States.

3. Cooperation by the Contracting Parties under the provisions of this Agreement and through other subregional or regional organizations involved in the management of marine living resources should include action for the purposes of:

(*a*) enhancing the ability of developing States bordering the Area, in particular the least-developed among them and small island developing States, to conserve and manage fishery resources and to develop their own fisheries for such resources; and

(*b*) assisting developing States bordering the Area, in particular the least-developed among them and small island developing States, to enable them to participate in fisheries for such resources, including facilitating access in accordance with this Agreement.

4. Cooperation with developing States bordering the Area, in particular the least-developed among them and small island developing States, for the purposes set out in this Article should include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, and activities directed specifically towards:

(*a*) improved conservation and management of the fishery resources and of straddling stocks occurring in waters under national jurisdiction adjacent to the Area, which can include the collection, reporting, verification, exchange and analysis of fisheries data and related information;

(*b*) improved information collection and management of the impact of fishing activities on the marine environment;

(*c*) stock assessment and scientific research;

(*d*) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology; and

(*e*) participation in the Meeting of the Parties and meetings of its subsidiary bodies as well as in the settlement of disputes.

Article 14. Transparency

1. The Contracting Parties shall promote transparency in decision making processes and other activities carried out under this Agreement.

2. Coastal States with waters under national jurisdiction adjacent to the Area that are not Contracting Parties to this Agreement shall be entitled to participate as observers in the Meeting of the Parties and meetings of its subsidiary bodies.

3. Non-Contracting Parties to this Agreement shall be entitled to participate as observers in the Meeting of the Parties and meetings of its subsidiary bodies.

4. Intergovernmental organizations concerned with matters relevant to the implementation of this Agreement, in particular the Food and Agriculture Organization of the United Nations, the South West Indian Ocean Fisheries Commission, and regional fisheries management organizations with competence over high seas waters adjacent to the Area, shall be entitled to participate as observers in the Meeting of the Parties and meetings of its subsidiary bodies.

5. Representatives from non-governmental organizations concerned with matters relevant to the implementation of this Agreement shall be afforded the opportunity to participate in the Meeting of the Parties and meetings of its subsidiary bodies as observers or otherwise as determined by the Meeting of the Parties. The Rules of Procedure of the Meeting of the Parties and its subsidiary bodies shall provide for such participation. The procedures shall not be unduly restrictive in this respect.

6. Observers shall be given timely access to pertinent information subject to the Rules of Procedure, including those concerning confidentiality requirements, which the Meeting of the Parties may adopt.

Article 15. Fishing entities

1. After the entry into force of this Agreement any fishing entity whose vessels have fished or intend to fish for fishery resources in the Area may, by a written instrument delivered to the Chairperson of the Meeting of the Parties, in accordance with such procedures as may be established by the Meeting of the Parties, express its firm commitment to be bound by the terms of this Agreement. Such commitment shall become effective thirty (30) days from the date of receipt of the instrument. Any such fishing entity may withdraw such commitment by written notification addressed to the Chairperson of the Meeting of the Parties. Notice of withdrawal shall become effective ninety (90) days from the date of its receipt by the Chairperson of the Meeting of the Parties.

2. A fishing entity which has expressed its commitment to be bound by the terms of this Agreement may participate in the Meeting of the Parties and its subsidiary bodies, and partake in decision making, in accordance with the Rules of Procedure adopted by the Meeting of the Parties. Articles 1 to 18 and 20.2 apply, *mutatis mutandis,* to such a fishing entity.

Article 16. Cooperation with other organizations

The Contracting Parties, acting jointly under this Agreement, shall cooperate closely with other international fisheries and related organizations in matters of mutual interest, in particular with the South West Indian Ocean Fisheries Commission and any other

regional fisheries management organization with competence over high seas waters adjacent to the Area.

Article 17. Non-contracting Parties

1. Contracting Parties shall take measures consistent with this Agreement, the 1995 Agreement and international law to deter the activities of vessels flying the flags of non-Contracting Parties to this Agreement which undermine the effectiveness of conservation and management measures adopted by the Meeting of the Parties or the attainment of the objectives of this Agreement.

2. Contracting Parties shall exchange information on the activities of fishing vessels flying the flags of non-Contracting Parties to this Agreement which are engaged in fishing operations in the Area.

3. Contracting Parties shall draw the attention of any non-Contracting Party to this Agreement to any activity undertaken by its nationals or vessels flying its flag which, in the opinion of the Contracting Party, undermines the effectiveness of conservation and management measures adopted by the Meeting of the Parties or the attainment of the objectives of this Agreement.

4. Contracting Parties shall, individually or jointly, request non-Contracting Parties to this Agreement whose vessels fish in the Area to cooperate fully in the implementation of conservation and management measures adopted by the Meeting of the Parties with a view to ensuring that such measures are applied to all fishing activities in the Area. Such cooperating non-Contracting Parties to this Agreement shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with, and their record of compliance with, conservation and management measures in respect of the relevant stocks of fishery resources.

Article 18. Good faith and abuse of right

Each Contracting Party shall fulfil in good faith the obligations assumed under this Agreement and shall exercise the rights recognized in this Agreement in a manner which would not constitute an abuse of right.

Article 19. Relation to other agreements

Nothing in this Agreement shall prejudice the rights and obligations of States under the 1982 Convention or the 1995 Agreement.

Article 20. Interpretation and settlement of disputes

1. Contracting Parties shall use their best endeavours to resolve their disputes by amicable means. At the request of any Contracting Party a dispute may be submitted for binding decision in accordance with the procedures for the settlement of disputes provided in Section II of Part XV of the 1982 Convention or, where the dispute concerns one or more straddling stocks, the procedures set out in Part VIII of the 1995 Agreement. The relevant part of the 1982 Convention and the 1995 Agreement shall apply whether or not the parties to the dispute are also parties to either of these instruments.

2. If a dispute involves a fishing entity which has expressed its commitment to be bound by the terms of this Agreement and cannot be settled by amicable means, the dispute shall, at the request of any party to the dispute, be submitted to final and binding arbitration in accordance with the relevant rules of the Permanent Court of Arbitration.

Article 21. Amendments

1. Any Contracting Party may propose an amendment to the Agreement by providing to the Depositary the text of a proposed amendment at least sixty (60) days in advance of an ordinary Meeting of the Parties. The Depositary shall circulate a copy of this text to all other Contracting Parties promptly.

2. Amendments to the Agreement shall be adopted by consensus of all Contracting Parties.

3. Amendments to the Agreement shall enter into force ninety (90) days after all Contracting Parties which held this status at the time the amendments were approved have deposited their instruments of ratification, acceptance, or approval of such amendments with the Depositary.

Article 22. Signature, ratification, acceptance and approval

1. This Agreement shall be open for signature by:

(*a*) the States and regional economic integration organization participating in the Inter-Governmental Consultation on the Southern Indian Ocean Fisheries Agreement; and

(*b*) any other State having jurisdiction over waters adjacent to the Area;

and shall remain open for signature for twelve (12) months from 7 July 2006 (the date of opening for signature).

2. This Agreement is subject to ratification, acceptance or approval by the signatories.

3. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

Article 23. Accession

1. This Agreement shall be open for accession, after its closure for signature, by any State or regional economic integration organization referred to in Article 22.1, and by any other State or regional economic integration organization interested in fishing activities in relation to the fishery resources.

2. Instruments of accession shall be deposited with the Depositary.

Article 24. Entry into force

1. This Agreement shall enter into force ninety (90) days from the date of receipt by the Depositary of the fourth instrument of ratification, acceptance or approval, at least two of which have been deposited by coastal States bordering the Area.

2. For each signatory which ratifies, accepts or approves this Agreement after its entry into force, this Agreement shall enter into force for that signatory thirty (30) days after the deposit of its instrument of ratification, acceptance or approval.

3. For each State or regional economic integration organization which accedes to this Agreement after its entry into force, this Agreement shall enter into force for that State or regional economic integration organization thirty (30) days after the deposit of its instrument of accession.

Article 25. The depositary

1. The Director-General of the Food and Agriculture Organization of the United Nations shall be the Depositary of this Agreement and of any amendments thereto. The Depositary shall transmit certified copies of this Agreement to all signatories and shall register this Agreement with the Secretary-General of the United Nations pursuant to Article 102 of the Charter of the United Nations.

2. The Depositary shall inform all signatories of and Contracting Parties to this Agreement of signatures and of instruments of ratification, accession, acceptance or approval deposited under Articles 22 and 23 and of the date of entry into force of the Agreement under Article 24.

Article 26. Withdrawal

Any Contracting Party may withdraw from this Agreement at any time after the expiration of two years from the date upon which the Agreement entered into force with respect to that Contracting Party, by giving written notice of such withdrawal to the Depositary who shall immediately inform all the Contracting Parties of such withdrawal. Notice of withdrawal shall become effective ninety (90) days from the date of its receipt by the Depositary.

Article 27. Termination

This Agreement shall be automatically terminated if and when, as the result of withdrawals, the number of Contracting Parties drops below three.

Article 28. Reservations

1. Ratification, acceptance or approval of this Agreement may be made subject to reservations which shall become effective only upon unanimous acceptance by all Contracting Parties to this Agreement. The Depositary shall notify forthwith all Contracting Parties of any reservation. Contracting Parties not having replied within three (3) months from the date of notification shall be deemed to have accepted the reservation. Failing such acceptance, the State or regional economic integration organization making the reservation shall not become a Contracting Party to this Agreement.

2. Nothing in paragraph 1 shall prevent a State or a regional economic integration organization on behalf of a State from making a reservation with regard to membership acquired through territories and surrounding maritime areas over which the State asserts its rights to exercise sovereignty or territorial and maritime jurisdiction.

In witness whereof, the undersigned Plenipotentiaries, having been duly authorized by their respective Governments, have signed this Agreement.

Done in Rome on this Seventh day of July 2006 in English and French, both texts being equally authoritative.

3. International Atomic Energy Agency

Agreement on the Establishment of ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project

Preamble

The European Atomic Energy Community (hereinafter "EURATOM"), the Government of the People's Republic of China, the Government of the Republic of India, the Government of Japan, the Government of the Republic of Korea, the Government of the Russian Federation and the Government of the United States of America,

Recalling that the successful completion of the ITER Engineering Design Activities under the auspices of the International Atomic Energy Agency (hereinafter "the IAEA") has placed at the disposal of the Parties a detailed, complete and fully integrated engineering design of a research facility aimed to demonstrate the feasibility of fusion as an energy source;

Emphasizing the long term potential of fusion energy as a virtually limitless, environmentally acceptable and economically competitive source of energy;

Convinced that ITER is the next important step on the path to develop fusion energy and that now is the appropriate time to initiate the implementation of ITER on the basis of progress of research and development in the field of fusion energy;

Having regard to the joint declaration by the Representatives of the Parties to the ITER negotiations, on the occasion of the ministerial meeting for ITER on 28 June 2005 in Moscow;

Recognizing that the World Summit on Sustainable Development of 2002 called upon governments to promote increased research and development in the field of various energy technologies, including renewable energy, energy efficiency and advanced energy technologies;

Emphasizing the importance of the joint implementation of ITER to demonstrate the scientific and technological feasibility of fusion energy for peaceful purposes and to stimulate the interest of young generations in fusion;

Determined that ITER's overall programmatic objective will be pursued by the ITER Organization through a common international research programme organized around scientific and technological goals, developed and executed with participation of leading researchers from all Parties;

Emphasizing the importance of safe and reliable implementation of construction, operation, exploitation, de-activation and decommissioning of the ITER facilities with a view to demonstrating safety and promoting social acceptability of fusion as an energy source;

Affirming the importance of genuine partnership in implementing this long term and large scale project for the purpose of fusion energy research and development;

Recognizing that while scientific and technological benefits will be shared equally among the Parties for fusion energy research purposes, other benefits associated with the implementation of the Project will be shared on an equitable basis;

Desiring to continue the fruitful cooperation with the IAEA in this endeavour;

Have agreed as follows:

Article 1. Establishment of the ITER Organization

1. The ITER International Fusion Energy Organization (hereinafter "the ITER Organization") is hereby established.

2. The headquarters of the ITER Organization (hereinafter "the Headquarters") shall be at St Paul-lez-Durance, (Bouches-du-Rhône, France). For the purposes of this Agreement, EURATOM shall be referred to as "the Host Party" and France as "the Host State".

Article 2. Purpose of the ITER Organization

The purpose of the ITER Organization shall be to provide for and to promote cooperation among the Members referred to in Article 4 (hereinafter "the Members") on the ITER Project, an international project that aims to demonstrate the scientific and technological feasibility of fusion energy for peaceful purposes, an essential feature of which would be achieving sustained fusion power generation.

Article 3. Functions of the ITER Organization

1. The ITER Organization shall:

a) construct, operate, exploit, and de-activate the ITER facilities in accordance with the technical objectives and the general design presented in the Final Report of the ITER Engineering Design Activities (ITER EDA Documentation Series No. 21) and such supplemental technical documents as may be adopted, as necessary, in accordance with this Agreement, and provide for the decommissioning of the ITER facilities;

b) encourage the exploitation of the ITER facilities by the laboratories, other institutions and personnel participating in the fusion energy research and development programmes of the Members;

c) promote public understanding and acceptance of fusion energy; and

d) undertake, in accordance with this Agreement, any other activities that are necessary to achieve its purpose.

2. In the performance of its functions, the ITER Organization shall give special regard to the maintenance of good relations with local communities.

Article 4. Members of the ITER Organization

The Parties to this Agreement shall be the Members of the ITER Organization.

Article 5. Legal Personality

1. The ITER Organization shall have international legal personality, including the capacity to conclude agreements with States and/or international organizations.

2. The ITER Organization shall have legal personality and enjoy, in the territories of the Members, the legal capacity it requires, including to:

a) conclude contracts;

b) acquire, hold and dispose of property;

c) obtain licenses; and

d) institute legal proceedings.

Article 6. Council

1. The Council shall be the principal organ of the ITER Organization and shall be composed of Representatives of the Members. Each Member shall appoint up to four Representatives to the Council.

2. The Depositary shall convene the first session of the Council no later than three months after the entry into force of this Agreement, provided that the notifications referred to in Article 12(5) have been received from all Parties.

3. The Council shall elect from among its members a Chair and a Vice-Chair who shall each serve for a term of one year and who may be re-elected up to three times for a maximum period of four years.

4. The Council shall adopt its rules of procedure by unanimity.

5. The Council shall meet twice a year, unless it decides otherwise. The Council may decide to hold an extraordinary session at the request of a Member or of the Director General. Sessions of the Council shall take place at the Headquarters, unless the Council decides otherwise.

6. When appropriate, the Council may decide to hold a session at the ministerial level.

7. The Council shall be responsible, in accordance with this Agreement, for the promotion, overall direction and supervision of the activities of the ITER Organization in pursuit of its purpose. The Council may take decisions and make recommendations on any questions, matters or issues in accordance with this Agreement. In particular, the Council shall:

a) decide on the appointment, replacement and extension of the term of office of the Director-General;

b) adopt and amend where necessary, on the proposal of the Director-General, the Staff Regulations and the Project Resource Management Regulations of the ITER Organization;

c) decide, on the proposal of the Director-General, the main management structure of the ITER Organization and complement of the Staff;

d) appoint senior Staff on the proposal of the Director-General;

e) appoint the members of the Financial Audit Board as referred to in Article 17;

f) decide, in accordance with Article 18, on the terms of reference for the undertaking of an assessment of the management of the ITER Organization and appoint a Management Assessor for that purpose;

g) decide, on the proposal of the Director-General, the total budget for the various phases of the ITER Project and allowable ranges for adjustment for the purpose of the annual updates referred to in subparagraph j), and approve the initial ITER Project Plan and Resource Estimates;

h) approve changes to the overall cost sharing;

i) approve, with the consent of the Members concerned, modifications to the procurement allocation without changing the overall cost sharing ;

j) approve the annual updates of the ITER Project Plan and Resource Estimates and, correspondingly, approve the annual programme and adopt the annual budget of the ITER Organization;

k) approve the annual accounts of the ITER Organization;

1) adopt the annual reports;

m) adopt, as necessary, the supplemental technical documents referred to in Article 3 (1) (a);

n) establish such subsidiary bodies of the Council as may be necessary;

o) approve the conclusion of agreements or arrangements for international cooperation in accordance with Article 19;

p) decide on acquisition, sale and mortgaging of land and other titles of real property;

q) adopt the rules on Intellectual Property Rights management and the dissemination of information in accordance with Article 10 on the proposal of the Director-General;

r) approve, on the proposal of the Director-General, the details of setting up of Field Teams with consent of the Members concerned, in accordance with Article 13. The Council shall review, on a periodic basis, the continuation of any Field Teams established;

s) approve, on the proposal of the Director-General, agreements/arrangements governing relations between the ITER Organization and the Members or States on whose territory the Headquarters and Field Teams of the ITER Organization are located;

t) approve, on the proposal of the Director-General, efforts to promote collaboration among the relevant domestic fusion research programmes of the Members and between such programmes and the ITER Organization;

u) decide on the accession of States or international organizations to this Agreement in accordance with Article 23;

v) recommend to the Parties, in accordance with Article 28, amendments to this Agreement;

w) decide on the taking or granting of loans, provision of assurances and guarantees and furnishing collateral and security in respect thereto;

x) decide whether to propose material, equipment and technology for consideration by international export control fora for inclusion on their control lists, and establish a policy supporting peaceful uses and non-proliferation in accordance with Article 20;

y) approve compensation arrangements referred to in Article 15; and

z) decide on waivers of immunity in accordance with Article 12 (*3*) and have such other powers as may be necessary to fulfill the purpose and to carry out the functions of the ITER Organization, consistent with this Agreement.

8. The Council shall decide issues under subparagraphs a), b), c), g), h), o), u), v), w), x), y) and z) of paragraph 7, and on the weighted voting system referred to in paragraph 10, by unanimity.

9. On all issues other than as specified in paragraph 8, the Members shall use their best efforts to achieve consensus. Failing consensus, the Council shall decide the issue in accordance with the weighted voting system referred to in paragraph 10. Decisions on issues related to Article 14 shall require the concurrence of the Host Party.

10. The respective weights of the votes of the Members shall reflect their contributions to the ITER Organization. The weighted voting system, which shall include both the distribution of votes and the decision making rules, shall be set out in the Council Rules of Procedure.

Article 7. The Director-General and the Staff

1. The Director-General shall be the chief executive officer and the representative of the ITER Organization in the exercise of its legal capacity. The Director-General shall act in a manner consistent with this Agreement and decisions of the Council, and shall be responsible to the Council for the execution of his/her duties.

2. The Director-General shall be assisted by the Staff. The Staff shall consist of direct employees of the ITER Organization and personnel seconded by the Members.

3. The Director-General shall be appointed for a term of five years. The appointment of the Director-General may be extended once for an additional period of up to five years.

4. The Director-General shall take all measures necessary for the management of the ITER Organization, the execution of its activities, the implementation of its policies and the fulfillment of its purpose. In particular, the Director-General shall:

a) prepare and submit to the Council:

- the total budget for the various phases of the ITER Project and allowable ranges for adjustment;
- the ITER Project Plan and Resource Estimates and their annual updates;
- the annual budget within the agreed total budget, including the annual contributions, and annual accounts;
- proposals on senior Staff appointments and main management structure of the ITER Organization;
- the Staff Regulations;
- the Project Resource Management Regulations; and

- the annual reports;

b) appoint, direct and supervise the Staff;

c) be responsible for safety and undertake all organizational measures needed to observe the laws and regulations referred to in Article 14;

d) undertake, where necessary in conjunction with the Host State, to obtain the permits and licenses required for the construction, operation and exploitation of the ITER facilities;

e) promote collaboration among the relevant domestic fusion research programmes of the Members and between such programmes and the ITER Organization;

f) ensure the quality and fitness of components and systems procured for use by the ITER Organization;

g) submit to the Council, as necessary, the supplemental technical documents referred to in Article 3 (1) (a);

h) conclude, subject to prior approval of the Council, agreements or arrangements for international cooperation in accordance with Article 19 and supervise their implementation;

i) make arrangements for the sessions of the Council;

j) as requested by the Council, assist subsidiary bodies of the Council in the performance of their tasks; and

k) monitor and control the execution of the annual programmes with respect to timing, results and quality, and accept the completion of the tasks.

5. The Director-General shall attend meetings of the Council unless the Council decides otherwise.

6. Without prejudice to Article 14, the responsibilities of the Director-General and the Staff in respect of the ITER Organization shall be exclusively international in character. In the discharge of their duties they shall not seek or receive instructions from any government or from any authority external to the ITER Organization. Each Member shall respect the international character of the responsibilities of the Director-General and the Staff, and shall not seek to influence them in the discharge of their duties.

7. The Staff shall support the Director-General in the performance of his/her duties and shall be under his/her management authority.

8. The Director-General shall appoint the Staff in accordance with the Staff Regulations.

9. The term of the appointment of each member of the Staff shall be up to five years.

10. The Staff of the ITER Organization shall consist of such qualified scientific, technical and administrative personnel as shall be required for the implementation of the activities of the ITER Organization.

11. The Staff shall be appointed on the basis of their qualifications, taking into account an adequate distribution of posts among the Members in relation to their contributions.

12. In accordance with this Agreement and the relevant regulations, the Members may second personnel and send visiting researchers to the ITER Organization.

Article 8. Resources of the ITER Organization

1. The resources of the ITER Organization shall comprise:

a) Contributions in kind, as referred to in the document "Value Estimates for ITER Phases of Construction, Operation, Deactivation and Decommissioning and Form of Party Contributions", comprising: i) specific components, equipment, materials and other goods and services in accordance with the agreed technical specifications and ii) staff seconded by the Members;

b) Financial contributions to the budget of the ITER Organization by the Members (hereinafter "contributions in cash"), as referred to in the document "Value Estimates for ITER Phases of Construction, Operation, Deactivation and Decommissioning and Form of Party Contributions";

c) Additional resources received either in cash or in kind within limits and under terms approved by the Council.

2. The respective Members' contributions over the duration of this Agreement shall be as referred to in the documents"Value Estimates for ITER Phases of Construction, Operation, Deactivation and Decommissioning and Form of Party Contributions" and "Cost Sharing for all Phases of the ITER Project"and may be updated by unanimous decision of the Council.

3. The resources of the ITER Organization shall be solely used to promote the purpose and to exercise the functions of the ITER Organization in accordance with Articles 2 and 3.

4. Each Member shall provide its contributions to the ITER Organization through an appropriate legal entity, hereinafter "the Domestic Agency" of that Member, except where otherwise agreed by the Council. The approval of the Council shall not be required for Members to provide cash contributions directly to the ITER Organization.

Article 9. Project Resource Management Regulations

1. The purpose of the Project Resource Management Regulations is to ensure the sound financial management of the ITER Organization. These Regulations shall include, *inter alia,* the principal rules relating to:

a) the Financial Year;

b) the unit of account and the currency that the ITER Organization shall use for accounting, budget and resource evaluation purposes;

c) the presentation and structure of the ITER Project Plan and Resource Estimates;

d) the procedure for the preparation and adoption of the annual budget, the implementation of the annual budget and internal financial control;

e) the contributions by the Members;

f) the awarding of contracts;

g) the management of contributions; and

h) the management of the decommissioning fund.

2. The Director-General shall prepare each year, and submit to the Council, an update of the ITER Project Plan and Resource Estimates.

3. The ITER Project Plan shall specify the plan for the execution of all functions of the ITER Organization and shall cover the duration of this Agreement. It shall:

a) outline an overall plan including time schedule and major milestones, for the fulfilment of the purpose of the ITER Organization and summarise the progress of the ITER Project in relation to the overall plan;

b) present specific objectives and schedules of the programme of activities of the ITER Organization for the coming five years or for the period of construction, whichever will last longer; and

c) provide appropriate commentaries, including assessment of the risks to the ITER Project and descriptions of risk avoidance or mitigation measures.

4. The ITER Resource Estimates shall provide a comprehensive analysis of the resources already expended and required in the future to undertake the ITER Project Plan and of the plans for the provision of the resources.

Article 10. Information and Intellectual Property

1. Subject to this Agreement and the Annex on Information and Intellectual Property, the ITER Organization and the Members shall support the widest appropriate dissemination of information and intellectual property they generate in the execution of this Agreement. The implementation of this Article and the Annex on Information and Intellectual Property shall be equal and non-discriminatory for all Members and the ITER Organization.

2. In carrying out its activities, the ITER Organization shall ensure that any scientific results shall be published or otherwise made widely available after a reasonable period of time to allow for the obtaining of appropriate protection. Any copyright on works based on those results shall be owned by the ITER Organization unless otherwise provided in specific provisions of this Agreement and the Annex on Information and Intellectual Property.

3. When placing contracts for work to be performed pursuant to this Agreement, the ITER Organization and the Members shall include provisions in such contracts on any resulting intellectual property. These provisions shall address, inter alia, rights of access to, as well as disclosure and use of, such intellectual property, and shall be consistent with this Agreement and the Annex on Information and Intellectual Property.

4. Intellectual property generated or incorporated pursuant to this Agreement shall be treated in accordance with the provisions of the Annex on Information and Intellectual Property.

Article 11. Site Support

1. The Host Party shall make available or cause to be made available to the ITER Organization the site support required for the implementation of the ITER Project as sum-

marized and under the terms outlined in the Annex on Site Support. The Host Party may designate an entity to act on its behalf for this purpose. Such designation shall not affect the obligations of the Host Party under this Article.

2. Subject to the approval of the Council, the details of and the procedures for cooperation on site support between the ITER Organization and the Host Party or its designated entity shall be covered by a Site Support Agreement to be concluded between them.

Article 12. Privileges and Immunities

1. The ITER Organization, its property and assets, shall enjoy in the territory of each Member such privileges and immunities as are necessary for the exercise of its functions.

2. The Director-General and the Staff of the ITER Organization and the representatives of the Members in the Council and subsidiary bodies, together with their alternates and experts, shall enjoy in the territory of each of the Members such privileges and immunities as are necessary for the exercise of their functions in connection with the ITER Organization.

3. The privileges and immunities set out in paragraphs 1 and 2 shall be waived in cases where the authority competent to waive the immunities considers that such immunities would impede the course of justice and where, in the case of the ITER Organization, the Director-General, and the Staff, the Council determines that such a waiver would not be contrary to the interests of the ITER Organization and its Members.

4. The privileges and immunities conferred in accordance with this Agreement shall not diminish or affect the duty of the ITER Organization, the Director-General or the Staff to comply with the laws and regulations referred to in Article 14.

5. Each Party shall notify the Depositary in writing upon having given effect to paragraphs 1 and 2.

6. The Depositary shall notify the Parties when notifications have been received from all the Parties in accordance with paragraph 5.

7. A Headquarters Agreement shall be concluded between the ITER Organization and the Host State.

Article 13. Field Teams

Each Member shall host a Field Team established and operated by the ITER Organization as required for the exercise of the ITER Organization's functions and the fulfillment of its purpose. A Field Team Agreement shall be concluded between the ITER Organization and each Member.

Article 14. Public Health, Safety, Licensing and Environmental Protection

The ITER Organization shall observe applicable national laws and regulations of the Host State in the fields of public and occupational health and safety, nuclear safety, radiation protection, licensing, nuclear substances, environmental protection and protection from acts of malevolence.

Article 15. Liability

1. The contractual liability of the ITER Organization shall be governed by the relevant contractual provisions, which shall be construed in accordance with the law applicable to the contract.

2. In the case of non-contractual liability, the ITER Organization shall compensate appropriately or provide other remedies for any damage caused by it, to such extent as the ITER Organization is subject to a legal liability under the relevant law, with the details of compensation arrangements to be approved by the Council. This paragraph shall not be construed as a waiver of immunity by the ITER Organization.

3. Any payment by the ITER Organization to compensate for the liability referred to in paragraphs 1 and 2 and any costs and expenses incurred in connection therewith shall be considered as 'operational cost' as defined in the Project Resource Management Regulations.

4. In case the costs of compensation for damage referred to in paragraph 2 exceed funds available to the ITER Organization in the annual budget for operations and/or through insurance, the Members shall consult, through the Council, so that the ITER Organization can compensate, according to paragraph 2 by seeking to increase the overall budget by unanimous decision of the Council in accordance with Article 6 (8).

5. Membership in the ITER Organization shall not result in liability for Members for acts, omissions, or obligations of the ITER Organization.

6. Nothing in this Agreement shall impair, or shall be construed as a waiver of, immunity that Members enjoy in the territory of other States or in their territory.

Article 16. Decommissioning

1. During the period of operation of ITER, the ITER Organization shall generate a Fund (hereinafter "the Fund") to provide for the decommissioning of the ITER facilities. The modalities for the generation of the Fund, its estimation and updating, the conditions for changes and for its transfer to the Host State shall be set out in the Project Resource Management Regulations referred to in Article 9.

2. Following the final phase of experimental operations of ITER, the ITER Organization shall, within a period of five years, or shorter if agreed with the Host State, bring the ITER facilities into such conditions as are to be agreed and updated as necessary between the ITER Organization and the Host State, following which the ITER Organization shall hand over to the Host State the Fund and the ITER facilities for their decommissioning.

3. Following the acceptance by the Host State of the Fund together with the ITER facilities, the ITER Organization shall bear no responsibilities or liabilities for the ITER facilities, except when otherwise agreed between the ITER Organization and Host State.

4. The respective rights and obligations of the ITER Organization and the Host State and the modalities of their interactions in respect of ITER decommissioning shall be set out in the Headquarters Agreement referred to in Article 12, under which the ITER Organization and the Host State shall, *inter alia,* agree that:

a) after the handing over of the ITER facilities, the Host State shall continue to be bound by the provisions of Article 20; and

b) the Host State shall make regular reports to all Members that have contributed to the Fund on the progress of the decommissioning and on the procedures and technologies that have been used or generated for the decommissioning.

Article 17. Financial Audit

1. A Financial Audit Board (hereinafter "the Board") shall be established to undertake the audit of the annual accounts of the ITER Organization in accordance with this Article and the Project Resource Management Regulations.

2. Each Member shall be represented on the Board by one member. The members of the Board shall be appointed by the Council on the recommendation of the respective Members for a period of three years. The appointment may be extended once for an additional period of three years. The Council shall appoint from among the members the Chair of the Board, who shall serve for a period of two years.

3. The members of the Board shall be independent and shall not seek or take instructions from any Member or any other person and shall report only to the Council.

4. The purposes of the Audit shall be to:

a) determine whether all income/expenditure has been received/incurred in a lawful and regular manner and has been accounted for;

b) determine whether the financial management has been sound;

c) provide a statement of assurance as to the reliability of the annual accounts and the legality and regularity of the underlying transactions;

d) determine whether expenditures are in conformity with the budget; and

e) examine any matter having potential financial implications for the ITER Organization.

5. The Audit shall be based on recognized international principles and standards for accounting.

Article 18. Management Assessment

1. Every two years, the Council shall appoint a Management Assessor who shall assess the management of the activities of the ITER Organization. The scope of the assessment shall be decided by the Council.

2. The Director-General may also call for such assessments following consultation with the Council.

3. The Management Assessor shall be independent and shall not seek or take instructions from any Member or any person and shall report only to the Council.

4. The purpose of the assessment shall be to determine whether the management of the ITER Organization has been sound, in particular with respect to management effectiveness and efficiency in terms of scale of staff.

5. The assessment shall be based on records of the ITER Organization. The Management Assessor shall be granted full access to personnel, books and records as he/she may deem appropriate for this purpose.

6. The ITER Organization shall ensure that the Management Assessor shall abide by its requirements relating to the treatment of sensitive and/or business confidential information, in particular its policies concerning Intellectual Property, Peaceful Uses and Non-Proliferation.

Article 19. International Cooperation

Consistent with this Agreement and upon a unanimous decision of the Council, the ITER Organization may, in furtherance of its purpose, cooperate with other international organizations and institutions, non-Parties, and with organizations and institutions of non-Parties, and conclude agreements or arrangements with them to this effect. The detailed arrangements for such cooperation shall be determined in each case by the Council.

Article 20. Peaceful Uses and Non-Proliferation

1. The ITER Organization and the Members shall use any material, equipment or technology generated or received pursuant to this Agreement solely for peaceful purposes. Nothing in this paragraph shall be interpreted as affecting the rights of the Members to use material, equipment or technology acquired or developed by them independent of this Agreement for their own purposes.

2. Material, equipment or technology received or generated pursuant to this Agreement by the ITER Organization and the Members shall not be transferred to any third party to be used to manufacture or otherwise to acquire nuclear weapons or other nuclear explosive devices or for any non-peaceful purposes.

3. The ITER Organization and the Members shall take appropriate measures to implement this Article in an efficient and transparent manner. To this end, the Council shall interface with appropriate international fora and establish a policy supporting peaceful uses and non-proliferation.

4. In order to support the success of the ITER Project and its non-proliferation policy, the Parties agree to consult on any issues associated with the implementation of this Article.

5. Nothing in this Agreement shall require the Members to transfer material, equipment or technology contrary to national export control or related laws and regulations.

6. Nothing in this Agreement shall affect the rights and obligations of the Parties that arise from other international agreements concerning non-proliferation of nuclear weapons or other nuclear explosive devices.

Article 21. Application with regard to EURATOM

In accordance with the Treaty establishing EURATOM, this Agreement shall apply to the territories covered by that Treaty. In accordance with that Treaty and other relevant agreements, it shall also apply to the Republic of Bulgaria, the Republic of Romania and the Swiss Confederation, participating in the EURATOM fusion programme as fully associated third States.

Article 22. Entry into Force

1. This Agreement is subject to ratification, acceptance or approval in accordance with the procedures of each Signatory.

2. This Agreement shall enter into force thirty days after the deposit of instruments of ratification, acceptance or approval of this Agreement by the People's Republic of China, EURATOM, the Republic of India, Japan, the Republic of Korea, the Russian Federation and the United States of America.

3. If this Agreement has not entered into force within one year after signature, a meeting of the Signatories shall be convened by the Depositary to decide what course of action shall be undertaken to facilitate its entering into force.

Article 23. Accession

1. After the entry into force of this Agreement, any State or international organization may accede to and become a Party to this Agreement following a unanimous decision of the Council.

2. Any State or international organization that wishes to accede to this Agreement shall notify the Director-General, who shall inform the Members of this request at least six months before it is submitted to the Council for decision.

3. The Council shall determine the conditions of accession of any State or international organization.

4. Accession to this Agreement by a State or international organization shall take effect 30 days after the Depositary has received both the instrument of accession and the notification referred to in Article 12(5).

Article 24. Duration and Termination

1. This Agreement shall have an initial duration of 35 years. The last five years of this period, or shorter if agreed with the Host State, shall be dedicated to the de-activation of the ITER facilities.

2. The Council shall, at least eight years before the expiry of this Agreement, establish a Special Committee, chaired by the Director-General, that shall advise it on whether the duration of this Agreement should be extended having regard to the progress of the ITER Project. The Special Committee shall assess the technical and scientific state of the ITER facilities and reasons for the possible extension of this Agreement and, before recommending to extend this Agreement, the financial aspects in terms of required budget and impact on the de-activation and decommissioning costs. The Special Committee shall submit its report to the Council within one year after its establishment.

3. On the basis of the report, the Council shall decide by unanimity at least six years before the expiry whether to extend the duration of this Agreement.

4. The Council may not extend the duration of this Agreement for a period of more than ten years in total, nor may the Council extend this Agreement if such extension would alter the nature of the activities of the ITER Organization or the framework of financial contribution of the Members.

5. At least six years before the expiry of this Agreement, the Council shall confirm the foreseen end of this Agreement and decide the arrangements for the de-activation phase and the dissolution of the ITER Organization.

6. This Agreement may be terminated by agreement of all Parties, allowing the necessary time for de-activation and ensuring the necessary funds for decommissioning.

Article 25. Settlement of Disputes

1. Any issue arising among the Parties or between one or more Parties and the ITER Organization out of or in connection with this Agreement shall be settled by consultation, mediation or other procedures to be agreed, such as arbitration. The parties concerned shall meet to discuss the nature of any such issue with a view to an early resolution.

2. If the parties concerned are unable to resolve their dispute in consultation, either party may request the Chair of the Council (or if the Chair has been elected from a Member that is a party to the dispute, a member of the Council representing a Member that is not a party to the dispute) to act as a mediator at a meeting to attempt to resolve the dispute. Such meeting shall be convened within thirty days following a request by a party for mediation and concluded within sixty days thereafter, immediately following which the mediator shall provide a report of the mediation, which report shall be prepared in consultation with the Members other than the parties to the dispute with a recommendation for resolution of the dispute.

3. If the parties concerned are unable to resolve their dispute through consultations or mediation, they may agree to submit the dispute to an agreed form of dispute resolution in accordance with procedures to be agreed.

Article 26. Withdrawal

1. After this Agreement has been in force for ten years, any Party other than the Host Party may notify the Depositary of its intention to withdraw.

2. Withdrawal shall not affect the withdrawing Party's contribution to the construction cost of the ITER facilities. If a Party withdraws during the period of operation of ITER, it shall also contribute its agreed share of the cost of decommissioning the ITER facilities.

3. Withdrawal shall not affect any continuing right, obligation, or legal situation of a Party created through the execution of this Agreement prior to its withdrawal.

4. The withdrawal shall take effect at the end of the Financial Year following the year the notification referred to in paragraph 1 is given.

5. The details of withdrawal shall be documented by the ITER Organization in consultation with the withdrawing Party.

Article 27. Annexes

The Annex on Information and Intellectual Property and the Annex on Site Support shall form integral parts of this Agreement.

Article 28. Amendments

1. Any Party may propose an amendment to this Agreement.

2. Proposed amendments shall be considered by the Council, for recommendation to the Parties by unanimity.

3. Amendments are subject to ratification, acceptance or approval in accordance with the procedures of each Party and shall enter into force thirty days after the deposit of the instruments of ratification, acceptance or approval by all the Parties.

Article 29. Depositary

1. The Director General of the IAEA shall be the Depositary of this Agreement.

2. The original of this Agreement shall be deposited with the Depositary, who shall send certified copies thereof to the Signatories, and to the Secretary General of the United Nations for registration and publication pursuant to Article 102 of the Charter of the United Nations.

3. The Depositary shall notify all Signatory and acceding States and international organizations of:

a) the date of deposit of each instrument of ratification, acceptance, approval or accession;

b) the date of deposit of each notification received in accordance with Article 12 (5);

c) the date of entry into force of this Agreement and of amendments as provided for under Article 28;

d) any notification by a Party of its intention to withdraw from this Agreement; and

e) the termination of this Agreement.

Done in Paris, on the 21 November 2006.

4. World Intellectual Property Organization

(*a*) Singapore Treaty on the Law of Trademarks, 27 March 2006

Article 1. Abbreviated Expressions

For the purposes of this Treaty, unless expressly stated otherwise:

(i) "Office" means the agency entrusted by a Contracting Party with the registration of marks;

(ii) "registration" means the registration of a mark by an Office;

(iii) "application" means an application for registration;

(iv) "communication" means any application, or any request, declaration, correspondence or other information relating to an application or a registration, which is filed with the Office;

(v) references to a "person" shall be construed as references to both a natural person and a legal entity;

(vi) "holder" means the person whom the register of marks shows as the holder of the registration;

(vii) "register of marks" means the collection of data maintained by an Office, which includes the contents of all registrations and all data recorded in respect of all registrations, irrespective of the medium in which such data are stored;

(viii) "procedure before the Office" means any procedure in proceedings before the Office with respect to an application or a registration;

(ix) "Paris Convention" means the Paris Convention for the Protection of Industrial Property, signed at Paris on March 20, 1883, as revised and amended;

(x) "Nice Classification" means the classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, signed at Nice on June 15, 1957, as revised and amended;

(xi) "license" means a license for the use of a mark under the law of a Contracting Party;

(xii) "licensee" means the person to whom a license has been granted;

(xiii) "Contracting Party" means any State or intergovernmental organization party to this Treaty;

(xiv) "Diplomatic Conference" means the convocation of Contracting Parties for the purpose of revising or amending the Treaty;

(xv) "Assembly" means the Assembly referred to in Article 23;

(xvi) references to an "instrument of ratification" shall be construed as including references to instruments of acceptance and approval;

(xvii) "Organization" means the World Intellectual Property Organization;

(xviii) "International Bureau" means the International Bureau of the Organization;

(xix) "Director General" means the Director General of the Organization;

(xx) "Regulations" means the Regulations under this Treaty that are referred to in Article 22;

(xxi) references to an "Article" or to a "paragraph", "subparagraph" or "item" of an Article shall be construed as including references to the corresponding rule(s) under the Regulations;

xxii) "TLT 1994" means the Trademark Law Treaty done at Geneva on October 27, 1994.

Article 2. Marks to Which the Treaty Applies

(1) *Nature of Marks*—Any Contracting Party shall apply this Treaty to marks consisting of signs that can be registered as marks under its law.

(2) *Kinds of Marks*

(*a*) This Treaty shall apply to marks relating to goods (trademarks) or services (service marks) or both goods and services.

(*b*) This Treaty shall not apply to collective marks, certification marks and guarantee marks.

Article 3. Application

(1) *Indications or Elements Contained in or Accompanying an Application; Fee*

(*a*) Any Contracting Party may require that an application contain some or all of the following indications or elements:

(i) a request for registration;

(ii) the name and address of the applicant;

(iii) the name of a State of which the applicant is a national if he/she is the national of any State, the name of a State in which the applicant has his/her domicile, if any, and the name of a State in which the applicant has a real and effective industrial or commercial establishment, if any;

(iv) where the applicant is a legal entity, the legal nature of that legal entity and the State, and, where applicable, the territorial unit within that State, under the law of which the said legal entity has been organized;

(v) where the applicant has a representative, the name and address of that representative;

(vi) where an address for service is required under Article 4 (2)(b), such address;

(vii) where the applicant wishes to take advantage of the priority of an earlier application, a declaration claiming the priority of that earlier application, together with indications and evidence in support of the declaration of priority that may be required pursuant to Article 4 of the Paris Convention;

(viii) where the applicant wishes to take advantage of any protection resulting from the display of goods and/or services in an exhibition, a declaration to that effect, together with indications in support of that declaration, as required by the law of the Contracting Party;

(ix) at least one representation of the mark, as prescribed in the Regulations;

(x) where applicable, a statement, as prescribed in the Regulations, indicating the type of mark as well as any specific requirements applicable to that type of mark;

(xi) where applicable, a statement, as prescribed in the Regulations, indicating that the applicant wishes that the mark be registered and published in the standard characters used by the Office;

(xii) where applicable, a statement, as prescribed in the Regulations, indicating that the applicant wishes to claim color as a distinctive feature of the mark;

(xiii) a transliteration of the mark or of certain parts of the mark;

(xiv) a translation of the mark or of certain parts of the mark;

(xv) the names of the goods and/or services for which the registration is sought, grouped according to the classes of the Nice Classification, each group preceded

by the number of the class of that Classification to which that group of goods or services belongs and presented in the order of the classes of the said Classification;

(xvi) a declaration of intention to use the mark, as required by the law of the Contracting Party.

(*b*) The applicant may file, instead of or in addition to the declaration of intention to use the mark referred to in subparagraph (a)(xvi), a declaration of actual use of the mark and evidence to that effect, as required by the law of the Contracting Party.

(*c*) Any Contracting Party may require that, in respect of the application, fees be paid to the Office.

(2) *Single Application for Goods and/or Services in Several Classes*—One and the same application may relate to several goods and/or services, irrespective of whether they belong to one class or to several classes of the Nice Classification.

(3) *Actual Use*—Any Contracting Party may require that, where a declaration of intention to use has been filed under paragraph (1) (a)(xvi), the applicant furnish to the Office within a time limit fixed in its law, subject to the minimum time limit prescribed in the Regulations, evidence of the actual use of the mark, as required by the said law.

(4) *Prohibition of Other Requirements*—No Contracting Party may demand that requirements other than those referred to in paragraphs (1) and (3) and in Article 8 be complied with in respect of the application. In particular, the following may not be required in respect of the application throughout its pendency:

(i) the furnishing of any certificate of, or extract from, a register of commerce;

(ii) an indication of the applicant's carrying on of an industrial or commercial activity, as well as the furnishing of evidence to that effect;

(iii) an indication of the applicant's carrying on of an activity corresponding to the goods and/or services listed in the application, as well as the furnishing of evidence to that effect;

(iv) the furnishing of evidence to the effect that the mark has been registered in the register of marks of another Contracting Party or of a State party to the Paris Convention which is not a Contracting Party, except where the applicant claims the application of Article 6*quinquies* of the Paris Convention.

(5) [*Evidence*] Any Contracting Party may require that evidence be furnished to the Office in the course of the examination of the application where the Office may reasonably doubt the veracity of any indication or element contained in the application.

Article 4. Representation; Address for Service

(1) *Representatives Admitted to Practice*

(*a*) Any Contracting Party may require that a representative appointed for the purposes of any procedure before the Office

(i) have the right, under the applicable law, to practice before the Office in respect of applications and registrations and, where applicable, be admitted to practice before the Office;

(ii) provide, as its address, an address on a territory prescribed by the Contracting Party.

(b) An act, with respect to any procedure before the Office, by or in relation to a representative who complies with the requirements applied by the Contracting Party under subparagraph (a), shall have the effect of an act by or in relation to the applicant, holder or other interested person who appointed that representative.

(2) *Mandatory Representation; Address for Service*

(*a*) Any Contracting Party may require that, for the purposes of any procedure before the Office, an applicant, holder or other interested person who has neither a domicile nor a real and effective industrial or commercial establishment on its territory be represented by a representative.

(*b*) Any Contracting Party may, to the extent that it does not require representation in accordance with subparagraph (a), require that, for the purposes of any procedure before the Office, an applicant, holder or other interested person who has neither a domicile nor a real and effective industrial or commercial establishment on its territory have an address for service on that territory.

(3) *Power of Attorney*

(*a*) Whenever a Contracting Party allows or requires an applicant, a holder or any other interested person to be represented by a representative before the Office, it may require that the representative be appointed in a separate communication (hereinafter referred to as "power of attorney") indicating the name of the applicant, the holder or the other person, as the case may be.

(*b*) The power of attorney may relate to one or more applications and/or registrations identified in the power of attorney or, subject to any exception indicated by the appointing person, to all existing and future applications and/or registrations of that person.

(*c*) The power of attorney may limit the powers of the representative to certain acts. Any Contracting Party may require that any power of attorney under which the representative has the right to withdraw an application or to surrender a registration contain an express indication to that effect.

(*d*) Where a communication is submitted to the Office by a person who refers to itself in the communication as a representative but where the Office is, at the time of the receipt of the communication, not in possession of the required power of attorney, the Contracting Party may require that the power of attorney be submitted to the Office within the time limit fixed by the Contracting Party, subject to the minimum time limit prescribed in the Regulations. Any Contracting Party may provide that, where the power of attorney has not been submitted to the Office within the time limit fixed by the Contracting Party, the communication by the said person shall have no effect.

(4) *Reference to Power of Attorney*—Any Contracting Party may require that any communication made to the Office by a representative for the purposes of a procedure before the Office contain a reference to the power of attorney on the basis of which the representative acts.

(5) *Prohibition of Other Requirements*—No Contracting Party may demand that requirements other than those referred to in paragraphs (3) and (4) and in Article 8 be complied with in respect of the matters dealt with in those paragraphs.

(6) *Evidence*—Any Contracting Party may require that evidence be furnished to the Office where the Office may reasonably doubt the veracity of any indication contained in any communication referred to in paragraphs (3) and (4).

Article 5. Filing Date

(1) *Permitted Requirements*

(*a*) Subject to subparagraph (b) and paragraph (2), a Contracting Party shall accord as the filing date of an application the date on which the Office received the following indications and elements in the language required under Article 8(2):

(i) an express or implicit indication that the registration of a mark is sought;

(ii) indications allowing the identity of the applicant to be established;

(iii) indications allowing the applicant or its representative, if any, to be contacted by the Office;

(iv) a sufficiently clear representation of the mark whose registration is sought;

(v) the list of the goods and/or services for which the registration is sought;

(vi) where Article 3(1)(a)(xvi) or (b) applies, the declaration referred to in Article 3(1)(a)(xvi) or the declaration and evidence referred to in Article 3(1)(b), respectively, as required by the law of the Contracting Party.

(*b*) Any Contracting Party may accord as the filing date of the application the date on which the Office received only some, rather than all, of the indications and elements referred to in subparagraph (a) or received them in a language other than the language required under Article 8(2).

(2) *Permitted Additional Requirement*

(a) A Contracting Party may provide that no filing date shall be accorded until the required fees are paid.

(b) A Contracting Party may apply the requirement referred to in subparagraph (a) only if it applied such requirement at the time of becoming party to this Treaty.

(3) *Corrections and Time Limits*—The modalities of, and time limits for, corrections under paragraphs (1) and (2) shall be fixed in the Regulations.

(4) *Prohibition of Other Requirements*—No Contracting Party may demand that requirements other than those referred to in paragraphs (1) and (2) be complied with in respect of the filing date.

Article 6. Single Registration for Goods and/or Services in Several Classes

Where goods and/or services belonging to several classes of the Nice Classification have been included in one and the same application, such an application shall result in one and the same registration.

Article 7. Division of Application and Registration

(1) *Division of Application*

(*a*) Any application listing several goods and/or services (hereinafter referred to as "initial application") may,

(i) at least until the decision by the Office on the registration of the mark,

(ii) during any opposition proceedings against the decision of the Office to register the mark,

(iii) during any appeal proceedings against the decision on the registration of the mark, be divided by the applicant or at its request into two or more applications (hereinafter referred to as "divisional applications") by distributing among the latter the goods and/or services listed in the initial application. The divisional applications shall preserve the filing date of the initial application and the benefit of the right of priority, if any.

(b) Any Contracting Party shall, subject to subparagraph (a), be free to establish requirements for the division of an application, including the payment of fees.

(2) *Division of Registration*—Paragraph (1) shall apply, *mutatis mutandis,* with respect to a division of a registration. Such a division shall be permitted

(i) during any proceedings in which the validity of the registration is challenged before the Office by a third party,

(ii) during any appeal proceedings against a decision taken by the Office during the former proceedings, provided that a Contracting Party may exclude the possibility of the division of registrations if its law allows third parties to oppose the registration of a mark before the mark is registered.

Article 8. Communications

(1) *Means of Transmittal and Form of Communications*—Any Contracting Party may choose the means of transmittal of communications and whether it accepts communications on paper, communications in electronic form or any other form of communication.

(2) *Language of Communications*

(*a*) Any Contracting Party may require that any communication be in a language admitted by the Office. Where the Office admits more than one language, the applicant, holder or other interested person may be required to comply with any other language requirement applicable with respect to the Office, provided that no indication or element of the communication may be required to be in more than one language.

(*b*) No Contracting Party may require the attestation, notarization, authentication, legalization or any other certification of any translation of a communication other than as provided under this Treaty.

(*c*) Where a Contracting Party does not require a communication to be in a language admitted by its Office, the Office may require that a translation of that communication by an official translator or a representative, into a language admitted by the Office, be supplied within a reasonable time limit.

(3) *Signature of Communications on Paper*

(*a*) Any Contracting Party may require that a communication on paper be signed by the applicant, holder or other interested person. Where a Contracting Party requires a communication on paper to be signed, that Contracting Party shall accept any signature that complies with the requirements prescribed in the Regulations.

(*b*) No Contracting Party may require the attestation, notarization, authentication, legalization or other certification of any signature except, where the law of the Contracting Party so provides, if the signature concerns the surrender of a registration.

(*c*) Notwithstanding subparagraph (b), a Contracting Party may require that evidence be filed with the Office where the Office may reasonably doubt the authenticity of any signature of a communication on paper.

(4) *Communications Filed in Electronic Form or by Electronic Means of Transmittal*—Where a Contracting Party permits the filing of communications in electronic form or by electronic means of transmittal, it may require that any such communications comply with the requirements prescribed in the Regulations.

(5) *Presentation of a Communication*—Any Contracting Party shall accept the presentation of a communication the content of which corresponds to the relevant Model International Form, if any, provided for in the Regulations.

(6) *Prohibition of Other Requirements*—No Contracting Party may demand that, in respect of paragraphs (1) to (5), requirements other than those referred to in this Article be complied with.

(7) *Means of Communication with Representative*—Nothing in this Article regulates the means of communication between an applicant, holder or other interested person and its representative.

Article 9. Classification of Goods and/or Services

(1) *Indications of Goods and/or Services*—Each registration and any publication effected by an Office which concerns an application or registration and which indicates goods and/or services shall indicate the goods and/or services by their names, grouped according to the classes of the Nice Classification, and each group shall be preceded by the number of the class of that Classification to which that group of goods or services belongs and shall be presented in the order of the classes of the said Classification.

(2) *Goods or Services in the Same Class or in Different Classes*

(*a*) Goods or services may not be considered as being similar to each other on the ground that, in any registration or publication by the Office, they appear in the same class of the Nice Classification.

(*b*) Goods or services may not be considered as being dissimilar from each other on the ground that, in any registration or publication by the Office, they appear in different classes of the Nice Classification.

Article 10. Changes in Names or Addresses

(1) *Changes in the Name or Address of the Holder*

(*a*) Where there is no change in the person of the holder but there is a change in its name and/or address, each Contracting Party shall accept that a request for the recordal of the change by the Office in its register of marks be made by the holder in a communication indicating the registration number of the registration concerned and the change to be recorded.

(*b*) Any Contracting Party may require that the request indicate

(i) the name and address of the holder;

(ii) where the holder has a representative, the name and address of that representative;

(iii) where the holder has an address for service, such address.

(*c*) Any Contracting Party may require that, in respect of the request, a fee be paid to the Office.

(*d*) A single request shall be sufficient even where the change relates to more than one registration, provided that the registration numbers of all registrations concerned are indicated in the request.

(2) *Change in the Name or Address of the Applicant*—Paragraph (1) shall apply, *mutatis mutandis,* where the change concerns an application or applications, or both an application or applications and a registration or registrations, provided that, where the application number of any application concerned has not yet been issued or is not known to the applicant or its representative, the request otherwise identifies that application as prescribed in the Regulations.

(3) *Change in the Name or Address of the Representative or in the Address for Service*—Paragraph (1) shall apply, *mutatis mutandis,* to any change in the name or address of the representative, if any, and to any change relating to the address for service, if any.

(4) *Prohibition of Other Requirements*—No Contracting Party may demand that requirements other than those referred to in paragraphs (1) to (3) and in Article 8 be complied with in respect of the request referred to in this Article. In particular, the furnishing of any certificate concerning the change may not be required.

(5) *Evidence*—Any Contracting Party may require that evidence be furnished to the Office where the Office may reasonably doubt the veracity of any indication contained in the request.

Article 11. Change in Ownership

(1) *Change in the Ownership of a Registration*

(*a*) Where there is a change in the person of the holder, each Contracting Party shall accept that a request for the recordal of the change by the Office in its register of marks be made by the holder or by the person who acquired the ownership (hereinafter referred to as "new owner") in a communication indicating the registration number of the registration concerned and the change to be recorded.

(*b*) Where the change in ownership results from a contract, any Contracting Party may require that the request indicate that fact and be accompanied, at the option of the requesting party, by one of the following:

(i) a copy of the contract, which copy may be required to be certified, by a notary public or any other competent public authority, as being in conformity with the original contract;

(ii) an extract of the contract showing the change in ownership, which extract may be required to be certified, by a notary public or any other competent public authority, as being a true extract of the contract;

(iii) an uncertified certificate of transfer drawn up in the form and with the content as prescribed in the Regulations and signed by both the holder and the new owner;

(iv) an uncertified transfer document drawn up in the form and with the content as prescribed in the Regulations and signed by both the holder and the new owner.

(*c*) Where the change in ownership results from a merger, any Contracting Party may require that the request indicate that fact and be accompanied by a copy of a document, which document originates from the competent authority and evidences the merger, such as a copy of an extract from a register of commerce, and that that copy be certified by the authority which issued the document or by a notary public or any other competent public authority, as being in conformity with the original document.

(*d*) Where there is a change in the person of one or more but not all of several co-holders and such change in ownership results from a contract or a merger, any Contracting Party may require that any co-holder in respect of which there is no change in ownership give its express consent to the change in ownership in a document signed by it.

(*e*) Where the change in ownership does not result from a contract or a merger but from another ground, for example, from operation of law or a court decision, any Contracting Party may require that the request indicate that fact and be accompanied by a copy of a document evidencing the change and that that copy be certified as being in conformity with the original document by the authority which issued the document or by a notary public or any other competent public authority.

(*f*) Any Contracting Party may require that the request indicate

(i) the name and address of the holder;

(ii) the name and address of the new owner;

(iii) the name of a State of which the new owner is a national if he/she is the national of any State, the name of a State in which the new owner has his/her domicile, if any, and the name of a State in which the new owner has a real and effective industrial or commercial establishment, if any;

(iv) where the new owner is a legal entity, the legal nature of that legal entity and the State, and, where applicable, the territorial unit within that State, under the law of which the said legal entity has been organized;

(v) where the holder has a representative, the name and address of that representative;

(vi) where the holder has an address for service, such address;

(vii) where the new owner has a representative, the name and address of that representative;

(viii) where the new owner is required to have an address for service under Article 4(2)(b), such address.

(*g*) Any Contracting Party may require that, in respect of the request, a fee be paid to the Office.

(*h*) A single request shall be sufficient even where the change relates to more than one registration, provided that the holder and the new owner are the same for each reg-

istration and that the registration numbers of all registrations concerned are indicated in the request.

(*i*) Where the change of ownership does not affect all the goods and/or services listed in the holder's registration, and the applicable law allows the recording of such change, the Office shall create a separate registration referring to the goods and/or services in respect of which the ownership has changed.

(2) *Change in the Ownership of an Application*—Paragraph (1) shall apply, *mutatis mutandis,* where the change in ownership concerns an application or applications, or both an application or applications and a registration or registrations, provided that, where the application number of any application concerned has not yet been issued or is not known to the applicant or its representative, the request otherwise identifies that application as prescribed in the Regulations.

(3) *Prohibition of Other Requirements*—No Contracting Party may demand that requirements other than those referred to in paragraphs (1) and (2) and in Article 8 be complied with in respect of the request referred to in this Article. In particular, the following may not be required:

(i) subject to paragraph (1)(c), the furnishing of any certificate of, or extract from, a register of commerce;

(ii) an indication of the new owner's carrying on of an industrial or commercial activity, as well as the furnishing of evidence to that effect;

(iii) an indication of the new owner's carrying on of an activity corresponding to the goods and/or services affected by the change in ownership, as well as the furnishing of evidence to either effect;

(iv) an indication that the holder transferred, entirely or in part, its business or the relevant goodwill to the new owner, as well as the furnishing of evidence to either effect.

(4) *Evidence*—Any Contracting Party may require that evidence, or further evidence where paragraph (1)(c) or (e) applies, be furnished to the Office where that Office may reasonably doubt the veracity of any indication contained in the request or in any document referred to in the present Article.

Article 12. Correction of a Mistake

(1) *Correction of a Mistake in Respect of a Registration*

(*a*) Each Contracting Party shall accept that the request for the correction of a mistake which was made in the application or other request communicated to the Office and which mistake is reflected in its register of marks and/or any publication by the Office be made by the holder in a communication indicating the registration number of the registration concerned, the mistake to be corrected and the correction to be entered.

(*b*) Any Contracting Party may require that the request indicate

(i) the name and address of the holder;

(ii) where the holder has a representative, the name and address of that representative;

(iii) where the holder has an address for service, such address.

(*c*) Any Contracting Party may require that, in respect of the request, a fee be paid to the Office.

(*d*) A single request shall be sufficient even where the correction relates to more than one registration of the same person, provided that the mistake and the requested correction are the same for each registration and that the registration numbers of all registrations concerned are indicated in the request.

(2) *Correction of a Mistake in Respect of an Application*—Paragraph (1) shall apply, *mutatis mutandis,* where the mistake concerns an application or applications, or both an application or applications and a registration or registrations, provided that, where the application number of any application concerned has not yet been issued or is not known to the applicant or its representative, the request otherwise identifies that application as prescribed in the Regulations.

(3) *Prohibition of Other Requirements*—No Contracting Party may demand that requirements other than those referred to in paragraphs (1) and (2) and in Article 8 be complied with in respect of the request referred to in this Article.

(4) *Evidence*—Any Contracting Party may require that evidence be furnished to the Office where the Office may reasonably doubt that the alleged mistake is in fact a mistake.

(5) *Mistakes Made by the Office*—The Office of a Contracting Party shall correct its own mistakes, *ex officio* or upon request, for no fee.

(6) *Uncorrectable Mistakes*—No Contracting Party shall be obliged to apply paragraphs (1), (2) and (5) to any mistake which cannot be corrected under its law.

Article 13. Duration and Renewal of Registration

(1) *Indications or Elements Contained in or Accompanying a Request for Renewal; Fee*

(*a*) Any Contracting Party may require that the renewal of a registration be subject to the filing of a request and that such request contain some or all of the following indications:

(i) an indication that renewal is sought;

(ii) the name and address of the holder;

(iii) the registration number of the registration concerned;

(iv) at the option of the Contracting Party, the filing date of the application which resulted in the registration concerned or the registration date of the registration concerned;

(v) where the holder has a representative, the name and address of that representative;

(vi) where the holder has an address for service, such address;

(vii) where the Contracting Party allows the renewal of a registration to be made for some only of the goods and/or services which are recorded in the register of marks and such a renewal is requested, the names of the recorded goods and/or services for which the renewal is requested or the names of the recorded goods

and/or services for which the renewal is not requested, grouped according to the classes of the Nice Classification, each group preceded by the number of the class of that Classification to which that group of goods or services belongs and presented in the order of the classes of the said Classification;

(viii) where a Contracting Party allows a request for renewal to be filed by a person other than the holder or its representative and the request is filed by such a person, the name and address of that person.

(*b*) Any Contracting Party may require that, in respect of the request for renewal, a fee be paid to the Office. Once the fee has been paid in respect of the initial period of the registration or of any renewal period, no further payment may be required for the maintenance of the registration in respect of that period. Fees associated with the furnishing of a declaration and/or evidence of use shall not be regarded, for the purposes of this subparagraph, as payments required for the maintenance of the registration and shall not be affected by this subparagraph.

(*c*) Any Contracting Party may require that the request for renewal be presented, and the corresponding fee referred to in subparagraph (b) be paid, to the Office within the period fixed by the law of the Contracting Party, subject to the minimum periods prescribed in the Regulations.

(2) *Prohibition of Other Requirements*—No Contracting Party may demand that requirements other than those referred to in paragraph (1) and in Article 8 be complied with in respect of the request for renewal. In particular, the following may not be required:

(i) any representation or other identification of the mark;

(ii) the furnishing of evidence to the effect that the mark has been registered, or that its registration has been renewed, in any other register of marks;

(iii) the furnishing of a declaration and/or evidence concerning use of the mark.

(3) *Evidence*—Any Contracting Party may require that evidence be furnished to the Office in the course of the examination of the request for renewal where the Office may reasonably doubt the veracity of any indication or element contained in the request for renewal.

(4) *Prohibition of Substantive Examination*—No Office of a Contracting Party may, for the purposes of effecting the renewal, examine the registration as to substance.

(5) *Duration*—The duration of the initial period of the registration, and the duration of each renewal period, shall be 10 years.

Article 14. Relief Measures in Case of Failure to Comply with Time Limits

(1) *Relief Measure Before the Expiry of a Time Limit*—A Contracting Party may provide for the extension of a time limit for an action in a procedure before the Office in respect of an application or a registration, if a request to that effect is filed with the Office prior to the expiry of the time limit.

(2) *Relief Measures After the Expiry of a Time Limit*—Where an applicant, holder or other interested person has failed to comply with a time limit ("the time limit concerned") for an action in a procedure before the Office of a Contracting Party in respect of an application or a registration, the Contracting Party shall provide for one or more of the follow-

ing relief measures, in accordance with the requirements prescribed in the Regulations, if a request to that effect is filed with the Office:

(i) extension of the time limit concerned for the period prescribed in the Regulations;

(ii) continued processing with respect to the application or registration;

(iii) reinstatement of the rights of the applicant, holder or other interested person with respect to the application or registration if the Office finds that the failure to comply with the time limit concerned occurred in spite of due care required by the circumstances having been taken or, at the option of the Contracting Party, that the failure was unintentional.

(3) *Exceptions*—No Contracting Party shall be required to provide for any of the relief measures referred to in paragraph (2) with respect to the exceptions prescribed in the Regulations.

(4) *Fee*—Any Contracting Party may require that a fee be paid in respect of any of the relief measures referred to in paragraphs (1) and (2).

(5) *Prohibition of Other Requirements*—No Contracting Party may demand that requirements other than those referred to in this Article and in Article 8 be complied with in respect of any of the relief measures referred to in paragraph (2).

Article 15. Obligation to Comply with the Paris Convention

Any Contracting Party shall comply with the provisions of the Paris Convention which concern marks.

Article 16. Service Marks

Any Contracting Party shall register service marks and apply to such marks the provisions of the Paris Convention which concern trademarks.

Article 17. Request for Recordal of a License

(1) *Requirements Concerning the Request for Recordal*—Where the law of a Contracting Party provides for the recordal of a license with its Office, that Contracting Party may require that the request for recordal

(i) be filed in accordance with the requirements prescribed in the Regulations, and

(ii) be accompanied by the supporting documents prescribed in the Regulations.

(2) *Fee*—Any Contracting Party may require that, in respect of the recordal of a license, a fee be paid to the Office.

(3) *Single Request Relating to Several Registrations*—A single request shall be sufficient even where the license relates to more than one registration, provided that the registration numbers of all registrations concerned are indicated in the request, the holder and the licensee are the same for all registrations, and the request indicates the scope of the license in accordance with the Regulations with respect to all registrations.

(4) *Prohibition of Other Requirements*

(*a*) No Contracting Party may demand that requirements other than those referred to in paragraphs (1) to (3) and in Article 8 be complied with in respect of the recordal of a license with its Office. In particular, the following may not be required:

(i) the furnishing of the registration certificate of the mark which is the subject of the license;

(ii) the furnishing of the license contract or a translation of it;

(iii) an indication of the financial terms of the license contract.

(*b*) Subparagraph (a) is without prejudice to any obligations existing under the law of a Contracting Party concerning the disclosure of information for purposes other than the recording of the license in the register of marks.

(5) *Evidence*—Any Contracting Party may require that evidence be furnished to the Office where the Office may reasonably doubt the veracity of any indication contained in the request or in any document referred to in the Regulations.

(6) *Requests Relating to Applications*—Paragraphs (1) to (5) shall apply, *mutatis mutandis,* to requests for recordal of a license for an application, where the law of a Contracting Party provides for such recordal.

Article 18. Request for Amendment or Cancellation of the Recordal of a License

(1) *Requirements Concerning the Request*—Where the law of a Contracting Party provides for the recordal of a license with its Office, that Contracting Party may require that the request for amendment or cancellation of the recordal of a license

(i) be filed in accordance with the requirements prescribed in the Regulations, and

(ii) be accompanied by the supporting documents prescribed in the Regulations.

(2) *Other Requirements*—Article 17(2) to (6) shall apply, *mutatis mutandis,* to requests for amendment or cancellation of the recordal of a license.

Article 19. Effects of the Non-Recordal of a License

(1) *Validity of the Registration and Protection of the Mark*—The non-recordal of a license with the Office or with any other authority of the Contracting Party shall not affect the validity of the registration of the mark which is the subject of the license or the protection of that mark.

(2) *Certain Rights of the Licensee*—A Contracting Party may not require the recordal of a license as a condition for any right that the licensee may have under the law of that Contracting Party to join infringement proceedings initiated by the holder or to obtain, by way of such proceedings, damages resulting from an infringement of the mark which is the subject of the license.

(3) *Use of a Mark Where License Is Not Recorded*—A Contracting Party may not require the recordal of a license as a condition for the use of a mark by a licensee to be deemed to constitute use by the holder in proceedings relating to the acquisition, maintenance and enforcement of marks.

Article 20. Indication of the License

Where the law of a Contracting Party requires an indication that the mark is used under a license, full or partial non-compliance with that requirement shall not affect the validity of the registration of the mark which is the subject of the license or the protection of that mark, and shall not affect the application of Article 19 (3).

Article 21. Observations in Case of Intended Refusal

An application under Article 3 or a request under Articles 7, 10 to 14, 17 and 18 may not be refused totally or in part by an Office without giving the applicant or the requesting party, as the case may be, an opportunity to make observations on the intended refusal within a reasonable time limit. In respect of Article 14, no Office shall be required to give an opportunity to make observations where the person requesting the relief measure has already had an opportunity to present an observation on the facts on which the decision is to be based.

Article 22. Regulations

(1) *Content*

(*a*) The Regulations annexed to this Treaty provide rules concerning

(i) matters which this Treaty expressly provides to be "prescribed in the Regulations";

(ii) any details useful in the implementation of the provisions of this Treaty;

(iii) any administrative requirements, matters or procedures.

(b) The Regulations also contain Model International Forms.

(2) [*Amending the Regulations*] Subject to paragraph (3), any amendment of the Regulations shall require three-fourths of the votes cast.

(3) [*Requirement of Unanimity*]

(*a*) The Regulations may specify provisions of the Regulations which may be amended only by unanimity.

(*b*) Any amendment of the Regulations resulting in the addition of provisions to, or the deletion of provisions from, the provisions specified in the Regulations pursuant to subparagraph (a) shall require unanimity.

(*c*) In determining whether unanimity is attained, only votes actually cast shall be taken into consideration. Abstentions shall not be considered as votes.

(4) *Conflict Between the Treaty and the Regulations*—In the case of conflict between the provisions of this Treaty and those of the Regulations, the former shall prevail.

Article 23. Assembly

(1) *Composition*

(*a*) The Contracting Parties shall have an Assembly.

(*b*) Each Contracting Party shall be represented in the Assembly by one delegate, who may be assisted by alternate delegates, advisors and experts. Each delegate may represent only one Contracting Party.

(2) *Tasks*—The Assembly shall

(i) deal with matters concerning the development of this Treaty;

(ii) amend the Regulations, including the Model International Forms;

(iii) determine the conditions for the date of application of each amendment referred to in item (ii);

(iv) perform such other functions as are appropriate to implementing the provisions of this Treaty.

(3) *Quorum*

(*a*) One-half of the members of the Assembly which are States shall constitute a quorum.

(*b*) Notwithstanding subparagraph (a), if, in any session, the number of the members of the Assembly which are States and are represented is less than one-half but equal to or more than one-third of the members of the Assembly which are States, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the members of the Assembly which are States and were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of such members having thus expressed their vote or abstention attains the number of the members which was lacking for attaining the quorum in the session itself, such decisions shall take effect, provided that at the same time the required majority still obtains.

(4) *Taking Decisions in the Assembly*

(*a*) The Assembly shall endeavor to take its decisions by consensus.

(*b*) Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. In such a case,

(i) each Contracting Party that is a State shall have one vote and shall vote only in its own name; and

(ii) any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa. In addition, no such intergovernmental organization shall participate in the vote if any one of its Member States party to this Treaty is a Member State of another such intergovernmental organization and that other intergovernmental organization participates in that vote.

(5) *Majorities*

(*a*) Subject to Articles 22(2) and (3), the decisions of the Assembly shall require two- thirds of the votes cast.

(*b*) In determining whether the required majority is attained, only votes actually cast shall be taken into consideration. Abstentions shall not be considered as votes.

(6) *Sessions*—The Assembly shall meet upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(7) *Rules of Procedure*—The Assembly shall establish its own rules of procedure, including rules for the convocation of extraordinary sessions.

Article 24. International Bureau

(1) *Administrative Tasks*

(*a*) The International Bureau shall perform the administrative tasks concerning this Treaty.

(*b*) In particular, the International Bureau shall prepare the meetings and provide the secretariat of the Assembly and of such committees of experts and working groups as may be established by the Assembly.

(2) *Meetings Other than Sessions of the Assembly*—The Director General shall convene any committee and working group established by the Assembly.

(3) *Role of the International Bureau in the Assembly and Other Meetings*

(*a*) The Director General and persons designated by the Director General shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly.

(*b*) The Director General or a staff member designated by the Director General shall be *ex officio* secretary of the Assembly, and of the committees and working groups referred to in subparagraph (a).

(4) *Conferences*

(*a*) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any revision conferences.

(*b*) The International Bureau may consult with Member States of the Organization, intergovernmental organizations and international and national non-governmental organizations concerning the said preparations.

(*c*) The Director General and persons designated by the Director General shall take part, without the right to vote, in the discussions at revision conferences.

(5) *Other Tasks*—The International Bureau shall carry out any other tasks assigned to it in relation to this Treaty.

Article 25. Revision or Amendment

This Treaty may only be revised or amended by a diplomatic conference. The convocation of any diplomatic conference shall be decided by the Assembly.

Article 26. Becoming Party to the Treaty

(1) *Eligibility*—The following entities may sign and, subject to paragraphs (2) and (3) and Article 28(1) and (3), become party to this Treaty:

(i) any State member of the Organization in respect of which marks may be registered with its own Office;

(ii) any intergovernmental organization which maintains an Office in which marks may be registered with effect in the territory in which the constituting treaty of the intergovernmental organization applies, in all its Member States or in those of its member States which are designated for such purpose in the relevant application, provided that all the Member States of the intergovernmental organization are members of the Organization;

(iii) any State member of the Organization in respect of which marks may be registered only through the Office of another specified State that is a member of the Organization;

(iv) any State member of the Organization in respect of which marks may be registered only through the Office maintained by an intergovernmental organization of which that State is a member;

(v) any State member of the Organization in respect of which marks may be registered only through an Office common to a group of States members of the Organization.

(2) *Ratification or Accession*—Any entity referred to in paragraph (1) may deposit

(i) an instrument of ratification, if it has signed this Treaty,

(ii) an instrument of accession, if it has not signed this Treaty.

(3) *Effective Date of Deposit*—The effective date of the deposit of an instrument of ratification or accession shall be,

(i) in the case of a State referred to in paragraph (1)(i), the date on which the instrument of that State is deposited;

(ii) in the case of an intergovernmental organization, the date on which the instrument of that intergovernmental organization is deposited;

(iii) in the case of a State referred to in paragraph (1)(iii), the date on which the following condition is fulfilled: the instrument of that State has been deposited and the instrument of the other, specified State has been deposited;

(iv) in the case of a State referred to in paragraph (1)(iv), the date applicable under item (ii), above;

(v) in the case of a State member of a group of States referred to in paragraph (1)(v), the date on which the instruments of all the States members of the group have been deposited.

Article 27. Application of the TLT 1994 and This Treaty

(1) *Relations Between Contracting Parties to Both This Treaty and the TLT 1994*—This Treaty alone shall be applicable as regards the mutual relations of Contracting Parties to both this Treaty and the TLT 1994.

(2) *Relations Between Contracting Parties to This Treaty and Contracting Parties to the TLT 1994 That Are Not Party to This Treaty*—Any Contracting Party to both this Treaty and the TLT 1994 shall continue to apply the TLT 1994 in its relations with Contracting Parties to the TLT 1994 that are not party to this Treaty.

Article 28. Entry into Force;

Effective Date of Ratifications and Accessions

(1) *Instruments to Be Taken into Consideration*—For the purposes of this Article, only instruments of ratification or accession that are deposited by entities referred to in Article 26(1) and that have an effective date according to Article 26(3) shall be taken into consideration.

(2) *Entry into Force of the Treaty*—This Treaty shall enter into force three months after ten States or intergovernmental organizations referred to in Article 26 (1)(ii) have deposited their instruments of ratification or accession.

(3) *Entry into Force of Ratifications and Accessions Subsequent to the Entry into Force of the Treaty*—Any entity not covered by paragraph (2) shall become bound by this Treaty three months after the date on which it has deposited its instrument of ratification or accession.

Article 29. Reservations

(1) *Special Kinds of Marks*—Any State or intergovernmental organization may declare through a reservation that, notwithstanding Article 2(1) and (2)(a), any of the provisions of Articles 3(1), 5, 7, 8(5), 11 and 13 shall not apply to associated marks, defensive marks or derivative marks. Such reservation shall specify those of the aforementioned provisions to which the reservation relates.

(2) *Multiple-class Registration*—Any State or intergovernmental organization, whose legislation at the date of adoption of this Treaty provides for a multiple-class registration for goods and for a multiple-class registration for services may, when acceding to this Treaty, declare through a reservation that the provisions of Article 6 shall not apply.

(3) *Substantive Examination on the Occasion of Renewal*—Any State or intergovernmental organization may declare through a reservation that, notwithstanding Article 13(4), the Office may, on the occasion of the first renewal of a registration covering services, examine such registration as to substance, provided that such examination shall be limited to the elimination of multiple registrations based on applications filed during a period of six months following the entry into force of the law of such State or organization that introduced, before the entry into force of this Treaty, the possibility of registering service marks.

(4) *Certain Rights of the Licensee*—Any State or intergovernmental organization may declare through a reservation that, notwithstanding Article 19(2), it requires the recordal of a license as a condition for any right that the licensee may have under the law of that State or intergovernmental organization to join infringement proceedings initiated by the holder or to obtain, by way of such proceedings, damages resulting from an infringement of the mark which is the subject of the license.

(5) *Modalities*—Any reservation under paragraphs (1), (2), (3) or (4) shall be made in a declaration accompanying the instrument of ratification of, or accession to, this Treaty of the State or intergovernmental organization making the reservation.

(6) *Withdrawal*—Any reservation under paragraphs (1), (2), (3) or (4) may be withdrawn at any time.

(7) *Prohibition of Other Reservations*—No reservation to this Treaty other than the reservations allowed under paragraphs (1), (2), (3) and (4) shall be permitted.

Article 30. Denunciation of the Treaty

(1) *Notification*—Any Contracting Party may denounce this Treaty by notification addressed to the Director General.

(2) *Effective Date*—Denunciation shall take effect one year from the date on which the Director General has received the notification. It shall not affect the application of this Treaty to any application pending or any mark registered in respect of the denouncing Contracting Party at the time of the expiration of the said one-year period, provided that the denouncing Contracting Party may, after the expiration of the said one-year period, discontinue applying this Treaty to any registration as from the date on which that registration is due for renewal.

Article 31. Languages of the Treaty; Signature

(1) *Original Texts; Official Texts*

(*a*) This Treaty shall be signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.

(*b*) An official text in a language not referred to in subparagraph (a) that is an official language of a Contracting Party shall be established by the Director General after consultation with the said Contracting Party and any other interested Contracting Party.

(2) *Time Limit for Signature*—This Treaty shall remain open for signature at the headquarters of the Organization for one year after its adoption.

Article 32. Depositary

The Director General shall be the depositary of this Treaty.

(b) Regulations under the Singapore Treaty on the Law of Trademarks

Rule 1. Abbreviated Expressions

(1) *Abbreviated Expressions Defined in the Regulations*—For the purposes of these Regulations, unless expressly stated otherwise:

(i) "Treaty" means the Singapore Treaty on the Law of Trademarks;

(ii) "Article" refers to the specified Article of the Treaty;

(iii) "exclusive license" means a license which is only granted to one licensee and which excludes the holder from using the mark and from granting licenses to any other person;

(iv) "sole license" means a license which is only granted to one licensee and which excludes the holder from granting licenses to any other person but does not exclude the holder from using the mark;

(v) "non-exclusive license" means a license which does not exclude the holder from using the mark or from granting licenses to any other person.

(2) *Abbreviated Expressions Defined in the Treaty*—The abbreviated expressions defined in Article 1 for the purposes of the Treaty shall have the same meaning for the purposes of these Regulations.

Rule 2. Manner of Indicating Names and Addresses

(1) *Names*

(*a*) Where the name of a person is to be indicated, any Contracting Party may require,

(i) where the person is a natural person, that the name to be indicated be the family or principal name and the given or secondary name or names of that person or that the name to be indicated be, at that person's option, the name or names customarily used by the said person;

ii) where the person is a legal entity, that the name to be indicated be the full official designation of the legal entity.

(*b*) Where the name of a representative which is a firm or partnership is to be indicated, any Contracting Party shall accept as indication of the name the indication that the firm or partnership customarily uses.

(2) *Addresses*

(*a*) Where the address of a person is to be indicated, any Contracting Party may require that the address be indicated in such a way as to satisfy the customary requirements for prompt postal delivery at the indicated address and, in any case, consist of all the relevant administrative units up to, and including, the house or building number, if any.

(*b*) Where a communication to the Office of a Contracting Party is in the name of two or more persons with different addresses, that Contracting Party may require that such communication indicate a single address as the address for correspondence.

(*c*) The indication of an address may contain a telephone number, a telefacsimile number and an e-mail address and, for the purposes of correspondence, an address different from the address indicated under subparagraph (a).

(*d*) Subparagraphs (a) and (c) shall apply, *mutatis mutandis,* to addresses for service.

(3) *Other Means of Identification*—Any Contracting Party may require that a communication to the Office indicate the number or other means of identification, if any, with which the applicant, holder, representative or interested person is registered with its Office. No Contracting Party may refuse a communication on grounds of failure to comply with any such requirement, except for applications filed in electronic form.

(4) *Script to Be Used*—Any Contracting Party may require that any indication referred to in paragraphs (1) to (3) be in the script used by the Office.

Rule 3. Details Concerning the Application

(1) *Standard Characters*—Where the Office of a Contracting Party uses characters (letters and numbers) that it considers as being standard, and where the application contains a statement to the effect that the applicant wishes that the mark be registered and published in the standard characters used by the Office, the Office shall register and publish that mark in such standard characters.

(2) *Mark Claiming Color*—Where the application contains a statement to the effect that the applicant wishes to claim color as a distinctive feature of the mark, the Office may require that the application indicate the name or code of the color or colors claimed and an indication, in respect of each color, of the principal parts of the mark which are in that color.

(3) *Number of Reproductions*

(*a*) Where the application does not contain a statement to the effect that the applicant wishes to claim color as a distinctive feature of the mark, a Contracting Party may not require more than

(i) five reproductions of the mark in black and white where the application may not, under the law of that Contracting Party, or does not contain a statement to the effect that the applicant wishes the mark to be registered and published in the standard characters used by the Office of the said Contracting Party;

(ii) one reproduction of the mark in black and white where the application contains a statement to the effect that the applicant wishes the mark to be registered and published in the standard characters used by the Office of that Contracting Party.

(*b*) Where the application contains a statement to the effect that the applicant wishes to claim color as a distinctive feature of the mark, a Contracting Party may not require more than five reproductions of the mark in black and white and five reproductions of the mark in color.

(4) *Three-Dimensional Mark*

(*a*) Where the application contains a statement to the effect that the mark is a three-dimensional mark, the reproduction of the mark shall consist of a two-dimensional graphic or photographic reproduction.

(*b*) The reproduction furnished under subparagraph (a) may, at the option of the applicant, consist of one single view of the mark or of several different views of the mark.

(*c*) Where the Office considers that the reproduction of the mark furnished by the applicant under subparagraph (a) does not sufficiently show the particulars of the three-dimensional mark, it may invite the applicant to furnish, within a reasonable time limit fixed in the invitation, up to six different views of the mark and/or a description by words of that mark.

(*d*) Where the Office considers that the different views and/or the description of the mark referred to in subparagraph (c) still do not sufficiently show the particulars of the three-dimensional mark, it may invite the applicant to furnish, within a reasonable time limit fixed in the invitation, a specimen of the mark.

(*e*) Paragraph (3)(a)(i) and (b) shall apply *mutatis mutandis.*

(5) *Hologram Mark, Motion Mark, Color Mark, Position Mark*—Where the application contains a statement to the effect that the mark is a hologram mark, a motion mark, a color mark or a position mark, a Contracting Party may require one or more reproductions of the mark and details concerning the mark, as prescribed by the law of that Contracting Party.

(6) *Mark Consisting of a Non-Visible Sign*—Where the application contains a statement to the effect that the mark consists of a non-visible sign, a Contracting Party may

require one or more representations of the mark, an indication of the type of mark and details concerning the mark, as prescribed by the law of that Contracting Party.

(7) *Transliteration of the Mark*—For the purposes of Article 3(1)(a)(xiii), where the mark consists of or contains matter in script other than the script used by the Office or numbers expressed in numerals other than numerals used by the Office, a transliteration of such matter in the script and numerals used by the Office may be required.

(8) *Translation of the Mark*—For the purposes of Article 3(1)(a)(xiv), where the mark consists of or contains a word or words in a language other than the language, or one of the languages, admitted by the Office, a translation of that word or those words into that language or one of those languages may be required.

(9) *Time Limit for Furnishing Evidence of Actual Use of the Mark*—The time limit referred to in Article 3(3) shall not be shorter than six months counted from the date of allowance of the application by the Office of the Contracting Party where that application was filed. The applicant or holder shall have the right to an extension of that time limit, subject to the conditions provided for by the law of that Contracting Party, by periods of at least six months each, up to a total extension of at least two years and a half.

Rule 4. Details Concerning Representation and Address for Service

(1) *Address Where a Representative Is Appointed*—Where a representative is appointed, a Contracting Party shall consider the address of that representative to be the address for service.

(2) *Address Where No Representative Is Appointed*—Where no representative is appointed and an applicant, holder or other interested person has provided as its address an address on the territory of the Contracting Party, that Contracting Party shall consider that address to be the address for service.

(3) *Time Limit*—The time limit referred to in Article 4(3)(d) shall be counted from the date of receipt of the communication referred to in that Article by the Office of the Contracting Party concerned and shall not be less than one month where the address of the person on whose behalf the communication is made is on the territory of that Contracting Party and not less than two months where such an address is outside the territory of that Contracting Party.

Rule 5. Details Concerning the Filing Date

(1) *Procedure in Case of Non-Compliance with Requirements*—If the application does not, at the time of its receipt by the Office, comply with any of the applicable requirements of Article 5(1)(a) or (2)(a), the Office shall promptly invite the applicant to comply with such requirements within a time limit indicated in the invitation, which time limit shall be at least one month from the date of the invitation where the applicant's address is on the territory of the Contracting Party concerned and at least two months where the applicant's address is outside the territory of the Contracting Party concerned. Compliance with the invitation may be subject to the payment of a special fee. Even if the Office fails to send the said invitation, the said requirements remain unaffected.

(2) *Filing Date in Case of Correction*—If, within the time limit indicated in the invitation, the applicant complies with the invitation referred to in paragraph (1) and pays any

required special fee, the filing date shall be the date on which all the required indications and elements referred to in Article 5(1)(a) have been received by the Office and, where applicable, the required fees referred to in Article 5(2)(a) have been paid to the Office. Otherwise, the application shall be treated as if it had not been filed.

Rule 6. Details Concerning Communications

(1) *Indications Accompanying Signature of Communications on Paper*—Any Contracting Party may require that the signature of the natural person who signs be accompanied by

(i) an indication in letters of the family or principal name and the given or secondary name or names of that person or, at the option of that person, of the name or names customarily used by the said person;

(ii) an indication of the capacity in which that person signed, where such capacity is not obvious from reading the communication.

(2) *Date of Signing*—Any Contracting Party may require that a signature be accompanied by an indication of the date on which the signing was effected. Where that indication is required but is not supplied, the date on which the signing is deemed to have been effected shall be the date on which the communication bearing the signature was received by the Office or, if the Contracting Party so allows, a date earlier than the latter date.

(3) *Signature of Communications on Paper*—Where a communication to the Office of a Contracting Party is on paper and a signature is required, that Contracting Party

(i) shall, subject to item (iii), accept a handwritten signature;

(ii) may permit, instead of a handwritten signature, the use of other forms of signature, such as a printed or stamped signature, or the use of a seal or of a bar-coded label;

(iii) may, where the natural person who signs the communication is a national of the Contracting Party and such person's address is on its territory, or where the legal entity on behalf of which the communication is signed is organized under its law and has either a domicile or a real and effective industrial or commercial establishment on its territory, require that a seal be used instead of a handwritten signature.

(4) *Signature of Communications on Paper Filed by Electronic Means of Transmittal*—A Contracting Party that provides for communications on paper to be filed by electronic means of transmittal shall consider any such communication signed if a graphic representation of a signature accepted by that Contracting Party under paragraph (3) appears on the communication as received.

(5) *Original of a Communication on Paper Filed by Electronic Means of Transmittal*—A Contracting Party that provides for communications on paper to be filed by electronic means of transmittal may require that the original of any such communication be filed

(i) with the Office accompanied by a letter identifying that earlier transmission and

(ii) within a time limit which shall be at least one month from the date on which the Office received the communication by electronic means of transmittal.

(6) *Authentication of Communications in Electronic Form*—A Contracting Party that permits the filing of communications in electronic form may require that any such communication be authenticated through a system of electronic authentication as prescribed by that Contracting Party.

(7) *Date of Receipt*—Each Contracting Party shall be free to determine the circumstances in which the receipt of a document or the payment of a fee shall be deemed to constitute receipt by or payment to the Office in cases in which the document was actually received by or payment was actually made to

(i) a branch or sub-office of the Office,

(ii) a national Office on behalf of the Office of the Contracting Party, where the Contracting Party is an intergovernmental organization referred to in Article 26(1)(ii),

(iii) an official postal service,

(iv) a delivery service, or an agency, specified by the Contracting Party,

(v) an address other than the nominated addresses of the Office.

(8) *Electronic Filing*—Subject to paragraph (7), where a Contracting Party provides for the filing of a communication in electronic form or by electronic means of transmittal and the communication is so filed, the date on which the Office of that Contracting Party receives the communication in such form or by such means shall constitute the date of receipt of the communication.

Rule 7. Manner of Identification of an Application Without Its Application Number

(1) *Manner of Identification*—Where it is required that an application be identified by its application number but where such a number has not yet been issued or is not known to the applicant or its representative, that application shall be considered identified if the following is supplied:

(i) the provisional application number, if any, given by the Office, or

(ii) a copy of the application, or

(iii) a representation of the mark, accompanied by an indication of the date on which, to the best knowledge of the applicant or the representative, the application was received by the Office and an identification number given to the application by the applicant or the representative.

(2) *Prohibition of Other Requirements*—No Contracting Party may demand that requirements other than those referred to in paragraph (1) be complied with in order for an application to be identified where its application number has not yet been issued or is not known to the applicant or its representative.

Rule 8. Details Concerning Duration and Renewal

For the purposes of Article 13 (1)(c), the period during which the request for renewal may be presented and the renewal fee may be paid shall start at least six months before the date on which the renewal is due and shall end at the earliest six months after that date. If the request for renewal is presented and/or the renewal fees are paid after the date on

which the renewal is due, any Contracting Party may subject the acceptance of the request for renewal to the payment of a surcharge.

Rule 9. Relief Measures in Case of Failure to Comply with Time Limits

(1) *Requirements Concerning Extension of Time Limits Under Article 14 (2)(i)*—A Contracting Party that provides for the extension of a time limit under Article 14 (2)(i) shall extend the time limit for a reasonable period of time from the date of filing the request for extension and may require that the request

(i) contain an identification of the requesting party, the relevant application or registration number and the time limit concerned, and

(ii) be filed within a time limit which shall not be less than two months from the date of expiry of the time limit concerned.

(2) *Requirements Concerning Continued Processing Under Article 14 (2)(ii)*—A Contracting Party may require that the request for continued processing under Article 14 (2)(ii)

(i) contain an identification of the requesting party, the relevant application or registration number and the time limit concerned, and

(ii) be filed within a time limit which shall not be less than two months from the date of expiry of the time limit concerned. The omitted act shall be completed within the same period or, where the Contracting Party so provides, together with the request.

(3) [*Requirements Concerning Reinstatement of Rights Under Article 14 (2)(iii)*]

(*a*) A Contracting Party may require that the request for reinstatement of rights under Article 14 (2)(iii)

(i) contain an identification of the requesting party, the relevant application or registration number and the time limit concerned, and

(ii) set out the facts and evidence in support of the reasons for the failure to comply with the time limit concerned.

(*b*) The request for reinstatement of rights shall be filed with the Office within a reasonable time limit, the duration of which shall be determined by the Contracting Party from the date of the removal of the cause of failure to comply with the time limit concerned. The omitted act shall be completed within the same period or, where the Contracting Party so provides, together with the request.

(*c*) A Contracting Party may provide for a maximum time limit for complying with the requirements under subparagraphs (a) and (b) of not less than six months from the date of expiry of the time limit concerned.

(4) *Exceptions Under Article 14(3)*—The exceptions referred to in Article 14(3) are the cases of failure to comply with a time limit

(i) for which a relief measure has already been granted under Article 14(2),

(ii) for filing a request for a relief measure under Article 14,

(iii) for payment of a renewal fee,

(iv) for an action before a board of appeal or other review body constituted in the framework of the Office,

(v) for an action in *inter partes* proceedings,

(vi) for filing the declaration referred to in Article 3(1)(a)(vii) or the declaration referred to in Article 3(1)(a)(viii),

(vii) for filing a declaration which, under the law of the Contracting Party, may establish a new filing date for a pending application, and

(viii) for the correction or addition of a priority claim.

Rule 10. Requirements Concerning the Request for Recordal of a License or for Amendment or Cancellation of the Recordal of a License

(1) *Content of Request*

(*a*) A Contracting Party may require that the request for recordal of a license under Article 17(1) contain some or all of the following indications or elements:

(i) the name and address of the holder;

(ii) where the holder has a representative, the name and address of that representative;

(iii) where the holder has an address for service, such address;

(iv) the name and address of the licensee;

(v) where the licensee has a representative, the name and address of that representative;

(vi) where the licensee has an address for service, such address;

(vii) the name of a State of which the licensee is a national if he/she is a national of any State, the name of a State in which the licensee has his/her domicile, if any, and the name of a State in which the licensee has a real and effective industrial or commercial establishment, if any;

(viii) where the holder or the licensee is a legal entity, the legal nature of that legal entity and the State, and, where applicable, the territorial unit within that State, under the law of which the said legal entity has been organized;

(ix) the registration number of the mark which is the subject of the license;

(x) the names of the goods and/or services for which the license is granted, grouped according to the classes of the Nice Classification, each group preceded by the number of the class of that Classification to which that group of goods or services belongs and presented in the order of the classes of the said Classification;

(xi) whether the license is an exclusive license, a non-exclusive license or a sole license;

(xii) where applicable, that the license concerns only a part of the territory covered by the registration, together with an explicit indication of that part of the territory;

(xiii) the duration of the license.

(*b*) A Contracting Party may require that the request for amendment or cancellation of the recordal of a license under Article 18(1) contain some or all of the following indications or elements:

(i) the indications specified in items (i) to (ix) of subparagraph (a);

(ii) where the amendment or cancellation concerns any of the indications or elements specified under subparagraph (a), the nature and scope of the amendment or cancellation to be recorded.

(2) *Supporting Documents for Recordal of a License*

(*a*) A Contracting Party may require that the request for recordal of a license be accompanied, at the option of the requesting party, by one of the following:

(i) an extract of the license contract indicating the parties and the rights being licensed, certified by a notary public or any other competent public authority as being a true extract of the contract; or

(ii) an uncertified statement of license, the content of which corresponds to the statement of license Form provided for in the Regulations, and signed by both the holder and the licensee.

(*b*) Any Contracting Party may require that any co-holder who is not a party to the license contract give its express consent to the license in a document signed by it.

(3) *Supporting Documents for Amendment of Recordal of a License*

(*a*) A Contracting Party may require that the request for amendment of the recordal of a license be accompanied, at the option of the requesting party, by one of the following:

(i) documents substantiating the requested amendment of the recordal of the license; or

(ii) an uncertified statement of amendment of license, the content of which corresponds to the statement of amendment of license Form provided for in these Regulations, and signed by both the holder and the licensee.

(*b*) Any Contracting Party may require that any co-holder who is not a party to the license contract give its express consent to the amendment of the license in a document signed by it.

(4) *Supporting Documents for Cancellation of Recordal of a License*—A Contracting Party may require that the request for cancellation of the recordal of a license be accompanied, at the option of the requesting party, by one of the following:

(i) documents substantiating the requested cancellation of the recordal of the license; or

(ii) an uncertified statement of cancellation of license, the content of which corresponds to the statement of cancellation of license Form provided for in these Regulations, and signed by both the holder and the licensee.

(*c*) Resolution by the Diplomatic Conference supplementary to the Singapore Treaty on the Law of Trademarks and the Regulations Thereunder

1. The Diplomatic Conference for the Adoption of a Revised Trademark Law Treaty, held in Singapore in March 2006, agreed that the Treaty adopted by the Conference would be named "Singapore Treaty on the Law of Trademarks" (hereinafter referred to as "the Treaty").

2. When adopting the Treaty, the Diplomatic Conference agreed that the words "procedure before the Office" in Article 1(viii) would not cover judicial procedures under the contracting Parties' legislation.

3. Acknowledging the fact that the Treaty provides for effective and efficient trademark formality procedures for Contracting Parties, the Diplomatic Conference understood that Articles 2 and 8, respectively, did not impose any obligations on Contracting Parties to:

(i) register new types of marks, as referred to in Rule 3, paragraphs (4), (5) and (6) of the Regulations; or

(ii) implement electronic filing systems or other automation systems.

Each Contracting Party shall have the option to decide whether and when to provide for the registration of new types of marks, as referred to above.

4. With a view to facilitating the implementation of the Treaty in Developing and Least Developed Countries (LDCs), the Diplomatic Conference requested the World Intellectual Property Organization (WIPO) and the Contracting Parties to provide additional and adequate technical assistance comprising technological, legal and other forms of support to strengthen the institutional capacity of those countries to implement the Treaty and enable those countries to take full advantage of the provisions of the Treaty.

5. Such assistance should take into account the level of technological and economic development of beneficiary countries. Technological support would help improve the information and communication technology infrastructure of those countries, thus contributing to narrowing the technological gap between Contracting Parties. The Diplomatic Conference noted that some countries underlined the importance of the Digital Solidarity Fund (DSF) as being relevant to narrowing the digital divide.

6. Furthermore, upon entry into force of the Treaty, Contracting Parties will undertake to exchange and share, on a multilateral basis, information and experience on legal, technical and institutional aspects regarding the implementation of the Treaty and how to take full advantage of opportunities and benefits resulting therefrom.

7. The Diplomatic Conference, acknowledging the special situation and needs of LDCs, agreed that LDCs shall be accorded special and differential treatment for the implementation of the Treaty, as follows:

(*a*) LDCs shall be the primary and main beneficiaries of technical assistance by the Contracting Parties and the World Intellectual Property Organization (WIPO);

(*b*) such technical assistance includes the following:

(i) assistance in establishing the legal framework for the implementation of the Treaty,

(ii) information, education and awareness raising as regards the impact of acceding to the Treaty,

(iii) assistance in revising administrative practices and procedures of national trademark registration authorities,

(iv) assistance in building up the necessary trained manpower and facilities of the IP Offices, including information and communication technology capacity to effectively implement the Treaty and its Regulations.

8. The Diplomatic Conference requested the Assembly to monitor and evaluate, at every ordinary session, the progress of the assistance related to implementation efforts and the benefits resulting from such implementation.

9. The Diplomatic Conference agreed that any dispute that may arise between two or more Contracting Parties with respect to the interpretation or the application of this Treaty should be settled amicably through consultation and mediation under the auspices of the Director General.

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. 1285 (28 July 2006): Applicant* v. *the Secretary-General of the United Nations*[3]

Evaluation of personal performances—Discretion of the Secretary-General in personnel matters—Due process in evaluation procedures—No right to promotion for staff members

The Applicant entered the service of the United Nations Development Fund for Women (UNIFEM) in 1982. She subsequently became a permanent staff member of the United Nations Development Programme (UNDP), and at the time of the events which gave rise to her Application, she held the D-1 post of UNDP Resident Representative in Zambia.

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[1] In view of the large number of judgements which were rendered in 2006 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. 1282 to 1316 of the United Nations Administrative Tribunal, Judgments Nos. 2480 to 2568 of the Administrative Tribunal of the International Labour Organization, Decisions Nos. 345 to 356 of the World Bank Administrative Tribunal, and Judgments No. 2006–1 to 2006–6 of the International Monetary Fund Administrative Tribunal, see, respectively, documents AT/DEC/1282 to AT/DEC/1316; *Judgements of the Administrative Tribunal of the International Labour Organization: 100th and 101st Sessions; World Bank Administrative Tribunal Reports, 2006;* and *International Monetary Fund Administrative Tribunal Reports, Judgements No. 2006–1 to 2006–6*.

[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] Spyridon Flogaitis, President; and Brigitte Stern and Goh Joon Seng, Members.

On 15 March 2000, the Applicant received and signed her performance appraisal review (PAR) covering the year 1999, in which her immediate supervisor gave her the rating of "1" (Outstanding) and noted that her "promotion was long overdue". On 20 March, the Regional Bureau for Africa downgraded that rating to a "2" (Exceeds the Expectations of the Performance Plan), with explanation, and submitted it to the Senior Management Review Group (MRG). The MRG downgraded the PAR again, to a "3" (Satisfactory), explaining that, while it "recognized the importance of the staff member's contributions", it "considered it more appropriate to rate her performance as fully satisfactory in line of what is expected from a senior staff member of her level". On 20 September, the Applicant submitted a rebuttal on the downgrading of her PAR and, on 31 July 2001, the Rebuttal Panel concluded that the "1" should be reinstated because the Regional Bureau for Africa had committed a procedural irregularity by not informing her of the change it had made to the rating. On 16 November 2001, the Senior Career Review Group (CRG, formerly MRG) nevertheless decided to maintain the Applicant's "3" rating, prompting a second rebuttal from the Applicant on 15 January 2002. In this second review, the Rebuttal Panel concluded that the "3" rating given by CRG should stand, stating that it was satisfied "that the promotion review was not affected by a different outcome of the rebuttal process".

On 3 October, the Applicant requested administrative review of the decision taken by the Rebuttal Panel. On 14 February 2003, the Applicant lodged an appeal with the Joint Appeals Board (JAB) in New York. The JAB adopted its report on 28 October 2004, concluding that the decision to maintain her "3" rating was vitiated by extraneous factors as both the CRG and the Rebuttal Panel had overlooked important performance achievements. The JAB recommended that the 1999 PAR be "properly evaluated" to reflect consistency with the Applicant's prior record, that UNDP should "make every effort to fully and fairly consider [her] in any future promotion exercise", and that she "be given priority to any suitable vacant D-2 post [. . .] taking into consideration the remaining time of service [. . .] before [she would reach] retirement age".

On 18 February 2005, the Applicant, having not received any decision from the Secretary-General regarding her appeal to the JAB, filed her Application with the Tribunal. On 14 March, the Secretary-General accepted the recommendations of the JAB that UNDP re-evaluate the Applicant's 1999 PAR, and that the Applicant's candidature for any future promotion exercise be fully and fairly considered, but did not accept that the Applicant should be given priority in promotion because the JAB had not offered a legal basis for this recommendation. On 25 October, the Rebuttal Panel issued its third report on the Applicant's 1999 PAR, finding that there was no new information regarding her performance which would justify a change in the "3" rating, and CRG decided to maintain that rating.

In its consideration of the case, the Tribunal was of the opinion that it concerned both non-promotion and due process in evaluation procedures. With respect to the Applicant's non-promotion claim, the Tribunal noted that it had "consistently held that staff members have no right to promotion: the right is to be given full and fair consideration of their candidacy". It concluded that the decision of the Secretary-General not to promote the Applicant was an "exercise of his discretion and [. . .] cannot be impugned unless it is actuated by extraneous or improper motive". The Tribunal did not accept the Applicant's argument that "bias reflected in the evaluation process imbued the promotion process" because the Secretary-General had accepted the recommendations of the JAB that the Applicant's 1999 PAR be properly evaluated and that UNDP make every effort to fully and fairly consider

the Applicant in any future promotion exercise. However, with respect to the Applicant's due process claim, the Tribunal ordered the Respondent to pay her US$ 5,000 as compensation for the irregularities she suffered in the down-grading of her PAR.

2. *Judgement No. 1289 (28 July 2005): Applicant v. the Secretary-General of the United Nations*[4]

Termination of employment for disciplinary reasons—Proportionality of disciplinary measures—Misconduct justifying termination—Fraud—Presumption of innocence—Benefit of the doubt should profit the Applicant

The Applicant entered the service of the United Nations High Commission for Refugees (UNHCR) on 19 February 1992 on a short-term P-3 contract as Logistics Officer in Kinshasa, Democratic Republic of the Congo. His contract was subsequently renewed several times. At the time of the events which gave rise to his Application, he held the post of Senior Liaison Officer and then Officer-in-Charge of the UNHCR liaison office in Brazzaville, Republic of the Congo. These events can be divided into three general categories. First, it was alleged that on 12 April 2000, on the basis of false statements and incorrect information, the Applicant improperly requested and ultimately received daily subsistence allowance (DSA) to which he was not entitled. Second, it was alleged that, on 16 October, he wrote a note verbale to the Congolese administrative authorities requesting a visa for his female companion. Despite the personal nature of this correspondence, he used UNHCR letterhead and sent it in an official envelope, giving it the appearance of official correspondence. Finally, a series of allegations of professional misconduct were made against him concerning his conduct between September 2000 and August 2001, including allegedly failing to reimburse the Organization for airline tickets; fraudulently using Organization funds to acquire an air conditioner for his personal use; putting a colleague in danger; flying business class to take unauthorized leave; and failing to pay hotel bills.

In October and November 2001, UNHCR investigated the matter and, on 15 January 2002, a report was sent to the High Commissioner. On 23 January, the Applicant was presented with allegations of misconduct and, on 4 March, he rebutted the allegations. On 3 September, the Applicant received the Secretary-General's decision to summarily dismiss him.

On 1 October, the Applicant requested that his summary dismissal be reviewed by the Joint Disciplinary Committee (JDC) in Geneva. In its report of 27 November 2003, the JDC concluded that the disciplinary measures were disproportionate to the offence. It recommended the Applicant's reinstatement or, failing that, payment of compensation equivalent to 12 months' net base salary in addition to separation allowance. On 24 April 2004, the Secretary-General decided not to follow the recommendation of the JDC. In particular, while it was never confirmed that the Applicant had actually sent the note verbale misusing UNHCR stationary for personal ends, the Secretary-General took the position that the mere possibility that the note verbale might have been sent was sufficient grounds in itself to justify termination.

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[4] Spyridon Flogaitis, President; and Julio Barboza and Brigitte Stern, Members.

On 15 August 2004, the Applicant filed his Application with the Tribunal, requesting rescission of the Secretary-General's decision; compensation of two years' net base salary; and the reconstruction of his pension.

With regard to the allegation that the Applicant fraudulently requested DSA, the Tribunal upheld the JDC determination that the allegation had not been established with certainty and the Applicant "cannot be held accountable for something which has not been definitely established" and concluded that his conduct did not justify dismissal without compensation.

Concerning the Applicant's alleged misconduct between September 2000 and August 2001, the Tribunal again agreed with the JDC, concluding that the Applicant had not intended to commit fraud or evade the Administration's rules, but rather that the events were "the result of lack of attention on the Applicant's part coupled with administrative dysfunction" and that "the Applicant cannot be held accountable for the alleged incidents by the imposition of disproportionate disciplinary measures on him".

Finally, with regard to the note verbale to the Congolese authorities on UNHCR letterhead, the Tribunal was not convinced that, even if the note verbale had been sent, this act would have constituted misconduct serious enough to justify the imposition of summary dismissal, for three reasons. First, there was no conclusive evidence that the note had been sent and, "by virtue of the fundamental principle of the presumption of innocence, [. . .] the Applicant should be given the benefit of the doubt"; second, as the Applicant's companion did not even need a visa to join him, his attempt to help her attain one would not have violated the rule of law; and, third, even if the Applicant's companion had needed the visa, the Tribunal doubted that such use of the Organization's supplies could in itself constitute misconduct of such serious proportions. Such conduct would amount, at the very most, to an "act of dishonesty that did not attain the level of fraud". Therefore, "at the very worst, [the Applicant] might be guilty of a minor irregularity".

The Tribunal concluded that the decision of the JDC "in no way underestimated the seriousness of the Applicant's misconduct but, on the contrary, overestimated it at times", and that the Secretary-General should have followed the recommendation of the JDC, and recognized that termination was disproportionate in relation to the offence. It ordered reinstatement or, in the alternative, compensation in the amount of 12 months' net base salary as well as the termination indemnity he should have received at the time of his separation.

3. *Judgement No. 1290 (28 July 2006): Applicant v. the Secretary-General of the United Nations*[5]

Wrongful termination of contract—Rights of due process in termination proceedings—Termination on grounds of unsatisfactory performance requires a proper evaluation of the staff member performance—Harassment—On-payment of salary and emoluments—"No-contest" letters

The Applicant entered the service of the United Nations Office for Project Services (UNOPS) on 28 April 2000, on a special service agreement as Chief Technical Adviser of the Coffee Promotion and Cotton Improvement Project in Nairobi. At the time of the

[5] Spyridon Flogaitis, President; Dayendra Sena Wijewardane, Vice-President; and Goh Joon Seng, Member.

events which gave rise to his Application, he was in this post under a one-year fixed-term appointment at the L-5/10 level. The letter of appointment for the fixed-term contract required that he submit certain documentation which was considered essential for determining his entitlements without delay. The Applicant had some difficulty furnishing the documentation in a timely manner, but ultimately submitted all necessary information by 5 December. UNOPS withheld his salary until this date, did not pay him various emoluments due to him even after this date, and informed him by a letter dated 18 December that due to the "tardy submission of the required documentation", they were "obliged to withdraw" his fixed-term offer of appointment.

The Applicant replied on the day he received the letter, 23 December, offering multiple reasons for the delay in his submission of the documentation, arguing that in any case a delay in submitting documentation was not a valid ground for withdrawal of the offer of appointment, and asking that all outstanding payments be made to him. On 23 January 2001, the Division for Human Resources Management (DHRM) responded that "under the circumstances that prevailed subsequent to your recruitment, termination of your contract is the only workable solution to resolve the situation in the best interest of everyone involved in international development". DHRM stated that his one-year fixed-term contract was being "foreshortened to expire on 31 March 2001 close of business"; that his salary for the period July 2000 to March 2001 would be placed in his account; that he would be paid a termination indemnity of US$ 9,000; and, that he would be given a one way repatriation travel ticket. These terms, moreover, were conditional on the Applicant signing a "no-contest" letter.

On 2 February 2001, the UNOPS Country Representative informed the Applicant via e-mail that UNOPS had decided to provide him with a contract up to 31 March and that further extension of his contract would be contingent on his performance. On 9 February, the Applicant responded that he was puzzled by that message as he had a contract until 19 July, and requested clarification on whether his contract was being terminated because of late submission of documents or poor performance. He argued that because his performance had never been independently evaluated, he could not be terminated on the latter ground. He also refused to sign the "no-contest" letter.

On 20 February, the Division for Human Resources Management reiterated the decision of UNOPS that terminating the Applicant's services was "the only workable solution to resolve the situation in the best interest of everyone involved in international development". The Applicant's further attempts to resolve the matter were unsuccessful and his contract was terminated on 31 March. On 23 April, he submitted a request for administrative review and on 24 July he lodged an appeal with the Joint Appeals Board (JAB) in Nairobi.

In its report of 24 March 2003, the JAB noted that UNOPS had changed its grounds for the Applicant's termination from late submission of documents to performance-related issues, and then to an agreed termination under staff regulation 9.1. According to the JAB, the withdrawal of the offer of his fixed-term appointment was arbitrary and was a "mere pretext" for his termination. As to performance issues, the JAB emphasized that the Applicant was never apprised of his shortcomings in a timely manner in accordance with established procedures. It also noted that the Respondent did not offer any evidence for his contention that there was no further need for the kind of services provided by the Appli-

cant. The JAB thus concluded that UNOPS had no right to withdraw its offer of appointment or to terminate the agreement with the Applicant, and recommended that he be paid six weeks' net base salary indemnity, two months' net base salary as compensation for the wrongful termination of his contract, and US$ 15,300 for emoluments due to him.

On 28 August, the Under-Secretary-General for Management agreed with the recommendations of the JAB concerning termination indemnity and salary compensation. It also agreed that the Applicant should be paid emoluments due to him, but instructed UNOPS to provide a precise accounting of this amount. On 31 August 2004, the Applicant filed his application with the Tribunal, claiming compensation for wrongful termination, violation of his due process rights, harassment, and non-payment of emoluments to which he was entitled.

In its consideration of the case, the Tribunal concluded that "before a staff member is terminated on grounds of unsatisfactory performance, such performance must be properly evaluated and the staff member must be allowed a chance to improve", and that therefore the Applicant's termination on the ground of unsatisfactory performance violated his rights. It considered that the Administration's request that he sign the "no-contest" letter constituted "an oblique attempt to obtain the Applicant's agreement [on termination] as required by staff regulation 9.1", and also considered that such action raised "a serious question with regard to due process". The Tribunal agreed with the JAB that "the Administration simply used various pretexts to wriggle out of its contractual arrangement with the Applicant, resulting in a wrongful termination of the Applicant's appointment". It found that the Respondent had failed to deal with the specific allegations of harassment and concluded that the facts of the case "reveal a lack of transparency in the way the Administration dealt with the Applicant [that] clearly destabilized him in a way which the Tribunal views as harassment justifying compensation".

The Tribunal ordered that the Respondent pay the Applicant three-and-a-half months' net base salary representing the amount left on his fixed-term appointment, six months' net base salary for the violation of his due process rights, all agreed emolument amounts per a UNOPS memorandum of 13 July 2006, and an additional US$ 5,000 for the delays in paying him his entitlements. Finally, it ordered that the Respondent carry out a final audit of all outstanding claims and disputed payments and make such payments as are found due, or, in the alternative, compensate the Applicant an additional US$ 40,000.

4. *Judgement No. 1293 (28 July 2006): Applicant v. the Secretary-General of the United Nations*[6]

Coverage of family members by the United Nations Staff Mutual Insurance Society against Sickness and Accident (the Society)—Meaning of "organization in the United Nations family" in the statutes and internal rules of the Society

The Applicant entered the service of the United Nations, on 22 August 1971, on a P-3 post as Human Rights Officer in New York, and on 1 February 1974 he was granted a permanent appointment. He retired on 31 October 1996 after serving in the P-5 post of Acting Chief, Communications Branch, Centre for Human Rights, United Nations Office at Geneva. At the time of the Applicant's retirement, his wife was employed by the Inter-

[6] Jacqueline R. Scott, Vice-President, presiding; and Kevin Haugh and Goh Joon Seng, Members.

national Labour Organization (ILO) in Geneva, but she was later terminated pursuant to a mutual agreement which became effective on 31 May 2001. On 21 November 2000, the Applicant requested that his wife receive health insurance coverage from the United Nations Staff Mutual Insurance Society against Sickness and Accident (the Society). This request was rejected by the Executive Secretary of the Society on the basis that the Applicant's wife was not affiliated with a sickness insurance scheme of an "organization in the United Nations family", a pre-condition to the admission of former officials' spouses under paragraph 2 of Rule IV of its Statutes and Internal Rules. He considered that the ILO was not an "organization in the United Nations family" by reference to paragraph 1 of Rule II, which defines such an organization as "primarily United Nations Headquarters, the United Nations Office in Vienna, the Economic and Social Commissions and the specialized agencies whose headquarters are not located in Geneva".[7]

On 31 December 2001, the Applicant sought administrative review of the issue and direct submission of his case to the Tribunal, arguing that ILO was "an organization in the United Nations family" because the definition should be read broadly since it began with the word "primarily" ("*principalement*"). On 5 April 2002, the Secretary-General refused to consent to direct submission of the Applicant's case to the Tribunal since he did not considered his appeal to be limited to questions of law. Thus, the Applicant lodged an appeal with the Joint Appeals Board (JAB) in Geneva on 4 May.

In its report of 30 October 2003, the JAB stated that although the definition of "an organization in the United Nations family" provided in paragraph 1 of Rule II "seems not to be exhaustive, as would indicate the word '*principalement*' at the beginning of the listing", the presence of

> "the definite article '*les*' before the group '*institutions spécialisées dont le siège ne se trouve pas à Genève*', allows the Panel to maintain without any ambiguity that *a contrario* a specialized agency whose headquarters **is** located in Geneva cannot be added to the list. In that sense, it might be that the list is not exhaustive, but given the wording of the paragraph, any adding would necessar[ily] consist of a new category".

It therefore found that the Appellant had no grounds for contesting the decision denying his wife coverage by the Society. On 27 July 2004, the Secretary-General accepted the findings and conclusions of the JAB. On 13 August, the Applicant filed his application with the Tribunal. In its consideration of the case, the Tribunal agreed with the JAB, finding that while

> "the use of the word 'principalement' or 'primarily' does lead to the conclusion that the list was not meant to be exhaustive, it cannot be interpreted to include specialized agencies whose headquarters are located in Geneva, because this would make the provision internally inconsistent. It would make no sense for the drafters of this provision to have specifically excluded specialized agencies headquartered in Geneva, if it envisioned that those agencies could be included by use of the word 'principalement' or 'primarily'".

The Tribunal therefore concluded that "the Applicant's wife clearly cannot participate in the Society's insurance scheme pursuant to Rule IV, paragraph 4".

Accordingly, the Application was rejected in its entirety.

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[7] The authentic French text reads: "*[P]rincipalement le Siège de l'Organisation des Nations Unies, l'Office des Nations Unies à Vienne, les Commissions économiques et sociales et les institutions spécialisées dont le siège ne se trouve pas à Genève*".

5. *Judgement No. 1298 (28 July 2006): Applicant v. the Secretary-General of the United Nations*[8]

FILING OF ADVERSE MATERIAL IN PERSONNEL RECORDS—BAN ON FUTURE EMPLOYMENT—ADEQUACY OF AMOUNT OF COMPENSATION FOR VIOLATION OF RIGHTS

The Applicant entered the services of the United Nations Environment Programme (UNEP) in December 1987 on a short-term G-5 level appointment as a Keypunch Operator. At the time of the events which gave rise to her Application, she held a fixed-term contract with the United Nations Office at Nairobi (UNON).

In July 1999, the Applicant was interviewed for a short-term position with UNON. In August, however, the Acting Head of Staff Development informed her that she was not to be considered for further employment with the Organization because of an incident of allegedly fraudulent overtime claims in 1997. In May 2000, she was again interviewed by UNON and, on 7 June, she was identified as the most suitable candidate for a mission replacement and the Human Resources Management Services (HRMS) was asked to initiate her recruitment. When she did not hear from UNON following her interview, the Applicant met with the Acting Chief of HRMS, who reiterated concerns regarding the alleged incident in 1997 and informed her that she was not considered a suitable candidate for re-employment. On 1 August, the Applicant discovered a note dated 19 June 2000 in her Official Status file purporting to set out reasons why her previous contract had not been renewed. The document had apparently been written with a view to ensuring that the Applicant would not be re-employed and had been placed in her file without being brought to her attention. On 24 November 2000 and 7 June 2001, the Applicant requested that the note for the file be removed. On 8 January 2002, she discovered an additional memorandum in her Official Status file, dated 16 December 2000 and addressed to the Chief of Administrative Services of UNON, justifying the 19 June note, which had been annotated by him. On 26 March, the Applicant requested that the Chief of Administrative Services withdraw his decision to bar her from future employment. On 4 September, the Applicant lodged her appeal with the Joint Appeals Board (JAB) in Nairobi.

In its report of 25 May 2004, the JAB recommended that both documents, "as well as any other adverse material in connection with the aforementioned note [for] the file", be removed from the Applicant's Official Status file and that UNON either properly investigate her alleged misconduct or exonerate her. For the violation of her rights, the JAB recommended compensation of three months' net base salary.

On 14 September 2004, before receiving a response from the Secretary-General, the Applicant filed her Application with the Tribunal. On 12 January 2005, the Secretary-General agreed with the recommendation of the JAB that the adverse material be removed from her Official Status file. However, he decided not to conduct an investigation in view of the time that had elapsed since the alleged events occurred, and awarded her compensation of one month's net base salary, finding the recommendation of the JAB excessive.

In its consideration of the case, the Tribunal concluded that it was "intolerable that such documentation was placed in her file without affording her the opportunity of viewing and commenting thereon", and it was "irrefutable that this amounted to a serious viola-

[8] Jacqueline R. Scott, First Vice-President; Dayendra Sena Wijewardane, Second Vice-President; and Goh Joon Seng, Member.

tion of her rights under ST/AI/292 [of 15 July 1982, entitled 'Filing of adverse material in personnel records']". It considered that it was "not necessary for the Applicant to prove that she would have obtained a position but for the offending material". Because the Tribunal was "satisfied that the adverse material was deliberately placed in the Applicant's file with the intention of preventing her re-employment", it found it "reasonable to assume that it did impact the recruitment process".

The Tribunal increased the Applicant's compensation to six months' net base salary, considering that the officials involved should have been aware of the illegality of their acts and consequences on the Applicant's future employment prospects.

6. *Judgement No. 1299 (28 July 2006): Applicant* v. *the Secretary-General of the United Nations*[9]

Sexual harassment—hostile work environment—Secretary-General's discretion in disciplinary matters—Conduct befitting an international civil servant—Proportionality of the sanction to the violation committed

The Applicant joined the United Nations on a fixed-term appointment on 12 May 1975 as an Accounts Officer, and at the time of the events which gave rise to his application, he was working in the United Nations Population Fund (UNFPA) Office, New Delhi, India.

On 26 April 2002, a former UNFPA Accounts Clerk filed a complaint against the Applicant with the Gender Advisor alleging that he had habitually viewed, and subjected her to viewing, pornographic movies from his office computer; that he regularly used obscene language and made degrading and suggestive remarks to her; that he habitually engaged in unwelcome touching, pinching and forcing of his person on her and other women; and that he had threatened her with termination after she raised these issues at a "Gender Sensitization Workshop". On 12 September, following extensive interviews and a review of daily internet logs, the United Nations Development Programme (UNDP)/UNFPA Grievance Committee on Sexual Harassment concluded that the Applicant had subjected the complainant to sexual harassment and had created a hostile work environment. The Applicant refuted the charges, alleging that someone else had accessed his computer to view the pornographic movies; that the complainant was seeking revenge for a poor performance review; and that that he was being singled out, while others who had engaged in the same conduct were not being similarly investigated or charged. On 14 January 2003, the Applicant was charged with serious misconduct, and a Disciplinary Committee was convened.

On 7 January 2004, the Disciplinary Committee concluded that the Applicant had indeed created a hostile work environment, but rejected the complainant's charge of sexual harassment, based on conflicting and confusing evidence that the Disciplinary Committee believed indicated a more consensual relationship between the parties than the complainant alleged. It also concluded that the Applicant had been afforded appropriate due process and that there were no procedural irregularities. The Disciplinary Committee recommended that the Applicant be censured under staff rule 110.3 (a) (i).

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[9] Jacqueline R. Scott, First Vice-President, presiding; Dayendra Sena Wijewardane, Second Vice-President; and Julio Barboza, Member.

On 26 January, the UNDP Administrator rejected the Disciplinary Committee's recommendation, deciding instead that "in light of the seriousness of the conduct in question and consistent with the disciplinary sanctions imposed for misconduct of a similar nature", the Applicant was to be separated from service with UNFPA on the date he received the Administrator's letter. The letter was sent four days before the Applicant's scheduled retirement date. On 20 October 2004, the Applicant filed his Application with the Tribunal, requesting that it rescind the decision to separate him from service; restore the medical plan for him and his wife; and award him US$ 45,000 as compensation for emotional damage and embarrassment.

In its consideration of the case, the Tribunal first concluded that the two inquiry panels established by the Respondent had sufficiently established the presence of misconduct by the Applicant. It did not find credible the Applicant's allegations that someone else was accessing his computer to view the pornographic websites. While the Tribunal accepted the Disciplinary Committee's factual findings and its conclusion as to the presence of a hostile work environment, it did not agree with the Disciplinary Committee as to its finding on the lack of sexual harassment. It stated that

> "[i]t would appear that the Disciplinary Committee panel either misread or misunderstood the very specific language of the UNFPA sexual harassment policy, which defines sexual harassment to include creating a hostile work environment. Thus, by finding that the Applicant created a hostile work environment, the Disciplinary Committee necessarily should have found him also guilty of sexual harassment".

It also criticized the "inappropriate and pejorative language employed by the Disciplinary Committee in its report", such as the conclusion that "the complainant [was] being 'overly sensitive' to discussions of pornographic nature", concluding rather that "it was quite reasonable for the complainant to have objected to such conduct in the workplace and certainly did not amount to undue sensitivity on her part".

The Tribunal concluded that "[t]here can be no doubt that the viewing of pornographic movies and other media, as well as engaging in the sexually lewd and explicit behaviours exhibited by the Applicant, constituted serious violations of the Organization's rules and guidelines". It found the sanction of separation from service to be both legal and proportionate. Concerning the fact that the separation occurred within four days of the Applicant's anticipated retirement, the Tribunal noted that, with the exception of four days salary, "the Applicant generally received all monies and entitlements, including vacation pay, spousal payments and accrued pay that he would have received had he not been separated from service and instead allowed to retire as planned", and that "[g]iven the nature of his conduct, this was a small price to pay and one that was not disproportionate to his conduct".

The Tribunal concluded that there had been no substantive or procedural irregularities. It further concluded that the Respondent had not acted with improper motive, abuse of purpose or arbitrariness in sanctioning the Applicant, noting that the "burden of proof is on the Applicant where allegations of such extraneous motivation are made". Concerning the Applicant's request that the Tribunal reinstate medical insurance for him and his wife, the Tribunal found that the issue was not receivable because there was no evidence that he had sought administrative review of it.

Accordingly, the Application was rejected in its entirety.

7. *Judgement No. 1300 (28 July 2006): Applicant* v. *the Secretary-General of the United Nations*[10]

AUTHORITY OF THE SECRETARY-GENERAL TO DETERMINE STAFF MEMBER'S NATIONALITY FOR UNITED NATIONS' PURPOSES UNDER STAFF RULE 104.8—CAPACITY OF THE TRIBUNAL TO REVIEW NATIONALITY DECISIONS BY THE SECRETARY-GENERAL—SUCCESSIVE CHANGES IN NATIONALITY IN ORDER TO OBTAIN MAXIMUM BENEFITS AND ENTITLEMENTS

The Applicant entered the service of the Economic and Social Commission for Western Asia (ESCWA), Beirut, on 7 November 1977 on a three-month fixed-term appointment as a local recruit at the G-3 level. After several extensions and promotions, she received a permanent appointment on 1 October 1985. During the course of her career with ESCWA, the Agency and the Applicant relocated to Baghdad in 1981, Amman in 1991, and back to Beirut in 1997.

On 28 December 1981, the Applicant married a Lebanese national, and, as provided under Lebanese law, acquired Lebanese nationality one year later. On 3 November 1982, her nationality was changed for United Nations' purposes from Syrian to Lebanese at her request. On 14 April 1999, the Applicant requested that she again be considered a Syrian national for United Nations' purposes, stating that while her first change of United Nations nationality had been motivated by security concerns, she was now compelled to revert to her Syrian nationality for personal reasons, including the settlement of inherited property. On 20 August, the Administration rejected her request, seeing "no compelling reason for changing the previous determination that the staff member is 'most closely associated' with Lebanon, which is the only basis in the rule on which the [United Nations] recognized her Lebanese nationality", and noting that the nationality "was for [United Nations'] purposes only and that she still maintained the nationality of any other states for which she acquired that status".

On 25 February 2000, the Applicant lodged an appeal with the Joint Appeals Board (JAB) in New York. In its report of 20 January 2003, the JAB determined that in requesting the second change of nationality, the Applicant "had the duty to demonstrate [. . .] how circumstances had changed so fundamentally that Syria had replaced Lebanon as the country with which she was most closely associated" and that she "had failed to provide the requested evidence in support of [this] request". The JAB added that it "saw no evidence that there was any need for the [Applicant] to change her nationality for [United Nations'] purposes [. . .] in order to pursue her inheritance claim in Syria, because she was still a Syrian national in the eyes of the Government of Syria". The JAB therefore made no recommendation in respect of her appeal. On 28 July, the Secretary-General agreed with the conclusions of the JAB, and on 19 November 2004, the Applicant filed her Application with the Tribunal.

In its consideration of the case, the Tribunal concluded that the reason for the Applicant's change of nationality in 1982, insofar as the Administration was concerned, was the Applicant's marriage, a legitimate reason for the Administration to accept her request, and that the Applicant had not raised security concerns at that time. Concerning the second request for a change of nationality in 1999, however, the Tribunal stated that the Applicant

[10] Dayendra Sena Wijewardane, Vice-President, presiding; and Kevin Haugh and Brigitte Stern, Members.

"may well speak of her family in Syria and her frequent visits as justification for her ties with that State, but the gist of her argument is the loss of the education grant and expatriation benefits". The Tribunal concluded that the principal reason for her nationality change in 1982 had been marriage, not security concerns, and without evidence that her marital situation had changed or that the State with which she was most closely related had changed, no further change in nationality was warranted, adding that "it is not acceptable to seek to profit by successive changes in nationality and status within the Organization in order to obtain maximum benefits from the entitlements and other advantages accorded by the Administration to internationally recruited staff".

Accordingly, the Tribunal rejected the Application in its entirety.

8. *Judgement No. 1302 (28 July 2006): Applicant* v. *the Secretary-General of the United Nations*[11]

"Special measures for the achievement of gender equality" under ST/AI/1999/9 of 21 September 1999—Modification of standard burden of proof when relevant evidence is solely in the hands of the Administration

The Applicant entered the service of the International Narcotics Control Board (INCB) in Vienna on 1 September 1990 on a one-year fixed-term appointment as a Junior Professional Officer at the L-2 level. After succeeding in the National Competitive Examination, she was appointed in September 1991 to the P-2 post of Associate Social Affairs Officer at INCB, and was granted a permanent appointment on 1 September 1993. At the time of the events which gave rise to her Application, she held the P-3 post of Drug Control Officer at INCB.

On 8 January 2002, the Applicant applied for the P-4 post of Secretariat Services Officer, Secretariat of the Commission on Narcotic Drugs, United Nations Office on Drugs and Crime (UNODC), Vienna. On 27 February, UNODC requested that she be interviewed the following day, but then cancelled this appointment later that same afternoon. The following day, however, she was informed at 11 a.m. that she would be interviewed at 11:45 a.m. She underwent this interview, but wrote to the Administration on 8 March expressing her concern about this procedure. The Vienna Appointment and Promotion Committee (APC) met twice to review the recommendation to fill the post by lateral transfer of a male candidate, but failing to achieve unanimity, referred the case to the Appointment and Promotion Board (APB) in New York for review. On 3 October, APB concurred with the recommendation of the Administration to fill the post by the lateral transfer of a male candidate and endorsed the recommendation of the Applicant as the alternate candidate.

On 22 October, the Applicant submitted an appeal to the Joint Appeals Board (JAB) in Vienna requesting suspension of the administrative action to fill the P-4 post. On 24 October, the JAB advised her that it would not support her request for suspension of action as the administrative decision had already been implemented, *i.e.* the other candidate had already been informed of his selection. That same day, the Applicant was formally notified that she had not been selected for the post. On 17 December, she requested the Secretary-General to review the administrative decision to appoint another candidate to the post. On 26 March 2003, she lodged an appeal on the merits of her case with the JAB.

[11] Spyridon Flogaitis, President; and Kevin Haugh and Brigitte Stern, Members.

In its report of 11 February 2004, the JAB determined that the Respondent had not shown how the qualifications of the selected candidate were superior to the Applicant's as required by ST/AI/1999/9 ('Special measures for the achievement of gender equality') and that therefore the Applicant should have been offered the post. It recommended that the Applicant be paid the P-4 salary she would have been entitled to if selected for the post for a duration of two years or until she was promoted to the P4 level, whichever came first, and that she be placed on the 'Galaxy roster' until offered a suitable post at the P-4 level. On 16 September, the Secretary-General disagreed with the recommendations of the JAB, concluding that it had exceeded its mandate by undertaking a comparison of the qualifications of the candidates, and emphasizing that "[t]he fact that [the Applicant was] endorsed as the alternate candidate by the [APB] does not mean that it considered [her] to be equally suitable for the post in question". With regard to the rescheduling of her interview time, he noted that this was a "frequent occurrence" and had not disadvantaged the Applicant, who had prepared for the interview the previous day in any case. He therefore concluded that no due process violation had occurred. On 1 December, the Applicant filed her Application with the Tribunal.

In its consideration of the case, the Tribunal noted that ST/AI/1999/9 required that where there are both male and female candidates with substantially equal qualifications, "the female candidate should be appointed unless the qualifications of the male candidate are in some *demonstrable* and *measurable* way superior to those of the best qualified female candidate". It concluded that although as a general principle, the party making an allegation bears the burden of proving it, "this general proposition must require modification where the relevant evidence is solely in the hands of the Administration". In this case, although the APC and APB reports on the Applicant's case were provided to her, they were redacted to protect other candidates' confidentiality, and thus it was not possible for the Applicant to assess the qualifications of the successful male candidate in order to prepare her case alleging a violation of the Organization's affirmative action policy.

The Tribunal concluded that "[i]n these circumstances, it would be improper and unprincipled to maintain that her claim must be defeated because she failed to discharge what the Respondent claims as her burden" and that "where the relevant information is in the hands of the Administration and not available to an Applicant, the onus of proof in certain matters should be viewed as neutral rather than as resting on the Applicant". In this regard, the Tribunal considered it established that the Applicant had adequate qualifications for the post because she had been named as the alternate. The Tribunal agreed with the conclusions of the JAB that "since there was no demonstrable or measurable evidence to support a conclusion that the successful male candidate enjoyed substantially superior qualifications when compared with those of the Applicant, a breach of ST/AI/1999/9 [had] been established". It rejected the Applicant's allegations of procedural irregularities in the interview process, agreeing with Secretary-General that the Applicant had not suffered any measurable disadvantage since she had been able to prepare for the interview, and further noting that there was no evidence of any *mala fides* on the part of the Administration.

Considering the Respondent's decision to reject the unanimous recommendation of the JAB, the Tribunal did "not consider that there were any adequate reasons in either principle or policy which would have justified departure from the Respondent's oft-announced policy" but it did "not consider that his decision not to accept the recommendation of the

JAB could be said to have infringed any right of the Applicant or could give rise to an entitlement to compensation".

Accordingly, the Tribunal ordered the Respondent to pay the Applicant the difference between her salary at the P-3 level and the P-4 salary that she would have received had she been appointed to the post in question, from October 2002, for the lesser of either two years or until her promotion to the P-4 level, and ordered the Respondent either to place the Applicant on the "Galaxy roster" until she secures a suitable post at the P-4 level or to pay her two months' net base salary.

9. *Judgement No. 1303 (28 July 2006): Applicant* v. *the Secretary-General of the United Nations*[12]

General service staff—Right to apply to vacancies—Movement of staff from the General Service to the professional category—Definition of "internal" and "external" candidate—Claim for special post allowance not presented previously for administrative review is not admissible

The Applicant entered the service of the United Nations on a short-term G-3 appointment as Records Clerk in August 1992. His appointment was subsequently extended and then converted to fixed-term. On 9 June 1997, he earned a *Juris Doctor* degree and was subsequently admitted to the New York Bar. At the time of the events which gave rise to his Application, he was a G-4 level Legal Clerk for the Administrative Law Unit (ALU), Office of Human Resources Management (OHRM), acting as a P-2 Associate Legal Officer, with a special post allowance (SPA).

On 10 October 2001, the Applicant applied for the P-3 post of Legal Officer as an external candidate. He was subsequently informed by the Chief, Staffing Support Section, that he could not be short-listed for consideration, his qualifications notwithstanding, because such action was prevented by "the horrible barrier between G and P". In particular, the Chief cited General Assembly resolution 33/143 of 20 December 1978, para. 1 (g), which provides:

> "Movement of staff from the General Service category to the Professional category should be limited to the P1 and P2 levels and be permitted up to 30 per cent of the total posts available for appointment at those levels and such recruitment should be conducted exclusively through competitive methods of selection from General Service staff with at least five years' experience and post secondary educational qualifications".

The communication also referenced General Assembly resolution 35/210 of 17 December 1980, which provides that "movement of staff from the General Service category [. . .] is to be regulated exclusively through competitive examination [. . .]. No exception shall be authorised."

On 18 December 2000, the Applicant requested the Secretary-General to review the administrative decision not to consider him for the position, and he also submitted an appeal to the Joint Appeals Board (JAB) in New York, requesting suspension of action of this decision. On 29 December, the JAB recommended "that the contested decision be suspended so that the [Applicant] is not excluded from the process and [. . .] could have an equal opportunity to be considered along with other candidates for the [. . .] post". On

[12] Spyridon Flogaitis, President; and Kevin Haugh and Brigitte Stern, Members.

8 March 2001, the Applicant lodged an appeal on the merits of his case with the JAB. On 15 March, according to the Applicant, the Assistant Secretary-General of OHRM, told him that in order to be considered eligible to apply for a Professional level post, he would have to resign his General Service position, but that the post would be re-advertised for three weeks in order to permit him to do this. On 30 March, the Secretary-General decided not to accept the recommendation of the JAB in his suspension of action case. On 2 April, the Applicant wrote to the Assistant Secretary-General of OHRM, requesting that, in view of the financial constraints which resigning his position would place upon him, the deadline for applications be extended. On 3 April, the Assistant Secretary-General of OHRM responded that no further delay could be permitted in the selection process but that, if he chose to resign his General Service position, he could apply for "any suitable vacancy at the Professional level".

In its report of 9 March 2004, the JAB determined that resolution 33/143 takes no position on whether General Service staff may apply for P-3 posts, and that the Applicant had "never offer[ed] a convincing argument why they should be". It also noted that, without resigning, the Applicant could not be considered an external candidate because "an external candidate is by definition *not* a staff member of the United Nations". Consequently, it made no recommendation with respect to the Applicant, and on 9 November, the Secretary-General agreed with this result.

On 20 December, the Applicant filed his Application with the Tribunal, contending that the decision not to consider him as an external candidate for the P-3 post was not supported by the Staff Regulations and Rules or any other administrative issuances in effect at the time, and was unfair, unjust, and contrary to the basic principles of international civil service.

In its consideration of the case, the Tribunal concluded that the question of whether the Applicant was an internal or external candidate was a "distraction" because it is "beyond dispute that the Applicant was a staff member in the General Service category so that, on the understanding of the Chief, Staffing Support Section, the Applicant was ineligible for appointment to the P-3 level post other than through competitive examination". The Tribunal rejected the Applicant's contention that paragraph 1 (g) of resolution 33/143 be construed as only extending to P-1 and P-2 levels, concluding that "it logically follows that promotion to a P-3 post for a staff member of the General Service category through means other than competitive examination is not possible whilst the staff member remains in the service of the Organization". In other words, the Tribunal concluded that the specific mention of P-1 and P-2 levels in the resolution has the effect of limiting promotion of General Service candidates to those levels, not opening the possibility that they apply directly for promotion to a higher level.

Concerning the Applicant's claim that such an interpretation of the resolutions would be contrary to the basic principles of the international civil service and would be unfair and unjust, the Tribunal emphasized that "it is a body created by the General Assembly[,] and that it derives its jurisdiction solely from the terms of its Statute as adopted by the General Assembly", and that "the language of the relevant General Assembly resolutions is clear and unambiguous in its intention to restrict movement of staff from the General Service category to the Professional category in the manner described".

Concerning the Applicant's claim that he receive SPA for the additional time during which he exercised the functions of Acting Associate Legal Officer in ALU, the Tribunal considered the claim inadmissible as it had not been "the subject matter of a request for administrative review and ha[d] not received consideration by a joint body prior to coming to [the] Tribunal".

Accordingly, the Tribunal rejected the Application in its entirety.

10. *Judgement No. 1304 (28 July 2006): Applicant* v. *the Secretary-General of the United Nations*[13]

Recruitment process—Balance between confidentiality concerns and an Applicant's due process rights—Quorum requirements of the Appointments, Promotions and Postings Committee—Use of teleconference

The Applicant entered the service of the International Trade Center (ITC) in January 1978 in a three-month short-term G-2 contract as Typist. In April 1978, she joined the United Nations High Commissioner for Refugees (UNHCR). She subsequently received an indefinite appointment. At the time of the events which gave rise to her Application, she held a G-6 level post of Human Resources Assistant of UNHCR.

On 31 October 2001, the Applicant applied for the G-7 position of Senior Human Resources Assistant, and she was interviewed, along with two other candidates, between 26 and 28 November. On 28 January 2002, she was informed that she had not been recommended for the post. On 13 February, she requested administrative review by the High Commissioner of UNHCR, and on 28 February requested conciliation. On 8 March, she requested administrative review by the Secretary-General, and on 21 May she lodged an appeal on the merits of her case with the Joint Appeals board (JAB).

In its report of 23 August 2004, the JAB found that the Appointments, Promotions and Postings Committee (APPC) had breached its rules of procedure by not having the required quorum of six members when it reviewed the G-7 candidates. The JAB therefore found the APPC recommendation null and void, concluded that the Applicant's due process rights had been violated, and recommended that she be compensated six months' net base salary. On 23 December, not having received any response from the Secretary-General, the Applicant filed her application with the Tribunal. On 17 February 2005, the Secretary-General rejected the findings of the JAB on the basis that a sixth member of APPC had participated by teleconference.

In its consideration of the case, the Tribunal first addressed the Administration's request that the summary of recommendations it produced in evidence not be released to the Applicant for confidentiality reasons, refusing to grant this request because confidentiality "must be balanced with the right of an applicant to defend him or herself. Otherwise, a violation of due process rights may occur". Concerning the issue of quorum, the Tribunal noted that it was "a recognized and well-established general principle of administrative law that [. . .] the physical presence of the members of a collegial body is required", and although "modern legislation around the world [had] tried to introduce attenuations to this traditional principle, taking advantage of modern systems of communication such as teleconferencing and videoconferencing", "there is currently no provision for attain-

[13] Spyridon Flogaitis, President; and Kevin Haugh and Brigitte Stern, Members.

ing quorum through such technical means in the APPC Rules of Procedure". Despite this finding, the Tribunal concluded that rescinding the contested decision "given the precise circumstances of this case [. . .] would [. . .] place undue burden on the Administration", noting that "were the proceedings to be quashed, the body would meet again and produce exactly the same decision". The Tribunal concluded that "despite the fact that a formality was not observed", the decision had not been "taken in disregard of the *substantive* rules of administrative law".

Accordingly, the Tribunal rejected the Application in its entirety.

In her dissenting opinion, Judge Stern concluded that the question of quorum was a substantive one and "the Tribunal should not have entered into conjecture of what would have happened had quorum been respected". Accordingly, she concluded that the Tribunal should have confirmed the decision of the JAB.

11. Judgement No. 1310 (22 November 2006): Applicants v. *the Secretary-General of the United Nations*[14]

Termination of employment on grounds of misconduct—Distinction between "misconduct" and "serious misconduct"—Proportionality of sanctions—Review of decisions of the Administration for abuse of discretion—Rights of due process

Applicant Y entered the service of the United Nations Children's Fund (UNICEF) on 7 April 1994, on a fixed-term P-5 level contract as UNICEF Representative, Niger. At the time of the events which gave rise to her Application, she was serving as Representative of the UNICEF Conakry Office in Guinea. Applicant X entered the service of UNICEF on 25 January 2000, on a fixed-term P-3 level post as Operations Officer in the UNICEF Conakry Office, the position he held at the time of the events which gave rise to his Application.

In 2000, to facilitate the availability of iodised salt in Guinea, Applicant Y promoted the involvement of the private sector in its production and distribution. In this connection, Mr. S., the owner of SELGUI, a privately owned company in Guinea, approached UNICEF with a proposal to import and distribute iodised salt. On 20 November, Applicant X advised Applicant Y that the bank had negatively assessed the project, and proposed that UNICEF provide a US$ 100,000 security on the bank's loan to Mr. S. and SELGUI. The same day, Applicant Y determined that support for SELGUI should be limited to the provision of equipment. On 21 December 2000, the bank notified UNICEF that it required its US$ 100,000 guarantee in order to carry out the loan to Mr. S. and SELGUI, and, on 20 February 2001, pursuant to oral instructions from Applicant Y, Applicant X and a colleague transferred US$ 100,000 to the bank. On 19 April, Applicant X approved the payment voucher for the transaction and recorded it as accounts receivable, attributing it to the Private Sector Division of UNICEF, but in October he adjusted this entry so as to make it appear as if it were a programme expenditure of the office rather than accounts receivable to the Private Sector Division. In May 2002, the bank informed UNICEF that Mr. S. and SELGUI had defaulted on the loan and that it was taking possession of the guarantee.

In October 2003, the Office of Internal Audit concluded that while there was no evidence of intention to defraud UNICEF, the Applicants had not followed established UNICEF procedures and their actions had exposed UNICEF to foreseeable risk. It recom-

[14] Dayendra Sena Wijewardane, Vice-President; and Kevin Haugh and Goh Joon Seng, Members.

mended that UNICEF "establish the responsibilities of the involved staff, and implement appropriate actions". On 11 March 2004, Applicant X was charged with:

> "repeatedly engag[ing] in acts of grossly negligent conduct, acting with reckless disregard for UNICEF's best financial interests, sound management of its financial resources and its related business procedures [. . . compounded by . . .] failing to put in place measures that would have safeguarded and/or provided a measure of protection against the financial loss that UNICEF suffered [. . . ;] repeatedly violat[ing] UNICEF Financial Rules [. . .] result[ing] in a significant financial loss [. . . ; and, making] false certifications in official documents and accounting records".

He was advised that his actions constituted serious misconduct; that he could be found personally and financially liable for the loss suffered by UNICEF; and, that he would remain on suspension with pay, pending the completion of disciplinary proceedings. Also on 11 March, Applicant Y received similar charges and was also suspended. On 15 April, Applicant Y responded to these charges, offering to pay UNICEF US$ 5,000, the amount which she calculated to be the Organization's actual damages.

In its separate reports on 3 September 2004, the *ad hoc* JDC unanimously concluded that the Applicants had each "failed to perform in accordance with the highest standard of efficiency and competence[,] which constitute[s] misconduct as described in [. . .] Chapter 15 of the Human Resources Policy and Procedure Manual, paragraph 15.2.3". However, noting that the Applicants "did not have criminal intentions and acted in good faith, and [. . .] the amount was fully recovered", the JDC recommended with respect to Applicant X the disciplinary measure of "[w]ritten censure by the Executive Director with a statement that the staff member's performance be closely monitored to ensure that he has learnt from this experience", and, with respect to Applicant Y, the disciplinary measure of written censure by the Executive Director and deferment of eligibility for within-grade increment for two years.

On 27 September 2004, the UNICEF Executive Director disagreed with the recommendations of the JDC, concluding that the Applicants' "actions constitute a serious violation of the highest standards of conduct and integrity expected of all international civil servants". Consequently, she decided to separate Applicant X from service with one month's compensation in lieu of notice and to separate Applicant Y from service with three months' compensation in lieu of notice. Applicants X and Y filed Applications with the Tribunal on 24 November 2004 and 28 January 2005, respectively. The Tribunal decided to consolidate the cases as they related to disciplinary measures arising from the same set of events.

In its consideration of the case, the Tribunal concluded that the JDC was well justified in concluding that each particular Applicant had been guilty of misconduct. It reasoned, therefore, that the principal question was whether the Executive Director had abused her discretion by re-characterizing the conduct as serious misconduct, subject to much harsher sanctions. The Tribunal noted that "[t]he measures adopted were undoubtedly severe and [. . .] were harsh" especially since "both Applicants acted with the most worthy and laudable of intentions without expectation or prospect of gaining any personal benefit". Nevertheless, the Tribunal concluded that the Executive-Secretary had not abused her discretion, noting that while in the vast majority of cases a conclusion of serious misconduct entailed "dishonest activity or activity designed to advance [the staff member's] situation or finan-

cial position", "the absence of such a motive does not automatically remove a case from the realm of serious misconduct". The Tribunal also rejected Applicant Y's claim that her due process rights were violated by the decision of the JDC not to grant her request for an oral hearing, emphasizing that the "decision on whether or not to conduct oral proceedings falls within the discretion of the JDC". Accordingly, the Tribunal rejected the Applicants' claims in their entirety.

In his dissenting opinion, the Vice-President considered that "serious as the Applicants' shortcomings were, they do not [. . .] add up to a 'reckless disregard' for the interests of UNICEF or 'serious misconduct' as they were later to be categorized" and consequently found the sanction imposed to be disproportionate. The Vice-President was "troubled by the way in which the JDC's findings were disregarded, and the more serious characterization and sanction imposed, without a reasoned and substantive explanation for such departure". He stated that "[i]n the circumstances of these cases of staff members with noble goals and no criminal intent, whose misconduct arose from shortcomings in their performance and not from any deliberately fraudulent activity or *mens rea* to commit harm", the sanction of separation from service is disproportionate, and the Executive Director vitiated her discretion in imposing it, noting that termination for misconduct or serious misconduct "is almost exclusively imposed upon staff members who have committed—or attempted to commit—fraud, rather than for matters of poor performance". Accordingly, the Vice-President would have rescinded the decision of the Executive Director in each of the Applicants' cases.

12. *Judgement No. 1313 (22 November 2006): Applicant* v. *the Secretary-General of the United Nations*[15]

Mobility policy—Discretion of the Secretary-General with regard to personnel decisions—Compensation for emotional stress or psychological injury

The Applicant entered the service of the United Nations on 24 August 1970 in a fixed-term G-3 level contract as a Bilingual Clerk in the Executive Office of the Secretary-General (EOSG). Her contract was subsequently extended, and on 1 August 1972 she was granted a permanent appointment. At the time of the events that gave rise to her Application, she was serving as a Telephone Operator at the G-5 level in EOSG.

On 24 August 2001, the Chef de Cabinet requested that the Assistant Secretary-General for Human Resources Management facilitate the Applicant's move to a new assignment effective 1 September, noting that the Applicant had at that time enjoyed some 31 years' experience working in EOSG, that "[t]his is a very long time for a staff member to remain in one office", and that "it is strongly felt that a change would be both desirable and in keeping with the direction in which the Organization is moving with regard to staff mobility". On 1 September, the Applicant left EOSG and began seeking other appointments. On 11 October, the Applicant requested administrative review of the Chef de Cabinet's 24 August request to transfer her. On 1 November, the Applicant reported to the Terminology and Reference Section of DGACM. On 28 December, she lodged an appeal with the JAB in New York.

[15] Jacqueline R. Scott, Vice-President; and Julio Barboza and Kevin Haugh, Members.

In its report of 24 August 2004, the JAB noted that the Applicant had not "suffer[ed] any pecuniary loss, as she received her full pay and [. . .] none of her entitlements [had] been affected". It also noted that no medical report existed attesting that she was under mental or emotional distress as a consequence of the reassignment. The JAB emphasized that, in accordance with staff rule 1.2 (c), "[s]taff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations". It unanimously concluded that the decision to transfer the Applicant had been taken within the discretion of the Secretary-General and had thus not violated her rights, but recommended that OHRM make every effort to place her in a post "that would allow her [. . .] further career development". On 28 January 2005, the Secretary-General agreed with the recommendations of the JAB. On 2 May, the Applicant filed her Application with the Tribunal, contending that since her removal from EOSG, she had "not been assigned any meaningful or useful work", that she had "effectively languished in the doldrums, leading a soul-destroying, demoralizing and depressing existence insofar as her career [was] concerned", and that "her future career and promotion prospects [had] been seriously impaired".

In its consideration of the case, the Tribunal noted that, while the Respondent had claimed that the transfer was carried out "in the interests of mobility", he had not offered "any evidence tending to establish that actual or useful duties were assigned to the Applicant for any substantial period since her said transfer occurred". It also observed that by basing its rejection of the Applicant's claim on the discretion of the Secretary-General, the JAB had avoided the "central issue as to whether the Applicant was ever assigned useful or suitable duties following her transfer". In the absence of contrary evidence, the Tribunal concluded that "the Applicant's evidence must be accepted on this issue and [that it] must likewise accept her evidence that she found this to be a deeply unhappy, embarrassing and soul-destroying experience".

Having found that the Applicant had been assigned little or no suitable or useful work since her transfer, it examined "the legitimacy of the Respondent's contention that the Applicant's transfer was a *bona fide* exercise of the Secretary-General's wide discretion" and "the *bona fides* of the assertion that the transfer was effected in the interests of mobility". It concluded that "when justification for a transfer such as occurred in the Applicant's case involves an assertion that it was made in the interests of mobility, there should be some surrounding circumstances which would tend to establish that the move was being made for the ultimate benefit of the Organization". Having found none, it concluded that the transfer constituted an abuse of power.

With regard to compensation, it rejected the conclusion of the JAB that no claim is warranted where no identifiable financial loss has been proved, noting that such an approach "might serve to encourage persons contemplating bringing proceedings for moral damage to unnecessarily seek medical treatment". The Tribunal concluded that because the Applicant had suffered emotional stress as a result of the Respondent's actions, she was entitled to compensation for moral injury.

Accordingly, the Tribunal ordered the Respondent to pay the Applicant compensation in the amount of six months' net base salary.

B. Decisions of the Administrative Tribunal of the International Labour Organization[16]

1. *Judgment No. 2493 (1 February 2006): Mr. G. J. M. and others* v. *European Organization for Safety of Air Navigation*[17]

Imposition of disciplinary measures—Question of compatibility between the exercise of the collective right to strike and the duty to ensure continuity of service—Legitimate competence of the director general to declare a collective action illegal—Regulation of the exercise of collective right should not deprive the substance of that right in practice—Short notice and indefinite duration of a strike not deemed to render the strike unlawful—Respect of adversarial principle in disciplinary procedure

The Complainants are, or were at the material time, employed as Clerical Assistants at the Central Flow Management Unit (CFMU) at the European Organization for Safety of

[16] 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; African, Caribbean and Pacific Group of States; the Agency for International Trade Information and Cooperation; and the European Telecommunications Satellite Organization and the International Organization of Legal Metrology. 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 http://www.ilo.org/public/english/tribunal/.

[17] Michel Gentot, President; Seydou Ba and Claude Rouiller, Judges.

Air Navigation (Eurocontrol Agency). They requested that the disciplinary measures taken against them following a strike held at the Agency in March 2003 be set aside.

On 29 December 2002, the FFPE-Eurocontrol, a trade union recognized by the Agency, issued a strike notice, as well as "instructions" urging officials not to apply their normal working rules. The action was however suspended after a meeting with the Director General. On 7 March 2003, the trade union reassumed the strike, this time however without any instructions, as these had been considered illegal by the Director General of CFMU. In a memorandum of 10 March 2003, the Director General stated that the action commenced the same day was illegal, and that "instructions" given to staff constituted an external interference in Eurocontrol's working procedure. The complainants ceased work on various dates between 10 and 14 March.

Later, in March 2003, the Director of Human Resources invited staff members concerned to a hearing to discuss charges made against them in connection to their participation in an "illicit strike". Fourteen of the Complainants were heard, and all twenty-two were issued a written warning for having failed to meet their legal and professional duties in participating in an unlawful industrial action. Following internal complaints, on 19 November 2003, the Director General rejected the recommendation of the Joint Committee for Disputes and decided not to withdraw the warnings.

After having deemed all the complaints receivable, the Tribunal turned to the procedural complaints. In this regard, the Tribunal found that the adversarial principle had been correctly applied, and that the charges against them and the reasons for disciplinary measures had been sufficiently precise and substantiated. The working languages of the Agency being English and French, and none of the Complainants claiming to not understand the documents in English, the Complainants were not found to have a right to have the relevant documents drafted in French as they had requested. Moreover, the allegation of discrimination against the Complainants based on the fact that some officials who had participated in the strike had not been penalized, was not found to be supported by evidence on the file.

The Tribunal then turned to the question of whether the Director General had authority to decide whether the collective action was illegal. It was recognized that the Director General has a wide discretion and independence with regard to technical, financial and personnel resources placed at his disposal. This includes the competence to take whatever measures are necessary to prevent actions deemed unlawful and lay down guidelines for the exercise of the collective rights of staff in accordance with the general principles of international civil service law, especially in the absence of any statutory provisions or collective agreement between the Agency and the staff Representatives. However, the Tribunal clarified that such measures must not have the effect of restricting the exercise of these rights in a way which would deprive them of all substance.

Further, the Tribunal rejected the reasoning of the Agency, which claimed that the action by the Complainants were in fact not a strike but a resumption of the industrial action of January 2003, the staff union having explicitly stated that the "instructions", which, had they been maintained, would undoubtedly had rendered the action unlawful, were not to be applied during the March strike.

Thus, the Tribunal had to decide if, in the circumstances of the case, a work stoppage not involving unlawful actions, the Agency could, in view of the Staff regulations whereby

an official is bound to ensure the continuity of the service and must not cease to exercise his functions without prior authorization, deem participation in the collective action by the officials in question to be unlawful, and therefore legitimately take disciplinary measures against them. The Tribunal observed that a strike by its very nature affect the continuity of service, and is lawful in principle. Therefore, to make the exercise of the right to strike conditional on obtaining a leave of absence would be clearly incompatible with the principle itself. In the absence of specific rules in that respect, the short notice and the indefinite duration of the strike were not sufficient to render the collective action unlawful, neither the fact to take part in it.

Therefore, the Tribunal found the Director General to have wrongly imposed disciplinary sanctions against the Complainants, and decided that the impugned decisions should be set aside. Further, it awarded € 1,000 to each Complainants for moral injury.

2. *Judgment No. 2524 (1 February 2006): Ms. F.V.* v. *Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization*[18]

Non-extension of contract due to unsatisfactory conduct—Harassment and mobbing claim—Harassment and mobbing do not require intent to intimidate, abuse, discriminate or humiliate—Incidents supporting the claim of harassment and mobbing shall be considered in the whole circumstances of the case and not as separate incidents—Duty to provide a safe and secure working environment to the employee—Right to due process in the administrative appeal proceedings—Disclosure of confidential material—Moral damages

The Complainant began her employment as a nuclear physicist at the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO PrepCom) in May 2001 on a three-year appointment. In October 2003, she was informed that the Executive Director, after consideration by her Division Director and a Personnel Advisory Panel, had decided not to extend her appointment, due to unsatisfactory conduct. In February 2004, the Complainant lodged an appeal with a Joint Appeals Panel against that decision. She also claimed to have been victim of harassment and mobbing by her supervisor Mr. M., and in this regard, she claimed material and moral damages. In its report of September 2004, the Joint Appeals Panel considered that, since a "Note for File" submitted to the Executive Secretary along with the Panel's recommendation had not been made available to her, the Complainant had been denied due process. The Joint Appeal Panel did not found that the Complainant had been victim of mobbing or harassment, but that the recommendation of the Advisory Panel had been "tainted by an error of law". Therefore, the Appeals Panel recommended that a new decision be made. On 18 October 2004, the Complainant was informed that the said Note had been removed from her file, a new performance appraisal report would be prepared, and the Executive Secretary would convene a Personnel Advisory Panel to make a new recommendation on her case. She was further informed that action regarding the non-renewal decision was suspended until 30 November 2004.

It is this decision of 18 October 2004 that the Complainant decided to challenge before the Tribunal. Meanwhile, in December 2004, the Personnel Advisory Panel recommended

[18] Michael Gentot, President; Mary G. Gaudron and Agustín Gordillo, Judges.

not extending her employment, and on 16 December, the Executive Director decided to follow that recommendation.

With regard to admissibility, the Tribunal agreed with the claim of CTBTO that material damages for the non-extension of the Complainant's contract were referable to the later decision of 16 December 2004, which was still subject to an internal appeal. The claim in this respect was therefore dismissed by the Tribunal, whereas it decided that moral damages would be considered along with the claims of harassment and mobbing.

The Tribunal pointed out that harassment and mobbing were extreme examples of the breach of the duty of the employer to provide a safe workplace and to ensure that an employee is treated fairly and with dignity. In considering the present claim in this regard, the Tribunal noted that the Joint Appeals Panel had concentrated solely on the alleged harassment or mobbing led by Mr. M. However, the Tribunal noted that material provided in support of mobbing or harassment may disclose some lesser breach of the employer's duty, and any such breaches should also be considered. Therefore, the Tribunal stated that the present claim should be considered, not only regarding the involvement of Mr. M., but in the whole circumstances of the case.

The Tribunal observed that the Appeals Panel had committed an error when analyzing certain incidents that the Complainant relied upon, considering them as independent and isolated events without placing them in their overall context. Furthermore, the Tribunal found that the Panel had been mistaken in its position that harassment and mobbing require an intent to "intimidate, insult, harass, abuse, discriminate or humiliate a colleague" and that "bad faith or prejudice or other malicious intent" should be established. The Tribunal underlined that harassment and mobbing do not require such intent.

Regarding the facts, it was clear that problems had arisen with the Complainant and her first supervisor, Mr. D., as well as with other employees when she began her employment at CTBTO in 2001. In his first appraisal report, Mr. D. made a negative evaluation of the complainant, based on claims of shortcomings, which however had not been presented to the Complainant.

In the period 2002 to 2004, her second supervisor, Mr. M., gave a number of inconsistent and often contradictory assessments with regard to the Complainant's qualifications and performance, and later showed an attitude of open hostility towards the Complainant, as sometimes he reacted extremely negatively to her, in a way likely to cause stress and humiliation. After various incidents between the Complainant and her supervisor, she was transferred to another Section. During 2003 and 2004, the Complainant's car tires were damaged on five occasions in the office car park, and she received anonymous phone calls at home, and an anonymous internal letter at work.

These incidents were all considered by the Appeals Panel as independent events, and therefore the Appeals Panel held that they were not conclusive of any harassment or mobbing against the Complainant.

On the contrary, the Tribunal stated that, despite the negative relationships between the Complainant and other employees, there was a duty to ensure that the Complainant had a healthy working environment and that she was treated fairly and with dignity. Seen in the light of the many procedural errors and inequities that were committed during the appeal procedures, the Tribunal noted that these facts added to the merits of her claim. The Tribunal concluded that the approach of the Joint Appeals Panel to the question of

harassment and mobbing was seriously flawed and that, therefore, its decision should be set aside.

The Tribunal further noted that the Complainant had been denied due process, as her two successive supervisors were prepared to accept statements from others without investigating their accuracy, and expressed unsubstantiated opinion on her without giving the Complainant an opportunity to respond. Finally, the Tribunal stated that the disclosure of the Complainant's medical records to her supervisors during the appeals procedure entailed a serious breach of confidence.

In conclusion, the Tribunal decided that the decision of 16 October 2003 should be set aside, and awarded to the Complainant € 35,000 for material and moral damages.

3. *Judgment No. 2533 (12 July 2006): Mr. D.S. K.V. v. Organization for the Prohibition of Chemical Weapons (OPCW)*[19]

Appropriate compensation for complete and permanent disability resulting from a work-related injury—Entitlement to compensation independently of the question of negligence or fault on the part of employer—Evaluation of reasonable in-home care and appropriate method of payment—*Ex gratia* payment covers non-pecuniary loss such as pain and suffering but not the required adaptations of the Complainant's house and car—No indexation of disability pension but possible adjustment in case of high inflation—Compensation for future deterioration of the Complainant's health would require further request to the Organization

The Complainant was a former official of the Organization for the Prohibition of Chemical Weapons (OPCW), who in January 2002 was hurt when a machine fell onto his left foot. Although seemingly minor, the injury led to a rare illness which caused complete and permanent disability. OPCW provided a compensation package, which the Complainant claimed was insufficient to meet his daily needs. The compensation package, negotiated between OPCW, Van Breda International (the insurance brokers) and the insurers, included a life-long annual compensation, a lump-sum compensation for loss of function of both legs, an annual lump-sum for in-home care of €2,400 per month, and an *ex-gratia* payment of €150,000.

Before the Tribunal, the Complainant argued that he was entitled to a compensation for negligence from OPCW, as the Organization had breached its obligation to maintain a safe work environment. The Tribunal observed that the staff member was entitled to adequate compensation for his work-related injuries independently of any question of negligence or fault on the employer's part. The Tribunal therefore considered the dispute to be about quantum, not liability, and that the negligence question was irrelevant.

Another important issue raised by the Complainant related to in-home care payments, as he claimed that the monthly sum of € 2,400, negotiated by the insurers brokers, would not cover his costs in this regard, basing its claim, among other things, on the sum of €11,280 initially claimed from Van Breda on behalf of the Complainant. The Tribunal found that the Organization should not be held to this initial claimed amount and that the main disputed question was to determine what could be considered a "reasonable" cost for in-home care, as provided for in the relevant provisions of the Staff Regulations. There was

[19] Michel Gentot, President; James K. Hugessen, Vice-President; Augustín Gordillo, Judge.

also the question of the payments options, periodically against receipt or on a lump-sum basis. The Tribunal observed that, despite the complainant's desire for a lump-sum award, the only reasonable course to adequately cover all related costs would be reimbursement upon provision of receipts for in-home care. The Tribunal further observed that in-home care should include services that go well beyond house keeping, and that the assessment of the "reasonable" care should be made considering the needs of the recipient, rather than what the payer may think should be paid.

With regard to the Complainant's claims of costs for adaptations to his house and car, OPCW had denied them, considering that they had been included in the "additional costs" covered by the *ex gratia* payment. The Tribunal strongly rejected this argument and emphasized that the *ex gratia* payment must be seen as compensation for non-pecuniary loss such as pain and suffering and loss of enjoyment of life. The Tribunal also considered that such expenses were a consequence of the Complainant's service-related injury and that they should therefore be reimbursed.

The Complainant further raised the issue of the non-indexation of his "disability pension", as this could be resulting in loss of purchasing power each year. The Tribunal acknowledged the absence of an indexation clause in the OPCW Group insurance Contract. While expressing its reluctance to order indexation as a matter of routine since the feared spoliation may never occur, the Tribunal recalled the obligation of the Organization to provide the Complainant with adequate compensation, and that inflation should not have the effect of negating the very purpose of the disability pension. Therefore, exceptionally, the Tribunal provided for an adjustment mechanism of the disability pension amount in case of high inflation.

Regarding the claims relating to the future deterioration of the Complainant's health due to the progressive nature of his illness, the Tribunal observed that the Complainant would have to request further compensation from his employer. However, it also stressed that the Organization's obligation to pay the Complainant reasonable compensation for the consequences of his workplace injury was a continuing one, not affected or diminished by the terms of an insurance policy between the Organization and its insurance company, to which the Complainant was not a party.

The Tribunal concluded that OPCW should pay reasonable compensation to the complainant for the consequences of his workplace injury, including reasonable in-home care expenses to be justified by receipts, as well as the cost of past and future adaptations to the complainant's house and car without any reduction in the amount of the *ex gratia* payment.

4. *Judgment No. 2535 (5 May 2006): Mr. E. K.* v. *United Nations Industrial Development Organization (UNIDO)*[20]

PROMOTION WITH RETROACTIVE EFFECT—LACK OF BUDGETARY PROVISIONS AS JUSTIFICATION FOR DELAYING PROMOTION—CLASSIFICATION OF POST—MORAL DAMAGES WHEN A REASONABLE SETTLEMENT OFFER HAS BEEN REJECTED

The Complainant joined UNIDO in 1989 as an Associate Industrial Development Officer at the P-2 level. He was promoted to the P-3 level in April 1992 and to the P-4 level in January 1996. On 1 March 1999 he was, following his application thereto, assigned as

[20] Michel Gentot, President; James K. Hugessen, Vice-President and Mary G. Gaudron, Judge.

UNIDO Representative in Iran. By a memorandum of 4 October 1999, the Complainant requested to be promoted to the P-5 level, claiming that it was customary to increase the grade of staff rotating to the field, and that all UNIDO Representatives were assigned, as a minimum, at the P-5 level. By a letter dated 21 March 2000, the Complainant was informed that the conversion of his P-4 level to a P-5 level had been approved by the Director-General, with effect from 1 March 2000. On 16 April 2000, the Complainant requested by a memorandum to the Director-General that the conversion be made retroactive to the date of his assignment in Iran, 1 March 1999. Having received no reply to the memorandum, the Complainant submitted an appeal to the Joint Appeals Board on 13 July 2000, challenging the effective date of his promotion.

Independently of the appeals procedure, the Complainant was, by a decision of the Director-General of 4 July 2000, reassigned to Vienna with immediate effect. On 17 July he was asked to return to Vienna by 21 July 2000.

On 8 November 2004 the Joint Appeals Board issued a report recommending that the conversion of the Complainant's assignment to level P-5 take effect retroactively from 1 July 1999, consistent with the staff members assigned to the field around the same time. The Director-General rejected the Board's recommendation in a decision of 2 December 2004. In his decision, the Director-General indicated that he had asked the Human Resources Branch (HRM) to discuss the matter with the Complainant with a view to reaching a settlement. HRM did, on 15 December 2004, offer a settlement of US$ 3,000, corresponding to "the cost of implementing the recommendation of the [Joint Appeals Board] in monetary terms". Having received no answer from the Complainant, the Organization however withdrew its offer on 25 February 2005.

While noting that the Complainant had not requested a higher salary than level P-4 at the time of his promotion, the Tribunal stated that the issue was not whether he should have been promoted but rather when such promotion should have taken effect. The file did not reveal any uniform practice in this respect; on the contrary the cases identified by the Joint Appeals Board showed that several months often lapsed between appointment and promotion.

The post to which the Complainant was assigned was classified as P-5 as of 9 September 1999. However, apparently because the budget did not provide for funds for the post until January 2000, he was not in fact promoted until 1 March 2000. The Tribunal observed that the lack of budgetary provisions is not a reason which can be invoked by an international organization to deny a staff member a promotion to which he or she would otherwise be entitled, or to deny him or her the salary which is commensurate with the duties of the post occupied. The Tribunal hence ordered that the Organization backdate the Complainant's promotion to the date of the classification of his post to P-5, and pay him corresponding salaries and allowances from that date, together with interest.

With regard to the claim for moral damages and costs made by the Complainant, the Tribunal noted that the Organization had in fact, in December 2004, made an offer to settle the matter, which had been rejected by the Complainant. Noting that the offer made did not vary markedly from what he would have received under the present judgment, the Tribunal stated that it would make no award of moral damages or costs where a reasonable settlement offer had been rejected.

5. *Judgment No. 2549 (12 May 2006): Mrs. A.H.R.C.-J.* v. *International Labour Organization (ILO)*[21]

Recognition of the status of spouse to same-sex partner registered under national law—Entitlement to spousal dependency benefits—Secretary-General's Bulletin ST/SGB/2004/13—Personal status of staff members determined by reference to the law of their nationality—Interpretation of "spouse" under staff regulations—Differentiation between marriage and civil union—Principle of equal treatment of officials placed in comparable situations

The Complainant, a Dutch national, requested that the International Labour Organization recognize her same-sex partner as a "spouse" in the meaning of the Staff Regulations, as to allow her to receive dependency benefits for the period of her employment at the ILO Office ("the Office") in Pretoria, South Africa.

On taking up her functions on 3 January 2002, the applicant submitted a family status report and application for dependency benefits, designating her partner as her spouse, and attaching a copy of their Danish Certificate of Registered Partnership, dated 17 October 2001. However, the Office recorded her family status as "single" and denied her dependency benefits. The Complainant lodged an appeal with the Joint Panel, which undertook a thorough examination of relevant Danish law, and issued a recommendation supporting the Complainant's claim. Yet, the Director-General did not follow this recommendation and the appeal was rejected on 4 February 2005.

In the present case, the Tribunal had to consider whether the ILO Office, with due regard to applicable rules, could and should have regarded the Complainant's partner as her "spouse", especially in the absence of a clear definition of "spouse". While the rules that apply to United Nations staff members are not binding on the specialized agencies as ILO, the Tribunal recalled that the United Nations refers to the personal status of staff members as determined by reference to the law of their nationality, in order to ascertain whether a union is considered valid and qualifies them to receive entitlements provided for spouses. In this regard, it was noted that the bulletin issued by the United Nations Secretary-General on 20 January 2004,[22] stating that legally recognized domestic partnerships qualify to receive entitlements provided for family members, must be taken into account in the present case. The Tribunal recalled that this rule ensured respect for the social, religious and cultural diversity of Member States and their nationals, and was consistent with its own case law, which recognized certain *de facto* marriage situations such as "traditional" marriages, as stated in Judgement 1715.

However, the Tribunal also referred to its Judgement 2193, in which it emphasized the link between the word "spouse" and the institution of marriage, whatever form it may take, and thus rejected that "civil solidarity contract" ("PACS") partners being recognized as "spouses". It was further observed that, on the contrary, the United Nations Administrative Tribunals, in its Judgment No. 1183, had decided that PACS gave entitlement to spousal benefits.

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[21] Michel Gentot, President; James K. Hugessen, Vice-President; Seydou Ba; Mary G. Gaudron and Claude Rouiller, Judges.

[22] ST/SGB/2004/13 entitled "Personal status for purposes of United Nations entitlements".

No formal decision having been taken by the Governing Body of ILO on the interpretation of the term "spouse", the Tribunal had to decide whether the broad interpretation of the term "spouse" could include same-sex civil unions, as argued by the Complainant. The Tribunal noted that the Office had already agreed to interpret the term "spouse" in favour of same-sex marriages recognized as such by the individuals' national law despite several references to the terms "man" and "wife" in the Staff Regulations.

Thus, the Tribunal considered that it would be excessively formalistic to rely entirely on the name given to a form of union under domestic law, marriage or civil partnership, without looking at its legal significance. Such an interpretation would entail the risk of violating the principle of equal treatment of officials placed in comparable situations. Although some differences existed between marriage and registered partnership in applicable Danish law with regard to parental custody, insemination and adoption, the Tribunal recalled that it was clearly specified that "[t]he provisions of Danish law pertaining to marriage and spouses shall apply similarly to registered partnership and registered partners".

Therefore, the Tribunal concluded that the Director-General was wrong in refusing to recognize the status of "spouse" for the Complainant's partner. It also requested ILO to grant the Complainant the benefits that she had been denied during her employment, the cost of a private health insurance for her spouse, as well as any health expenses not covered by the health insurance. She was further granted CHF 10,000 in compensation for damages and the delay in providing assistance to obtain a visa for her partner.

6. *Judgment 2562 (12 July 2006): Mr. J.A.S.* v. *European Patent Organisation*[23]

Locus standi of the Chairman of the Central Staff Committee to preserve the common rights and interest of the staff—No *Locus standi* for employee who could not have been eligible for a position—Reorganization of the President's Office through reassignments of staff members—Differentiation between reassignments and creation of new posts and their respective procedure—Executive power of the President to assign staff members to different posts—No obligation to inform staff and open posts for competition outside formal vacancies—No obligation to consult the General Advisory Committee for such reorganization of office

The Complainant turned to the Tribunal both in his personal capacity as an employee at the European Patent Organization (EPO) in The Hague, and on behalf of the Central Staff Committee, in his capacity as Chairman. On 1 July 2004, the new President of EPO reorganized the unit known as the President's Office. The Complainant argued that EPO had failed to comply with its Service Regulations as the staff had not been informed of the vacancies created by the reorganization, that the posts had not been open to competition, and that staff representation had not been present on selection and promotion boards. In his individual capacity, the Complainant requested that the appointment of Mr. F. and Mr. M., as well as of subordinates be cancelled, and proper procedure be applied in the selection process for the posts. In addition, in his capacity as Chair of the Staff Committee, he requested that the General Advisory Committee (GAC) be consulted "if the establishment of the President's Office is still desired" and that the "defamatory statement" suggesting

[23] Michel Gentot, President; James K. Hugessen, Vice-President; and Mary G. Gaudron, Judge.

that the Staff Representation was working against the interests of the Office, made by Mr. M. in a President's letter of 5 August 2004, be withdrawn.

Mr. M, who held a post at grade A6 had been assigned to temporarily act as the new Head of the President's Office during the reorganization, while Mr. F., a Principle Director also at grade A6, was assigned to temporarily replace Mr. M. Both. Mr. M. and Mr. F. were to retain their respective budget posts until a new budget, drawn up by the President's predecessor, was approved and took effect on 1 January 2005. In the new budget, provisions were made for a new post at level A6.

EPO claimed that the Complaint was irreceivable as the Complainant had not exhausted internal means of redress, but the Tribunal considered that if the Complainant's appeal had not yet been considered by the Appeals Committee at the time the complaint was filed with the Tribunal, it was due to the failure of EPO to comply with its own Service Regulations. As more than two months had passed since the Complainant had filed his appeal, he was right in assuming, under article 109 (2), that his appeal had been rejected. However, the Tribunal further concluded that the Complainant lacked *locus standi* in his private capacity, since, being an employee at grade A3, he could not have been considered for an A6 position, and therefore had not suffered any prejudice. Yet, the Tribunal found that the Complainant had *locus standi* on behalf of the Central Staff Committee. As the Committee itself cannot file suits, individual members of the Committee must be allowed to do so, in order to preserve the common rights and interest of the staff.

On the merits, the Tribunal concluded that the changes occurred in the President's Office did not amount to the creation of a new structure or new posts. It was therefore unnecessary to consult GAC, which, according to article 38(3) of the Service Regulations, is only required for proposals to amend the Service Regulations, the Pension Scheme Regulations, and other proposals to implement rules, or which affect the whole staff. Nothing indicated that the use of staff "on loan" was to become a regular practice, and the changes made by the President could not be considered a "policy". The Tribunal reiterated that the head of an international organization has the "executive authority to assign staff to different posts" and "is empowered to change the duties assigned to his subordinates". As no vacancy was created, but rather some staff reassigned, there was no need to inform the staff or hold a competition for the posts in question. The Tribunal consequently dismissed the complaints.

C. Decisions of the World Bank Administrative Tribunal[24]

1. *Decision No. 348 (26 May 2006), Paula Donnelly-Roark* v. *International Bank for Reconstruction and Development*[25]

Extension of employment beyond mandatory retirement age—Staff rule 7.01 (ending employment), paragraph 4.03 (a)—Interpretation of the sentence "in the interest of the Bank Group"—Doctrine of legitimate expectations in relation to the expiry of a fixed-term contract

The Applicant retired from the Bank on 1 January 2004 upon reaching the mandatory retirement age of 62. Before her retirement, the Applicant requested an extension of her employment for a further 20 months, in order to have ten years of service, which would have qualified her for an annual pension instead of a lump sum payment. Staff Rule 7.01 (Ending Employment), paragraph 4.03 (a), provides that employment may be extended in the interests of the Bank Group, but the Bank declined her request on 12 January 2004.

The Applicant challenged the decision of the Bank to deny her request for an extension of her employment on the grounds that the Bank applied the phrase "in the interests of the Bank Group" in a narrow and arbitrary manner, that the denial of extension was unfair, and the impugned decision was tainted by improper motivation.

The Tribunal observed that the purpose of Staff Rule 7.01 (Ending Employment), paragraph 4.03 (a), was to provide explicitly for the circumstances in which a staff member may secure extension of employment upon reaching the age of retirement. The Applicant submitted that this Rule should be interpreted to mean that in taking the extension decision, the Bank must consider both the interests of the Bank as an institution and the interests of its staff members. The Bank, however, pointed out that it complied with the Human Resources guidelines in this regard (the 1999 Stern memorandum), which states that the "interests of the Bank Group" must be distinguished from and elevated above the interests of an applicant.

The Tribunal found that the interpretation by the Bank of the said Staff Rule was reasonable and having been consistently applied, it was not necessary that the Rule itself be formally amended to incorporate the guidelines. The Tribunal considered that the interpretation of the Applicant of the phrase "in the interests of the Bank Group" ran counter to the purpose of the Rule.

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[24] The World Bank Administrative Tribunal is competent to hear and pass judgement upon any applications alleging non-observance of the contract of employment or terms of appointment, including all pertinent regulations and rules in force at the time of the alleged non-observance, of members of the staff of the International Bank for Reconstruction and Development, the International Development Association and the International Finance Corporation (referred to collectively in the statute of the Tribunal as "the Bank Group"). The Tribunal is open to any current or former member of the staff of the Bank Group, any person who is entitled to a claim upon a right of a member of the staff as a personal representative or by reasons of the staff member's death and any person designed or otherwise entitled to receive 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.

[25] Jan Paulsson, President; Robert A. Gorman, Francisco Orrego Vicuña, Sarah Christie and Florentino P. Feliciano, Judges.

Further, the Tribunal stated that the Applicant's submission that the Bank violated the Staff Rules when it declined to grant her an extension in spite of her talents was not persuasive. The Applicant's managers exercised lawful authority to reorganize the unit and to redefine the scope of the duties of its staff. In matters involving assessment of technical competence of staff or evaluation of staff performance, the Tribunal recalled that it would not substitute its judgment for the discretionary decisions of management. (Oraro, Decision No. 341 [2005], paras. 39, 59.)

In any event, the Applicant's submission that her satisfactory past performance should guarantee extension beyond retirement contradicted the clear language of the Staff Rule. It followed that good performance was a necessary but not sufficient condition for extension.

The Applicant also contended that she was in any event entitled to rely on the doctrine of legitimate expectations recognized in administrative law. In the past, the Tribunal had occasion to consider legitimate expectations as an aspect of fairness. In relation to the expiration of a Fixed-Term contract, the Tribunal has held that such a contract cannot be extended by operation of the doctrine of legitimate expectation unless "circumstances are shown which reasonably warrant the inference by a staff member that the Bank in fact made a promise to extend or renew his or her appointment 'either expressly or by unmistakable implication.'" (Rittner, Decision No. 339 [2005], paras. 30–33.), which had not been proven to be the case for the Applicant.

The Tribunal concluded, in light of Staff Rule 7.01, paragraph 4.03 (a), that the Bank's decision not to extend the Applicant's appointment beyond her mandatory retirement was a proper and valid exercise of the Bank's discretionary authority. No convincing evidence was tendered to support the allegations of abuse of discretion, arbitrariness, violation of procedural requirements and improper motivation.

The Tribunal hereby dismissed the application.

2. *Decision No. 349 (26 May 2006): J.* v. *International Finance Corporation*[26]

Claims for compensation of alleged work-related illness—Differentiation between a claim for payment of treatments of the alleged illness and a claim for compensation of lost wages and benefits due to this illness—Statute of limitation viewed as protecting the stability of the Bank Group's legal relationship with the staff members—Estoppel—Procedures for handling of claims followed by the Claims Administrator should be diligent and transparent—The outsourcing of the Administration of certain programs does not relieve the Bank Group from responsibility and liability in case of improper administration of the program

The Applicant challenged two decisions of the Claims Administrator dated 20 August 2001 and 26 September 2003, regarding an alleged illness suffered by the Applicant during her employment assignment in Africa between 18 June and 18 August 1988, and a related Workers' Compensation Administrative Review Panel (Review Panel) decision dated 12 May 2005 (the hyperpigmentation claim).

[26] Jan Paulsson, President; Robert A. Gorman, Francisco Orrego Vicuña, Sarah Christie and Florentino P. Feliciano, Judges.

The Applicant also raised a claim for a separate illness (the dysentery claim) that she had be diagnosed with, upon her return to the United States, after the end of her employment with the International Finance Corporation (IFC). She sought benefits from the Claims Administrator on the basis that her illness was caught while on work-related travel. The claim was held to be compensable and the Applicant received payments for treatment and temporary disability. An additional claim, filed in 1994, for alleged recurring dysentery symptoms and related temporary disability was also accepted and therefore viewed as settled by the Tribunal.

In 1994, the Applicant filed a claim concerning her skin condition, with the Bank Group's Claims Administrator, who accepted to absorb the costs of her treatments until 15 August 2001. After a second review of the Applicant's condition in 2001 concluded that her illness responded to treatment over time, the Claims Administrator decided to deny the Applicant's claim for ongoing medical treatment and other benefits, decision which the Tribunal viewed as reasonably sustained in accordance with the relevant rules.

At this point the Tribunal had to draw an important distinction between the claim for treatment and that for other benefits, such as lost wages. The Applicant's claim in 1994 concerned only the treatment of her skin condition and it was this precise benefit that the Bank Group compensated until 2001. That claim did not involve the issue of lost wages or other benefits that the Applicant had not raised before 2001, and was accordingly time-barred. Such claim could not be raised nine years later without seriously altering the stability of the Bank Group's legal relationship with the staff members, particularly in a situation where the claimed illness has faded away.

The question remained as to whether the decision to reimburse medical treatment until 2001 implied recognition on the part of the Bank Group that the claim arose out of, and in the course of employment. Except for the alleged confusion with the claim for dysentery, there did not appear to be any other connection with employment in that, as concluded above, the cause of the illness has not been convincingly related to the Applicant's IFC assignment. But even if this connection had been established, it would have no consequences for this claim. This was so, first, because the medical treatment was indeed covered and hence there could be no detriment to the Applicant in this respect, and second, because the statute of limitations applied in any event and its operation would not be altered by a late claim. The estoppel argument raised by the Applicant in this regard was accordingly rejected by the Tribunal.

The Tribunal also found that the claim for vocational rehabilitation was time-barred for the same reasons as the claim for lost wages. Even if this were not so, the claim did not meet any of the requirements laid down under Staff Rule 6.11, para. 6.01 as there was no evidence that the Applicant was unable to resume her previous job. The Tribunal agreed with the conclusion of the Review Panel that a claimant could not unilaterally undertake a course of vocational rehabilitation and later claim for the expenses.

The Tribunal found that while reasonableness and lawfulness in this case were beyond doubt, the procedures followed by the Claims Administrator were not. The Tribunal was troubled by a variety of procedural anomalies as the confusion of the Claims Administrator with respect to two separate claims made by the Applicant. Moreover, the confused discussions between the Claims Administrator and the Applicant about lost wages, that

apparently took place in 2001, fell short of diligence and transparency in the handling of claims.

The Tribunal was also concerned about the procedure followed by the Claims Administrator in connection with the role of independent medical examiners, as one could not see the Applicant personally, and another made references in his report that went beyond his medical functions and speculated as to the motives of the Applicant in an inappropriate and disrespectful manner. All this raised a question about the strict observance of appropriate procedures by the Claims Administrator. The Tribunal observed that the fact that the Bank Group outsourced the administration of certain of its programs did not relieve it from responsibility and liability if a program was improperly administered.

The Tribunal stated that the Applicant's claims on the merits were properly rejected by the Review Panel. However, it was evident that the mishandling of the claims by the Claims Administrator had caused unnecessary difficulties, uncertainties, and anxiety for the Applicant. The Tribunal accordingly concluded that the Applicant should be compensated and be paid US$ 15,000 net of taxes while all other claims were dismissed.

3. *Decision No. 350 (26 May 2006): Yaw Kwakwa (No. 2)* v. *International Finance Corporation (IFC)*[27]

Request to reopen a case—*Res judicata* rule viewed as general principle with very limited exceptions—Reopening of a case requires a new fact able to shake the very foundations of the tribunal's persuasion— "New fact" must have existed at the time of the judgement, albeit unknown by the Tribunal—Anonymity can only be granted at the outset of the proceedings

The Applicant requested that his case be reopened on the basis of new evidence. His claim originated in *Kwakwa,* Decision No. 300 [2003], in which the Applicant contested the termination of his employment at the International Finance Corporation (IFC) in 2001 due to misconduct. In 1994 the Applicant, in breach of Staff Rules, received US$ 50,000 from a businessman, Mr. Kassardijan, whose loan applications were at the time being processed by the Applicant in his capacity as staff of IFC. Despite the Applicant's argument that the transaction was part of a currency exchange, and that his intention had been to return the equivalent sum immediately to Mr. Kassardijan, the claim was denied by the Tribunal as it had been proven that the said transactions had taken place, as it has been admitted by the Applicant himself.

The Tribunal stated that the *res judicata* rule contained in Article XI of its Statute was a general principle to which very limited exceptions could be made, in accordance with Article XIII of its Statute. The Tribunal emphasized that a vigorous screening should be made to justify a disruption of this principle, and a "new fact" must "shake the very foundations of the tribunal's persuasion". Further, it was indicated that the "new fact" must have existed at the time of the judgement, albeit unknown by the Tribunal. Examples of such "new facts" could be that evidence relied upon by the Tribunal in its judgements turned out to be falsified, or that evidence could only be discovered at a later point, using new technology. The Tribunal also observed that another point to consider was wether the

[27] Jan Paulsson, President; Robert A. Gorman and Francisco Orrego Vicuña, Judges.

failure to present the evidence prior to the judgement was attributable to lack of diligence on behalf of the discovering party.

With regard to the alleged new evidence provided by the Applicant in the present case, the Tribunal unhesitatingly concluded that it contained no new facts relating in any material way to the prior judgement and the findings on which it was based. Documents from court proceedings in Ghana between IFC and Mr. Kassardijan allegedly showing "the lengths to which Mr. Kassardijan will go in his efforts to escape liability" were irrelevant, as the Tribunal had in no way relied on Mr. Kassardijan's trustworthiness in its judgement. Similarly, the Tribunal found irrelevant documents allegedly proving attempts made by the Applicant to repay the amount of US $50,000 to Mr. Kassardijan in 1996. A newspaper article invoked by the Applicant to show that the investigator had been biased and that a false testimony had been solicited against him was not found to support any of these allegations. Finally, documents had been provided, which allegedly showed that the Applicant had not praised the project for which the loans from IFC were provided, and that the memorandum he had signed with regard to the loans were in fact not written by him. The Tribunal noted that these same arguments had been set forth in the first proceedings, and that these facts could therefore not possibly justify a reopening of the case.

As an alternative plea, presented in a reply to the proceedings, the Applicant requested that the first judgement be annulled. The Tribunal strongly rejected this request, and pointed out that *res judicata* applied to the first judgement which, if anything, had been reinforced by the refusal by the Tribunal to reopen the case. Furthermore, the Applicant requested anonymity as to protect his reputation. The Tribunal noted that in accordance with Tribunal Rule 28, anonymity could only be requested at the outset of the proceedings, and was therefore refused.

In conclusion, the Tribunal stated that the Applicant had failed to understand that the complaint against him was proven by his own admissions. The Tribunal consequently dismissed the application.

4. *Decision No. 352 (28 September 2006): K.* v. *International Bank for Reconstruction and Development*[28]

Disciplinary measures for misconduct relating to unjustified travel expense claims—Applicant's "gross negligence" entailed a knowledge that conduct violated a duty to obey established standards even without culpable intent––Duty to initiate a formal investigation once a pattern of possible irregularities has been revealed—Alleged mitigating factors revealed a pattern of the Applicant to see oneself above the rules—Senior staff member should stand as an example—Denial of the possibility to rationalize *post facto* disregard for rules—The evaluation of a claim of disproportionality between sanctions and economic consequences suffered by the Bank should not be viewed as only a matter of sums—Admission into the record of written declarations of a Bank's travel specialist not directly involved in the case

The Applicant, employed at the International Bank for Development and Reconstruction (the Bank), requested the Tribunal to review disciplinary measures taken against him

[28] Jan Paulsson, President; Robert A. Gorman and Francisco Orrego Vicuña, Judges.

on the basis of alleged gross negligence in his travel expense claims during the period January 2000 to November 2002.

In November 2002, the Applicant's manager reviewed his Statements of Expenses (SOEs) and noticed that many of his trips involved stopovers in Montreal, where his family was residing. This was not a problem per se, but these stops had been marked as "operational" rather than "personal", leading to reimbursements for in-and-out transportation and per diem compensation to which he was not entitled. The Applicant's manager raised these concerns with the Administrative Officer for the Africa Region, who asked the Accounting Department's Travel Audit Team to undertake an audit of the Applicant's travel expenses. She also raised her concerns with the Applicant, and advised him to correctly label all his future trips. In December 2002 the Audit Team concluded its audit, and the matter was referred to the Department of Institutional Integrity (INT). INT commenced a formal investigation and issued its final report in June 2004, concluding that there was sufficient evidence to show that the Applicant was engaged in a clear and consistent pattern of misrepresentation regarding his trips to Montreal, that he had received US$ 4,239.38 to which he was not entitled, that he had made no efforts to correct the errors after being made aware of them, and that costs of additional airfares should have been borne by the Applicant. INT further investigated allegedly unjustified claims relating to trips to New York.

The final report was submitted to the Vice-President of Human Resources, Ms. Sierra, who imposed disciplinary measures. The Applicant was given a written reprimand, to be included in his Staff File for three years, downgraded by one level, declared ineligible for promotion until 1 August 2007, and his Salary Review Increase (SRI) was withheld for the period in which the misconduct took place. On 18 October 2004, the Applicant brought a challenge before the Appeals Committee, which concluded on 15 August 2005 that Ms. Sierra had not abused her discretion in finding that the Applicant had engaged in misconduct or in imposing the disciplinary measures. The Appeals Committee recommended that the Applicant's claims be dismissed, and the Managing Director of the Bank accepted its recommendation. On 20 December 2005, the Applicant petitioned to the Tribunal, claiming that Ms. Sierra's decisions were arbitrary.

With regard to the Applicant's claim that the circumstances did not warrant a formal investigation, as he had been willing to repay the incorrect sums and that there was no evidence of intent, the Tribunal agreed with the Bank that *prima facie* evidence of "intentional" misconduct was not a prerequisite to initiate a formal investigation. In fact, the apparent expense irregularities could not responsibly have been ignored by INT once the matter was referred to it.

The Tribunal further considered the Applicant's claim that the investigation had been flawed, and noted that the process had been legally sufficient and that the applicant had not raised any issues related to due process. Nevertheless, it observed that his "failure to correct" his previous errors, should not have been held against the Applicant, as it was not obvious that he should have done so while these matters were under review. Then, the Tribunal turned to the claim regarding the allegedly prejudicial statements made by INT concerning the Applicant's trips to New York despite the fact that no misconduct was found regarding these trips., The Tribunal remarked that the Applicant had failed to give an account of the purpose of his trips to New York, and of whom he had met there: INT had given an objective account of its findings, and its conclusion that his actions were not

inappropriate suggested a willingness to give him the benefit of the doubt, rather than revealing a bias against him. The Tribunal also dismissed the Applicant's argument that a finding of "gross negligence" by INT was unsustainable as no culpable intent had been proven. The Tribunal observed that "gross negligence" entailed knowledge that certain conduct violated a duty to obey established standards; this was not however the same as an intention to defraud the bank.

The Tribunal further dismissed claims by the Applicant that, as the Bank had failed to train and supervise him in using the new reporting system (SAP) after 2000, the Bank was guilty of contributory neglect. The Applicant had claimed that the system by default labeled trips as operational, that other employees had encountered similar problems, and that these elements should at least be viewed as mitigating factors to be taken into account under the question of proportionality of the disciplinary measures.

The Tribunal found that the Applicant's alleged mitigating factors as the fact that his work for the Bank was outstanding, included much traveling and high-risk operations, that he was not aware of the default setting of the SAP, and that his Montreal stopovers did not result in overall costs to the Bank as he had not claimed home leave for eight years, were, on the contrary, aggravating. The Tribunal stressed that those arguments suggested that the Applicant considered himself exempt from applicable rules, when as a senior staff member and a "distinguished engineer" he should have stood as an example. The Bank would be ungovernable if staff members could construct *post facto* rationalizations for their disregard of the rules.

Finally, the Tribunal itself noted that this case gave rise to a procedural episode which deserved mention, namely the Bank's proffer of written declarations by a Travel Specialist in the Bank's General Services Department, who had no role in the Applicant's SOEs or in the investigation. These declarations were admitted into the record, and the Applicant availed himself of the opportunity to comment on them. Yet they have had no effect on this judgment. The Bank submitted them since their thrust was that a review of microfiche printouts contradicted the Applicant's contention that the misrecording of the purpose of his Montreal stopovers was accidental. The Applicant disagreed. The Tribunal recalled that it did not take a position in this regard, having concluded that the implausibility of the innocent-error thesis was more than adequately established as of the date of the disciplinary measures.

The Tribunal remained unconvinced of the explanations given by the Applicant, and while the sanctions might seem harsh in relation to the economic consequences for the Bank, stressed that the evaluation of a claim of disproportionality was not only a matter of sums.

Consequently, all the Applicant's claims were dismissed.

D. Decisions of the Administrative Tribunal of the International Monetary Fund[29]

Judgment No. 2006–6 (29 November 2006): Ms. "M" and Dr. "M" v. *International Monetary Fund (IMF)*[30]

Challenge of the fund's denial of requests to give effect to child support orders issued by a national court—Possibility to deduct support payments from pension payments made to the retired staff member—Tribunal's jurisdiction *ratione personae* over non-staff members asserting rights under the Fund's benefit plans—Statute of limitations of the Tribunal overcome by the exceptional circumstances of the case, as non-staff members could not be assumed to have known recourse procedures of the Fund—Authorization of child support payments arising outside marital relationship–No requirement that a support order include an express reference to the Staff Retirement Plan of the Fund in order to authorize such payment from this Plan—Prospective-payment rule recognized when the order expressly specifies that past support obligations be drawn from future pension payments—Question of the existence of a *bona fide* dispute on the validity and meaning of the court orders

Applicants Ms. "M" and Dr. "M" contested decisions of the International Monetary Fund (IMF/the Fund) denying requests to give effect under section 11.3 of the Staff Retirement Plan (SRP) to a series of child support orders issued by German courts by deducting the support payments for Ms. "M" from the SRP pension payments of Mr. "N", a retired participant in SRP.

Neither Ms. "M" nor her mother, Dr. "M", were staff members of IMF. The Tribunal's jurisdiction *ratione personae* over Applicants was not disputed, as the Tribunal has held that its jurisdiction pursuant to article II, section 1 (b) of its Statute extends to non-staff members asserting rights under IMF benefit plans. Mr. "N" was invited to participate as an Intervenor in the proceedings of the Tribunal, but he declined to do so.

Applicants had made three requests to the Administration Committee of the Staff Retirement Plan of IMF, in 1999, 2002 and 2003. On each occasion, their requests were denied. The request of 1999 was denied on the ground that the court orders did not "aris[e] from a marital relationship," as required by the terms of SRP section 11.3 in effect at the time, as Dr. "M" and Mr. "N" had never been married to one another. Thereafter, in December 2001, the pension Plan was amended to authorize payments of a portion of a IMF retiree's pension for child support " . . . pursuant to a legal obligation arising from a marital relationship or pursuant to a legal obligation to make child support payments", thereby abolishing the "marital relationship" requirement.

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[29] 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 http://www.imf.org/ external/imfat.

[30] Stephen M. Schwebel, President; Nisuke Ando and Michel Gentot, Associate Judges.

In January 2002, Applicants again filed a request with the SRP Administration Committee. That request was denied on the grounds that (a) as Ms. "M" had reached age eighteen by the time of the 2002 request and the applicable court order was for pre-majority support, the order was for "past due amounts" rather than "prospective" payments; and (b) the support order was not one which by its terms ordered payment from pension benefits. In 2003, Applicants initiated a third request under SRP, referencing their earlier requests and enclosing a new court order, which related to post-majority support for Ms. "M" as a dependent student. Applicants' third request was denied on the basis that the finality and binding nature of the order had not been established and it did not require Mr. "N" to direct that support payments be made from his pension benefits; in the view of the SRP Administration Committee, a *bona fide* dispute existed regarding the efficacy, finality and meaning of the order and therefore, pursuant to the rules of the Administration Committee under SRP section 11.3, it could not be given effect.

The Tribunal first addressed the question of the admissibility of the Applicants' challenges to the 1999 and 2002 decisions of the Fund, in light of the statute of limitations of the Tribunal. It concluded that Applicants had established "exceptional circumstances" overcoming the time bar of article VI of the statute. The Tribunal rejected the view that Applicants had made a knowing relinquishment of their right to judicial review of their claims by lobbying successfully for a legislative remedy to the "marital relationship" requirement. While emphasizing the importance of adherence to time limits, the Tribunal, in the circumstances of the case, held that Applicants as non-staff members could not be assumed to have known the recourse procedures of the International Monetary Fund and that their conduct did not demonstrate casual disregard of legal requirements.

Further, the Tribunal considered whether the "marital relationship" requirement of SRP section 11.3, later revised, was dispositive of Applicants' requests to give effect to court-ordered support for Ms. "M" relating to the time period pre-dating the revision of the Staff Retirement Plan. The Tribunal noted that the question was not one of retroactive application of the revised SRP provision but rather of the validity of the prior SRP provision, in light of Applicants' contention that it represented impermissible discrimination against children born out of wedlock. Respondent, for its part, maintained that the "marital relationship" requirement of section 11.3, which obtained until its 2001 amendment, was a reasonable exercise of the discretion of the IMF Executive Board in defining the conditions under which the Staff Retirement Plan would give effect to support orders.

The Tribunal, however, concluded that " . . . the disparate—and discriminatory—effect with respect to children born out of wedlock followed directly from the intended classification by marital status and by treating child support awards as incidental to a dissolution of marriage and payment of spousal support." (para. 130.) The Tribunal observed that a court-ordered entitlement to child support essentially rests with the child: "The governing consideration is that the child is innocent of the marital—or non-marital—relationship of his or her parents and, as an innocent human being, is entitled to the human right of being free from impermissible discrimination." (*Idem*). Citing universally accepted principles of human rights, including the Universal Declaration of Human Rights of 1948, the Tribunal concluded that " . . . the Fund's apparent failure to provide consideration to the effect of this classification on children born out of wedlock is not compatible with contemporary standards of human rights . . . ," and therefore should not debar Applicants'

support requests for the period during which the "marital relationship" requirement had governed. (paras. 132–133.)

The Tribunal turned next to the question, central to the controversy in the case, of whether the Fund had erred in requiring that a court order, to be given effect pursuant to SRP section 11.3, must specify that support be paid from the retiree's IMF pension benefits (or direct the retiree to submit a direction to the Administration Committee to that effect). The Tribunal observed that none of the court orders that Applicants had sought to have given effect under the Staff Retirement Plan of the Fund referred to Mr. "N"'s IMF pension benefits.

While IMF maintained that the SRP provision was drafted with the intent of creating a voluntary exception to the anti-alienation rule of the IMF Staff Retirement Plan that would be "akin" to the "Qualified Domestic Relations Order" exception found in United States law applicable to private employer pension plans, the Tribunal concluded that such an interpretation " . . . raise[d] an issue of treatment of IMF staff and their dependents in diverse legal systems. The rights of the child born out of wedlock who is raised in a foreign jurisdiction should not turn on the particularities of the law of the District of Columbia, Maryland or Virginia. IMF is a universal organization that in its operation must give due weight to legal principles and procedures of a variety of jurisdictions." (para. 155.) Accordingly, the Tribunal concluded, " . . . while the immediate purpose of the adoption of section 11.3 may have been to remove a particular impediment to the enforceability of family support orders arising from courts in the United States, the larger purpose of the amendment was just as clearly to give effect to a more general policy, under what the Tribunal has termed the 'public policy of its forum,' i.e. ' . . . to encourage enforcement of orders for family support and division of marital property'" (para. 143), citing its earlier Judgment in *Mr. "P" (No. 2)*.[31]

The Tribunal additionally noted that the text of section 11.3 does not clearly state any requirement that a support order include an express reference to the Staff Retirement Plan of IMF. Accordingly, the Tribunal declined to read such a requirement into the Plan provision. Rather, concluded the Tribunal: "What is important is that an alternate payee submit a valid court order entitling the applicant to support arising out of a marital or parental relationship. The precise terms in which the obligation for support is cast are not dispositive." (para. 156.)

The Tribunal next turned to the difficult question of the meaning to be ascribed, in the circumstances of the case, to the "prospective payments" rule of the SRP Administration Committee. IMF had contended that the rule barred payment from Mr. "N"'s prospective pension payments of past due support obligations. The Tribunal noted that, during the pendency of Ms. "M" and Dr. "M"'s Application in the Administrative Tribunal, Applicants had obtained an order from the District of Columbia Superior Court, which created an entitlement to monies previously owed by Mr. "N" for support of Ms. "M" prior to her reaching the age of eighteen and had ordered that his pension be garnished "prospectively," in the sense that the monies be taken from future pension payments, at the maximum rate permitted by section 11.3 of 16 2/3 percent. The Tribunal concluded that " . . . a court order, such as the 2006 Order against Mr. "N", that expressly specifies that

[31] *Mr. "P" (No. 2)* v. *International Monetary Fund,* International Monetary Fund Administrative Tribunal Judgment No. 2001–2 (November 20, 2001), paras. 151, 156.

support payments be made from future pension payments—even if the liability for that support was incurred at some period in the past—is consistent with the requirements of section 11.3." (para. 171.) At the same time, the Tribunal drew a distinction between the application of the "prospective payments" rule in the case of an order (such as the 2006 District of Columbia Order) that expressly specifies that past support obligations be drawn from future pension payments and an order (such as the German orders referred to earlier) that require only that the parent pay support to the dependent child. As to the latter type of order, the Tribunal concluded, the "prospective payments" rule would preclude support payments for any period pre-dating the filing by Applicants of the applicable request to the SRP Administration Committee.

Finally, the Tribunal turned to the question of whether, pursuant to the rules under section 11.3, Applicants' several requests should have been denied, as IMF contended, on the ground that a *bona fide* dispute existed as to the efficacy, finality or meaning of the court orders that Applicants sought to have given effect. Examining each of the orders in question and the respective arguments of the Applicants and Mr. "N", who had set out his views in the earlier proceedings of the SRP Administration Committee, the Tribunal determined that the dispute that existed between the parties as to the validity of the court orders, including as to the paternity of Mr. "N" and his assertion that the law of his domicile governed any support obligation, was not *bona fide.* Accordingly, the Tribunal concluded that the support orders were to be given effect pursuant to the terms of section 11.3 of the Staff Retirement Plan.

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*) Note on the legal status of the United Nations in the United States of America

Privileges and immunities of the United Nations in the United States of America—Convention on the privileges and immunities of the United Nations, 1946[*]—Articles 104 and 105 of the Charter of the United Nations—Necessity of privileges and immunities for the exercise by the organization of its functions and the fulfilment of its purposes—Legal capacities arising from the legal personality of the United Nations—Privileges and immunities of United Nations officials, headquarters, property, assets and archives—United Nations' duty to cooperate with federal authorities for the administration of justice

7 February 2006

1. The United Nations is an intergovernmental organization established pursuant to the Charter of the United Nations in 1945. Its legal status in the host country is governed by the relevant provisions of the Charter of the United Nations, the 1946 Convention on the Privileges and Immunities of the United Nations, the 1947 Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations[**] and the 1961 Vienna Convention on Diplomatic Relations.[***] Without prejudice to the above treaties, the federal, state and local laws and regulations of the United States are applicable within the Headquarters district.

2. The main focus of this Note is on the privileges and immunities of the United Nations to the extent of their relevancy to the relationship between the Organization and the host country.

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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. 11, p. 11.

[***] United Nations, *Treaty Series,* vol. 500, p. 95.

Principle of functional necessity of United Nations privileges and immunities

3. The Charter of the United Nations does not specify the exact scope and extent of the legal capacities and privileges and immunities of the Organization. In this regard, it only sets out the major principles that are premised on a functional necessity approach. Thus, according to Articles 104 and 105 of the Charter, the Organization enjoys in the territory of each of its Members such legal capacity, and such privileges and immunities as may be necessary for the exercise of its functions and for the fulfilment of its purposes. These principles have been developed in the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly in 1946 (hereinafter "the General Convention"). They have also been reflected in the 1947 Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (hereinafter "the Headquarters Agreement").

Legal capacities and immunity from legal process

4. As an entity, the United Nations possesses juridical personality and has the capacity (a) to enter into legally binding agreements and contracts, (b) to acquire and dispose of movable and immovable property, and (c) to institute legal proceedings (Section 1). Furthermore, the General Convention established that the United Nations, its property and assets, wherever located and by whomsoever held, enjoy immunity from every form of legal process. This immunity, however, can be waived by the Secretary-General in any particular case if it is in the interest of the Organization. The General Convention then established that no waiver of immunity can be extended to any measure of execution (Section 2).

Inviolability of the Headquarters district

5. Under Section 3 the General Convention and Section 9 (a) of the Headquarters Agreement the premises and the Headquarters district of the United Nations are inviolable. Federal, state or local officers or officials of the United States, whether administrative, judicial, military or police, can enter the Headquarters district to perform any official duties only with the express consent of and under conditions agreed to by the Secretary-General. The service of legal process, including the seizure of private property, may also take place only with the consent of the Secretary-General.

Applicability of United States law in the Headquarters district

6. Section 7 of the Headquarters Agreement specifies that the Headquarters district is under the control and authority of the United Nations. However, as noted in paragraph 1 above, except as otherwise provided in the Headquarters Agreement and the General Convention, the federal, state and local law applies in the Headquarters district.

Immunity from search and confiscation of United Nations property and assets

7. The property and assets of the Organization, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action (Section 3 of the General Convention).

Inviolability of archives and documents

8. The General Convention also established that the archives of the Organization and in general all its documents are also inviolable, wherever located. This provision should be understood to mean that without the express consent of the Secretary-General, documents belonging to the Organization or held by it, cannot be taken or somehow expropriated by any outside authority (Section 4).

The independence of United Nations officials as a fundamental principle

9. The independence of United Nations Officials is enshrined in the Charter of the United Nations. Pursuant to Article 100 (1) of the Charter, the Secretary-General and the staff of the United Nations, in the performance of their official duties, "shall not seek or receive instructions from any Government or from any other authority external to the Organization". They have, furthermore, "to refrain from any action which might reflect on their position as international officials responsible only to the Organization." Corresponding obligations for Member States are defined in paragraph 2 of this Article. Namely, each Member of the United Nations also undertakes to respect the exclusively international character of the functions and responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities and functions.

Functional privileges and immunities of United Nations officials

10. In order to assure to United Nations Officials an independent status, Article 105, paragraph 2, of the Charter provides that they shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization. These privileges and immunities are detailed in the General Convention. In particular, United Nations Officials enjoy immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. In accordance with the established jurisprudence, it is the Secretary-General's prerogative to establish what constitutes "official capacity."

11. Furthermore, Officials of the Organization are exempt from taxation on their salaries and emoluments. They are also immune from national service obligations and from immigration restrictions and alien registration. They have the right to import free of duty their furniture and effects at the time of first taking up their post in the host country.

12. It should be noted that when becoming Parties to the General Convention, several Member States made certain reservations. For example, the United States made reservations to Section 18 (b) and (c) providing for immunity from taxation and national service obligations, respectively.

Diplomatic status of the Secretary-General, Deputy Secretary-General, Under-Secretaries-General (USGs) and Assistant-Secretaries-General (ASGs)

13. In addition to the functional immunities enjoyed by the staff at large, the Secretary-General, Deputy Secretary-General, USGs and ASGs are accorded in respect of themselves, their spouses and minor children, the diplomatic privileges and immunities, exemptions and facilities. The latter are codified in the 1961 Vienna Convention on Diplomatic Relations. In particular, they are entitled to enjoy immunity from criminal, civil

and administrative jurisdiction of the host country, although that immunity is subject to a number of exceptions. They cannot be obliged to give evidence as a witness and shall not be subject to any form of arrest and detention. With several exceptions, they are also exempt from all dues and taxes whether personal or real, national, regional, or municipal.

Waiver of immunity of United Nations officials

14. Under the General Convention, privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. Accordingly, the Secretary-General has the right and the duty to waive the immunity of any official in any case when the immunity impedes the course of justice. This right and duty is qualified by the provision stipulating that immunity can be waived when it is without prejudice to the interests of the Organization.

Waiver of Immunity of the Secretary-General

15. The right to waive immunity of the Secretary-General is vested in the Security Council.

Duty to cooperate

16. The Organization has the duty to cooperate at all times with the appropriate authorities to facilitate the administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges immunities and facilities accorded to its officials (Section 21 of the General Convention).

Appropriate American authorities: Ultimate responsibility of the Federal Government

17. For the purposes of the Headquarters Agreement, the expression "appropriate American authorities" is defined as "such federal, state, or local authorities in the United States as may be appropriate in the context and in accordance with the laws and customs of the United States, including the laws and customs of the state and local government involved" (Section 1 (b)). However, the Headquarters Agreement unequivocally established that the Government of the United States has the ultimate responsibility for the fulfilment of the obligations under the Agreement by the appropriate American authorities.

Communications and contacts with the host country authorities

18. In 1996, following the request from the United States Mission to the United Nations, the Under-Secretary-General for Administration and Management issued an Information Circular[*] ST/IC/1996/60 setting out the Organization's policy with respect to communications and contacts with the host country authorities. This Administrative Instruction reads as follows:

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[*] Information circulars are issued by the Under-Secretary-General for Administration and Management or by such other officials to whom the Under-Secretary-General has delegated specific authority. They contain general information on, or explanation of, established rules, policies and procedures, as well as isolated announcements of one-time or temporary interest (See ST/SGB/1997/2).

1. With a view to ensuring the best possible coordination, between the Government of the United States of America and the United Nations, the United States Mission to the United Nations has recently informed the Organization that communications and contacts with United States government agencies should normally be channelled through the United States Mission to the United Nations.

2. The United States Mission has advised that this policy is not intended to apply to matters of a routine nature. Officials of the Organization should call the Minister-Counsellor for Host Country Affairs [Name and telephone] to confirm that the contact is of such a routine nature that it and similar contacts may be made directly.

(*b*) Letter to the Department of Environmental Conservation (DEC) of the State of New York relating to the issue of payment by the United Nations of fees under the State Pollutant Discharge Elimination System (SPDES)

Privileges and immunities of the United Nations—Convention on the privileges and immunities of the United Nations, 1946*—United Nations exempted from direct taxes—Not exempted from charges for public utility services—Such services should be specifically identified, described and itemized—United Nations entitled to the most favourable rate when being charged for public utility services

19 May 2006

I write in response to your letter of 21 February 2006 addressed to [Name], Under-Secretary-General for Management, concerning the long-standing issue of payment by the United Nations of fees under the "State Pollutant Discharge Elimination System" (SPDES).

You note that such fees relate to the United Nations' use of water from the East River for cooling purposes, which results in water being heated, and then discharged into the East River, and that the discharge of the heated water constitutes a pollutant under New York Law, in respect of which regulatory fees are assessed. You state that as of the date of your letter, the amount in back regulatory fees owed by the United Nations is $[number], irrespective of penalties or interest.

The legal position of the United Nations with respect to the payment of such fees is governed by the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations of 4 August 1947** ("the Headquarters Agreement"), Public Law 80–357, 4 August 1947, and the Convention on the Privileges and Immunities of the United Nations ("the Convention") (United Nations, *Treaty Series,* vol. 1 p. 15). The United States became a party to the Convention on 29 April 1970 (21 *U.S.T.* 1418, [1970] *T.I.A.S.* No. 6900).

Under Article VII, Section 17 (a) of the Headquarters Agreement, the United Nations is to be "supplied *on equitable terms* with the necessary public services, including electricity, water, gas, post, telephone, telegraph transportation, drainage, collection of refuse, fire protection, snow removal, et cetera . . ." (emphasis added). Accordingly, the charge for the services in question must be levied at the most favourable rate.

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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. 11, p. 11.

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". Accordingly, while the United Nations is exempt from direct taxes under the Convention, the Organization will not claim exemption with respect to "taxes" which are in fact no more than charges for public utility services.

With respect to what constitute "charges for public utility services", it has been the long-standing practice of the United Nations to interpret the term "public utility services" as having a restricted connotation applying to particular supplies or 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.

This interpretation has been accepted by Member States and is set forth in the Study prepared by the Secretariat on the "Practice of the United Nations, the Specialized Agencies and the International Atomic Energy Agency concerning their Status, Privileges and Immunities" (*Yearbook of the International Law Commission,* 1967, Vol. II, at page 248; and *Yearbook of the International Law Commission,* 1985, Vol. II at page 165; as attached).* The Study explains that "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*" (emphasis added). We further attach a more recent opinion from the 1992 *United Nations Juridical Yearbook,* at pp 474–475, which again sets forth this interpretation.*

We note that [Name 1], the former Director of the General Legal Division, wrote to [Name 2], Deputy Commissioner and General Counsel of the DEC in August 2004 concerning (i) the liability of the United Nations to pay the SPDES fees; and (ii) the classification of the Organization as the basis for the amount of the SPDES fees assessed. With respect to the question concerning the liability of the United Nations to pay the fees, we note that [Name 1]'s assessment was based on an unpublished decision of the United States Federal Court (*New York State Department of Environmental Conservation* v *United States Department of Energy,* Nos. 89-CV-197, 89 CV-196, 1997 W.L. 797523, N.D.N.Y., Dec 24, 1997) regarding the liability of the United States Government to pay such fees, in which the court made a specific finding that the SPDES fees were not taxes, but constituted charges for public services provided by the State of New York relating to the management of the state's water resources.

As the United Nations is constituted by 191 Member States, each of which may have its own national approach as to what constitutes a "charge for services" as opposed to a "tax", it is essential that the same test is applied across the board with respect to what constitutes "charges for public utility services" so as to ensure the consistent application of the Convention. As such, it is not feasible, nor permissible, for the United Nations to rely on the determinations of national courts.

Accordingly, the United Nations invites the DEC to demonstrate how the fees imposed on it in respect of its discharge of heated water into the East River are calculated. In order to make payment for such services, the Organization must be presented with invoices which specifically identify, describe and itemize the services that have actually been ren-

* Not reproduced therein.

dered to it. If it can be shown that a "service" is provided, and that the charges for this "service" are calculated at a fixed rate, according to the amount of services rendered, which amount must, in turn, be calculated in accordance with some predetermined unit, the Organization will not consider itself exempt from payment of such charges. In addition, the charges must be levied at the most favourable rate, which entails parity of treatment with United States Government facilities. Absent such a showing, which has not yet been made, the Organization must continue to treat such fees as being in the nature of a tax in accordance with Article II, Section 7 (a) of the Convention.

(*c*) Interoffice memorandum to the Officer-in-Charge, United Nations Framework Convention on Climate Change (UNFCCC) Secretariat, regarding the privileges and immunities of individuals serving on constituted bodies established under the Kyoto Protocol to the UNFCCC

Scope of the Convention on the privileges and immunities of the United Nations, 1946*—Bodies established under UNFCCC** and the Kyoto Protocol*** are not United Nations organs—Individuals serving on constituted bodies and on expert review teams under the Kyoto Protocol do not enjoy privileges and immunities under the 1946 Convention—Only individuals appointed by the Secretary-General or performing missions for the United Nations are entitled to the status of "experts on mission"—Other legal options for the granting of privileges and immunities to those individuals

30 June 2006

1. This is with reference to your memorandum dated 26 May 2006 addressed to the Secretary-General with respect to the request by the Subsidiary Body for Implementation, established under the UNFCCC, for further information from the United Nations Secretary-General on the scope of application of the Convention on the Privileges and Immunities of the United Nations ("the General Convention"), and in particular whether it could be applied to individuals serving on constituted bodies established under the Kyoto Protocol, and individuals serving on expert review teams under the Kyoto Protocol. You further inform us that the Parties have requested the views of the Secretary-General as to whether these individuals could enjoy privileges and immunities under the General Convention: "(a) by considering them 'Experts on missions for the United Nations', pursuant to Article VI of the General Convention; or (b) by other ways".

2. You also seek our advice as to whether the Conference of the Parties, the supreme body of the UNFCCC serving as the Meeting of the Parties to the Kyoto Protocol (COP/MOP), could invite the United Nations General Assembly to adopt a resolution that would recognize individuals serving on constituted bodies established under the Kyoto Protocol and individuals serving on expert review teams under the Kyoto Protocol as "Experts on missions for the United Nations" within the context of the General Convention, or a resolution that applies the General Convention to such individuals in some other way.

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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. 1771, p. 107.

*** United Nations, *Treaty Series,* vol. 2303, p. 148.

3. With respect to the question as to whether such individuals serving on expert bodies/review teams could be considered "Experts on missions for the United Nations" pursuant to Article VI of the Convention, we wish to advise that this would not be appropriate, as such individuals are neither appointed by the Secretary-General, nor "perform missions for the United Nations". The "Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Missions" (ST/SGB/2002/9)* provide guidance concerning the appointment of experts on missions. According to Regulation 1(b):

> " . . . experts on missions shall make the following written declaration witnessed by the Secretary-General or an authorized representative:
>
> 'I solemnly declare and promise to exercise in all loyalty, discretion and conscience the functions entrusted to me by the United Nations. To discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not seek or accept instructions in regard to the performance of my duties from any Government or other source external to the Organization'".

Regulation 2 (b) unequivocally provides:

> "[i]n the performance of their duties, . . . experts on mission shall neither seek nor accept instructions from any Government or from any other source external to the Organization" (emphasis added). Regulation 3 further provides that "experts on mission are accountable to the United Nations for the proper discharge of their functions".

4. As the bodies established under the UNFCCC and the Kyoto Protocol are not United Nations organs, experts and any other individuals serving on such bodies cannot be accorded the status of experts on missions for the United Nations under the General Convention.

5. In our view, the following four options could be considered by which such individuals serving on expert bodies/review teams could be provided with the necessary privileges and immunities in respect of their official functions.

6. First, the COP/MOP could amend the Kyoto Protocol and insert additional provisions which explicitly provide for immunity from legal process and other privileges and immunities, as appropriate, for individuals serving on constituted expert bodies and expert review teams under the Kyoto Protocol. The procedure and other relevant requirements to adopt amendments are set forth under Article 20 of the Kyoto Protocol.

7. Second, the Parties to the Kyoto Protocol could create a new multilateral instrument which would provide for the necessary privileges and immunities in respect of individuals serving on expert bodies/review teams. Such an instrument would need to be accepted, approved or ratified by the Parties to the Kyoto Protocol in order for the individuals to enjoy privileges and immunities in the national jurisdictions concerned.

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* 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).

8. Third, the Parties to the Kyoto Protocol could adopt a decision to apply *mutatis mutandis* the General Convention to the individuals in question. The implementation of this decision would require appropriate action at the national level as well.

9. Fourth, the Kyoto Protocol Secretariat could negotiate and enter into bilateral agreements with the Parties to the Kyoto Protocol to ensure that the latter accord the necessary privileges and immunities to the individuals concerned in the national jurisdictions of each Party. We note that individuals who serve on constituted bodies under the Kyoto Protocol enjoy privileges and immunities in Germany by virtue of the "Protocol amending the Agreement among the United Nations, the Government of the Federal Republic of Germany and the Secretariat of the United Nations Framework Convention on Climate Change concerning the Headquarters of the Kyoto Protocol Secretariat" (the Headquarters Agreement). As mentioned in our advice of 30 March 2006, in order for the Secretariat of the COP/MOP to possess the legal capacity to enter into agreements (with Parties other than Germany), there must be a decision of the COP/MOP to this effect.

10. With respect to the question whether the COP/MOP could request the General Assembly to extend the application of the General Convention to the individuals on the expert bodies/review teams, we consider that even if the General Assembly were to agree to this request, States Parties would need to amend the General Convention accordingly and make corresponding changes to their domestic implementing legislation in order to give effect to such a decision. As such, we do not consider this option to be realistic and viable.

11. Finally, please note that this Office will be available to provide any assistance needed in the preparation of draft instruments as referred to above.

(*d*) Note to the Assistant Secretary-General of the Department of Peacekeeping Operations on the question of searches of personal luggage of members of a United Nations Mission by customs officials of the Country of deployment of the Mission

Convention on the Privileges and Immunities of the United Nations, 1946*—Status of Forces Agreement—Scope of privileges and immunities granted to members of the Mission varies according to their status and grade—Distinction between custom searches and inspections for security purposes—Inspection of baggage by customs officials should not impede or delay travels of the members of the Mission—Absolute immunity for official documents and correspondence of the United Nations carried in personal baggages

14 November 2006

I refer to your Note dated 19 October 2006, forwarding a copy of [the Mission] Code Cable [Number] of 11 October 2006. It appears from that Code Cable and its attachments that officials of the customs service of the Government of [Country] stationed at [Cities 1 and 2] and airports have been conducting manual searches of the personal baggage of members of [the Mission] passing through those airports. [The Mission] has protested these searches as contrary to paragraph 38 (*sic*) of the Agreement between the United Nations and [Country] Concerning the Status of the [United Nations Mission], done at

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

New York on [date] (the SOFA). The Government has responded, maintaining that such searches are fully consistent with the SOFA. You seek our advice.

Our advice, in summary form, is as follows:

– The personal baggage of the Special Representative of the Secretary-General (SRSG), the Deputy SRSG, the Force Commander, the Police Commissioner and other high-ranking members of the staff of SRSG agreed upon with the Government is, in the normal course of events, exempt from inspection and search by the [Country] customs authorities. However, those authorities may conduct a search of that baggage if they have serious grounds for believing that the particular set of baggage in front of them in fact contains certain kinds of items, specifically items (i) that are neither for the official use of [the Mission] nor for the personal use of those high officials or their family members forming part of their households or (ii) items whose import or export is prohibited by the national laws of [Country] or controlled by its quarantine regulations.

– Similar considerations apply with respect to the personal baggage of military observers and civilian police of [the Mission].

– The personal baggage of United Nations officials serving in the civilian component of [the Mission] does not enjoy any immunity from inspection or search by [Country] customs.

– The personal baggage of military personnel of national contingents assigned to the military component of [the Mission] also does not enjoy any such immunity.

– Neither does the personal baggage of United Nations Volunteers serving with [the Mission].

– It would be inconsistent with the SOFA if inspections and searches of the personal baggage of members of [the Mission] were to be carried out in such a way as to substantially impede and substantially delay their entry into or departure from [Country].

– It would also be inconsistent with the SOFA if searches were conducted in a manner that specifically targeted members of [the Mission], such that they were subjected to delays and impediments which were not faced by other travellers using the two airports concerned.

– In searching the personal baggage of members of [the Mission], [Country] customs officers may not, under any circumstances, inspect, read, photograph, copy or retain official documents or correspondence of the United Nations that might be carried in that baggage.

– Moreover, in so far as they may properly conduct a search of the personal baggage of high-ranking members of [the Mission] or of its military observers or civilian police, [Country] customs officers may not inspect, read, photograph, copy or retain any documents or correspondence that might be contained in that baggage.

– It is not clear from the Code Cable of [the Mission] and its attachments whether the personal baggage of members of [the Mission] is also being searched for security purposes. If security searches are indeed in issue, we stand ready to provide further assistance and advice. However, we would first require certain additional information from [the Mission].

A detailed explanation of the above advice is contained in an Annex to this Note. [. . .]

Annex

(A) Immunities of personal baggage from search for customs purposes

In accordance with paragraph 39 of the SOFA (not paragraph 38, as stated in the letter of [the Mission] of 31 August 2005 attached to its Code Cable [Number] of 11 October 2006)

> "[L]e Représentant Spécial et les membres de [la Mission] sont dispensés des formalités d'inspection et de restrictions prévues par les services d'immigration à l'entrée et la sortie de la zone de la mission".

As is apparent from its terms, this provision concerns inspections carried out by the Government's immigration services, as well as immigration restrictions—not inspections that are carried out by the customs services of the Government of [Country] for the purposes of enforcing [Country]'s national customs laws and regulations. It is therefore not relevant for present purposes.

There is no other provision of the SOFA that, by its express terms, confers on any member of [the Mission] any exemption from inspection of his or her personal baggage by the [Country] customs services.

That having been said, a number of the provisions of the SOFA are relevant in this regard.

We will consider those provisions as they relate to each of the categories of [the Mission]'s members and officials.

(i) The SRSG and other high-ranking officials

Paragraph 29 of the SOFA provides:

> "[L]e Représentant spécial, le Représentant spécial adjoint, le commandant de la force de l'unité militaire, le Commissaire de police dirigeant l'unité de sécurité et ceux des collaborateurs de haut rang du Représentant spécial dont il peut être convenu avec le Gouvernement jouissent du statut spécifié dans les sections 19 et 27 de la Convention [sur les privilèges et immunités des Nations Unies], dans la mesure où les privilèges et immunités visés sont ceux que le droit international reconnait aux envoyés diplomatiques".

Section 19 of the Convention on the Privileges and Immunities of the United Nations (the 'General Convention') provides, *inter alia,* that the high officials of the United Nations who fall within its scope are to be accorded "the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law".

Those privileges, immunities, exemptions and facilities are codified in the Convention on Diplomatic Relations,* done at Vienna on 18 April 1961.

Article 36, paragraph 2, of the Vienna Convention provides as follows:

> "The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative."

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* United Nations, *Treaty Series,* vol. 500, p. 95.

The items listed in paragraph 1 of Article 36 are ones for the official use of the diplomatic mission or for the personal use of the diplomatic agent or members of his or her family forming part of his or her household.

In the light of these provisions, it is clear that the personal baggage of the SRSG, the Deputy SRSG, the Force Commander and the Police Commissioner do not enjoy absolute and unconditional immunity from inspection and search by the customs services of [Country].

However, in accordance with the terms of Article 36, paragraph 2, of the Vienna Convention, the customs authorities of [Country] may properly and lawfully inspect and search the personal baggage of any of these high officials only if there are serious grounds for presuming that the personal baggage concerned contains either (i) items that are neither for the official use of [the Mission] nor for the personal use of those high officials or their family members forming part of their households or (ii) items whose import or export is prohibited by the national laws of [Country] or controlled by its quarantine regulations.

Moreover, the [Country] customs service must have serious grounds for suspecting that the particular personal baggage that they wish to inspect or search contains such an article. It will hardly be sufficient to found any such suspicion that certain members of [the Mission] have in the past been found to be carrying items whose importation was prohibited by [Country] law or which were not for their personal use or that of their families. Much less would it be consistent with this condition for the customs service to follow a general policy of inspecting and searching the personal baggage of all members of [the Mission].

Furthermore, it follows from the terms of paragraph 29 of the SOFA, as well as from those of Section 19 of the General Convention, that high officials of [the Mission] should be accorded the same treatment by the Government of [Country] as it accords to diplomatic envoys accredited to [Country]. It would be inconsistent with these provisions if the practices of inspection and search that were applied by the [Country] customs services to the personal baggage of [the Mission]'s high officials passing through [City 1] airport were more exacting or more intrusive than those followed with respect to the baggage of diplomatic envoys that are accredited to [Country] when they pass through [Country]'s airports, whether at [City 1] or elsewhere. Information on the treatment that is accorded to diplomatic envoys in [Country] may presumably be obtained from the Dean of the Diplomatic Corps in [Capital of the Country]

(ii) Officials of the United Nations assigned to [the Mission]'s civilian component

Paragraph 30 of the SOFA stipulates that:

> "Les fonctionnaires des Nations Unies qui sont affectés à l'unité civile mise au service de la [Mission] demeurent des fonctionnaires des Nations Unies jouissant des privilèges et immunités énoncés dans les articles V et VII de la Convention [sur les privilèges et immunités des Nations Unies]. "

Under-Secretaries-General and Assistant Secretaries-General aside, Articles V and VII of the General Convention do not confer on officials of the United Nations any immunities in respect of their personal baggage.

The personal baggage of United Nations officials serving with [the Mission]'s civilian component is therefore not immune from search by the [Country] customs authorities.

(iii) Military observers and civilian police

Paragraph 31 of the SOFA provides that:

> "Les observateurs militaires, les membres de l'unité de sécurité et les agents civils non fonctionnaires des Nations Unies dont les noms sont communiqués à cette fin au Gouvernement par le Représentant spécial sont considérés comme des experts en mission au sens de l'article VI et VII de la Convention [sur les privilèges et immunités des Nations Unies]."

Article VI, Section 22 (f), of the General Convention provides that experts performing missions for the United Nations shall be accorded "the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys".

The observations set out above with respect to the personal baggage of high-ranking members of [the Mission] therefore apply equally with respect to the personal baggage of military observers and civilian police.

(iv) Military personnel of national contingents

Paragraph 32 of the [the Mission] SOFA provides that:

> "Le personnel militaire des contingents nationaux affecté à l'unité militaire de la [Mission] jouit des privilèges et immunités expressément prévus dans le présent Accord."

There is no provision in the [the Mission] SOFA that confers on military personnel of national contingents assigned to the military component of [the Mission] any immunity from inspection or search of their personal baggage.

The personal baggage of such military personnel is therefore not immune from search by the [Country] customs services.

(v) United Nations Volunteers

The SOFA does not contain any provisions regarding the status, privileges, immunities, facilities or exemptions of United Nations Volunteers serving with [the Mission]. Nor are there any other legal instruments of which we are aware that would confer any privileges or immunities on them.

The personal baggage of United Nations Volunteers serving with [the Mission] is therefore not immune from search by the [Country] customs services.

(B) General considerations related to searches of personal baggage

Subject to what is said above, the following provisions of the SOFA and of the General Convention may also be of relevance in the event that officials of the [Country] customs service conduct searches of the personal baggage of members of [the Mission].

(i) Failure to facilitate speedy entry and departure

Paragraph 38 of the SOFA provides, in part, that "[l]e Gouvernement s'engage à faciliter l'entrée dans la zone de la mission du Représentant spécial et des membres de la [Mission] ainsi que leur sortie". More importantly still, paragraph 35 of the SOFA provides in part that "[s]'il en est averti à l'avance et par écrit, le Gouvernement accorde des facilités

spéciales en vue de l'accomplissement rapide des formalités d'entrée et de sortie pour tous les membres de la [Mission], y compris l'unité militaire."

Further, pursuant to paragraphs 29, 30 and 31 of the SOFA, high-ranking officials of [the Mission], United Nations officials assigned to its civilian component and military observers and civilian police officers serving with the mission are all entitled to the privileges and facilities laid down in the applicable provisions of Article VII of the General Convention. In accordance with Sections 25, 26 and 27 of that Article, these members of [the Mission] shall be "granted facilities for speedy travel", while high-ranking members of [the Mission] are also to be "granted the same facilities as are accorded to diplomatic envoys".

It would clearly be inconsistent with these various provisions if inspections and searches of the personal baggage of the members of [the Mission] concerned were to be carried out in such a way as to substantially impede or substantially delay their entry into or departure from [Country].

It would likewise be inconsistent with these provisions if searches were to be conducted in a manner that specifically targeted members of [the Mission], such that they were subjected to delays and impediments not faced by other travellers using the two airports concerned.

(ii) Inviolability of documents and correspondence

Paragraph 3 of the SOFA provides that:

> "La [Mission], ses biens, fonds et avoirs ainsi que ses membres, y compris le Représentant spécial, jouissent des privilèges et immunités énoncés dans le présent Accord ainsi que de ceux prévus dans la Convention [sur les privilèges et immunités des Nations Unies], à laquelle le [Pays] est partie."

Article II, Section 4, of the General Convention stipulates that "all documents belonging to the United Nations or held by it, shall be inviolable wherever located".

[Country] customs officers may, in the course of searching the personal baggage of members of [the Mission], properly require that folders, binders, envelopes and document bags contained in that baggage be opened to verify their contents.

However, in view of these provisions, they may not, under any circumstances, inspect, read, photograph, copy or retain official documents or correspondence of the United Nations that might be contained in those folders, binders, envelopes or bags—or, for that matter, which may be carried loose in the personal baggage concerned or on the person of the member of [the Mission] whose baggage it is.

Further, as already noted, paragraph 31 of the SOFA provides that military observers and civilian police are to be considered experts on mission within the meaning of Articles V and VII of the General Convention. Section 22 (c) of Article V of the General Convention provides that experts on mission are to be accorded "inviolability for all papers and documents".

Again, as already noted, pursuant to paragraph 29 of the SOFA, the SRSG and other high-ranking members of [the Mission] are to be accorded the privileges and immunities, facilities and exemptions accorded to diplomatic envoys in accordance with international

law. Article 30, paragraph 2, of the Vienna Convention on Diplomatic Relations stipulates that the papers and correspondence of a diplomatic agent "shall enjoy [. . .] inviolability".

In so far as they may properly conduct a search of the personal baggage of high-ranking members of [the Mission] or of its military observers or civilian police, [Country] customs officers may therefore *not* inspect, read, photograph, copy or retain *any* documents or correspondence that might be contained in that baggage.

(C) Searches for security purposes

It is not clear from [the Mission]'s Code Cable and its attachments whether the personal baggage of members of [the Mission] is also being subject to security searches. In case it is, we would make the following brief observations.

Passengers boarding aircraft are nowadays routinely expected, as a condition of their carriage, to submit to the screening of their personal baggage. Such screening may involve the conduct of random searches by hand. These searches are usually carried out, not by customs officers, but by or on behalf of the air carrier or else by members of the Government's airport security services. The need for such precautions has been generally accepted by diplomats. In any event, an airline may refuse to carry anyone who refuses voluntarily to submit to such a search. The qualified immunity from inspection of their personal baggage that the SRSG and other high-ranking members of [the Mission] enjoy, as well as [the Mission]'s military observers and civilian police, does not in any way preclude an airline from following and implementing this policy.

If security searches are indeed in issue in the present case, we stand ready to provide further assistance and advice. However, we would need for this purpose much more detailed information from [the Mission], in particular regarding the precise point or points in the boarding process at which such searches are conducted, by whom they are conducted and on whose behalf, on the basis of what precise justification and what the consequences are of failure to comply. It would also be helpful to know the provisions of any relevant [Country] national laws or regulations on this matter.

(*e*) Interoffice memorandum to the Deputy of the Under-Secretary-General for Safety and Security on the search of United Nations laptop computers by Host Country customs

Convention on the privileges and immunities of the United Nations, 1946*—Immunity and inviolability of United Nations property and archives—Information stored on laptop viewed as archives—Security inspection of the laptop by border control officials is deemed compatible with immunity if no file is opened, copied or read

28 November 2006

1. This is in reference to your memorandum of 8 November 2006 requesting our advice as to what action should be taken by a United Nations staff member returning from an official mission should [Host Country] border officials try to take possession or examine

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

the contents of a laptop computer belonging to the United Nations, which contains United Nations documents. You also seek our views as to whether it would be appropriate for a "sticker" to be attached to United Nations laptops advising host country officials of their status, or whether United Nations staff should be provided with a document which could be presented to border officials in such situations.

2. The Convention on the Privileges and Immunities of the United Nations (the "Convention"), to which the [Host Country] acceded on [date], sets forth the relevant legal framework concerning search and seizure of United Nations property. Pursuant to Article II, Section 3 of the Convention "[t]he property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action". In addition, Article II, Section 4 of the Convention provides"[t]he archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located." Accordingly, pursuant to Article II, Section 3 of the Convention, United Nations laptop computers, as property of the United Nations, should not be searched, confiscated or interfered with in any way by border officials. Similarly, pursuant to Article II, Section 4 of the Convention, the documents stored on United Nations laptops, which form part of the "archives" and "documents" of the United Nations, are inviolable.

3. At the same time, however, the above provisions must be interpreted in light of Article V, Section 21 of the Convention, under which the United Nations is under an obligation to "co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this article."

4. Accordingly, it is reasonable to allow United Nations property to be examined from a security perspective at border control security checkpoints. In our view, it is reasonable to allow a laptop to be subjected to an external visual inspection, to be put through an X-ray machine, to be swiped for explosive residue, and to be turned on to see if it works. We consider that a rapid, non-intrusive visual inspection would not constitute a "search" as such, and would not amount to "interference" with the "property" or "archives" of the United Nations, within the meaning of Article II, Sections 3 and 4 of the Convention. However, we consider that the opening and reading of documents is not reasonable, and cannot be tolerated by the United Nations. It is also not reasonable for a border official to take a United Nations laptop away and examine it without it being in the presence of the United Nations official. In such circumstances, a staff member should politely object to the procedure and request to see a supervisor if necessary. If the search persists, the staff member should make a note of the incident and report it without delay to the Office of the Legal Counsel, which Office will then take the matter up with the host country authorities.

5. With respect to your question whether a "sticker" should be attached to United Nations laptop computers, or whether a document should be provided to the bearer of such a laptop, we see no objection to such courses of action, and would be happy to assist in preparing any necessary language setting forth the relevant provisions of the Convention.

(*f*) Note to the Assistant Secretary-General for Peacekeeping Operations regarding the letter from the President of the House of Representatives of [Country]

IMMUNITIES OF UNITED NATIONS OFFICIALS IN THE CONTEXT OF INVITATIONS TO APPEAR BEFORE NATIONAL PARLIAMENTARY BODIES—COOPERATION WITH NATIONAL BODIES VIEWED TO BE IN THE INTERESTS OF THE ORGANIZATION IS POSSIBLE ON A STRICTLY VOLUNTARY BASIS—UNITED NATIONS OFFICIALS DULY AUTHORIZED BY THE SECRETARY-GENERAL CAN PROVIDE INFORMAL INFORMATION—FORMAL TESTIMONY REQUIRING OFFICIAL'S IMMUNITY TO BE WAIVED MAY BE CONSIDERED ON A CASE-BY-CASE BASIS

30 November 2006

1. This is with reference to your Note dated 20 November 2006, to which was attached a copy of a letter dated 16 November 2006 from the President of the House of Representatives of [Country], addressed to the Secretary-General. The letter informs that the Standing Committee on Institutions, Merit and the Commissioner for Administration (Ombudsman) of the [Country] House of Representatives is currently looking into a matter scheduled for debate, entitled "The institutional issue of financing Non Governmental Organizations or persons in the framework of the [Plan] and the need of legislation, which will regulate with transparency the issue of financing persons and organizations functioning in the Republic of [Country]." In this context, the Committee is seeking "every possible assistance by the United Nations Secretariat in this delicate matter".

2. In particular, the President of the House of Representatives requests the Secretary-General to ensure "that all United Nations officials concerned will be able to cooperate with the House of Representatives, without hindrance due to immunity considerations, so that the House could proceed, in the framework of its powers to exercise parliamentary control, according to the Republic of [Country] Constitution." The letter from the President of the House of Representatives does not specify any names of United Nations officials who would have to provide the requested information; and it contains no specific request for a waiver of their immunity in this connection.

3. We would like to recall that earlier in October, a United Nations Development Programme (UNDP) Programme Manager in [City of the Country], [Name A] received a somewhat similar request from the Chairman of the Standing Committee on Institutions, Merit and the Commissioner for Administration (Ombudsman), [Name B]. In his letter dated 25 October 2006, [Name B] requests that [Name A] *inter alia* "inform the said Committee on matters pertaining to the financing by the United Nations Office for Project Service (UNOPS)/UNDP or other cooperating Organizations or Funds, drawing on [Country C] Aid funds for [Country], during the period preceding the Referendum on the [Plan] . . ." by "temporarily setting aside [his] diplomatic immunity" for this purpose. Furthermore, the 25 October letter from the Chairman of the House Standing Committee attached a list of fifteen specific written questions addressed to [Name A]. UNDP has informed us of [Name A]'s preference to respond to the questions posed in writing rather than appearing in person before the House Standing Committee.

4. It has been the long-standing policy of the Organization that invitations to United Nations officials to appear before national parliamentary committees or congressional bodies may only be accepted upon a specific authorization by the Secretary-General, which

is granted if in his opinion such authorization is in the interests of the Organization. However, it has also been the consistent practice of the Organization that if for reasons having to do with the interests both of States and of the Organization, officials may need to provide information to national governmental bodies on specific issues, this could be achieved through private briefings, as and when appropriate, on an informal basis.

5. In our view, the requests from the President of the [Country] House of Representatives and the Chairman of the House Standing Committee should be considered in the light of the above-referenced policy and practice. We would see no objection from a legal standpoint if United Nations officials concerned provide on a purely informal and voluntary basis the information sought. It is understood that such information could be provided orally or in writing. However, pursuant to United Nations Staff Regulation 1.5, the provision of such information must be with the authorization of the Secretary-General.

6. Should the request from the [Country] House of Representatives be construed to mean that the staff members concerned would have to give formal testimony to parliamentary hearings then specific requests for waiver of their immunity would have to be considered on a case-by-case basis.

7. Accordingly, if it is found that cooperating with the [Country] House of Representatives in the present matter is in the interests of the Organization, the President of the House of Representatives should be advised of the United Nations' willingness to do so on a strictly voluntary and informal basis, without prejudice to the privileges and immunities, including immunity from legal process of the United Nations officials concerned. However, if the information sought is needed for formal testimony by the United Nations officials concerned, then the Organization would be prepared to consider, on a case-by-case basis, specific requests for a waiver of immunity of such officials, in accordance with the applicable international legal instruments.

2. Procedural and institutional issues

(*a*) Note relating to the powers and role of the Secretary-General as Chief Administrative Officer of the United Nations in the context of the proposal for the creation of a position of Chief Operating Officer

Role of the United Nations Secretary-General as chief administrative officer—Articles 97 and 101 of the Charter of the United Nations—Exclusive power to appoint and manage staff—Administrative powers limited by the General Assembly's powers—Secretary-General's acquiescence to a certain interference by the General Assembly in his administrative powers—Financial responsibilities of the Secretary-General under the supervision of the General Assembly—A new chief operating officer should be appointed directly by the Secretary-General

17 January 2006

1. I write further to your oral request, in the context of the Post-Summit Coordination Committee, for a brief analysis of the powers and role of the Secretary-General as the Chief Administrative Officer (CAO) of the Organization. Specifically, you wish to know whether these powers and role have been codified and whether they are now more limited

than what was originally intended. Finally, you enquire as to whether there are any legal ramifications for the creation of a position of Chief Operating Officer (COO).

The role of the Secretary-General under the Charter of the United Nations

2. The Charter states the following:

– The Secretary-General "shall be the chief administrative officer of the Organization" (Article 97);

– He is to "perform such functions as are entrusted to him" by the principal organs (Article 98);

– He shall make an annual report to the General Assembly on the activities of the Organization (Article 98);

– He may bring to the attention of the Security Council any matter which, in his opinion, may threaten the maintenance of international peace and security (Article 99);

– He is also the head of the United Nations Secretariat, which "shall comprise of the Secretary-General and such staff as the Organization may require" (Article 97);

– Such staff are to be appointed by the Secretary-General under regulations established by the General Assembly (Article 101 (1));

– The Secretary-General is also given specific roles under Articles 12 (2), 20 and 73 (e) (notifying the General Assembly on matters of peace and security, convoking special sessions of the General Assembly, receiving certain information from Member States).

3. The Charter thus gives the Secretary-General a broad administrative role, as well as a political role. His political role derives from Article 99, and has developed extensively through practice, recognized and accepted by the political organs. His administrative role encompasses the duties assigned to him under Article 98, as well as those inherent in his designation under Article 97 as CAO, and his power to appoint and manage staff under Article 101. Since this Note is intended for discussions related to administrative reform, it will not explore the political role of the Secretary-General. It will focus, instead, on the pertinent administrative role and powers under Articles 97 and 101.

The administrative role of the Secretary-General under the Charter

4. The precise scope of the Secretary-General's administrative role and how it interacts with the powers and role of the principal organs of the United Nations is not codified in the Charter. Generally, it must be noted that the Secretary-General is the CAO of not only the Secretariat, but also of the Organization as a whole. Through his staff in the Secretariat, he is therefore responsible for the delivery of the programmes and implementation of the policies laid down by the principal political organs and their subsidiary bodies. In order to fulfil this responsibility, the Secretary-General must have authority over the administration of the Secretariat and its staff. Such administrative power is, however, limited by the Charter in two respects:

– The General Assembly has the normative power to regulate the Secretariat under Article 101 (1); and

– The General Assembly also has the power to consider and approve the budget of the Organization under Article 17.

5. The system set up by the Charter can, therefore, be seen as a dynamic system in which the General Assembly (i) sets the regulatory parameters and (ii) the budget within which the Secretary-General is to (a) administer the Secretariat and (b) implement the policies and programmes decided upon by the General Assembly and other United Nations organs. The Charter does not, however, specify the exact limits of the General Assembly's authority over the Secretary-General in administrative matters, and the delineation of such borders has been left to evolve through practice. It must be stressed that practice in the application of the Charter not only serves to interpret the Charter, but may also eventually constitute an informal modification of the Charter, if the practice is acquiesced in by the Secretary-General and the principal political organs for a period of time.

The evolving practice in respect of the administrative role of the Secretary-General

(a) Personnel functions

6. The Secretary-General has the sole responsibility for appointing and administering his staff, although he must do so under regulations established by the General Assembly. The General Assembly has delegated some of its normative powers to the Secretary-General, so that he now has the authority to make subsidiary legislation, so long as it is consistent with the Staff Regulations.[1] Such delegated powers can always be taken back by the General Assembly.[2]

7. Despite the fact that the Charter would seem to confer on the Secretary-General exclusive powers over the matter, the General Assembly has nevertheless assumed some responsibility in respect of the appointment of certain senior officials (e.g. Executive Director of United Nations Environment Programme, Office of the United Nations High Commissioner for Refugees (UNHCR), etc). This Office and the Secretary-General have expressed concern at this extension of the General Assembly's jurisdiction on a number of occasions. In view of the fact that this practice is well established and the Secretary-General has acquiesced in it, it would now be very difficult, though, to contest its legality.

8. The General Assembly has also displayed a strong interest in the procedures for the recruitment and promotion of United Nations staff, and through its resolutions and the Staff Regulations has legislated extensively on the matter. This Office has previously advised that the General Assembly has the constitutional power to do so pursuant to its normative powers under Article 101 of the Charter.

9. The General Assembly has effectively circumscribed the power of the Secretary-General to administer his staff through the establishment of the Administrative Tribunal (UNAT), which monitors the legality of his administrative actions. The International Court of Justice has ruled that the establishment of the UNAT was not an improper interference with the powers of the Secretary-General.[3]

10. Finally, the decentralization of the Secretariat through the direct assignment by the General Assembly of the power to administer the staff of certain subsidiary organs which are financed from voluntary contributions (such as United Nations Development

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[1] See Staff Regulation 12.2

[2] For example, in its resolution 34/165, Part u, para. 3, the General Assembly decided on the question of repatriation grants itself.

[3] See Effect of Awards Advisory Opinion, [1954] *I.C.J. Reports* p. 47, at p. 60.

Programme, United Nations Children's Fund, UNHCR) to the Executive Heads of these organs can be seen as an appropriation by the General Assembly of the exclusive power of the Secretary-General under the Charter to administer his staff. This Office has expressed concerns on this matter previously. Once more, though, in view of the established nature of this practice and the Secretary-General's acquiescence in it, it would be difficult now to say that this is at variance with the Charter or otherwise inappropriate.

(b) Financial and related functions

11. Although the Charter is silent on the Secretary-General's financial responsibilities and functions, some are inherent in his role as CAO, while others have been specifically assigned to him by the General Assembly. The Secretary-General collects, holds in custody and disburses or commits the funds of the United Nations. He also administers trust funds according to procedures he establishes.[4] The Secretary-General also prepares the proposed programme budget for each financial period for the General Assembly's approval, through the Administrative Committee on Administrative and Budgetary Questions (ACABQ).[5]

12. The Secretary-General's power to structure the Secretariat is closely related to his powers over the budget. The General Assembly, at its first session, explicitly recognized the authority of the Secretary-General to restructure the Secretariat.[6] In practice, though, any transfer of resources between departments or offices will require approval of the ACABQ, [7] whilst the creation or abolition of any post will require full General Assembly approval. As such, the Secretary-General is only free to transfer resources within departments or offices. Nevertheless, it appears that a practice has evolved to only inform the ACABQ *ex post facto* in respect of transfers between offices and departments.

13. Although the General Assembly can limit the authority of the Secretary-General to restructure the Secretariat, a balance must be struck between the need for effective management of the Secretariat by the Secretary-General and the supervisory function of the General Assembly. This Office has previously advised that the Financial Regulations should not be interpreted so as to limit the authority and responsibility of the Secretary-General to streamline the structure of the Secretariat. Clearly, however, there are limits to the restructuring which the Secretary-General can make without General Assembly approval. For instance, the Secretary-General cannot reformulate entire sub programmes, or introduce new programmes in the programme budget without prior General Assembly approval.

(c) Has there been an erosion of the Secretary-General's role?

14. The role of the Secretary-General, and his powers to administer the Organization vis-à-vis those of the General Assembly are in a state of constant flux. They evolve together with Organization. As the Organization and its activities have grown in scope, and as the General Assembly and Security Council have assigned more functions to the

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[4] See Financial Regulations 6.6–6.7.

[5] See Financial Regulation 3.1.

[6] General Assembly Resolution 13 (1) of 13 February 1946.

[7] See Financial Rule 104.4, whereby the General Assembly delegates this power to the ACABQ.

Secretary-General, his responsibilities in respect of the administration of the Organization, and specifically the Secretariat have also grown. The General Assembly, at the same time, has increasingly sought to control and restrain such responsibilities. It cannot, therefore, be said that the role originally intended for the Secretary-General has been curtailed by the General Assembly, since the nature and functions of the Organizations in general, and of the Secretary-General specifically, have substantially evolved since the creation of the Organization.

15. Generally, however, the institutional architecture envisaged by the Charter can be said to have the General Assembly lay down general rules, while the Secretary-General applies these to specific cases. On this basis, it is possible to detect a pattern whereby the General Assembly may be increasingly dealing with the particulars of administering the Organization, rather than merely setting the general rules. As much as it is difficult to point to an exact border between the general and the specific, the Secretary-General needs to be able to manage the Secretariat in an effective manner so as to deliver the programmes mandated by the General Assembly and other political organs. He should, of course, report to the General Assembly in accordance with his obligations, and takes into account its views.

Legal implications for the creation of the position of chief operating officer

16. Generally, the Secretary-General is entitled to delegate any power that he himself has. Further, by virtue of Article 97 of the Charter, the Secretary-General is the CAO of the Organization, and the sole head of the Secretariat. As such, in the absence of any amendment of the Charter, a future COO must be subordinate to the Secretary-General. Further, without explicit General Assembly approval, the COO cannot have any powers or functions which the Secretary-General himself does not have. One further consideration to bear in mind is that the COO should be appointed exclusively by the Secretary-General, and the General Assembly should not have any official role in appointing the COO. This would ensure the authority of the Secretary-General to appoint his staff under Article 101 (1) of the Charter. Finally, General Assembly approval will be needed to create this new post in view of the budgetary implications. (See paragraph 13 above).

17. I have examined the four options which [Name] is proposing in respect of a COO. As required to ensure consistency with the Charter, all four options keep the Secretary-General as the head of the Secretariat. As long as the COO is appointed directly by the Secretary-General, and does not have powers in excess of those of the Secretary-General, there would be no legal obstacles to any of the four options. The choice between these is clearly a policy matter.

(*b*) Note relating to the powers and role of the Secretary-General

Distinction between powers of the General Assembly and of the Secretary-General being loosened—Intervention of the General Assembly in specific matters of staff administration—Reduction of the managerial discretion of the Secretary-General in how to implement programmes, due to the change in the drafting procedure of the Organization's budget and the greater control exercised by the General Assembly—Established practice of the General Assembly to approve all new posts and all transfers of posts between programme sections

25 January 2006

1. I write further to my Note to you of 17 January 2006* and to the discussions at the Post-Summit Coordination Committee meeting of 18 January 2006 on the above matter. I understand that you wish to have further analysis and examples of specific resolutions of the General Assembly in which the authority of the Secretary-General in administrative matters can be considered to have been curtailed or circumscribed.

2. As indicated in my Note of 17 January 2006, the Charter assigns general functions to the General Assembly and to the Secretary-General, but it does not define precise limits to the responsibilities of each. Generally, the institutional architecture envisaged by the Charter can be said to have the General Assembly lay down general rules, while the Secretary-General applies these to specific cases.

3. An analogy to domestic systems would have the General Assembly as a quasi-legislative body and the Secretary-General as a quasi-executive body. In such a system, the legislature would decide on programmes, whether or not on proposal of the executive. The executive would indicate the resources required to carry out such programmes, which the legislature would scrutinize and, where appropriate, authorize. The executive would then carry out these programmes. The executive would be accountable to the legislature for the fulfilment of these programmes.

4. As discussed in my Note of 17 January 2006, the delineation of the borders between the Secretary-General's authority to manage and the General Assembly's authority to legislate and oversee has evolved through practice. In coordination with the Office of the Controller, and the Office of Human Resources Management (OHRM), my Office has examined this practice through resolutions of the General Assembly in matters relating to personnel and budget in order to ascertain whether the Secretary-General's power is being circumscribed by the General Assembly. This examination was based on examples provided by OHRM and the Office of the Controller.

(i) Personnel functions

5. As detailed in paragraph 2 above, the Secretary-General is responsible for delivering the programmes mandated by the General Assembly through his staff in the Secretariat. His capacity to manage such staff is, therefore, essential to fulfil his responsibilities to the General Assembly.

6. The Secretary-General has the sole responsibility for appointing and administering his staff, although he must do so under regulations established by the General Assembly. The United Nations Staff Regulations delegate to the Secretary-General the power to make subsidiary legislation. The dichotomy of the General Assembly dealing with the generic and the Secretary-General dealing with the specific is thus reinforced in this area of administration. Yet, the practice shows a trend of the General Assembly dealing with specific matters of staff administration. Some examples are listed below.

a. The General Assembly urged the Secretary-General to ensure that successful candidates of the National Competitive Exam (NCE) are offered positions within one year after their selection. (General Assembly resolution 49/222, Section I, para. 14). The placement of successful NCE candidates should be responsive to the managerial needs of

* See (a) above.

the Secretary-General, and the General Assembly's urging the Secretary-General in this respect may be seen as an encroachment.

b. The General Assembly requested the Secretary-General to take measures to prevent the placement of staff members against higher-level unencumbered posts for periods longer than three months, and issue vacancy announcements within a three-month period. (General Assembly resolution 51/226, Section III (B), para. 10). Again, this may be seen as the General Assembly circumscribing the managerial power of the Secretary-General over his staff.

c. Staff Regulation 1.2 (c) provides that "[s]taff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations." However, this authority is circumscribed by General Assembly resolution 51/226 which specifically limits the discretionary power of the Secretary-General to appoint and promote outside the established procedures to his Executive Office, Under-Secretary-General and Assistant Secretary-General levels and special envoys. (General Assembly resolution 51/226, II, paragraph 5.) Consequently, the Secretary-General currently does not have the authority to move staff within the Organization outside established procedures, as may be required by the interests of the Organization.

d. The General Assembly requested the Secretary-General not to extend the contracts of 17 individuals who were former gratis personnel and subsequently recruited by the International Criminal Tribunal for the ex-Yugoslavia. (General Assembly resolution 53/221, Section V, para. 11). This request descends at the level of specific decisions by the General Assembly over the administration of the Secretariat, an encroachment into the managerial powers of the Secretary-General.

e. The General Assembly discouraged the Secretary-General from using retired former staff to present reports to any intergovernmental body. (General Assembly resolution 57/305, Section VI, para. 7). The use of former staff, so long as it is consistent with the Staff Regulations, should be the prerogative of the Secretary-General and not a concern of the General Assembly.

f. The General Assembly authorized the Secretary-General to appoint to posts not subject to geographical distribution at the P-2 level up to seven successful candidates from the General Service to Professional examination each year, and to appoint to P-2 posts in duty stations with chronically high vacancy rates up to three successful candidates from the G to P examination each year when no successful candidates from the NCE are available. (General Assembly resolution 59/266, Section III, paras. 2 and 3). The appointment of staff within the approved programme budget, and subject to the Staff Regulations, should be the prerogative of the Secretary-General.

(ii) Budgetary functions

7. The General Assembly, through its budgetary powers under Article 17 of the Charter, considers and approves the budget of the Organization. Through resolution 14 (1) of 13 February 1946, the General Assembly set up the Advisory Committee on Administrative and Budgetary Questions (ACABQ) to, *inter alia,* examine and report on the draft budget submitted by the Secretary-General to the General Assembly. The level of consideration by the General Assembly, and the amount of detail which is requested from the Secretary-General,

and subsequently approved by the General Assembly, is the "grey area" between the jurisdiction of the General Assembly and the Secretary-General's managerial role.

8. Initially, the Secretary-General submitted draft budgets with global sums for each budget section, with each budget section representing a functional category (i.e. staff costs, equipment, etc.) but not divided in programmatic categories (i.e. human rights, political and peacekeeping, etc). The General Assembly, through the ACABQ, considered and approved this budget. Within this framework, the Secretary-General had considerable managerial discretion in how to implement the programmes which the General Assembly and other political organs mandated him to execute, so long as he did so within the total budget.

9. This approach changed when the General Assembly adopted its resolution 3043 (XXVII) of 19 December 1972 on "Form of presentation of the United Nations budget and duration of the budget cycle." This resolution was based on a proposal of the Secretary-General himself (A/C.5/1429 of 20 April 1972) to introduce programme budgeting. The purpose of this new approach was to "facilitate an easy correlation between the main components of the programmes and activities of the Organization and the appropriations required for their implementation." At the time, the Secretary-General positively noted that "the degree of control which could be exercised in the first instance by the main organs and subsidiary organs, and by the [Secretary-General] on their behalf, would be intensified." With the change to the new form of budget, the Secretary-General lost some managerial discretion in implementing the Organization's work programme, as the General Assembly would consider and approve specific resources for each section of the work programme. The Secretary-General's power to organize and re-arrange the deployment of such resources mid-programme was thus reduced.

10. Indeed, in a legal opinion of 30 September 1975 from the Legal Counsel to the Controller, this Office confirmed that the General Assembly must approve every post in each respective budget section. This is now established practice, and thus it is clearly within the General Assembly's competence to approve all new posts, as well as all transfer of posts between programme sections, although as pointed out in my Note of 17 January 2006, a practice has evolved to only inform the ACABQ *ex post facto* in respect of transfers between offices and departments. As such, the General Assembly, through the ACABQ, considers and approves a very detailed budget, and the Secretary-General is hardly in a position to refuse to provide the level of detail requested.

11. Within this framework, it is difficult to identify specific resolutions of the General Assembly where it exceeds its competence in budgetary matters. It must, however, be noted that the in-depth questioning by the ACABQ and the Fifth Committee over every aspect of the budget is proving to be a strain on the Secretariat, and is of questionable value to the General Assembly. Examples of the type of questions and comments which the Secretariat has had to answer over the budget include:

a. Requesting the Secretary-General to provide details of estimates of travel requirements including number of trips, destinations, duration, etc., and the purpose of the travel;

b. Querying why the Secretary-General cannot refurbish existing vehicles to meet the security requirements rather than buying new ones; and

c. Requesting that there should be one printer for every four computers.

12. It should be noted that the level of minutiae which the General Assembly and the ACABQ have been concerning themselves with should hardly fall within the purview of an intergovernmental organ. The intergovernmental organ should more properly concern itself with the reasonableness of the overall budgetary envelope, rather than a detailed line item analysis, and should leave the Secretary-General a margin of managerial discretion within which to effectively implement the work programme.

(iii) Conclusion

13. As detailed in my Note of 17 January 2006, it cannot be said that the role originally intended for the Secretary-General has been curtailed by the General Assembly, since the nature and functions of the Organizations in general, and of the Secretary-General specifically, have substantially evolved since the creation of the Organization. It can, however, be queried whether the requests and demands the General Assembly has increasingly been making on the Secretary-General in respect of very specific aspects of the administration of the Organization are a proper use of the General Assembly's jurisdiction.

14. There is no specific legal injunction on the General Assembly not to exercise this level of oversight and control, and the problem is better framed in terms of what the most effective way to administer the Organization is. In general constitutional terms, it appears more proper for the General Assembly to only direct the Secretary-General on broad and general issues, leaving the specifics of administration to the Secretary-General.

(*c*) Interoffice memorandum to the Officer-in-Charge, Policy, Information and Resource Mobilization Section of the United Nations Mine Action Service, Department of Peacekeeping Operations, regarding contractual provisions on sexual exploitation and abuse

United Nations general conditions of contracts—Secretary-General's bulletin ST/SGB/2003/13*—Contracts signed with non-United Nations entities must include provisions prohibiting sexual exploitation and abuse—Such entities must commit themselves to take all appropriate measures to prevent sexual exploitation or abuse of anyone by any of its personnel—Contract provisions must comply with the specific standards set forth in ST/SGB/2003/13

1 February 2006

1. This is in response to your memorandum of 22 December 2005, requesting advice as to whether the model agreement for cooperation between the United Nations Mines Action Service (UNMAS) and non-United Nations entities should be modified to include provisions concerning sexual exploitation and abuse, pursuant to Section 6 of ST/SGB/2003/13, of 9 October 2003, and if so, the appropriate language for such provisions.

2. ST/SGB/2003/13, entitled "Special measures for protection from sexual exploitation and sexual abuse", was promulgated for the purpose of "preventing and addressing cases of sexual exploitation and abuse" (See opening paragraph of ST/SGB/2003/13, unnumbered). Section 6.1 of ST/SGB/2003/13 provides as follows:

* For information on Secretary-General's bulletins, see note in section 1 (c), para. 3, above.

"When entering into cooperative arrangements with non-United Nations entities or individuals, relevant United Nations officials shall inform those entities or individuals of the standards of conduct listed in section 3, and shall receive a written undertaking from those entities or individuals that they accept these standards".

3. Section 3, entitled "Prohibition of sexual exploitation and abuse", reaffirms the prohibition against sexual exploitation and abuse for United Nations staff, pursuant to the Staff Regulations and Rules (section 6.1), and further provides, in section 3.2, as follows:

"In order to further protect the most vulnerable populations, especially women and children, the following specific standards which reiterate existing general obligations under the United Nations Staff Regulation and Rules, are promulgated:

(a) Sexual exploitation and sexual abuse constitute acts of serious misconduct and are therefore grounds for disciplinary measures, including summary dismissal;

(b) Sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or age of consent locally. Mistaken belief in the age of a child is not a defence;

(c) Exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour, is prohibited. This includes any exchange of assistance that is due to beneficiaries of assistance;

(d) Sexual relationships between United Nations staff and beneficiaries of assistance, since they are based on inherently unequal power dynamics, undermine the credibility and integrity of the work of the United Nations and are strongly discouraged;

(e) Where a United Nations staff member develops concerns or suspicions regarding sexual exploitation or sexual abuse by a fellow worker, whether in the same agency or not and whether or not within the United Nations system, he or she must report such concerns via established reporting mechanisms;

(f) United Nations staff are obliged to create and maintain an environment that prevents sexual exploitation and sexual abuse. Managers at all levels have a particular responsibility to support and develop systems that maintain this environment."

4. Section 4 imposes upon Heads of Departments, Offices and Missions responsibility for the enforcement of those standards, while providing the following exception:

"The Head of Department, Office or Mission shall not apply the standard prescribed in section 3.2 (b), where a staff member is legally married to someone under the age of 18 but over the age of majority or consent in their country of citizenship. (Section 4.4)"

5. The United Nations General Conditions of Contract have already been amended, pursuant to section 6.1, to meet the standards established by section 3 of ST/SGB/2003/13, without the exception in section 4.4. We propose that the model agreement between UNMAS and non-United Nations entities be amended along the same lines as the United Nations General Conditions of Contract, but that the amendment also include the exception in section 4.4 of ST/SGB/2003/13.

6. Accordingly, the sample Agreement between the United Nations and the Geneva International Centre for Humanitarian Demining (GICHD), which you submitted to us and which follows the model agreement, should be amended by the insertion, after the current paragraph 2 in Article IV, Personnel Requirements, of the following provisions, as paragraphs 3 and 4:

"3. GICHD shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by it or by any of its personnel or any other persons who may be engaged by GICHD to perform any services under this Agreement. For these purposes, sexual activity with any person less than eighteen years of age, regardless of the age of majority or consent, shall constitute the sexual exploitation and abuse of such person. In addition, GICHD shall refrain from, and shall take all appropriate measures to prohibit its personnel or other persons engaged by it from, exchanging any money, goods, services, offers of employment or other things of value, for sexual favors or activities, or from engaging in any sexual activities that are exploitive or degrading to any person. GICHD acknowledges and agrees that the provisions hereof constitute an essential term of the Agreement and that failure to take preventive measures against exploitation or abuse, to investigate allegations thereof, or to take corrective action when sexual exploitation or sexual abuse has occurred, shall constitute grounds for termination in accordance with Article XIII."

"4. The United Nations shall not apply the standard above relating to age where the GICHD personnel or any person engaged by GICHD to perform any services is married to someone under the age of eighteen and such marriage is recognized as valid under the law of their country of citizenship."

7. Consequentially, the current paragraphs 3 and 4 should be renumbered 5 and 6 respectively.

(*d*) Interoffice memorandum to the Executive Office of the Secretary-General regarding the method of submission of the Report on programme performance of the United Nations for the biennium 2004–2005

POLICY AND PRACTICE GOVERNING PROGRAMME PERFORMANCE AND MONITORING—FUNCTION OF PROGRAMME PERFORMANCE MONITORING ENTRUSTED TO THE SECRETARY-GENERAL—SECRETARY-GENERAL REQUIRED TO SUBMIT REPORTS CONCERNING PROGRAMME PERFORMANCE TO THE GENERAL ASSEMBLY—PROGRAMME PERFORMANCE REPORTS PREPARED BY OIOS CONSIDERED TO BE REPORTS OF THE SECRETARY-GENERAL UNDER THE RELEVANT PROGRAMME MONITORING LEGISLATIVE SCHEME ESTABLISHED BY THE GENERAL ASSEMBLY.

9 February 2006

1. This refers to the note to the Secretary-General, dated 30 November 2005, from the Under-Secretary-General for Internal Oversight Services regarding her questions concerning the manner of submission of the Programme Performance Report (PPR) of the United Nations for the biennium 2004–2005. That note was referred to this Office for advice. The question raised by the note is whether the PPR should be submitted directly to the General Assembly by the Office of Internal Oversight Services (OIOS), in accordance with paragraph 3 of General Assembly resolution 59/272 of 2 January 2005, which provides that reports of OIOS shall be submitted directly to the General Assembly, with the Secretary-General providing any comments separately to the General Assembly. On this basis, it was the understanding of OIOS that the 2004–2005 PPR, being a report of OIOS, would have to be submitted directly to the General Assembly (with a copy to the Secretary-General) for consideration by the Committee for Programme and Coordination (CPC) at its forty-sixth session and, subsequently, by the General Assembly at its sixty-first session.

2. The Office of Programme Planning, Budget and Accounts (OPPBA) has taken issue with the proposed method for submission of the PPR report, contending that the direct submission of the PPR to the General Assembly by OIOS would be inconsistent with the policy and practice governing programme performance and monitoring and the role of the Secretary-General in managing and reporting on programme performance. Thus, in an e-mail, dated 17 December 2005, the Office of the Controller stated that,

> "the biennial programme performance report (PPR) is a report which is coordinated and consolidated by OIOS on the basis of inputs from all departments. This PPR reflects the 'monitoring' component of the planning, programme budgeting, monitoring and evaluation cycle, as mentioned by OIOS and contains reporting on the work implemented by the Secretariat, i.e. the Departments. It is not an evaluation nor an audit nor an investigation nor an inspection by OIOS of the work of the Secretariat. The PPR is technically a report of the Secretary-General. There is a history attached to the placement of monitoring activities and management consultant services in an oversight entity."
>
> "The 2005 World Summit Outcome requested an evaluation of governance, auditing and oversight, including a review of OIOS which will include a review of the services and responsibilities to be satisfied through OIOS and those that should be satisfied elsewhere (A/60/568, Annex II, section B refers). It would be appropriate to await the results of the evaluation/review prior to changing the established practice."

Based on the foregoing, there is a difference of opinion between OIOS and OPPBA on whether the PPR is a report of the Secretary-General that should be submitted by him to the General Assembly in accordance with long-standing practice or, rather, is a report of OIOS that, in accordance with resolution 59/272, should be submitted directly to the General Assembly.

3. The practice concerning programme performance monitoring and reporting was established by the General Assembly in its resolution 37/234 of 21 December 1982, pursuant to which it first adopted the Regulations Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation (PPBME Regulations).[1] Regulation 5.1 of the PPBME Regulations provided that, "the Secretary-General shall monitor the delivery of output scheduled in the approved programme budget through a central unit in the Secretariat. After the completion of the biennial budget period, the Secretary-General shall report to the General Assembly, through the Committee for Programme and Coordination, on programme performance during that period." Thus, as originally established by the PPBME Regulations, the function of programme performance monitoring was entrusted to the Secretary-General, who was required to submit reports concerning programme performance to the General Assembly, through the CPC.

4. By its resolution 48/218 B of 29 July 1994, the General Assembly established the Office of Internal Oversight Services. Under paragraph 5 (a) of that resolution, OIOS would "exercise operational independence under the authority of the Secretary-General in the

[1] See also, ST/SGB/204, of 4 September 1984, by which the Secretary-General first promulgated rules corresponding to the PPBME Regulations (PPBME Regulations and Rules). The PPBME Regulations and the accompanying rules of the Secretary-General were re-issued as a separate bulletin in 1987 (see ST/SGB/PPBME Rules/1 (1987)), following revisions to the PPBME Regulations adopted by General Assembly resolution 42/215 of 21 December 1987.

conduct of its duties" and would "have the authority to initiate, carry out and report on any action which it considers necessary to fulfil its responsibilities with regard to monitoring, internal audit, inspection and evaluation and investigations . . ." Paragraph 5 (c) of the resolution provided that OIOS would exercise five primary functions: monitoring, internal audit, inspection and evaluation, investigation, and reporting on the implementation of its recommendations. In paragraph 5 (e)(i) of resolution 48/218 B, the General Assembly mandated that, in carrying out its principal functions, OIOS would submit its reports to the Secretary-General who, in turn, would submit such reports to the General Assembly in the same form as submitted by OIOS, together with any "separate comments" that the Secretary-General might deem appropriate.

5. With respect to its monitoring function, paragraph 5 (c) provided that OIOS "shall assist the Secretary-General in implementing the provisions of article V of the [PPBME Regulations and Rules] on monitoring of programme implementation." Out of the five functions set forth in paragraph 5 (c) of the resolution, only with respect to the monitoring of programme performance was OIOS called upon to "assist the Secretary-General." In respect of its other functions, OIOS was given direct responsibility, such as to "examine, review and appraise the use of financial resources of the United Nations," in the case of its internal auditing function, or to "evaluate the efficiency and effectiveness of the implementation of the programmes and legislative mandates of the Organization," in the case of its inspection and evaluation function, or to "investigate reports of violations of United Nations regulations, rules and pertinent administrative issuances," in the case of its investigation function. Moreover, paragraph 5 (c) of the resolution made clear that the monitoring function of OIOS was that of assisting the Secretary-General in implementing article V of the PPBME Regulations and Rules. Thus, the PPBME Regulations and Rules were to be read as being consistent with the mandate of OIOS, which was to assist the Secretary-General in monitoring programme implementation.

6. After promulgating the mandate of OIOS by resolution 48/218 B, the General Assembly issued changes to the PPBME Regulations.[2] In doing so, however, the General Assembly did not alter the PPBME Regulations that govern the monitoring of programme performance, as are now set forth in article VI of the PPBME Regulations and Rules.[3] Thus, Regulation 6.1 (formerly Regulation 5.1) of the PPBME Regulations and Rules continues to provide that the Secretary-General shall monitor programme accomplishments and that the Secretary-General shall report to the General Assembly through the CPC. Accordingly, there is nothing in the action taken by the General Assembly to suggest that it changed the role of OIOS from one of assisting the Secretary-General in carrying out his programme performance functions under article VI of the PPBME Regulations and Rules, including his responsibility to submit reports on programme performance to the General Assembly through the CPC.

7. In her note to the Secretary-General, the Under-Secretary-General for Internal Oversight Services concludes that, as a result of the change of reporting methods set forth in resolution 59/272, OIOS should submit PPRs directly to the General Assembly. However,

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[2] See, *e.g.*, General Assembly resolution 53/207, of 18 December 1998, pursuant to which the latest revisions to the PPBME Regulations were adopted.

[3] See ST/SGB/2000/8, of 19 April 2000, setting out the latest version of the PPBME Regulations and Rules.

that conclusion assumes that PPRs are reports of the OIOS. It is not clear that the General Assembly has ever sought to change the PPBME Regulation governing the method of programme performance reporting. That Regulation, PPBME Regulation 6.1, states that PPRs are reports of the Secretary-General. The role of OIOS, as clearly set forth in the mandate of OIOS established by General Assembly resolution 48/218 B, is to assist the Secretary-General in monitoring programme performance and in reporting thereon to the General Assembly through the CPC. Resolution 48/218 B should be construed consistently with and in a manner that is complementary of resolution 59/272. Thus, because the General Assembly did not expressly indicate its intention to change past practice concerning OIOS's role in assisting the Secretary-General in monitoring programme performance, we should not assume it intended to do so.

8. PPRs are reports of the Secretary-General under the relevant programme monitoring legislative scheme that was established by the General Assembly both prior to and after the creation of OIOS. Accordingly, the requirements, as set forth in resolution 59/272, concerning the methods of submission of reports of OIOS do not appear to apply to PPRs. In our view, unless the General Assembly clearly mandates that PPRs should be subject to the reporting procedures set forth in resolution 59/272, PPRs should continue to be submitted by the Secretary-General to the General Assembly through the CPC.

(*e*) Note to the Under-Secretary-General for Peacekeeping Operations relating to the applicability of Security Council decisions to the United Nations organizations operating in Afghanistan

Sanctions regime decided by the Security Council—Implementation of the sanctions regime by a United Nations Mission in the context of its interaction with a provincial government led by a person listed by the 1267 Committee*—The Mission may provide financial assistance through protected channels for specific humanitarian projects in the province—The Mission cannot allow such person to travel on United Nations air assets—The Mission cannot provide military assistance to the provincial government

24 March 2006

1. This is in response to your Note dated 24 February 2006, which refers to code cable [Number] of 19 February 2006 seeking guidance as to "the applicability of Security Council decisions to United Nations organizations operating in Afghanistan, and the extent of their responsibility in ensuring the implementation of the sanctions regime". In particular, you seek our advice on making financial aid available to a provincial government in Afghanistan led by a person listed by the 1267 Committee, and as to whether individuals listed by the 1267 Committee may travel on United Nations air assets. We note that paragraph 4 of [code cable] also refers to the provision of military assistance to a provincial government which is under the control of a listed person. Our views are as follows.

2. At the outset, we advise that the interpretation of decisions of the deliberative organs of the United Nations is the prerogative of such organs themselves. Accordingly, it is

* The 1267 Committee is the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and Associated Individuals and Entities.

advisable that guidance on the issues raised in [code cable] of 19 February 2006 be sought from the 1267 Committee. Notwithstanding the above, our general observations as to the issues raised are as follows.

3. With respect to the question as to the applicability of the decisions of the Security Council vis-à-vis United Nations organizations operating in Afghanistan, it should be noted that although Security Council resolutions may be addressed to "States", such resolutions are nevertheless binding by implication on the United Nations. While it is the responsibility of States to establish mechanisms to implement the sanctions of the Security Council, the United Nations is bound to comply with such decisions. To that end, and until such time as the Government of Afghanistan establishes appropriate mechanisms to enforce the provisions of relevant Security Council resolutions, including resolution 1617 (2005), the United Nations Assistance Mission in Afghanistan should refrain from dealing, directly or indirectly, with persons and or entities included in the 1267 Committee's List in such a way as would contravene relevant Security Council resolutions.

4. With respect to whether financial assistance may be provided to a provincial government under the control of a listed person, we note that the Security Council, acting under Chapter VII of the Charter, decided in its resolution 1617 (2005), operative paragraph 1 (a), that all States shall take measures to:

> "[f]reeze without delay the funds and other financial assets or economic resources of [listed] individuals . . . , including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and to ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons' benefits, by their nationals or by any persons within their territory."

In our view, the provision of financial assistance to a provincial government under the control of a listed person would not be consistent with the requirement to "ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons' benefit . . .".

5. However, the above provision should be understood in the greater context in which the Security Council recognizes the important role played by the United Nations and other humanitarian relief agencies in Afghanistan. Various Security Council resolutions, including resolutions 1659 (2006) of 15 February 2006 and 1589 (2005) of 24 March 2005, envisage United Nations operations in Afghanistan which require close coordination with the Government of Afghanistan. Accordingly the terms "for such person's benefit" as included in operative paragraph 1 (a) of resolution 1617 (2005) must be interpreted restrictively, so as not to preclude humanitarian assistance to Afghanistan by the United Nations and its agencies. In addition, the question as to whether the terms of the resolution would be breached by United Nations bodies would depend on the practical means by which the United Nations carries out its mandate in Afghanistan. If funds are not channeled through the Government, but are provided through protected channels for specific humanitarian projects, we do not consider that such assistance would constitute either "direct or indirect" provision of financial assistance for the "benefit" of the listed person.

6. With respect to whether a listed individual may travel on United Nations air assets, we refer to operative paragraph 1(b) of resolution 1617 (2005) which obliges States to "[p]revent the entry into or transit through their territories of [the listed] individuals". In

our view, provision of United Nations air assets to such individuals would be inconsistent with the letter and the intent of Security Council resolution 1617 (2005).

7. With respect to the provision of military assistance to a provincial government under the control of a listed individual, we note that operative paragraph 1(c) of resolution 1617 (2005) obliges States to:

> "[p]revent the direct or indirect supply, sale or transfer to [listed individuals] . . . of arms and related material of all types including weapons and ammunition, military, vehicles and equipment, paramilitary equipment and spare parts for the aforementioned and technical advice, assistance, or training related to military activities".

In our view, any military assistance to a provincial government under the control of a listed person would be inconsistent with the above-mentioned requirement.

(*f*) Interoffice memorandum to the Legal Affairs Section of the Office of the United Nations High Commissioner for Refugees (UNHCR) regarding the status of experts on mission

Definition of experts on mission—Convention on the Privileges and Immunities of the United Nations, 1946*—Experts on mission are persons entrusted with a mission for the Organization, who are not officials of the Organization—Such experts must be appointed directly by the Organization and make a written declaration—Missions assigned to experts are increasingly varied in nature—Such experts must enter into an agreement with the Organization specifying their obligations

17 April 2006

1. This is in reference to your memorandum dated 3 April 2006 requesting our advice with respect to the status of experts on mission. We understand that the issue has arisen in the context of the negotiation of a Memorandum of Understanding (MOU) between UNHCR and the [Country] Immigration and Refugee Board (IRB) concerning the deployment of IRB experts to train UNHCR staff in the field with respect to the determination of refugee status. While there is a reference in the MOU that experts provided by the IRB will enjoy the status of experts on mission under Article VI, Section 22 of the Convention on the Privileges and Immunities of the United Nations ("the Convention"), you request our advice as to whether it is necessary, in order to ensure that such individuals enjoy the status of experts on mission in countries other than [Country], that there also be some form of agreement or undertaking between the individual experts and UNHCR. We note that the IRB does not accept that its personnel deployed to UNHCR sign an undertaking.

2. The "Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission" (ST/SGB/2002/9)** ("the Regulations") provide guidance concerning the appointment of experts on mission. According to Regulation 1(b):

> " . . . experts on mission shall make the following written declaration witnessed by the Secretary-General or an authorized representative:

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

** For information on Secretary-General's bulletins, see note in section 1 (c), para. 3, above.

'I solemnly declare and promise to exercise in all loyalty, discretion and conscience the functions entrusted to me by the United Nations. To discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not seek or accept instructions in regard to the performance of my duties from any Government or other source external to the Organization'."

Regulation 1 (d) provides: "[e]xperts on mission will receive a copy of the present Regulations . . . when they receive documentation from the United Nations relating to their mission and will be required to acknowledge receipt of the Regulations . . ."

Regulation 2 (b) provides: "[i]n the performance of their duties, . . . experts on mission shall neither seek, nor accept instructions from any Government or from any other source external to the Organization". Regulation 3 further provides that "experts on mission are accountable to the United Nations for the proper discharge of their functions".

The commentary to Regulation 1 (d) states:

"1. Experts on mission retained by the Secretariat sign a consultant contract or receive a letter or other documentation indicating the scope of their mission for the Organization. The consultant contract or other documentation will incorporate the Regulations by reference, and experts will be required to acknowledge that they will abide by the Regulations.

2. At times, legislative bodies entrust tasks to individuals to perform assignments for those bodies (for example, members and special rapporteurs of the International Law Commission and other bodies). Those individuals have the status of experts on mission. Although their appointments may have been concluded without the signature of any document of appointment, their attention will be drawn to the Regulations when they receive documentation from the Secretariat relating to their functions and/or assignment. That documentation will include a copy of the Regulations explaining that they were adopted by the General Assembly and thus constitute part of the conditions of those individuals' assignment for the United Nations . . ."

3. In the Advisory Opinion of the International Court of Justice (ICJ) of 15 December 1989 entitled "Applicability of Article VI, Section 22 of the Convention on the Privileges and Immunities of the United Nations",* the ICJ considered the meaning of "experts on missions" for the purposes of Section 22. Noting that the Convention gives no definition, it found that "the purpose of Section 22 is nevertheless evident, namely, to enable the United Nations *to entrust missions to persons* who do not have the status of an official of the Organization and to guarantee them "such privileges and immunities as are necessary for the independent exercise of their functions" (emphasis added). The Court noted that in practice that "the United Nations has had occasions *to entrust missions—increasingly varied in nature*—to persons not having the status of United Nations officials. Such persons have been entrusted with mediation, with preparing reports, preparing studies, conducting investigations or finding and establishing facts. In addition, many committees, commissions or similar bodies whose members serve, not as representatives of States, but in a personal capacity, have been set up in the Organization. In all these cases, the practice of the United Nations shows that the *persons so appointed,* and in particular the members of these committees and commissions, have been regarded as experts on missions within the meaning of Section 22" (emphasis added). The ICJ summed up "that Section 22 . . . is appli-

* *I.C.J. Reports 1989,* p. 177.

cable to persons (other than United Nations officials) *to whom a mission has been entrusted by the Organization* and who are therefore entitled to enjoy the privileges and immunities provided for in this Section with a view to the independent exercise of their functions . . ." (emphasis added). While the term "experts on mission" may be applied in respect of a variety of different missions performed for the United Nations, it is essential that this status is reserved for persons who perform missions for the United Nations in an "expert" capacity, and that such missions be entrusted to the individuals by the Organization.

4. As the individuals will be provided to UNHCR by the IRB on a "non-reimbursable basis", rather than being directly appointed by the United Nations, it is essential that the individuals enter into some form of an agreement or undertaking with UNHCR which sets forth their obligations as experts on missions, as outlined in the Regulations. If there is no such agreement or undertaking between the individual expert and UNHCR, the individuals could be seen as having the status of "sub-contractors" or as "implementing partners" of the United Nations, and would not enjoy "expert on mission" status. It is clear from the above mentioned ICJ Advisory Opinion that such missions must be entrusted to the individuals concerned, in order for such individuals to enjoy the status of experts on mission. Thus, we suggest that agreements or undertakings are entered into with the IRB individuals, which would be parallel to the MOU.

5. With respect to the above-mentioned MOU, while we have not been requested to review or provide any assistance with respect to its provisions, we suggest that in Section 5, paragraph (B), which concerns the "Status of the IRB experts", the first line be amended to read "[f]or the purpose of privileges and immunities, UNHCR will ensure that IRB experts will be considered by the host-country as having the legal status of experts on mission . . ."

6. We further suggest that the language in Section 9 concerning "Liability, indemnity and insurance" be strengthened to ensure that the IRB will take out the necessary indemnity insurance, and hold the United Nations harmless, in respect to any claims brought against the United Nations in respect of any loss, injury or death caused to the IRB experts in the performance of their assignments under the MOU.

(*g*) Note to the Deputy Secretary-General regarding due process in the context of audits performed by the Office of Internal Oversight Service (OIOS)

Procedures to be followed by OIOS during audits—Duty of staff to fully cooperate with auditors—Auditors have the right to direct and prompt access to staff members—Respect of due process rights of staff members audited, especially during audits that may uncover possible misconduct—Taping viewed as a good practice to ensure accurate record and report of interviews—Presence of a witness or request to have questions and answers in writing viewed as a concern for the integrity of the audit process

19 April 2006

1. You have requested a legal opinion on the authority of the Secretary-General to instruct OIOS to respect due process rights of staff members in audits. I note that your query is related to the question of the United Nations Mission in the Sudan (UNMIS) cooperation with an OIOS audit, and that I provided legal advice on this matter in my Note

of 7 April 2006 to [the Assistant Secretary-General for Mission Support in the Department of Peacekeeping Operations] (copy attached for ease of reference). My advice should be read against the information set out in that Note. I should also point out that this opinion relates to all audits and is not limited to the UNMIS case.

Background

2. OIOS was established by General Assembly resolution 48/218 B of 29 July 1994 as an office "under the authority of the Secretary-General." (Paragraph 4). OIOS "exercise[s] operational independence under the authority of the Secretary-General in the conduct of its duties and, in accordance with Article 97 of the Charter, ha[s] the authority to initiate, carry out and report on any action which it considers necessary to fulfil its responsibilities with regard to monitoring, internal audit, inspection and evaluation and investigations as set forth in [48/218 B] resolution." (Paragraph 5 (a)). General Assembly resolution 54/244 of 23 December 1999, entitled "Review of the implementation of General Assembly resolution 48/218 B", emphasized that, "the operational independence of [OIOS] is related to the performance of its internal oversight functions." (Paragraph 18).

3. While the precise scope of the authority of the Secretary-General over OIOS has not been defined by the General Assembly, it is however clear that the authority to initiate, carry out and report on any action which it considers necessary to fulfil its responsibilities lies with OIOS. Nevertheless, OIOS carries out its functions under the authority of the Secretary-General and in accordance with Article 97 of the Charter, which vests the Secretary-General with the authority of Chief Administrative Officer of the Organization.

Due process

4. As elaborated in my Note of 7 April 2006, relevant legislative texts and administrative issuances do not deal directly or precisely with the rights of staff members in the context of OIOS audits. Nevertheless, in accordance with the jurisprudence of the United Nations Administrative Tribunal (UNAT), we consider that any audit that leads to findings that an individual may have committed misconduct should afford such an individual certain due process rights. In that Note, it was concluded that the right to be treated fairly during an OIOS audit would be a basic due process right of a staff member. Further, we suggested that the right to be treated fairly during an OIOS audit included the right to have any formal interview with OIOS accurately recorded and reported. Clearly, it would not be within the mandate of OIOS to carry out its functions without respect for the staff regulations and rules and without respect for the individual rights of staff members as provided for therein, in administrative issuances, and in light of UNAT jurisprudence.

5. As indicated above, although OIOS has operational independence in the conduct of its duties, it carries out those functions as an Office under the authority of the Secretary-General and in accordance with Article 97 of the Charter, which establishes the Secretary-General as Chief Administrative Officer of the Organization. To this extent, whilst OIOS is operationally independent, the Secretary-General, as Chief Administrative Officer, must ensure that the administrative and legislative framework which provides for the rights of staff members is respected. To this extent, the Secretary-General retains authority under Article 97 of the Charter to ensure that OIOS carries out its functions, including audit functions, with due respect for the rights of staff members.

Attachment

Note to the Assistant Secretary-General for Mission Support, Department of Peacekeeping Operations regarding UNMIS cooperation with auditors

7 April 2006

1. I refer to your Note of 22 March 2006, attaching for our review a draft note from the Special Representative of the Secretary-General (SRSG) for the Sudan, [. . .] to UNMIS personnel regarding their cooperation with OIOS staff during audits. I note that UNMIS personnel have expressed concern about the modalities of their cooperation with OIOS auditors. In his note to UNMIS staff, [the SRSG] sets out his view that UNMIS staff members may, when being interviewed by OIOS auditors, request that: (a) any questions be put in writing, and that replies in the written form be accepted; (b) a witness be allowed during interviews; (c) the interview be taped; or (d) the interview be transcribed and approved by the staff member concerned. He notes that OIOS has reserved the right to refuse such requests, and that he has sought a legal opinion on this issue from my Office. Such a request has not yet been received. In the meantime, he informs UNMIS staff that OIOS may, indeed, refuse such requests, although he hopes that refusals will be kept to a minimum.

2. We have reviewed [the SRSG]'s note to UNMIS staff. Although we have not yet received the formal request for advice from [the SRSG], we provide below our comments on the underlying issues which he raises.

3. Initially, we would note that pursuant to ST/SGB/272,* entitled "Establishment of the Office of Internal Oversight Services", OIOS is to discharge its responsibilities, including its audit functions, without any hindrance or need for prior clearance, that OIOS staff including its auditors, have the right to direct and prompt access to all staff, and are to receive their full cooperation. [The SRSG] must, thus, be clear with his staff that they (and he) have a duty to fully cooperate with OIOS auditors.

4. The underlying issue at stake, however, appears to be whether staff members, whilst providing this full cooperation, have the "due process" right to request measures to ensure that their statements made to OIOS auditors are accurately reflected by OIOS in its records of such statements.

5. Initially, we would note that OIOS audits may identify discrepancies within a document trail, and implicate individuals with potential misconduct. The statements made by such individuals may subsequently be used in any disciplinary proceedings which may ensue. In this respect, some audits may have the same consequences as OIOS investigations, and it may be pertinent to note some of the jurisprudence of the United Nation's Administrative Tribunal (UNAT).

6. In Judgement No. 1246 [of 2005],** the Tribunal stated that "as soon as a person is identified, or reasonably concludes that he has been identified, as a possible wrongdoer in any investigation procedure and at any stage, he has the right to invoke due process with everything that this guarantees." As such, when an audit leads to any finding that an

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* For information on Secretary-General's bulletins, see note in section 1 (c), para. 3, above.

** Judgement No. 1246 (22 July 2005): *Applicant* v. *the Secretary-General of the United Nations.*

individual may have committed misconduct, thus potentially affecting his or her rights, it is our view that such an individual should be afforded due process rights.

7. We have reviewed the Staff Regulations and Rules, and pertinent administrative instructions, and the issue of due process rights during audits does not appear to be directly addressed, although the General Assembly did issue the clear instruction, in its resolution 48/218 B that staff members have due process rights during investigations. The Secretary-General also made reference to due process rights and fairness in investigations in ST/SGB/273.

8. We have also reviewed the OIOS Inspection Manual, which does not deal directly with the rights of staff members to request specific modalities during interviews with OIOS auditors. The OIOS Investigation Manual does note that investigators may request a staff member to sign a written statement of an interview (paragraph 19), although the right of a staff member to request or refuse such a signed statement is not addressed. This, in any event, is limited to OIOS investigations and does not apply to OIOS audits.

9. Although neither the Staff Regulations and Rules, nor OIOS internal manuals address the issue of due process rights during OIOS audits, any audit that leads to findings that an individual may have committed misconduct should afford such an individual certain due process rights. The question, thus, is what due process rights are applicable in these circumstances.

10. In this respect, we draw a distinction between the due process rights applicable after a staff member has been charged with misconduct, those applicable during an investigation into alleged misconduct by an already identified staff member, and those applicable during an audit which, incidentally, may uncover possible misconduct by a staff member. In respect of the latter, we are of the view that only the basic due process rights apply, namely those of "fairness" and "justice" in the Administration's dealings with such individuals.

11. The right of a staff member to have his interview accurately recorded by OIOS auditors, whenever the audit may uncover possible misconduct by this staff member, would seem to us as much a "due process" right of the staff member to be fairly treated by the Administration, as a good practice for OIOS to follow in order to minimize claims against the Organization, and strengthen the evidence it gathers. Further, we would suggest that the right to be treated fairly during an OIOS audit includes the right to have any interview with OIOS accurately recorded and reported. The failure to ensure that such a right is respected may lead to a finding against the Organization by the UNAT, with consequent financial implications.

12. In order to ensure that this right is respected, we are of the view that staff members may request that interviews be transcribed, and signed off by the staff member concerned to confirm their accuracy, and that OIOS should generally accede to such a request. In this respect, we would note that if a staff member later refuses to sign a transcript of an interview which OIOS nevertheless believes is an accurate reflection of the interview, OIOS may still use the contested transcript as evidence with an appropriate indication of the refusal. OIOS can, in the alternative, inform the staff member that the interview will be taped, so that any disagreement as to what was said at the interview can be verified through the use of a master tape.

13. We do, however, have some concerns in respect of staff members requesting to having a witness present at interviews with OIOS, and to give staff members a right to request that all questions and answers be in writing. In respect of both, there may be issues of the integrity of the audit process. Further, such measures do not appear to strike the correct balance between the rights of staff members to due process during audits, and their duty to cooperate with duly authorized audits. As such, we do not believe that staff members have the right to request such measures from OIOS.

14. Given the above, we are of the opinion that [the SRSG]'s note contains a number of inaccuracies and inconsistencies with applicable regulations and rules, although some of the underlying issues which he raises do, indeed, have some merit. It is a matter of policy for the management of the Department of Peacekeeping Operations (DPKO) as to how it wishes to deal with [the SRSG]'s note, and we have limited ourselves to providing advice on the underlying legal issues. We would ask both OIOS and DPKO to take due note of these.

15. In the interests of transparency, I must note that we have shared various drafts of this advice with OIOS with a view to finding a common understanding in respect of its contents. We understand that OIOS has not, however, been able to agree with our approach or the content of this note. Nevertheless, this represents the legal opinion of the Office of Legal Affairs (OLA), and whatever concerns OIOS might have with the managerial issues raised therein may be addressed at the management level. OLA stands ready to provide further advice on this matter upon request.

(*h*) Interoffice memorandum to the Deputy Secretary, Economic and Social Council, regarding the request from the 'Ramsar Secretariat' for 'Observer Status' with the Economic and Social Council

Observer status with the Economic and Social Council—Definition of "international organization" under international law—Definition and functions of the secretariat of an international organization

26 April 2006

1. This is with reference to your memorandum of 5 April 2006 seeking our views as to whether the 'Ramsar Secretariat'* qualifies as an intergovernmental organization in order to be considered for 'observer status' with the Economic and Social Council. You informed us that the Bureau of the Council is apparently inclined to positively recommend granting the Ramsar Secretariat the status requested.

2. At the outset, we note that, in its request to the Economic and Social Council, the Ramsar Secretariat mainly prefers the term "international organizations", as opposed to "intergovernmental organizations", which is the term used in Rule 79 ("Intergovernmental Organizations") of the Economic and Social Council Rules of Procedure. Please note that in view of the observations made by the International Law Commission in 1985** and in

* The Ramsar Secretariat refers to the Secretariat of the Convention on Wetlands of International Importance especially as Waterfowl Habitat, signed in Ramsar (Iran) on 2 February 1971; reproduced in United Nations, *Treaty Series,* vol. 996, p. 245.

** See *Yearbook of the International Law Commission, 1985,* vol. I (United Nations publication, Sales No. E.86.V.4), pp. 283–312.

light of Article 2 (i) of the 1969 Vienna Convention on the Law of Treaties,* the two terms appear to be interchangeable.

3. With respect to the institutional structure of the Ramsar Convention, we note that the 9th Meeting of the Conference of the Parties to the 1971 Convention on wetlands, held in Uganda from 8 to 15 November 2005, decided in its resolution IX.10 that "in its external relations the Ramsar Bureau may be used the descriptor 'the Ramsar Secretariat' in its official statements and documents when such a descriptor is considered to be more suitable". Article 10 *bis*.3 of the Convention defines the "Bureau" as the "organization or government performing the continuing bureau duties under the Convention". In accordance with Article 8 of the Convention, the "International Union for Conservation of Nature and Natural Resources" performs these duties, including provision of the necessary staff. As recalled by resolution IX.10, the Bureau is considered to be "an administrative unit performing those duties which amount to the Convention's secretariat functions". Article 6 of the Convention established a Conference of the Contracting Parties "to review and promote the implementation" of the Convention. Finally, we understand that there is a Standing Committee, established by the Conference of the Contracting Parties, of an intergovernmental nature, to guide the Convention's progress and oversee the work of the Bureau.

4. With respect to your question, we note that there seems to be no clear definition of the term "intergovernmental organization" in public international law that can be applied to make a definitive determination on this matter. For the sake of simplicity, however, the following definition has been found acceptable, in accordance with the discussions held by the International Law Commission in 1985: "an international organization is one that is established by the will of States which form it, but acts and operates in the international community with its own personality, even if it is not clearly defined, for the purposes of fulfilling its tasks and the aims for which it has been established."

5. The above definition, although pragmatic in its approach, does not take into consideration institutional frameworks created under certain multilateral environmental treaties, such as the Ramsar Secretariat. Furthermore, it should be noted that the Ramsar Secretariat is only the "administrative unit performing those duties which amount to the Convention's secretariat functions"; and it has no intergovernmental nature. Moreover, in fact, neither the Parties to the Convention,[1] nor the Ramsar Secretariat itself[2] does recognize the Ramsar Secretariat as an "international organization".

6. In light of the above, granting the Ramsar Secretariat an "observer status" (i.e., participation on a continuing basis) with the Economic and Social Council does not seem advisable.

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* United Nations, *Treaty Series,* vol. 1155, p. 331.

[1] In its 9th Meeting, the Conference of the Parties to the Convention instructed the Secretary General of the Ramsar Secretariat, in its Resolution IX.10, to "engage in a consultative process" regarding the options and implications "for the transformation of the status of the Ramsar Secretariat towards an International Organization".

[2] In its application to the Economic and Social Council, the Ramsar Secretariat acknowledges that it is "in a kind of legal limbo, which has frequently been the occasion of operational problems in terms of contractual arrangements with public and private funding sources, internal financial management, visas for official travel, custom status, and recognition in international fora".

7. Despite the foregoing observation, we would like to note several examples of treaty bodies and, in general, less structured mechanisms of international cooperation that appear to become gradually in practice international organizations. This has been the case of the Conference on Security and Cooperation in Europe (CSCE) established in 1975, which was given throughout the years a formal structure until it was officially decided to change the name of the Conference to the "Organization for Security and Cooperation in Europe" (OCSE). A similar process was followed by the General Agreement on Tariffs and Trade (GATT), created in 1947 and gradually transformed into an international organization. Yet another example would be the 1959 Antarctic Treaty* that originally did not establish an international organization. However, in 2001 a permanent Secretariat was established and in 2003 the plenary organ of the Treaty (the Consultative Meeting) was given the authority to conclude a headquarters agreement with Argentina.

8. The Ramsar Convention appears to fall within the above-described categories. In fact, while the institutional framework of the Ramsar Convention cannot be considered an international organization *stricto sensu,* it acts as it were one, albeit of a less formal, more *ad hoc* nature, than traditional international organizations. Moreover, we realize that an international organization "in the making", such as the Ramsar Convention, could participate in the work of the Economic and Social Council only under Rule 79.

9. In view of the above considerations, and the wish of the Economic and Social Council Bureau to respond positively to this request, we would see no objection if, for political reasons, the Ramsar Convention were invited, pursuant to Rule 79, on *ad hoc* basis to participate in the work of the Economic and Social Council. Once the Ramsar Convention has been transformed into a full fledged international organization, a formal request for observer status, i.e, participation on a continuing basis, could be considered.

(*i*) Note to the Executive Office of the Secretary-General (EOSG) regarding fair and clear procedures in Security Council sanctions regimes and, in particular, the release of study commissioned by the Office of Legal Affairs

Sanctions regime decided by the Security Council—International momentum to adopt fair and clear sanctions procedures vis-à-vis individuals—Right to be informed—Right to be heard—Right to a counsel—Right to an effective remedy

3 May 2006

1. In paragraph 109 of the 2005 World Summit Outcome resolution 60/1 of 16 September 2005, the General Assembly called "upon the Security Council, with the support of the Secretary-General, to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them, as well as for granting humanitarian exemptions". Pursuant to this mandate, the Policy Committee, by its decision of 27 September 2005, has tasked the Office of Legal Affairs to lead an interdepartmental process to develop proposals and guidelines that would be available for the consideration of the Security Council. In particular, the Policy Committee requested the Office of Legal Affairs to closely cooperate with the Department of Political Affairs and the Office of the High Commissioner for Human Rights. In paragraph 20 of his report on the "Implementation

* United Nations, *Treaty Series,* vol. 402, p. 71.

of decisions from the 2005 World Summit Outcome for action by the Secretary-General", the Secretary-General has informed the General Assembly of this decision (A/60/430 of 19 October 2005).

2. Having received inputs on this issue from the Department of Political Affairs (DPA) and the Office of the High Commissioner for Human Rights (OHCHR), the Office of Legal Affairs (OLA) commissioned a study from Professor Bardo Fassbender of Humboldt University Berlin on the question of the responsibility of the Security Council to ensure that fair and clear procedures are made available to individuals and entities targeted with sanctions under Chapter VII of the Charter. The study has been scrutinized at an OLA organized closed in-house seminar on 27 February 2006, following which it has been finalized by Professor Fassbender.

3. Several Member States are aware of this study and have approached us with a view to obtaining a copy thereof. In the interest of transparency, it is advisable that the study be made available to interested Member States. The study could be placed on the internet with an appropriate disclaimer. If there is no objection, we will proceed accordingly. Please find attached a copy of this study for your information.*

4. In the context of this matter, we wish to provide you with some background information and inform you of the key elements for a strategy as to how to proceed in this matter.

5. The above cited paragraph 109 of the 2005 World Summit Outcome resolution triggered or accelerated several developments that OLA closely followed:

a) Germany, Sweden and Switzerland commissioned a study, entitled "Strengthening Targeted Sanctions through Fair and Clear Procedures", which was prepared by the Watson Institute for International Studies at Brown University and presented to Member States on 30 March 2006. This study, which was endorsed by the States that commissioned it, elaborates several proposals for the Security Council to address shortcomings of existing Security Council sanctions procedures. The proposals focus, in particular, on listing and procedural issues and provide options for a review mechanism (a copy of this study is attached for your information).**

b) The Council of Europe commissioned a study, entitled "The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Due Process and United Nations Security Council Counter-Terrorism Sanctions",*** which was prepared by Professor Iain Cameron of Uppsala University and discussed at the last meeting of the Legal Advisers of the Council of Europe Member States (CAHDI) on 24 March 2006. The study examines the problems caused for due process by sanctions introduced by the Security Council in the context of counter-terrorism; analyzes the case-law of the European Court of Human Rights relevant to the issues and addresses the question whether the ECHR standards represent general human rights principles. The study concludes that the adoption by ECHR States Parties, while acting in the Security Council, of targeted sanc-

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* Not reproduced therein. The study is now available on the internet at: http://www.un.org/law/counsel/Fassbender_study.pdf.

** Not reproduced therein. The study is available on the internet at: http://www.watsoninstitute.org/pub/Strengthening_Targeted_Sanctions.pdf

*** Doc. CAHDI (2006) 23.

tions containing no due process safeguards would be contrary to general human rights principles embodied in the ECHR. This would not mean that the sanctions are invalid, rather that the relevant ECHR States Parties incur State responsibility for the violation of the ECHR. The Cameron study further concludes that it would be possible to create an appropriate level of due process safeguards at the Security Council level while carrying out its function aimed at maintaining international peace and security (a copy of the Cameron study is attached for your information).*

c) On 21 September 2005, the Court of First Instance of the European Communities upheld European Union regulations implementing Security Council resolutions establishing sanctions regimes. *Inter alia,* the Court of First Instance held that the obligations of Member States under the Charter, including Security Council resolutions, prevail over their other obligations under, for example, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).** We have informed the Secretary-General about these decisions (a copy of the Note, dated 21 September 2005, is attached for your ease of reference).* In the meantime, the applicants have appealed these decisions and the cases are pending before the Court of Justice of the European Communities, as the court of last resort. The appeals decision can be expected during the second half of 2007.

6. These developments have created a certain momentum and may be perceived as putting pressure on the Security Council to further adapt the procedures in sanctions regimes to be more responsive to the minimum standards of fair and clear procedures. At the same time they have generated interest in the Fassbender study commissioned by OLA.

7. As to the substance of the Fassbender study, I should like to mention that we agree to a large extent with its findings and conclusions. The study contains several elements that we believe are important to the Security Council with respect to sanctions regimes. It sets forth the minimum elements required to ensure fair and clear procedures vis-à-vis individuals (see paragraph 8 below), and analyzes the state of the law with respect to whether such rights are binding on the Security Council. As a matter of strategy, my Office will, in consultation with DPA and OHCHR, prepare a paper for submission to the Policy Committee. On the basis of this paper, the Policy Committee could subsequently advise the Secretary-General on possible ways forward.

8. The minimum standards required to ensure fair and clear procedures include the following four basic elements:

a) The right of a person against whom measures have been taken by the Security Council to be informed of those measures, and to know the case against him or her, as soon as possible without thwarting their purpose;

b) The right of such a person to be heard within a reasonable time either by the Council or by an impartial, competent and effective review mechanism;

c) The right of such a person to counsel with respect to proceedings vis-à-vis the Security Council or the review mechanism;

d) The right of such a person to an effective remedy.

9. This paper, *inter alia,* would:

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* Not reproduced therein.

** *European Treaty Series,* No. 005.

a) Identify the minimum standards required under international law for fair and clear procedures in Security Council sanctions regimes;

b) Suggest practical steps as to how fair and clear procedures in sanctions regimes could be attained;

c) Provide the necessary background information in support of the proposal.

10. The paper would also suggest several options how the matter could be raised with the Security Council. The Policy Committee could recommend that the Secretary-General:

a) inform the President of the Security Council of his intentions by means of a letter;

b) informally approach the Security Council on the occasion of the upcoming Security Council retreat or in the framework of a Security Council luncheon;

c) share observations and suggestions with a specific Security Council sanctions committee, for example the 1267 Committee, or with the Working Group on General Issues on Sanctions of the Security Council;

d) address a Note along the lines described above (*paragraph 8*) to the Security Council without prior consultations.

11. Given the fact that the political mandate stems from General Assembly resolution 60/1 the Secretary-General should keep the President of the General Assembly informed.

12. If you are agreeable to the suggested course of action, we will proceed accordingly.

(*j*) Interoffice memorandum to the Acting Director, Administrative Support Division of the Department of Peacekeeping Operations, regarding the draft Memorandum of Understanding with the United Nations Development Programme (UNDP) on cost-sharing arrangements for the post of the Deputy Special Representative of the Secretary-General (Resident Coordinator/Humanitarian Coordinator/Resident Representative) (DSRSG (RC/HC/RR))

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED NATIONS SECRETARIAT AND UNDP RELATING TO THE COST-SHARING ARRANGEMENTS FOR THE POST OF DSRSG (RC/HC/RR)—UNPRECEDENTED CASE OF "DUAL APPOINTMENT" OF A UNITED NATIONS STAFF MEMBER—DISTINCTION BETWEEN DESIGNATION AND APPOINTMENT—TERMS AND CONDITIONS OF APPOINTMENTS DEFINED IN LETTER OF APPOINTMENT—INAPPROPRIATENESS OF HAVING TWO DISTINCT LETTERS OF APPOINTMENT COVERING THE SAME PERIOD OF TIME—LEGAL OPTIONS AVAILABLE TO ADEQUATELY REFLECT THIS EXCEPTIONAL SITUATION IN THE MEMORANDUM

22 May 2006

1. This refers to your memoranda of 29 March and 2 May 2006, responding to my memorandum of 22 November 2005, and requesting our review of a revised draft of the above-referenced Memorandum of Understanding (MOU) ("revised draft MOU"). Attached to your memorandum of 29 March 2006 are, *inter alia,* copies of comments of the Office of Human Resources Management (OHRM) on the matter set out in [Chief of Human Resources Policy Service]'s memoranda of 11 January and 7 March 2006, and

comments of the Office of Programme Planning, Budget and Accounts (OPPBA) set out in [Director of Accounts Division]'s memorandum of 28 February 2006. We have reviewed the revised draft MOU in the light of the clarifications provided by you, OHRM and OPPBA, and have the following further comments. Our comments are also indicated in the attached mark-up draft.*

"Appointment" of the Deputy Special Representative of the Secretary-General (Resident Coordinator/Humanitarian Coordinator/Resident Representative)

2. Regarding the issue of "appointment" versus "designation" of the Deputy Special Representative of the Secretary-General (Resident Coordinator/Humanitarian Coordinator/Resident Representative), (hereinafter the "DSRSG (RC/HC/RR)"), you have indicated, following consultation with OHRM, that a DSRSG (RC/HC/RR) would be "appointed" by the Secretary-General by a Letter of Appointment (LoA), while maintaining a contractual relationship with the United Nations Development Programme (UNDP). In this regard, OHRM has indicated that the alternative of "designation" would, in their view, "do justice neither to the functions involved nor to the special status, responsibilities and accountabilities of Deputy SRSGs in the mission" (para. 3 of OHRM's memorandum of 31 January 2006 refers). Therefore, paragraph 1.1 of the revised draft MOU retains the word "appoint" and paragraph 3.1 has been revised, reflecting the wording proposed by OHRM.

3. As OHRM has indicated in its memorandum of 11 January 2005 (para. 3 thereof), the proposed arrangement involving "dual appointment" of a United Nations staff member seems unprecedented. While we are aware of the unique circumstances relating to the "appointment" of a DSRSG (RC/HC/RR), we consider that the arrangement, whereby the staff member concerned would be governed by two separate LoAs covering the same period of service for the Organization, would be inappropriate from a legal point of view. In this respect, the two LoAs issued to the DSRSG (RC/HC/RR) could be under different Series of the Staff Rules, e.g. a 100 Series appointment with UNDP and an Appointment of Limited Duration (ALD) under the 300 Series of the Staff Rules as the DSRSG. Since the terms and conditions of 100 and 300 Series appointments are different, the DSRSG (RC/HC/RR) holding such LoAs could conceivably be subject to different terms and conditions of appointment, which obviously should be avoided.

4. In this regard, we understand from the revised draft MOU, including Annex C thereto, that the terms of conditions of the appointment of the DSRSG (RC/HC/RR), including the salaries, benefits and allowances, would continue to be governed by the terms of his/her appointment with UNDP. It thus appears to us that the primary purpose of the LoA issued by the Secretary-General would be to assign the staff member concerned to discharge the functions of the DSRSG, in addition to carrying out his/her functions as the RC/HC/RR. If this is the case, we are of the view that a letter of "designation" issued by the Secretary-Genera] to the staff member would achieve the same objective. Alternatively, the LoA issued by UNDP could be amended to stipulate that the staff member shall perform the functions of the DSRSG, in accordance with the provisions of the MOU, and a copy of the MOU could be attached to the revised LoA. This would appear to constitute a reasonable solution.

* Not reproduced therein.

5. In view of the above, we wish to reiterate our suggestion made in our 22 November 2005 memorandum that the DSRSG (RC/HC/RR) should be "designated" by the Secretary-General, rather than be "appointed" by him. However, if "appointment" is deemed absolutely necessary by the Department of Peacekeeping Operations (DPKO) and OHRM, we recommend that the proposed "dual appointment" be expressly approved by the Secretary-General as an exception, in order to avoid creating a precedent for "dual appointment" of United Nations staff members. We would also recommend that the arrangement be reported to the General Assembly, pointing out the exceptional circumstances for the "appointment" of the DSRSG (RC/HC/RR).

6. In view of the foregoing, we have placed the references to the word "appoint", in relevant parts, within square brackets and included the word "designate", also in square brackets, next to it, and have placed paragraph 3.2 in square brackets. In this regard, "designation" of the DSRSG (RC/HC/RR) seems to affect the basis for the cost-sharing arrangement which, under the revised draft MOU, is the 50 percent of the amount normally payable at the level of appointment under a United Nations Appointment of Limited Duration. We would therefore recommend that, depending on the decision taken concerning "appointment" or "designation" of the DSRSG (RC/HC/RR), any necessary revisions be made to the provisions relating the cost-sharing arrangements, including the provisions in Annex C. Please note that in the mark-up draft, we have not made any revisions to those provisions.

7. If it is decided that the DSRSG (RC/HC/RR) would be "appointed" by the Secretary-General, we would recommend that the following sentence be included in paragraph 3.1 of the MOU, as the new second sentence:

> "Unless otherwise expressly stated in this Memorandum of Understanding and the Letter of Appointment issued by the Secretary-General, the terms and conditions of the appointment, including salaries, benefits and allowances, of the Deputy Special Representative of the Secretary-General (Resident Coordinator/Humanitarian Coordinator/Resident Representative) shall continue to be governed by the terms of his or her contractual relationship with UNDP."

We would also recommend that a similar provision be included in the LoA issued by the Secretary-General, in addition to the provisions recommended by OHRM in paragraphs 9 and 10 of its memorandum of 11 January 2006 (which you have indicated would be included):

> "Unless otherwise expressly stated in this Letter of Appointment and the Memorandum of Understanding of [date] between the United Nations and UNDP, which is attached hereto, the terms and conditions of the appointment of the staff member, including salaries, benefits and allowances, shall continue to be governed by the terms of the staff member's contractual relationship with UNDP."

In addition, we would recommend that the following provision, reflecting the provision recommended by OHRM in paragraph 10 of its 11 January 2006 memorandum, be included in paragraph 3.2, as the new second sentence:

> "The Letter of Appointment issued by the Secretary-General shall indicate that the appointment is subject to the provisions of this Memorandum of Understanding, which shall be attached to the Letter of Appointment."

Reporting lines of the DSRSG (RC/HC/RR)

8. Regarding the reporting lines of the DSRSG (RC/HC/RR), you have indicated that "primary" and "secondary" reporting lines of the DSRSG (RC/HC/RR) are addressed in the Secretary-General's Note of Guidance on Integrated Missions, which is referred to in paragraph 2.1 of the revised draft MOU, but not attached thereto. We recommend that paragraphs 17 to 22 of the Notes of Guidance concerning the "Role, responsibility and authority of the DSRSG/RC/HC" (or the Notes of Guidance in their entirety, if appropriate) be attached to the MOU as Annex A, and the numbering of the other Annexes be adjusted. In this regard, the Notes of Guidance only refer to the DSRSG (RC/HC) but do not refer to his or her functions as the Resident Representative. However, based on paragraph 8 of your memorandum of 29 March 2006, we understand that the Resident Representative is also be covered by the references to the DSRSG (RC/HC) in the Notes of Guidance. This should be clarified.

(*k*) Interoffice memorandum to the Secretary, Commission on Human Rights, regarding the implications of Article 12 of the United Nations Charter and the Human Rights Council

Scope of Article 12 of the United Nations Charter—Article 12 applies to subsidiary bodies of the General Assembly—Human Rights Council entitled to convene a special session to discuss a matter considered by the Security Council—Difference in the title of the item on the agenda of the two bodies—Human Rights Council entitled to make recommendations regarding aspects of the situation, within the scope of its mandate, which are not in connection with the maintenance of international peace and security

6 July 2006

1. I refer to the request by the President of the Human Rights Council during the Bureau meeting of 30 June 2006 about the legal implications of Article 12 of the Charter vis-à-vis the decision of the Human Rights Council to convene a special session to discuss a matter that was also under consideration by the Security Council.

2. We note that on 30 June, [State] supported by 21 other members of the Human Rights Council, submitted a request to the President calling for a special session of the Human Rights Council to discuss the "latest escalation of the situation in the Palestinian and other Occupied Arab Territories." The request met the requirements set out in paragraph 10 of General Assembly resolution 60/251, which provides that the Council "shall be able to hold special sessions, when needed, at the request of a member of the Council with the support of one third of the membership of the Council." The President of the Human Rights Council discussed the options for holding the special session in a Bureau meeting right after closing the regular session and decided to hold it on Thursday, 6 July 2006.

3. We also note that, at the requests of [State], the Security Council held a meeting on 30 June 2006 to consider the item entitled "The situation in the Middle East, including the Palestinian question." At the end of the meeting, the President of the Security Council stated that, with the list of speakers exhausted, the Council had "concluded the present stage of its consideration of the item on its agenda."

4. The question put before us is whether Article 12 of the Charter applies to subsidiary organs of the General Assembly and, if so, whether Article 12 provides for any obstacle for the Human Rights Council to meet, discuss and make recommendations on the issue raised by [State].

5. Article 12, paragraph 1, of the Charter provides as follows: "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests."

6. Consistent with the previous position of this Office on the matter, we consider that the above provision of the Charter applies to subsidiary organs of the General Assembly, including the Human Rights Council.

7. Furthermore, in accordance with the practice of the Assembly, Article 12 does not prevent the General Assembly, and its subsidiary organs, from generally considering, discussing and making recommendations on items which are on the agenda of the Security Council, in particular where the titles of the items before the Council and the Assembly are not identical.

8. It is to be noted that the General Assembly has interpreted the words "is exercising" in Article 12 in a restricted fashion, as meaning "is exercising at this moment" and, consequently, it had made recommendations on matters which the Security Council was also considering. Examples of such matters are the situations in Congo (1960–61), Angola (1961–62), the apartheid question (1960–63), territories under the Portuguese administration (1962–63) or the question of Southern Rhodesia (1962–63).

9. On the question at hand, we note that the Security Council has concluded the present stage of its consideration of item on its agenda. In addition, the title of the item in the Security Council is not identical to that of the Human Rights Council.

10. In light of the foregoing, in our view the Security Council is not exercising its functions under the Charter "at this moment" on this particular issue. Therefore, Article 12 of the Charter should not be considered as an obstacle for the Human Rights Council to meet in a special session to consider recommendations to the General Assembly on the '"latest escalation of the situation in the Palestinian and other Occupied Arab Territories", as proposed by [State].

11. Furthermore, we would point out that the International Court of Justice, in paragraph 27 of its advisory opinion of 9 July 2004 on the "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory", noted that there had been "an increasing tendency over time for the General Assembly and the Security Council to deal in parallel with the same matter" (see, for example, recently, the cases of Bosnia and Herzegovina and Somalia) and that "while the Security Council has tended to focus on the aspects of such matters related to international peace and security, the General Assembly has taken a broader view, considering also their humanitarian, social and economic aspects."

12. Accordingly, we believe that, even if the Security Council was "exercising at this moment" its functions under the Charter on the matter, the Human Rights Council should also be able to make recommendations regarding those aspects of the situation which do not have any connection with the maintenance of international peace and security, and which are within the scope of its mandate.

13. We would be grateful if you could convey our opinion to the President of the Human Rights Council.

(*1*) Note to the Director, Accounts Division of the Office of Programme Planning, Budget and Accounts, regarding the performance bond provisions in United Nations contracts

United Nations contracts with vendors—United Nations entitled to request performance bonds from vendors—Failure to exercise such a right not to be construed as a waiver of this right—Right to request performance bond can be exercised at any time—United Nations always entitled to withhold payment in case vendors fail to provide the requested performance bonds

28 July 2006

I refer to your e-mail of 27 July 2006, by which you requested assistance in interpreting performance bond provisions from various contracts. The provisions you cited in your e-mail message appear to provide that the Organization may withhold payments from vendors' invoices in cases where the vendors have not provided performance bonds to the United Nations within the time limits specified in the contracts at issue.

As in any contract, the United Nations' exercising its rights under its contracts should be effected with care in order to minimize exposure to claims from contractors.

We note that the failure by the United Nations to exercise its right to a performance bond may be construed as a waiver of its right to demand such performance bond. In this regard, our model contracts contain provisions stating that failure by the United Nations to exercise any rights available to it shall not be construed as a waiver by the United Nations of any such right or any remedy associated therewith, and shall not relieve the Contractor of any of its obligations under the contract. If such a provision is included in the contracts at issue, then the United Nations could exercise, at a late stage, its right to demand that the vendors submit a performance bond in accordance with the contractual stipulations. Should the vendors fail to comply with the United Nations' demand, the United Nations could begin withholding payments owed to the vendor pursuant to the contractual stipulations.

On the other hand, if the contracts at issue do not contain provisions regarding the non-waiver of remedies, the vendors may object to the United Nation's efforts to enforce the performance bond provisions now, after much time has elapsed, without a prior demand for the production of the performance bonds. Even if the vendors object to the United Nations' belated demand, the contracts do require the vendors to provide the United Nations with a performance bond. Accordingly, the Payroll Section should remain firm in continuing to seek to exercise the United Nations' right to either obtain a performance bond in accordance with the requirements of the contracts or, failing the vendors' providing such a performance bond, withholding monies in accordance with the contract provisions you have cited.

Therefore, the Payroll Section should in any case notify the vendors in writing that the United Nations demands the provision of the required performance bonds pursuant to the applicable provisions of the contracts, within a time period to be determined by the Payroll Section. Such notices to the vendors should further make clear that the vendors' failure to

provide the required performance bonds within such timeframe will result in the United Nations' exercising its rights in accordance with the contracts to withhold payments from the contractors' invoices up to the value of the performance bonds in question.

(m) Interoffice memorandum to the Executive Secretary, International Civil Service Commission (ICSC), regarding conditions for candidate organizations to join ICSC

United Nations common system—International Civil Service Commission aiming to develop a single unified international civil service—Impossibility to adhere only selectively to the common system—Obligation to accept ICSC statute in its entirety as well as its decisions and recommendations concerning allowances and benefits—Possibility of joining the common system without joining the United Nations Joint Staff Pension Fund

16 August 2006

1. I refer to your memorandum of 3 August 2006, seeking advice of the Office of Legal Affairs (OLA) on the conditions that a candidate organization must fulfil in order to join the United Nations common system and be invited to participate in the work of the International Civil Service Commission (ICSC). I understand that questions were recently addressed to the ICSC by two candidate organizations, [International Organizations A and B] I further understand that you seek our advice only on the questions raised by [International Organization A], and not by [International Organization B], since you indicate that [International Organization B] is preparing its candidacy "in a straightforward manner." You have stated that [International Organization A] apparently believes that it can join the United Nations common system, while selectively accepting the decisions of the ICSC and recommendations concerning certain allowances and benefits that have been endorsed by the General Assembly, and without becoming a member organization in the United Nations Joint Staff Pension Fund (UNJSPF). Please find herewith our comments.

2. The Statute of the ICSC, approved by the General Assembly by its resolution 3357 (XXIX) of 18 December 1974, states in Article 1, paragraph 2, the following:

> "The Commission shall perform its functions in respect of the United Nations and of those specialized agencies and other international organizations, which participate in the United Nations common system and which accept the present statute . . ."

Therefore, if [International Organization A] wishes to join the common system, it would have to accept the Statute of the ICSC in its entirety, including the provisions therein concerning the functions and powers of the ICSC set out in Chapter III of the Statute. We understand that all other organizations, participating in the common system accept the ICSC Statute in its entirety.

3. Moreover, Article 9 of the Statute of the ICSC provides that:

> "In the exercise of its functions, the Commission shall be guided by the principle set out in the agreements between the United Nations and the other organizations, which aims at the development of a single unified international civil service through the application of common personnel standards, methods and arrangements."

Pursuant to Article 9, we understand that an agreement is to be concluded between the United Nations and each organization participating in the United Nations common system. We note that the Annex to the Statute and Rules of Procedure of the ICSC set out relevant provisions of the agreements concluded by the United Nations and other participating organizations, concerning the coordination in personnel matters. Consistent with Article 9 of the Statute, the provisions contained in the Annex reflect the agreement of the participating organizations to cooperate to develop a single unified international civil service through the application of common personnel standards, methods and arrangements. Thus, having the [International Organization A] only selectively accept the Statute of the ICSC, including Article 9, would not seem appropriate. In view of the fact that the purpose of the ICSC is to develop a single unified international civil service, we consider that selective acceptance of the ICSC Statute would defeat that purpose.

4. With respect to the second issue raised in your memorandum on whether the [International Organization A] may join the United Nations common system without becoming a member organization of the UNJSPF, as far as we can determine from the ICSC Statute, being a member organization in the UNJSPF is not a requirement to join the United Nations common system. We have noted, in fact, that not every organization that is a participating organization in the common system is a member of the UNJSPF, as illustrated by the case of the Universal Postal Union (UPU). (See Table 1, in the Statute and Rules of Procedure of the ICSC). We also note that Article 11 of the ICSC Statute provides that the Commission shall establish:

> "(a) The methods by which the principles for determining conditions of service should be applied;
>
> (b) Rates of allowances and benefits, *other than pensions* and those referred to in article 10 (c) [dealing with allowances and benefits of staff determined by the General Assembly], the conditions of entitlement thereto and standards of travel; (emphasis added) . . ."

According to Article 11, establishing pension rates is not a function of the ICSC.

5. Therefore, while we consider that full acceptance of the Statute of the ICSC is required by any organization that wishes to join the United Nations common system, membership in the UNJSPF does not appear to be a prerequisite to joining the common system.

(*n*) Note to the Assistant Secretary-General for Policy Coordination and Strategic Planning, Executive Office of the Secretary-General, regarding the name of the United Nations Office on Drugs and Crime (UNODC)

Mandate of UNODC as established by the Secretary-General pursuant to General Assembly resolutions 45/179 and 46/152—UNODC mandated to implement two programmes: drug control and crime prevention—Inclusion of functions relating to terrorism prevention in the crime prevention programme—UNODC's name viewed as adequately reflecting its mandate

19 October 2006

1. I refer to your electronic mail message of 17 October 2006, seeking my urgent advice concerning the proposal to add the word "Terrorism" to the name of the United Nations Office on Drugs and Crime (UNODC). Please see below for my comments on the proposal.

2. Secretary-General's bulletin ST/SGB/2004/6 of 15 March 2004,* entitled "Organization of the United Nations Office on Drugs and Crime" states that, prior to 1 October 2002, the United Nations Office on Drugs and Crime (UNODC) was called "Office for Drug Control and Crime Prevention" (ODCCP) (see footnote 1 to ST/SGB/2004/6 . . .). (It is further stated in footnote 1 that ODCCP was established in accordance with the Secretary-General's reform programme described in part two, section V, of document A/51/950, dated 14 July 1997).

3. Section 2.1 of ST/SGB/2004/6 provides that UNODC has been:

> "established to implement the Organization's drug programme [footnote 2 hereto is omitted; see below] and crime programme [footnote 3 hereto is omitted; see below] in an integrated manner, addressing the interrelated issues of drug control, crime prevention and *international terrorism* in the context of sustainable development and human security". (Emphasis added).

With regard to the Organization's drug programme, footnote 3 to section 2.1 of ST/SGB/2004/6 provides as follows:

> "The United Nations International Drug Control Programme was established pursuant to General Assembly resolution 45/179 of 21 December 1990 as the body responsible for coordinated international action in the field of drug abuse control. The authority for the Fund of the Programme was conferred on the Executive Director by the General Assembly in its resolution 46/185 C of 20 December 1991."

With regard to the Organization's crime programme, footnote 4 to section 2.1 of ST/SGB/2004/6 provides as follows:

> "The Crime Prevention and Criminal Justice Programme was established by the General Assembly in its resolution 46/152 of 18 December 1991. Since 1997, the Programme has been implemented by the Centre for International Crime Prevention, which was established in accordance with the Secretary-General's reform programme described in part two, section V, of document A/51/950, dated 14 July 1997."

In view of the foregoing provisions in ST/SGB/2004/6, it appears that the name, United Nations Office on Drugs and Crime (as well as its predecessor name ODCCP), is intended to reflect the fact that UNODC implements the above-referenced two programmes established by the General Assembly, i.e. the United Nations International Drug Control Programme established by General Assembly resolution 45/179, and the Crime Prevention and Criminal Justice Programme established by General Assembly resolution 46/152.

4. UNODC's functions relating to terrorism prevention are implemented through UNODC's crime programme. In this regard, section 2.3 of ST/SGB/2004/6 provides as follows:

> "Through its crime programme, the United Nations Office on Drugs and Crime:
>
> "(a) Is responsible for carrying out activities in the field of international crime prevention and control; strengthening regional and international cooperation in prevent-

* For information on Secretary-General's bulletins, see note in section 1 (c), para. 3, above.

ing and combating transnational crime, in particular organized and economic crime, money-laundering, illicit trafficking in women and children, financial crimes and *terrorism in all its forms*: [. . .];

"(b) Serves as the repository of technical expertise in the field of crime and *terrorism prevention* and criminal justice for the Secretariat of the United Nations, including the regional commissions, and other United Nations organs [. . .]" (Emphasis added).

5. The Secretary-General has certain discretionary authority concerning the naming of the organizational units within the Secretariat, except for the names of units established by the General Assembly, e.g., OIOS. Although UNODC in and of itself was not established by the General Assembly, its mandate is to implement the Organization's drug programme and crime programme established by the General Assembly (see paragraph 3 above). In my view, the current name of the Office, United Nations Office on Drugs and Crime, accurately reflects those two mandates of UNODC. Moreover, UNODC's functions relating to terrorism prevention fall under UNODC's crime programme (see paragraph 4 above). In the light of the above, the need to add the word "Terrorism" to the name of UNODC does not seem to be obvious. If, however, the addition of the word "Terrorism" is intended to go beyond the activities already carried out by UNODC, this could be perceived as a change of the mandate or programmatic activities of UNODC for which the prior approval or endorsement of the General Assembly would be required.

3. Other issues relating to peacekeeping operations

(*a*) Note to the Under-Secretary-General for Political Affairs regarding guidance on activities of the Special Envoy in [Rebel Group]-affected areas

Negotiation of conflict resolution—Implementation of the mandate of the United Nations Representative in the context of interaction with rebel leaders—Contact with rebel leaders indicted by the International Criminal Court (ICC) should be avoided—Preferable to interact with non-indicted rebel leaders—National amnesties for the crime of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law are not recognized by the United Nations

31 August 2006

1. I refer to your note of 24 August 2006, by which you sought our views on how Special Envoy designate [Name] in carrying out his mandate might interact with members of the [Rebel Group]-who have been indicted by the International Criminal Court (ICC). Further, you seek guidance on the implications of an amnesty offered by [Country] President to the [Rebel Group]-indictees in relation to the mandate of the Special Envoy.

2. We recall that on several occasions in the past, this Office has advised that United Nations programmes, funds and offices carrying out humanitarian or development mandates in [Rebel Group]-affected areas, should avoid any direct contacts with indicted [Rebel Group]-leaders unless such contacts are strictly necessary to carry out their mandated activities, and not beyond.

3. In the present case, the Terms of Reference of the Special Envoy entrusts him with a mandate to:

(*i*) promote, assist and facilitate the national dialogue and reconciliation in [Country], including, as appropriate, transitional justice initiative, (3 (b));

(*ii*) promote, assist and facilitate, as required, peaceful approaches to ending the hostilities with the [Rebel Group], (3 (c)); and

(*iii*) promote and complement the peacebuilding, development and ex-combatant re-integration initiatives required to sustain peace and stability in [part of the Country], (3 (d)).

4. For the Special Envoy to carry out his mandated activities—whether in the pursuit of the Emergency Plan for Humanitarian Interventions and the future National Peace, Recovery and Development Plan, or of the Secretary-General's good offices—direct contacts with the five indicated leaders may be required. They should, however, be limited to what is strictly required for carrying out his mandate. The presence of the Special Envoy in any ceremonial or similar occasions should be avoided. We should also add that when contacts with the [Rebel Group] are necessary, an attempt should be made to interact with *non-indicted [Rebel Group] leaders,* if at all possible.

5. We note that the "Agreement on Cessation of Hostilities between the Government of the Republic of [Country] and [Rebel Group]", signed on [date] 2006 in [City, Country 2], does not grant amnesty to [Rebel Group] members. The [country] Amnesty Act 2000, however, provides for a sweeping amnesty which is unlimited in time and unqualified in scope. Paragraph 3 (2) of the Amnesty Act provides that,

> "A person referred to under subsection (1) shall not be prosecuted or subjected to any form of punishment for the participation in the war or rebellion *for any crime* committed in the cause of the war or armed rebellion" (emphasis added).

6. Amnesty is thus, in principle, applicable to any person, including [Rebel Group] leaders indicted by the ICC, and to crimes which were, or are being committed with no limitation in time. As a national measure, any amnesty granted under the [Country] Amnesty Act, has no effect on the ongoing investigations against the five leaders, the validity of ICC arrest warrants, the power of the ICC to request the surrender of indicted individuals, or the international obligation of [Country] to surrender them. While the Special Envoy may, when absolutely necessary, interact with the indicted leaders for the purpose of carrying out his mandate, he should avoid any action which would obstruct their eventual surrender to the ICC.

7. We should note, in this connection, that in the event that the Special Envoy is called upon to conduct, facilitate or otherwise participate in negotiations of a permanent cease-fire or a peace agreement, especially if the Agreement includes an amnesty clause, the following should be borne in mind. It has been the long-standing position of the United Nations not to recognize, let alone condone any amnesties for the crime of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law. We wish to recall that the 1999 "Guidelines for United Nations representatives on certain aspects of negotiations for conflict resolution" (copy attached) contain clear instructions for United Nations representatives in the field. They provide, in particular, that the " United Nations Representative should seek guidance from Headquarters should any of the following issues arise during the negotiations [. . .] demands for amnesty may be made on behalf of different elements [. . .]." At the end of this paragraph, the "guide-

lines" set forth that "the United Nations cannot condone amnesties regarding war crimes, crimes against humanity and genocide [. . .]."

8. This Office stands ready to provide further advice on any specific question that may arise in the course of the Special Envoy's mandate with regard to any of these issues.

Annex

Introduction to the guidelines for United Nations representatives in certain aspects of negotiations for conflict resolution

In recent years, since the United Nations has become more deeply involved in efforts to resolve internal conflicts, United Nations representatives have had to grapple with the urgency of stopping the fighting, on the one hand, and the need to address punishable human rights violations, on the other, particularly when the temptation to enact hasty amnesties arises as negotiations draw to a close. This can create dilemmas for these representatives who may find themselves navigating with apparently conflicting mandates, with deep roots in the United Nations Charter and the Universal Declaration of Human Rights[*] and other sources of international law. In order to assist them in discharging their task, the attached confidential guidelines have been prepared, having in mind the overarching goal that solutions to conflicts should be durable. They are meant as a useful practical tool for United Nations negotiators that will also serve the purpose of ensuring the consistency and quality of agreements reached in the area of human rights, under the auspices of the United Nations.

The guidelines were prepared after extensive consultations with experienced practitioners in the mediation of conflicts under the auspices of the United Nations, of other multilateral organizations, member states and non-governmental organizations on one side, and human rights experts and scholars of international law on the other. They were asked to consider, with an emphasis on the practical problems faced by those who work to secure transitions from a violent past, such questions as: Is it a mediator's duty to bring human rights considerations to the attention of parties to a negotiation, and if so which? If parties to a negotiation seem to be headed towards an arrangement that would involve reciprocal impunity, ignoring internationally accepted human rights standards, what should the mediator do? and what is the mediator's responsibility with respect to addressing the past?

Finding answers to these questions will never be easy; it is not the intention of the guidelines to provide hard and fast rules for universal application. Rather, it is hoped that the existence of the guidelines, which are accompanied by a background paper (attached as an annex),[**] will help alert representatives of the United Nations engaged in negotiation processes to some of the challenges they may encounter regarding human rights, including amnesties and the question of accountability and how to address the past, and encourage them to seek guidance and support from United Nations Headquarters. It goes without saying that the guidelines should at all times remain confidential to the United Nations representative; the timing with which he/she chooses to apply them within the specific

[*] General Assembly resolution 217 (III) of 10 December 1948.

[**] Not reproduced therein.

process in which he/she is engaged would, as the final point of the guidelines makes clear, be entirely a question of his/her judgement and discretion.

Guidelines for United Nations representatives on certain aspects of negotiations for conflict resolution

1. Peace negotiations with the mediation or good offices of a Representative of the Secretary-General are deemed as taking place under the auspices of the United Nations. The Secretary-General's Representative must therefore be mindful that, as an agent of the Organization, he/she is acting within a framework of established purposes, principles and rules.

2. The purposes and principles of the United Nations Charter must be promoted and upheld. The United Nations has a record and credibility to defend and cannot condone agreements arrived at through negotiations that would violate Charter principles. Under the Charter, disputes should be settled in conformity with the principles of justice and international law.

3. Parties must be led to understand that negotiations that are conducted with an awareness of these concerns will contribute to forming the basis for a sustainable peace. The United Nations will thus be in a better position to marshal the support of the System as a whole, regional and other intergovernmental organizations, as well as non-governmental organizations for implementation of the agreements.

4. In addition, agreements signed under the auspices of the Secretary-General must withstand the scrutiny of a variety of constituencies; the Secretary-General's representatives must therefore make every effort to make them politically defensible.

5. For a peace agreement to be durable, the parties, with the assistance of the United Nations Representative, should look ahead to the implementation phase at an early stage of the negotiations. The negotiators should be alerted to the need to address issues of capacity and/or institution-building which, particularly when undertaken in the areas of governance, public security and the judicial system, will contribute to prevent the recurrence of conflict.

6. In view of the importance of issues of governance, legal, electoral and socio-economic reform to the sustainability of peace, the United Nations Representative should alert the parties to the resources available within the System and elsewhere and be prepared to engage the various United Nations agencies and programmes in the provision of support to his/her efforts.

7. Negotiations often take place in a context of human rights violations and violations of the laws of armed conflict. Early commitments to respect human rights and humanitarian principles should be encouraged. Measures to be considered in this regard could include international access, observation and verification, which may mitigate or deter violations and contribute to the building of confidence in the peace process as a whole.

8. It should be borne in mind that human rights violations by state organs and acts committed by rebel groups do not fall in the same category under law, given the primary duty of the state to guarantee respect for human rights. Violations by state organs and those by rebel groups may therefore need to be addressed in different ways. This is without prejudice to individual criminal responsibility for violations of human rights and inter-

national humanitarian law for which there is no distinction to be made as between the category of perpetrators.

9. In some circumstances the United Nations Representative may need to acquaint the parties to a conflict with the existence of a body of international law and practice regarding these issues, including those related to current human rights and humanitarian obligations, accountability and amnesties.

10. While every effort should be made to address these questions satisfactorily in the agreements, in the event that this is not possible the parties should be urged to include language that will allow for the possibility of further elaboration of any outstanding issues.

11. In the event that the negotiations are proceeding towards an agreement that may be seriously flawed from the perspective of the United Nations, the United Nations Representative should, after obtaining political and legal advice from United Nations Headquarters, in an appropriate way and at a time of his/her judgement, draw the attention of the parties to the consequences for the sustainability of the agreement and, having regard to international law and opinion, for United Nations engagement and donor assistance. He/she may even need to warn the parties that, if they cross certain lines, the United Nations might be put in a position where it would have to take a stance, on the public record, concerning aspects of the agreement.

12. The United Nations Representative should seek guidance from Headquarters should any of the following issues arise during the negotiations, in order to furnish the parties with the necessary advice and assistance:

Allegations of serious human rights violations or violations of international humanitarian law recently committed or currently being committed that might require immediate investigation;

Requests for investigation of allegations of serious violations of human rights or international humanitarian law committed in the past. Such demands may raise issues of prosecution of those allegedly responsible for such acts or for a comprehensive investigation into a systematic pattern of abuses that may lead to the establishment of mechanisms such as "Truth Commissions";

Demands for amnesty may be made on behalf of different elements. It may be necessary and proper for immunity from prosecution to be granted to members of the armed opposition seeking reintegration into society as part of a national reconciliation process. Government negotiators may seek endorsement of self-amnesty proposals; however, the United Nations cannot condone amnesties regarding war crimes, crimes against humanity and genocide or foster those that violate relevant treaty obligations of the parties in this field.

13. United Nations representatives should keep in mind opportunities to encourage the parties and assist them in incorporating into agreements provisions and arrangements for the promotion and protection of human rights, inspired by international and regional standards.

14. It is understood that the preceding guidelines are drafted in general terms so as to cover a wide range of conflicts and mediations. The timing and manner in which the United Nations Representative may wish to raise these issues would, of course, be a matter for his/her judgement and discretion.

(*b*) Interoffice memorandum relating to the United Nations position on peace and justice in post-conflict societies

Recognition of amnesties granted at national level and in peace agreements—no recognition of amnesties for crimes of genocide, crimes against humanity, war crimes and serious violations of international humanitarian law—Relationship between the United Nations and the International Criminal Court—Cooperation between the two Organizations limited by mandates and other rules—No obligation for the United Nations to support policies and strategic decisions of ICC

25 September 2006

With the growing involvement of the United Nations in post-conflict societies—both in facilitating the negotiation of peace agreements and in establishing judicial and non-judicial accountability mechanisms—the Organization has frequently been called upon to express its position on the relationship between peace and justice, on the validity and lawful contours of amnesty, on the relationship between the United Nations and the International Criminal Court (ICC), and on the interaction between United Nations representatives and persons indicted by international and United Nations-based tribunals, who continue to hold positions of authority in their respective countries. This Note reflects the long-established policy and practice of the Organization in all of these respects. While general in character, it also deals with the situation in [Country] where peace negotiations are conducted with [Rebel Group] leaders against whom ICC indictments for war crimes and crimes against humanity have been issued. This Note does not obviate the need to consult with the relevant United Nations Departments, including Office of Legal Affairs, on the applicability of these principles in the specificities of any given case.

1. The relationship between peace and justice: there is no sustainable peace without justice—although they can be sequenced in time

– "Justice and peace must be regarded as complimentary requirements. There can be no lasting peace without justice. The problem is not one of choosing between peace and justice, but of the best way to interlink one with the other, in the light of specific circumstances, without ever sacrificing the duty of justice." (22 June 2006, the Legal Counsel in the Security Council, S/PV.5474).

– "We should know that there cannot be real peace without justice, yet the relentless pursuit of justice may sometimes be an obstacle to peace. If we insist, at all times and in all places, on punishing those who are guilty of extreme violations of human rights, it may be difficult or even impossible to stop the bloodshed and save innocent civilians. If we always and everywhere insist on uncompromising standards of justice, a delicate peace may not survive. But equally, if we ignore the demands of justice simply to secure agreement, the foundations of that agreement will be fragile, and we will set bad precedents." (24 September 2003, the Secretary-General in the Security Council, S/PV.4833).

– "There are no easy answers to such moral, legal and philosophical dilemmas. At times, we may need to accept something less than full or perfect justice or to devise intermediate solutions such as truth and reconciliation commissions. We may need to put off the day when the guilty are brought to trial. At other times, we may need to accept, in the short-term, a degree of risk to the peace in the hope that in the long-term peace will be

more securely guaranteed." (24 September 2003, the Secretary-General in the Security Council, S/PV.4833).

2. The lawful contours of amnesty and the non-recognition of amnesty for genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law

– The United Nations does not recognize any amnesty for genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law. This principle, which reflects a long-standing position and practice, applies to peace agreements negotiated or facilitated by the United Nations, or otherwise conducted under its auspices. In the event that such a peace agreement nevertheless grants amnesty for such crimes, the United Nations representative, when witnessing the agreement on behalf of the United Nations, shall affix a declaration next to his or her signature, stating that "the United Nations does not recognize amnesty for genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law."

– Where amnesty has already been granted in any given country and the United Nations is subsequently involved in the establishment of a judicial accountability mechanism in that country, the United Nations will ensure that an amnesty thus granted will not be a bar to prosecution before the United Nations-based tribunal.

– The 1999 "Guidelines for United Nations representatives on certain aspects of negotiations for conflict resolution" contain instructions for United Nations representatives in the field with respect to the negotiation of peace agreements. They provide, in particular, that the "United Nations Representative should seek guidance from Headquarters should any of the following issues arise during the negotiations (. . .) demands for amnesty may be made on behalf of different elements (. . .)."

3. United Nations-ICC relationship—While the ICC is independent of the United Nations, the United Nations supports the Court and avoids any action likely to undermine its authority

– The ICC is an international judicial institution independent of the United Nations. The United Nations, however, played a major role in assisting States in creating this institution and continues to support it.

– The legal basis for cooperation with and assistance to the ICC is the "'Relationship Agreement between the United Nations and the International Criminal Court", which entered into force on 4 October 2004.* Under the Agreement, the United Nations and the ICC will cooperate closely, whenever appropriate, with a view to facilitating the effective discharge of their respective responsibilities and to consulting each other on matters of mutual interest. This cooperation, however, is not unlimited, but has several qualifiers. The United Nations can only cooperate within the limits of existing mandates, staff rules, procurement rules, confidentiality rules, security imperatives and privileges and immunities related rules.

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* United Nations, *Treaty Series,* vol. 2283, p. 195.

– While the Relationship Agreement does not oblige the United Nations to support any policy or strategy decision of the ICC. The United Nations should, if possible, avoid any action that would undermine or counteract key ICC policies and strategies.

– Under Article 14 of the Rome Statute, a State may refer a situation to the competence of the ICC. Once its competence is triggered, however, the requesting State may no longer influence the course of justice. Under Article 16 of the Rome Statute, only the Security Council has the power to defer or put on hold investigations or prosecutions for a period of 12 months.

4. Interaction between United Nations representatives and persons indicted by international criminal jurisdictions holding positions of authority in their respective countries

– Contacts between United Nations representatives and persons indicted by international criminal jurisdictions holding positions of authority in their respective countries should be limited to what is strictly required for carrying out United Nations mandated activities. The presence of United Nations representatives in any ceremonial or similar occasion with such individuals should be avoided. When contacts are absolutely necessary, an attempt should be made to interact with non-indicted individuals of the same group or party.

5. Specificity of the situation in [Country]

[. . .]

(*c*) Note to the Secretary-General relating to the meetings with the Mission of [Country] on arrests, detention and expulsion of United Nations officials

28 September 2006

On 26 September, [the Legal Counsel] invited the Permanent Representative of [Country], Ambassador [Name 1], to meet and discuss the legal obligations of [Country] vis-à-vis the Organization, including [the United Nations Mission], and its officials. Representatives of the Department of Peacekeeping Operations, the Department of Political Affairs and the Department of Safety and Security also attended the meeting. [The Legal Counsel] handed over to him the attached *Aide-Memoire*.

We expressed serious concern about the recent decision of the Government to declare *persona non grata* five United Nations officials and the pattern of arrest and detention of United Nations officials, especially the case of an international United Nations Volunteer. [The Legal Counsel] stressed that such actions were contrary to international law. He also reiterated the need for the United Nations to have access to detained United Nations officials and our willingness to cooperate and investigate any allegation of wrongdoings, for which the cooperation of the Government would be indispensable.

During the discussion, it became apparent that the Government was blaming the United Nations for the failure to implement the binding international arbitral award on the border demarcation between [Country] and [Country 2]. [The Legal Counsel] made it clear that the lack of compliance with the arbitral award on the border demarcation could

not excuse [Country] for not observing its obligations under international law vis-à-vis the United Nations and its staff.

Yesterday, [the Legal Counsel] received the Director General for the Department of Americas and International Organizations of the [Country] Ministry for Foreign Affairs, Ambassador [Name 2], at his request, who was accompanied by Ambassador [Name 1]. [The Legal Counsel] reiterated the message delivered the day before. Ambassador [Name 2] denied any political linkage between the decisions to declare United Nations officials *persona non grata,* arrest or detain them, and the unresolved border demarcation. He insisted, however, on the right of his Government to arrest, detain and/or declare any United Nations official *persona non grata,* if they were found involved in activities posing a threat to national security. He also blamed the United Nations for not taking timely corrective action when United Nations officials were allegedly involved in wrongdoings. He further expressed strong dissatisfaction with the reaction of the United Nations to the recent expulsions by the Government, which he said it had the sovereign right to do.

[The Legal Counsel] clarified again the legal obligations of [Country] under international law and made three specific requests, namely (a) to accept a United Nations Team dispatched to [Country] to investigate the latest allegations, especially the United Nations Volunteer case; (b) to make available Government competent authorities in order to cooperate with the Team; and (c) to grant immediate access to the detained United Nations officials. Ambassador [Name 2] took note of the requests and promised to respond to us as soon as possible.

In the Office of Legal Affairs' view, the Organization should take effective steps to prevent any wrongdoings and, if they occur, act promptly and decisively. It seems advisable that the investigative capacity of the United Nations in the country be strengthened with a view to addressing any credible allegation expeditiously and effectively. The Organization should be ready to dispatch a professional team to [Country] as soon as possible to investigate the latest allegations, in particular the United Nations Volunteer case.

Aide-memoire

The Legal Counsel's attention has been drawn to recent instances of arbitrary arrests, detention and expulsions of United Nations officials serving in [Country]. The Legal Counsel would like to clarify the obligations of the Government of [Country] under the applicable international legal instruments as follows.

The status of the United Nations and its officials in [Country] is governed by Article 105 of the Charter of the United Nations. Pursuant to paragraph 1 of Article 105, "[t]he Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes." Pursuant to paragraph 2 of the same Article, " . . . officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization." These privileges and immunities are specified in 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 the "Convention"). Although

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

[Country] has not yet become a party to the Convention, it has unequivocally agreed to apply this instrument.

In accordance with the Agreement between the United Nations and the Government of [Country] relating to the Establishment in [Country] of a United Nations Office (the "Office Agreement"), concluded on [date], the Government has assumed an obligation to apply the Convention "to the United Nations, the Office, and the United Nations Agencies, Programmes and Funds, their property, funds and assets, and to officials of the United Nations, and experts on mission in [Country]." (Article IV)

Moreover, pursuant to Security Council resolution [number and date], the model status of forces agreement (A/45/594) ("the model") shall provisionally apply to the United Nations Mission in [Country 2] and [Country], pending conclusion of a status of forces agreement with the Government. As no status of forces agreement has as yet been concluded with the Government the model continues, pursuant to Security Council resolution [number], to apply. Under paragraph 3 of the model, the Convention shall apply to [the United Nations Mission].

The Legal Counsel wishes to recall that the General Assembly, in its resolution 76 (I) of 7 December 1946, approved the granting of the privileges and immunities under the Convention to "all members of the staff of the United Nations, with the exception of those recruited locally and assigned to hourly rates." Thus, in the application of the privileges and immunities to officials of the United Nations, no distinction should be made on the basis of their nationality or place of recruitment.

The Legal Counsel notes with deep concern the instances of the arrests, detention and expulsions of United Nations officials serving in [Country], both locally and internationally recruited. Such instances are inconsistent with the obligations of the Government under the aforementioned instruments, in particular Article V, Section 18 (a) of the Convention stipulating that "officials of the United Nations shall be immune from legal process."

It is noted that the Government of [Country] has refused to answer repeated requests by the United Nations as to the reasons for such arrests, detention and expulsion. In addition, the Government of [Country] has denied the Organization access to the arrested and detained staff, thus preventing the United Nations from exercising its right to safeguard the legal interests of the Organization and its staff. The attached table lists the United Nations officials concerned who, to our knowledge, have been arrested and detained from 1 January to 31 August 2006.

The Legal Counsel has been informed that some instances of arrests and detention might have occurred in order to compel locally-recruited officials to perform national service obligations. In this respect, the Legal Counsel wishes to clarify that pursuant to Article V, Section 18 (c) of the Convention, officials of the United Nations, irrespective of nationality or place of recruitment, "shall be immune from national service obligations." This obligation is also contained in Article VII. 1 (c) of the Office Agreement and paragraph 28 of the model status of forces agreement.

Furthermore, the Legal Counsel notes with great concern the recent request to [the United Nations Mission] that four of its officials, and the United Nations Security Adviser assigned to [Country], leave [Country] "for performing activities incompatible with their duties." At no time have the competent authorities of [Country] brought to the attention of [the United Nations Mission] any specific evidence or charges against the [the United

Nations Mission] officials concerned. In the absence of any specific evidence or charges, the United Nations cannot accept blanket, unsubstantiated accusations against [the United Nations Mission] officials. The measures undertaken by the Government of [Country] are not compatible with its international obligations vis-à-vis the Organization, under the latter's Charter, the Convention, the Office Agreement and the model status of forces agreement.

The Government of [Country] is obliged to give effect under its national laws to the provisions of the above-referenced international legal instruments.

The Legal Counsel respectfully requests that urgent steps be taken by the Government of [Country] with the view to ensuring its full compliance under the applicable international legal instruments referred to above. The Legal Counsel trusts that the Government will grant the Organization unimpeded access to the concerned United Nations officials to enable the Organization to safeguard its legal rights in such situations and to discharge its obligations to the staff.

(*d*) Note to the Under-Secretary-General for Peacekeeping Operations regarding [the United Nations Mission] staff members declared *persona non grata*

Privileges and immunities of United Nations Mission personnel—Concept of *persona non grata* exclusively within bilateral diplomatic relations—Impossibility for a State to declare a Mission staff member *persona non grata*—Whenever a Mission staff member is considered to have committed a criminal offence, State must inform the Special Representative of the Secretary-General and present some evidence—Mission staff members are entitled to immunity for acts related to their official duties—Disciplinary procedure and possibility to waive such immunity for acts not related to their official duties—Exclusive right of the Secretary-General to waive immunity of Mission personnel

3 October 2006

1. This is with reference to your Note of 28 September 2006 bringing to our attention [Mission note] of 26 September, with attachments, and your response thereto in code cable [number] concerning the decision by the [Country] Government to declare "persona non grata" two [Mission] international staff members, [Name 1] and [Name 2], and to request them to leave the country within 72 hours. From paragraph 6 of [Mission note], we note that the staff members were seriously mistreated and manhandled by [Country] National security at the time. We further note that the Government, in its note verbale [reference] of 26 September, refers to the incident of 6 September 2006 in which the staff members "were caught, in clear violation of their mission and mandate, inside a university campus in [City] in a day of riots and demonstrations." In your code cable [Number], you indicate that the Government has not provided any evidence substantiating the alleged wrongdoing of the two staff members involved. You seek legal advice on the matter. Please be advised as follows.

2. The status of the United Nations and [Mission] officials in [Country] is governed by the Charter of the United Nations, the Convention on the Privileges and Immunities of

the United Nations, adopted by the General Assembly on 13 February 1946* (hereinafter "the General Convention"), the Agreement between the United Nations and the Government of [Country] concerning the Activities of the United Nations Mission in [Country] concluded by the Parties on [Date] 2004 (hereinafter "the 2004 Agreement") and the Agreement between the United Nations and the Government of [Country] concerning the Status of the United Nations Mission in [Country] concluded by the parties on [Date] 2005 (hereinafter "the SOFA") as well as other applicable international legal instruments as will be explained below. A detailed description of the legal obligations incumbent on [Country] is set out in the attached Annex which makes it clear that the Government has breached those obligations by expelling the two staff members concerned.

3. In the present circumstances, we should focus on the SOFA. In accordance with Section 51 of the SOFA should the Government consider that any member of [Mission] has committed a criminal offence, it shall promptly inform the Special Representative of the Secretary-General (SRSG) and present to him any evidence available to it. If the accused person is a member of the civilian component of [Mission], the procedure established under the SOFA authorizes the SRSG to "conduct any necessary supplementary inquiry and then agree with the Government whether or not criminal proceeding should be instituted." Failing such agreement, the question must be resolved as provided in the disputes settlement clause of the SOFA.

4. For your background information, in accordance with Section 52 of the SOFA, on civil proceedings, such proceedings shall be discontinued if the SRSG "certifies that the proceeding is related to official duties." If the SRSG certifies that the proceeding is not related to official duties, the proceeding may continue.

5. It should be noted that none of the agreements referred above nor any other international legal instruments regulating the status of United Nations officials worldwide allows for the latter to be declared *persona non grata.* The United Nations staff members are not representing any particular government nor are they accredited to such government. The *persona non grata* concept applies only in bilateral diplomatic relations. Accordingly, the decision of the Government of [Country] to declare the two [Mission] staff members *persona non grata* is at variance with its legal obligations to the United Nations.

6. Moreover, requests for staff members to leave a country of their assignment are inconsistent with the fundamental principles of the international civil service enshrined in the Charter of the United Nations. In accordance with paragraph 2 of Article 100 of the Charter, each Member State of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff of the Organization and shall not seek to influence them in the discharge of their responsibilities. The demand that the two staff members leave [Country] within 72 hours was also at variance with the above-mentioned provisions of the Charter of the United Nations and the applicable agreements referred to above.

7. We note that on 6 September all [Mission] staff received a Security Advisory concerning a demonstration expected that day in [City] organized by opposition parties. In particular, staff members were directed to avoid unnecessary movement into the City until an "all clear" signal was given and in particular to restrict movement to the area of

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

[City] City Center and [City] University. From the explanatory statements made by the staff members concerned, it appears that both were aware of the Security Advisory. We also note that the Chief Security Advisor in [Country], in his report dated 7 September 2006, concluded that based on the facts presented by the staff members concerned, they "ignored [the] United Nations Security Advisory with respect to their movements into both [University Name] and [City] University."

8. In accordance with Article 6 of the 1994 Convention, United Nations personnel have the duty to respect the laws and regulations of the host State and to refrain from any action or activity incompatible with the impartial and international nature of their duties. Pursuant to paragraph 6 of the same Article, the Secretary-General is obliged to take all appropriate measures to ensure the observance of the above-stated obligations. In accordance with Section 43 of the SOFA, the Special Representative shall take all appropriate measures to ensure the maintenance of discipline and good order among members of [Mission].

9. It should be recalled that Regulation 1.1 (f) of the Staff Regulations and Rules specifies that the privileges and immunities enjoyed by United Nations staff members "are conferred in the interests of the Organization." The Regulation further provides that "these privileges and immunities furnish no excuse to the staff members who are covered by them to fail to observe laws and police regulations of the State in which they are located." Moreover, the Regulation stipulates that "in any case where an issue arises regarding the application of these privileges and immunities, staff members shall immediately report the matter to the Secretary-General, who alone may decide whether such privileges and immunities exist and whether they shall be waived in accordance with the relevant instruments."

10. From the documents made available to us, it is not clear whether or not the staff members were performing their official duties while attending the events in [City] on 6 September 2006. If the internal review of their actions comes to the conclusion that they acted outside of their official functions, such behaviour may give rise to disciplinary action.

11. Based on the foregoing, the Government should be informed that the concept *persona non grata* cannot be applied to [Mission] officials and that the Government's demands for staff members to leave the country are in contravention of the [Country]'s obligations under the Charter, the General Convention, the 2004 Agreement and the SOFA, as well as other relevant international legal instruments. The Government of [Country] is obliged to give effect under its national laws to the provisions of the above-referenced international legal instruments.

12. In the absence of any specific evidence or charges, the United Nations cannot accept unsubstantiated accusations against two [Mission] officials to justify expulsion. However, their actions seem to warrant a careful internal review by the Organization of their activities particularly to ascertain whether they were not performed in their official capacity and were in violation of local laws and police regulations. Depending on the findings of the review, a waiver of immunities may or may not be in order.

Annex

Treaty obligations of [Country]

1. In accordance with paragraph 1 of Article 105 of the Charter, "[t]he Organization shall enjoy in the territory of each of its Members such privileges and immunities as are

necessary for the fulfilment of its purposes." Pursuant to paragraph 2 of the same Article, " . . . officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization." These privileges and immunities are specified in the General Convention.

2. Pursuant to Section 18 (a) of the General Convention, officials of the United Nations shall enjoy immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. [Country] acceded to the General Convention on 21 March 1977 without any reservation.

3. In Article I, paragraph 2 (a) of the Agreement, the Government has unequivocally undertaken to extend the privileges and immunities set out in the General Convention to all United Nations officials assigned to serve with [Mission]. Pursuant to paragraph 6 (ii) of Article VI of the Agreement, [Mission] officials, for the fulfilment of their functions, are entitled to "full and unrestricted freedom of movement throughout the country . . . without the need for travel permits or prior authorization or notification . . .".

4. The Agreement contains a number of detailed provisions on safety and security of [Mission] personnel. Thus, under Article VI, paragraph 1, of the Agreement, the Government has an obligation to ensure the safety, security and freedom of movement of [Mission] personnel. However, if in the course of the performance of their duties members of [Mission] are captured, detained or held hostage, the Agreement provides for a clear obligation of the Government to "make every endeavour to secure their immediate release to the United Nations", once their identification has been established (paragraph 2 (ii) of Article VI of the Agreement).

5. Moreover, under paragraph 2 of Article VI of the Agreement, the Government has agreed to ensure that the provisions of the Convention on the Safety of United Nations and Associated Personnel* (hereinafter "the 1994 Convention"), are applied to and in respect of [Mission] and its members. This Agreement binds the Government of [Country], even though it is not a party to the Convention. Article 7 of the 1994 Convention stipulates that "United Nations and associated personnel, their equipment and premises shall not be made the object of attack or of any action that prevents them from discharging their mandate." Pursuant to Article 8 of the same Convention, they "shall not be subjected to interrogation and they shall be promptly released and returned to United Nations or other appropriate authorities, if they are captured or detained in the course of the performance of their duties and their identification has been established." The Convention requires that pending their release, such personnel shall be treated in accordance with universally recognized standards of human rights and the principles and spirit of the 1949 Geneva Conventions.

6. The SOFA confirms the application of the privileges and immunities contained in the General Convention to [Mission] and its personnel. Pursuant to Section 45 of the SOFA, without prejudice to privileges and immunities, the Government may take into custody any member of [Mission] when such a member "is apprehended in the commission or attempted commission of a criminal offence." Under Section 46, the Government may make a preliminary investigation, but may not delay the transfer of custody of an [Mission] member concerned. Furthermore, in accordance with Section 47 of the SOFA, [Mission]

* United Nations, *Treaty Series* , vol. 2051, p. 363.

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.

4. Liability and responsibility of international organizations

(*a*) Note to the Office of Programme Planning, Budget and Accounts regarding the liability for damages and repairs to the Economic and Social Commission for Western Asia (ESCWA) facilities in Beirut, Lebanon

HEADQUARTERS AGREEMENTS RELATING TO OCCUPANCY AND USE OF PREMISES—SHARE OF COSTS AND RESPONSIBILITIES BETWEEN THE GOVERNMENT OF LEBANON AND THE UNITED NATIONS—REQUIREMENT OF DETAILED ASSESSMENT OF DAMAGES AND LOSS OF PROPERTY—GOVERNMENT OF LEBANON RESPONSIBLE FOR REPAIRING OR REPLACING ALL INSTALLATIONS, FIXTURES AND EQUIPMENT IT SUPPLIED UNDER THE AGREEMENT—UNITED NATIONS RESPONSIBLE FOR REPAIRING OR REPLACING ALL FURNITURE AND EQUIPMENT IT OWNED AND SUPPLIED—CLAIMS TO BE MADE TO THE INSURANCE COMPANIES

4 August 2006

INTRODUCTION

1. This note responds to your e-mail, dated 31 July 2006 [. . .]. Based on an inquiry by the Deputy to the Under-Secretary-General for Safety and Security, you requested advice concerning the allocation of liability between the United Nations and the Government of Lebanon for damages to and loss of property at the headquarters facilities of ESCWA in Beirut, Lebanon, that occurred during recent civil disturbances. Other than reports in the media, this Office has not been informed about the nature or the extent of the damage or loss of property. Accordingly, the following presents general advice about the allocation of liability for the damage and losses.

THE SUPPLEMENTARY AGREEMENT TO THE ESCWA HEADQUARTERS AGREEMENT

2. The occupancy and use of the building located in the Jb 132 Zokak El-Blat area, Beirut Central District, together with the fixtures therein and the surrounding grounds and parking areas ("Premises"), is the subject of the "Supplementary Agreement between the United Nations and the Government of Lebanon Relating to the Occupancy and Use of United Nations Premises in Beirut, Lebanon," which was concluded and came into force on 9 October 1997 (United Nations, *Treaty Series,* vol. 1993, p. 321) ("Supplementary Agreement"). The Supplementary Agreement is an addendum to the Headquarters Agreement between the Organization and the Government of Lebanon, concluded on 27 August 1997.*

3. Pursuant to Article 1 of the Supplementary Agreement, the Government of Lebanon granted to the United Nations the occupancy and use of the Premises, "free of taxes, duties, levies" and any other similar charges referred to in the Headquarters Agreement. The portion of the Premises occupied by the Organization for the headquarters of ESCWA is "provided by the Government free of rent" and the Government also agreed to "furnish

* United Nations, *Treaty Series,* vol. 1988, p. 339.

and equip the ESCWA headquarters, free of charge," provided that the "United Nations shall not be the owner of such furnishings and equipment."

4. In addition to use of the Premises for ESCWA, Article 1 of the Supplementary Agreement provides that the United Nations can "authorize, after consultation with the Government, the use and occupancy of the Premises by other offices of the United Nations" as well as "offices of other international organizations institutionally linked with the United Nations." Each such occupant would be required "to conclude a separate tripartite arrangement with the United Nations and the Government in order to set out the rent to be paid and, as appropriate, any additional details. . . ." The files of the Office of Legal Affairs (OLA) only contain a memorandum of agreement, dated 24 November 1998, between ESCWA and the United Nations Development Programme, the United Nations Population Fund, the United Nations Children's Fund, and the United Nations Industrial Development Organization, for the use of the Premises as "common premises" (within the meaning of GA resolutions 44/211, of 22 December 1989, and 47/199, of 22 December 1992). However, such memorandum of understanding does not appear to be a tripartite arrangement with the Government of Lebanon, as contemplated by Article 1 of the Supplementary Agreement. It is not clear from OLA's files whether there have been any other agreements concluded with the Government of Lebanon for the use and occupancy of the Premises as common premises by other Funds and Programmes or the Specialized Agencies or other organizations of the United Nations system.

5. Under Article 3 of the Supplementary Agreement, the Government of Lebanon is "responsible, at its own cost and expense, for major modifications and repairs to the Premises, including structural repairs and replacements to the building, installations, fixtures and equipment." In addition, the Government "shall retain title to all installations, furniture and equipment that *it provides* under this Supplementary Agreement and shall be responsible for the cost of insuring, maintaining and repairing and replacing such installations, furniture and equipment as may be necessary" (emphasis added). Article 3 further provides that the "United Nations shall retain the ownership of and title to any installations, additions, furniture, equipment and fixtures that the United Nations shall, from time to time furnish or install at its own expense. . . ." Article 3 makes clear that "the United Nations shall have no financial responsibility and shall not be obligated to make any repairs or replacements made necessary as a result of damage to the Premises caused by civil disturbance, riot, vandalism, aircraft, and other aircraft and aerial devices, war, floods, earthquakes or *force majeure*."

6. Article 5 of the Supplementary Agreement requires the Government of Lebanon to "ensure that the Premises are insured against damage by fire, civil disturbance, riot, vandalism, flood, earthquakes or any other cause." Such insurance must "name the United Nations as an additional insured and include a waiver of subrogation of the Government's rights to the insurance company against the United Nations." Further, the Organization is "responsible for insuring or self-insuring its own property, fixtures and fittings, and that of its officials, employees, agents, servants, invitees or subcontractors in the Premises. . . ." Additionally, under Article 5, to the extent that the Premises are used as common premises by other Funds and Programmes or the Specialized Agencies or other organizations of the United Nations system, the "United Nations shall ensure that [such] other Occupants maintain insurance."

7. Article 6 of the Supplementary Agreement requires the Government of Lebanon to restore the Premises or any part thereof should they "be damaged by fire or any other cause." Article 6 further states that "[i]n the event that, at the sole discretion of the United Nations, the Premises are totally destroyed or otherwise unfit for further occupancy or use, the Government shall provide the United Nations, without undue delay, with other suitable and comparable premises acceptable to the United Nations, under terms and conditions similar to those under which the Premises are provided under th[e] Supplementary Agreement, and shall cover all costs related to the move of ESCWA headquarters and, as appropriate, other offices, to such new premises including all costs due to the inconvenience created by such move."

Recommended action

8. A full assessment of the damages and loss of property at the Premises should be undertaken by the ESCWA and Government authorities as soon as possible. If feasible, an agreement on such assessment should be obtained in writing.

9. Based on the foregoing review of the Supplementary Agreement:

(*a*) to the extent that such assessment reveals that the damage to and loss of property at the Premises that took place during recent civil disturbances occurred in respect of the building, or any part thereof, or to any installations, fixtures, furniture and equipment supplied by the Government of Lebanon, the Government would bear the liability and responsibility for repairing or replacing such property;

(*b*) to the extent that the damages to and loss of property occurred in respect of the furniture, equipment or other items owned and supplied by the United Nations, the Organization would be responsible for repairing or replacing such property.

10. In the light of any such assessment, steps with respect to addressing claims under relevant insurance coverage for losses or damages to the Premises and other property contained therein could be undertaken as follows:

(*a*) In respect of the damages or losses for which the Government of Lebanon bears responsibility, the Organization may wish to determine whether the Government has maintained the insurance coverage required under the Supplementary Agreement, including that the United Nations has been named an additional insured under such policies, and whether such policies have time limits for instituting claims. If the policies do provide for time limits on filing claims and the Government has not been able to initiate claims under the policies, the United Nations may then wish to seek to preserve its rights to bring such claims as an additional insured under the policies.

(*b*) To the extent that such damages or losses occurred in respect of the property of the United Nations, the Organization should make appropriate claims against the insurance it has maintained in respect thereof.

11. Finally, to the extent that damages or losses occurred to property of any of the Funds and Programmes or the Specialized Agencies or other organizations of the United Nations system using the Premises as common premises, presumably the same allocation of liability and responsibility for repairing or replacing such damaged property would apply. However, should questions arise about responsibility for repairing or replacing property in any of such common premises, this Office will have to conduct a fuller review

of the matter after obtaining any other relevant agreements or documents that are not contained in OLA's files.

(*b*) Observations of the United Nations as a third party in the cases in front of the European Court of Human Rights: Application Nos. 71412/01: *Behrami and Behrami* v. *France* and 78166/01: *Saramati* v. *France, Norway and Germany*

(Extracts)

OBSERVATIONS ON RESPECTIVE MANDATES AND RESPONSIBILITIES OF THE UNITED NATIONS MISSION IN KOSOVO (UNMIK) AND KOSOVO FORCE (KFOR)*—MANDATES CONSIDERED TO BE A TASK, A POWER OR COMPETENCE, AN AUTHORITY TO ACT OR A DIRECTIVE TO ENGAGE—MANDATE NOT TO BE VIEWED AS AN OBLIGATION OF RESULT—DISCRETION OF THE UNITED NATIONS TO DETERMINE MODALITIES OF IMPLEMENTATION OF MISSION MANDATES, INCLUDING THE TIMING AND PRIORITIZATION—TRANSFER OF RESPONSIBILITY *DE FACTO* FOR DEMINING BETWEEN KFOR AND UNMIK—RESIDUAL AND CONTINUOUS RESPONSIBILITY OF KFOR TO COOPERATE AND SUPPORT DEMINING PROCESS, ESPECIALLY BY IDENTIFYING AND REPORTING LOCATIONS OF CLUSTER BOMB STRIKE SITES—IMPOSSIBILITY FOR UNMIK TO DEMINE WITHOUT SUCH INFORMATION—FAILURE TO DEMINE NOT ATTRIBUTABLE TO UNMIK—UNMIK AND KFOR ARE SEPARATE ENTITIES, ESTABLISHED AND FUNCTIONING INDEPENDENTLY FROM EACH OTHER—REVIEW OF LEGALITY OF ARRESTS AND DETENTION BY KFOR OUTSIDE OF UNMIK'S COMPETENCE—ILLEGAL ARREST OR DETENTION NOT ATTRIBUTABLE TO UNMIK.

13 October 2006

I. INTRODUCTION

1. By a letter of 10 July 2006 the Deputy Registrar of the European Court of Human Rights ("the Court") informed the Legal Counsel of the United Nations that the applicants in the case of *Behrami and Behrami* v. *France* ("the Behrami case") and the case of *Saramati* v. *France, Norway and Germany* ("the Saramati case"), have complained "of matters related to the action of United Nations Mission in Kosovo (UNMIK) and Kosovo Force (KFOR) in Kosovo."

2. The President of the Grand Chamber has accordingly invited the United Nations to intervene as third party in both cases, should it wish to do so, and submit written observations on the following questions:

71412/01 *Behrami and Behrami* v. *France*

"1. Was KFOR or UNMIK (United Nations Mine Action Coordination Centre "UNMACC") legally responsible, at the relevant time, for marking and/or de-mining the ordinance which exploded in the present case (see, in particular, Article 9(e) of the United Nations Security Council Resolution 1244 and paragraphs 40–42 of the attached "Facts")? "

2. Is the applicants' complaint compatible *ratione personae* and/or *loci* with the provisions of the Convention and/or can they be considered to have fallen "within the jurisdiction" of the respondent State? In particular, can the impugned inaction be attrib-

* KFOR is the international military force led by the North Atlantic Treaty Organization in Kosovo.

uted to the United Nations or the respondent State given the latter's participation in a measure adopted under Chapter VII of the United Nations Charter?"

78166/01 *Saramati* v. *France, Norway and Germany*

"1. Are the applicant's complaints compatible *ratione personae* and/or *loci* with the provisions of the Convention and/or can he be considered to have fallen "within the jurisdiction" of the respondent States?

2. In particular, can the impugned action be attributed to the United Nations or to each of the respondent States given the latter's participation in a measure adopted under Chapter VII of the United Nations Charter?"

3. While as a non-party to the European Convention on Human Rights ("the European Convention"), the United Nations is not subject to the jurisdiction of the Court, it has nevertheless agreed to intervene as a third party in order to assist the Court in its deliberations. Furthermore, although the internationally-recognized human rights standards contained in international and regional human rights conventions, including the European Convention, were incorporated into the "applicable law" in Kosovo,[1] the United Nations Interim Administration Mission in Kosovo (UNMIK) is not subject to the institutional review mechanism of the Convention or the jurisdiction of its judicial institution.

4. The United Nations, and UNMIK as its subsidiary organ, are entitled to privileges and immunities under the 1946 Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1946* pursuant to Article 105 of the United Nations Charter. Under Article II, Section 2 of the Convention, the United Nations, its property, funds and assets enjoy immunity from any form of legal process except in so far as it has expressly waived its immunity. This submission, therefore, is without prejudice to, and should not be considered as a waiver, of any of the aforementioned privileges and immunities.

5. In its submission, the United Nations will not comment on whether the complaint in either Application falls within the provisions of the European Convention or the jurisdiction of the Respondent States within the meaning of Article 1 of the Convention, as it considers these questions to be matters for the Parties and the Court. The observations provided by the United Nations are confined to the questions bearing upon the respective mandates of UNMIK and KFOR in the circumstances of the *Behrami* and *Saramati* cases. With respect to the *Behrami case:*

– Was KFOR or UNMIK/UNMACC responsible, at the relevant time, for marking and/or demining the ordnance which exploded? and,

– Can the impugned inaction be attributed to the United Nations?

and with respect to the *Saramati case:*

– Whether the impugned action could be attributed to the United Nations?

6. In addressing these questions this submission will elaborate on the following:

(*i*) The respective mandates of UNMIK and KFOR under Security Council resolution 1244 (1999) of 10 June 1999;

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[1] UNMIK Regulation 1999/24 on the Law Applicable in Kosovo, section 1.3.

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

(*ii*) The legal status of UNMIK as a subsidiary organ of the United Nations and as the Interim Administration in Kosovo, and its relationship to KFOR;

(*iii*) The *Behrami case*—the mandate to demine and the responsibility for demining activities in Kosovo;

(*iv*) The *Saramati case*—the mandate to ensure public safety and order and the power to detain.

II. The respective mandates of UNMIK and KFOR under Security Council resolution 1244 (1999)

7. The responsibilities of the two international presences as set forth in Security Council resolution 1244 constitute their respective mandates. Understanding the nature of a "mandate" or "responsibility" to carry out a mandated activity in the context of a United Nations operation is key to understanding whether the "action" or "inaction" in the cases before the Court can be attributed to the United Nations. Mandates adopted by the legislative organs of the United Nations are an expression of the will of the Member States and the means by which the United Nations membership as a whole grants a United Nations organ authority to act. A mandate is thus a task, a power or competence, an authority to act or a directive to engage. It is an authority granted and a duty to act. It is not, however, an obligation of result. In executing its mandate, the United Nations operation, unless otherwise specified, retains discretion to determine the modalities of its implementation, including timing and prioritization.[2]

8. By resolution 1244 (1999) of 10 June 1999 ("the Resolution"), the Security Council, determining that the situation in the region constituted a threat to international peace and security, and acting under Chapter VII of the United Nations Charter, established two international presences in Kosovo: an international civil presence and an international security presence. Paragraph 7 of that resolution authorized the establishment of the international security presence "with all necessary means" to fulfil its responsibilities as identified in paragraph 9. The main responsibilities of the *international security presence* included the following:

– Establishing a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered (para. 9 (c));

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[2] The margin of discretion to decide on the timing, priorities and modalities of implementation is of particular importance in the context of demining operations which, depending on their scope, may span over a lengthy period of time, and where the necessity of prioritizing is imposed by the constraints of resources, both human and financial. The "Evaluation Report of the United Nations Mine Action Programme in Kosovo 1999–2001" (prepared by the Praxis Group, Ltd. Riverside/Geneva, January 2002) defined the success of any demining operation thus:

[t]he ultimate objective of mine action programmes is the complete elimination of the mine/unexploded ordnance (UXO) problem. In many mine-affected countries, this is usually not feasible in the short term as it may require many years (or even decades) to achieve this. As a consequence, most mine action programmes initially aim to contain the problem such that the impact on the affected communities is reduced or minimized. Subsequent (or concurrent) international efforts usually aim to build a sustainable local capacity that can then work towards the ultimate end-state of complete elimination or mines and UXO" (page 70).

– Ensuring public safety and order until the international civil presence can take responsibility for this task (para. 9 (d));

– Supervising demining until the international civil presence can, as appropriate, take over responsibility for this task (para. 9 (e)); and

– Supporting, as appropriate, and coordinating closely with the work of the international civil presence (para. 9 ((f)).

9. The international civil presence in Kosovo was established to provide an interim administration for Kosovo under which the people of Kosovo could enjoy substantial autonomy within the Federal Republic of Yugoslavia, while at the same time establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo.[3] The main responsibilities of the international civil presence included, *inter alia,* the following: [4]

– Performing basic civilian administrative functions where and as long as required (para. 11 (b));

– Supporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid (para. 11 (h));

– Maintaining civil law and order, including establishing local police forces (para. 11 (i));

– Protecting and promoting human rights (para. 11 (j)); and

– Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo (para. 11 (k)).

10. In his first report to the Security Council pursuant to paragraph 10 of Security Council Resolution 1244, the Secretary-General presented an operational plan for the international civil presence, to be known as the United Nations Interim Administration Mission in Kosovo (UNMIK).[5] Accordingly, UNMIK comprised of four components, each having a lead role in a designated area. They included:

(*a*) Interim civil administration: the United Nations;

(*b*) Humanitarian affairs: the Office of the United Nations High Commissioner for Refugees (UNHCR);

(*c*) Institution-building: the Organization for Security and Cooperation in Europe (OSCE); and

(*d*) Reconstruction: the European Union.

III. The legal status of UNMIK and its relationship to KFOR

11. Established by a Security Council resolution, the United Nations Interim Administration in Kosovo is a subsidiary organ of the United Nations entitled to the privileges and immunities as set forth under the 1946 Convention on the Privileges and Immunities of the United Nations. As an Interim Administration, it was mandated to administer the territory and people of Kosovo pending a determination of its final status. While recogniz-

[3] Operative paragraph 10 of the Resolution.

[4] Operative paragraph 11 of the Resolution, sub-paragraphs (b), (h), (i), (j) and (k).

[5] S/1999/672 of 12 June 1999.

ing the continued sovereignty and territorial integrity of the Federal Republic of Yugoslavia, the Security Council endowed the Interim Administration with all-inclusive legislative and administrative powers, including the administration of justice.[6]

12. UMMIK and KFOR were established as two equal presences with separate mandates and command and control structures. KFOR, the international security presence, is a NATO-led operation authorized by the Security Council under unified command and control; UNMIK, the international civil presence, is a United Nations operation headed by a Special Representative of the Secretary-General and reporting to the Security Council through the Secretary-General. There is no formal or hierarchical relationship between the two presences, nor is the military in any way accountable to the civil presence. Operating independently of each other and in complete parity, both presences are required to coordinate their activities to ensure that they operate in a mutually supportive manner towards the same goals. Their general, and at times imprecise mandates were, for the most part, left to be concretized and agreed upon in the realities of their daily operations. In the territory of Kosovo, both presences enjoy immunity from local jurisdiction, although members of either operation are duty-bound to respect the local law, including UNMIK-promulgated Regulations.[7]

13. This analysis of the nature, legal status and mandates of the two international presences operating on a par, is essential to the understanding of their respective and shared responsibilities in the areas of demining and security in Kosovo.

IV. The *Behrami case:* a mandate to demine and the responsibility for demining activities

14. The responsibility for supervising demining was entrusted by the Security Council to the international security presence with a view to its subsequent transfer to the international civil presence "as appropriate". The arrangements for the transfer of responsibility and continued cooperation and support in demining activities were left, however, to be determined by the two presences.

[. . .]

16. On 17 June 1999, a Mine Action Coordination Centre (MACC) was established within the "Humanitarian Affairs" Pillar, as the "focal point and coordination mechanism for all mine action activities in Kosovo". Its capability to fulfil these functions depended largely on close cooperation with all concerned partners, including KFOR, non-governmental organizations, commercial and relief organizations, and the local population. [. . .]

18. Responsibility for demining was *de facto* assumed by UNMACC in August 1999, although it was not until October that year that UNMIK officially informed KFOR that

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[6] Regulation 1999/1 on the Authority of the Interim Administration in Kosovo provides that: "All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK, and is exercised by the Special Representative of the Secretary-General".

[7] Section 2.2 of UNMIK Regulation 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel.

it was in a position to assume responsibility for mine action in Kosovo.[11] The transfer of responsibility to UNMIK, however, did not absolve KFOR from its residual and continuous responsibility to cooperate and support demining activities, and in particular, to identify, mark and report on the location of cluster bomb "strike sites". Such cooperation and support was considered critical to the successful implementation of the clearance operation and eradication of mines and unexploded ordnance from the territory of Kosovo.

[. . .]

22. In the specificities of the *Behrami* case, responsibility for demining the area depended on whether accurate information was available at the time on the location of the dangerous site and the existence within the site of unexploded ordnance. Unaware of the actual location of the strike site and the presence of unexploded cluster munitions where the incident took place, UNMACC took no action to demine the unmarked area.[13]

23. In response to the questions put by the Court, the United Nations submits that while the actual demining operation would have fallen within UNMACC's mandate, in the absence of the necessary information on the precise location of the site, the inaction—subject of the *Behrami* complaint—cannot be attributed to UNMIK.

V. The *Saramati* case—The mandate to ensure public safety and order and the authority to detain

24. Mr. Saramati complains of being held in pre-trial detention by order of KFOR in a KFOR detention facility between 13 July 2001 and 26 January 2002. Prior to his detention he had been indicted by a Kosovo Court and on 23 January 2002 was convicted of attempted murder. On 26 January 2002, he was transferred by KFOR to an UNMIK detention facility in Pristina. The Supreme Court of Kosovo subsequently quashed his conviction, sent the case for re-trial to the Pristina District Court, and ordered his release.

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[11] By his letter of 5 October 1999, [the] SE/DSRSG UNMIK informed [the] Commander of KFOR that "following the recent approval of the attached 'Outline Concept Plan for the UNMIK Mine Action Programme', UNMIK are now in a position to officially assume responsibility for mine action in Kosovo". [. . .]

[13] A communication exchange between KFOR and UNMIK following the incident reaffirmed the continued validity of the arrangements contained in KFOR. Directives, notably "FRAGO 300", and KFOR's role in marking-off all CBU strike sites, and its continued support for UNMACC's efforts by marking and fencing CBU sites. In his letter to KFOR Commander of 6 April 2000, DSRSG [. . .] wrote:

> "Despite the progress that has been made . . . there have been two recent incidents involving children and teenagers who encountered CBUs. The first incident occurred on 11 March 2000 in MNB (N) . . . In both cases, the strike areas were not marked or recorded as dangerous areas. While the assistance provided by KFOR has been invaluable, I have been advised by UNMACC that inaccuracies in the information provided by NATO often make it difficult to identify the exact location of the CBU strike areas. For example, despite using NATO information to identify the sites, KFOR EOD teams were able to locate only 31 of the 76 CBU strikes that occurred in the MNB (C) area. I am deeply concerned that we are going to continue to locate remaining CBU strike areas in Kosovo, only when serious accidents occur. I would therefore be most grateful for your personal support to ensure that KFOR continues to support the clearance process by identifying and marking these areas with a matter of urgency. In addition, the provision of any additional information from NATO that may provide greater clarity on the exact location of CBU strike areas would greatly assist us in this important task". [. . .]

25. Security Council resolution 1244 (1999) mandated the international security presence to establish a secure environment and to maintain public safety and order; a mandate interpreted as an authority to detain individuals believed to constitute a threat to the safety of KFOR troops and to public safety and order in Kosovo.

26. Having been established as equal but separate international presences, UNMIK and KFOR functioned independently of each other. KFOR was not accountable to UNMIK, nor was it subject to its authority or to the jurisdiction of the local courts, from which it is immune. Consequently, neither UNMIK nor the local courts could review the legality of arrests or detentions ordered by KFOR.

27. In response to the question put by the Court, therefore, and given the legal status of the two international presences and the relationship between them, the United Nations submits that the action complained of in the *Saramati* case cannot be attributed to UNMIK.

5. Treaty law

Note to the Under-Secretary-General for Peacekeeping Operations regarding the Common Aviation Area Agreement (ECAA) in respect of Kosovo

Limited treaty making power of the United Nations Mission in Kosovo (UNMIK)—Department of Peacekeeping Operations must approve the signature by UNMIK of an international agreement—Agreement must be necessary for the purposes of the United Nations Administration of Kosovo and limited to its duration—UNMIK cannot bind future authority of Kosovo—Ultimate responsibility of UNMIK, and not of the United Nations, to implement such agreement—Signature of such Agreement must go with a declaration about the restricted scope of the agreement

6 June 2006

1. I wish to refer to your Note dated 2 June 2006 concerning the European Common Aviation Agreement (ECAA), which is in response to our Note on this matter dated 25 May 2006 in which we had raised questions firstly about whether the conclusion of this Agreement is necessary for the United Nations Mission in Kosovo (UNMIK) administration of Kosovo and secondly, whether the necessary legal framework is in place within the current Kosovo legal system in order to implement the Agreement. UNMIK in its Code Cable of 30 May 2006 indicates, for the reasons given in that Cable, that it is well placed to fulfil the commitments arising out of the Agreement, at least for its first transitional phase.

2. In your Note you concur with UNMIK's position that there is "a valid justification that the ECAA is essential for the governance and administration of Kosovo and for the duration of its interim administration." You therefore conclude that UNMIK's arguments made in previous Code Cables "highlight the need for the ECAA for the immediate and long-term administrative needs of Kosovo" and you request our views on how "the legal concerns can be addressed in order to provide, if possible, a positive response to UNMIK's request [for authorisation to sign the ECAA Agreement]."

3. While our position as expressed in previous Notes remains unchanged, as does our view on UNMIK's Treaty making power, it is for the Department of Peacekeeping Operations to approve the signature of this Agreement on the basis of its determination that it is necessary for the purposes and for the duration of the United Nations Administration in Kosovo. If approval is given we suggest that the attached Declaration be appended to the Agreement. This Declaration makes it clear, *inter alia,* that this Agreement is limited for the duration of UNMIK's administration of Kosovo, that it does not bind the future authorities of Kosovo and that it is UNMIK and not the United Nations that has ultimate responsibility for the implementation of this Agreement.

4. In accordance with previous practice [. . .], this Declaration, while not part of the Agreement itself, would constitute part of the records of the Agreement and be used, when necessary, as an element in the interpretation of the Agreement. We would also suggest that when the signature is actually affixed to the signature page on behalf of UNMIK, the following language should be included under the signature "With declaration". In this way, there is a reference in the Agreement itself to the declaration. We should also recall that a similar declaration should be attached to the notification of approval submitted by UNMIK in accordance with Article 105 of the Agreement, modifying, as necessary, references to "signature", "signing", and the like.

5. Finally, we wish to reiterate our view that UNMIK has a limited treaty-making power to engage on the international level on behalf of Kosovo in matters required strictly for the administration of the territory. Agreements that promote Kosovo's participation in the European integration process are matters for the future authorities of Kosovo. We wish to recall, in this connection, the view expressed in our Note to you of 21 February 2006 that, "this Agreement is only one in a series of agreements concluded by the European Community with South-East European countries aiming at creating a political-economic integration. Taken as a whole, this trend will affect the status and nature of the territory of Kosovo for years to come and long after UNMIK will have completed its mandate."

Declaration

I, [. . .], Special Representative of the Secretary-General and Head of the United Nations Interim Administration Mission in Kosovo (UNMIK), on behalf of the United Nations Interim Administration Mission in Kosovo (UNMIK),

Hereby declare that the United Nations Interim Administration Mission in Kosovo (UNMIK) makes the following declaration upon signature of the Treaty establishing the European Common Aviation Agreement (ECAAA), adopted on . . . :

(*i*) The United Nations Interim Administration Mission in Kosovo (UNMIK) established by Security Council resolution 1244 (1999) of 10 June 1999 signs the Treaty on behalf of Kosovo;

(*ii*) The Treaty is valid in respect of Kosovo for the duration of the United Nations Interim Administration Mission in Kosovo (UNMIK) administration under resolution 1244 (1999), and its continued validity beyond that would depend on the future authorities of Kosovo;

(*iii*) The participation in the Treaty on behalf of the United Nations Interim Administration Mission in Kosovo (UNMIK) is without prejudice to the future status of Kosovo;

(*iv*) The Treaty does not engage the responsibility of the United Nations, nor does it create for the Organization any legal, financial or other obligations.

(*v*) This Declaration shall be duly registered and published pursuant to Article 102 of the United Nations Charter along with the Treaty establishing the Energy Community, adopted on . . . , to which it relates.

Witness whereof, I have hereto set my hand and seal,

Done at Pristina on. [SRSG]

6. International humanitarian law

Note on the protection of peacekeeping personnel under international humanitarian law

ABSENCE OF SPECIFIC PROTECTIVE LEGAL REGIME OF UNITED NATIONS PEACEKEEPERS—RELEVANCE OF PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW—PROTECTED AND PROTECTIVE STATUS OF UNITED NATIONS EMBLEM—DUTY OF PARTIES TO THE ARMED CONFLICT TO PROTECT PEACEKEEPERS AGAINST THE EFFECTS OF MINES—OBLIGATION TO ENSURE SECURITY AND SAFETY OF PEACEKEEPERS—CRIMINALIZATION UNDER NATIONAL AND INTERNATIONAL LAWS OF ATTACKS AGAINST NON-COMBATANT PEACEKEEPERS—CUMULATIVE EFFECT OF VARIOUS PROTECTIVE CLAUSES FOR PEACEKEEPERS UNDER INTERNATIONAL HUMANITARIAN LAW—EMERGENCE OF CUSTOMARY PRINCIPLE THAT NON-COMBATANT PEACEKEEPERS ARE ENTITLED TO THE STATUS OF "PROTECTED GROUP".

9 August 2006

1. This Note examines the protective legal regime of United Nations peacekeeping operations, when in a situation of armed conflict they take no part in the hostilities, or otherwise engage therein as combatants. It surveys the international humanitarian law (IHL) principles and rules under the 1977 Additional Protocol I to the Geneva Conventions ("Additional Protocol I"),[*] Protocol II to the 1980 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, as amended, ("Protocol II to the 1980 Convention"),[**] and the Statute of the International Criminal Court (ICC).[***] The 1994 Convention on the Safety of United Nations and Associated Personnel,[****] while not an IHL instrument as such, is, in part, at least, applicable also in times of armed conflict.

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[*] United Nations, *Treaty Series,* vol. 1125, p. 3.

[**] United Nations, *Treaty Series,* vol. 1342, p. 137 and CCW/CONF.I/16 (Part I) for the Protocol II as amended on 3 May 1996.

[***] United Nations, *Treaty Series,* vol. 2187, p. 3.

[****] United Nations, *Treaty Series,* vol. 2051, p. 363.

A. Additional Protocol I to the Geneva Conventions, 1977.

2. The 1949 Geneva Conventions[*] which preceded the inception of peacekeeping operations are obviously silent on the question. Additional Protocol I to the Geneva Conventions, adopted in 1977, prohibits perfidy, [1] in particular,

> "the feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other States not Parties to the conflict" (Article 37, para. 1 (d)).[2]

3. Article 38, para. 2 of Additional Protocol I prohibits the "use of the distinctive emblem of the United Nations except as authorized by that Organization", [3] and thus recognizes it both as a protected and protective emblem. In protecting the United Nations emblem and prohibiting its feigning or unauthorized use, the Protocol recognizes also and perhaps primarily so, the "protected status" of persons and premises of United Nations operations rightfully entitled to use the emblem.

B. Protocol II to the 1980 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, as amended

4. Article 12 of Protocol II to the 1980 Convention provides for specific protection to United Nations forces from the effects of mines. It applies to "any United Nations force or mission performing peacekeeping, observation or similar functions in any area in accordance with the Charter of the United Nations", and enjoins the Parties, if so requested by the head of a force or mission, to "take such measures as are necessary to protect the force or mission from the effects of mines, booby-traps and other devices in any area under its control." Each Party is bound, in order effectively to protect such personnel, "to remove or render harmless, so far as it is able, all mines, booby-traps and other devices in that area", and "inform the head of the force or mission of the locations of all known minefields, mined areas, mines, booby-traps and other devices in the area in which the force or mission is performing its functions".

C. The protective regime of the 1994 Convention on the safety of United Nations and associated personnel

5. As part of the general prohibition on attacks against any person within a State's territory, attacks against peacekeepers are prohibited under the municipal laws of all host States in whose territories peacekeeping forces are deployed. The 1994 Convention, however, "internationalized" the crime and enjoined its Parties to criminalize attacks against peacekeepers in their national laws, and "prosecute or extradite" the offender.

6. The crime of "attacks against peacekeepers" is defined in Article 9 of the Convention, in part, as follows:

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[*] United Nations, *Treaty Series,* vol. 75, p. 31; p. 85; p. 185 and p. 287.

[1] Perfidy is defined in Article 37 (1) of the Protocol as an act inviting the confidence of an adversary to lead him to believe that he is entitled to protection with the intent to betray that confidence.

[3] In its Commentary to Article 38(2) of the Protocol, the ICRC notes:

> "The United Nations emblem only has a *protective character* to the extent that it can be assimilated to the emblem of neutral or other States or parties to the conflict, but not when the United Nations intervenes in a conflict by sending combatants"(emphasis added).

"The intentional commission of:

a. A murder, kidnapping or other attack upon the person or liberty of any United Nations or associated personnel;

b. A violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations or associated personnel likely to endanger his or her person or liberty".

7. The relationship between the protective regime of the Convention and international humanitarian law were not defined in the Convention. While enforcement actions under Chapter VII, in which any peacekeeping personnel are engaged as combatants, are explicitly excluded from the scope of the Convention (Article 2), Article 20 of the Convention provides that:

"Nothing in this Convention shall affect:

(a) The applicability of international humanitarian law and universally recognized standards of human rights as contained in international instruments in relation to the protection of United Nations operations and United Nations and associated personnel or the responsibility of such personnel to respect such law and standards".

8. The applicability of either regime depends, however, on whether in any given conflict peacekeeping personnel are engaged therein as combatants, or whether, situated in the theatre of war, they take no part in the hostilities. In the former case they are protected and bound by international humanitarian law, in the latter, they are entitled to the protection given to civilians in armed conflict and may also be entitled to the protective regime of the Convention. In its "non-prejudice" clause, the Convention recognizes that in certain (albeit undefined) circumstances, the protective regime of the Convention and international humanitarian law are mutually inclusive.

9. While for the most part, the Convention does not lend itself to applicability in times of armed conflict, the obligation to ensure the safety and security of United Nations and associated personnel (whether in the territory of the State Party or in the territory of a third State where its military forces are deployed), is the exception. Article 7 provides in that respect:

"1. United Nations and associated personnel, their equipment and premises shall not be made the object of attack or of any action that prevents them from discharging their mandate".

2. States Parties shall take all appropriate measures to ensure the safety and security of United Nations and associated personnel".

D. The Statute of the International Criminal Court (ICC)

10. The Statute of the ICC established the crime of attacks against peacekeepers as a war crime subject to the jurisdiction of the Court, and for the first time drew a clear distinction between peacekeepers as combatants and peacekeepers as civilians. Article 8 (2) (b)) (iii) of the Statute lists the following among the war crimes falling within the jurisdiction of the Court:

"Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance

with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under international law of armed conflict".

11. In determining the criminal individual responsibility of the accused for attacks against peacekeepers, it must, therefore, be proven that the perpetrator had both knowledge and intent to attack the United Nations peacekeeping personnel and missions as such.[4]

E. Conclusion

11. While none of the afore-mentioned IHL instruments explicitly grant peacekeeping operations the status of a "protected group" (similar to the one enjoyed by medical personnel and units), the cumulative effect of the "protective clauses" in a series of legal instruments—namely, the protected and protective status of the United Nations emblem, the obligation to protect peacekeeping missions from the effects of mines, the duty to ensure their safety and security and the criminalization and internationalization of attacks against peacekeepers when in an armed conflict they are entitled to protection given to civilians—is an indication that a customary international humanitarian law principle has emerged, whereby peacekeeping personnel performing functions under the United Nations Charter in an area and situation of armed conflict and taking no part in the hostilities, are entitled to the status of a "protected group"; with the correlative obligation on the Parties to the conflict to take precautionary measures to respect their protected status.

7. Human rights and refugee law

Note to the Assistant Secretary-General for Political Affairs on the granting of protection to third parties on United Nations premises

Protection of third parties on United Nations premises—No obligation under international law to provide refuge—Possibility to grant refuge, on humanitarian grounds, in case of immediate danger for the person's life—Persons trying to evade justice by seeking such refuge must be handed over to national authorities with certain warranties—Risk of jeopardizing the inviolability and security of United Nations premises when granting such refuge

16 February 2006

1. Further to our meeting last week, you asked me to provide a couple of points concerning the granting of protection to third parties on United Nations premises. Set out below are the legal principles applicable to situations where third parties seek protection on United Nations premises. It should be emphasized that each case is different, which is why when an office or mission finds itself in a situation where a third party is seeking or has been granted protection on United Nations premises, United Nations Headquarters should be contacted immediately and the views of the Office of Legal Affairs be sought.

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[4] The Commentary on the Rome Statute states in this respect as follows:

"It may be mentioned, however, that the term "intentionally" is used to convey the requirements that the perpetrator of the crime must in fact have been aware that the personnel or objects were involved in a humanitarian assistance or peacekeeping mission. Thus, it is required that the attack was on humanitarian assistance or peacekeeping personnel or objects a such" (p. 196).

2. The question of those who seek protection on United Nations premises has legal as well as humanitarian aspects. Legally, the right to seek refuge and the correlative obligation to provide for such refuge are not recognized as part of customary international law. On a humanitarian basis, however, refuge may be given if there is an imminent danger to that person's life and for the duration of such danger. By "imminent danger", we mean that if a person is faced with an immediate threat of violence and that threat is credible, the person in question may, on humanitarian grounds, be given temporary protection.

3. The question of those who seek protection on United Nations premises is therefore governed by the principle of inviolability of our premises and our obligation not to allow them to be used as a refuge for persons evading justice.

4. Under the Convention on the Privileges and Immunities of the United Nations* the premises of the United Nations are inviolable. The United Nations alone can exercise authority over such premises and no governmental or other authority or person can enter the premises without prior consent. The purpose behind such inviolability is to enable the United Nations and its offices as well as peacekeeping operations and political missions to be able to fulfill their mandate and it is important that members of an office/mission/operation do nothing that is inconsistent with the impartial and international nature of their duties.

5. Certain United Nations Office/Headquarters Agreements contain the following standard provision:

> "Without prejudice to the provisions of the General Convention and this Agreement, the [Office/HQ] shall not allow the premises to become a refuge from justice for persons avoiding arrest or prosecution under the laws of [the host country], or against whom a warrant of arrest or an order of extradition, expulsion or deportation has been issued by the competent authorities".

6. Should a person who has been granted refuge be facing prosecution in the host country and the United Nations is so informed by the Government, we could agree to hand him/her over to national authorities on condition of safe conduct out of United Nations premises and that he or she would be guaranteed due process of law, i.e., that the Government would not act arbitrarily. As appropriate, a humanitarian organization such as the International Committee of the Red Cross (ICRC) could act as an intermediary between the United Nations and the Government and assist with the hand-over.

7. In this connection and by way of an example, I attach a legal opinion dated 29 August 1995 concerning 65 individuals who sought refuge in the United Nations compound in [City, Country]. The legal opinion included advice as to how the United Nations should respond to the Government's request for their hand-over as well as to how ICRC and the Office of the United Nations High Commissioner for Refugees should be involved in this process.

8. In conclusion, I would point out that there are important policy and legal reasons that militate against granting temporary refuge to third parties on our premises. In the first instance, by granting temporary refuge, we assume responsibility for the protection of that individual. Secondly, we may, through granting such assistance, be undermining our own international status and jeopardizing the safety and security of our own staff.

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

8. Personnel questions

(*a*) Interoffice memorandum to a Human Resources Officer, Personnel Management and Support Service of the Department of Peacekeeping Operations, regarding the release of personal effects of a [staff member]

HAND-OVER OF PERSONAL EFFECTS OF A DECEASED STAFF MEMBER—ORGANIZATION'S DUTY TO IDENTIFY A SUITABLE HEIR—NO OBLIGATION TO IDENTIFY ACTUAL HEIRS ACCORDING TO NATIONAL LAWS—DISPUTE BETWEEN POSSIBLE HEIRS MUST BE BROUGHT TO APPROPRIATE NATIONAL COURT

25 April 2006

1. I refer to your memorandum of 31 March 2006 in respect of the above matter, and note that pursuant to our advice of 17 January 2006, you have written to both [staff member]'s parents and to his sister, asking them whether a Notary Public has determined who the heirs to [staff member]'s estate are. I note that only [staff member]'s parents have responded, forwarding a notarized attestation of the heirs to [staff member]'s estate. Such heirs include both [staff member]'s parents and his sister. The attestation states that any of the heirs "are solely competent and authorized to perform any and all acts of administration and disposal as regards the aforementioned estate, including the right to claim and take receipt of any and all objects and assets belonging thereto, and to validly give discharge for same."

2. In our memorandum to you of 31 March 2005, we had noted that the policy of the Organization in respect of the personal effects of deceased staff members is to hand them over to the "presumed heirs", and have them sign a "receipt and release, hold harmless and identification agreement" before a notary public (as contained in Annex 2 of the Handbook). The policy does not oblige the Organization to identify the actual heirs according to national laws, but merely identify a suitable person to hand over the effects to, and hand them over on the condition that the Organization is held harmless in any subsequent dispute.

3. As such, we would propose that the late [staff member]'s personal effects should now be sent to his parents upon their signing the above mentioned hold harmless agreement. The reason is that the Organization is not in a position to arbitrate a dispute between [Staff member]'s family, if indeed there is one, and its only duty is to hand over the personal effects to a presumed heir. Enough proof has been submitted by [Staff member]'s parents that they are indeed presumed heirs. We also suggest that, as a matter of proper procedure, the Department of Peacekeeping Operations inform [Staff member]'s sister that his personal effects are being handed over to his parents upon their signing of a hold harmless agreement, and that should she wish to contest their possession of such effects, she should bring the dispute to the appropriate national court.

(*b*) Interoffice memorandum to the Director, Office of Legal and Procurement Support of the United Nations Development Programme (UNDP), regarding the discretionary authority of the United Nations Joint Staff Pension Fund (UNJSPF) to determine periods of contributory service for purposes of participation in the UNJSPF

DETERMINATION OF PERIODS OF CONTRIBUTORY SERVICE—PERIOD OF NOTICE OF A STAFF ON SPECIAL LEAVE WITHOUT PAY—EXCLUSIVE ROLE OF THE PENSION BOARD OF UNJSPF

TO INTERPRET ITS REGULATIONS AND ADMINISTRATIVE RULES—UNJSPF NOT BOUND BY SEPARATION PACKAGES AGREED BETWEEN A MEMBER ORGANIZATION AND ONE OF ITS STAFF MEMBERS—POSSIBILITY TO APPEAL DECISIONS OF UNJSPF FOLLOWING THE RELEVANT ADMINISTRATIVE REVIEW PROCESS

6 June 2006

1. [. . .] You have requested advice regarding the participation of staff of UNDP in the United Nations Joint Staff Pension Fund (UNJSPF) when such staff are on special leave without pay (SLWOP).

AUTHORITY OF THE UNJSPF TO DETERMINE ELIGIBILITY FOR PARTICIPATION IN THE FUND

2. As a preliminary matter, Staff Regulation 6.1 provides that participation of staff members in the UNJSPF is governed by the Regulations of the UNJSPF. Article 2 of the Regulations provides that the United Nations Joint Staff Pension Board ("Pension Board") has the authority to interpret the Regulations and the Administrative Rules of the UNJSPF to the extent required to give effect thereto. Therefore only the Board of the UNJSPF has the authority to interpret and apply them. Moreover, a participant in the UNJSPF or anyone else entitled to rights under the Regulations and Administrative Rules of the UNJSPF who claims that a decision of the Board of the UNJSPF constitutes a "non-observance" of such Regulations and Administrative Rules may submit an application to the Administrative Tribunal, in accordance with Article 48 of the Regulations and Section K of the Administrative Rules of the UNJSPF appealing such decision. In light of the limited role of this Office in interpreting and applying the Regulations and Administrative Rules of the UNJSPF, I suggest that notwithstanding my advice below, you address your request for advice to the Secretariat of the UNJSPF.

NOTICE PERIOD AS CONTRIBUTORY SERVICE

3. You have requested advice as to whether the period of notice given to a staff member in accordance with Staff Rule 109.3 is contributory service for purposes of participation in the UNJSPF, if such period of notice occurs after an interval of SLWOP.[1]

4. Under Article 21(c) of the Regulations of the UNJSPF, participation in the UNJSPF ceases when a participant has completed three consecutive years of service without concurrent contributions having been paid into the UNJSPF while serving on leave without pay. If such a period of leave without pay is interrupted by periods of contributory service, participation ceases when a participant completes, within any five-year period, a total of four years of non-contributory service while on leave without pay. Article 21(c), therefore, establishes clear limits to participation in the UNJSPF for participants who are on leave without pay and for whom concurrent contributions to the UNJSPF are not being made.

[1] Staff Rule 109.3 provides that a staff member whose appointment is terminated is entitled to either an appropriate notice period, or, in lieu of such notice period, compensation "equivalent to salary, applicable post adjustment and allowances corresponding to the relevant notice period." The Staff Rules do not address the situation in which a staff member actually serves during such a notice period with pay and allowances after having been on SLWOP.

5. In addition to the limits on participation in the UNJSPF while on leave without pay set forth in Article 21 of the Regulations of the UNJSPF, Rule J.6 of the Administrative Rules of the UNJSPF provides as follows:

> "The contributory service of a participant shall not include unused annual leave accrued at the date of separation, for which compensation is paid, or any period in respect of which payment is made in lieu of notice of termination."

This Rule makes clear that payment in lieu of notice under Staff Rule 103.9(c) cannot be used as a means for resuming contributory service under the Regulations of the UNJSPF.

6. The more complex question you have raised is whether service during a notice period after an interval of SLWOP constitutes contributory service within the meaning of the Regulations of the UNJSPF. As previously noted, it is the exclusive role of the Pension Board of the UNJSPF to interpret its Regulations and Administrative Rules. In this regard, I understand that it is the UNJSPF's policy not to consider a notice period served after an interval of SLWOP as constituting contributory service if the purpose of serving such notice period is merely to allow a staff member to re-enter the UNJSPF as a participant and to avoid the time limits set forth in Article 21. The UNJSPF appears to be of the view that such notice periods after SLWOP intervals are effectively the same as compensation in lieu of a notice period pursuant to Staff Rule 109.3(c), particularly if the staff member does not perform any actual duties. In this regard, the UNJSPF's concerns relate to the risk of liability to the UNJSPF itself, including potential payments of death and disability benefits. I further understand that such policy is now the subject of an appeal filed by a UNDP staff member who has been on SLWOP for an extended period of time and who had agreed to a separation package, and that this issue may only finally be resolved by the Administrative Tribunal.

7. These problems, relating to the cessation of participation in the UNJSPF, could be avoided if the employing organization informed its staff members in advance of the implications that taking SLWOP and/or agreeing to a separation package may have on their pension entitlements. In addition, such staff members should be made aware of the possibility of continuing concurrent contributions in accordance with Article 22(b) and 25(b) of the Regulations of the UNJSPF, provided that such concurrent contributions commence before SLWOP is first taken.

8. As regards separation agreements, I would like to state that such agreements concluded between a member organization of the UNJSPF and a staff member relating to pension entitlements and benefits must conform to the Regulations and Administrative Rules of the UNJSPF. The UNJSPF is not bound by such bilateral agreements, and therefore, they can have no bearing on the application of the Regulations and Administrative Rules of the UNJSPF.

Case of [Name]

9. In addition to requesting advice generally about participation of staff in the UNJSPF while serving on SLWOP, you have asked for our views on the specific case of one such UNDP staff member, [Name]. In this regard, you stated that [Name] had been a staff member of UNDP on a permanent appointment for 24 years, 10 months and 26 days when he accepted a separation package offered by UNDP. Pursuant to this separation package, [Name] was placed on SLWOP for a period of 2 years, 6 months and 23 days. He was then

reinstated by UNDP to pay status for the duration of his termination notice period in order to bridge his contributory service with the UNJSPF to 25 years, in such a case, the UNJSPF participant would normally be entitled to either a withdrawal settlement or a deferred retirement benefit. UNDP and [Name] also agreed that he would be placed on SLWOP until he reached the age of 55, when he would be eligible for an early retirement benefit pursuant to Article 29 of the Regulations of the UNJSPF. After he served an additional month on SLWOP, UNDP offered [Name] a short-term assignment for a period of six months. It appears that these administrative measures were taken by UNDP to maximize the pension benefits of [Name] who was not yet eligible for an early retirement benefit.

10. After considering [Name]'s case, the UNJSPF stated that the notice period during which he returned to UNDP service did not constitute contributory service for purposes of participation in the UNJSPF. In addition, after UNDP had provided the UNJSPF with [Name]'s Personnel Action form (PA) concerning his short-term assignment, the UNJSPF requested that UNDP also submit [Name]'s terms of reference and his employment contract. In this regard, you have raised the following questions: (i) whether the decision of the UNJSPF that [Name]'s notice period did not constitute contributory service was supportable, and, (ii) whether the UNJSPF has the right to request and review [Name]'s terms of reference and his employment contract.

11. As mentioned in paragraph 6 above, it is for the UNJSPF to determine whether a staff member's service during a notice period constitutes contributory service for purposes of applying Article 21(c) of the Regulations and Rule J.6 of the Administrative Rules of the UNJSPF. While in [Name]'s case no payment had been made in lieu of notice, you specifically indicated that the purpose of his reinstatement to pay status was to enable [Name] to attain 25 years of contributory service with the UNJSPF and, thus, to become eligible for an early retirement benefit. While you indicated that [Name] was "available to perform duties" during his notice period, it is unclear whether he actually performed any work. In light of the foregoing, it appears that the UNJSPF's determination that [Name]'s service during the notice period did not constitute contributory service within the meaning of Article 21(c) of the Regulation the UNJSPF was arguably within its discretionary authority. In any case, if [Name] is of the view that the decision of the UNJSPF is not supportable under the Regulations and Administrative Rules of the UNJSPF, he may appeal that decision in accordance with Article 48 of the Regulations and Section K of the Administrative Rules of the UNJSPF.

12. Finally, as regards UNJSPF's request to UNDP to submit further documents concerning [Name]'s short-term assignment, I refer to Article 21 of the Regulations of the UNJSPF which establishes the conditions of participation in the Fund, as well as Rule B.I of the Administrative Rules of the UNJSPF, which provides that the member organization has an obligation to register a staff member's admission to the Fund as a participant by furnishing the secretary of the staff pension committee of the organization with such information as is required, including the terms of appointment. Furthermore, Rule B.I specifically indicates that the member organization shall "*thereafter* notify the secretary [of the staff pension committee of the organization] of any changes which occur therein." (Emphasis added). It appears, therefore, that the UNJSPF's request to UNDP to submit [Name]'s terms of reference and his employment contract was made pursuant to such provisions of the Regulations and Administrative Rules of the UNJSPF.

13. Please do not hesitate to contact me should you have any further questions or require any clarifications regarding the foregoing advice.

(*c*) Letter to the Interim Director of the United Nations System Staff College (Turin, Italy) regarding the calculation of end of service payment (*Liquidazione*)

End of service of locally-recruited staff members—No end of service packages provided for in United Nations Staff Rules and Regulations—Flemming principle—Staff members transferred from an organization providing for end of service packages, having severed their contractual link with this organization, lost their entitlement to such packages unless specifically provided otherwise in the transfer agreements—Possibility for the Organization to establish end of service packages for current staff members without retroactive effects for former staff members

14 June 2006

1. I refer to your letter dated 24 March 2006, received on 4 May 2006 at our Office, in which you sought my advice on the implementation of an end of service payment policy (*Liquidazione*) by the United Nations System Staff College (Staff College) with respect to its locally recruited General Service staff members (GS staff members). In particular, you asked whether (i) previous service with the International Training Centre of the International Labour Organization (ITC-ILO) of staff members who transferred to the Staff College upon its inception and their subsequent service with the Staff College should be considered for the calculation of their end of service payment; and, (ii) whether service of staff members of the Staff College who were recruited by the Staff College prior to 1 January 2006 should be considered for the calculation of their end of service payment.

2. The Staff College was established by resolution 55/207 of the General Assembly on 1 January 2002 after approval of its Statute, and is part of the United Nations. Pursuant to Article V, paragraph 4 of the Staff College's Statute, approved by the General Assembly in resolution 55/278, "the terms and conditions of service of the Director and the staff shall be those provided for in the Staff Regulations and Rules of the United Nations, subject to such administrative arrangements as are approved by the Secretary-General in his capacity as Chairman of the Administrative Committee on Coordination". The United Nations Staff Regulations and Rules do not provide for an end of service payment for staff members. I understand, however, that the majority of Italian-based United Nations organizations have implemented an end of service payment policy for their locally recruited GS staff members, based on the Flemming principle.*

3. I further understand that upon the establishment of the Staff College in January 2002, some of ITC-ILO's staff members holding fixed-term appointments transferred to the Staff College on the basis of the Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations applying the United Nations Com-

* The Flemming Principle establishes the conditions of service for General Service staff on the basis of the best prevailing local conditions. The principle has been subject to several reviews since its adoption by the General Assembly in 1949.

mon System of Salaries and Allowances (Inter-Agency Agreement). This Agreement sets forth in Section I, article 1(b) that "it does not of itself give the staff members rights which are enforceable against an organization. It merely sets out what the organizations will normally do. The agreement can only be enforced to the extent that either the organizations have included appropriate provisions in their administrative rules or the parties have accepted to apply it in the individual case".

4. With regard to the transfer ITC-ILO staff members to the Staff College, ITC-ILO and the Staff College agreed that transferring staff members would carry over the following entitlements: service credits, salary and allowances, annual leave credit, home leave entitlement and participation in the United Nations Joint Staff Pension Fund (UNJSPF). However, even though ITC-ILO had an end of service payment policy in place at the time of the transfer, it appears from the facts made available to us that the organizations did not take any explicit decision as to whether this policy should continue to apply to staff members transferring to the Staff College. The Personnel Action forms issued to the transferring staff members by the United Nations Office at Geneva did not include such an end of service payment entitlement either.

5. In accordance with Section III, article 8 (a) and (b) of the Inter-Agency Agreement, a staff member will cease to have any contractual relationship with the releasing organization as of the date of transfer, and from then on the staff member's entitlements will be governed by his/her contractual relationship with the receiving organization. The conditions of service of the staff members who transferred from ITC-ILO to the Staff College are therefore, as of the date of their transfer, governed by the United Nations Staff Regulations and Rules. Thus, in the absence of any contractual agreement, these staff members do not have any right to an end of service payment even though they were entitled to such payment under the conditions of service of the releasing organization.

6. I also understand that the Staff College has directly recruited local GS staff members since its inception. In this regard, and as mentioned above, the terms and conditions of service of staff members of the Staff College are governed by the United Nations Staff Regulations and Rules, in accordance with Article V, paragraph 4 of the Staff College's Statute. As these Regulations and Rules do not provide for an end of service payment entitlement, and as the Staff College had not implemented an end of service policy, staff members directly recruited by the Staff College do not have a right to an end of service payment at this time.

7. In light of the above, there appears to be no legal impediment to introduce the end of service payment as of 1 January 2006 only for current staff members, and not to apply it retroactively to former staff members. This view is supported by the case *Brimicombe and Ablett* in which the Administrative Tribunal of the United Nations (UNAT) held that:

> "With respect to the question of whether the benefits ought to have been extended to all staff members, including former staff members [. . .], the Tribunal finds that it was reasonable for the Respondent to decline to do so. [. . .], if the Applicants had wished to challenge their recruitment status, the appropriate time to do so was within two months of their recruitment, in accordance with staff rule 111.2, and certainly within their employment, when they knew or should have known of their claim."
>
> (See Judgement No. 871, *Brimicombe and Ablett* (1998))

8. With regard to your question as to whether service prior to the implementation of the end of service payment policy should be taken into consideration for the calculation of such payment, we are of the view that, while there would be no legal objection thereto, it might be unreasonable to take into account any service of staff members prior to the inception of the Staff College. Therefore, previous service with the ITC-ILO of staff members who transferred to the Staff College does not necessarily have to be considered for the calculation of their end of service payment.

9. The question as to whether service of staff members with the Staff College prior to the implementation of an end of service policy should be considered for the calculation of the end of service payment is a policy question for you to decide. We recommend, however, that such decision will ensure equal and fair treatment of all staff members concerned, namely those who transferred from the ITC-ILO, as well as those who were directly recruited by the Staff College. From a legal point of view, the end of service payment may be calculated either:

(*a*) By taking into account service of eligible staff members with the Staff College prior to the implementation of the end of service payment policy; or,

(*b*) By taking into account service of eligible staff members with the Staff College only as of the date of the implementation of the end of service payment policy.

10. Please do not hesitate to contact me should you have any further questions or require any clarifications regarding the foregoing advice.

(*d*) Interoffice memorandum to the Secretary, Advisory Board on Compensation Claims, regarding recreational activities sponsored by the United Nations Staff Union

Compensation of a staff member for injuries sustained during Inter-Agency sport Games—Games not considered to be official United Nations events—Participating staff members are not on official duty—Despite a broad notion of injury incurred "in the course of employment", such injury cannot be viewed as work-related and thus compensated—Recommendation to have staff members sign a waiver before taking part in future similar events

28 June 2006

1. I refer to your memorandum of 10 May 2006, requesting the opinion of the Office of Legal Affairs (OLA), as to whether injuries arising from, sports/athletic events that are scheduled for Staff Day and for Inter-Agency Games may be compensated under Appendix D to the Staff Rules, in addition, you request OLA's opinion as to whether, for future events, the Staff Union could be encouraged to schedule events that would less likely result in injuries to staff.

2. We understand that the Advisory Board on Compensation Claims (the "Board") has received one claim thus far resulting from Staff Day activities from a staff member who sustained an injury to his right rib cage while participating in a football game. We are not aware whether the Board has received any other claims arising from the Inter-Agency Games that took place in Pesaro, Italy, last month. With respect to the Inter-Agency games, you have informed us that while participating staff are responsible for their own travel

arrangements, the leave is considered as official business (special leave with pay) and that staff members have not been requested to sign any sort of waiver in case they sustain an injury while travelling to or participating in the games.

3. At the outset, I note that as recreational and sports events for staff members, Staff Day activities and the United Nations Inter-Agency Games are not official United Nations events. Furthermore, the Inter-Agency Games do not fall within the scope of ST/AI/2000/20 of 22 December 2000 on official travel.* Accordingly, staff participating in these sports and recreational activities are not considered to be on official duty, even if staff are granted special leave with pay at the discretion of their supervisors. This Office has also in the past advised that as the Inter-Agency Games are not official United Nations events, use of the un-modified United Nations emblem on uniforms made for the Games would not be appropriate.

4. Pursuant to Article 2(a) of Appendix D, "Compensation shall be awarded in the event of death, injury or illness of a staff member which is attributable to the performance of official duties on behalf of the United Nations . . ." Article 2(b) adds that:

> "Without restricting the generality of paragraph (a), death, injury or illness of a staff member shall be deemed to be attributable to the performance of official duties on behalf of the United Nations in the absence of any wilful misconduct or wilful intent when:
>
> (i) The death, injury or illness resulted as a natural incident of performing official duties on behalf of the United Nations; or
>
> (ii) The death, injury or illness was directly due to the presence of the staff member, in accordance with an assignment by the United Nations, in an area involving special hazards to the staff member's health or security, and occurred as the result of such hazards; or
>
> (iii) The death, injury or illness occurred as a direct result of travelling by means of transportation furnished by or at the expense or direction of the United Nations in connexion with the performance of official duties; provided that the provisions of this sub-paragraph shall not extend to private motor vehicle transportation sanctioned or authorized by the United Nations solely on the request and for the convenience of the staff member."

5. As you may be aware, Appendix D is somewhat analogous to workmen's compensation schemes. Therefore, the Board may be guided by the following factors in such schemes that have been considered as important in establishing whether a recreational injury occurred "in the course of employment":

a. place where the injury occurred: did it occur on the premises of the employer?

b. time the injury occurred: during normal working hours? during lunch time? or after normal working hours?

c. activity giving rise to the injury: was it encouraged, organized or financed by the employer (in order to encourage physical fitness, to create employee good will, or even as an inducement for entry into employment)?

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* 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 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).

d. any benefits to employer: e.g. team competing against others under the employer's name, thus in effect advertising for the employer?

6. Furthermore, most Worker Compensation Acts do not require that the employee be on the clock when the injury occurred. In many instances, it is sufficient that the injury occurred within a reasonable time before or after the scheduled hours of work. In addition, under the jurisdiction of some States of the Host Country, a compensable injury may occur while the employee is involved with an employer-sponsored athletic event, social function or other after-work related activity, as long as the employee is performing some activity to promote the employer's business interest or affairs. Courts also apply the "totality of the circumstances" test in order to determine whether there is sufficient causal connection between the injury and employment in order to justify compensation. The criteria used are generally those listed in paragraph 5 above.

7. Thus, the context of the recreational or sports event that leads to an injury of a staff member would have to be analyzed to determine whether the activity in question occurred in the course of a staff member's official duties.

8. As the Inter-Agency Games do not appear to satisfy most of the criteria in paragraphs 5 and 6 above and would not be considered as "performance of official duties" according to Article 2 of Appendix D, we believe that Appendix D coverage would not extend to staff members participating in the Games. Given the criteria cited above, however, it may be probable that some recreational activities taking place on Staff Day may fall under Appendix D. Therefore, the specific facts of claims should be examined on a case-by-case basis, taking into account the guidelines listed above.

9. The Board should also note, however, that the United Nations Administrative Tribunal has recognized that, "depending upon the circumstances of a given case, an accident occurring while a staff member is engaged in an activity not strictly within the official duties defined and listed in any job description might nevertheless be attributable to performance of official duties as a natural incident thereof." (See Judgement No. 570, *Roth* (1992), paragraph VI). To safeguard against potential claims by staff members that may be appealed and ultimately viewed favourably by the United Nations Administrative Tribunal, we would recommend that staff members participating at recreational and sports events that include a risk for injury should sign a waiver beforehand. At the very least, such staff members should be warned in advance of the risk that they may suffer non-compensable injury.

10. With respect to your question of whether, for future events, the Staff Union could be encouraged to schedule events that would less likely result in injuries to staff, that is a policy decision that is outside the purview of this Office.

(*e*) Interoffice memorandum to the Officer-in-Charge, Policy Support Unit of the Office of Human Resources Management regarding the decision on payment of death benefit to staff member's husband who is in prison as the prime suspect in her murder

Payment of death benefits to the spouse of a deceased staff member—Exceptional withholding of such payment pending the trial of the spouse for the murder of

THE STAFF MEMBER—IN CASE OF GUILTY VERDICT, THE PAYMENT WOULD HAVE TO BE MADE TO THE STAFF MEMBER'S CHILD

2 August 2006

1. This refers to your memorandum dated 11 July 2006 asking advice on whether it would be justified to hold the "death benefit" payable to a staff member's spouse under Staff Rule 109.10 (a) in escrow until there is a judgement from the competent [national] court as to whether the deceased staff member's spouse is guilty or not of her murder. The staff member died on 5 October 2005, and, as advised in an email of 22 June 2006 from the International Criminal Tribunal for Rwanda, the husband is still being held by the [national] police as a prime suspect "under investigation". If he is found not guilty, the Organization would pay him the benefit. If he were found to be guilty, you request our advice as to whether it would be legally justified to make an exception to the applicable Staff Rules and pay the benefit to the staff member's dependent child, who is already entitled to 50 % of the total amount of the death benefit of $9,395.75.

2. It is an accepted general principle of law that no one should be allowed to profit from his/her own wrongdoing. The United Nations Staff Rules are rules of general application and do not envisage very unusual situations such as the one you presented. Of course, we recognize that the accused remains innocent until proven guilty. However, we also recognize that once the funds are distributed, it would be very unlikely that they could ever be retrieved. Accordingly, the escrow proposal, pending the resolution of the criminal case, seems appropriate. Therefore, in light of the extraordinary circumstances of this case, the Organization should hold the death benefit normally due to the staff member's spouse until there is a judgement from the competent [national] court. Should the staff member's spouse be found guilty, it would be in accordance with general principles of law for the staff member's dependent child to receive the share of the staff member's spouse. We consider that there are very limited risks that the United Nations Administrative Tribunal would reverse a decision denying a death benefit to the murderer of a staff member.

(*f*) Interoffice memorandum to the Assistant Secretary-General for Human Resources Management regarding the travel of staff members with [Country] nationality

STATUS OF STATELESS PERSONS—STATELESSNESS DETERMINED BY REFERENCE TO NATIONAL LAW—STATUS GRANTED ONLY TO STATELESS PERSONS *DE JURE* AND NOT TO THOSE *DE FACTO*—WIDESPREAD LACK OF RECOGNITION OF A NATIONAL PASSPORT NOT REGARDED AS *DE JURE* STATELESSNESS—OFFICIAL TRAVEL ON BEHALF OF THE ORGANIZATION—STAFF MEMBERS ON OFFICIAL TRAVEL CAN USE THEIR UNITED NATIONS *LAISSEZ-PASSER* AS VALID TRAVEL DOCUMENTS

26 October 2006

1. This is in reference to your memorandum of 25 May 2006 in which you seek our advice with respect to the issues raised by [Name], President of the Coordinating Committee for International Staff Unions and Associations of the United Nations System (CCISUA), in his letter dated 15 May 2006. [Name] draws attention to the increasing difficulties experienced by staff members of [Country] nationality with regard to official travel on behalf of the Organization, including their inability to obtain travel visas. You request

our advice on his behalf as to whether the Organization has ever considered issuing travel documents in respect of staff who are considered "stateless", and if not, what the United Nations might do to address this specific situation.

2. The principles governing the status of stateless persons are established in the Convention Relating to the Status of Stateless Persons of 28 September 1954,[*] and the Convention on the Reduction of Statelessness of 30 August 1961.[**] A "stateless person" is defined as "a person who is not considered as a national by any State *under the operation of its law*" (emphasis added). As such, a person's "statelessness" is determined solely by reference to the national law of the original State of nationality. In adopting this approach, the 1954 Convention has adopted a "*de jure*" (legal) as distinguished from a "*de facto*" (actual) definition of "statelessness". In the present case, therefore, the question of whether any [Country] staff members may be considered "stateless" would be determined under [Country] law.

3. As noted in your memorandum, the staff members at hand are in fact nationals of [Country]. Accordingly, it is the widespread lack of recognition of the [Country] passport which places them in a situation akin to "statelessness", rather than the operation of [Country] law regarding nationality. As such they are "*de facto*" stateless. As the determination of nationality or statelessness remains within the purview of the national law, "*de facto*" stateless persons are not internationally protected, and no third State or international organization, including the United Nations, can substitute the State of nationality and pronounce itself on the nationality or statelessness of any person. As unsatisfactory as this situation may be, there is little that the United Nations can do by way of issuing travel documents to the said staff members.

4. With respect to official travel by United Nations officials, Article VII of the Convention on the Privileges and Immunities of the United Nations[***] ("the General Convention") sets forth provisions which relate to United Nations *Laissez-Passer* (UNLP):

> *Section 24* "the United Nations may issue United Nations *laissez-passer* to its officials. These *laissez-passer* shall be recognized and accepted as valid travel documents by the authorities of members taking into account the provisions of section 25".
>
> *Section 25* "Applications for visas (where required) from the holders of United Nations *laissez-passer,* when accompanied by a certificate that they are traveling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel".

5. Based on the provisions of Article VII above, [Country] staff members should be able to undertake official travel using their UNLPs as valid travel documents. Although the recognition of a passport issued by [Country] is a matter for the Member State to which the [Country] national wishes to travel, the issuance of visas in respect of official travel is a matter in which the United Nations can be of assistance on the basis of Member States' obligations under the General Convention. Accordingly, with respect to your question as to what the United Nations might do to address this specific situation, we suggest that this issue be approached on a case-by-case basis. Should a Member State refuse to issue a visa

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[*] United Nations, *Treaty Series,* vol. 360, p. 117.

[**] United Nations, *Treaty Series,* vol. 989, p. 175.

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

to a [Country] staff member in respect of official travel, this matter may be taken up by the Office of Legal Affairs of the United Nations vis-à-vis the national authorities concerned.

(*g*) Note to the Treasurer regarding the adherence to United Nations policy for salary payments—status of [Association Name]

PAYMENT OF SALARIES OF UNITED NATIONS STAFF MEMBERS—SALARIES MUST BE PAID TO A BANK ACCOUNT HELD IN THE NAME OF THE STAFF MEMBER AND NO MORE THAN ONE OTHER PERSON

1 December 2006

1. We refer to your memorandum of 9 November 2006, requesting our advice in connection with the payment by the United Nations of salaries of eleven staff members into a shared bank account, which is held in the name of the [Association Name] at the United Nations Federal Credit Union in New York (UNFCU). We also refer to our various follow-up discussions with your office. Under separate cover, we will revert on the concerns raised in your 9 November memorandum regarding the status of the [Association Name] (including [Association Name]'s operation and management) under applicable banking laws.

2. You stated in your 9 November memorandum that Treasury has recently become aware that, pursuant to their written instructions, salaries of eleven staff members have been paid into a shared bank account, held at the UNFCU in the name of the [Association Name]. Upon learning of this fact, Treasury advised the staff members concerned that the designation of a shared bank account was inconsistent with United Nations rules governing the payment of emoluments, and requested the staff members concerned to amend their payment instructions, to ensure that their salaries would be paid into a bank account held in the name of the individual staff member or a joint account maintained by the staff member and no more than one other person.

3. We concur with Treasury's view that payment of staff salaries into a shared bank account does not comport with applicable United Nations rules. Administrative Instruction ST/AI/2001/1,* dated 8 February 2001, entitled "Currency and modalities of payment of salaries and allowances", sets out the procedures for the payment of salaries to staff members employed by the United Nations. In this regard, Section 2.2 of ST/AI/2001/1 provides that "salaries [. . .] shall be paid to *individual staff members* [. . .]" (emphasis added). Moreover, Annex II to Information Circular ST/IC/2001/14,** dated 8 February 2001, entitled "Direct deposit of salary, salary distribution request and funds transfer request forms" provides that, for purposes of receiving salary payments from United Nations Headquarters, the staff member must have a bank account in his or her name or a joint account

* 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 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).

** Information circulars are issued by the Under-Secretary-General for Administration and Management or by such other officials to whom the Under-Secretary-General has delegated specific authority. They contain general information on, or explanation of, established rules, policies and procedures, as well as isolated announcements of one-time or temporary interest (See ST/SGB/1997/2).

maintained by the staff member and no more than one other person.[1] Accordingly, we concur with Treasury's course of action to request the staff members concerned to designate individual bank accounts for the payment of their salaries.

(*h*) Interoffice memorandum to the Senior Adviser, Office of the Executive Director of the United Nations Children's Fund (UNICEF) regarding the disclosure of employment records of a UNICEF staff member

Release to a third party of employment and medical records of a staff member—Immunity and privileges of United Nations archives—Possibility to release to a third party, at the request of the staff member and on a strictly voluntary basis, information relating to attendance and earnings—Copies of medical records can only be provided to the staff member

8 December 2006

1. I refer to your memorandum, dated 6 November 2006, by which you forwarded to us copies of the letters of [Name 1] of the [Law Firm Name], dated 17 August and 13 October 2006, respectively, regarding the release of employment records of [Name 2], a UNICEF staff member. You requested our assistance in responding to those letters.

2. I understand that [Name 1] is the legal representative of [Names 3 and 4], against whom [Name 2] has instituted a law suit in New Jersey. From the information provided to this Office, it is not clear what the subject matter of the law suit is. It appears, however, that it is in connection with a private dispute that does not involve the Organization. I note that [Name 1] has requested UNICEF to release certified copies of [Name 2]'s employment records for the purposes of discovery. In this regard, [Name 2] has signed a form authorizing UNICEF to release certified copies of "records in its possession pertaining to [her] attendance at work, as well as [her] earnings and any other medical records pertaining to disability, sick time, Workers' Compensation claims, ability to discharge [her] duties for [UNICEF], to [Law Firm, Address]."

3. As you know, pursuant to Article II, Section 2 of the Convention on the Privileges and Immunities of the United Nations of 1946 ("United Nations Convention"), (United Nations, *Treaty Series,* vol. 1, p. 15), to which the United States of America became a party in 1970 (21 *UST* 1418; *TIAS* No. 6900), "[t]he 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." Pursuant to Article II, Section 4 of the Convention, "[t]he archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located". However, the United Nations may, on a strictly voluntary basis, cooperate in order to facilitate the proper administration of justice, and may, therefore, agree to release certain information on a staff member at his or her request.

4. In this regard, [Name 2] has signed a form authorizing UNICEF to release certified copies of: (i) her attendance records; (ii) records relating to her earnings; and (iii) medi-

[1] Annex II to ST/IC/2001/14 applies to internationally recruited staff members stationed in the field. It is our understanding that the 11 staff members concerned are all internationally recruited staff members.

cal records (see paragraph 3 above). Pursuant to the release signed by [Name 2], the release of her attendance records and records relating to her earnings, do not seem objectionable, unless UNICEF considers that those records should be provided by [Name 2] directly to [Name 1]'s firm, since the staff member herself can obtain them from the relevant offices in UNICEF (or she may already be in possession of those records).

5. With regard to [Name 2]'s medical records, under existing United Nations policy, a staff member's medical records cannot be released to a third party, notwithstanding a release provided by the staff member concerned. The Organization should therefore not accede to [Name 1]'s request for the release of [Name 2]'s medical records. However, you may wish to inform [Name 1] that, under current United Nations policy, [Name 2] herself may obtain copies of her medical records from the Medical Services Division, which copies [Name 2] can then provide to [Name 1].

6. In light of the above, we have prepared and attached a draft letter which you may wish to consider sending to [Name 1].

Draft letter from UNICEF to the outside counsel

Employment records of [Name 2]

I refer to your letters of 17 August and 13 October 2006, requesting certified copies of employment records of [Name 2], a UNICEF staff member, pertaining to her attendance at work, her earnings, her medical records relating to disability, sick time and Worker's Compensation claims, as well as records relating to her ability to discharge her duties.

I understand that your request is made in connection with a law suit initiated by [Name 2] against your clients. From the information provided to us, it is not clear what the subject matter of the law suit is. It appears, however, that it concerns a private dispute that does not involve the United Nations.

We wish to inform you that under Article II, Section 2 of the Convention on the Privileges and Immunities of the United Nations of 1946 ("United Nations Convention"), (United Nations, *Treaty Series,* vol. 1, p. 15), to which the United States of America became a party in 1970, 21 *UST* 1418; *TIAS* No. 6900, "[t]he 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." Pursuant to Article II, Section 4 of the United Nations Convention, "[t]he archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located". However, the United Nations may, on a strictly voluntary basis, cooperate in order to facilitate the proper administration of justice, and may, therefore, agree to release certain information on a staff member at his or her request.

In this regard, you have submitted a form signed by [Name 2], authorizing UNICEF to release certified copies of "records in its possession pertaining to [her] attendance at work as well as [her] earnings and any other medical records pertaining to disability, sick time, Workers' Compensation claims, ability to discharge [her] duties for [UNICEF], to [Law Firm, Address]."

Pursuant to the above-referenced request for release, please find enclosed certified copies of [Name 2]'s (i) attendance records and (ii) records relating to her earnings. With regard [Name 2]'s medical records, please be informed that the United Nations is not in

a position to accede to your request since, under United Nations policy, a staff member's medical file cannot be released to a third party, notwithstanding a release provided by the staff member concerned. Under United Nations policy, however, a staff member may obtain copies of medical records from the United Nations Medical Services Division. Therefore, we suggest that you contact [Name 2] directly with a request to provide you with copies of the medical records referred to above.

Please take notice that nothing in or relating to the foregoing, including the provision of the copies of [Name 2]'s records relating to her attendance and earnings, shall be deemed a waiver, express or implied, of the privileges and immunities of the United Nations.

(*i*) Interoffice memorandum to the Senior Advisor, Office of the executive Director of the United Nations Children's Fund (UNICEF), regarding the release of records relating to the earnings of a UNICEF staff member

Release to a third party of earnings records of a staff member—Immunity and privileges of United Nations archives—Possibility to release, at the request of the staff member and on a strictly voluntary basis, records relating to payments, pension and insurance plans

8 December 2006

1. I refer to your e-mail message of 4 December 2006, by which you forwarded to us a copy of the letter of [Name A], Attorney at Law, dated 15 November 2006, regarding the release of the records relating to the earnings of [Name B], a retired UNICEF staff member. You requested our assistance in responding to this letter.

2. I understand that [Name A] has requested UNICEF to provide him with copies "of all pay statements issued to [Name B] [by UNICEF] between 1 January 2000, and the present". I note that [Name B] has signed a form authorizing UNICEF to release" any and all information regarding any pension plan, savings plan, insurance plan, or any other benefit of [his] employment to [Name A, Address]". From the information provided to us, it is not clear whether [Name A] is representing [Name B] or why [Name A] is requesting those documents.

3. Under Article II, Section 2 of the Convention on the Privileges and Immunities of the United Nations of 1946 ("United Nations Convention"), (United Nations, *Treaty Series,* vol. 1, p. 15), to which the United States of America became a party in 1970 (21 *UST* 1418; *TIAS* No. 6900), "[t]he 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." Pursuant to Article II, Section 4 of the United Nations Convention, "[t]he archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located". However, the United Nations may, on a strictly voluntary basis, cooperate in order to facilitate the proper administration of justice, and may, therefore, agree to release certain information on a staff member at his or her request. UNICEF is a subsidiary organ of the United Nations, and, therefore, is covered by the United Nations Convention.

4. Pursuant to the above-mentioned release signed by [Name B], the release of his records relating to his earnings while employed by UNICEF does not seem objectionable.

However, UNICEF might consider that those records should be provided by [Name B] directly to [Name A], since the retired staff member himself may already be in possession of those records.

5. In light of the above, we have prepared and attached hereto a draft response which UNICEF may wish to consider sending to [Name A].

Draft letter from UNICEF to the outside counsel

Records relating to [Name B]'s earnings

I refer to your letter of 15 November 2006, requesting copies of all pay statements issued by UNICEF to [Name B], a retired UNICEF staff member, between 1 January 2000 and the present. From the information provided to us, it is not clear whether you are representing [Name B] in a matter or for what purpose you have requested those records.

We wish to inform you that under Article II, Section 2 of the Convention on the Privileges and Immunities of the United Nations of 1946 ("United Nations Convention") (United Nations, *Treaty Series,* vol. 1, p. 15), to which the United States of America became a party in 1970 (21 *UST* 1418; TIAS No. *6900*), "[t]he 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." Pursuant to Article II, Section 4 of the United Nations Convention, "[t]he archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located". However, the United Nations may, on a strictly voluntary basis, cooperate in order to facilitate the proper administration of justice, and may, therefore, agree to release certain information on a staff member at his or her request. UNICEF is a subsidiary organ of the United Nations, and, therefore, is covered by the United Nations Convention.

In this regard, you have submitted a form signed by [Name B], authorizing UNICEF to release to you copies of "any pension plan, savings plan, insurance plan, or any other benefit of [his] employment."

Pursuant to the above-referenced request for release, please find enclosed copies of records relating to [Name B]'s earnings while employed by UNICEF.

Nothing in or relating to the foregoing, including the provision of the copies of [Name B]'s records relating to his earnings, shall be deemed a waiver, express or implied, of the privileges and immunities of the United Nations, including its subsidiary organs.

9. Miscellaneous

Note to the Assistant Secretary-General for Peacekeeping Operations regarding the request from [Country] for the amnesty of [Name]

Criminal accountability and responsibility in peacekeeping missions—Staff member sentenced by Court in Kosovo to time in jail for murder and larceny committed while on mission in Kosovo—Sentence enforced in his country of origin—Possibility of granting an amnesty in accordance with the laws of his country of origin, if approved by the sentencing party, UNMIK—Information relating to national laws regarding amnesty must be conveyed by the Government and not the staff member's attorney—In view of the grave and violent nature of crimes involved, such amnesty would be inconsistent with the rule of law and principles of accountability

20 September 2006

1. I wish to refer to Code Cable [Number] from [the Under-Secretary-General for Peacekeeping operations] to UNMIK dated 23 August 2006 and copied to [the Under-Secretary-General for Legal Affairs] attaching a Note Verbale from the Permanent Mission of [Country] which reiterates the Government's request that [Name], who is currently serving a thirteen year jail sentence in [Country] for murder and larceny he committed in Kosovo, be granted amnesty. You will recall that [Name], previously an international police officer in Kosovo, was convicted and sentenced in 2002 by a Court in Kosovo for murdering his language assistant. He was then transferred to [Country] pursuant to an Agreement concluded in 2003 between UNMIK and the Government whereby the Government agreed to enforce [Name]'s sentence.

2. However, the Government has requested that UNMIK approve the granting of an amnesty to [Name] in accordance with Article 9 of the Agreement which provides that the Government may grant the sentenced person amnesty or a commutation of his sentence in accordance with its laws, "if such amnesty or commutation is of general applicability and the sentencing Party [UNMIK] approves."

3. We had previously, for purposes of considering this request, asked the Government to provide us with the relevant laws under which amnesty is granted in [Country] as well as further details as to how the Government pursuant to its national laws intends to grant [Name] amnesty.

4. In response, the Government, by its Note Verbale of 23 August has submitted a memorandum from [Name]'s attorney that explains the laws pursuant to which amnesty is granted. This memorandum cites provisions in the [Country] Constitution as well as the [Country] Penal Code which indicate that the granting of amnesty is at the discretion of the President and can be of general applicability. The memorandum explains that, "The application of amnesty in [Country] is based on the issuance of [an] amnesty sentence by the President for the sentenced persons at the various religious and national occasions" and that "such amnesty is a general one including general groups of prisoners who [have] already executed a given or specified period of the penalties issued against them conditioning on their good behavior."

5. Furthermore, the President, may, at his discretion, under the Constitution, grant amnesty, "to those who are suffering from health problems or [are] having some special

family circumstance." The memorandum reiterates that amnesty is of general applicability of which thousands of sentenced persons at [Country] jails take advantage. It concludes by stating that the request for amnesty for [Name] falls within the "general applicability of amnesty" provided for under Article 9 of the Agreement and that there are also humanitarian grounds that should be taken into account, including the fact that [Name] is the father of a son and also needs to assist his parents who are suffering from health problems.

6. In the first instance, the United Nations is not in a position to act pursuant to information provided by the defence counsel of [Name] and would prefer that information concerning the granting of amnesty and the laws pursuant to which amnesty is granted be conveyed through the Government's official channels. Secondly, the amnesty of "general applicability" from which [Name] will benefit should be further clarified by the Government. While the amnesty laws in [Country] may be of general application, Article 9 of the Agreement referred to above makes clear that the amnesty to be granted has to be of "general applicability". This means that the act of amnesty should be based on general criteria which should be applicable to a broad category of prisoners, including [Name].

7. Finally, even if the Government did confirm that [Name] was to benefit from an amnesty of "general applicability" as defined above, we nevertheless remain of the view that given the grave and violent nature of the crimes for which he was convicted, UNMIK should not approve any amnesty for [Name]. Any approval of amnesty in this particular case would be inconsistent with the Organization's policy of promoting the rule of law as well as the principles of accountability and responsibility for serious crimes.

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

1. International Labour Organization[1]

(*a*) Legal Adviser's opinion on the relationship between Parts A and B of the Code[2]

New form of legal instruments—Legal question arising from the coexistence of binding and non-binding provisions in a single Convention

Questions were addressed to the Legal Adviser by the Government representatives of the Netherlands and Denmark, as well as those of Cyprus and Norway, as to the various consequences flowing from the coexistence in the draft consolidated Convention of binding and non-binding provisions for ratifying Members.

The High-level Tripartite Working Group on Maritime Labour Standards is, in accordance with its mandate, working on a consolidated Convention as a new type of instrument compared with those adopted up to now. The consolidation of maritime instruments in force is aimed at placing all substantive elements in a single instrument in an approach radically different to that employed up to now, where Conventions contain detailed techni-

[1] Submitted by the Legal Adviser of the International Labour Conference.

[2] Adoption of an instrument to consolidate maritime labour standards.

cal provisions, often accompanied by Recommendations. From this perspective, conclusions cannot be drawn from the traditional formal arrangement based on the distinction between a Convention—where the provisions are binding—and a Recommendation–where they are not.

The future instrument is a Convention open to ratification by States Members providing explicitly for the coexistence of binding and non-binding provisions (proposed Article VI, paragraph 1). The provisions of Part A of the Code would be binding; those of Part B would not. Some international labour Conventions set out, alongside binding provisions, others that are of a different nature.[3] The novelty introduced in the future instrument essentially resides in the great number of non-binding provisions in the instrument. It should equally be noted that other organizations, such as the International Maritime Organization, have adopted conventions containing the two types of provisions without any apparent legal problems in their application.

Members ratifying the Convention would have to conform to the obligations set out in the Articles, the Regulations and Part A of the Code. Their only obligation under Part B of the Code would be to examine in good faith to what extent they would give effect to such provisions in order to implement the Articles, the Regulations and Part A of the Code. Members would be free to adopt measures different from those in Part B of the Code so long as the obligations set out elsewhere in the instrument were respected. Any State Member which decided to implement the measures and procedures set out in Part B of the Code would be presumed to have properly implemented the corresponding provisions of the binding parts of the instrument. A Member which chose to employ other measures and procedures would, if necessary, and particularly where the Member's application of the Convention was questioned in the supervisory machinery, have to provide justification that the measures taken by it did indeed enable it to properly implement the binding provisions concerned.

(*b*) Provisional record 20, Fourth item on the Agenda: Committee on Occupational Safety and Health

Legal significance of International Labour Organization (ILO) recommendations

Following a request from the Worker Vice-Chairperson, the representative of the ILO Legal Adviser clarified the status of ILO Recommendations. He explained that they were instruments of the International Labour Organization and, like Conventions, they were formally adopted by the International Labour Conference but, unlike Conventions, they were not subject to ratification by member States and were not binding on them. Most Recommendations supplemented Conventions and as such they were intended to guide government action in implementing the latter. Like unratified Conventions, Recommendations entailed an obligation for Members to report on the state of law and practice in their

[3] Annex D, Report 1 (1 A) Adoption of an instrument to consolidate maritime labour standards available at http://www.ilo.org/public/english/standards/relm/ilc/ilc94/rep-i-la.pdf

See, for example, the Occupational Health Services Convention, 1985 (No. 161), Article 9, paragraph 1: " . . . occupational health services should be multidisciplinary."

country in regard to the matters covered by the Recommendation, when requested by the Governing Body.

2. United Nations Industrial Development Organization

(*a*) Legal opinion re: Privileges and immunities of non-[State's] staff members of the rank of P-5 and above who are (permanent) residents of [State]

PRIVILEGES AND IMMUNITIES OF STAFF MEMBERS OF RANK P-5 AND ABOVE—PERMANENT RESIDENCE IN RECEIVING STATE—VIENNA CONVENTION ON DIPLOMATIC RELATIONS, 1961*—ADDITIONAL PRIVILEGES AND IMMUNITIES GRANTED BY RECEIVING STATE

The main legal question raised by the [. . .] Foreign Ministry's request to return [Name's] red legitimation card is whether officials of the rank of P-5 and above who have acquired (permanent) residence in [State] are entitled to diplomatic privileges and immunities in terms of UNIDO's Headquarters Agreement.

Section 37 of the Headquarters Agreement lists the privileges and immunities granted to officials of all ranks, while section 38 grants additional privileges and immunities to the Director-General and officials of the rank of P-5 and above. In relevant part, section 38 (c) reads:

> "(c) *Except as provided in Section 39,* other officials having the professional grade of P-5 and above . . . shall be accorded the same privileges and immunities, exemptions and facilities as the Government accords to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to [State]." (Emphasis added.)

In accordance with the opening exception in this paragraph, the granting of diplomatic privileges and immunities to officials of the rank of P-5 and above does not extend to [State's] nationals and stateless persons resident in [State], who under section 39 (a) are granted the privileges and immunities foreseen in the Convention on the Privileges and Immunities of the United Nations of 1946,** together with tax exemption on pensions and access to the Commissary.

In section 38 (c), the phrase "shall be accorded the same privileges and immunities, exemptions and facilities as the Government accords to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to [State]", describes the privileges and immunities accorded and not the persons to whom they are accorded under this section.

Section 38 (c) therefore expressly excludes only [State's] nationals and stateless persons resident in [State] from its field of application. It thus applies to all other officials of the rank P-5 and above, whether or not they may be (permanently) resident in [State]. If the intention had been to deny additional diplomatic privileges and immunities to non-[State's] nationals (permanently) resident in [State], section 38 or some other section should have stated as much.

It follows from the above that the remark [privileges and immunities in terms of the Headquarters Agreement only], which the foreign ministry proposes to add to [name's]

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* United Nations, *Treaty Series,* vol. 500, p. 95.

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

legitimation card, cannot have the effect of limiting his diplomatic privileges and immunities.

The Vienna Convention on Diplomatic Relations of 1961, which provides the framework for the diplomatic privileges and immunities accorded to officials of the rank of P-5 and above, foresees a limited range of privileges and immunities where the diplomatic agent is a national or permanent resident of the receiving state. Paragraph 1 of article 38 of the convention stipulates that:

> "1. *Except insofar as additional privileges and immunities may be granted by the receiving State,* a diplomatic agent who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions." (Emphasis added.)

This provision contains an important qualification, underlined above, making it possible for the receiving state to grant additional diplomatic privileges and immunities to its nationals or permanent residents, should it so choose. [State] appears to have exercised this right in section 38 (c) of the Headquarters Agreement, which, by expressly excluding only [State's] nationals and stateless persons resident in [State] from its scope, implies agreement that diplomatic privileges and immunities should extend to all other officials of the rank of P-5 and above, including those who acquire (permanent) residence in [State].

In view of the above, the Office of Legal Affairs doubts that the provisions of the Headquarters Agreement provide a satisfactory justification for the opinion that staff members of the rank of P-5 and above who acquire (permanent) residence in [State] enjoy only a limited range of privileges and immunities. In order to restrict the privileges and immunities granted to (permanent) residents of [State], it would appear necessary to amend the Headquarters Agreement. This is particularly so since the agreement does not refer to or define the concept of 'permanent' residence.

(*b*) Interoffice memorandum re: Legal basis of UNIDO's exemption from value-added tax in [State]

Exemption from value-added tax for international organizations—Convention on the Privileges and Immunities of the Specialized Agencies, 1947*—European Union (EU) harmonization of tax exemptions—Request for statement from tax authorities

I refer to your email dated [. . .] addressed to [name], in which you requested additional justifications regarding UNIDO's exemption from Value Added Tax (VAT) in [State]. The justifications are needed in view of certain difficulties which a supplier, [name], is said to be experiencing with the [State's] tax authorities. [. . .]

In your email you state that the [State's] tax authorities are requiring a statement from the [host country] tax authorities regarding UNIDO's exemption from VAT. You mention that you are of the opinion that the fact that UNIDO does not pay tax within the EU has nothing to do with the [host country] tax authorities, but with the agreement that [State] has signed with UNIDO.

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

The legal basis under international and EU law of UNIDO's exemption from VAT in [State] is as follows:

(*a*) **Convention on the privileges and immunities of the specialized agencies of 1947**, to which [State] acceded on [date]. Section 10 of the Convention provides that States parties to the Convention will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax which forms part of the price to be paid. VAT is a "tax which forms part of the price to be paid".

(*b*) **EU Directive 77/388/EEC of 17 May 1977**, which governs the harmonization of the laws of EU member states relating to VAT. In particular, article 15, paragraph 10, of the directive provides that EU member States shall exempt from VAT supplies of goods and services to international organizations recognized as such by the public authorities of the host country, within the limits and under the conditions laid down by the international conventions establishing the organizations or by headquarters agreements. The same paragraph states that the exemption may be implemented by means of a refund of the tax. The fact that [host country] is a member of and has concluded a headquarters agreement with UNIDO indicates that UNIDO is an international organization "recognized as such by the public authorities of the host country". Since UNIDO is exempt from all forms of taxation in [host country] pursuant to section 24(a)-(b) of its headquarters agreement, the Organization benefits in other EU member states from the VAT exemption established by the directive. Even though VAT charged in [host country] is refunded to UNIDO rather than exempted at the point of sale, the general practice seems to be for other EU member states to grant UNIDO an exemption at source.

In my view, it would not be an acceptable precedent to obtain a statement from the [host country] tax authorities as requested by the local [State's] tax authorities.

You may wish to bring the above-mentioned provisions to the attention of the supplier. [. . .]

(*c*) Internal e-mail message re: Query regarding dispute settlement by [Name]

Dispute settlement between Members of UNIDO—Application or interpretation of the Constitution of UNIDO—Article 22 of the Constitution of UNIDO—Industrial Development Board—Advisory opinions of the International Court of Justice—Arbitral tribunal—Conciliation commission

I refer to your e-mail of [date] to [Name] concerning a request from [Name], a student of international law at [City] University. [Name] has requested detailed information about the mechanism of dispute settlement between Members of UNIDO and requests for advi-

sory opinions as foreseen in Art. 22[1] of the Constitution of UNIDO. I would be grateful if you could transmit the following information to [Name], [. . .]

Article 22 of the UNIDO Constitution, which was opened for signature on 7 October 1979, regulates the settlement of possible disputes between Members of the Organization concerning the interpretation or application of the Constitution. Paragraph 1(a) of Article 22 provides that any dispute among two or more Members concerning the interpretation or application of the Constitution, including its annexes, that is not settled by negotiation shall be referred to the Industrial Development Board unless the parties agree on another mode of settlement. For disputes that are not settled in the afore-mentioned manner to the satisfaction of any party to the dispute, paragraph 1(b) of Article 22 provides that that party may refer the matter either (i) to the International Court of Justice or to an arbitral tribunal, if the parties so agree, or (ii) to a conciliation commission. The same paragraph stipulates that the rules concerning the procedures and the operation of the arbitral tribunal and of the conciliation commission are laid down in Annex III to the Constitution.

Paragraph 2 of Article 22 provides that the General Conference and the Industrial Development Board are separately empowered, subject to authorization from the General Assembly of the United Nations, to request an advisory opinion from the International Court of Justice on any legal question arising within the scope of UNIDO's activities. The requisite authorization for both the General Conference and the Industrial Development Board has been granted in terms of Article 12 of the Agreement concerning the Relationship between the United Nations and UNIDO,* which was concluded pursuant to Article 57 of the Charter of the United Nations and Article 18 of the Constitution of UNIDO. The Agreement was provisionally applied from 12 December 1985 and came into force definitively on 17 December 1985.

In practice, no dispute between Members of UNIDO has arisen concerning the interpretation or application of the Constitution which has necessitated referral to the International Court of Justice (ICJ), an arbitral tribunal or a conciliation commission pursuant to Article 22. In addition, neither the General Conference nor the International Development

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[1] "Article 22. Settlement of disputes and requests for advisory opinions

1. (*a*) Any dispute among two or more Members concerning the interpretation or application of this Constitution, including its annexes, that is not settled by negotiation shall be referred to the Board unless the parties concerned agree on another mode of settlement. If the dispute is of particular concern to a Member not represented on the Board, that Member shall be entitled to be represented in accordance with rules to be adopted by the Board.

(*b*) If the dispute is not settled pursuant to paragraph 1 (a) to the satisfaction of any party to the dispute, that party may refer the matter: either, (i) if the parties so agree:

(A) to the International Court of Justice; or

(B) to an arbitral tribunal;

or, (ii) otherwise, to a conciliation commission.

The rules concerning the procedures and operation of the arbitral tribunal and of the conciliation commission are laid down in Annex III to this Constitution.

2. The Conference and the Board are separately empowered, subject to authorization from the General Assembly of the United Nations, to request the International Court of Justice to give an advisory opinion on any legal question arising within the scope of the Organizations' activities."

* United Nations, *Treaty Series,* vol. 1412, p. 305.

Board has requested an advisory opinion from the ICJ. For these reasons, no statements of arguments or arbitration panel decisions are available.

Finally, it may be relevant to mention that UNIDO includes in its country-office agreements and other agreements with States an appropriate clause, usually providing for arbitration, on the settlement of any dispute between the parties. A typical example of such an clause is Article XIII[1] of UNIDO's Model Standard Basic Cooperation Agreement, a copy of which is attached for your information.*

(*d*) Information circular: Privileges and immunities and traffic violations

PRIVILEGES AND IMMUNITIES—TRAFFIC VIOLATIONS AND PARKING OFFENCES—STAFF REGULATIONS PROVISIONS 1.3 AND 1.7—FUNCTIONAL IMMUNITY REGARDING AUTHORIZED OFFICIAL BUSINESS

In view of the number of cases involving violations of [Host Country] traffic regulations by staff members, both with and without diplomatic status, which have been reported to the Organization by the [Host Country] Federal Ministry of Foreign Affairs, the attention of all staff is drawn to the following Staff Regulations:

> *Regulation 1.3: Staff shall conduct themselves at all times in a manner befitting their status as international civil servants.* They shall not engage in any activity that is incompatible with the proper discharge of their duties with the Organization. They shall avoid any action and in particular any kind of public pronouncement which may adversely reflect on their status, or on the integrity, independence and impartiality which are required by that status. (Emphasis added)
>
> *Regulation 1.7: The immunities and privileges attached to the Organization by virtue of Article 21 of the Constitution are conferred in the interests of the Organization. These privileges and immunities furnish no excuse to the staff who enjoy them for non-performance of their private obligations or failure to observe laws and police regulations.* In any

[1] Article XIII "*Settlement of Disputes*

1. Any dispute between UNIDO and the Government arising out of or relating to the interpretation or application of this 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 days of the request for arbitration either Party has not appointed an arbitrator or if within fifteen days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the 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.

2. Any dispute between the Government and an operational expert arising out of or relating to the conditions of his service with the Government may be referred to UNIDO by either the Government or the operational expert involved, and UNIDO shall use its good offices to assist them in arriving at a settlement. If the dispute cannot be settled in accordance with the preceding sentence or by other agreed mode of settlement, the matter shall at the request of either the Government or UNIDO be submitted to arbitration following the same provisions as are laid down in paragraph 1 of this Article, except that the arbitrator not appointed by either Party or by the arbitrators of the Parties shall be appointed by the Secretary General of the Permanent Court of Arbitration."

* Not reproduced therein.

> case where a question of these privileges and immunities arises, the staff member shall immediately report to the Director-General, with whom alone it rests to decide whether they shall be waived. In the case of the Director-General, the Industrial Development Board shall have the right to waive immunities. (Emphasis added)

Staff members are reminded that privileges and immunities are conferred solely in the interests of the Organization and not for the personal benefit of the individuals themselves. Immunities do not excuse staff from the performance of their private obligations or from the observance of laws and regulations. In particular, staff members are not exempt from paying fines issued for violations of traffic and parking regulations, which should be settled on a personal basis. If a staff member considers that a fine has been wrongly imposed, he or she should take the steps provided by the law to appeal against the decision. Recurrent traffic violations by a staff member reflect upon the Organization and cannot be considered merely the private matter of the staff member concerned.

Communications from the [Host Country] authorities regarding traffic violations, parking offenses and related matters are normally sent to staff members directly. Staff members are therefore requested to ensure that they provide their private residential addresses and not that of the Organization when registering their privately owned vehicles with the competent [Host Country's] authorities. Staff members who have provided the address of the Organization should change the address accordingly.

Whenever the Secretariat receives diplomatic notes concerning traffic violations or parking offenses by staff members and their dependents, the Office of Legal Affairs initiates appropriate action in cooperation with the Human Resources Management Branch. The Human Resources Management Branch generally forwards diplomatic notes to the staff members concerned for comments before the Office of Legal Affairs replies to the foreign ministry. A traffic violation or parking offence incurred by a staff member while on authorized official business may be reported to the Human Resources Management Branch with an explanation of the circumstances of the violation or offence, the nature of the official business and a request that functional immunity be claimed. In the event that functional immunity can be claimed, the Office of Legal Affairs will take steps to inform the foreign ministry that the staff member was on official business.

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. On 4 December 2006, the United Nations General Assembly adopted resolution 61/37, entitled "Commemoration of the sixtieth anniversary of the International Court of Justice", at its 64th plenary meeting. The resolution was proposed by the Sixth Committee.

1. Judgments

Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. *Rwanda),* 3 February 2006 (judgment on the merits).

2. Advisory Opinions

No advisory opinions were delivered by the International Court of Justice in 2006.

3. Orders

Pulp Mills on the River Uruguay (Argentina v. *Uruguay),* Request for the Indication of Provisional Measures, Order of 13 July 2006.

4. Pending cases as at 31 December 2006

(i) *Certain questions of Mutual Assistance in Criminal Matters (Dijbouti* v. *France)* (2006-)

(ii) *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay)* (2006-)

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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 http://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.

iii) *Dispute regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua)* (2005-).

(iv) *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine)* (2005-)

(v) *Sovereignty over Pedra Branca/ Palau Batu Putech, Middle Rocks and South Ledge(Malaysia* v. *Singapore)* (2003-)

(vi) *Certain Criminal Proceedings in France (Republic of the Congo* v. *France)* (2003-)

(vii) *Territorial and Maritime dispute (Nicaragua* v. *Colombia)* (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 Project (Hungary* v. *Slovakia)* (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

No judgments were delivered by the International Tribunal for the Law of the Sea in 2006.

2. Pending cases as at 31 December 2006

Case No. 7—Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community) (2000-).

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[2] The texts of the 2006 judgments and orders are published in the *Reports of Judgments, Advisory Opinions and Orders/Recueil des arrêts, avis consultatifs et ordonnances, Volume 10 (2006),* Martinus Nijhoff Publishers, 2007, and are also provided in English and French on the Tribunal's website at http://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 2006 (SPLOS/152).

[3] United Nations, *Treaty Series,* vol. 1833, p. 3.

[4] United Nations, *Treaty Series,* vol. 2000, p. 468.

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 Prosecutor continued to investigate the situations in the Democratic Republic of the Congo, Uganda and Darfur, the Sudan, and judicial proceedings took place in each of these situations. 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]

Prosecutor v. Thomas Lubanga Dyilo Case, ICC-01/04–01/06

Subsequent to the opening of the first investigation concerning the situation in the Democratic Republic of the Congo in 2004,[8] the Court issued a warrant of arrest for Thomas Luganga Dyilo in February 2006.[9] A first public hearing in the case was held in March 2006.

D. International Criminal Tribunal for the former Yugoslavia[10]

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.[11]

1. Judgements delivered by the Appeals Chamber

(i) *Prosecutor* v. *Stanislav Galić,* Case No. IT-98–29, Judgement, 30 November 2006.

(ii) *Prosecutor* v. *Blagoje Simić,* Case No. IT-95–9-A, Judgement, 28 November 2006.

(iii) *Prosecutor* v. *Naletilić and Martinović,* Case No. IT-98–34, Appeals Judgement, 3 May 2006.

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[5] For more information about the Court's activities, see the reports of the International Criminal Court contained in documents A/61/217 and A/62/314, and the Court's website at http://www.icc-cpi.int/.

[6] United Nations, *Treaty Series,* vol. 2187, p. 3.

[7] United Nations, *Treaty Series,* vol. 2283, p. 195.

[8] Situation in the Democratic Republic of the Congo, ICC-01/04.

[9] ICC-01/04–01/06–2.

[10] The texts of the indictments, decisions and judgements are published in the *Judicial Reports / Recueils judiciaries* 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 http://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/61/271-S/2006/666 and A/62/172-S/2007/469).

[11] 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).

(iv) *Prosecutor* v. *Milomir Stakić,* Case No. IT-97–24, Appeals Judgement, 22 March 2006.[12]

(v) *Prosecutor* v. *Momir Nikolić,* Case No. IT-02–60/1, Judgement on Sentencing Appeal, 8 March 2006.

2. Judgements delivered by the Trial Chambers

(i) *Prosecutor* v. *Dragomir Milošević,* Case No. IT-98–29/1, Judgement, 12 December 2006.

(ii) *Prosecutor* v. *Fatmir Limaj* et al., Case No. IT-03–66, Corrigendum to Trial Judgement and Decision on Prosecution Motion to Admit an Agreed Fact and Supplement the Trial Record, 29 November 2006.

(iii) *Prosecutor* v. *Fatmir Limaj* et al., Case No. IT-03–66, Prosecution's Motion to Admit an Agreed Fact and Supplement the Trial Record, 5 November 2006.

(iv) *Prosecutor* v. *Momčilo Krajišnik,* Case No. IT-00–39 & 40, Judgement, 27 September 2006.

(v) *Prosecutor* v. *Naser Orić,* Case No. IT-03–68, Judgement, 30 June 2006.

(vi) *Prosecutor* v. *Ivica Rajić,* Case No. IT-95–12, Sentencing Judgement, 8 May 2006.

(vii) *The Prosecutor* v. *Tihomir Blaskić,* Case No. IT-95–14, *The Prosecutor* v. *Ivica Marijačić and Markica Rebić*, Case No. IT-95–14-R77.2, Judgement in contempt, 10 March 2006.

(viii) *Prosecutor* v. *Josip Jović*, Case No. IT-95–14 and 14/2-R77, Judgement, 30 August 2006.

(ix) *Prosecutor* v. *Enver Hadžihasanović and Amir Kubura,* Case No. IT-01–47, Judgement, 15 March 2006.

E. International Criminal Tribunal for Rwanda[13]

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.[14]

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[12] See also *Prosecutor* v. *Stakić,* Case No. IT-97–24, *Corrigendum to Judgements of 31 July 2003 and 22 March 2006,* 16 November 2006.

[13] The texts of the orders, decisions and judgements are published in the *Recueil des ordonnances, décisions et arrêts/Reports of Orders, Decisions and Judgements* of the International Criminal Tribunal for Rwanda. The texts are also available in English and French in the Tribunal's Judicial Records Database at http://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/61/265–S/2006/658 and A/62/284–S/2007/502).

[14] The Statute of the Tribunal is contained in the annex to the resolution.

1. Judgements delivered by the Appeals Chamber

(i) *Prosecutor* v. *André Ntagerura Emmanuel Bagambiki and Samuel Imanishimwe,* Case No. 1999–46-A, Judgement, 7 July 2006.

(ii) *Prosecutor* v. *Sylvestre Gacumbitsi,* Case No. ICTR 2002–64–1, Judgement, 7 July 2006.

2. Judgements delivered by the Trial Chambers

(i) *Prosecutor* v. *Paul Bisengimana,* Case No. ICTR 00–60-T, Judgement and Sentence, 13 April 2006.

(ii) *Prosecutor* v. *Joseph Serugendo,* Case No. ICTR 2005–84-I, Judgement and Sentence, 12 June 2006.

(iii) *Prosecutor* v. *Jean Mpambara,* Case No. ICTR 01–65-T, Judgement, 11 September 2006.

(iv) *Prosecutor* v. *Tharcisse Muvunyi,* Case No. 2000–55A-T, Judgement and Sentence, 12 September 2006.

(v) *Prosecutor* v. *André Rwamakuba,* Case No. ICTR-98–44C-T, Judgement, 20 September 2006.

(vi) *Prosecutor* v. *Athanase Seromba,* Case No. 2001–66–1, Judgement, 13 December 2006.

F. Special Court for Sierra Leone[15]

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.[16]

1. Judgements

No judgements were delivered by the Trial Chambers or the Appeals Chamber in 2006.

2. Decisions of the Appeals Chamber

There were no decisions of the Appeals Chamber pertaining to jurisdictional and other matters relating to the competence of the Court in 2006.

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[15] The texts of the judgments and decisions are available on the Court's website at http://www.sc-sl.org. For more information on the Court's activities, see the Fourth Annual Report of the President of the Special Court, covering the period from January 2006 to January 2007.

[16] For the text of the Agreement and the Statute of the Special Court, see United Nations, *Treaty Series,* vol. 2178, p. 137.

3. Selected Decisions of the Trial Chamber[17]

The Prosecutor v. *Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu* (SCSL-04–16-T-469), Decision on Defence Motions for Judgement of Acquittal pursuant to Rule 98, 31 March 2006.

G. Extraordinary Chambers in the Courts of Cambodia[18]

The Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the period of Democratic Kampuchea, signed in Phnom Penh on 6 June 2003,[19] entered into force the 29 April 2005 and established the Extraordinary Chambers in the Courts of Cambodia to prosecute the crimes committed during the period of Democratic Kampuchea.

There were no judgments or decisions issued by the Trial Chamber or Supreme Court Chamber in 2006.

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[17] Only decisions of the Trial Chambers made pursuant to rule 98 of the Rules of Procedure and Evidence of the Special Court (Motions of judgment of acquittal) are covered in this section.

[18] For further information on the activities of the extraordinary chambers, see the annual reports available at http://www.eccc.gov.kh.

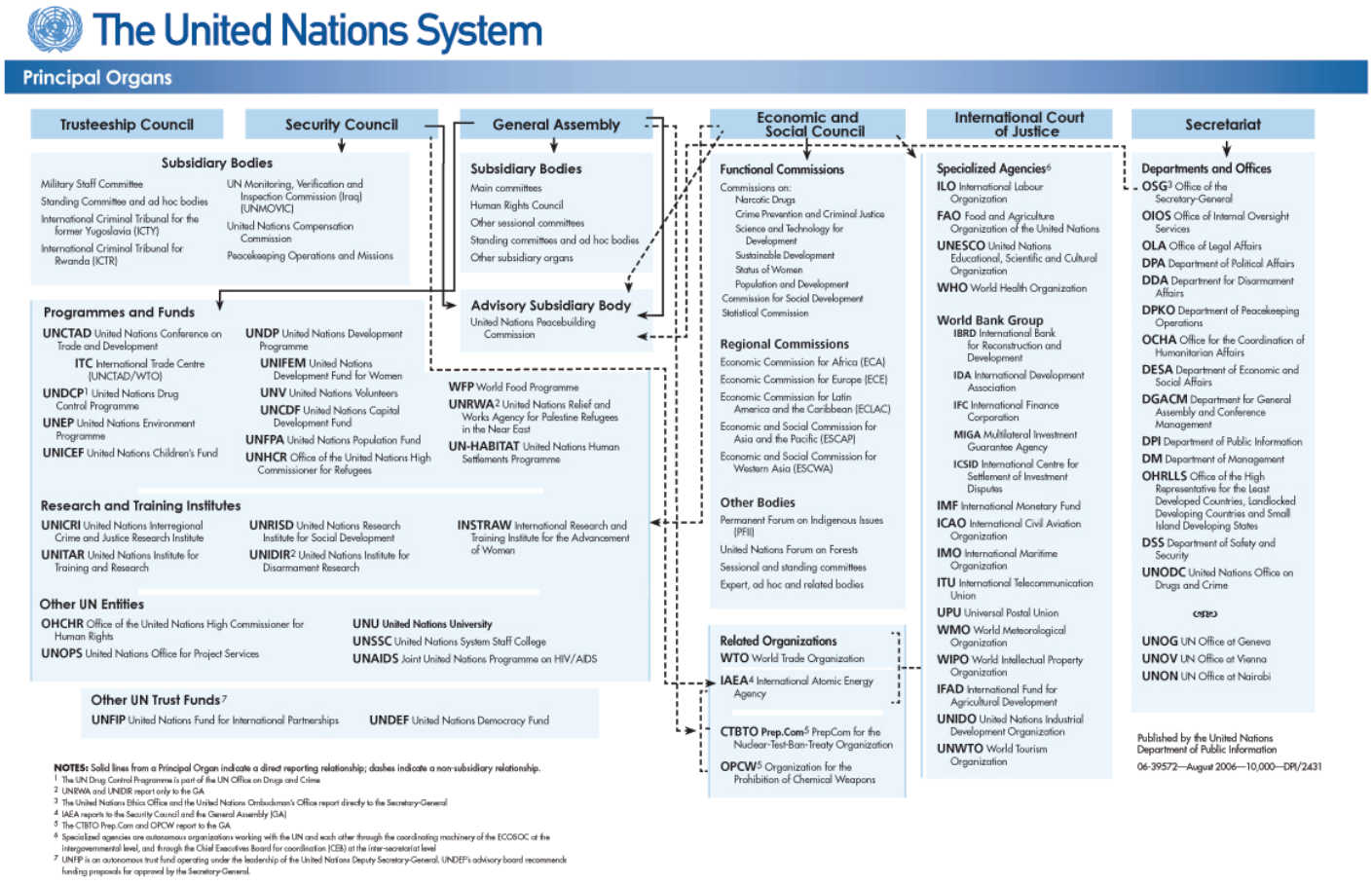
[19] United Nations, *Treaty Series,* vol. 2328.

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

[No decision or advisory opinion from national tribunals on questions relating to the United Nations and related intergovernmental organizations to be reported for 2006.]

ANNEX


The United Nations System
Principal Organs
Trusteeship Council
Security Council
General Assembly
Economic and Social Council
International Court of Justice
Secretariat
Subsidiary Bodies
Military Staff Committee
Standing Committee and ad hoc bodies
International Criminal Tribunal for the former Yugoslavia (ICTY)
International Criminal Tribunal for Rwanda (ICTR)
UN Monitoring, Verification and Inspection Commission (Iraq) (UNMOVIC)
United Nations Compensation Commission
Peacekeeping Operations and Missions
Subsidiary Bodies
Main committees
Human Rights Council
Other sessional committees
Standing committees and ad hoc bodies
Other subsidiary organs
Advisory Subsidiary Body
United Nations Peacebuilding Commission
Programmes and Funds
UNCTAD United Nations Conference on Trade and Development
ITC International Trade Centre (UNCTAD/WTO)
UNDCP[1] United Nations Drug Control Programme
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
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
Other UN Trust Funds[7]
UNFIP United Nations Fund for International Partnerships
UNDEF United Nations Democracy Fund
Functional Commissions
Commissions on:
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 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 Meteorological Organization
WIPO World Intellectual Property Organization
IFAD International Fund for Agricultural Development
UNIDO United Nations Industrial Development Organization
UNWTO World Tourism Organization
Departments and Offices
OSG[3] 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 Peacekeeping 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
DSS Department of Safety and Security
UNODC United Nations Office on Drugs and Crime
UNOG UN Office at Geneva
UNOV UN Office at Vienna
UNON UN Office at Nairobi
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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 United Nations Ethics Office and the United Nations Ombudsman's Office report directly to the Secretary-General
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
7 UNFIP is an autonomous trust fund operating under the leadership of the United Nations Deputy Secretary-General. UNDEF's advisory board recommends funding proposals for approval by the Secretary-General.

Part four

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