ST/LEG/SER.C/45

UNITED NATIONS JURIDICAL YEARBOOK 2007

UNITED NATIONS • NEW YORK, 2009

ST/LEG/SER.C/45

UNITED NATIONS PUBLICATION
Sales No. E.10.V.1
ISBN 978-92-1-133681-8

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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-fifth 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 2007.

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 2007.

In chapter VIII are found decisions given in 2007 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 2007.

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. Treaty provisions, legislative texts and judicial decisions may have been subject to minor editing by the Secretariat.

ABBREVIATIONS

ABCC	Advisory Board on Compensation Claims (UNDP)
ACABQ	Administrative Committee on Administrative and Budgetary Questions (United Nations)
ALU	Administrative Law Unit (United Nations)
AMIS	African Union Mission in the Sudan
AMISOM	African Union Mission to Somalia
APB	Appointments and Promotions Board (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)
CEN-SAD	Community of Sahelo-Saharan States
CICIG	International Commission against Impunity in Guatemala
CLCS	Commission on the Limits of the Continental Shelf
CTBTO	Comprehensive Nuclear-Test-Ban Treaty Organization
CTED	Counter-Terrorism Committee Executive Directorate (United Nations)
DAM	Department of Administration and Management (ESCAP)
DESA	Department of Economic and Social Affairs (United Nations)
DGACM	Department for General Assembly and Conference Management (United Nations)
DITC	Division on International Trade in Goods and Services and Commodities (UNCTAD)
DM	Department of Management (United Nations)
DPA	Department of Political Affairs (United Nations)
DPKO	Department of Peacekeeping Operations (United Nations)
ECA	Economic Commission for Africa
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECHR	European Court of Human Rights
ECOWAS	Economic Community of West African States
EGA	Emergency General Assembly (WIPO)
EPO	European Patent Organization
ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
EU	European Union

EUFOR	European Union Force
Eurocontrol	European Organization for the Safety of Air Navigation
FAO	Food and Agriculture Organization of the United Nations
FFDO	Financing for Development Office (DESA)
FOMUC	Multinational Force of the Central African Economic and Monetary Community
GNSS	Global Navigation Satellite Systems
HCC	Headquarters Committee on Contracts (United Nations)
HCOC	Hague Code of Conduct against Ballistic Missile Proliferation
HRC	Human Rights Council
HRMD	Human Resources Management Department (WIPO)
HRMS	Human Resource Management Service (United Nations)
IAEA	International Atomic Energy Agency
IAPSO	Inter-Agency Procurement Services Organization (UNDP)
IBC Code	International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICC	International Criminal Court
ICJ	International Court of Justice
ICSMA	International Civil Servants Mutual Association (UNOG)
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDA	International Development Association
IDP	Internally Displaced Persons
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IIC	Independent Inquiry Committee (United Nations)
ILO	International Labour Organization
IMF	International Monetary Fund
IMFAT	International Monetary Fund Administrative Tribunal
IMO	International Maritime Organization
IMPD	Interpretation and Meetings and Publishing Division
IMS	Investment Management Service (UNJSPF)

INF Code	Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships
INLEX	International Expert Group on Nuclear Liability (IAEA)
INGOs	International nongovernmental organizations
Interpol	International Criminal Police Organization
IOC	Intergovernmental Oceanographic Commission (UNESCO)
IOOC	International Olive Oil Council
IRS	Internal Revenue Service (United States)
ISA	International Seabed Authority
ITC	International Trade Center
ITLOS	International Tribunal for the Law of the Sea
ITSD	Information Technology Services Division (United Nations)
ITU	International Telecommunications Union
JAB	Joint Appeals Board (United Nations)
JDC	Joint Disciplinary Committee (United Nations)
JIU	Joint Inspection Unit (United Nations system)
KFOR	Kosovo Force (North Atlantic Treaty Organization)
LDCs	Least Developed Countries
MAF	Staff Mutual Assistance Fund (ESCAP)
MEPC	Marine Environment Protection Committee
MINURCAT	United Nations Mission in the Central African Republic and Chad
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)
MSC	Maritime Safety Committee
NATO	North Atlantic Treaty Organisation
ODA	Office of Disarmament Affairs (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)
ONUB	United Nations Operation in Burundi

OPCW	Organization for the Prohibition of Chemical Weapons
OPPBA	Office of Programme Planning, Budget and Accounts (United Nations)
PBAC	Pension Benefits Administration Committee (World Bank)
PS	Procurement Service (United Nations)
PTD	Purchase and Transportation Division (United Nations)
PTF	Procurement Task Force (United Nations)
RCDP	United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific
SALW	Small arms and light weapons
SBAA	Standard Basic Assistance Agreement (UNDP)
SCCR	Standing Committee on Copyright and Related Rights (WIPO)
SCSL	Special Court for Sierra Leone
SFOR	Stabilization Force (Bosnia and Herzegovina)
SOFA	Status-of-forces agreement
SRSG	Special Representative of the Secretary-General (United Nations)
SSS	Security and Safety Section (UNOG)
STL	Special Tribunal for Lebanon
UHRI	Universal Human Rights Index (OHCHR)
UNAMA	United Nations Assistance Mission in Afghanistan
UNAMI	United Nations Assistance Mission for Iraq
UNAMID	African Union/United Nations Hybrid operation in Darfur
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
UNDP-SC	United Nations Development Programme Service Center established in the Republic of South Africa to serve Eastern and Southern Africa
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNESCO-ITC	Centre for Integrated Surveys (UNESCO)
UNFICYP	United Nations Peacekeeping Force in Cyprus
UNFCU	United Nations Federal Credit Union
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund

UNIDO	United Nations Industrial Development Organization
UNIDROIT	International Institute for the Unification of Private Law
UNIFIL	United Nations Interim Force in Lebanon
UNIOSIL	United Nations Integrated Office in Sierra Leone
UNJSPF	United Nations Joint Staff Pension Fund
UN-LiREC	United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNMIK	United Nations Interim Mission in Kosovo
UNMIL	United Nations Mission in Liberia
UNMIN	United Nations Political Mission in Nepal
UNMIS	United Nations Mission in the Sudan
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
UNODA	United Nations Office for Disarmament Affairs
UNODC	United Nations Office on Drugs and Crime
UNOG	United Nations Office at Geneva
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
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
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNSCO	United Nations Special Coordinator for the Middle East
UNSSCA	United Nations Staff Savings & Credit Association
UNTOP	United Nations Tajikistan Office of Peacebuilding
UNTSO	United Nations Truce Supervision Organization
UNV	United Nations Volunteer
UPU	Universal Postal Union
USG	Under-Secretary-General (United Nations)

VAT	Value Added Tax
VRC	Vendor Review Committee (United Nations)
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

A. Czech Republic

1. Act No. 345/2007—Amendment to the Code of Criminal Procedure*

Section 460r. Conditions for recognition and enforcement

(1) On receiving a written opinion from the Prosecuting Attorney, the Regional Court shall decide by judgment, delivered in open court, whether to recognize and enforce or refuse to recognize and enforce a decision of another Member State of the European Union concerning fines and payment obligations, sent to it by the competent authority of the said State. The judgment shall be served on the sentenced party and the Prosecuting Attorney.

(2) In such proceedings, the sentenced party shall at all times have the assistance of a counsel, insofar as the purpose of the proceedings is to decide whether to recognize and enforce a decision of another Member State of the European Union concerning fines and payment obligations, referred to in Section 460o (1) (a).

(3) The Regional Court shall decide to refuse to recognize and enforce a decision of another Member State of the European Union concerning fines and payment obligations, referred to in paragraph (1), where

(*a*) a final decision on the same matter, arising out of the same actions, has been entered in the Czech Republic against the same party, or such decision has been entered and enforced in another State,

(*b*) the actions do not constitute a crime in the law of the Czech Republic, except where the actions are those referred to in Section 460q; in the case of crimes involving taxes, fees, duties or currency, the recognition and enforcement of such decision shall not be refused merely on the grounds that the Czech Republic's laws and regulations do not impose the same kind of taxes, fees and duties or do not contain the same provisions concerning taxes, fees, duties and currency as the laws and regulations of the State requesting the recognition and enforcement,

(*c*) the right to require the payment or to enforce the fine imposed by the decision is statute-barred under the Czech Republic's legislation and the decision concerns a crime or any other offence the punishment of which, according to the Czech Republic's legislation, falls within the competence of the authorities of the Czech Republic,

* Unofficial translation provided by the Czech Republic.

(*d*) the decision concerns a crime or any other offence committed in the territory of the Czech Republic or outside the territory of the Czech Republic on board a ship or aircraft registered in the Czech Republic, or in the Antarctica,

(*e*) the decision concerns a crime or any other offence committed outside the territories of both the Czech Republic and the State requesting the recognition and enforcement and, according to the Czech Republic's legislation, the authorities of the Czech Republic are not competent to punish such crime or offence,

(*f*) the decision concerns a crime or any other offence committed by a person enjoying privileges and immunities under the Czech Republic's legislation or under international law,

(*g*) the decision concerns a crime or any other offence committed by a person who, according to the Czech Republic's legislation, is not liable for such crime or offence due to his/her age,

(*h*) the imposed fine or payment obligation is not higher than EUR 70; an amount stated in another currency shall be converted from such foreign currency into euros at the exchange rate published by the Czech National Bank on the date of the decision,

(*i*) the recognition and enforcement of the decision is inconsistent with the Czech Republic's interests protected under Section 377, or

(*j*) there is no guarantee of reciprocity on the part of the State requesting the recognition and enforcement.

(4) Where there are grounds for refusing to recognize and enforce a decision of another Member State of the European Union concerning fines and payment obligations in terms of paragraph (3) (c) or (i), the Regional Court shall, before refusing to recognize and enforce such decision, seek the opinion of the competent authority of the State that has issued the decision the recognition and enforcement of which is requested, namely for the purpose of obtaining all information necessary for its own decision; if necessary, the Regional Court may request the competent authority to promptly provide the necessary additional documents and information."

2. Act No. 261/2007 concerning the stabilization of public budgets

1. Part Forty-Five: Tax on natural gas and some other gases
Tax refunds payable to persons enjoying privileges and immunities

Section 22

(1) For the purposes of this Part, a person enjoying privileges and immunities under the international treaties which are part of the Czech legislation (hereinafter referred to as a "person enjoying privileges and immunities") means:

(*a*) a diplomatic mission or a consular post, with the exception of consular posts headed by honorary consular officers, accredited to the Czech Republic[1] as foreign entities,

(*b*) a special mission,

(*c*) a representation of an international organization,

(*d*) organs of the European Communities,

(*e*) a member of a diplomatic mission or a consular post having a seat in the Czech Republic, with the exception of a member of service staff or a private servant, who is accredited to the Czech Republic and does not have permanent residence in the Czech Republic,

(*f*) an officer of a representation of an international organization who does not have permanent residence in the tax territory of the Czech Republic and is not a citizen of the Czech Republic, provided that such officer has been permanently assigned to perform his/her official functions in the tax territory of the Czech Republic, and a foreign government official who is a member of a special mission accredited to the Czech Republic and does not have permanent residence in the tax territory of the Czech Republic,

(*g*) a member of the family of any of the persons referred to in (e) or (f), provided that he/she forms part of such person's household in the tax territory of the Czech Republic, has reached the age of 15 years, is not a citizen of the Czech Republic and has been registered with the Ministry of Foreign Affairs.

(2) Persons enjoying privileges and immunities are entitled to recover tax starting from the date of delivery of the gas subject to tax.

(3) The paid tax shall be refunded subject to compliance with the principle of reciprocity certified by the Ministry of Foreign Affairs, or in accordance with the international treaties that are binding on the Czech Republic and regulate the status of international organizations and their officials.

Section 23

(1) The tax refund claim shall be supported by a tax document.

(2) To claim a tax refund, a person enjoying privileges and immunities shall file a tax return. The tax return shall be filed before the end of the fiscal period following the fiscal period in which the claim arose.

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[1] E.g. Notice of the Minister of Foreign Affairs No. 157/1964 concerning the Vienna Convention on Diplomatic Relations, Notice of the Minister of Foreign Affairs No. 21/1968 on the Convention on the Privileges and Immunities of the Specialized Agencies, Notice of the Minister of Foreign Affairs No. 32/1969 on the Vienna Convention on Consular Relations, Notice of the Minister of Foreign Affairs No. 40/1987 on the Convention on Special Missions, Notice of the Minister of Foreign Affairs No. 52/1956 on the accession of the Czechoslovak Republic to the Convention on the Privileges and Immunities of the United Nations, approved by the General Assembly of the United Nations on February 13, 1946, Act No. 125/1992 on the establishment of the Secretariat of the Conference on Security and Cooperation in Europe and on the privileges and immunities of this Secretariat and other institutions of the Conference on Security and Cooperation in Europe, Notice of the Ministry of Foreign Affairs No. 36/2001 on the adoption of the Agreement of the Status of the North Atlantic Treaty Organization, National Representatives and International Staff.

(3) Organs of the European Communities having a seat in the tax territory of the Czech Republic shall file their tax returns, through the Ministry of Finance, with the customs office responsible for the area where their seat is located in the tax territory of the Czech Republic.

(4) The paid tax shall be refunded to persons enjoying privileges and immunities within 30 days from the date on which the refund has been assessed.

(5) For the purposes of tax refunds, persons enjoying privileges and immunities shall have the procedural status of a taxpayer without the duty to register.

Section 24

The tax refund claim shall lapse upon the expiry of 1 year from the end of the fiscal period in which the tax refund claim arose. The tax refund claims of organs of the European Communities shall not lapse.

2. Part Forty-Six: Tax on solid fuels

Tax refunds payable to persons enjoying privileges and immunities

Section 21

(1) For the purposes of this Part, a person enjoying privileges and immunities under the international treaties which are part of the Czech legislation[2] (hereinafter referred to as a "person enjoying privileges and immunities") means:

(*a*) a diplomatic mission or a consular post, with the exception of consular posts headed by honorary consular officers, accredited to the Czech Republic as foreign entities,

(*b*) a special mission,

(*c*) a representation of an international organization,

(*d*) organs of the European Communities,

(*e*) a member of a diplomatic mission or a consular post having a seat in the Czech Republic, with the exception of a member of service staff or a private servant, who is accredited to the Czech Republic and does not have permanent residence in the Czech Republic,

(*f*) an officer of a representation of an international organization who does not have permanent residence in the tax territory of the Czech Republic and is not a citizen of the Czech Republic, provided that such officer has been permanently assigned to perform his/

[2] E.g. Notice of the Minister of Foreign Affairs No. 157/1964 concerning the Vienna Convention on Diplomatic Relations, Notice of the Minister of Foreign Affairs No. 21/1968 on the Convention on the Privileges and Immunities of the Specialized Agencies, Notice of the Minister of Foreign Affairs No. 32/1969 on the Vienna Convention on Consular Relations, Notice of the Minister of Foreign Affairs No. 40/1987 on the Convention on Special Missions, Notice of the Minister of Foreign Affairs No. 52/1956 on the accession of the Czechoslovak Republic to the Convention on the Privileges and Immunities of the United Nations, approved by the General Assembly of the United Nations on February 13, 1946, Act No. 125/1992 on the establishment of the Secretariat of the Conference on Security and Cooperation in Europe and on the privileges and immunities of this Secretariat and other institutions of the Conference on Security and Cooperation in Europe, Notice of the Ministry of Foreign Affairs No. 36/2001 on the adoption of the Agreement of the Status of the North Atlantic Treaty Organization, National Representatives and International Staff.

her official functions in the tax territory of the Czech Republic, and a foreign government official who is a member of a special mission accredited to the Czech Republic and does not have permanent residence in the tax territory of the Czech Republic,

(*g*) a member of the family of any of the persons referred to in (e) or (f), provided that he/she forms part of such person's household in the Czech Republic, has reached the age of 15 years, is not a citizen of the Czech Republic and has been registered with the Ministry of Foreign Affairs.

(2) Persons enjoying privileges and immunities are entitled to recover tax starting from the date of delivery of the solid fuels subject to tax.

(3) The paid tax shall be refunded subject to compliance with the principle of reciprocity certified by the Ministry of Foreign Affairs, or in accordance with the international treaties that are binding on the Czech Republic and regulate the status of international organizations and their officials.

Section 23

(1) The tax refund claim shall be supported by a tax document.

(2) To claim a tax refund, a person enjoying privileges and immunities shall file a tax return.

The tax return shall be filed before the end of the fiscal period following the fiscal period in which the claim arose.

(3) Organs of the European Communities having a seat in the tax territory of the Czech Republic shall file their tax returns, through the Ministry of Finance, with the customs office responsible for the area where their seat is located in the tax territory of the Czech Republic.

(4) The paid tax shall be refunded to persons enjoying privileges and immunities within 30 days from the date on which the refund has been assessed.

(5) For the purposes of tax refunds, persons enjoying privileges and immunities shall have the procedural status of a taxpayer without the duty to register.

Section 24

The tax refund claim shall lapse upon the expiry of 1 year from the end of the fiscal period in which the tax refund claim arose. The tax refund claims of organs of the European Communities shall not lapse.

3. Part Forty-Seven: Tax on electricity
Tax refunds payable to persons enjoying privileges and immunities

Section 22

(1) For the purposes of this Part, a person enjoying privileges and immunities under the international treaties which are part of the Czech legislation[3] (hereinafter referred to as a "person enjoying privileges and immunities") means:

(*a*) a diplomatic mission or a consular post, with the exception of consular posts headed by honorary consular officers, accredited to the Czech Republic as foreign entities,

(*b*) a special mission,

(*c*) a representation of an international organization,

(*d*) organs of the European Communities,

(*e*) a member of a diplomatic mission or a consular post having a seat in the Czech Republic, with the exception of a member of service staff or a private servant, who is accredited to the Czech Republic and does not have permanent residence in the Czech Republic,

(*f*) an officer of a representation of an international organization who does not have permanent residence in the tax territory of the Czech Republic and is not a citizen of the Czech Republic, provided that such officer has been permanently assigned to perform his/her official functions in the tax territory of the Czech Republic, and a foreign government official who is a member of a special mission accredited to the Czech Republic and does not have permanent residence in the tax territory of the Czech Republic,

(*g*) a member of the family of any of the persons referred to in (e) or (f), provided that he/she forms part of such person's household in the Czech Republic, has reached the age of 15 years, is not a citizen of the Czech Republic and has been registered with the Ministry of Foreign Affairs.

(2) Persons enjoying privileges and immunities are entitled to recover tax starting from the date of delivery of the electricity subject to tax.

(3) The paid tax shall be refunded subject to compliance with the principle of reciprocity certified by the Ministry of Foreign Affairs, or in accordance with the international treaties that are binding on the Czech Republic and regulate the status of international organizations and their officials.

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[3] E.g. Notice of the Minister of Foreign Affairs No. 157/1964 concerning the Vienna Convention on Diplomatic Relations, Notice of the Minister of Foreign Affairs No. 21/1968 on the Convention on the Privileges and Immunities of the Specialized Agencies, Notice of the Minister of Foreign Affairs No. 32/1969 on the Vienna Convention on Consular Relations, Notice of the Minister of Foreign Affairs No. 40/1987 on the Convention on Special Missions, Notice of the Minister of Foreign Affairs No. 52/1956 on the accession of the Czechoslovak Republic to the Convention on the Privileges and Immunities of the United Nations, approved by the General Assembly of the United Nations on February 13, 1946, Act No. 125/1992 on the establishment of the Secretariat of the Conference on Security and Cooperation in Europe and on the privileges and immunities of this Secretariat and other institutions of the Conference on Security and Cooperation in Europe, Notice of the Ministry of Foreign Affairs No. 36/2001 on the adoption of the Agreement of the Status of the North Atlantic Treaty Organization, National Representatives and International Staff.

Section 23

(1) The tax refund claim shall be supported by a tax document.

(2) To claim a tax refund, a person enjoying privileges and immunities shall file a tax return. The tax return shall be filed before the end of the fiscal period following the fiscal period in which the claim arose.

(3) Organs of the European Communities having a seat in the tax territory of the Czech Republic shall file their tax returns, through the Ministry of Finance, with the customs office responsible for the area where their seat is located in the tax territory of the Czech Republic.

(4) The paid tax shall be refunded to persons enjoying privileges and immunities within 30 days from the date on which the refund has been assessed.

(5) For the purposes of tax refunds, persons enjoying privileges and immunities shall have the procedural status of a taxpayer without the duty to register.

Section 24

The tax refund claim shall lapse upon the expiry of 1 year from the end of the fiscal period in which the tax refund claim arose. The tax refund claims of organs of the European Communities shall not lapse.

B. Peru

Supreme Decree No. 142–2007-EF amending the Regulations of the Act on the Import of Vehicles for Use by Diplomatic and Consular Missions, Offices of International Agencies and their Officials

The President of the Republic,

Considering:

That, by Supreme Decree No. 112–98-EF of 4 December 1998, the Regulations of Act No. 26983 on the Import of Vehicles for Use by Diplomatic and Consular Missions, Offices of International Agencies and their Officials were approved,

That it would be appropriate to eliminate the requirement relating to engine size (cylinder capacity) for vehicles imported duty-free by virtue of diplomatic status,

That, in addition, the aforementioned Supreme Decree needs to be amended with a view to improved implementation,

That, in accordance with articles 5 and 6 of the Single Consolidated Text of the Act on General Sales Tax and Selective Consumption Tax, approved by Supreme Decree No. 055–99-EF and amendments thereto, the transactions set out in appendices I and II are exempt from general sales tax; and that the lists of goods and services in the aforementioned appendices may be amended by Supreme Decree, approved by vote of the Council of Ministers, signed by the Ministry of Economic Affairs and Finance and with the technical advice of the National Superintendency of Tax Administration (SUNAT),

That, further, in accordance with article 61 of the Single Consolidated Text of the Act on General Sales Tax and Selective Consumption Tax, the rates and/or fixed amounts, as

well as the list of goods, set out in appendices III and/or IV shall be amended by supreme decree, signed by the Ministry of Economic Affairs and Finance,

In accordance with the provisions of articles 6 and 61 of the Single Consolidated Text of the Act on General Sales Tax and Selective Consumption Tax, approved by Supreme Decree No. 055–99-EF and amendments thereto, and of article 118, paragraph 8, of the Political Constitution of Peru, and

With approval by vote of the Council of Ministers,

Decrees the following:

Article 1—Article 3 of Supreme Decree No. 112–98-EF shall be replaced by the following text:

"Article 3—Foreign officials of diplomatic missions, consular offices, and representations and offices of international agencies duly accredited with the Government of Peru shall, by virtue of their diplomatic status, be permitted to import vehicles duty-free as follows:

Category A: head of mission with rank of nuncio, ambassador or minister plenipotentiary: two vehicles of any type every three years;

Category B: chargé d'affaires with Cabinet letter; diplomatic officials with rank of minister, minister counsellor or counsellor; military, naval, air force and police attachés; consuls general; and resident representatives, senior officials and directors of international agencies whose headquarters are in Peru: one vehicle every three years;

Category C: diplomatic officials with the rank of first, second or third secretary; paid consuls and vice-consuls; commercial and other counsellors; deputy military, naval, air force and police attachés; commercial, cultural and other attachés; officials of international agencies; and experts from international agencies and Governments who provide technical assistance, who are duly accredited and who have been in Peru for more than one year: one vehicle every three years.

Under no circumstances shall the Ministry of Foreign Affairs authorize the duty-free import of vehicles exceeding the number established for each of these categories and which are older than the age established in current regulations for the import of used motor vehicles."

Article 2—Article 4, paragraph 2, of Supreme Decree No. 112–98-EF shall be replaced by the following text:

"Article 4—

[. . .]

Category D: foreign administrative staff of embassies and consular offices, as well as assistants in the offices of military, naval, air force and police attachés: a one-time import of one vehicle within six months of taking up their posts.

Under no circumstances shall the Ministry of Foreign Affairs authorize the duty-free import of vehicles exceeding the number established for the present category and which are older than the age established in current regulations for the import of used motor vehicles."

Article 3—The following tariff subheadings shall be included in appendix I, paragraph A, of the Single Consolidated Text of the Act on General Sales Tax and Selective Consumption Tax, approved by Supreme Decree No. 055–99-EF and amendments thereto:

Tariff subheadings	*Description*
8702.10.10.00 8702.90.91.10	Only motor vehicles for the transport of not more than 16 persons, including the driver, for official use by diplomatic missions, consular offices, and representations and offices of international agencies duly accredited with the Government of Peru, imported under Act No. 26983 and its regulations
8704.21.10.10 8704.31.10.10	Only assembled pick-ups: diesel or petrol, total weight with maximum load less than or equal to 4.537 tonnes, for official use by diplomatic missions, consular offices, and representations and offices of international agencies duly accredited with the Government of Peru, imported under Act No. 26983 and its regulations

Article 4—The following tariff subheadings shall be included in appendix IV, paragraph A, of the Single Consolidated Text of the Act on General Sales Tax and Selective Consumption Tax, approved by Supreme Decree No. 055–99-EF and amendments thereto:

Tariff subheadings	*Description*
8702.10.10.00 8702.90.91.10	Only motor vehicles for the transport of not more than 16 persons, including the driver, for official use by diplomatic missions, consular offices, and representations and offices of international agencies duly accredited with the Government of Peru, imported under Act No. 26983 and its regulations
8703.10.00.00 8703.90.00.90	Only motor vehicles for the transport of persons imported under Act No. 26983 and its regulations
8704.21.10.10 8704.31.10.10	Only assembled pick-ups: diesel or petrol, total weight with maximum load less than or equal to 4.537 tonnes, for official use by diplomatic missions, consular offices, and representations and offices of international agencies duly accredited with the Government of Peru, imported under Act No. 26983 and its regulations

Final supplementary provisions

1. Entry into force

The present Supreme Decree shall enter into force on the day of its publication in the Official Gazette "El Peruano".

2. Signatures

The present Supreme Decree shall be signed by the Minister of Economic Affairs and Finance and by the Minister for Foreign Affairs.

Issued at Government House in Lima on 15 September 2007.

Chapter II

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

A. Treaties concerning the legal status of the United Nations

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

During 2007, the following States acceded to the Convention:

State	*Date of receipt of the instrument of accession*
Georgia	17 December 2007
Qatar	26 September 2007
Turkmenistan	23 November 2007

As at 31 December 2007, there were 156 States parties to the Convention.**

2. Agreements relating to missions, offices and meetings

(*a*) Agreement between the Government of Kazakhstan and the United Nations regarding the arrangements for the Sixty-third Session of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP). Bangkok, 28 March 2007***

Whereas the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), at its resumed sixty-second session, held in Bangkok on 21 December 2006, welcomed and accepted the offer of the Government of Kazakhstan (hereinafter referred to as "the Government") to host the sixty-third session of the ESCAP (hereinafter referred to as "the Session") at Almaty, Kazakhstan;

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* United Nations, *Treaty Series,* Vol. 1, p. 15, and vo1. 90, p. 327 (corrigendum to vol. 1).

** For the list of the States parties, see chapter III of *Multilateral Treaties Deposited with the Secretary-General*, available on the website http://treaties.un.org/Pages/ParticipationStatus.aspx.

*** Entered into force on 28 March 2007, in accordance with article XIII.

Whereas both the Government and the United Nations note that in accordance with ESCAP resolution 61/1 of 18 May 2005 on the mid-term review concerning the functioning of the conference structure of the Commission, the eighth session of the Special Body on Least Developed and Landlocked Developing Countries (hereinafter referred to as "the Special Body") will have to be held prior to the Session;

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

Now therefore, the Government and the United Nations, both hereinafter referred to as "the Parties", noting that this Agreement shall cover the Session and Special Body hereinafter referred to as "the Sessions", hereby agree as follows:

Article I. Dates and place of the sessions

1. The Session shall be held at Almaty, Kazakhstan from 17 to 23 May 2007.

2. The Special Body shall be held at Almaty, Kazakhstan on 15 and 16 May 2007.

Article II. Attendance at the sessions

1. The Sessions shall be open to participation by the representatives or observers of:

(*a*) Members and associate members of ESCAP;

(*b*) Other states;

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

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

(*e*) Other intergovernmental organizations;

(*f*) Intergovernmental organs of the United Nations;

(*g*) Non-governmental organizations;

(*h*) Officials of the United Nations Secretariat;

(*i*) Other persons invited by the United Nations.

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

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

Article III. Premises, equipment, utilities and supplies

1. The Government shall provide the necessary premises, including conference rooms for informal meetings, office space, working areas and other related facilities as

specified in Annex I.* The Government shall, at its expense, furnish, equip and maintain in good repair all these premises and facilities in a manner that the United Nations considers adequate for the effective conduct of the Sessions. The conference rooms shall be equipped for reciprocal simultaneous interpretation between four (4) languages and shall have facilities for sound recording in that number of languages as well as facilities for press, television, radio and film operations, to the extent required by the United Nations. The premises shall remain at the disposal of the United Nations from three days prior to the Sessions until a maximum of two days after the close of the Session.

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

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

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

Article IV. Accommodation

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

Article V. Medical facilities

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

2. Immediate access and admission to hospital will be assured by the Government whenever required, and the necessary transport will be constantly available on call.

Article VI. Transport

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

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

3. The Government, in consultation with the United Nations, shall provide an adequate number of oars with drivers for official use by the principal officers and the

* Not reproduced herein.

secretariat of the Sessions, as well as such other local transportation as is required by the secretariat in connection with the Sessions.

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

Article VII. Police protection

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

Article VIII. Local personnel

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

2. The Government shall engage and provide at its own expense the local personnel required in addition to the United Nations staff for the following services:

(*a*) to ensure the proper functioning of the equipment and facilities referred to in Article III (concerning premises, equipment, utilities and supplies);

(*b*) to reproduce and distribute the documents and press release needed by the Sessions;

(*c*) to work as conference assistants, office assistants, document assistants, registration assistants, and drivers, etc;

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

3. To ensure the efficiency of the meeting, the services of local staff would be used to the extent possible. Local support staff requirement are provided in Annex I. Among those persons, some shall be available two days before the opening of the Sessions and one day after their closure, as required by the United Nations.

Article IX. Financial arrangements

1. The Government shall, in accordance with General Assembly resolution 47/202, paragraph 17, bear the actual additional costs directly- or indirectly involved in holding the Sessions at Almaty rather than at Bangkok. Such costs, which are provisionally estimated at US$994,483.30, shall include, but not be restricted to, the actual additional costs of travel and staff entitlements of the United Nations officials assigned to plan for or attend the Sessions, as well as the costs of shipping any necessary equipment and supplies. Arrangements for the travel of United Nations officials required to plan for or service the Sessions and for the shipment of any necessary equipment and supplies shall be made by the ESCAP secretariat in accordance with the Staff Regulations and Rules of the United

Nations and its related administrative practices regarding travel standard, baggage allowances, subsistence payments and terminal expenses. The estimate of the additional costs to be borne by the Government is provided in Annex II.

2. The Government shall, no later than 30 March 2007, deposit with the United Nations the sum of US$ 994,483.30 representing the total estimated costs referred to in paragraph 1 of this article. The details of ESCAP's bank account appear in the attachment to Annex II.* [If] necessary, the Government shall make further advances as requested by the United Nations so that the latter will not at any time have to finance temporarily from its cash resources the extra costs that are the responsibility of the Government.

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

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

Article X. Liability

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

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

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

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

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

Article XI. Privileges and Immunities

1. The Convention of the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to which Kazakhstan is a party, shall be

* Not reproduced herein.

applicable in respect of the Sessions. In particular, the representatives of the members and associate members of ESCAP and states referred to in article II, paragraph 1 (a) and (b), above, shall enjoy the privileges and immunities provided under article IV of the Convention, the officials of the United Nations performing functions in connection with the Sessions referred to in article II, paragraphs 1(h) and 2, above, shall enjoy the privileges and immunities provided under articles V and VII of the Convention and any expert on mission for the United Nations in connection with the Sessions shall enjoy the privileges and immunities provided under articles VI and VII of the Convention.

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

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

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

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

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

7. For the purpose of the Convention on the Privileges and Immunities Of the United Nations, the conference premises specified in article III, paragraph 1, above, shall be deemed to constitute premises of the United Nations in the sense of section 3, Article II of the Convention and access thereto shall be subject to the authority and control of the United Nations. The premises shall be inviolable for the duration of the Sessions, including the preparatory and closing stages.

8. All persons referred to in article II, above, shall have the right to take out of Kazakhstan at the time of their departure, without any restriction, any unexpended portions of

the funds they brought into Kazakhstan in connection with the Sessions and to reconvert any such funds at the prevailing market rates.

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

Article XII. Settlements of disputes

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

Article XIII. Final provisions

1. This Agreement may be modified by written agreement between the Parties.

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

Signed this 28th day of March 2007 at Bangkok in duplicate, in English, both copies being equally authentic.

For the Government of Kazakhstan	For the United Nations
[*Signed*]	[*Signed*]
Chargé d'Affaires and Permanent Representative to ESCAP	Under-Secretary-General of the United Nations and Executive Secretary of ESCAP

(*b*) Agreement between the United Nations and Burundi concerning the Statute of the United Nations Integrated Office in Burundi (BINUB). Bujumbura, 19 April 2007*

Whereas the Security Council in its resolution 1719 (2006) of 25 October 2006 decided to establish the United Nations Integrated Office in Burundi (BINUB),

Recalling that on 17 June 2005 the United Nations and the Government of the Republic of Burundi signed the agreement between the United Nations and Burundi con-

* Entered into force on 19 April 2007, in accordance with paragraph 2.

cerning the statute of the United Nations Operation in Burundi (ONUB) (agreement on the statute of ONUB),

Wishing the provisions of the agreement on the statute of ONUB to apply *mutatis mutandis* to BINUB,

The United Nations and the Government of the Republic of Burundi (the Government) have agreed as follows:

1. The provisions of the agreement on the statute of ONUB shall apply *mutatis mutandis* to BINUB.

2. This Agreement shall enter into force on the date of its signature by the United Nations and by the Government.

In witness whereof, the undersigned, the Official Representative of the United Nations and the plenipotentiary of the Government, duly authorized for this purpose, have signed this Agreement on behalf of the parties.

Done in three original copies, at Bujumbura, on 19 April 2007.

For the United Nations:	For the Government of the Republic of Burundi:
[*Signed*]	[*Signed*]
Executive Representative of the Secretary General of the United Nations	Minister of Foreign Affairs and International Cooperation

(*c*) Headquarters Agreement for the Permanent Office of the United Nations Office for Project Services in the Argentine Republic. Buenos Aires, 21 May 2007*

The Government of the Argentine Republic and the United Nations Office for Project Services, hereinafter referred to as the Parties,

Taking into account that by its decision 48/501 of 19 September 1994, the United Nations General Assembly, upon recommendation from the Economic and Social Council, decided that the United Nations Office for Project Services should become a separate entity within the Organization, in accordance with decision 94/12 of the Executive Board of the United Nations Development Programme of 9 June 1994;

Bearing in mind that the United Nations Office for Project Services provides administrative services for development projects as well as specialized services in all areas of competence of the United Nations, in particular administering and implementing development projects directed towards the search for peace, social stability, economic growth and sustainable development;

Also bearing in mind the provisions of the Convention on the Privileges and Immunities of the United Nations** of 13 February 1946;

In consideration of their mutual interest in establishing a permanent office of the United Nations Office for Project Services in the Argentine Republic;

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* Entered into force provisionally on 21 May 2007 in accordance with article XIV.

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

Have agreed as follows:

Article I. Establishment of the offices of UNOPS in the Argentine Republic

1 The United Nations Office for Project Services (hereinafter "UNOPS") may establish a Permanent Office (hereinafter "the Office") in the territory of the Argentine Republic (hereinafter also referred to as "the Republic").

2. For the establishment of other offices, UNOPS shall require the consent of the Government of the Argentine Republic (hereinafter "the Government"), which must be provided in writing. The provisions of this Headquarters Agreement shall be applicable to such offices and their personnel.

3. The Office shall be responsible for the functions assigned to it by the Executive Director of UNOPS, in particular the management, administration and supervision of international loans financed or co-financed by international financial institutions, and acting as the implementing agency for projects of other international bodies, regional or donor organizations and agencies, whether or not government-controlled, regardless of their source of funding, which may be national, provincial or municipal. The Office will also exercise the functions referred to above for projects and programmes of the United Nations Development Programme (UNDP).

4. The Government shall be represented by the Ministry of Foreign Affairs, International Trade and Worship. The body requesting assistance from UNOPS and directly responsible for the projects and programmes shall be referred to as the "Cooperating Agency".

Article II. Legal personality

UNOPS shall enjoy legal personality in the Argentine Republic and, in particular, shall be empowered to:

(*a*) acquire and sell movable and immovable property;

(*b*) enter into contracts;

(*c*) initiate legal proceedings.

Article III. Cooperation between the Argentine Republic and UNOPS

1. UNOPS, through its Office in the Argentine Republic, shall cooperate with the Government in the preparation, examination and execution of projects which are of mutual interest to the two Parties. To that end, periodic consultations shall be held.

2. The procedures and conditions for projects carried out by UNOPS which are financed wholly or partially by the national Government or by provisional or municipal governments, including commitments relating to the provision of funds, supplies, equipment and services or the provision of any other assistance, shall be covered in specific agreements between the Parties for each project which, thereafter, shall be referred to generically as "Project Documents".

Article IV. Forms of assistance and cooperation

1. The assistance which UNOPS may provide to the Government through the Cooperating Agency on the basis of this Agreement shall be as follows:

(*a*) Entering into contracts on behalf of the Cooperating Agency for services of experts, advisers and consultants, including consulting firms or organizations selected by UNOPS or by the corresponding Cooperating Agency and responsible to them as the case may be;

(*b*) Entering into contracts on behalf of the Cooperating Agency for services of operational experts selected by the Cooperating Agency to provide functions, in conformity with the provisions of the laws and regulations in force, within organs of the Government or within entities designated by the Government, in conformity with the provisions of article V, paragraph 4;

(*c*) Acquisition of equipment and supplies;

(*d*) Selection of contractors for public works or contracting and administration on behalf of the Cooperating Agency of infrastructure projects of whatever type, as well as contracting for designs or technical inspection of the execution of public works;

(*e*) Organization and holding of seminars, training programmes, working groups with experts and related activities;

(*f*) Organization and administration of systems of grants or similar arrangements in the area of training for persons proposed to UNOPS by the Cooperating Agency;

(*g*) Any other form of cooperation as agreed between the Parties.

2. The Cooperating Agency shall present requests for UNOPS assistance to the Executive Director of its Office in the form and in accordance with the procedures established by UNOPS for such requests. The Cooperating Agency shall provide UNOPS with all the relevant information needed for analysis of the request, including a declaration of intent relating to the subsequent management of projects intended to result in investment.

3. UNOPS shall be entitled to provide assistance to the Government directly or by way of such external entity as it considers appropriate.

Article V. Execution of projects

1. The Cooperating Agency shall be responsible for carrying out all of the development projects in respect of which it has requested and received assistance from UNOPS, for achieving the objectives thereof and for executing the parts thereof which are within its remit, in accordance with the provisions of this Agreement and with those laid down in the relevant Project Documents. UNOPS hereby undertakes to complement and supplement the participation of the Cooperating Agency in such projects, by providing it with assistance in the fulfilment of this Agreement and of the work plans specified in the Project Documents. Additionally, and at the request of the Cooperating Agency, UNOPS shall be required to assist it in the subsequent management of projects related to investment.

2. The fulfilment by UNOPS of its responsibilities with respect to the project in question shall be conditional upon compliance by the Cooperating Agency with its obligations under this Agreement and the relevant Project Document.

3. The Cooperating Agency may designate, as appropriate, a full-time director for each project, who shall carry out the functions assigned to him or her by that agency. UNOPS may designate, as appropriate and in consultation with the Cooperating Agency, a principal technical adviser or project coordinator, responsible to UNOPS within the

project. This principal technical adviser or project coordinator shall supervise and coordinate the activities of the experts and other personnel of UNOPS and shall be responsible for the on-the-job training of the personnel subordinate to the Cooperating Agency. The principal technical adviser or project coordinator shall be responsible for the efficient administration and utilization of all the resources administered by UNOPS, including the equipment provided for the project.

4. In carrying out their functions, the experts, advisers, consultants and volunteers designated by UNOPS shall act in close consultation with the Cooperating Agency and the persons and agencies designated by the latter and shall comply with any instructions given to them by that Agency, taking into account the nature of their duties and the assistance in question, in the form mutually agreed between UNOPS and the Cooperating Agency. The experts shall be responsible solely to the Cooperating Agency or the entity to which they are assigned, and shall be under the exclusive supervision of the latter, but shall not be requested to carry out any function which is incompatible with their international status or with the objectives of UNOPS.

5. Recipients of grants shall be selected by the Cooperating Agency. Such grants shall be administered in accordance with the policies and practices of UNOPS in this area. The technical or other equipment, material, supplies and other assets administered or provided by UNOPS for the projects and programmes shall be the property of the relevant Cooperating Agency in accordance with the procedures and conditions mutually agreed between the Parties.

6. Patent rights, copyrights and other similar rights relating to any invention or procedure that originates in the assistance provided by UNOPS under this Agreement shall be the property of UNOPS. However unless the Parties explicitly agree to the contrary in any specific case, the Government shall have the right to use such inventions or procedures in the Argentine Republic exempt from royalties or other similar charges.

Article VI. Information relating to the projects

1. The Cooperating Agency shall provide UNOPS with any reports, maps, accounts, files, status reports, documents or other information that UNOPS may request concerning any project receiving assistance from its Office, or referring to the execution thereof, to the sustainability of its conditions of viability and validity or to the fulfilment by the Cooperating Agency of its responsibilities under this Agreement or the Project Documents.

2. UNOPS undertakes to keep the Government informed, through the Cooperating Agency, about the progress of its assistance activities under this Agreement. Each of the Parties shall have the right, at any time, to monitor the progress of the operations comprising the projects being assisted by UNOPS.

3. Once a project receiving assistance from UNOPS has been concluded, and at the request of the latter's Office, the Government, through the Cooperating Agency, shall inform UNOPS about the benefits resulting from the project and the activities undertaken to reach its objectives, including any information needed to evaluate the project or the assistance of UNOPS and, to those ends, shall consult with UNOPS and shall allow UNOPS to observe the situation.

4. UNOPS and the Cooperating Agency shall consult together on the publication, as appropriate, of any information relating to a project receiving assistance from UNOPS or to the benefits arising from the same. However, UNOPS shall be free to make use of any information relating to a project unless the Cooperating Agency requests UNOPS in writing to restrict the provision of information on any such project.

Article VII. Facilities

1. The Government shall adopt the necessary measures to facilitate the installation of the offices of UNOPS in the Republic, including measures within its control concerning the provision of public services.

2. In the communications area, the Government shall grant to UNOPS the facilities provided for in article III of the 1946 Convention on the Privileges and Immunities of the United Nations.

Article VIII. Officials and personnel of the office

1. The office shall be under the direction of a manager designated by UNOPS.

2. UNOPS shall also be empowered to designate, within its Office, the officials and staff necessary for the performance of its activities and functions.

3. In the communications area the Government shall grant to the officials and personnel of UNOPS the facilities provided for in article III of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.

4. The Government shall grant to the officials of UNOPS and the experts on mission to the Argentine Republic a form of identification which shall certify their status.

Article IX. Offices, property, funds and assets

1. UNOPS, its property and assets, wherever located and by whomsoever held, shall be immune from every form of legal process, in terms of article II, section 2 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.

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

3. The archives of the UNOPS offices and, in general, all documents belonging to them, shall be inviolable.

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

(*a*) any form of direct taxation;

(*b*) customs duties and prohibitions or restrictions on the articles imported or exported by UNOPS for the operation of its Office and for the projects executed by UNOPS, in conformity with the procedures, modalities and rules drawn up to this end by the Argentine Government for international bodies forming part of the United Nations system. Articles imported under such an exemption shall not be sold or used for commercial purposes in the country, except under conditions explicitly agreed with the Government;

(*c*) customs duties and prohibitions or restrictions on the import or export of its publications.

5. UNOPS shall be exempt from value added tax applicable to any goods acquired in the country for the operation of its Office and for the projects executed by UNOPS and its offices in the Republic, where such purchases are significant. The Parties, though an agreement set out in writing, shall concur on the minimum amount applicable in order for a purchase to be considered "significant", for the purposes of the present paragraph. Such amount shall be equal to that laid down for other organizations within the United Nations system.

6. UNOPS shall be entitled to:

(*a*) hold funds, bullion or currency of any kind and to maintain its accounts in any currency;

(*b*) to transfer its funds, bullion or currency from one country to another or within any country, and to convert the currency which it holds to any other currency.

(*c*) to open and maintain, subject to the laws and regulation in force in the Argentine Republic, accounts in local or foreign currency, in public and/or private financial entities regulated by the Central Bank of the Argentine Republic.

Article X. Privileges, immunities and facilities of officials

1. The Government shall extend to the senior officials of UNOPS, to the Head of any of its offices in the Argentine Republic and to the other officials carrying out their functions in such offices, provided that they are not Argentine nationals or permanent residents, the provisions of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.

2. The officials of UNOPS who are Argentine nationals or permanent residents shall enjoy only the following privileges and immunities:

(*a*) immunity from prosecution in respect of any act carried out in the official performance of their duties, and an integral part thereof;

(*b*) exemption from taxation on the remuneration paid by UNOPS.

3. Additionally, the officials of UNOPS who are present in the country shall be granted those facilities and courtesies that are necessary for them effectively to carry out their official functions.

4. The privileges, immunities and facilities described above shall be granted to the officials of UNOPS in the interests of UNOPS and of the United Nations and not for their personal benefit. The Secretary-General of the United Nations shall have the right and the duty to waive the immunity of any official of UNOPS when such immunity impedes the course of justice or is prejudicial to the interests of the United Nations and of UNOPS.

Article XI. Experts on mission

The privileges, immunities and facilities provided for in article VI, sections 22 and 23 and article VII, section 26 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall be extended to experts carrying out UNOPS missions.

Article XII. Respect for the Argentine Republic

1. Without prejudice to the privileges, immunities, facilities and courtesies provided for in this Agreement, all officials of UNOPS and experts on mission shall be obliged to observe the laws and regulations in force in the Argentine Republic and not to interfere in the internal affairs of the country.

2. UNOPS shall cooperate at all times with the Argentine authorities to facilitate the proper administration of justice, to ensure respect for the laws and regulations of the Argentine Republic and to prevent any abuse of the privileges, immunities, facilities and exemptions provided for in this Agreement.

Article XIII. Resolution of disputes

1. Any dispute between the Argentine Republic and UNOPS arising out of the interpretation or implementation of this Agreement which cannot be resolved though direct negotiations or through any other means of mutually agreed dispute resolution shall be submitted to arbitration, at the request of either of the Parties. In such a case, each Party shall nominate one arbitrator and the two arbitrators thereby nominated shall nominate a third arbitrator, who shall act as President. If within the thirty days following the submission of a request for arbitration, one of the Parties should not yet have nominated its arbitrator or, if within the fifteen days following the nomination of the two arbitrators the third should not have been nominated, either of the Parties may request the President of the International Court of Justice to nominate the arbitrator in question. The arbitrators shall lay down the arbitration procedure and the costs of the arbitration shall be divided between the Parties in the proportions laid down by the arbitrators. All decisions of the arbitrators shall require a vote in favour from at least two of them. The arbitration findings shall include a statement of the grounds on which they are based and the Parties shall accept them as the final resolution of the dispute.

2. Any dispute between the Government or the Cooperating Agency and any of the persons placed under contract by UNOPS in accordance with article IV, which may arise out of his or her conditions of service with the Government or in relation with the same, may be submitted to UNOPS by either of the parties to the dispute and the UNOPS Office shall use its good offices to help them to reach an agreement. If the dispute cannot be resolved in the manner described in the preceding paragraph or by some other means of resolution accepted by common accord, the matter may be submitted to arbitration at the request of either of the parties, following the same provisions as laid down in paragraph 1 of this article, except that if an arbitrator is not nominated by one of the parties, or if the third arbitrator is not nominated by the first two, than that arbitrator shall be nominated by the Secretary-General of the Permanent Court of Arbitration.

Article XIV. General provisions

1. This Agreement shall enter into force at the moment when the Parties shall have informed one another that their internal procedures required for adoption have been completed, and shall remain in force until terminated in accordance with the procedure laid down in paragraph 4 of this article.

2. This Agreement shall enter into force provisionally from the moment it is signed.

3. This Agreement may be amended by the Parties, on the basis of a written notification. The amendments agreed shall enter into force on the basis of the procedure laid down in paragraph 1.

4. This Agreement may be denounced at any time by either of the Parties, by way of a written notification sent to the other Party through the diplomatic channel, with advance notice of one hundred and twenty days, at the end of which it shall cease to be valid. Unless the Argentine Government announces to the contrary, the denunciation shall not have the effect of halting projects already being executed, which shall continue to be executed until their completion.

Done at Buenos Aires on the 21st day of the month of May 2007, in two originals in the Spanish language, both of them being equally authentic.

For the Government of the Argentine Republic	For the United Nations Office for Project Services
[*Signed*]	[*Signed*]

(*d*) Agreement between the United Nations and Nepal regarding the establishment in Kathmandu of the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific. New York, 20 July 2007*

The United Nations and Nepal

Considering the decision of the Government of Nepal (hereinafter referred to as "the Government") and the United Nations, in accordance with resolution 42/39 D of the General Assembly dated 30 November 1987, have agreed to establish in Kathmandu, Nepal, the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific,

Considering that the Government undertakes to assist the United Nations in securing all the necessary facilities for the establishment and functioning of the Centre,

Considering that the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946 (hereinafter referred to as "the Convention"), applies to the field offices which are an integral part of the Secretariat of the United Nations,

Considering that it is desirable to conclude an agreement to regulate questions arising as a result of the establishment of the Centre in Kathmandu,

Have agreed as follows:

Article I. Establishment of the Centre

The United Nations Centre for Peace and Disarmament in Asia and the Pacific shall be established in Kathmandu, Nepal, to carry out the functions assigned to it by the Gen-

* Entered into force 20 July 2007, in accordance with article XIV.

eral Assembly and the Secretary-General, within the framework of the Office for Disarmament Affairs.

Article II. Legal status of the Centre

1. The provisions of the Convention shall apply fully to the Centre.

2. The premises of the Centre shall be under the control and authority of the United Nations.

3. The Centre and the residence of the Director shall be inviolable. Government officers or officials shall not enter these premises to perform any official duties, except with the consent of the Director and under conditions agreed to by him.

4. Any location in or outside Kathmandu which may be used temporarily for meetings held by the Centre outside its premises shall be deemed to be covered by this Agreement for the duration of such meetings.

Article III. Property, funds and assets

1. The Centre, its property, funds and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar as, in any particular case, the United Nations has expressly waived its immunity. It is, however, understood that such waiver shall not extend to measures of execution.

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

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

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

(*b*) Shall be free to transfer its funds, gold or currency from one country to another, or within the host country, to the United Nations or any other agency.

4. The Centre shall be accorded the most favourable, legally available, rate of exchange for its financial activities.

5. The appropriate authorities shall exercise due diligence to ensure the security and protection of the Centre and the residence of the Director, in order to ensure that the tranquillity of these places is not disturbed by the unauthorized entry of persons or groups of persons from outside or by disturbances in its immediate vicinity.

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

Article IV. Contribution by the Government

In addition to the provisions made in operative paragraph 1 of General Assembly resolution 42/39 D, the Government shall make an annual contribution to cover fully the rent, maintenance and operation costs of the Centre. The precise quantum of such contribution will be stipulated in the memorandum of understanding between the Government

and the United Nations which shall form an integral part of this Agreement. Furthermore, the Government shall, freely and voluntarily, make additional contributions towards the maintenance of the Centre to the best of its ability.

Article V. Public services

1. The Government shall ensure that the Centre is supplied with the necessary public services on equitable terms. The Centre shall enjoy treatment for the use of telephone, radio-telegraph and mail communication facilities as favourable as that normally accorded to diplomatic missions in Nepal.

2. In case of interruption or threatened interruption of the services referred to above, the Centre shall, for the performance of its functions, be accorded by the Government the same priority as is given to essential government agencies.

Article VI. Exemption from taxation

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

Article VII. Communication facilities

1. The Centre shall have the right to use codes, and to dispatch and receive its correspondence and other materials by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

2. The Government shall secure the inviolability of the official communications and correspondence of the Centre and shall not apply any censorship to such communications and correspondence. Such inviolability shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, films and sound or videotape recordings and electronic data communications dispatched to or by the Centre.

3. The Centre shall have the right to operate, without hindrance or encumbrance and free of any duties, radio and any other telecommunications equipment, including a satellite earth station facility, on United Nations registered frequencies and those allocated by the Government, within and outside the host country.

Article VIII. Officials of the Centre

1. Officials of the Centre, regardless of the nationality, shall:

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

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

2. Internationally recruited officials of the Centre shall also:

(*a*) Be immune from national service obligations;

(*b*) Be immune, together with their spouses and relatives dependent on them, from provisions restricting immigration and formalities for alien registration;

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

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

(*e*) Have the right to import free of duty their furniture, personal effects and all household appliances, at the time of first taking up their posts.

3. The Director of the Centre, and any other internationally recruited officials as may be agreed between the Parties in respect of themselves, their spouses and members of their families shall enjoy the same privileges and immunities as are accorded by the Government to members of diplomatic missions of comparable rank. For this purpose, the name of the Director of the Centre may be incorporated in the diplomatic list.

4. Internationally recruited officials shall also be entitled to the following facilities applicable to members of diplomatic missions of comparable rank:

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

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

Article IX. Locally recruited personnel paid at hourly rates

The terms of employment of persons recruited locally and paid at hourly rates shall be in accordance with applicable United Nations rules. Personnel recruited 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. The Government shall make an annual contribution to cover the full salaries and benefits of locally recruited staff. Such contribution shall be stipulated in the memorandum of understanding between the Government and the United Nations which shall form part of this Agreement.*

Article X. Financial and personnel administration of the Centre

1. The activities of the Centre shall be administered in accordance with the Financial Regulations and Staff Regulations of the United Nations, except as otherwise specifically provided by the General Assembly of the United Nations. The activities of the Centre shall also be administered in accordance with the Financial Rules and the Staff Rules of the United Nations, except as otherwise provided in special rules promulgated by the Secretary-General of the United Nations.

2. The terms of employment of staff of the Centre who are appointed as staff members of the United Nations, including locally recruited persons, shall, regardless of their nationality, derive exclusively from the Staff Regulations and Rules of the United Nations.

* Not reproduced herein.

Article XI. Waiver of privileges and immunities

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

Article XII. Settlement of disputes

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

Article XIII. Entry to and exit from the host country

1. All persons referred to in this Agreement and persons invited on official business by the Centre shall have the right of unimpeded entry into, departure from, and free movement and sojourn within the host country. They shall be granted facilities for speedy travel. Visas and entry and exit permits, where required, shall be granted free of charge and as promptly as possible. No activity performed by persons referred to above in their official capacity with respect to the Centre shall constitute a reason for preventing their entry into and departure from the territory of the host country or for requiring them to leave such territory.

2. The Government shall recognize and accept the United Nations *laissez-passer* issued by the United Nations as a valid travel document.

3. In accordance with the provisions of Section 26 of the Convention, the Government shall recognize and accept the United Nations certificate issued to persons travelling on the business of the United Nations.

4. The Government further agrees to issue any required visas on the United Nations *laissez-passer* and certificates.

Article XIV. General provisions

1. The provisions of the present Agreement shall, where possible, be treated as complementary to those of the Convention, so that the provisions of both the Agreement and the Convention shall be applicable and neither shall restrict the effect of the other.

2. Consultation with respect to modifications of this Agreement shall be entered into at the request of either Party; any such modifications shall be made by mutual consent.

3. This Agreement shall cease to be in force by mutual consent of both Parties or if the Centre is moved from the territory of Nepal, except for such provisions as may be applicable in connection with the termination of the operations of the Centre in Nepal and the disposal of its property therein.

4. This Agreement shall come into force upon signature by both Parties.

In Witness Whereof, the undersigned, the duly authorized plenipotentiary of the Government and the duly appointed representative of the United Nations, have on behalf of the Parties signed the present Agreement, in two originals in the English language.

Done at New York on 20 July 2007.

For the United Nations:	For Nepal:
[*Signed*]	[*Signed*]
High Representative for Disarmament Affairs	Permanent Representative of Nepal to the United Nations

(*e*) Protocol modifying, supplementing and amending the 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, 3 August 2007*

Recalling the 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), done at Addis Ababa on 25 November 2006 ("the MOU");

Recalling the Conclusions of the Addis Ababa African Union-United Nations High-Level Consultation on the Situation in Darfur of 16 November 2006;

Recalling the Communiqué adopted by the African Union Peace and Security Council at its 66th meeting held at the level of Heads of State and Government on 30 November 2006, in Abuja, Nigeria, which endorsed the conclusions of the Addis Ababa High Level Consultations;

Recalling the Statement by the President of the Security Council of the United Nations made on behalf of the Council at its 5598th meeting on 19 December 2006 (S/PRST/2006/55), endorsing the Conclusions and the Communiqué and calling for them to be implemented by all parties without delay, including the immediate deployment of the United Nations Light and Heavy Support Packages to the African Union Mission in the Sudan (AMIS) and a hybrid operation in Darfur, for which backstopping and command and control structures and systems will be provided by the United Nations;

Recalling that, by a letter dated 24 January 2007, the Secretary-General of the United Nations informed the President of the Sudan that the United Nations and the African Union had agreed on the Heavy Support Package and forwarded to the President the Final Report

* Entered into force on 3 August 2007, in accordance with article XI.

on the Heavy Support Package as agreed during consultations undertaken in Khartoum between the two Organizations between 19 and 21 January 2007 (the "Final Report");

Recalling the Report of the Secretary-General of 23 February 2007 to the Security Council (S/2007/104), which set out the most significant elements of the Heavy Support Package as contained in the Final Report;

Recalling that at the High Level Technical Consultations on the Heavy Support Package conducted on 9 April 2007 between the African Union, the United Nations and the Government of the Sudan ("the Government"), clarifications were provided by the African Union and the United Nations in response to observations made by the Government and agreement was finalized on the Heavy Support Package;

Recalling that, by a letter to the Secretary-General dated 16 April 2007, the Permanent Representative of the Sudan confirmed that the Government of the Sudan accepted in full the Heavy Support Package and looked forward to its expeditious implementation;

Recalling that the Security Council, by the President's letter dated 17 April 2007 to the Secretary-General (United Nations document S/2007/212), endorsed the Final Report, supported the proposals made in Section VI, paragraphs 35 to 41, of the Secretary-General's Report of 23 February 2007 with respect to the Heavy Support Package and urged their implementation through the use of additional and existing United Nations resources;

Recalling Article 16.2 of the MOU, pursuant to which the MOU may be modified, supplemented or amended at any time by written agreement between the Parties;

Wishing to modify, supplement and amend the MOU in order that, in addition to setting out the modalities for the provision by UNMIS to AMIS of the package of immediate support constituting the Light Support Package, it may also set out the modalities for the provision of the additional more resource-intensive support constituting the Heavy Support Package;

Confirming that the MOU, as so modified, supplemented and amended, shall accordingly set out the modalities for the provision by UNMIS to AMIS of both the Light Support Package and the Heavy Support Package;

Now, therefore, the United Nations and the African Union, acting through UNMIS and AMIS respectively, agree to modify, supplement and amend the MOU as follows:

Article I. Purpose of the Protocol

1. The purpose of this Protocol is to modify, supplement and amend the MOU so that, in addition to setting out the modalities for the provision by UNMIS to AMIS of the Light Support Package, the MOU may also set out the modalities for the provision of the Heavy Support Package.

2. Upon entry-into-force of this Protocol, the MOU, as modified, supplemented and amended by this Protocol, shall accordingly set out the modalities for the provision by UNMIS to AMIS of both the Light Support Package and the Heavy Support Package.

3. For the convenience of the Parties only and in order to assist and facilitate implementation, the operative provisions of the MOU, as modified, supplemented and amended by this Protocol, are attached to this Protocol as Annex 7. In the event of any inconsistency

between the provisions of the MOU and this Protocol, on the one hand, and the provisions of Annex 7, on the other, the provisions of the MOU and of this Protocol shall prevail.

Article II. Amendments to article 4 (Deployment of UNMIS personnel)

1. Article 4.1 of the MOU shall be amended to read as follows:

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

2. Article 4.2 of the MOU shall be amended to read as follows:

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

Article III. Amendments and supplementary provisions to article 5 (Status of UNMIS personnel)

1. Article 5.3 of the MOU shall be amended to read as follows:

5.3 UNMIS Military Personnel, Police Advisers and members of Formed Police Units 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, members of Formed Police Units 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.

2. The following paragraphs shall be inserted immediately after Article 5.3 of the MOU:

5.4 UNMIS Security Officers shall, while performing their official duties, wear the United Nations uniform. In addition, they shall, while performing their official duties, wear an AMIS arm band clearly identifying them as UNMIS personnel assigned to AMIS.

5.5 UNMIS Military Personnel, members of Formed Police Units and Security Officers deployed to AMIS in accordance with Annex 1A may possess and carry arms, ammunition and protective equipment and clothing, including flack jackets, body armour and helmets, while on official duty in accordance with their orders, as authorized by or on behalf of the Head of Mission of UNMIS. UNMIS Police Advisers deployed to AMIS in accordance with Annexes 1 and 1A may also possess and carry such items of protective equipment and clothing under such conditions.

Article IV. Amendments and supplementary provisions to article 6 (Command and control)

1. Article 6.2 of the MOU shall be amended to read as follows:

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, consistently with Article 6.6 below, 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 Annexes 1 and 1 A, in accordance with the terms of this MOU.

2. Article 6.4 of the MOU shall be amended to read as follows:

6.4 UNMIS Police Advisers and civilian personnel deployed to AMIS shall provide advice and support to AMIS as described in Annexes 1 and 1A. Except as otherwise provided in Article 6.9 below, 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.

3. The following paragraphs shall be inserted immediately after Article 6.4 of the MOU:

6.5 UNMIS Military Personnel deployed to AMIS in accordance with Annex 1A shall at all times operate under and adhere to the Rules of Engagement for the Military Members of the Military Component of the African Union Mission in the Sudan (AMIS) and for Military Members of the Military component of the United Nations Mission in the Sudan (UNMIS) Deployed to or in Support of AMIS as part of the Heavy Support Package Provided by UNMIS to AMIS, jointly issued by the African Union Commissioner for Peace and Security and the United Nations Under-Secretary-General for Peacekeeping Operations, as from time to time amended. The AMIS and UNMIS Force Commander will acting in close conjunction, issue Directives, in order further to define the parameters, circumstances and manner within, under and in which AMIS and UNMIS Military Personnel respectively who are deployed in Darfur may use force.

6.6 With respect to those UNMIS Military Personnel referred to in Annex 1 A serving as force multipliers, the AMIS Force Commander shall, for the reasons explained in paragraph 15 of that Annex, exercise his/her command of those force multipliers through the AMIS Joint Operations Centre (JOC). With respect to those UNMIS Military Personnel referred to in Annex 1A serving as mission enablers, the AMIS Force Commander shall, for the reasons explained in paragraph 15 of that Annex, exercise his/her command of those mission enablers through the AMIS Joint Logistics Operations Centre (JLOC) and through the UNMIS Chief Integrated Support Service (CISS).

6.7 The UNMIS Police Commissioner is vested with United Nations Operational Control of all UNMIS police personnel in Sudan. However, the AMIS Police Commissioner shall exercise Operational Control of the UNMIS Formed Police Units deployed to AMIS to the extent required to facilitate the effective performance, on the ground, of the functions described in Annex 1A, in accordance with this MOU. Specific directives will be developed by the UNMIS Police Commissioner in conjunction with the AMIS Police Commissioner setting out the manner in which members of UNMIS Formed Police Units deployed to AMIS will perform those functions.

6.8 Members of UNMIS Formed Police Units deployed to AMIS shall at all times operate under and adhere to UNMIS directives on detention, searches and use of force. The UNMIS Police Commissioner will issue more specific Police Commissioner's Directives,

which s/he will develop in conjunction with the AMIS Police Commissioner, in order further to define the parameters, circumstances and manner within, under and in which members of UNMIS Formed Police Units deployed to AMIS may carry out detentions and searches and use force.

6.9 UNMIS Security Officers deployed to AMIS shall at all times operate in accordance with the United Nations Integrated Security Management System in Sudan and report to the UNMIS Principal Security Adviser,

6.10 UNMIS Security Officers deployed to AMIS shall at all times operate under and adhere to UNMIS policies and standing operating procedures on the use of force and firearms. The UNMIS Principal Security Adviser will issue more specific policies and standing operating procedures, which s/he will develop in conjunction with the AMIS Chief of Security or any officer acting in this capacity, to further define the parameters, circumstances and manner within, under and in which UNMIS Security Officers deployed to AMIS may use force and firearms.

6.11 For the purposes of this Article:

(a) "United Nations Operational Control" ("UN OPCON") means the authority granted to a United Nations Military Commander in a United Nations Peacekeeping Operation to direct forces assigned, so that the Commander may accomplish specific missions or tasks which are usually limited by function, time, or location (or a combination), to deploy units concerned and/or military personnel, and to retain or assign tactical control of those units/personnel. UN OPCON includes the authority to assign separate tasks to sub-units of a contingent, as required by operational necessity, within the mission area of responsibility, in consultation with the Contingent Commander and as approved by United Nations Headquarters. It does not include responsibility for personnel administration.

(b) "Operational Control" ("OPCON") means the ability of the AMIS Force Commander or the AMIS Police Commissioner, as the case may be, to direct relevant UNMIS Military Personnel or Formed Police Units, to facilitate the effective performance, on the ground, of the relevant functions described in Annexes 1 and 1A, in accordance with the terms of this MOU. The AMIS Force Commander or the AMIS Police Commissioner, as the case may be, may seek to assign separate tasks to sub-units of UNMIS Military Personnel or Formed Police Units, as required by operational necessity, within the mission area of responsibility, again within the limitations of function, time, or location, in consultation with the Contingent Commander and as approved by United Nations Headquarters. It does not include the responsibility for personnel administration.

Article V. Amendments to article 9 (Safety and security)

Article 9.4 of the MOU shall be amended to read as follows:

9.4 AMIS shall take the necessary steps as required by the AMIS Joint 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 and equipment deployed to AMIS, including items of contingent-owned equipment as provided for in Article 12 bis below, and UNMIS facilities used by UNMIS Personnel so deployed against actual or imminent attack. This is without prejudice to the ability of UNMIS Military Personnel, members of Formed Police Units, Security Officers and Police Advisers (the latter who may not possess and carry arms or ammunition) deployed to AMIS in accordance with Annex 1A to use force, up to

and including deadly force, if necessary, to defend themselves and each other, as well as UNMIS equipment and facilities, against actual or imminent attack. It is further understood that those UNMIS Military Personnel, members of Formed Police Units, Security Officers and Police Advisers (the latter who may not possess and carry arms or ammunition) will use force, up to and including deadly force if necessary, to defend against actual or imminent attack any AMIS personnel with whom they may be co-located or to whom they may be providing operational support.

Article VI. Amendment to article 10 (Logistics support)

1. The title of Article 10 of the MOU shall be amended to read as follows: Logistics Support to UNMIS Personnel Deployed to AMIS

2. Article 10.3 of the MOU shall be amended to read as follows:

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 VII. Supplementary provisions articles 10 bis *and 12* bis *(Logistics support to AMIS and contingent-owned equipment)*

1. The following Article shall be inserted between Article 10 and Article 11 of the MOU:

Article 10 bis. *Logistics support to AMIS*

10 *bis*.1 The UNMIS Military Personnel referred to in paragraph 12 (a) of Annex 1A shall provide to AMIS Personnel the medical support described in that Annex subject to and in accordance with relevant United Nations procedures, including the signature of the "Release from Liability in connection with the provision of Medical Services by the United Nations" contained in Annex 5.

10 *bis*.2 It is understood that the medical facilities referred to in Annex 1A will also provide treatment to UNMIS Personnel deployed to AMIS. AMIS personnel shall be accorded the same priority in the delivery of medical services at those facilities as is accorded to UNMIS Personnel deployed to AMIS.

10 *bis*.3 The UNMIS Military Personnel referred to in paragraph 12 (b), (c) and (d) of Annex 1A shall provide to AMIS the forms of logistics support described in that Annex or such other forms of logistics support as may be agreed in writing between UNMIS and AMIS.

10 *bis*.4 The UNMIS Military Personnel referred to in paragraph 12 (d), (e) and (f) of Annex 1A shall provide to AMIS the ground and air transport services described in that Annex subject to and in accordance with relevant United Nations procedures, including, in the case of the transport of AMIS personnel, the signature of the "General Release from Liability in connection with Travel by Third Parties on United Nations-provided Aircraft/Vehicles" contained in Annex 6.

10 *bis*.5 AMIS shall advise its personnel deploying to the Sudan of the necessity of completing and signing the Release from Liability forms contained in Annexes 5 and 6 as a condition of obtaining medical and ground and air transportation services pursuant to

this MOU. AMIS shall accordingly provide its personnel with copies of those forms, for completion and signature by them before or upon their arrival in the Sudan. AMIS shall make practical arrangements with UNMIS for the transmittal to UNMIS of completed and signed forms.

10 *bis*.6 AMIS, as a Peace and Support Operation of the African Union, acknowledges and agrees that the medical support and ground and air transportation services referred to in paragraphs 1 and 4 above shall be provided at the sole risk of AMIS and that neither UNMIS nor the United Nations shall incur any liability arising from the provision of such medical support and ground and air transportation services. AMIS, as a Peace and Support Operation of the African Union, shall indemnify, hold and save harmless, and defend UNMIS and the United Nations and their respective officials, agents, servants and employees from and against all suits, proceedings, claims, demands, losses and liability of any nature or kind, based on, arising out of, related to, or in connection with the provision of such medical support and transportation services.

2. The following Article shall be inserted between Article 12 and Article 13 of the MOU:

Article 12 bis. *Contingent-owned equipment*

12 *bis*.1 It is understood that States providing the UNMIS Military Personnel and Formed Police Units described in Annex 1A ("Participating States") will also be providing the necessary equipment for those personnel to perform their functions as therein set out, including major items of equipment directly related to the performance of those functions, items to support that major equipment and items that directly or indirectly support those Personnel ("Contingent-owned Equipment"). These items of Contingent-owned Equipment shall at all times remain under the direct and immediate control of the Participating State providing that Contingent-owned Equipment and such Contingent-owned Equipment shall at all times be operated by UNMIS Military Personnel or members of Formed Police Units only.

12 *bis*.2 AMIS shall take such steps as are within its capabilities to ensure that adequate security measures are in place to protect and preserve all items of Contingent-owned Equipment that are deployed or used within or in the immediate proximity of AMIS camps, facilities and installations against damage, theft or loss. AMIS shall also ensure that AMIS personnel take reasonable care not to damage or destroy any such Contingent-owned Equipment. The AMIS Coordinator shall cooperate with UNMIS and with the Participating State concerned in any investigation into the loss, destruction or damage of such Contingent-owned Equipment.

Article VIII. Amendment to article 13 (Indemnity)

Article 13.1 of the MOU shall be amended to read as follows:

13.1 Subject and without prejudice to the provisions of Article 10 bis.6, 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 willful misconduct of the other Party or of the other Party's officials, personnel, servants or agents.

Article IX. Amendment to article 16 (Final provisions)

Article 16.3 of the MOU shall be amended to read as follows:

16. 3 This MOU may be terminated at any time by either Party giving the other thirty (30) days notice. This MOU shall terminate immediately upon the termination of the mandate of either UNMIS or AMIS, or upon the commencement of the operation of the African Union/United Nations Hybrid Operation in Darfur (UNAMID), as contemplated by AU Peace and Security Council Communiqué of 22 June 2007 and UN Security Council resolution 1769 (2007) of 31 July 2007, Notwithstanding the termination of this MOU, the provisions of Articles 10 bis.6, 11, 12, 13, 14 and 15 shall remain in force.

Article X. Supplementary annexes to the MOU

1. Annex 1 A, which is attached, shall be added to the MOU.*
2. Annex 5, which is attached, shall be added to the MOU.*
3. Annex 6, which is attached, shall be added to the MOU.*
4. Annex 7, which is attached, shall be added to the MOU.

Article XI. Final provision

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

In witness whereof, the duly authorized representatives of the United Nations and the African Union have affixed their signatures, this 3rd day of August 2007 at Addis Ababa.

For and on behalf of the United Nations:	For and on behalf of the African Union
[*Signed*]	*[Signed*]
Acting Special Representative of the Secretary-General United Nations Mission in Sudan	African Union Commissioner Peace and Security

Annex 7. Operative provision of the 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), done at Addis Ababa on 25 November 2006, as modified, supplemented and amended by the Protocol modifying, supplementing and amending the 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), done at Addis Ababa on 3 August 2007

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 Secu-

* Not reproduced herein.

rity 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 Coordinator, 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, Formed Police Units and civilian personnel (hereinafter collectively referred to as "UNMIS Personnel") to or in support of AMIS to perform the functions described in Annexes 1 and 1 A, 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 Annexes 1 and 1A, 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, Police Advisers and members of Formed Police Units 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, members of Formed Police Units 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.

5.4 UNMIS Security Officers shall, while performing their official duties, wear the United Nations uniform. In addition, they shall, while performing their official duties, wear an AMIS arm band clearly identifying them as UNMIS personnel assigned to AMIS.

5.5 UNMIS Military Personnel, members of Formed Police Units and Security Officers deployed to AMIS in accordance with Annex 1A may possess and carry arms, ammunition and protective equipment and clothing, including flack jackets, body armour and helmets, while on official duty in accordance with their orders, as authorized by or on behalf of the Head of Mission of UNMIS. UNMIS Police Advisers deployed to AMIS in accordance with Annexes 1 and 1A may also possess and carry such items of protective equipment and clothing under such conditions.

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, consistently with Article 6.6 below, 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 Annexes 1 and 1A, 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 Annexes 1 and 1 A. Except as otherwise provided in Article 6.9 below, 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.

6.5 UNMIS Military Personnel deployed to AMIS in accordance with Annex 1A shall at all times operate under and adhere to the Rules of Engagement for the Military Members of the Military Component of the African Union Mission in the Sudan (AMIS) and for Military Members of the Military component of the United Nations Mission in the Sudan (UNMIS) Deployed to or in Support of AMIS as part of the Heavy Support Package Provided by UNMIS to AMIS, jointly issued by the African Union Commissioner for

Peace and Security and the United Nations Under-Secretary-General for Peacekeeping Operations, as from time to time amended. The AMIS and UNMIS Force Commanders will, acting in close conjunction, issue Directives, in order further to define the parameters, circumstances and manner within, under and in which AMIS and UNMIS Military Personnel respectively who are deployed to Darfur may use force.

6.6 With respect to those UNMIS Military Personnel referred to in Annex 1 A serving as force multipliers, the AMIS Force Commander shall, for the reasons explained in paragraph 15 of that Annex, exercise his/her command of those force multipliers through the AMIS Joint Operations Centre (JOC). With respect to those UNMIS Military Personnel referred to in Annex 1A serving as mission enablers, the AMIS Force Commander shall, for the reasons explained in paragraph 15 of that Annex, exercise his/her command of those mission enablers through the AMIS Joint Logistics Operations Centre (JLOC) and through the UNMIS Chief Integrated Support Service (CISS).

6.7 The UNMIS Police Commissioner is vested with United Nations Operational Control of all UNMIS police personnel in Sudan. However, the AMIS Police Commissioner shall exercise Operational Control of the UNMIS Formed Police Units deployed to AMIS to the extent required to facilitate the effective performance, on the ground, of the functions described in Annex 1 A, in accordance with this MOU. Specific directives will be developed by the UNMIS Police Commissioner in conjunction with the AMIS Police Commissioner setting out the manner in which members of UNMIS Formed Police Units deployed to AMIS will perform those functions.

6.8 Members of UNMIS Formed Police Units deployed to AMIS shall at all times operate under and adhere to UNMIS directives on detention, searches and use of force. The UNMIS Police Commissioner will issue more specific Police Commissioner's Directives, which s/he will develop in conjunction with the AMIS Police Commissioner, in order further to define the parameters, circumstances and manner within, under and in which members of UNMIS Formed Police Units deployed to AMIS may carry out detentions and searches and use force.

6.9 UNMIS Security Officers deployed to AMIS shall at all times operate in accordance with the United Nations Integrated Security Management System in Sudan and report to the UNMIS Principal Security Adviser.

6.10 UNMIS Security Officers deployed to AMIS shall at all times operate under and adhere to UNMIS policies and standing operating procedures on the use of force and firearms. The UNMIS Principal Security Adviser will issue more specific policies and standing operating procedures, which s/he will develop in conjunction with the AMIS Chief of Security or any officer acting in this capacity, to further define the parameters, circumstances and manner within, under and in which UNMIS Security Officers deployed to AMIS may use force and firearms.

6.11 For the purposes of this Article:

(*a*) "United Nations Operational Control" ("UN OPCON") means the authority granted to a United Nations Military Commander in a United Nations Peacekeeping Operation to direct forces assigned, so that the Commander may accomplish specific missions or tasks which are usually limited by function, time, or location (or a combination), to deploy units concerned and/or military personnel, and to retain or assign tactical control of those units/personnel. UN OPCON includes the authority to assign separate tasks to sub-units of

a contingent, as required by operational necessity, within the mission area of responsibility, in consultation with the Contingent Commander and as approved by United Nations Headquarters. It does not include responsibility for personnel administration.

(*b*) "Operational Control" ("OPCON") means the ability of the AMIS Force Commander or the AMIS Police Commissioner, as the case may be, to direct relevant UNMIS Military Personnel or Formed Police Units, to facilitate the effective performance, on the ground, of the relevant functions described in Annexes 1 and 1 A, in accordance with the terms of this MOU. The AMIS Force Commander or the AMIS Police Commissioner, as the case may be, may seek to assign separate tasks to sub-units of UNMIS Military Personnel or Formed Police Units, as required by operational necessity, within the mission area of responsibility, again within the limitations of function, time, or location, in consultation with the Contingent Commander and as approved by United Nations Headquarters. It does not include the responsibility for personnel administration.

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, polices 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 Joint 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 and equipment deployed to AMIS, including items of contingent-owned equipment as provided for in Article 12 *bis* below, and UNMIS facilities used by UNMIS Personnel so deployed against actual or imminent attack. This is without prejudice to the ability of UNMIS Military Personnel, members of Formed Police Units, Security Officers and Police Advisers (the latter who may not possess and carry arms or ammunition) deployed to AMIS in accordance with Annex 1A to use force, up to and including deadly force, if necessary, to defend themselves and each other, as well as UNMIS equipment and facilities, against actual or imminent attack. It is further understood that those UNMIS Military Personnel, members of Formed Police Units, Security Officers and Police Advisers (the latter who may not possess and carry arms or ammunition) will use force, up to and including deadly force if necessary, to defend against actual or imminent attack any AMIS personnel with whom they may be co-located or to whom they may be providing operational support.

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 to UNMIS personnel deployed to AMIS

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 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 10 bis. *Logistics support to AMIS*

10 *bis*.1 The UNMIS Military Personnel referred to in paragraph 12 (a) of Annex 1A shall provide to AMIS Personnel the medical support described in that Annex subject to and in accordance with relevant United Nations procedures, including the signature of the "Release from Liability in connection with the provision of Medical Services by the United Nations" contained in Annex 5.

10 *bis*.2 It is understood that the medical facilities referred to in Annex 1A will also provide treatment to UNMIS Personnel deployed to AMIS. AMIS personnel shall be accorded the same priority in the delivery of medical services at those facilities as is accorded to UNMIS Personnel deployed to AMIS.

10 *bis*.3 The UNMIS Military Personnel referred to in paragraph 12 (b), (c) and (d) of Annex 1A shall provide to AMIS the forms of logistics support described in that Annex or such other forms of logistics support as may be agreed in writing between UNMIS and AMIS.

10 bis.4 The UNMIS Military Personnel referred to in paragraph 12 (d), (e) and (f) of Annex 1A shall provide to AMIS the ground and air transport services described in that Annex subject to and in accordance with relevant United Nations procedures, including, in the case of the transport of AMIS personnel, the signature of the "General Release from Liability in connection with Travel by Third Parties on United Nations-provided Aircraft/Vehicles" contained in Annex 6.

10 *bis*.5 AMIS shall advise its personnel deploying to the Sudan of the necessity of completing and signing the Release from Liability forms contained in Annexes 5 and 6 as a condition of obtaining medical and ground and air transportation services pursuant to this MOU. AMIS shall accordingly provide its personnel with copies of those forms, for completion and signature by them before or upon their arrival in the Sudan. AMIS shall make practical arrangements with UNMIS for the transmittal to UNMIS of completed and signed forms.

10 *bis*.6 AMIS, as a Peace and Support Operation of the African Union, acknowledges and agrees that the medical support and ground and air transportation services referred to in paragraphs 1 and 4 above shall be provided at the sole risk of AMIS and that neither UNMIS nor the United Nations shall incur any liability arising from the provision of such medical support and ground and air transportation services. AMIS, as a Peace and Support Operation of the African Union, shall indemnify, hold and save harmless, and defend UNMIS and the United Nations and their respective officials, agents, servants and employees from and against all suits, proceedings, claims, demands, losses and liability of

any nature or kind, based on, arising out of, related to, or in connection with the provision of such medical support and transportation services.

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 opera-

tion, 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 12 bis. *Contingent-owned equipment*

12 *bis*.1 It is understood that States providing the UNMIS Military Personnel and Formed Police Units described in Annex 1A ("Participating States") will also be providing the necessary equipment for those personnel to perform their functions as therein set out, including major items of equipment directly related to the performance of those functions, items to support that major equipment and items that directly or indirectly support those Personnel ("Contingent-owned Equipment"). These items of Contingent-owned Equipment shall at all times remain under the direct and immediate control of the Participating State providing that Contingent-owned Equipment and such Contingent-owned Equipment shall at all times be operated by UNMIS Military Personnel or members of Formed Police Units only.

12 bis.2 AMIS shall take such steps as are within its capabilities to ensure that adequate security measures are in place to protect and preserve all items of Contingent-owned Equipment that are deployed or used within or in the immediate proximity of AMIS camps, facilities and installations against damage, theft or loss. AMIS shall also ensure that AMIS personnel take reasonable care not to damage or destroy any such Contingent-owned Equipment. The AMIS Coordinator shall cooperate with UNMIS and with the Participating State concerned in any investigation into the loss, destruction or damage of such Contingent-owned Equipment.

Article 13. Indemnity

13.1 Subject and without prejudice to the provisions of Article 10 bis.6, 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 willful misconduct of the other Party or of the other Party's officials, personnel, servants or agents.

13.2 AMIS, as a Peace Support Operation of 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

15. 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 the other thirty (30) days notice to the other. This MOU shall terminate immediately upon the termination of the mandate of either UNMIS or AMIS, or upon the commencement of the

operation of the African Union/United Nations Hybrid Operation in Darfur (UNAMID) as contemplated by AU Peace and Security Council Communiqué of 22 June 2007 and UN Security Council resolution 1769 (2007) of 31 July 2007. Notwithstanding the termination of this MOU, the provisions of Articles 10 *bis*.6, 9, 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[*].

(*f*) Agreement between the Government of the Republic of South Africa and the United Nations Development Programme on establishing a Service Centre in South Africa. New York, 1 October 2007[**]

Preamble

The Government of the Republic of South Africa (hereinafter referred to as "the Government") and the United Nations Development Programme (hereinafter referred to as "UNDP"),

Recalling the decision made by the UNDP on the desirability to establish a Service Centre for Eastern and Southern Africa,

Recognizing that the Government welcomes the establishment of such a Service Centre within the Republic of South Africa,

Recognizing the benefits of establishing a Service Centre within the Republic of South Africa, to serve Eastern and Southern Africa,

Recalling the applicability to UNDP of the Convention of the Privileges and Immunities of the United Nations, adopted by the United Nations General Assembly on 13 February 1946, and acceded to by the Government on 30 August 2002,

Recalling the applicability to UNDP of the Basic Agreement concluded between the Government and UNDP on 3 October 1994 concerning UNDP's assistance to the Government in the area of technical cooperation and development,

Recognizing that the activities of the UNDP-Service Centre are focused primarily on service of UNDP operations outside of the Host Country, including for the management and support of regional programmatic activities, and

Acknowledging that occasionally the UNDP-Service Centre will be called upon to support UNDP activities within the framework of the UNDP Country Programme in the Host Country;

Hereby agree as follows:

Article I. Definitions

Section 1

In this Agreement the expressions:

[*] Not reproduced herein.

[**] Entered into force on 1 October 2007, in accordance with section 28.

(*a*) "accredited foreign Mission in the Host Country" means diplomatic and consular missions and missions of international organisations based in the Republic of South Africa

(*b*) "Administrator" means the Administrator of the UNDP;

(*c*) "appropriate authorities" means such national or local government authorities under the laws and regulations of the Republic of South Africa as may be responsible in the context of, and in accordance with, the laws and customs applicable in the Republic of South Africa;

(*d*) "archives of the UNDP-SC" means all records, correspondence, documents, manuscripts, computer records, still and motion pictures, films and sound recordings, belonging to or held by UNDP-SC in furtherance of its functions;

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

(*f*) "the Director of the UNDP-SC" means the head of the UNDP-SC in the Republic of South Africa;

(*g*) "the Host Country" means the Republic of South Africa;

(*h*) "officials of the UNDP-SC" means the Director of the UNDP-SC and all staff assigned to the UNDP-SC, irrespective of nationality, with the exception of those who are locally recruited and assigned to hourly rates as provided for in United Nations General Assembly resolution 76(1) of 7 December 1946;

(*i*) "the Parties" means the Government and UNDP;

(*j*) "premises of the UNDP-SC" means the facilities in the Republic of South Africa used for conducting functions by the UNDP-SC;

(*k*) "property of UNDP-SC" means all property, including funds, income and other assets belonging to the UNDP-SC or held or administered by UNDP-SC in furtherance of the functions of the UNDP-SC;

(*l*) "Secretary-General" means the Secretary-General of the United Nations;

(*m*) "Service contractors" means individuals who are engaged under service contracts in their personal capacity not as representatives of a government nor of any other authority external to the United Nations. They are neither staff members under the Staff Regulations and Rules of UNDP nor officials for the purposes of the Convention.

(*n*) "telecommunications" means any emission, transmission or reception of written or verbal information, images, sound or information of any nature by wire, radio, satellite, optical fibre or any other electronic or electromagnetic means;

(*o*) "UNDP Country Programme" means the activities undertaken by UNDP in the Host Country within the framework of the 1994 Agreement;

(*p*) "UNDP-SC" means the United Nations Development Programme Service Centre established in the Republic of South Africa to serve Eastern and Southern Africa;

(*q*) "1994 Agreement" means the Agreement between the United Nations (United Nations Development Programme) and the Republic of South Africa concluded on 3 October 1994.

Article II. Purpose and scope of the Agreement

Section 2

(*a*) This Agreement regulates the status of the UNDP-SC premises, officials and experts in the Host Country. To the extent that the UNDP-SC undertakes functions in support of the UNDP activities within the framework of the UNDP Country Programme in the Host Country, the 1994 Agreement shall apply to these technical and operational activities of the UNDP-SC.

(*b*) The Government confirms that the treatment afforded to the UNDP-SC and the UNDP shall be equal and the same as afforded to any other accredited foreign, mission in the Host Country.

Article III. Legal capacity

Section 3

(*a*) The United Nations, acting through UNDP, shall have the capacity:

(i) to contract;

(ii) to acquire and dispose of immovable and movable property; and

(iii) to institute judicial proceedings.

(*b*) For the purposes of this Article, UNDP shall be represented by the Director of UNDP-SC.

Article IV. Inviolability of the UNDP-SC

Section 4

(*a*) The UNDP-SC shall be inviolable and its property and assets, wherever located and by whosoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case immunity shall have expressly been waived in accordance with the Convention. Waiver of immunity from legal process shall not extend to any measure of execution.

(*b*) No officer or official of the Host Country or person exercising any public authority within the Host Country, shall enter the premises of the UNDP-SC to perform any duties therein except with the consent of, and under conditions approved by the Director of the UNDP-SC. In case of a fire or other emergency requiring prompt protection action, the consent of the Director of the UNDP-SC to any necessary entry into the premises shall be presumed if he/she cannot be reached in time.

(*c*) The premises of the UNDP-SC shall not be used in any manner incompatible with the scope and purpose of the UNDP-SC, as set forth in Article II, above, which includes the use of the premises and facilities for meetings, seminars, exhibitions and other related purposes which are organized by the UNDP-SC, the United Nations or other related organizations.

Section 5

The Archives of the UNDP-SC, wherever located in the Host Country, shall be inviolable.

Article V. Public services and security

Section 6

(*a*) The UNDP-SC shall receive the same level of service delivery by the relevant local authorities of necessary public services and utilities that is provided to any other accredited foreign mission in the Host Country.

(*b*) The UNDP-SC shall receive the same level of security and protection that is provided to any other accredited foreign mission in the Host Country.

Article VI. Exemption from taxation

Section 7

With respect to all official activities, the UNDP-SC, its assets, income and property shall be exempt from all forms of taxation; however, the UNDP-SC shall not claim exemption from taxes, which are, in fact, no more than charges for public utility services.

Section 8

The UNDP-SC shall be exempt from customs duties, prohibitions and restrictions on goods imported or exported for its official purposes, including publications; it is understood, however, the articles imported under such exemption shall not be sold in the Host Country except under conditions agreed to with the Government.

Article VII. Financial transactions

Section 9

Without being restricted by financial controls, regulations or moratoria of any kind, the UNDP-SC may, in order to carry out its activities:

(i) hold funds and currency of any kind and to operate accounts in any currency; and

(ii) freely transfer its funds and currency to and from the Host Country, and convert any currency held by it into any other currency.

(iii) be accorded the most favourable, legally available rate of exchange.

Article VIII. Communications

Section 10

The UNDP-SC shall enjoy, for its official communications, treatment not less favorable than that accorded by the Host Country to any other Government, including the latter's diplomatic mission, in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communication, and press rates for information to the press and radio.

Section 11

(*a*) No censorship shall be applied to the official correspondence and other official communications of the UNDP-SC.

(*b*) The UNDP-SC shall have the right to operate communication equipment including satellite facilities and to use codes and to dispatch and receive correspondence by 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 shall be provided with a courier certificate issued by the United Nations.

Article IX. Representatives of members

Section 12

Representatives of members of the United Nations to meetings convened by the UNDP-SC shall, while exercising their functions, enjoy the privileges and immunities as set out in Article IV of the Convention.

Article X. Officials of the UNDP-SC

Section 13

The Government shall accord to:

(*a*) the officials of the UNDP-SC, regardless of their nationality, the privileges and immunities set out in Articles V and VII of the Convention;

(*b*) the Head of the UNDP-SC and the Deputy Head of the UNDP-SC and other officials assigned to the UNDP-SC, having the rank of P-5 and above, who do not have South African nationality or permanent resident status in the Host Country, shall, together with their families forming part of their household in addition to the privileges and immunities set out in Articles V and VII of the Convention, be accorded the same privileges and immunities, exemptions and facilities as are accorded to diplomatic staff at missions accredited to the Host Country.

Section 14

Privileges and immunities are granted to officials 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 official of the UNDP-SC in any case where, in the opinion of the Secretary-General, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Organization.

Article XI. Experts on missions and service contractors

Section 15

Experts, other than officials, performing missions for the UNDP-SC shall be accorded the privileges and immunities as set out in Articles VI and VII of the Convention.

Section 16

Service Contractors 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 UNDP-SC. Such immunity shall continue to be accorded after termination of their engagement with the UNDP-SC. They shall also be accorded such other facilities as may be necessary for the independent exercise of their functions for the UNDP-SC. The terms and conditions of their engagement shall be in accordance with UN and UNDP decisions, regulations, rules and policies.

Section 17

Privileges and immunities are granted to experts and service contractors in the interests of the United Nations and not for the personal benefit of the individuals themselves.

The Secretary-General shall have the right and the duty to waive the immunity of any expert or service contractor of the UNDP-SC in any case where, in the opinion of the Secretary-General, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Organization.

Article XII. Cooperation with the appropriate authorities

Section 18

Without prejudice to the privileges and immunities accorded by this Agreement, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the Host Country, and not to interfere in the internal affairs of the Host Country.

Section 19

The UNDP-SC shall co-operate 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 facilities, privileges and immunities accorded to persons referred to in the present Agreement.

Article XIII. Entry into, exit from, movement and sojourn within the Host Country

Section 20

All persons referred to in this Agreement and persons invited on official business shall have the right of unimpeded entry into, exit from, sojourn and free movement within the Host Country except for zones which require special permission under the legislation on national security in force in the Host Country.

Visas, entry permits or licenses, where required, shall be granted as promptly as possible.

Article XIV. Laissez-passer

Section 21

The Government shall recognize and accept the United Nations *laissez- passer* issued by the United Nations as a valid travel document equivalent to a passport. In accordance with the provisions of Section 26 of the Convention, the Government shall also recognize and accept the United Nations certificate issued to persons traveling on official business.

Section 22

Applications for the necessary permits or visas, where required, by officials holding the United Nations *laissez-passer*, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel. The Government further agrees to issue any required visa on the United Nations *laissez-passer* or national passport.

Section 23

Similar facilities to those specified in Section 22 shall be accorded to experts and other persons who, though not the holders of United Nations *laissez-passer*, are confirmed by the UNDP-SC as traveling on official business.

Article XV. Identification cards

Section 24

All persons referred to in this Agreement and conferred with immunities and privileges shall be entitled to have an appropriate identification card issued by the Government indicating their status.

Article XVI. United Nations flag and emblem

Section 25

The UNDP-SC shall have the right to display the emblem of the United Nations or UNDP and/or the flag of the United Nations on its premises, vehicles, aircraft and vessels.

Article XVII. Settlement of disputes

Section 26

Any dispute between the Parties arising out of, or relating to this Agreement, which is not settled by negotiation or another agreed mode of settlement, shall, at the request of either Party, be submitted to a Tribunal of three arbitrators. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairperson of the Tribunal. If, within thirty days of the request for arbitration, a 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 the arbitrator referred to. The Tribunal shall determine its own procedures, provided that any two arbitrators shall constitute a quorum for all purposes, and all decisions shall require the agreement of any two arbitrators. The expenses of the Tribunal shall be borne by the Parties as assessed by the Tribunal. The arbitral award shall contain a statement of the reasons on which it is based and shall be final and binding on the Parties.

Article XVIII. Entry into force, duration and termination

Section 27

This Agreement may be modified by written agreement between the Parties hereto. Each Party shall give full consideration to any proposal advanced by the other Party under this Section.

Section 28

(*a*) This Agreement shall be subject to the signature by the Parties. It shall enter into force on the date of the last signature thereof.

(*b*) This Agreement may be terminated by either Party by written notice to the other and shall terminate six months after the receipt of such notice. Notwithstanding any such notice of termination, this Agreement shall remain in force until complete fulfillment or termination of all obligations entered into by virtue of this Agreement.

(*c*) The obligations assumed by the Government shall survive the termination of this Agreement, to the extent necessary to permit orderly withdrawal of the property, funds and assets of the UNDP-SC and officials assigned to it by virtue of this Agreement.

In witness whereof the undersigned, being the duly appointed representatives of the respective Parties, have signed this Agreement in duplicate.

Done at New York, this 1st day of October 2007.

[*Signed*]	[*Signed*]
For the Government of the Republic of South Africa	For the United Nations Development Programme

(*g*) Agreement between the United Nations and the Government of Denmark relating to the Headquarters and other offices in Copenhagen of the United Nations Office for Project Services. Copenhagen, 13 December 2007*

The United Nations, represented by the United Nations Office for Project Services, (hereinafter referred to as "UNOPS") and the Government of Denmark, represented by the Ministry for Foreign Affairs, (hereinafter referred to as "the Government"),

Considering that the UNOPS was established as a separate and identifiable entity by General Assembly decision 48/50.1 of 19 September 1994;

Considering that, further to the offer by the Government to host UNOPS' Division for Procurement Projects, the United Nations and the Government concluded an Interim Agreement regarding the legal status of the UNOPS in Copenhagen, in the form of an exchange of letters dated 20 May 1997;

Considering that measures proposed by UNOPS 2005 action plan (DP/2005/39) and recognized in decision 2005/36 of the Executive Board of the United Nations Development Programme and the United Nations Population Fund (hereinafter referred to as "the Executive Board") included the relocation of UNOPS Headquarters functions from New York;

Considering that, by its decision 2006/6 of 27 January 2006, the Executive Board took note of the progress report of UNOPS Executive Director, a.i. (DP/2006/11) which stated that UNOPS would relocate its current headquarters functions and Europe-based operations to Denmark (Copenhagen) in the first half of 2006, further to the generous offer (reference number 119.D.16) dated 2 December 2005 made by the Government of Denmark to provide expanded facilities in Copenhagen for its Headquarters, service centre and operations (attached hereto as Annex I) as clarified by, but not limited to, a communication dated December 16, 2005 from the First Secretary, Permanent Mission of Denmark to the United Nations (attached hereto as Annex II). Such expanded facilities include, but are not limited to, rent free premises on an indefinite basis to house UNOPS' personnel as may be increased or decreased from time to time;

Considering that UNOPS is an integral part of the United Nations, whose status, privileges and immunities axe governed by 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 Denmark acceded on 10 June 1948, without reservation;

* Entered into force on 13 December 2007, in accordance with its article XXV.

Considering that it is desirable to conclude an Agreement, complementary to the Convention on the Privileges and Immunities of the United Nations, to regulate questions not envisaged in that Convention arising as a result of the relocation of the Headquarters of UNOPS in Denmark;

Have agreed as follows:

Article I. Definitions

In the present Agreement,

(*a*) "Archives" means all records, correspondence, documents, publications, manuscripts, photographs, films, recordings, computer, data files and software belonging or held by UNOPS, wherever located;

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

(*c*) "Country" means Denmark;

(*d*) "Executive Director" means the Executive Director of UNOPS or his / her authorized representative;

(*e*) "experts on missions" means individuals, other than officials of UNOPS, performing missions on behalf of UNOPS within the scope of Articles VI and VII of the Convention;

(*f*) "Headquarters" means all the UNOPS offices and premises, installations and facilities made available to or occupied, maintained or used by the UNOPS in Copenhagen and any sub-offices which may be established in Denmark, with the written consent of the Government;

(*g*) "Officials of UNOPS" means the Executive Director and all UNOPS personnel, irrespective of nationality, with the exception of persons who are recruited in Denmark and assigned to hourly rates;

(*h*) "the appropriate Danish Authorities" means national, departmental, local and other competent authorities under the laws and regulations of Denmark;

(*i*) "the Government" means the Government of Denmark;

(*j*) "UNOPS" means the United Nations Office for Project Services.

Article II. Juridical personality and capacity

The United Nations, acting through UNOPS, shall have the capacity:

(*a*) To contract;

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

(*c*) To institute legal proceedings.

Article III. Purpose

The purpose of this Agreement is to regulate the status of UNOPS Headquarters and its personnel, and to ensure the availability of the necessary privileges and immunities,

facilities and courtesies to enable UNOPS to perform fully and effectively its functions, including its scheduled programmes of work and any related activities.

Article IV. Mandate, general objectives and standards of operation of UNOPS

UNOPS mandate is as set out in United Nations General Assembly decision 48/501 of 19 September 1994 and successive decisions of the Executive Board.

Article V. Status of the Headquarters

1. UNOPS, its property, funds and assets wherever located and by whomsoever held, shall be immune from every form of legal process, except insofar as in any particular case where the Secretary-General of the United Nations has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.

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

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

4. The appropriate Danish Authorities shall not enter the Headquarters premises to perform any official duties, except with the express consent of the Executive Director and under conditions agreed to by him or her.

5. UNOPS shall have the power to make regulations, operative within the Headquarters, for the purpose of establishing therein conditions in all respects necessary for the full execution of its' functions. No law of Denmark which is inconsistent with a regulation of UNOPS authorized by this paragraph shall, to the extent of such inconsistency, be enforceable within the Headquarters. Any dispute between UNOPS and the Government as to whether a regulation of UNOPS is authorized by this paragraph or as to whether a law of Denmark is inconsistent with any regulation of UNOPS authorized by this paragraph, shall promptly be settled by the procedure set out in Article XXVI. The regulations set out in this Article shall not prevent the reasonable application of protective measures to be taken by the competent Danish authorities in case of an emergency such as a fire.

6. Juridical actions, including service of legal process and the seizure of private property, shall not take place within the Headquarters, except with the consent of, and under conditions approved by the Executive Director.

7. Without prejudice to the provisions of the Convention or this Agreement, UNOPS shall prevent the Headquarters from being used as a refuge by persons who are avoiding arrest under any law of Denmark, who are required by the Government for extradition to another country, or who are endeavoring to avoid service of legal process.

8. The appropriate Danish authorities shall make every possible effort to secure upon the request of the Executive Director the public services needed by UNOPS, including, without limitation by reason of this enumeration postal, telephone, and telegraph services and power, water and fire protection services. Such public services shall be supplied on equitable terms.

9. In case of any interruption or threatened interruption of the aforesaid services, the appropriate Danish authorities shall consider the needs of the Headquarters as being of equal importance with those of essential agencies of the Government, and shall take steps accordingly, to ensure that the work of UNOPS is not prejudiced.

10. Any location in or outside Copenhagen which may be used temporarily for meetings by UNOPS or the United Nations shall be deemed, with the written concurrence of the Government, to be included in the Headquarters district for the duration of such meetings,

11. Except as otherwise provided in this Agreement or the Convention, the laws of Denmark shall apply within the headquarters.

Article VI. Entry into, exit from, movement and sojourn in the host country

1. All persons referred to in this Agreement and persons invited on official business by the Executive Director shall have the right of unimpeded entry into, exit from, free movement and sojourn within the host country. They shall be granted facilities for speedy travel. Visas, entry permits or licenses, where required, shall be granted free of charge and as promptly as possible. The same facilities shall be extended to UNOPS candidates, if such is requested by the Executive Director. No activity performed by persons referred to above in their official capacity with respect to UNOPS shall constitute a reason for preventing their entry into or departure from the territory of the host country or for requiring them to leave such territory.

2. The Government undertakes, for this purpose, to allow the entry into and residence in Denmark of the persons listed in Articles X to XII below during their assignment or during the performance of their duties for UNOPS, without charging visa fees and without delay as well as exemption from any requirements of exit visa formalities upon departure from. Denmark of:

(*a*) Representatives of States, representatives of United Nations organs, specialized or related agencies, and observers from intergovernmental, non-governmental and other organizations invited to participate in conferences or meetings convened in Denmark by the United Nations including alternate representatives or observers, advisers, experts and assistants, as well as their spouses and dependent members of their families;

(*b*) Officials of UNOPS, experts on missions, as well as their spouses and dependent members of their families;

(*c*) Officials of the United Nations or any of its specialized or related agencies who are assigned to work for UNOPS and those who have official duties with UNOPS, as well as their spouses and dependent members of their families;

(*d*) All persons invited to the Headquarters on official business.

3. Without prejudice to the privileges, immunities, facilities and courtesies which they may enjoy, persons referred to in paragraph 2 above may not be forced by Danish authorities to leave Danish territory unless they abuse their recognized residence privileges, and subject to the provisions mentioned hereunder:

(*a*) No action to force the persons referred to in paragraph 2 above to leave the Danish territory may be taken except with the prior approval of the Ministry of Foreign Affairs.

Such approval shall be given only after consultation with the Secretary-General of the United Nations;

(*b*) Persons enjoying diplomatic privileges and immunities under this Agreement may not be requested to leave the Danish territory except in accordance with the practices and procedures applicable to diplomats accredited to the Government;

(*c*) It is understood that persons referred to in paragraph 2 above shall not be exempt from application of quarantine or other health regulations.

Article VII. Communications facilities

1. For all official postal, telephone, telegraph, telephoto and electronic communications, the Government shall accord to UNOPS a treatment equivalent to that accorded to any diplomatic missions, or to other intergovernmental organizations in matters of establishment and operation, priorities, tariffs and charges on mail, cables, telegrams, telephotos, telephone calls and other communications, as well as such rates for news reported to the press and radio as may be accorded.

2. The Government shall secure the inviolability of the official correspondence of UNOPS and shall not apply any censorship to such correspondence. Such inviolability shall extend, without limitation, by reason of this enumeration to publications, still and moving pictures, films and sound recording dispatched to or by UNOPS, as well as to any electronic data communications and other forms of communications as may be agreed between UNOPS and the Government.

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

(*a*) UNOPS Is authorized to establish and operate at the. Headquarters facilities for electronic, high frequency radio and satellite communications including point to point dedicated telecommunications circuits as and when needed for the purpose of communications with other United Nations or UNOPS offices all over the world;

(*b*) With the agreement of the Government as may be included in a supplementary Agreement between the United Nations and the Government, UNOPS may also establish and operate at the Headquarters:

(i) Its own short-wave sending and receiving radio broadcasting facilities (including emergency link equipment) which may be used on the same frequencies (within the tolerances prescribed for the broadcasting service by applicable Danish regulations) radiograph, radiotelephone and similar services;

(ii) Such other radio facilities as may be specified by supplementary agreement;

(*c*) UNOPS shall make arrangements for the operation of the services referred to in this Article with the International Telecommunication Union, the appropriate agencies of the Government and the appropriate agencies of other affected Governments with regard to all frequencies and similar matters;

(*d*) The facilities provided for in this Article may, to the extent necessary for efficient operation, be established and operated outside the Headquarters with the consent of the Government.

Article VIII. Funds, assets and other property

Without being restricted by financial controls, regulations or moratoria of any kind, UNOPS shall be free to:

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

(*b*) transfer its funds, gold or currency from one country to another or within Denmark to other organizations or agencies of the United Nations system;

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

Article IX. Exemption from taxation

1. UNOPS, its assets, income and other property shall be exempt from all direct and indirect taxes, including, but not limited to, income tax, value added tax, capital tax, corporate tax, trade tax, motor vehicle tax, property tax, fees, tolls, excise duty, conveyance duty or any other duties, levied by national, regional or local authorities or otherwise. It is understood, however, that UNOPS shall not claim exemption from taxes and duties which are, in fact, no more than charges for public utility services provided at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemized.

2. UNOPS, its funds, assets and other property shall be exempt from all custom duties in respect of articles imported or exported by UNOPS for its official use, including motor vehicles. It is understood, however, that articles imported or purchased under such an exemption shall not be sold or otherwise disposed of in Denmark except under conditions agreed upon with the Government. UNOPS shall also be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of its publications, audio-visual materials, etc.

Article X. Representatives of States

1. The representatives of States shall, together with members of their families forming part of their household and who do not have Danish nationality or permanent residence status in the host country, enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents, in accordance with international law and in particular under the Convention and the 1961 Vienna Convention on Diplomatic Relations.

2. The representatives of States who are not resident in Denmark shall, in the discharge of their duties and while exercising their functions, enjoy privileges and immunities as described in Article IV of the Convention.

3. The Ministry of Foreign Affairs shall include the names of the individuals referred to in paragraph 1 above on the Diplomatic List.

Article XI. Officials of UNOPS

1. Officials of UNOPS shall enjoy the following privileges and immunities:

(*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 to be accorded after termination of employment with UNOPS;

(*b*) Immunity from inspection or seizure of official baggage;

(*c*) Exemption from taxation on the salaries and emoluments paid to them by UNOPS, including accrued interest rates on UN pension schemes;

(*d*) Exemption from military and national service obligations;

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

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

(*g*) The same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their household as are accorded in time of international crises to members, having comparable rank, of the staffs of heads of diplomatic missions accredited to Denmark;

(*h*) If they have been previously residing outside Denmark, the right to import their furniture, personal effects and all household appliances, including one automobile, intended for personal use free of duty. The privilege shall be valid for a period of one year from the date of first taking up their post in Denmark.

(*i*) For officials who are not locally recruited staff, the right to import free of customs and excise duties, limited quantities of certain articles for personal consumption (food products, beverages, etc.);

(*j*) For officials who are not locally recruited staff, the right, once every three years, to import one automobile and one motorcycle free of customs and excise duties, including value added taxes, it being understood that permission to sell or dispose of the automobile or motorcycle in the open market will normally be granted two years after the importation of the automobile or motorcycle only. It is further understood that customs and excise duties will become payable in the event of the sale or disposal of such automobile or motorcycle within three years after its importation to a person not entitled to this exemption.

2. Officials of UNOPS having the professional grade of P.5 or above and such additional categories of officials as may be designated, in agreement between the United Nations and the Government, on the ground of the responsibilities of their positions in the UNOPS, Denmark, shall be accorded the same privileges and immunities, exemptions and facilities as the Government accords to members of diplomatic missions accredited in Denmark, having comparable rank.

3. In addition, to the privileges and immunities specified above, the Executive Director shall be accorded in respect of himself, his spouse and minor children, the privileges and immunities, exemptions and facilities normally accorded to Heads of diplomatic missions.

4. The Ministry of Foreign Affairs shall include the names of the individuals referred to in paragraphs 2 and 3 above on the Diplomatic List.

Article XII. Experts on missions for UNOPS

Experts on missions for UNOPS, other than the Officials referred to in Article XI above, performing missions authorized by, serving on boards, committees or other organs of, or consulting at its request in any way with UNOPS shall enjoy, within, and with respect to Denmark, the following privileges and immunities:

(*a*) Immunity in respect of themselves, their spouses and their dependent children from personal arrest or detention and from seizure of their personal and official baggage;

(*b*) Immunity from legal process of any kind with respect to words spoken or written, and all acts done by them, in the performance of their official functions, such immunity to continue notwithstanding that the persons concerned may no longer be employed on missions for, serving on committees of, or acting as consultants for UNOPS, or may no longer be present at the Headquarters attending meetings convened by UNOPS;

(*c*) Inviolability of all papers, documents and other official material;

(*d*) The right, for the purpose of all communications with UNOPS, to use codes and to dispatch or receive papers, correspondence or other official material by courier or in sealed bags;

(*e*) Exemption with respect to themselves and their spouses from immigration restrictions, alien registration and national service obligations;

(*f*) The same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their households as are accorded in time of international crisis to members having comparable rank, of the staff of heads of diplomatic missions accredited to Denmark;

(*g*) The same privileges with respect to currency and exchange restrictions, as are accorded to representatives of foreign Governments on temporary official missions;

(*h*) The same immunities and facilities with respect to their personal and official baggage as the Government accords to members, having comparable rank of the staff of heads of diplomatic missions accredited to Denmark.

Article XIII. Personnel recruited locally and assigned to hourly rates

Personnel recruited in Denmark and assigned to hourly rates shall be accorded immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with UNOPS. The terms and conditions of their employment shall be in accordance with the relevant United Nations resolutions, decisions, regulations, rules and policies.

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

1. Spouses of all persons employed by UNOPS and their children forming part of their household who are under 21 years of age or economically dependent, shall not require a work permit.

2. The Government undertakes to issue visas and residence permits, where required, to household employees of persons employed by UNOPS as speedily as possible; household

employees serving in the private households of persons employed by UNOPS are exempt from requirements of a work permit.

3. It is understood that denial of the above referenced permits must not relate to nationality, gender, religion, professional or political affiliation.

Article XV. Notification

UNOPS shall notify the Government of the names and categories of Officials of UNOPS, experts on missions, and personnel locally recruited and assigned to hourly rates, and of any change in their status.

Article XVI. Identification cards

1. At the request of the Executive Director, the Government shall issue to the personnel of UNOPS referred to in Articles X to XIII above appropriate identity documents comparable to those issued to staff of other diplomatic missions.

2. Members of the staff of UNOPS shall show, but not surrender, their identity documents to any authorized Government official upon request.

3. Upon the termination of the functions of a member of the staff of UNOPS or upon his/her transfer, UNOPS shall ensure that his identity documents are promptly returned to the Government.

Article XVII. Co-operation with the appropriate Danish authorities

1. Without prejudice to their privileges and immunities, it is the duty of all persons, enjoying such privileges and immunities to respect the laws and regulations of the host country. They also have a duty not to interfere in the internal affairs of the host country.

2. UNOPS shall co-operate at all times with the appropriate authorities to facilitate the proper administration of justice, secure the observance of police regulations and avoid the occurrence of any abuse in connection with the privileges, immunities, facilities and courtesies accorded under this Agreement.

3. If the Government considers that there has been an abuse of the privileges or immunities conferred by this Agreement, consultations will be held between the competent authorities and the Executive Director to determine whether any such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to the Government and to the United Nations, either Party may submit the question as to whether such an abuse has occurred for resolution in accordance with the provisions on settlement of disputes under Article XXIV.

Article XVIII. Waiver of immunity

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

Article XIX. Laissez-passer

1. The Government shall recognize and accept the United Nations *laissez-passer* issued to Officials of UNOPS as a valid travel document equivalent to a passport.

2. In accordance with the provisions of section 26 of the Convention, the Government shall recognize and accept the United Nations certificate issued to experts on missions for UNOPS and other persons travelling on the business of UNOPS.

3. The Government further agrees to issue any required visas on such certificates.

Article XX. Security

1. The Government shall provide to UNOPS and its personnel, throughout Denmark, such security as is required for the effective performance of its activities. To this end, the appropriate Danish Authorities shall ensure the security and protection of the Headquarters and personnel, and exercise diligence to ensure that the tranquillity of the Headquarters is not disturbed, by the unauthorized entry of persons or groups of persons from outside or by disturbances in its immediate vicinity.

2. If so requested by the Executive Director, the appropriate Danish Authorities shall provide necessary assistance for the preservation of law and order in the Headquarters and for the removal therefrom of persons as requested by the Executive Director.

Article XXI. Government undertaking

The Government undertakes to respect the status of UNOPS and its personnel, and to ensure that anyone associated with UNOPS is not subjected in any way to abuses, threats, reprisals or legal prosecution by reason of their status.

Article XXII. Government contribution

In addition, to the contribution set out in the Agreement relating to the occupancy and use of premises by United Nations Offices in Copenhagen, concluded between the United Nations and Denmark on 20 May 1997, which the parties hereto agree should be amended in due course, and which is superseded in accordance with Article XXV paragraph 5 hereof, and therefore amended consequentially with immediate effect on the signing of the present agreement to the extent that, in relation to UNOPS, it is inconsistent or at variance with the present agreement, the Government shall also assist UNOPS in the installation and supply of utility services, such as water, electricity, sewerage, fire protection services and other essential services, for the Headquarters, as may be requested by UNOPS.

Article XXIII. Flags, emblems and distinctive signs

The Headquarters may fly or display the United Nations flag and/or emblems on its premises, official vehicles and in any other manner agreed upon by the Parties.

Article XXIV. Settlement of disputes

1. UNOPS shall make provisions for appropriate modes of settlement of:

(*a*) Disputes arising out of contracts and other disputes of a private law character to which UNOPS is a Party;

(*b*) Disputes involving an official of UNOPS who, by reason of his or her official position, enjoys immunity, if such immunity has not been waived.

2. Any dispute between UNOPS and the Government (hereinafter referred to as "the Parties") concerning the interpretation or application of this Agreement or of any supplementary Agreement or arrangement or any question, affecting the Headquarters or the relationship between UNOPS or the United Nations and the Government or the regulations of the United Nations, which is not settled by negotiation or any other agreed mode of settlement shall be referred for final decision, at the request of either Party, to a tribunal of three arbitrators: one to be chosen by the Secretary-General of the United Nations, one to be chosen by the Minister for Foreign Affairs of Denmark, and the third, who shall be Chairperson of the tribunal, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third within three months following the appointment of the first two arbitrators, such third arbitrator shall be chosen by the President of the International Court of Justice at the request of the Secretary-General of the United Nations or the Government. The arbitral tribunal shall determine its own procedure. The expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral tribunal shall reach its decision by a majority of votes. 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 XXV. Final provisions

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

2. Consultations with respect to amendments to this Agreement shall be entered into at the request of either Party and such amendments shall be made in writing by mutual consent.

3. This Agreement shall enter into force upon the date of the last signature and shall continue in force unless this Agreement is terminated in accordance with paragraph 4 below.

4. Except where this Agreement is applicable in connection with the orderly termination of operations of the Headquarters and disposition of UNOPS properly in Denmark, this Agreement shall terminate:

(*a*) By written notice of either Party to the other not less than twelve months after receipt of such notice; or

(*b*) By decision of the Executive Board of the UNDP to relocate the Headquarters out of the territory of Denmark not less than three months after this decision;

5. This Agreement supersedes the Exchange of Letters, constituting an Interim Agreement regarding the legal status of the UNOPS in Copenhagen, concluded on 20 May 1997.

6. It is understood that, should the Government enter into an agreement which accords a more favorable treatment than accorded to UNOPS in this Agreement, UNOPS shall have the right to request that similar treatment be also extended to UNOPS.

Done in duplicate in the English language at Copenhagen on 13 December 2007.

For the United Nations,	For the Government of Denmark
[*Signed*]	[*Signed*]
Executive Director	Under-Secretary for Multilateral Affairs

(*h*) Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the Special Tribunal for Lebanon. New York, 21 December 2007*

The United Nations and the Kingdom of the Netherlands,

Referring to the document annexed to Security Council resolution 1757 (2007) of 30 May 2007, entitled "the Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon";

Whereas the Security Council acting under Chapter VII of the Charter of the United Nations decided, in operative paragraph 1, subparagraph a, of its resolution 1757 (2007), for the provisions of the document annexed to that resolution, including its attachment, to enter into force on 10 June 2007 at the latest;

Whereas the document annexed to Security Council resolution 1757 (2007), including its attachment, has entered into force on 10 June 2007;

Whereas by letter of 23 July 2007, the Secretary-General of the United Nations invited the Kingdom of the Netherlands to consider hosting the Special Tribunal for Lebanon;

Whereas the Kingdom of the Netherlands accepted to host the Special Tribunal for Lebanon;

Whereas the Government of the Lebanese Republic has expressed its gratitude to the Kingdom of the Netherlands for its willingness to host the Special Tribunal for Lebanon and has been consulted in accordance with operative paragraph 1, subparagraph b, of Security Council resolution 1757 (2007);

Whereas the United Nations and the Kingdom of the Netherlands wish to conclude an agreement to facilitate the smooth and efficient functioning of the Tribunal in the host State;

Have agreed as follows:

Part I. General provisions

Article 1. Use of terms

For the purpose of this Agreement:

(*a*) "Statute" means the Statute of the Special Tribunal for Lebanon as attached to the document annexed to Security Council resolution 1757 (2007);

(*b*) "Tribunal" means the Special Tribunal for Lebanon established by the Statute;

(*c*) "Secretary-General" means the Secretary-General of the United Nations;

* Entered into force provisionally on 21 December 2007, in accordance with article 51.

(*d*) "Government of Lebanon" means the Government of the Lebanese Republic;

(*e*) "host State" means the Kingdom of the Netherlands;

(*f*) "Parties" means the United Nations and the host State;

(*g*) "judges" means the judges of the Tribunal appointed by the Secretary-General in accordance with article 2 of the document annexed to Security Council resolution 1757 (2007) and article 9, paragraph 3, of the Statute;

(*h*) "President" means the President of the Tribunal elected in accordance with article 8, paragraph 2, of the Statute;

(*i*) "Prosecutor" means the Prosecutor appointed by the Secretary-General in accordance with article 3, paragraph 2, of the document annexed to Security Council resolution 1757 (2007) and article 11, paragraph 3, of the Statute;

(*j*) "Deputy Prosecutor" means the Deputy Prosecutor appointed by the Government of Lebanon in accordance with article 3, paragraph 3, of the document annexed to Security Council resolution 1757 (2007);

(*k*) "Registrar" means the Registrar appointed by the Secretary-General in accordance with article 4, paragraph 1, of the document annexed to Security Council resolution 1757 (2007) and article 12, paragraph 3, of the Statute;

(*l*) "Head of the Defence Office" means the independent Head of the Defence Office appointed by the Secretary-General in accordance with article 13, paragraph 1, of the Statute;

(*m*) "staff" means the staff recruited in accordance with the document annexed to Security Council resolution 1757 (2007) and the Statute;

(*n*) "interns" means graduate or postgraduate students who, not being staff, have been accepted by the Tribunal into the internship programme of the Tribunal for the purpose of performing certain tasks for the Tribunal without receiving a salary from the Tribunal;

(*o*) "witnesses", "victims" and "experts" means persons designated as such by the Tribunal;

(*p*) "counsel" means defence counsel and the legal representatives of victims;

(*q*) "suspect" means a person referred to as such in the Statute;

(*r*) "accused" means a person referred to as such in the Statute;

(*s*) "Management Committee" means the Management Committee referred to in article 6 of the document annexed to Security Council resolution 1757 (2007);

(*t*) "premises" means buildings, parts of buildings, and areas, including installations and facilities made available to, maintained, occupied or used by the Tribunal in the host State, in consultation with the host State, in connection with its functions and purposes, including detention of a person, or in connection with meetings of the Management Committee;

(*u*) "Ministry of Foreign Affairs" means the Ministry of Foreign Affairs of the host State;

(*v*) "competent authorities" means national, provincial, municipal and other competent authorities under the laws, regulations and customs of the host State;

(*w*) "Vienna Convention" means the Vienna Convention on Diplomatic Relations of 18 April 1961;

(*x*) "Rules of Procedure and Evidence" means the Rules of Procedure and Evidence of the Tribunal adopted in accordance with article 28 of the Statute.

Article 2. Purpose and scope of this Agreement

This Agreement shall regulate matters relating to or arising out of the establishment and the proper functioning of the Tribunal in the host State. It shall, *inter alia,* create conditions conducive to the stability and independence of the Tribunal and facilitate its smooth and efficient functioning, including, in particular, its needs with regard to all persons required by the Tribunal to be present at its seat and with regard to the transfer of information, potential evidence and evidence into and out of the host State.

Article 3. Seat of the Tribunal

The Tribunal shall have its seat in the Netherlands.

Part II. Status of the Tribunal

Article 4. Juridical personality

1. The Tribunal shall possess in the host State full juridical personality. This shall, in particular, include the capacity:

(*a*) to contract;

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

(*c*) to institute proceedings; and

(*d*) to enter into agreements as may be necessary for the exercise of its functions and for the operation of the Tribunal in accordance with article 7, paragraph d, of the document annexed to Security Council resolution 1757 (2007).

2. For the purpose of this article the Tribunal shall be represented by the Registrar.

Article 5. Privileges, immunities and facilities

The Tribunal shall enjoy, in the territory of the host State, such privileges, immunities and facilities as are necessary for the fulfilment of its purposes.

Article 6. Inviolability of the premises

1. The premises shall be inviolable. The competent authorities shall ensure that the Tribunal is not dispossessed and/or deprived of all or any part of its premises without its express consent.

2. The competent authorities shall not enter the premises to perform any official duty, except with the express consent, or at the request of the Registrar, or a staff member of the Tribunal designated by him or her. Judicial actions and the service or execution of legal process, including the seizure of private property, cannot be enforced on the premises except with the consent of and in accordance with conditions approved by the Registrar.

3. In case of fire or other emergency requiring prompt protective action, or in the event that the competent authorities have reasonable cause to believe that such an emergency has occurred or is about to occur on the premises, the consent of the Registrar, or a staff member of the Tribunal designated by him or her, to any necessary entry into the premises shall be presumed if neither of them can be contacted in time.

4. Subject to paragraphs 1, 2 and 3 of this article, the competent authorities shall take the necessary action to protect the premises against fire or other emergency.

5. The Tribunal shall prevent its premises from being used as a refuge by persons who are avoiding arrest or the proper administration of justice under any law of the host State.

Article 7. Protection of the premises and their vicinity

1. The competent authorities shall take all effective and adequate measures to ensure the security and protection of the Tribunal and to ensure that the tranquillity of the Tribunal is not disturbed by the intrusion of persons or groups from outside the premises or by disturbances in their immediate vicinity, and shall provide to the premises the appropriate protection as may be required.

2. If so requested by the Registrar, the competent authorities shall, in consultation with the Registrar, to the extent it is deemed necessary by the competent authorities, provide adequate protection, including police protection, for the preservation of law and order on the premises or in the immediate vicinity thereof, and for the removal of persons therefrom.

3. The competent authorities shall take all reasonable steps to ensure that the amenities of the premises are not prejudiced and that the purposes for which the premises are required are not obstructed by any use made of the land or buildings in the vicinity of the premises.

4. The Tribunal shall take all reasonable steps to ensure that the amenities of the land in the vicinity of the premises are not prejudiced by any use made of the land or buildings in the premises.

5. The Tribunal shall provide the competent authorities with all information relevant to the security and protection of the premises.

Article 8. Law and authority on the premises

1. The premises shall be under the control and authority of the Tribunal, as provided in this Agreement.

2. Except as otherwise provided in this Agreement, the laws and regulations of the host State shall apply on the premises.

3. The Tribunal shall have the power to make regulations, operative within its premises, as are necessary for the carrying out of its functions. The Tribunal shall promptly inform the competent authorities upon the adoption of such regulations. No laws or regulations of the host State which are inconsistent with regulations of the Tribunal under this paragraph shall, to the extent of such inconsistency, be applicable within the premises.

4. The Tribunal may expel or exclude persons from the premises for violation of its regulations and shall inform in advance the competent authorities of such measures.

5. Subject to the regulations referred to in paragraph 3 of this article, and consistent with the laws and regulations of the host State, only staff authorized by the Registrar shall be allowed to carry arms on the premises.

6. The Registrar shall notify the host State of the name and identity of staff authorized by the Registrar to carry arms on the premises, as well as the name, type, calibre and serial number of the arm or arms at his or her disposition.

7. Any dispute between the Tribunal and the host State as to whether a regulation of the Tribunal come within the ambit of this article or as to whether a law or regulation of the host State is inconsistent with a regulation of the Tribunal under this article shall promptly be settled by the procedure set out in article 48 of this Agreement. Pending such settlement, the regulation of the Tribunal shall apply and the law or regulation of the host State shall be inapplicable on the premises to the extent that the Tribunal claims it to be inconsistent with its regulation.

Article 9. Public services for the premises

1. The competent authorities shall secure, upon the request of the Registrar or a staff member of the Tribunal designated by him or her, on fair and equitable conditions, the public services needed by the Tribunal such as, but not limited to, postal, telephone, telegraphic services, any means of communication, electricity, water, gas, sewage, collection of waste, fire protection, local transportation and cleaning of public streets including snow removal.

2. In cases where the services referred to in paragraph 1 of this article are made available to the Tribunal by the competent authorities, or where the prices thereof are under their control, the rates for such services shall not exceed the lowest comparable rates accorded to essential agencies and organs of the host State.

3. In case of any interruption or threatened interruption of any such services, the Tribunal shall be accorded the priority given to essential agencies and organs of the host State, and the host State shall take steps accordingly to ensure that the work of the Tribunal is not prejudiced.

4. Upon request of the competent authorities, the Registrar, or staff member of the Tribunal designated by him or her, shall make suitable arrangements to enable duly authorized representatives of the appropriate public services to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers on the premises under conditions which shall not unreasonably disturb the carrying out of the functions of the Tribunal.

5. Underground constructions may be undertaken by the competent authorities on the premises only after consultation with the Registrar, or a staff member of the Tribunal designated by him or her, and under conditions which shall not disturb the carrying out of the functions of the Tribunal.

Article 10. Flag, emblem and markings

The Tribunal shall be entitled to display its flag, emblem and markings at its premises and on vehicles and other means of transportation used for official purposes.

Article 11. Funds, assets and other property

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

2. Funds, assets and other property of the Tribunal, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

3. To the extent necessary to carry out the functions of the Tribunal, funds, assets and other property of the Tribunal, wherever located and by whomsoever held, shall be exempt from restrictions, regulations, control or moratoria of any nature.

Article 12. Inviolability of archives, documents and materials

1. The archives of the Tribunal, and all papers and documents in whatever form, and materials being sent to or from the Tribunal, held by the Tribunal or belonging to it, wherever located and by whomsoever held, shall be inviolable.

2. The termination or absence of such inviolability shall not affect protective measures that the Tribunal may order with regard to documents and material made available to or used by the Tribunal.

Article 13. Facilities in respect of communications

1. The Tribunal shall enjoy in the territory of the host State for the purposes of its official communications and correspondence treatment not less favourable than that accorded by the host State to any intergovernmental organization or diplomatic mission in the matter of priorities, rates and taxes applicable to mail and the various forms of communication and correspondence.

2. No censorship shall be applied to the official communications or correspondence of the Tribunal.

3. The Tribunal shall have the right to operate all appropriate means of communication, including electronic means of communication, and shall have the right to use codes or cipher for its official communications and correspondence. The official communications and correspondence of the Tribunal shall be inviolable.

4. The Tribunal shall have the right to dispatch and receive correspondence and other materials or communications by courier or in sealed bags, which shall enjoy the same privileges, immunities and facilities as diplomatic couriers and bags.

5. The Tribunal shall have the right to operate radio and other telecommunication equipment on any frequencies allocated to it by the host State in accordance with its national procedures. The host State shall endeavour to allocate to the Tribunal, to the extent possible, frequencies for which it has applied.

6. For the fulfilment of its purposes and efficient discharge of its responsibilities, the Tribunal shall have the right to publish freely and without restrictions within the host State in conformity with this Agreement.

Article 14. Freedom of financial assets from restrictions

1. Without being subject to any financial controls, regulations, notification requirements in respect of financial transactions, or moratoria of any kind, the Tribunal may freely:

(*a*) purchase any currency, hold and use it;

(*b*) operate accounts in any currency;

(*c*) purchase, hold and use funds, securities and gold; and

(*d*) transfer its funds, securities, gold and currencies to or from the host State, to or from any other country, or within the host State and convert any currency held by it in any other currency.

2. The Tribunal shall enjoy treatment not less favourable than that accorded by the host State to any intergovernmental organization or diplomatic mission in respect of rates of exchange for its financial transactions.

Article 15. Exemption from taxes and duties for the Tribunal and its property

1. Within the scope of its official activities, the Tribunal, its assets, income and other property shall be exempt from all direct taxes, whether levied by national, provincial or local authorities.

2. Within the scope of its official activities, the Tribunal shall be exempt from:

(*a*) import and export taxes and duties *(belastingen bij invoer en uitvoer);*

(*b*) motor vehicle tax *(motorrijtiiigenbelasthig, MRB);*

(*c*) tax on passenger motor vehicles and motorcycles *(belasting van personenauto's en motorrijwielen, BPM);*

(*d*) value added tax *(omzetbelasting, BTW)* paid on goods and services supplied on a recurring basis or involving considerable expenditure;

(*e*) excise duties *(accijmen)* included in the price of alcoholic beverages and hydrocarbons such as fuel oils and motor fuels:

(*f*) real property transfer tax *(overdrachtsbelasting);*

(*g*) insurance tax *(assurantiebelasting);*

(*h*) energy tax (*regulerende energiebelasting, REB*);

(*i*) tax on mains water (*belasting op leidingwater, BOL*);

(*j*) any other taxes and duties of a substantially similar character as the taxes provided for in this paragraph, levied in the host State subsequent to the date of signature of this Agreement.

3. The exemptions provided for in paragraph 2, subparagraphs (d), (e), (f), (g), (h), (i) and (j) of this article may be granted by way of a refund. These exemptions shall be applied in accordance with the formal requirements of the host State. These requirements, however, shall not affect the general principles laid down in paragraph 2 of this article.

4. Goods acquired or imported under the terms set out in paragraph 2 of this article shall not be sold, let out, given away or otherwise disposed of, except in accordance with conditions agreed upon with the host State.

5. The Tribunal shall not claim exemption from taxes which are, in fact, no more than charges for public utility services provided at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemized.

Article 16. Exemption from import and export restrictions

The Tribunal shall be exempted from all restrictions on imports and exports in respect of articles imported or exported by the Tribunal for its official use and in respect of its publications.

Part III. Privileges, immunities and facilities accorded to persons under this agreement

Article 17. Privileges, immunities and facilities of the judges, the Prosecutor, the Deputy Prosecutor, the Registrar and the Head of the Defence Office

1. The judges, the Prosecutor, the Deputy Prosecutor, the Registrar and the Head of the Defence Office, together with members of their family forming part of their household who do not have Netherlands nationality or permanent residence status in the host State, shall enjoy the same privileges, immunities and facilities as are accorded by the host State to heads of diplomatic missions in conformity with the Vienna Convention. They shall, *inter alia,* enjoy:

(*a*) personal inviolability, including immunity from personal arrest or detention or any other restriction of their liberty;

(*b*) immunity from criminal, civil and administrative jurisdiction;

(*c*) inviolability of all papers, documents in whatever form and materials;

(*d*) exemption from national service obligations;

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

(*f*) exemption from taxation on salaries, emoluments and allowances paid in respect of the employment of the judges, the Prosecutor, the Deputy Prosecutor, the Registrar and the Head of the Defence Office with the Tribunal;

(*g*) the same facilities in respect of currency and exchange facilities as are accorded to diplomatic agents;

(*h*) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents;

(*i*) the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention;

(*j*) the right of unimpeded entry into, exit from or movement within the host State, as appropriate and for purposes of the Tribunal.

2. Where the incidence of any form of taxation depends upon residence, periods during which the judges, the Prosecutor, the Deputy Prosecutor, the Registrar and the Head of the Defence Office are present in the host State for the discharge of their functions shall not be considered as periods of residence.

3. The judges, the Prosecutor, the Deputy Prosecutor, the Registrar and the Head of the Defence Office shall, after the expiry of their terms of office, continue to be accorded

immunity from legal process of every kind in respect of words which had been spoken or written and acts which had been performed by them in their official capacity.

4. The host State shall not be obliged to exempt from income tax pensions or annuities paid to former judges, Prosecutors, Deputy Prosecutors, Registrars and Heads of the Defence Office and the members of their family forming part of their household.

5. Without prejudice to paragraph 2 of this article, persons referred to in this article who are nationals or permanent residents of the host State shall enjoy only the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions:

(*a*) immunity from personal arrest or detention or any other restriction of their liberty;

(*b*) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the performance of their functions for the Tribunal, which immunity shall continue to be accorded even after they have ceased to perform their functions for the Tribunal;

(*c*) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions for the Tribunal;

(*d*) exemption from taxation on salaries, emoluments and allowances paid to them in respect of their employment with the Tribunal;

(*e*) for the purpose of their communications with the Tribunal the right to receive and send papers in whatever form;

(*f*) the right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up their post in the host State.

6. Persons referred to in paragraph 6 of this article shall not be subjected by the host State to any measure which may affect the free and independent performance of their functions before the Tribunal.

Article 18. Privileges, immunities and facilities of staff

1. Staff shall enjoy such privileges, immunities and facilities as are necessary for the independent performance of their functions. They shall be accorded:

(*a*) immunity from personal arrest or detention or any other restriction of their liberty and from inspection or seizure of their official baggage;

(*b*) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in their official capacity, which immunity shall continue to be accorded even after termination of their employment with the Tribunal;

(*c*) inviolability of all official papers, documents in whatever form and materials;

(*d*) exemption from taxation on salaries, emoluments and allowances paid to them in respect of their employment with the Tribunal;

(*e*) exemption from national service obligations;

(*f*) together with members of their family forming part of their household, exemption from immigration restrictions and alien registration;

(*g*) the same privileges in respect of currency and exchange facilities as are accorded to the officials of comparable rank of diplomatic missions established in the host State;

(*h*) together with members of their family forming part of their household, the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention;

(*i*) the right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up their post in the host State, and to re-export their furniture and effects free of duties and taxes to their country of permanent residence.

2. In addition to the privileges, immunities and facilities listed in paragraph 1 of this article, staff of a rank comparable to the United Nations P-5 level and above, together with members of their family forming part of their household who are not nationals or permanent residents of the host State, shall be accorded the same privileges, immunities and facilities as the host State accords to diplomatic agents of comparable rank of the diplomatic missions established in the host State in conformity with the Vienna Convention.

3. In addition to the privileges, immunities and facilities listed in paragraph 1 of this article, staff of a rank comparable to the United Nations P-4 level and below, together with members of their family forming part of their household who are not nationals or permanent residents of the host State, shall be accorded by the host State the same privileges, immunities and facilities as the host State accords to members of the administrative and technical staff of diplomatic missions established in the host State, in conformity with the Vienna Convention, provided that the immunity from criminal jurisdiction and personal inviolability shall not extend to acts performed outside the course of their official duties.

4. Where the incidence of any form of taxation depends upon residence, periods during which the staff are present in the host State for the discharge of their functions shall not be considered as periods of residence.

5. The host State shall not be obliged to exempt from income tax pensions or annuities paid to former staff and the members of their family forming part of their household.

6. Without prejudice to paragraph 4 of this article, persons referred to in this article who are nationals or permanent residents of the host State shall enjoy only the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions:

(*a*) immunity from personal arrest or detention or any other restriction of their liberty;

(*b*) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the performance of their functions for the Tribunal, which immunity shall continue to be accorded even after they have ceased to perform their functions for the Tribunal;

(*c*) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions for the Tribunal;

(*d*) exemption from taxation on salaries, emoluments and allowances paid to them in respect of their employment with the Tribunal;

(*e*) for the purposes of their communications with the Tribunal the right to receive and send papers in whatever form;

(*f*) the right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up their post in the host State.

7. Persons referred to in paragraph 6 of this article shall not be subjected by the host State to any measure which may affect the free and independent performance of their functions before the Tribunal.

Article 19. Personnel recruited locally and not otherwise covered by this Agreement

1. Personnel recruited locally by the Tribunal and not otherwise covered by this Agreement shall be accorded immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity for the Tribunal. Such immunity shall continue to be accorded even after termination of their employment with the Tribunal. During their employment, they shall also be accorded such other facilities as may be necessary for the independent performance of their functions for the Tribunal.

2. The terms and conditions of the employment of personnel recruited locally by the Tribunal and not otherwise covered by this Agreement shall be in accordance with the relevant resolutions, decisions, regulations, rules and policies of the Tribunal.

Article 20. Employment of family members of the judges, the Prosecutor, the Deputy Prosecutor, the Registrar, the Head of the Defence Office and staff of the Tribunal

1. Members of the family forming part of the household of a judge, Prosecutor, Deputy Prosecutor, Registrar, Head of the Defence Office or member of the staff of the Tribunal shall be authorized to engage in gainful employment in the host State for the duration of the term of office of the judge, Prosecutor, Deputy Prosecutor, Registrar, Head of the Defence Office or member of the staff of the Tribunal concerned.

2. Members of the family forming part of the household of a judge. Prosecutor, Deputy Prosecutor, Registrar, Head of the Defence Office or member of the staff of the Tribunal who obtain gainful employment shall enjoy no immunity from criminal, civil or administrative jurisdiction with respect to matters arising in the course of or in connection with such employment. However, any measures of execution shall be taken without infringing the inviolability of their person or of their residence, if they are entitled to such inviolability.

3. In case of the insolvency of a person aged under 18 with respect to a claim arising out of gainful employment of that person, the immunity of the judges, the Prosecutor, the Deputy Prosecutor, the Registrar, the Head of the Defence Office and staff of whose family the person concerned is a member shall be waived for the purpose of settlement of the claim, in accordance with the provisions of article 28 of this Agreement.

4. The employment referred to in paragraph 1 of this article shall be in accordance with the legislation of the host State, including fiscal and social security legislation.

Article 21. Interns

1. Within eight days after the first arrival of interns in the host State the Tribunal shall request the Ministry of Foreign Affairs to register them in accordance with paragraph 2 of this article.

2. The Ministry of Foreign Affairs shall register interns for a maximum period of one year, provided that the Tribunal supplies the Ministry of Foreign Affairs with a declaration signed by them, accompanied by adequate proof, to the effect that:

(*a*) the intern entered the host State in accordance with the applicable immigration procedures;

(*b*) the intern has sufficient financial means for living expenses and for repatriation, as well as sufficient medical insurance (including coverage of costs of hospitalization for at least the duration of the internship plus one month) and third party liability insurance, and shall not be a charge on the public purse in the host State;

(*c*) the intern shall not engage in gainful employment in the host State during his or her internship other than as an intern for the Tribunal;

(*d*) the intern shall not bring any family members to reside with him or her in the host State other than in accordance with the applicable immigration procedures;

(*e*) the intern shall leave the host State within fifteen days after the end of the internship.

3. Upon registration of the intern in accordance with paragraph 2 of this article, the Ministry of Foreign Affairs shall issue an identity card to the intern.

4. The Tribunal shall not incur liability for damage resulting from non-fulfilment of the conditions of the declaration referred to in paragraph 2 of this article by interns registered in accordance with that paragraph.

5. Interns and shall not enjoy privileges, immunities and facilities, except:

(*a*) immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity for the Tribunal, which immunity shall continue to be accorded even after termination of the internship with the Tribunal for activities carried out on its behalf;

(*b*) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions for the Tribunal.

6. The Tribunal shall notify the Ministry of Foreign Affairs of the final departure of the intern from the host State within eight days after such departure, and shall at the same time return the intern's identity card.

In exceptional circumstances the maximum period of one year mentioned in paragraph 2 of this article may be extended once by a maximum period of one year.

Article 22. Counsel and persons assisting counsel

1. Counsel shall enjoy the following privileges, immunities and facilities to the extent necessary for the free and independent exercise of their functions, subject to production of the certificate referred to in paragraph 2 of this article:

(*a*) immunity from personal arrest or detention or any other restriction of their liberty in respect of acts or convictions prior to their entry into the territory of the host State;

(*b*) immunity from seizure of their personal baggage;

(*c*) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in their official capacity, which immunity shall continue to be accorded even after they have ceased to perform their functions;

(*d*) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions;

(*e*) for the purposes of communications in pursuance of their functions as counsel, the right to receive and send papers and documents in whatever form;

(*f*) together with members of their family forming part of their household, exemption from immigration restrictions and alien registration;

(*g*) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the host State; an inspection in such a case shall be conducted in the presence of the counsel concerned;

(*h*) the same privileges in respect of currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions;

(*i*) the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention.

2. Upon appointment of counsel in accordance with the Statute, the Rules of Procedure and Evidence, counsel shall be provided with a certificate by the Registrar for the period required for the performance of their functions. This certificate shall be withdrawn if the power or mandate is terminated prior to the expiry of the certificate.

3. Where the incidence of any form of taxation depends upon residence, periods during which counsel are present in the host State for the discharge of their functions shall not be considered as periods of residence.

4. Counsel who are nationals or permanent residents of the host State shall enjoy only the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions before the Tribunal:

(*a*) immunity from personal arrest or detention or any other restriction of their liberty;

(*b*) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the performance of their functions, which immunity shall continue to be accorded even after they have ceased to perform their functions;

(*c*) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions;

(*d*) for the purpose of their communications with the Tribunal the right to receive and send papers in whatever form.

5. Counsel shall not be subjected by the host State to any measure which may affect the free and independent performance of their functions before the Tribunal.

6. The provisions of this article shall apply, *mutatis mutandis,* to persons assisting counsel in accordance with the Rules of Procedure and Evidence.

7. This article shall be without prejudice to such disciplinary rules as may be applicable to counsel.

Article 23. Witnesses

1. Witnesses shall enjoy the following privileges, immunities and facilities to the extent necessary for their appearance before the Tribunal for purposes of giving evidence, subject to the production of the document referred to in paragraph 2 of this article:

(*a*) immunity from personal arrest or detention or any other restriction of their liberty in respect of acts or convictions prior to their entry into the territory of the host State;

(*b*) immunity from seizure of their personal baggage unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the host State;

(*c*) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their testimony, which immunity shall continue to be accorded even after their appearance and testimony before the Tribunal;

(*d*) inviolability of all papers, documents in whatever form and materials relating to their testimony;

(*e*) for purposes of their communications with the Tribunal and counsel in connection with their testimony, the right to receive and send papers and documents in whatever form;

(*f*) exemption from immigration restrictions and alien registration when they travel for purposes of their testimony;

(*g*) the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention.

2. Witnesses shall be provided by the Registrar with a document certifying that their appearance is required by the Tribunal and specifying a time period during which such appearance is necessary. This document shall be withdrawn prior to its expiry if the witness's appearance before the Tribunal, or his or her presence at the seat of the Tribunal is no longer required.

3. The privileges, immunities and facilities referred to in paragraph 1 of this article shall cease to apply after fifteen consecutive days following the date on which the presence of the witness concerned is no longer required by the Tribunal, provided such witness had an opportunity to leave the host State during that period.

4. Witnesses who are nationals or permanent residents of the host State shall enjoy only the following privileges, immunities and facilities to the extent necessary for their appearance or testimony before the Tribunal:

(*a*) immunity from personal arrest or detention or any other restriction of their liberty;

(*b*) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their appearance or testimony, which immunity shall continue to be accorded even after their appearance or testimony;

(*c*) inviolability of all papers, documents in whatever form and materials relating to their appearance or testimony;

(*d*) for the purpose of their communications with the Tribunal and with their counsel in connection with their appearance or testimony, the right to receive and send papers in whatever form.

5. Witnesses shall not be subjected by the host State to any measure which may affect their appearance or testimony before the Tribunal.

6. The Registrar shall take all necessary measures to arrange the immediate relocation to third States of witnesses who for security reasons cannot return to their home countries or their countries of permanent residence after testifying before the Tribunal.

Article 24. Victims

1. Victims participating in the proceedings in accordance with article 17 of the Statute and the applicable Rules of Procedure and Evidence shall enjoy the following privileges, immunities and facilities to the extent necessary for their appearance before the Tribunal, subject to the production of the document referred to in paragraph 2 of this article:

(*a*) immunity from personal arrest or detention or any other restriction of their liberty in respect of acts or convictions prior to their entry into the territory of the host State;

(*b*) immunity from seizure of their personal baggage unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the host State;

(*c*) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their appearance before the Tribunal, which immunity shall continue to be accorded even after their appearance before the Tribunal;

(*d*) inviolability of all papers, documents in whatever form and materials relating to their participation in proceedings before the Tribunal;

(*e*) exemption from immigration restrictions and alien registration when they travel to and from the Tribunal for purposes of their appearance.

2. Victims shall be provided by the Registrar with a document certifying their participation in the proceedings of the Tribunal and specifying a time period for that participation. Such document shall be withdrawn prior to its expiry if the victim is no longer participating in the proceedings of the Tribunal, or if the victim's presence at the seat of the Tribunal is no longer required.

3. The privileges, immunities and facilities referred to in paragraph 1 of this article shall cease to apply after fifteen consecutive days following the date on which the presence of the victim concerned is no longer required by the Tribunal, provided such victim had an opportunity to leave the host State during that period.

4. Victims who are nationals or permanent residents of the host State shall enjoy no privileges, immunities and facilities, except, to the extent necessary for their appearance before the Tribunal, immunity from legal process in respect of words spoken or written and all acts performed by them in the course of their appearance before the Tribunal, which immunity shall continue to be accorded even after their appearance before the Tribunal.

5. Victims shall not be subjected by the host State to any measure which may affect their appearance before the Tribunal.

Article 25. Experts

1. Experts performing functions for the Tribunal shall be accorded the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions, subject to production of the document referred to in paragraph 2 of this article:

(*a*) immunity from personal arrest or detention or any other restriction of their liberty in respect of acts or convictions prior to their entry into the territory of the host State;

(*b*) immunity from seizure of their personal baggage;

(*c*) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of the performance of their functions for the Tribunal, which immunity shall continue to be accorded even after the termination of their functions;

(*d*) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions for the Tribunal;

(*e*) for the purposes of their communications with the Tribunal, the right to receive and send papers and documents in whatever form and materials relating to the performance of their functions for the Tribunal by courier or in sealed bags;

(*f*) exemption from inspection of their personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the host State; an inspection in such a case shall be conducted in the presence of the expert concerned;

(*g*) the same privileges in respect of currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions;

(*h*) the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention;

(*i*) exemption from immigration restrictions and alien registration in relation to their functions as specified in the document referred to in paragraph 2 of this article.

2. Experts shall be provided by the Tribunal with a document certifying that they are performing functions for the Tribunal and specifying a time period for which their functions will last. Such document shall be withdrawn prior to its expiry if the expert is no longer performing functions for the Tribunal, or if the expert's presence at the seat of the Tribunal is no longer required.

3. The privileges, immunities and facilities referred to in paragraph 1 of this article shall cease to apply after fifteen consecutive days following the date on which the presence of the expert concerned is no longer required by the Tribunal, provided such expert had an opportunity to leave the host State during that period.

4. Experts who are nationals or permanent residents of the host State shall enjoy only the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions or their appearance or testimony for the Tribunal:

(*a*) immunity from personal arrest or detention or any other restriction of their liberty;

(*b*) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the performance of their functions or in the course of their appearance or testimony, which immunity shall continue to be accorded even after they have ceased to perform their functions or their appearance or testimony;

(*c*) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions or their appearance or testimony;

(*d*) for the purpose of their communications with the Tribunal the right to receive and send papers in whatever form.

5. Experts shall not be subjected by the host State to any measure which may affect the independent performance of their functions for the Tribunal.

Article 26. Other persons required to be present at the seat of the Tribunal

1. Other persons required to be present at the seat of the Tribunal shall, to the extent necessary for their presence at the seat of the Tribunal, be accorded the privileges, immunities and facilities provided for in article 24 of this Agreement, subject to production of the document referred to in paragraph 2 of this article.

2. Persons referred to in this article shall be provided by the Registrar with a document certifying that their presence is required at the seat of the Tribunal and specifying a time period during which such presence is necessary. Such document shall be withdrawn prior to its expiry if their presence at the seat of the Tribunal is no longer required.

3. The privileges, immunities and facilities referred to in paragraph 1 of this article shall cease to apply after fifteen consecutive days following the date on which the presence of such other person concerned is no longer required by the Tribunal, provided that such other person had an opportunity to leave the host State during that period.

4. Persons referred to in this article who are nationals or permanent residents of the host State shall enjoy no privileges, immunities and facilities, except, to the extent necessary for their presence at the seat of the Tribunal, immunity from legal process in respect of words spoken or written and all acts performed by them in the course of their presence at the seat of the Tribunal. Such immunity shall continue to be accorded even after their presence at the seat of the Tribunal is no longer required.

5. Persons referred to in this article shall not be subjected by the host State to any measures which may affect their presence before the Tribunal.

Article 27. Representatives of States participating in meetings of the Management Committee

Representatives of States participating in meetings of the Management Committee, shall while exercising their functions and during the journey to and from the host State, enjoy the privileges and immunities provided for in Article IV of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.

Part IV. Waiver of privileges and immunities

Article 28. Waiver of privileges, immunities and facilities provided for in articles 17, 18, 19, 21, 22, 23, 24, 25 and 26

The privileges, immunities and facilities provided for in articles 17, 18, 19, 21, 22, 23, 24, 25, and 26 of this Agreement are granted in the interests of the Tribunal and not for the personal benefit of the persons themselves. The right and duty to waive the immunity in any case where it can be waived without prejudice to the purpose for which it is accorded shall lie:

(*a*) as concerns the judges, the Prosecutor, the Deputy Prosecutor, the Registrar, the Head of the Defence Office, and members of their family forming part of the household, with the Secretary-General in consultation with the President;

(*b*) as concerns staff, personnel recruited locally, interns, and members of their family forming part of the household, with the Registrar;

(*c*) as concerns witnesses, victims, experts, other persons required to be present at the seat of the Tribunal, counsel, persons assisting counsel, and members of their family forming part of the household, with the President.

Part V. Cooperation between the Tribunal and the host State

Section 1. General

Article 29. General cooperation between the Tribunal and the host State

1. Whenever this Agreement imposes obligations on the competent authorities, the ultimate responsibility for the fulfilment of such obligations shall rest with the Government of the host State.

2. The host State shall promptly inform the Tribunal of the office designated to serve as the official contact point and to be primarily responsible for all matters in relation to this Agreement, as well as of any subsequent changes in this regard.

3. The Registrar, or a staff member of the Tribunal designated by him or her, shall serve as the official contact point for the host State, and shall be primarily responsible for all matters in relation to this Agreement. The host State shall be informed promptly about this designation and of any subsequent changes in this regard.

Article 30. Cooperation with the competent authorities

1. The Tribunal shall cooperate at all times with the competent authorities to facilitate the proper administration of justice, the enforcement of the laws of the host State, to secure

the observance of police regulations and to prevent the occurrence of any abuse in connection with the privileges, immunities and facilities accorded under this Agreement.

2. The Tribunal and the host State shall cooperate on security matters, taking into account the public order and national security of the host State.

3. Without prejudice to their privileges, immunities and facilities, it is the duty of all persons enjoying such privileges, immunities and facilities to respect the laws and regulations of the host State. They also have the duty not to interfere in the internal affairs of the host State.

4. The Tribunal shall cooperate with the competent authorities responsible for health, safety at work, electronic communications and fire prevention.

5. The Tribunal shall observe all security directives as agreed with the host State, as well as all directives of the competent authorities responsible for fire prevention regulations.

6. The host State will use its best efforts to notify the Tribunal of any proposed or enacted national laws and regulations having a direct impact on the privileges, immunities, facilities, rights and obligations of the Tribunal and the judges, the Prosecutor, the Deputy Prosecutor, the Registrar, the Head of the Defence Office and staff. The Tribunal shall have the right to provide observations as to proposed national laws and regulations.

Article 31. Notification

The Registrar shall promptly notify the host State of:

(*a*) the appointment of the judges, the Prosecutor, the Deputy Prosecutor, the Registrar, the Head of the Defence Office and staff, the date of their arrival and their final departure or the termination of their functions with the Tribunal;

(*b*) the arrival and final departure date of members of the family forming part of the household of the persons referred to in subparagraph 1(a) of this article and, where appropriate, the fact that a person has ceased to form part of the household;

(*c*) the arrival and final departure date of private or domestic servants of persons referred to in subparagraph 1(a) of this article and, where appropriate, the fact that they are leaving the employ of such persons.

2. The host State shall issue to the judges, the Prosecutor, the Deputy Prosecutor, the Registrar, the Head of the Defence Office and staff and to members of their family forming part of their household and to private or domestic servants an identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to the competent authorities.

3. At the final departure of the persons referred to in paragraph 2 of this article or when these persons have ceased to perform their functions, the identity card referred to in paragraph 2 of this article shall be promptly returned by the Tribunal to the Ministry of Foreign Affairs.

Article 32. Social security regime

1. If the social security system of the Tribunal offers coverage comparable to the coverage under the legislation of the host State, the Tribunal and the judges, the Prosecu-

tor, the Deputy Prosecutor, the Registrar, the Head of the Defence Office and staff to whom the aforementioned scheme applies shall be exempt from social security provisions of the host State. Consequently, they shall not be covered against the risks described in the social security provisions of the host State. This exemption applies to them, unless they take up gainful activity in the host State.

2. Paragraph 1 of this article shall apply, *mutatis mutandis,* to members of the family forming part of the household of the persons referred to in paragraph 1, unless they are engaged in gainful employment in the host State, or are self-employed, or receive social security benefits from the host State.

Section 2. Visas, permits and other documents

Article 33. Visas for the judges, the Prosecutor, the Deputy Prosecutor, the Registrar, the Head of the Defence Office, staff, counsel and persons assisting counsel

1. The judges, the Prosecutor, the Deputy Prosecutor, the Registrar, the Head of the Defence Office, staff, counsel and persons assisting counsel, as notified as such by the Registrar to the host State, shall have the right of unimpeded entry into, exit from and movement within the host State including unimpeded access to the premises.

2. Visas, where required, shall be granted free of charge and as promptly as possible.

3. Applications for visas where required from members of the family forming part of the household of the persons referred to in paragraph 1 of this article shall be processed by the host State as promptly as possible and granted free of charge.

Article 34. Visas for witnesses, victims, experts, interns, and other persons required to be present at the seat of the Tribunal

1. All persons referred to in articles 21, 23, 24, 25 and 26 of this Agreement, as notified as such by the Registrar to the host State, shall have the right of unimpeded entry into, exit from and, subject to paragraph 3 of this article, movement within the host State, as appropriate and for the purposes of the Tribunal.

2. Visas, where required, shall be granted free of charge and as promptly as possible. The same facilities shall be accorded to persons accompanying witnesses and victims, who have been notified as such by the Registrar to the host State.

3. The host State may attach such conditions or restrictions to the visa as may be necessary to prevent violations of its public order or to protect the safety of the person concerned.

4. Before applying paragraph 3 of this article, the host State will seek observations from the Tribunal.

Article 35. Visas for visitors of persons detained by the Tribunal

1. The host State shall make adequate arrangements by which visas for visitors of persons detained by the Tribunal are processed promptly. Visas for visitors who are family members of a person detained by the Tribunal shall be processed promptly and may be issued, where appropriate, free of charge or for a reduced fee.

2. Visas for the visitors referred to in paragraph 1 of this article may be subjected to territorial limitations. Visas may be refused in the event that:

(*a*) the visitors referred to in paragraph 1 of this article cannot produce documents justifying the purpose and conditions of the intended stay and demonstrating that they have sufficient means of subsistence, both for the period of the intended stay and for the return to the country of origin or transfer to a third State into which they are certain to be admitted, or that they are in a position to acquire such means lawfully;

(*b*) an alert has been issued against them for the purpose of refusing entry; or

(*c*) they must be considered a threat to public order, national security or the international relations of any of the Contracting Parties to the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at their Common Borders.

3. The host State may attach such conditions or restrictions to the visa as may be necessary to prevent violations of its public order or to protect the safety of the person concerned.

4. Before applying paragraph 2 or 3 of this article, the host State will seek observations from the Tribunal.

Article 36. Laissez-passer

The host State shall recognize and accept the United Nations *laissez-passer* as a valid travel document.

Article 37. Driving licence

During their period of employment, the judges, the Prosecutor, the Deputy Prosecutor, the Registrar, the Head of the Defence Office and staff, members of their family forming part of their household and their private or domestic servants shall be allowed to obtain from the host State a driving licence on presentation of their valid foreign driving licence or to continue to drive using their own valid foreign driving licence, provided the holder is in possession of an identity card issued by the host State in accordance with article 31 of this Agreement.

Section 3. Security, operational assistance

Article 38. Security, safety and protection of persons referred to in this Agreement

1. Without prejudice to their privileges, immunities and facilities, the competent authorities shall take effective and adequate action which may be required to ensure the security, safety and protection of persons referred to in this Agreement, indispensable for the proper functioning of the Tribunal, free from interference of any kind.

2. The Tribunal shall cooperate with the competent authorities to ensure that all persons referred to in this Agreement observe the directives necessary for their security and safety, as given to them by the competent authorities.

3. Without prejudice to their privileges, immunities and facilities, it is the duty of all persons referred to in this Agreement to observe the directives necessary for their security and safety, as given to them by the competent authorities.

Article 39. Transport of persons in custody

1. The transport, pursuant to the Statute and the Rules of Procedure and Evidence, of a person in custody from the point of arrival in the host State to the premises shall, at the request of the Tribunal, be carried out by the competent authorities in consultation with the Tribunal.

2. The transport, pursuant to the Statute and the Rules of Procedure and Evidence, of a person in custody from the premises to the point of departure from the host State shall, at the request of the Tribunal, be carried out by the competent authorities in consultation with the Tribunal.

3. Any transport of persons in custody in the host State outside the premises shall, at the request of the Tribunal, be carried out by the competent authorities in consultation with the Tribunal.

4. The Tribunal shall give reasonable notice to the competent authorities of the arrival of persons referred to in this article. Whenever possible, 72 hours' advance notice will be given.

5. Where the host State receives a request under this article and identifies problems in relation to the execution of the request, it shall consult with the Tribunal, without delay, in order to resolve the matter. Such problems may include, *inter alia,*

(*a*) insufficient time and/or information to execute the request;

(*b*) the impossibility, despite best efforts, to make adequate security arrangements for the transport of the persons;

(*c*) the existence of a threat to public order and security in the host State.

6. A person in custody shall be transported directly and without impediment to the destination specified in paragraphs 1 and 2 of this article or to any other destination as requested by the Tribunal under paragraph 3 of this article.

7. The Tribunal and the host State shall, as appropriate, make practical arrangements for the transport of persons in custody in accordance with this article.

Article 40. Transport of persons appearing before the Tribunal on a basis other than a warrant of arrest

1. The provisions of article 39 of this Agreement shall apply, *mutatis mutandis*, to the transport of persons appearing before the Tribunal pursuant to such orders other than a warrant for arrest.

2. If the Tribunal issues any order other than a warrant of arrest in order to secure the appearance of a person before the Tribunal, the host State reserves the right to take any measures necessary to protect the public order and national security.

Article 41. Cooperation in detention matters

1. The host State shall cooperate with the Tribunal to facilitate the detention of persons and to allow the Tribunal to perform its functions within its detention centre.

2. Where the presence of a person in custody is required for the purpose of giving testimony or other assistance to the Tribunal and where, for security reasons, such a person cannot be maintained in custody in the detention centre of the Tribunal, the Tribunal and the host State shall consult and, where necessary, make arrangements to transport the person to a prison facility or other place made available by the host State.

Article 42. Provisional release

1. The host State shall facilitate the transfer of persons granted provisional release into a State other than the host State.

2. The host State shall facilitate the re-entry into the host State of persons granted provisional release and their short-term stay in the host State for any purpose related to proceedings before the Tribunal.

3. The Tribunal and the host State shall make practical arrangements as to the implementation of this article.

Article 43. Release without conviction

1. Where a person surrendered to the Tribunal is released from the custody of the Tribunal because the Tribunal does not have jurisdiction, the case is inadmissible, the charges have not been confirmed, the person has been acquitted at trial or on appeal, or for any other reason, the Tribunal shall, as soon as possible, make such arrangements as it considers appropriate for the transfer of the person, taking into account the views of the person, to a State which is obliged to receive him or her, to another State which agrees to receive him or her, or to a State which has requested his or her extradition with the consent of the original surrendering State.

2. The provisions of article 39 of this Agreement shall apply, *mutatis mutandis,* to the transport of persons referred to in this article within the host State.

3. The Tribunal shall not release a person referred to in this article on the territory of the host State except with the latter's consent.

Article 44. Enforcement of sentences

1. Imprisonment shall be served in a State designated by the President of the Special Tribunal from a list of States that have indicated their willingness to accept persons convicted by the Tribunal.

2. The President shall begin the process of designating a State of enforcement as soon as possible, based on the list referred to above, with a view to the immediate transfer of the convicted person for the purpose of serving a sentence of imprisonment imposed by the Tribunal.

3. The host State shall be under no obligation to let persons convicted by the Tribunal serve their sentence of imprisonment in a prison facility on its territory.

Article 45. Limitation to the exercise of jurisdiction by the host State

1. The host State shall not exercise its jurisdiction or proceed with a request for assistance or extradition from another State with regard to persons surrendered to the Tribunal, persons granted provisional release or persons who appear before the Tribunal voluntarily or pursuant to a summons, for any acts, omissions or convictions prior to the surrender, the transfer or the appearance before the Tribunal except as may be provided for in the Rules of Procedure and Evidence.

2. Where a person referred to in paragraph 1 of this article is, for any reason, released from the custody of the Tribunal without conviction, that paragraph shall continue to apply for a period of fifteen consecutive days from the date of his or her release.

PART VI. FINAL PROVISIONS

Article 46. Supplementary arrangements and agreements

The Tribunal and the host State may, for the purpose of implementing this Agreement or of addressing matters not foreseen in this Agreement, make other supplementary agreements and arrangements as appropriate.

Article 47. Settlement of disputes with third parties

The Tribunal shall make provisions for appropriate modes of settlement of:

(*a*) disputes arising out of contracts and other disputes of a private-law character to which the Tribunal is a party;

(*b*) disputes involving any person referred to in this Agreement who, by reason of his or her official position or function in connection with the Tribunal, enjoys immunity, if such immunity has not been waived.

Article 48. Settlement of differences on the interpretation or application of this Agreement or supplementary arrangements or agreements

1. All differences arising out of the interpretation or application of this Agreement or supplementary arrangements or agreements between the Tribunal and the host State shall be settled by consultation, negotiation or other agreed mode of settlement.

2. If the difference is not settled in accordance with paragraph 1 of this article within three months following a written request by one of the Parties to the difference, it shall, at the request of either party, be referred to an arbitral tribunal according to the procedure set forth in paragraphs 3 to 5 of this article.

3. The arbitral tribunal shall be composed of three members: one to be chosen by each party and the third, who shall be the chairman of the arbitral tribunal, to be chosen by the other two members. If either party has failed to make its appointment of a member of the arbitral tribunal within two months of the appointment of a member by the other party, that other party may invite the President of the International Court of Justice to make such appointment. Should the first two members fail to agree upon the appointment of the chairman of the tribunal within two months following their appointment, either party may invite the President of the International Court of Justice to choose the chairman.

4. Unless the Tribunal and the host State otherwise agree, the arbitral tribunal shall determine its own procedure and the expenses shall be borne by the Tribunal and the host State as assessed by the arbitral tribunal.

5. The arbitral tribunal, which shall decide by a majority of votes, shall reach a decision on the difference on the basis of the provisions of this Agreement and subsequent arrangements or agreements and the applicable rules of international law. The decision of the arbitral tribunal shall be final and binding on the Tribunal and the host State.

Article 49. Application

With respect to the host State, this Agreement shall apply to the part of the Kingdom of the Netherlands in Europe only.

Article 50. Amendments and termination

1. This Agreement may be amended by mutual consent of the Parties.

2. This Agreement shall cease to be in force if the seat of the Tribunal is removed from the territory of the host State or if the Tribunal is dissolved, except for such provisions as may be applicable in connection with the orderly termination of the operations of the Tribunal at its seat in the host State and the disposition of its property therein, as well as provisions granting immunity from legal process of every kind in respect of words spoken or written or acts done in an official capacity.

3. The provisions relating to the inviolability of the funds, assets, archives and documents of the Tribunal, shall survive termination of this Agreement.

4. The host State shall be notified in a timely manner with respect to the dissolution of the Tribunal.

Article 51. Entry into force

1. The provisions of this Agreement shall be applied provisionally as from the date of signature.

2. This Agreement shall enter into force on the first day of the second month after both Parties have notified each other in writing that the legal requirements for entry into force have been complied with.

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

Done at New York on 21 December 2007 in duplicate, in the English language.

For the Kingdom of Netherlands	For the United Nations
[*Signed*]	[*Signed*]

3. Other agreements

Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon. Beirut, 22 January 2007 and New York, 6 February 2007*

Whereas the Security Council, in its resolution 1664 (2006) of 29 March 2006, which responded to the request of the Government of Lebanon to establish a tribunal of an international character to try all those who are found responsible for the terrorist crime which killed the former Lebanese Prime Minister Rafiq Hariri and others, recalled all its previous resolutions, in particular resolutions 1595 (2005) of 7 April 2005, 1636 (2005) of 31 October 2005 and 1644 (2005) of 15 December 2005,

Whereas the Security Council has requested the Secretary-General of the United Nations (hereinafter "the Secretary-General") "to negotiate an agreement with the Government of Lebanon aimed at establishing a tribunal of an international character based on the highest international standards of criminal justice", taking into account the recommendations of the Secretary-General's report of 21 March 2006 (S/2006/176) and the views that have been expressed by Council members,

Whereas the Secretary-General and the Government of the Lebanese Republic (hereinafter "the Government") have conducted negotiations for the establishment of a Special Tribunal for Lebanon (hereinafter "the Special Tribunal" or "the Tribunal"),

Now therefore the United Nations and the Lebanese Republic (hereinafter referred to jointly as the "Parties") have agreed as follows:

Article 1. Establishment of the Special Tribunal

1. There is hereby established a Special Tribunal for Lebanon to prosecute persons responsible for the attack of 14 February 2005 resulting in the death of former Lebanese Prime Minister Rafiq Hariri and in the death or injury of other persons. If the tribunal finds that other attacks that occurred in Lebanon between 1 October 2004 and 12 December 2005, or any later date decided by the Parties and with the consent of the Security Council, are connected in accordance with the principles of criminal justice and are of a nature and gravity similar to the attack of 14 February 2005, it shall also have jurisdiction over persons responsible for such attacks. This connection includes but is not limited to a combination of the following elements: criminal intent (motive), the purpose behind the attacks, the nature of the victims targeted, the pattern of the attacks (modus operandi) and the perpetrators.

2. The Special Tribunal shall function in accordance with the Statute of the Special Tribunal for Lebanon. The Statute is attached to this Agreement and forms an integral part thereof.

Article 2. Composition of the Special Tribunal and appointment of the judges

1. The Special Tribunal shall consist of the following organs: the Chambers, the Prosecutor, the Registry and the Defence Office.

* Entered into force 10 June 2007, in accordance with article 19.

2. The Chambers shall be composed of a Pre-Trial Judge, a Trial Chamber and an Appeals Chamber, with a second Trial Chamber to be created if, after the passage of at least six months from the commencement of the functioning of the Special Tribunal, the Secretary-General or the President of the Special Tribunal so requests.

3. The Chambers shall be composed of no fewer than eleven independent judges and no more than fourteen such judges, who shall serve as follows:

(*a*) A single international judge shall serve as a Pre-Trial Judge;

(*b*) Three judges shall serve in the Trial Chamber, of whom one shall be a Lebanese judge and two shall be international judges;

(*c*) In the event of the creation of a second Trial Chamber, that Chamber shall be likewise composed in the manner contained in subparagraph (b) above;

(*d*) Five judges shall serve in the Appeals Chamber, of whom two shall be Lebanese judges and three shall be international judges; and

(*e*) Two alternate judges, of whom one shall be a Lebanese judge and one shall be an international judge.

4. The judges of the Tribunal shall be persons of high moral character, impartiality and integrity, with extensive judicial experience. They shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source.

5. (*a*) Lebanese judges shall be appointed by the Secretary-General to serve in the Trial Chamber or the Appeals Chamber or as an alternate judge from a list of twelve persons presented by the Government upon the proposal of the Lebanese Supreme Council of the Judiciary;

(*b*) International judges shall be appointed by the Secretary-General to serve as Pre-Trial Judge, a Trial Chamber Judge, an Appeals Chamber Judge or an alternate judge, upon nominations forwarded by States at the invitation of the Secretary-General, as well as by competent persons;

(*c*) The Government and the Secretary-General shall consult on the appointment of judges;

(*d*) The Secretary-General shall appoint judges, upon the recommendation of a selection panel he has established after indicating his intentions to the Security Council. The selection panel shall be composed of two judges, currently sitting on or retired from an international tribunal, and the representative of the Secretary-General.

6. At the request of the presiding judge of a Trial Chamber, the President of the Special Tribunal may, in the interest of justice, assign alternate judges to be present at each stage of the trial and to replace a judge if that judge is unable to continue sitting.

7. Judges shall be appointed for a three-year period and may be eligible for reappointment for a further period to be determined by the Secretary-General in consultation with the Government.

8. Lebanese judges appointed to serve in the Special Tribunal shall be given full credit for their period of service with the Tribunal on their return to the Lebanese national judiciaries from which they were released and shall be reintegrated at a level at least comparable to that of their former position.

Article 3. Appointment of a Prosecutor and a Deputy Prosecutor

1. The Secretary-General, after consultation with the Government, shall appoint a Prosecutor for a three-year term. The Prosecutor may be eligible for reappointment for a further period to be determined by the Secretary-General in consultation with the Government.

2. The Secretary-General shall appoint the Prosecutor, upon the recommendation of a selection panel he has established after indicating his intentions to the Security Council. The selection panel shall be composed of two judges, currently sitting on or retired from an international tribunal, and the representative of the Secretary-General.

3. The Government, in consultation with the Secretary-General and the Prosecutor, shall appoint a Lebanese Deputy Prosecutor to assist the Prosecutor in the conduct of the investigations and prosecutions.

4. The Prosecutor and the Deputy Prosecutor shall be of high moral character and possess the highest level of professional competence and extensive experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor and the Deputy Prosecutor shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source.

5. The Prosecutor shall be assisted by such Lebanese and international staff as may be required to perform the functions assigned to him or her effectively and efficiently.

Article 4. Appointment of a Registrar

1. The Secretary-General shall appoint a Registrar who shall be responsible for the servicing of the Chambers and the Office of the Prosecutor, and for the recruitment and administration of all support staff. He or she shall also administer the financial and staff resources of the Special Tribunal.

2. The Registrar shall be a staff member of the United Nations. He or she shall serve a three-year term and may be eligible for reappointment for a further period to be determined by the Secretary-General in consultation with the Government.

Article 5. Financing of the Special Tribunal

1. The expenses of the Special Tribunal shall be borne in the following manner:

(*a*) Fifty-one per cent of the expenses of the Tribunal shall be borne by voluntary contributions from States;

(*b*) Forty-nine per cent of the expenses of the Tribunal shall be borne by the Government of Lebanon.

2. It is understood that the Secretary-General will commence the process of establishing the Tribunal when he has sufficient contributions in hand to finance the establishment of the Tribunal and twelve months of its operations plus pledges equal to the anticipated expenses of the following 24 months of the Tribunal's operation. Should voluntary contributions be insufficient for the Tribunal to implement its mandate, the Secretary-General and the Security Council shall explore alternate means of financing the Tribunal.

Article 6. Management Committee

The parties shall consult concerning the establishment of a Management Committee.

Article 7. Juridical capacity

The Special Tribunal shall possess the juridical capacity necessary:

(*a*) To contract;

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

(*c*) To institute legal proceedings;

(*d*) To enter into agreements with States as may be necessary for the exercise of its functions and for the operation of the Tribunal.

Article 8. Seat of the Special Tribunal

1. The Special Tribunal shall have its seat outside Lebanon. The location of the seat shall be determined having due regard to considerations of justice and fairness as well as security and administrative efficiency, including the rights of victims and access to witnesses, and subject to the conclusion of a headquarters agreement between the United Nations, the Government and the State that hosts the Tribunal.

2. The Special Tribunal may meet away from its seat when it considers it necessary for the efficient exercise of its functions.

3. An Office of the Special Tribunal for the conduct of investigations shall be established in Lebanon subject to the conclusion of appropriate arrangements with the Government.

Article 9. Inviolability of premises, archives and all other documents

1. The Office of the Special Tribunal in Lebanon shall be inviolable. The competent authorities shall take appropriate action that may be necessary to ensure that the Tribunal shall not be dispossessed of all or any part of the premises of the Tribunal without its express consent.

2. The property, funds and assets of the Office of the Special Tribunal in Lebanon, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

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

Article 10. Funds, assets and other property

The Office of the Special Tribunal, its funds, assets and other property in Lebanon, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case the Tribunal has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.

Article 11. Privileges and immunities of the judges, the Prosecutor, the Deputy Prosecutor, the Registrar and the Head of the Defence Office

1. The judges, the Prosecutor, the Deputy Prosecutor, the Registrar and the Head of the Defence Office, while in Lebanon, shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents in accordance with the Vienna Convention on Diplomatic Relations of 1961.

2. Privileges and immunities are accorded to the judges, the Prosecutor, the Deputy Prosecutor, the Registrar and the Head of the Defence Office in the interest of the Special Tribunal and not for the personal benefit of the individuals themselves. The right and the duty to waive the immunity in any case where it can be waived without prejudice to the purposes for which it is accorded shall lie with the Secretary-General, in consultation with the President of the Tribunal.

Article 12. Privileges and immunities of international and Lebanese personnel

1. Lebanese and international personnel of the Office of the Special Tribunal, while in Lebanon, shall be accorded:

(*a*) Immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with the Office of the Special Tribunal;

(*b*) Exemption from taxation on salaries, allowances and emoluments paid to them.

2. International personnel shall, in addition thereto, be accorded:

(*a*) Immunity from immigration restriction;

(*b*) The right to import free of duties and taxes, except for payment for services, their furniture and effects at the time of first taking up their official duties in Lebanon.

The privileges and immunities are granted to the officials of the Office of the Special Tribunal in the interest of the Tribunal and not for their personal benefit. The right and the duty to waive the immunity in any case where it can be waived without prejudice to the purpose for which it is accorded shall lie with the Registrar of the Tribunal.

Article 13. Defence counsel

1. The Government shall ensure that the counsel of a suspect or an accused who has been admitted as such by the Special Tribunal shall not be subjected, while in Lebanon, to any measure that may affect the free and independent exercise of his or her functions.

2. In particular, the counsel shall be accorded:

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

(*b*) Inviolability of all documents relating to the exercise of his or her functions as a counsel of a suspect or accused;

(*c*) Immunity from criminal or civil jurisdiction in respect of words spoken or written and acts performed in his or her capacity as counsel. Such immunity shall continue to be accorded after termination of his or her functions as a counsel of a suspect or accused;

(*d*) Immunity from any immigration restrictions during his or her stay as well as during his or her journey to the Tribunal and back.

Article 14. Security, safety and protection of persons referred to in this Agreement

The Government shall take effective and adequate measures to ensure the appropriate security, safety and protection of personnel of the Office of the Special Tribunal and other persons referred to in this Agreement, while in Lebanon. It shall take all appropriate steps, within its capabilities, to protect the equipment and premises of the Office of the Special Tribunal from attack or any action that prevents the Tribunal from discharging its mandate.

Article 15. Cooperation with the Special Tribunal

1. The Government shall cooperate with all organs of the Special Tribunal, in particular with the Prosecutor and defence counsel, at all stages of the proceedings. It shall facilitate access of the Prosecutor and defence counsel to sites, persons and relevant documents required for the investigation.

2. The Government shall comply without undue delay with any request for assistance by the Special Tribunal or an order issued by the Chambers, including, but not limited to:

(*a*) Identification and location of persons;

(*b*) Service of documents;

(*c*) Arrest or detention of persons;

(*d*) Transfer of an indictee to the Tribunal.

Article 16. Amnesty

The Government undertakes not to grant amnesty to any person for any crime falling within the jurisdiction of the Special Tribunal. An amnesty already granted in respect of any such persons and crimes shall not be a bar to prosecution.

Article 17. Practical arrangements

With a view to achieving efficiency and cost-effectiveness in the operation of the Special Tribunal:

(*a*) Appropriate arrangements shall be made to ensure that there is a coordinated transition from the activities of the International Independent Investigation Commission, established by the Security Council in its resolution 1595 (2005), to the activities of the Office of the Prosecutor;

(*b*) Judges of the Trial Chamber and the Appeals Chamber shall take office on a date to be determined by the Secretary-General in consultation with the President of the Special Tribunal. Pending such a determination, judges of both Chambers shall be convened on an ad hoc basis to deal with organizational matters and serving, when required, to perform their duties.

Article 18. Settlement of disputes

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

Article 19. Entry into force and commencement of the functioning of the Special Tribunal

1. This Agreement shall enter into force on the day after the Government has notified the United Nations in writing that the legal requirements for entry into force have been complied with.

2. The Special Tribunal shall commence functioning on a date to be determined by the Secretary-General in consultation with the Government, taking into account the progress of the work of the International Independent Investigation Commission.

Article 20. Amendment

This Agreement may be amended by written agreement between the Parties.

Article 21. Duration of the Agreement

1. This Agreement shall remain in force for a period of three years from the date of the commencement of the functioning of the Special Tribunal.

2. Three years after the commencement of the functioning of the Special Tribunal the Parties shall, in consultation with the Security Council, review the progress of the work of the Special Tribunal. If at the end of this period of three years the activities of the Tribunal have not been completed, the Agreement shall be extended to allow the Tribunal to complete its work, for a further period(s) to be determined by the Secretary-General in consultation with the Government and the Security Council.

3. The provisions relating to the inviolability of the funds, assets, archives and documents of the Office of the Special Tribunal in Lebanon, the privileges and immunities of those referred to in this Agreement, as well as provisions relating to defence counsel and the protection of victims and witnesses, shall survive termination of this Agreement.

In witness whereof, the following duly authorized representatives of the United Nations and of the Lebanese Republic have signed this Agreement.

Done at Beirut on 22 January 2007 and at New York on 6 February 2007, in three originals in the Arabic, French and English languages, all texts being equally authentic.

For the United Nations:	For the Lebanese Republic
[*Signed*]	[*Signed*]

Statute of the Special Tribunal for Lebanon

Having been established by an Agreement between the United Nations and the Lebanese Republic (hereinafter "the Agreement") pursuant to Security Council resolution 1664 (2006) of 29 March 2006, which responded to the request of the Government of Lebanon to establish a tribunal of an international character to try all those who are found responsible for the terrorist crime which killed the former Lebanese Prime Minister Rafiq Hariri and others, the Special Tribunal for Lebanon (hereinafter "the Special Tribunal") shall function in accordance with the provisions of this Statute.

Section I. Jurisdiction and applicable law

Article 1. Jurisdiction of the Special Tribunal

The Special Tribunal shall have jurisdiction over persons responsible for the attack of 14 February 2005 resulting in the death of former Lebanese Prime Minister Rafiq Hariri and in the death or injury of other persons. If the Tribunal finds that other attacks that occurred in Lebanon between 1 October 2004 and 12 December 2005, or any later date decided by the Parties and with the consent of the Security Council, are connected in accordance with the principles of criminal justice and are of a nature and gravity similar to the attack of 14 February 2005, it shall also have jurisdiction over persons responsible for such attacks. This connection includes but is not limited to a combination of the following elements: criminal intent (motive), the purpose behind the attacks, the nature of the victims targeted, the pattern of the attacks (modus operandi) and the perpetrators.

Article 2. Applicable criminal law

The following shall be applicable to the prosecution and punishment of the crimes referred to in article 1, subject to the provisions of this Statute:

(*a*) The provisions of the Lebanese Criminal Code relating to the prosecution and punishment of acts of terrorism, crimes and offences against life and personal integrity, illicit associations and failure to report crimes and offences, including the rules regarding the material elements of a crime, criminal participation and conspiracy; and

(*b*) Articles 6 and 7 of the Lebanese law of 11 January 1958 on "Increasing the penalties for sedition, civil war and interfaith struggle".

Article 3. Individual criminal responsibility

1. A person shall be individually responsible for crimes within the jurisdiction of the Special Tribunal if that person:

(*a*) Committed, participated as accomplice, organized or directed others to commit the crime set forth in article 2 of this Statute; or

(*b*) Contributed in any other way to the commission of the crime set forth in article 2 of this Statute by a group of persons acting with a common purpose, where such contribution is intentional and is either made with the aim of furthering the general criminal activity or purpose of the group or in the knowledge of the intention of the group to commit the crime.

2. With respect to superior and subordinate relationships, a superior shall be criminally responsible for any of the crimes set forth in article 2 of this Statute committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(*a*) The superior either knew, or consciously disregarded information that clearly indicated that the subordinates were committing or about to commit such crimes;

(*b*) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(*c*) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

3. The fact that the person acted pursuant to an order of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Special Tribunal determines that justice so requires.

Article 4. Concurrent jurisdiction

1. The Special Tribunal and the national courts of Lebanon shall have concurrent jurisdiction. Within its jurisdiction, the Tribunal shall have primacy over the national courts of Lebanon.

2. Upon the assumption of office of the Prosecutor, as determined by the Secretary-General, and no later than two months thereafter, the Special Tribunal shall request the national judicial authority seized with the case of the attack against Prime Minister Rafiq Hariri and others to defer to its competence. The Lebanese judicial authority shall refer to the Tribunal the results of the investigation and a copy of the court's records, if any. Persons detained in connection with the investigation shall be transferred to the custody of the Tribunal.

3. (*a*) At the request of the Special Tribunal, the national judicial authority seized with any of the other crimes committed between 1 October 2004 and 12 December 2005, or a later date decided pursuant to article 1, shall refer to the Tribunal the results of the investigation and a copy of the court's records, if any, for review by the Prosecutor;

(*b*) At the further request of the Tribunal, the national authority in question shall defer to the competence of the Tribunal. It shall refer to the Tribunal the results of the investigation and a copy of the court's records, if any, and persons detained in connection with any such case shall be transferred to the custody of the Tribunal;

(*c*) The national judicial authorities shall regularly inform the Tribunal of the progress of their investigation. At any stage of the proceedings, the Tribunal may formally request a national judicial authority to defer to its competence.

Article 5. Non bis in idem

1. No person shall be tried before a national court of Lebanon for acts for which he or she has already been tried by the Special Tribunal.

2. A person who has been tried by a national court may be subsequently tried by the Special Tribunal if the national court proceedings were not impartial or independent, were

designed to shield the accused from criminal responsibility for crimes within the jurisdiction of the Tribunal or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under this Statute, the Special Tribunal shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 6. Amnesty

An amnesty granted to any person for any crime falling within the jurisdiction of the Special Tribunal shall not be a bar to prosecution.

Section II. Organization of the Special Tribunal

Article 7. Organs of the Special Tribunal

The Special Tribunal shall consist of the following organs:

(*a*) The Chambers, comprising a Pre-Trial Judge, a Trial Chamber and an Appeals Chamber;

(*b*) The Prosecutor;

(*c*) The Registry; and

(*d*) The Defence Office.

Article 8. Composition of the Chambers

1. The Chambers shall be composed as follows:

(*a*) One international Pre-Trial Judge;

(*b*) Three judges who shall serve in the Trial Chamber, of whom one shall be a Lebanese judge and two shall be international judges;

(*c*) Five judges who shall serve in the Appeals Chamber, of whom two shall be Lebanese judges and three shall be international judges;

(*d*) Two alternate judges, one of whom shall be a Lebanese judge and one shall be an international judge.

2. The judges of the Appeals Chamber and the judges of the Trial Chamber, respectively, shall elect a presiding judge who shall conduct the proceedings in the Chamber to which he or she was elected. The presiding judge of the Appeals Chamber shall be the President of the Special Tribunal.

3. At the request of the presiding judge of the Trial Chamber, the President of the Special Tribunal may, in the interest of justice, assign the alternate judges to be present at each stage of the trial and to replace a judge if that judge is unable to continue sitting.

Article 9. Qualification and appointment of judges

1. The judges shall be persons of high moral character, impartiality and integrity, with extensive judicial experience. They shall be independent in the performance of their

functions and shall not accept or seek instructions from any Government or any other source.

2. In the overall composition of the Chambers, due account shall be taken of the established competence of the judges in criminal law and procedure and international law.

3. The judges shall be appointed by the Secretary-General, as set forth in article 2 of the Agreement, for a three-year period and may be eligible for reappointment for a further period to be determined by the Secretary-General in consultation with the Government.

Article 10. Powers of the President of the Special Tribunal

1. The President of the Special Tribunal, in addition to his or her judicial functions, shall represent the Tribunal and be responsible for its effective functioning and the good administration of justice.

2. The President of the Special Tribunal shall submit an annual report on the operation and activities of the Tribunal to the Secretary-General and to the Government of Lebanon.

Article 11. The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for the crimes falling within the jurisdiction of the Special Tribunal. In the interest of proper administration of justice, he or she may decide to charge jointly persons accused of the same or different crimes committed in the course of the same transaction.

2. The Prosecutor shall act independently as a separate organ of the Special Tribunal. He or she shall not seek or receive instructions from any Government or from any other source.

3. The Prosecutor shall be appointed, as set forth in article 3 of the Agreement, by the Secretary-General for a three-year term and may be eligible for reappointment for a further period to be determined by the Secretary-General in consultation with the Government. He or she shall be of high moral character and possess the highest level of professional competence, and have extensive experience in the conduct of investigations and prosecutions of criminal cases.

4. The Prosecutor shall be assisted by a Lebanese Deputy Prosecutor and by such other Lebanese and international staff as may be required to perform the functions assigned to him or her effectively and efficiently.

5. The Office of the Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor shall, as appropriate, be assisted by the Lebanese authorities concerned.

Article 12. The Registry

1. Under the authority of the President of the Special Tribunal, the Registry shall be responsible for the administration and servicing of the Tribunal.

2. The Registry shall consist of a Registrar and such other staff as may be required.

3. The Registrar shall be appointed by the Secretary-General and shall be a staff member of the United Nations. He or she shall serve for a three-year term and may be eligible for reappointment for a further period to be determined by the Secretary-General in consultation with the Government.

4. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, and such other appropriate assistance for witnesses who appear before the Special Tribunal and others who are at risk on account of testimony given by such witnesses.

Article 13. The Defence Office

1. The Secretary-General, in consultation with the President of the Special Tribunal, shall appoint an independent Head of the Defence Office, who shall be responsible for the appointment of the Office staff and the drawing up of a list of defence counsel.

2. The Defence Office, which may also include one or more public defenders, shall protect the rights of the defence, provide support and assistance to defence counsel and to the persons entitled to legal assistance, including, where appropriate, legal research, collection of evidence and advice, and appearing before the Pre-Trial Judge or a Chamber in respect of specific issues.

Article 14. Official and working languages

The official languages of the Special Tribunal shall be Arabic, French and English. In any given case proceedings, the Pre-Trial Judge or a Chamber may decide that one or two of the languages may be used as working languages as appropriate.

Section III. Rights of defendants and victims

Article 15. Rights of suspects during investigation

A suspect who is to be questioned by the Prosecutor shall not be compelled to incriminate himself or herself or to confess guilt. He or she shall have the following rights of which he or she shall be informed by the Prosecutor prior to questioning, in a language he or she speaks and understands:

(*a*) The right to be informed that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Special Tribunal;

(*b*) The right to remain silent, without such silence being considered in the determination of guilt or innocence, and to be cautioned that any statement he or she makes shall be recorded and may be used in evidence;

(*c*) The right to have legal assistance of his or her own choosing, including the right to have legal assistance provided by the Defence Office where the interests of justice so require and where the suspect does not have sufficient means to pay for it;

(*d*) The right to have the free assistance of an interpreter if he or she cannot understand or speak the language used for questioning;

(*e*) The right to be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel.

Article 16. Rights of the accused

1. All accused shall be equal before the Special Tribunal.

2. The accused shall be entitled to a fair and public hearing, subject to measures ordered by the Special Tribunal for the protection of victims and witnesses.

3. (*a*) The accused shall be presumed innocent until proved guilty according to the provisions of this Statute;

(*b*) The onus is on the Prosecutor to prove the guilt of the accused;

(*c*) In order to convict the accused, the relevant Chamber must be convinced of the guilt of the accused beyond reasonable doubt.

4. In the determination of any charge against the accused pursuant to this Statute, he or she shall be entitled to the following minimum guarantees, in full equality:

(*a*) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;

(*b*) To have adequate time and facilities for the preparation of his or her defence and to communicate without hindrance with counsel of his or her own choosing;

(*c*) To be tried without undue delay;

(*d*) Subject to the provisions of article 22, to be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;

(*e*) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;

(*f*) To examine all evidence to be used against him or her during the trial in accordance with the Rules of Procedure and Evidence of the Special Tribunal;

(*g*) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the Special Tribunal;

(*h*) Not to be compelled to testify against himself or herself or to confess guilt.

5. The accused may make statements in court at any stage of the proceedings, provided such statements are relevant to the case at issue. The Chambers shall decide on the probative value, if any, of such statements.

Article 17. Rights of victims

Where the personal interests of the victims are affected, the Special Tribunal shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Pre-Trial Judge or the Chamber and in a manner that is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Pre-Trial Judge or the Chamber considers it appropriate.

Section IV. Conduct of proceedings

Article 18. Pre-trial proceedings

1. The Pre-Trial Judge shall review the indictment. If satisfied that a *prima facie* case has been established by the Prosecutor, he or she shall confirm the indictment. If he or she is not so satisfied, the indictment shall be dismissed.

2. The Pre-Trial Judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest or transfer of persons, and any other orders as may be required for the conduct of the investigation and for the preparation of a fair and expeditious trial.

Article 19. Evidence collected prior to the establishment of the Special Tribunal

Evidence collected with regard to cases subject to the consideration of the Special Tribunal, prior to the establishment of the Tribunal, by the national authorities of Lebanon or by the International Independent Investigation Commission in accordance with its mandate as set out in Security Council resolution 1595 (2005) and subsequent resolutions, shall be received by the Tribunal. Its admissibility shall be decided by the Chambers pursuant to international standards on collection of evidence. The weight to be given to any such evidence shall be determined by the Chambers.

Article 20. Commencement and conduct of trial proceedings

1. The Trial Chamber shall read the indictment to the accused, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment and instruct the accused to enter a plea.

2. Unless otherwise decided by the Trial Chamber in the interests of justice, examination of witnesses shall commence with questions posed by the presiding judge, followed by questions posed by other members of the Trial Chamber, the Prosecutor and the Defence.

3. Upon request or *proprio motu,* the Trial Chamber may at any stage of the trial decide to call additional witnesses and/or order the production of additional evidence.

4. The hearings shall be public unless the Trial Chamber decides to hold the proceedings *in camera* in accordance with the Rules of Procedure and Evidence.

Article 21. Powers of the Chambers

1 The Special Tribunal shall confine the trial, appellate and review proceedings strictly to an expeditious hearing of the issues raised by the charges, or the grounds for appeal or review, respectively. It shall take strict measures to prevent any action that may cause unreasonable delay.

2. A Chamber may admit any relevant evidence that it deems to have probative value and exclude such evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

3. A Chamber may receive the evidence of a witness orally or, where the interests of justice allow, in written form.

4. In cases not otherwise provided for in the Rules of Procedure and Evidence, a Chamber shall apply rules of evidence that will best favour a fair determination of the

matter before it and are consonant with the spirit of the Statute and the general principles of law.

Article 22. Trials in absentia

1. The Special Tribunal shall conduct trial proceedings in the absence of the accused, if he or she:

(*a*) Has expressly and in writing waived his or her right to be present;

(*b*) Has not been handed over to the Tribunal by the State authorities concerned;

(*c*) Has absconded or otherwise cannot be found and all reasonable steps have been taken to secure his or her appearance before the Tribunal and to inform him or her of the charges confirmed by the Pre-Trial Judge.

2. When hearings are conducted in the absence of the accused, the Special Tribunal shall ensure that:

(*a*) The accused has been notified, or served with the indictment, or notice has otherwise been given of the indictment through publication in the media or communication to the State of residence or nationality;

(*b*) The accused has designated a defence counsel of his or her own choosing, to be remunerated either by the accused or, if the accused is proved to be indigent, by the Tribunal;

(*c*) Whenever the accused refuses or fails to appoint a defence counsel, such counsel has been assigned by the Defence Office of the Tribunal with a view to ensuring full representation of the interests and rights of the accused.

3. In case of conviction *in absentia*, the accused, if he or she had not designated a defence counsel of his or her choosing, shall have the right to be retried in his or her presence before the Special Tribunal, unless he or she accepts the judgement.

Article 23. Judgement

The judgement shall be rendered by a majority of the judges of the Trial Chamber or of the Appeals Chamber and shall be delivered in public. It shall be accompanied by a reasoned opinion in writing, to which any separate or dissenting opinions shall be appended.

Article 24. Penalties

1. The Trial Chamber shall impose upon a convicted person imprisonment for life or for a specified number of years. In determining the terms of imprisonment for the crimes provided for in this Statute, the Trial Chamber shall, as appropriate, have recourse to international practice regarding prison sentences and to the practice of the national courts of Lebanon.

2. In imposing sentence, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

Article 25. Compensation to victims

1. The Special Tribunal may identify victims who have suffered harm as a result of the commission of crimes by an accused convicted by the Tribunal.

2. The Registrar shall transmit to the competent authorities of the State concerned the judgement finding the accused guilty of a crime that has caused harm to a victim.

3. Based on the decision of the Special Tribunal and pursuant to the relevant national legislation, a victim or persons claiming through the victim, whether or not such victim had been identified as such by the Tribunal under paragraph 1 of this article, may bring an action in a national court or other competent body to obtain compensation.

4. For the purposes of a claim made under paragraph 3 of this article, the judgement of the Special Tribunal shall be final and binding as to the criminal responsibility of the convicted person.

Article 26. Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chamber or from the Prosecutor on the following grounds:

(*a*) An error on a question of law invalidating the decision;

(*b*) An error of fact that has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chamber.

Article 27. Review proceedings

1. Where a new fact has been discovered that was not known at the time of the proceedings before the Trial Chamber or the Appeals Chamber and that could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit an application for review of the judgement.

2. An application for review shall be submitted to the Appeals Chamber. The Appeals Chamber may reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it may, as appropriate:

(*a*) Reconvene the Trial Chamber;

(*b*) Retain jurisdiction over the matter.

Article 28. Rules of Procedure and Evidence

1. The judges of the Special Tribunal shall, as soon as practicable after taking office, adopt Rules of Procedure and Evidence for the conduct of the pre-trial, trial and appellate proceedings, the admission of evidence, the participation of victims, the protection of victims and witnesses and other appropriate matters and may amend them, as appropriate.

2. In so doing, the judges shall be guided, as appropriate, by the Lebanese Code of Criminal Procedure, as well as by other reference materials reflecting the highest standards of international criminal procedure, with a view to ensuring a fair and expeditious trial.

Article 29. Enforcement of sentences

1. Imprisonment shall be served in a State designated by the President of the Special Tribunal from a list of States that have indicated their willingness to accept persons convicted by the Tribunal.

2. Conditions of imprisonment shall be governed by the law of the State of enforcement subject to the supervision of the Special Tribunal. The State of enforcement shall be bound by the duration of the sentence, subject to article 30 of this Statute.

Article 30. Pardon or commutation of sentences

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Special Tribunal accordingly. There shall only be pardon or commutation of sentence if the President of the Tribunal, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law

4. Office of the United Nations High Commissioner for Refugees

Agreement between the Office of the United Nations High Commissioner for Refugees and the Government of the Islamic Republic of Afghanistan. Kabul, 20 February 2007*

Whereas the Office of the United Nations High Commissioner for Refugees was established by the United Nations General Assembly Resolution 319 (IV) of 3 December 1949,

Whereas the Statute of the Office of the United Nations High Commissioner for Refugees, adopted by the United Nations General Assembly in its resolution 428 (V) of 14 December 1950, provides, *inter alia*, that the High Commissioner, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the Statute and of seeking permanent solutions for the problem of refugees by assisting governments and subject to the approval of the governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities,

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

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

* Entered into force on 20 February 2007, in accordance with article XVII.

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

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

Article I. Definitions

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

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

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

(*c*) "Government" means the Government of the Islamic Republic of Afghanistan.

(*d*) "Host Country" or "Country" means the Islamic Republic of Afghanistan.

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

(*f*) "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.

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

(*h*) "UNHCR Representative" means the UNHCR official in charge of the UNHCR Office in the country,

(*i*) "UNHCR officials" means all members of the staff of UNHCR employed under the Staff Regulations and Rules of the United Nations, with the exception of persons who are recruited locally and assigned to hourly rates as provided in General Assembly resolution 76(1).

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

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

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

(*m*) "Other persons of concern" means asylum-seekers, stateless persons, returnees, internally displaced persons (IDPs) and other persons threatened with displacement otherwise at risk.

Article II. Purpose of this Agreement

This Agreement embodies the basic conditions under which UNHCR shall, within its mandate, co-operate with the Government, open and/or maintain an office or offices in the

country, and carry out its international protection and humanitarian assistance functions in favour of refugees and other persons of its concern in the host country.

Article III. Co-operation between the Government and UNHCR

1. Co-operation between the Government and UNHCR in the field of international protection of, and humanitarian assistance to, refugees and other persons of concern to UNHCR shall be carried out on the basis of the Statute of UNHCR, of other relevant decisions and resolutions relating to UNHCR adopted by United Nations organs and of article 35 of the Convention relating to the Status of Refugees of 1951 and article 2 of the Protocol relating to the Status of Refugees of 1967 (attached as Annex I and II* to the present Agreement).

2. The UNHCR Office shall maintain consultations and co-operate with the Government with respect to the preparation and review of projects for refugees and other persons of concern to UNHCR,

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

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

Article IV. UNHCR Office

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

2. UNHCR may designate the UNHCR Office in the country to serve as a Regional/Area Office.

3. The UNHCR Office will exercise functions as assigned by the High Commissioner, in relation to his mandate for refugees and other persons of his concern, including asylum seekers, returnees, IDPs and stateless persons, and through the establishment and maintenance of relations between UNHCR and other governmental or non-governmental organizations functioning in the country.

Article V. UNHCR Personnel

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

2. The categories of officials and the names of the officials included in these categories, and of other personnel assigned to the UNHCR Office in the country, shall from time to time be made known to the Government.

* Not reproduced herein.

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

4. UNHCR may designate officials to visit the country for purposes of consulting and co-operating with the corresponding officials of the Government or other parties involved in refugee work in connection with:

(*a*) the review, preparation, monitoring and evaluation of international protection and humanitarian assistance programmes;

(*b*) the shipment, receipt, distribution or use of the supplies, equipment, and other materials, furnished by UNHCR,

(*c*) seeking permanent solutions for the problem of refugees; and

(*d*) any other matters relating to the application of this Agreement.

5. Without prejudice to international law, in particular the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, all UNHCR Officials, experts on mission and persons performing services on behalf of UNHCR shall respect Afghan laws and regulations.

Article VI. Facilities for implementation of UNHCR humanitarian programmes

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

2. Such measures shall include the providing for communication facilities in accordance with Article IX of this Agreement, the granting of air traffic rights and the exemption from aircraft landing fees and royalties for emergency relief cargo flights, transportation of refugees and/or UNHCR personnel.

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

4. The Government shall take all appropriate measures to ensure the safety and security of UNHCR personnel. In particular, it shall take all appropriate steps to protect UNHCR personnel and the UNHCR Office's premises and equipment from attack or any action that prevents UNHCR personnel from discharging UNHCR's mandate. This is without prejudice to the fact that all premises of UNHCR Offices are inviolable and subject to the exclusive control and authority of UNHCR.

5. Where private accommodation is not available the Government shall facilitate the location of suitable housing accommodation for UNHCR personnel recruited internationally.

Article VII. Privileges and immunities

1. The Government shall apply to UNHCR, its property, funds and assets and to its officials and experts on mission the relevant provisions of the General Convention to which Afghanistan became a party on September 5th 1947, without reservation. The Government also agrees to grant to UNHCR and its personnel such additional privileges and immunities as may be necessary for the effective exercise of the international protection and humanitarian assistance functions of UNHCR.

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

Article VIII. UNHCR Office, property, funds and assets

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

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

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

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

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

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

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

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

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

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

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

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

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

Article IX. Communication facilities

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

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

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

4. The Government shall ensure that UNHCR be enabled to operate, effectively and free of license fees, its own radio and other telecommunications equipment, including satellite communications systems, on networks using the frequencies assigned by or coordinated with the competent national authorities in conformity with the applicable International Telecommunication Union's regulations and norms currently in force.

Article X. UNHCR officials

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

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

(*a*) Immunity from personal arrest and detention;

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

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

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

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

(*f*) Access to the labour market with respect to their spouses and their dependent relatives forming part of their household without requiring a work permit;

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

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

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

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

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

(*l*) The right to import for personal use, free of duty and other import-levies, -prohibitions and -restrictions:

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

(ii) Reasonable quantities of certain articles for personal use or consumption and not for gift or sale.

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

Article XI. Locally recruited personnel assigned to hourly rates

1. The terms and conditions of employment for locally recruited personnel shall be in accordance with the relevant United Nations resolutions, regulations and rules.

Article XII. Experts on mission

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

(*a*) Immunity from personal arrest or detention;

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

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

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

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

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

Article XIII. Persons performing services on behalf of UNHCR including employees of non-governmental organizations

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

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

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

2. Employees of Non-Governmental Organizations (NGO), duly registered with the Afghan Government in accordance with the content of the Law on Non-Governmental Organisations dated 13 June 2005, shall be granted exemption by the Government from taxation in respect of salaries and all other remuneration paid to them by their employer in relation to services provided to UNHCR.

Article XIV. Crimes against UNHCR personnel

1. It is understood that the following acts are established by the Government as crimes under its national law, and are punishable by appropriate penalties taking into account their grave nature:

(*a*) A murder, kidnapping or other attack upon the person or liberty of any UNHCR personnel;

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

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

(*d*) An attempt to commit any such attack; and

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

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

3. The Government shall ensure the prosecution of persons accused of acts described in paragraph 1 above as well as those persons that are subject to its criminal jurisdiction who are accused of other acts in relation to UNHCR and its personnel, which, if committed in relation to the local population, would be rendered such acts liable to prosecution.

Article XV. Waiver of immunity

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

Article XVI. Settlement of disputes

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

Article XVII. General provisions

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

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

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

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

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

6. This Agreement supersedes and replaces the Agreement between UNHCR and the Republic of Afghanistan signed on 28 day of April in the year 1988.

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

Done at Kabul this twenty day of February on two thousand and seven.

For the Office of the United Nations High Commissioner for Refugees:	For the Government of the Islamic Republic of Afghanistan:
[*Signed*]	[*Signed*]
UNHCR Representative in Afghanistan	Minister of Foreign Affairs

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

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

In 2007, the following State acceded to the Convention on the Privileges and Immunities of the Specialized Agencies.**

State	*Date of receipt of instrument of accession*	*Specialized agencies*
Georgia	18 July 2007	ILO, FAO, ICAO, UNESCO, IMF, IBRD, WHO, UPU, ITU, WMO, IMO, IFC, IDA, WIPO, IFAD, UNIDO

2. International Labour Organization

Supplementary understanding between ILO and the Government of Myanmar relating to the role of the Liaison Officer with respect to forced labour complaints. 26 February 2007

On 15 February 2007, a supplement to the 2002 "Understanding between the Government of Myanmar and the International Labour Organization" was adopted. This Sup-

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

** For the list of the States parties, see chapter III of *Multilateral Treaties Deposited with the Secretary-Genera*l, available on the website http://treaties.un.org/Pages/ParticipationStatus.aspx.

plementary Understanding relates to the role of the Liaison Officer with respect to forced labour complaints channelled through him/her.

Supplementary understanding

In the framework of the Conclusions adopted by the 95th Session of the International Labour Conference (Geneva, June 2006) in order to give full credibility to their commitment to effectively eradicate forced labour, the Government of the Union of Myanmar and the International Labour Organization have agreed to adopt the present Understanding relating to the role of the Liaison Officer with respect to forced labour complaints channelled through him/her, which supplements the "Understanding between the Government of the Union of Myanmar and the International Labour Office concerning the Appointment of an ILO Liaison Officer in Myanmar" (Geneva, 19 March 2002) as follows.

Object

1. In line with the recommendations of the High-Level Team (Report, GB.282/4, 282nd Session, Geneva, November 2001, para. 80) to the effect that victims of forced labour should be able to seek redress in full confidence that no retaliatory action will be taken against them, the object of the present Understanding is to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant legislation and in accordance with the Forced Labour Convention No. 29 (1930). This Understanding is without prejudice to other steps to accommodate the requests of the competent supervisory bodies of the ILO.

I. Treatment of complaints of forced labour

2. In accordance with the objective of the appointment of a Liaison Officer, the functions assigned, and the facilities extended to him/her under the March 2002 Understanding, any person or their representative(s) bona fide residing in Myanmar shall have full freedom to submit to the Liaison Officer allegations that the person has been subject to forced labour together with any relevant supporting information.

3. In accordance with his/her role of assisting the authorities to eradicate forced labour, it shall be the task of the Liaison Officer and/or any person that he/she may appoint for that purpose to examine the complaint objectively and confidentially, in the light of any relevant information provided or that he/she may obtain through direct and confidential contact with the complainant(s), their representative(s) and any other relevant person(s), with a view to making a preliminary assessment as to whether the complaint involves a situation of forced labour.

4. The Liaison Officer will then communicate to the relevant Working Group established by the Government of the Union of Myanmar those complaints which he/she considers to involve such a situation of forced labour, together with his/her reasoned opinion, in order for these cases to be expeditiously investigated by the most competent civilian or military authority concerned, as appropriate. In minor cases the Liaison Officer may at the same time provide suggestions on ways in which the case could be settled directly among those concerned.

5. The Liaison Officer shall at all times during and after the treatment of the case have free and confidential access to the complainant(s), their representative(s) and any other relevant person(s) to verify that no retaliatory action has been taken. The Liaison Officer shall be informed by the authorities of any action taken against the perpetrator(s) with its motivation. In the event that penal action is taken he/she will have full freedom to attend any relevant court sittings personally or through a representative, in accordance with law.

6. The Liaison Officer will report through the ILO Director-General to the Governing Body at each of its sessions on the number and type of complaints received and treated under the above provisions as well as their outcome. He/she will provide at the end of the trial period his/her evaluation as to whether the scheme has been able to fulfill its objective, any obstacle experienced, and what possible improvements or other consequences could be drawn from the experience, including its termination. These interim and final reports will be communicated in advance to the authorities for any comments they would like to make.

II. Guarantees and facilities to be accorded to the Office in the discharge of the above responsibilities

7. The facilities and support extended to the Liaison Officer under the March 2002 Understanding and the present Understanding shall include timely freedom to travel for the purpose of establishing the contacts referred to in paragraph 3. While the designated representative of the Working Group may accompany the Liaison Officer, assist him/her at his/her request or otherwise be present in the area he/she is visiting in particular for security reasons, this presence should in no way hinder the performance of his/her functions, nor should the authorities seek to identify or approach the persons he/she has met until such time as he/she has completed his/her task under paragraph 3.

8. The two sides recognize that appropriate steps are to be taken to enable the Liaison Officer or his/her successor to effectively discharge the additional work and responsibilities arising out of this Understanding. The necessary adjustments will be made to the staff capacity available to him/her in a reasonable time, to meet the workload after due consultation.

9. Complaints submitted under the present Understanding shall not be a ground for any form of judicial or retaliatory action against complainant(s), their representative(s) or any other relevant person(s) involved in a complaint, at any time either during the implementation of the arrangements in the present Understanding or after its expiration, whether or not the complaint is upheld.

III. Time frame and trial period

10. The arrangements in the present Understanding shall be implemented on a trial basis over a period of 12 months that may be extended by mutual agreement.

11. It will then, subject to any modification that may appear appropriate and acceptable to both parties, either be consolidated or terminated in the light of the evaluation referred to in part I.

12. During the trial period, in the event that either party fails demonstrably to fulfill its obligations under the March 2002 Understanding or the present Understanding, the other party may terminate the mechanism by giving one month's notice in writing.

IV. Miscellaneous

13. The Government of the Union of Myanmar and the International Labour Organization shall give adequate publicity to the present Understanding in the appropriate languages.

For the International Labour Organization	For the Government of the Union of Myanmar
[*Signed*]	[*Signed*]
Executive Director	Ambassador/Permanent Representative

3. United Nations Educational, Scientific and Cultural Organization

(*a*) Agreements concluded for the purpose of holding international conferences

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

Privileges and immunities

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

In particular, the Government shall not place any restriction on the entry into, sojourn in, and departure from the territory of [name of the State] of all persons, of whatever nationality, entitled to attend the meeting by virtue of a decision of the appropriate authorities of UNESCO and in accordance with the Organization's relevant rules and regulations.

Damage and accidents

As long as the premises reserved for the meeting are at the disposal of UNESCO, the Government of [name of State] shall bear the risk of damage to the premises, facilities and furniture and shall assume and bear all responsibility and liability for accidents that may occur to persons present therein. The [name of State] authorities shall be entitled to adopt appropriate measures to ensure the protection of the participants, particularly against fire and other risks, of the above-mentioned premises, facilities and furniture. The Government of [name of State] may also claim from UNESCO compensation for any damage to persons and property caused by the fault of staff members or agents of the Organization."

(*b*) Exchange of notes constituting an Agreement between the Kingdom of Netherlands and the United Nations Educational, Scientific and Cultural Organization (UNESCO) concerning the ITC-UNESCO Centre for Integrated Surveys regarding employment opportunities of members of the families forming part of the household of the officials of UNESCO concerning the ITC-UNESCO Centre for Integrated Surveys. The Hague, 13 June 2007 and 27 June 2007*

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DJZ/VE-501/07

The Hague, 13 June 2007

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 (hereinafter [referred] to as ITC-UNESCO) and, with reference to the Agreement 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, the Exchange of Notes of 22 November/ 7 December 2005 between the Government of the Kingdom of the Netherlands and ITC-UNESCO and to discussions between the Ministry and ITC-UNESCO regarding employment opportunities of members of the families forming part of the household of the officials of ITC-UNESCO, has the honour to propose the following in respect of the privileges and immunities of the staff of ITC-UNESCO:

1. Members of the family forming part of the household of all categories of officials in the service of ITC-UNESCO shall be authorised to engage in gainful employment in the Netherlands for the duration of the term of office of the officials concerned.

2. The following persons are members of the family forming part of the household in the sense of paragraph 1:

(*a*) the spouses or registered partners of officials in the service of ITC-UNESCO;

(*b*) children of officials in the service of ITC-UNESCO who are under the age of 18;

(*c*) children of officials in the service of ITC-UNESCO who are aged 18 or over, but not older than 27, provided that they formed part of the official's household prior to their first entry into the Netherlands and still form part of this household, and that they are unmarried, financially dependent on the official concerned and are attending fulltime education in the Netherlands;

(*d*) children of officials in the service of ITC-UNESCO who are aged 18 or over, but not older than 23; they shall also be recognized as members of the family forming part of the household if they are not studying as long as they are unmarried and financially dependent on the official concerned.

3. Persons mentioned in paragraph 2 who obtain gainful employment shall enjoy no immunity from criminal, civil or administrative jurisdiction with respect to matters arising in the course of or in connection with such employment. However, any measures

* Entered into force 3 July 2007, in accordance with its provisions.

of execution shall be taken without infringing the inviolability of their person or of their residence, if they are entitled to such inviolability.

4. In case of the insolvency of a person aged under 18 with respect to a claim arising out of a gainful employment of that person, the immunity of the official in the service of ITC-UNESCO of whose family the person concerned is a member shall be waived for the purpose of settlement of the claim, in accordance with the provisions of the applicable ITC-UNESCO International Law agreements.

5. The employment referred to in paragraph 1 shall be in accordance with Netherlands legislation, including fiscal and social security legislation, unless any other applicable international legal instrument provides otherwise.

If this proposal is acceptable to ITC-UNESCO, the Ministry proposes that this Note and ITC-UNESCO's affirmative reply to it shall together constitute an Agreement between the Kingdom of the Netherlands and ITC-UNESCO. This Agreement shall enter into force on the date of receipt of ITC-UNESCO's reply by the Ministry.

The Ministry of Foreign Affairs of the Kingdom of the Netherlands avails itself of this opportunity to renew to ITC-UNESCO the assurances of its highest consideration.

The United Nations Educational,
Scientific and Cultural Organisation
concerning the ITC-UNESCO Centre for Integrated Surveys

II

Our ref.: D07.561/MM/ms

Enschede, 27 June 2007

Subject: Employment opportunities for members of the families

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-501/07 of 14† June 2007, which reads as follows:

[*See note 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 the date of receipt of this reply.

† Should read "13".

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.

Ministerie van Buitenlandse Zaken[†]
Treaties Division (DJZ/VE)
Attn. Director
Den Haag

4. International Tribunal for the Law of the Sea

(*a*) Agreement between the Federal Republic of Germany and the International Tribunal for the Law of the Sea on the occupancy and use of the premises of the International Tribunal for the Law of the Sea in the free and Hanseatic city of Hamburg. Berlin, 18 October 2000[*]

(Additional Agreement in accordance with Article [3] of the Headquarters Agreement)

The Government of the Federal Republic of Germany and the International Tribunal for the Law of the Sea,

Desiring to conclude an agreement regarding the occupancy and use of the premises of the International Tribunal for the Law of the Sea and in order to regulate the terms under which the premises shall be made available by the Government of the Federal Republic of Germany to the Tribunal as its seat in the Free and Hanseatic City of Hamburg, pursuant to article 1, paragraph 2, of Annex VI to the United Nations Convention on the Law of the Sea of 10 December 1982,

Having regard to the legal personality of the Tribunal and the provisions of the Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, adopted by the Meeting of State Parties to the United Nations Convention on the Law of the Sea on 23 May 1997,

Whereas the Government of the Federal Republic of Germany has agreed to provide, at its own expense, appropriate accommodation for the International Tribunal for the Law of the Sea and to make it available with all necessary facilities as the premises.

Whereas the International Tribunal for the Law of the Sea has accepted the offer of the Government of the Federal Republic of Germany and has agreed to occupy and use the premises,

Whereas the Headquarters Agreement between the Federal Republic of Germany and the International Tribunal for the Law of the Sea (hereinafter referred to as "the Head-

[†] Ministry of Foreign Affairs.

[*] Entered into force provisionally on 18 October 2000 and definitely on 1 May 2007, in accordance with article 11.

quarters Agreement") *inter alia* provides for the privileges, immunities and facilities of the Tribunal in the Federal Republic of Germany,

Have agreed as follows:

Article 1. Use of terms

For the purposes of this Agreement:

(*a*) "Tribunal" means the International Tribunal for the Law of the Sea;

(*b*) "Host country" means the Federal Republic of Germany;

(*c*) "Government" means the Government of the Federal Republic of Germany;

(*d*) "Competent authorities" means such federal (Bund), Land (state) or local authorities in the Federal Republic of Germany including the "Oberfinanzdirektion" as may be appropriate in the context and in accordance with the laws, regulations and customs of the Federal Republic of Germany, including the laws, regulations and customs of the Land (state) and local authorities involved;

(*e*) "Oberfinanzdirekition" means the regional finance directorate responsible for the area of the Free and Hanseatic City of Hamburg;

(*f*) "Parties" means the parties to this Agreement;

(*g*) "Headquarters Agreement" means the Agreement concluded between the Government and the Tribunal regarding the Headquarters of the Tribunal;

(*h*) "Headquarters district" comprises the area with the buildings upon it of the premises of the Tribunal as described in Annex 1;*

(*i*) "premises" means the property of the Federal Republic of Germany comprising the buildings, installations, equipment, fittings and all other facilities, as well as the surrounding grounds on the site located on the street "Am International en Seegerichtshof" in the Free and Hanseatic City of Hamburg, as described in Annex 1;

(*j*) "installations" means all immovable fixtures, such as machinery, utility and communication lines, drainage systems and all other systems and facilities which are permanently attached to the premises;

(*k*) "fittings" means any item which, though removable, is considered to be a permanent part of the premises, such as specially fitted or built-in furniture, lamps and video screens;

(*l*) "equipment" means any movable item which is provided as accessory to the premises and which is neither permanently fixed nor specially fitted for the premises, such as telephones, fax machines, furniture, kitchen equipment and table-ware.

Article 2. Purposes and scope of the agreement

This Agreement establishes the terms and conditions under which the premises together with the installations, equipment, fittings and all other facilities therein which are required for the effective functioning of the Tribunal are made available by the Government to the Tribunal and are occupied and used by the Tribunal.

* Not reproduced herein.

Article 3. Transfer and use of the premises

1. The Government hereby agrees to transfer the premises permanently to the Tribunal, free of rent, with the right to occupy and use the premises as the Headquarters of the Tribunal for the purpose of and in accordance with the Headquarters Agreement and this Agreement. Without prejudice to the foregoing, the premises shall remain the property of the Federal Republic of Germany.

2. The Tribunal shall have the right to enjoy the premises peaceably and quietly, without undue interruptions and disturbances, for the conduct of its activities including any ancillary activities it may decide to carry out.

3. The Government shall make every effort to ensure that the use of the vicinity of the premises shall not adversely affect the usefulness of the premises to the Tribunal.

4. The Tribunal may, with due notice to the Government, allow third parties use of the premises or parts of the premises, free of rent, but, if required, against compensation for expenses incurred, for the purpose of meetings, conferences, consultations, deliberations or any other activities related to the functions or interests of the Tribunal. In respect of the obligations of the Tribunal under this Agreement any such activities shall be deemed to be activities of the Tribunal.

5. The Government undertakes to ensure that the buildings are properly constructed and equipped for occupancy and use for the purposes of the Tribunal and that the buildings, installations and fittings are erected in compliance with the building regulations and standards that are legally binding in the host country.

6. The Government shall make the premises available to the Tribunal safe, fit and ready for use and occupancy on 6 November 2000. On this date, the Government shall transfer the possession of the premises to the Tribunal. The responsibilities of each of the Parties for the operation, maintenance and repair of the premises under article 4, shall take effect from the date of the transfer of the possession of the premises.

7. An inventory of the equipment, fittings and any other movable facilities provided with the building to the Tribunal shall be drawn up by the Government at least 30 days prior to the date specified in paragraph 6 and will be confirmed by the Tribunal within 30 days following the move into the premises by the Tribunal.

Article 4. Operation, maintenance, repair and alteration of the premises

1. The Tribunal shall maintain the premises in good repair and tenantable condition. In this respect, it shall be responsible, at its own expense, for the orderly operation and adequate maintenance of the premises including installations and fittings. Adequate maintenance shall include regular inspection and servicing of installations and fittings as well as upkeep of the buildings and care of the grounds. The Tribunal shall also be responsible for replacement or repair of buildings or parts of buildings, installations and fittings as a result of faulty operation or inadequate maintenance. In respect of all other repairs of the premises including installations and fittings, particularly those arising from wear and tear, the Tribunal will be responsible for minor repairs. A detailed description of the

responsibilities of the Tribunal in respect of operation and maintenance as well as repairs is set out in Annex 2.*

2. The Tribunal undertakes to secure the services of one or more providers of facility management to carry out the operation and maintenance of the premises in accordance with this article. When so requested, the Oberfinanzdirektion shall assist the Tribunal in the selection of the providers of facility management services. The Tribunal will notify the Government as to which of the services specified in Annex 2 will be carried out by external operators. All other services will be carried out by the Tribunal.

3. The host country shall be responsible, at its own expense, for major repairs as specified in Annex 2. This includes in particular measures necessary to preserve the substance of the buildings, installations and fittings thereon ("in Dach und Fach") and to eliminate possible construction defects in the buildings. In addition, it shall be responsible for any necessary restoration or reconstruction of the premises in accordance with article 7. The Tribunal shall report any necessary measures that are the responsibility of the host country to the Government, which shall take prompt and effective action in response.

4. The Tribunal may, with notice to the competent authorities, at its own expense, make alterations, attach fittings, add installations and erect additions on the premises for its own purposes. In any case involving structural alterations of the buildings or additions to be erected on the premises, the Tribunal shall obtain the prior consent of the Government and take into account the building regulations applicable in the Free and Hanseatic City of Hamburg to the extent feasible and subject to their applicability in the Headquarters district in accordance with article 4, paragraph 2, of the Headquarters Agreement.

5. In order to ensure the timely filing of warranty claims which may arise against a construction company or architect involved in the construction and renovation of the buildings, installations and fittings, the Tribunal shall inform the Government as soon as possible of any defects which may possibly give rise to warranty claims.

6. To the extent to which the host country furnishes the Tribunal with equipment for its use, the Tribunal shall be responsible, at its own expense, for any servicing measure, repair or replacement of such equipment which the Tribunal may consider to be necessary or appropriate according to its own requirements. In respect of such equipment the Government shall secure the transfer of any warranty rights to the Tribunal or shall authorize the Tribunal to secure servicing or repairs of the equipment warranted by the producers or suppliers of such equipment. The Government will make available to the Tribunal all information necessary to file such warranty claims.

7. Within one year from the date specified in article 3, paragraph 6, the Tribunal will notify the competent authorities of any conditions of the premises that do not conform to the requirements in article 3, paragraph 5. The Government shall take prompt and effective action to ensure that these requirements are met and that any necessary repairs or replacements are undertaken within a reasonable time.

Article 5. Public services for the premises

At the request of the Registrar of the Tribunal, the Oberfinanzdirektion shall use its good offices to cause the providers of public services to:

* Not reproduced herein.

(*a*) install and maintain, on fair conditions, the public services needed by the Tribunal, such as, but not limited to, postal, telephone, telegraph, facsimile and data communication services, electricity, water, gas, sewerage, collection of waste, fire protection and public (local) transportation;

(*b*) extend to the Tribunal, in respect of utilities and services referred to in subparagraph (a), rates not less favourable than the rates accorded to essential agencies and organs of the Government on the territory of the Free and Hanseatic City of Hamburg.

Article 6. Access to the premises

Without prejudice to article [5] of the Headquarters Agreement, upon request, with due notice given and subject to the prior approval of the Registrar of the Tribunal, duly authorized representatives of the competent authorities may enter the premises in order to inspect the premises for the purposes of maintenance, under conditions which shall not unreasonably disturb the carrying out of the functions of the Tribunal.

Article 7. Damage to or destruction of the premises

1. Subject to article 4, the Tribunal shall not be responsible for restoration or reconstruction of the premises including buildings, installations and fittings in case of damage or destruction by the elements, fire or other causes.

2. Should the premises, including buildings, installations and fittings, be damaged by the elements, fire or other causes the Government shall, in case of partial damage to the premises, restore the damaged part of the premises within a reasonable time. In the event that the premises are totally destroyed or otherwise rendered unfit for the use of the Tribunal, the Government shall make other suitable premises available to the Tribunal.

Article 8. Vacation of the premises

In the event that the Tribunal vacates the premises, it shall surrender the premises to the host country in as good a condition as when taken, except for reasonable wear and tear and damage by the elements, fire or other causes. The Tribunal shall not be required to restore the premises to the shape and state existent prior to any changes or additions that may have been executed in accordance with article 4, paragraph 4. The Tribunal shall not be required to replace or repair any equipment which is not a permanent fixture of the buildings and which will be provided by the host country with the premises.

Article 9. Consultations

1. Representatives of the Government and representatives of the Tribunal shall meet at the request of either party to resolve by mutual agreement any problems that may have been found to exist with respect to the application of this Agreement in order to find an appropriate solution with a view to securing the effective functioning of the Tribunal.

2. Three years after the entry into force of this Agreement or upon request of either party, representatives of the Government and representatives of the Tribunal shall meet to review the application of article 4 and Annex 2.

Article 10. Settlement of disputes

Any dispute between the Government and the Tribunal concerning the interpretation or application of this Agreement shall be settled in accordance with article [34] of the Headquarters Agreement.

Article 11. General provisions

1. This Agreement may be amended by agreement between the Government and the Tribunal, at any time, at the request of either Party.

2. After being signed by the Parties, this Agreement shall enter into force on the same day as the Headquarters Agreement. It shall be applied provisionally as from the date of signature.

3. The attached Annexes 1 and 2 are an integral part of this Agreement.

Done at Berlin, on 18 October 2000. in duplicate in the German, English and French languages, all texts being equally authentic.

For the Government of the Federal Republic of Germany:	For the International Tribunal for the Law of the Sea:
[*Signed*]	[*Signed*]

(*b*) Agreement between the Federal Republic of Germany and the International Tribunal for the Law of the Sea regarding the Headquarters of the Tribunal. Berlin, 14 December 2004*

The Federal Republic of Germany and the International Tribunal for the Law of the Sea,

Having regard to Annex VI to the United Nations Convention on the Law of the Sea which provides that the seat of the International Tribunal for the Law of the Sea shall be in the Free and Hanseatic City of Hamburg in the Federal Republic of Germany,

Having regard to the legal personality of the Tribunal and to the provisions of the Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, adopted by the Meeting of States Parties to the United Nations Convention on the Law of the Sea on 23 May 1997,

Recognizing that the Tribunal should enjoy such legal capacity, privileges and immunities as are necessary for the exercise of its functions,

Recalling that the Statute of the Tribunal provides, in article 10, that the Members of the Tribunal, when engaged on the business of the Tribunal, shall enjoy diplomatic privileges and immunities,

Have agreed as follows:

Article 1. Use of terms

For the purposes of this Agreement:

* Entered into force on 1 May 2007, in accordance with article 35.

(*a*) "Convention" means the United Nations Convention on the Law of the Sea, concluded at Montego Bay, Jamaica on 10 December 1982 and the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea, done at New York on 28 July 1994;

(*b*) "Statute" means the Statute of the International Tribunal for the Law of the Sea, Annex VI to the Convention;

(*c*) "Rules" means the Rules of the International Tribunal for the Law of the Sea;

(*d*) "General Agreement" means the Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea adopted by the Meeting of States Parties to the Convention on 23 May 1997;

(*e*) "States Parties" shall have the same meaning as that given in article 1 of the Convention;

(*f*) "Tribunal" means the International Tribunal for the Law of the Sea;

(*g*) "host country" means the Federal Republic of Germany;

(*h*) "Government" means the Government of the Federal Republic of Germany;

(*i*) "competent authorities" means such federal (Bund), Land (state), or local authorities in the Federal Republic of Germany as may be appropriate in the context and in accordance with the laws, regulations and customs of the Federal Republic of Germany, including the laws, regulations and customs of the Land (state) and local authorities involved;

(*j*) "Member" means an elected member of the Tribunal, as referred to in article 2 of the Statute, or a person chosen under article 17 of the Statute for the purposes of a particular case, while such person is exercising his or her functions;

(*k*) "officials of the Tribunal" means the members of the staff of the Registry of the Tribunal;

(*l*) "expert" means a person called at the instance of a party to a dispute or at the instance of the Tribunal to present testimony in the form of expert opinions, based on special knowledge, skills, experience or training;

(*m*) "expert appointed under article 289 of the Convention" means a person appointed in accordance with that article to sit with the Tribunal;

(*n*) "Headquarters district" means the area defined in article 3 of this Agreement;

(*o*) "international organization" means an intergovernmental organization.

Article 2. Juridical personality of the Tribunal

In accordance with its juridical personality the Tribunal has, in particular, the capacity:

(*a*) to contract;

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

(*c*) to institute legal proceedings.

Article 3. The Headquarters district

1. The seat of the Tribunal shall be the Headquarters district, which shall comprise:

(*a*) the area with the buildings upon it of the permanent premises of the Tribunal on the site located on the street "Am Intemationalen Seegerichtshof" in the Free and Hanseatic City of Hamburg as defined in the Agreement between the Government of the Federal Republic of Germany and the International Tribunal for the Law of the Sea on the Occupancy and Use of the Premises of the International Tribunal for the Law of the Sea in the Free and Hanseatic City of Hamburg (hereinafter "Additional Agreement"); and

(*b*) any other lands, buildings or part of buildings which may from time to time be included therein by supplementary agreement between the Government and the Tribunal.

2. The area with the buildings referred to in paragraph 1 (a), together with the installations, equipment, fittings and all other facilities therein which are required for the effective functioning of the Tribunal, shall be made available to it in accordance with the Additional Agreement.

Article 4. Law and authority in the Headquarters district

1. The Headquarters district shall be under the control and authority of the Tribunal, in accordance with this Agreement.

2. The Tribunal shall have the power to make regulations operative throughout the Headquarters district for the purpose of establishing therein the conditions in all respects necessary for the full execution of its functions. The Tribunal shall promptly inform the competent authorities of regulations thus enacted in accordance with this paragraph. No law or regulation of the host country which is inconsistent with a regulation of the Tribunal authorized by this paragraph shall, to the extent of such inconsistency, be applicable within the Headquarters district.

3. Any dispute between the host country and the Tribunal as to whether a regulation of the Tribunal is authorized by paragraph 2, or as to whether a law or regulation of the host country is inconsistent with any regulation of the Tribunal authorized by paragraph 2, shall be promptly settled by the procedure set out in article 33. Pending such settlement, the regulation of the Tribunal shall apply and the law or regulation of the host country shall not apply in the Headquarters district to the extent that the Tribunal claims it to be inconsistent with the regulation of the Tribunal.

4. Except as otherwise provided in this Agreement or in the General Agreement, and subject to the provisions of paragraph 2, the laws and regulations of the host country shall apply in the Headquarters district.

5. Except as otherwise provided in this Agreement or in the General Agreement, the courts or other competent authorities of the host country shall have jurisdiction, as provided in applicable laws, over acts done and transactions taking place in the Headquarters district.

6. The courts or other competent authorities, when dealing with cases arising out of or relating to acts done or transactions taking place in the Headquarters district, shall take into account the regulations enacted by the Tribunal under this article.

Article 5. Inviolability of the Headquarters district

1. The Headquarters district shall be inviolable. No officer or official of the host country or other person exercising any public authority within the host country shall enter

the Headquarters district to discharge any official duty except upon the express consent of or at the request of the Registrar of the Tribunal and in accordance with conditions approved by the President of the Tribunal.

2. Judicial actions and the service or execution of legal process, including the seizure of private property, cannot be enforced in the Headquarters district except with the consent of and in accordance with conditions approved by the President of the Tribunal.

3. In case of fire or other emergency requiring prompt protective action, or in the event that the competent authorities have reasonable cause to believe that such an emergency has occurred or is about to occur in the Headquarters district, the consent of the Registrar of the Tribunal to any necessary entry of the Headquarters district shall be presumed if the Registrar cannot be reached in time.

4. Subject to paragraphs 1 and 3, the competent authorities shall take the necessary action to protect the premises of the Tribunal against fire or other emergency.

5. Without prejudice to the Convention, this Agreement and the General Agreement, the Tribunal shall not allow the Headquarters district to become a refuge from justice for persons against whom a penal judgment had been made or who are pursued *flagrante delicto,* or against whom a warrant of arrest or an order of extradition, expulsion or deportation has been issued by the competent authorities.

6. Subject to paragraphs 1 and 2, nothing in this article shall preclude the official delivery by the postal service to the Headquarters district of letters and documents.

7. The Tribunal may expel or exclude persons from the Headquarters district either for violation of its regulations adopted under article 4 or for any other reason.

Article 6. Vicinity of the Headquarters district

1. The competent authorities shall take all reasonable measures to ensure that the amenities of the Headquarters district are not impaired and that the use for which the Headquarters district is intended is not obstructed by the use made of the land and buildings in the vicinity of the Headquarters district.

2. The Tribunal shall ensure that the Headquarters district is not used for purposes other than those for which it is intended and shall take all reasonable measures to ensure that the land and buildings in its vicinity are not unreasonably obstructed.

Article 7. Protection of the Headquarters district

1. The competent authorities shall take whatever measures may be necessary to ensure that the Tribunal shall not be dispossessed of all or any part of the Headquarters district without the express consent of the Tribunal.

2. The Government shall protect the premises of the Tribunal against unauthorized entry or damage of any kind and take appropriate measures to prevent any disturbance of the peace or impairment of the dignity and proper functioning of the Tribunal due to disturbances of public security or order in the Headquarters district or the immediate vicinity thereof.

3. The competent authorities shall provide the police or security forces necessary for the preservation of law and order in the Headquarters district and the removal therefrom of persons, if so requested by the Registrar of the Tribunal.

Article 8. Immunity of the Tribunal, its property, assets and funds

1. The Tribunal shall enjoy immunity from legal process, except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

2. The property, assets and funds of the Tribunal, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, seizure, expropriation or any other form of interference, whether by executive, administrative, judicial or legislative enforcement action.

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

4. The Tribunal shall have insurance coverage against third-party risks in respect of vehicles owned or operated by it, pursuant to the laws and regulations of the host country.

Article 9. Archives

The archives of the Tribunal, and all documents belonging to it or held by it, shall be inviolable at all times and wherever they may be located in the host country. The location of the archives and any documents shall be made known to the competent authorities if it is at a place other than in the Headquarters district.

Article 10. Public services in the Headquarters district

1. At the request of a duly authorized official of the Tribunal, the competent authorities shall do their utmost to ensure or assist, as appropriate, the provision on equitable terms of the public services needed by the Tribunal such as postal, telephone, telegraph, fax communications and on-line services, electricity, water, gas, sewerage, waste collection, fire protection, local transportation and cleaning of public streets.

2. In the event of interruption or threatened interruption of any such services, the competent authorities shall consider the needs of the Tribunal as being of equal importance with the needs of the essential agencies and organs of the Government and of the constitutional organs of the Free and Hanseatic City of Hamburg and will take steps accordingly to ensure that the work of the Tribunal is not impaired.

3. Upon request of the competent authorities, the Registrar of the Tribunal shall make suitable arrangements to enable duly authorized representatives of the appropriate public services to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers within the Headquarters district under conditions which shall not unreasonably disturb the carrying out of the functions of the Tribunal. Underground constructions may be undertaken by the competent authorities within the Headquarters district only after consultation with the Registrar of the Tribunal and under conditions which shall not disturb the carrying out of the functions of the Tribunal.

4. In cases where gas, electricity or water are supplied by the competent authorities or where the prices thereof are under their control, the Tribunal shall be supplied at rates

which shall not exceed the lowest comparable rates accorded to the federal or local governmental or administrative authorities.

Article 11. Communications

1. The Tribunal shall enjoy, as far as compatible with the international treaties, regulations and arrangements to which the host country is a party, for its official communications treatment not less favourable than that accorded by the host country to federal and local authorities or to international organizations and diplomatic missions, in the matter of priorities and rates for mail, cables, telegrams, radiograms, telex, facsimile, telephotos, television, telephone and other forms of communications as well as rates for information to press and radio.

2. The competent authorities shall ensure the inviolability of all communications and correspondence directed to the Tribunal, its Members or officials in the Headquarters district, as well as all outgoing communications and correspondence of the Tribunal and its Members or officials, by whatever means or in whatever form transmitted. Such inviolability shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, films and sound or videotape recordings.

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

4. If so requested by a duly authorized official of the Tribunal, the competent authorities shall provide for the official purposes of the Tribunal appropriate radio and other telecommunications facilities. These facilities may be specified by supplementary agreement between the Tribunal and the competent authorities.

5. Subject to the necessary authorization by the Meeting of States Parties and with the agreement of the Government as may be included in a supplementary agreement, the Tribunal may also establish and operate at the Headquarters district:

(*a*) its own short-wave sending and receiving radio broadcasting facilities (including emergency link equipment) which may be used on the same frequencies (within the tolerance prescribed for the broadcasting service by applicable regulations of the host country) for radiograph, radiotelephone and similar services;

(*b*) such other radio facilities as may be specified by supplementary agreement between the Tribunal and the competent authorities.

6. The Tribunal shall have the right to publish and broadcast freely and without restriction within the host country for purposes in conformity with the Convention and the Statute.

Article 12. Flag and emblem

The Tribunal shall be entitled to display its flag and emblem in the Headquarters district and on vehicles used for official purposes.

Article 13. Social security

1. Due to the fact that officials of the Tribunal are subject to regulations consistent with the United Nations Staff Regulations and Rules, including Article VI thereof, which establishes a comprehensive social security scheme, the Tribunal, the Registrar and other officials of the Tribunal, irrespective of nationality, shall be exempt from the laws of the host country on mandatory coverage by and compulsory contributions to the social security schemes of the host country during their employment with the Tribunal. This shall also apply insofar as another system of social security operated by the Tribunal or a system joined by the Tribunal provides for corresponding benefits.

2. The provisions of paragraph 1 shall not preclude voluntary participation by the Members and officials of the Tribunal in any social security scheme in the host country to the extent that such voluntary participation is permitted by the laws of the host country.

Article 14. Work permits for family members

Work permits for taking up gainful employment are granted to family members of Members, who have their residence or are normally staying in the host country, and of officials of the Tribunal. Family members within the meaning of the first sentence include the spouse as well as the children forming part of the household who are under 21 years of age or economically dependent.

Article 15. Exemption from taxes, customs duties and import or export restrictions

1. The Tribunal, its assets, income and other property, and its operations and transactions shall be exempt from all direct taxes in the host country. It is understood, however, that the Tribunal shall not claim exemption from taxes which are no more than charges for public utility services. The motor vehicles belonging to or operated by the Tribunal shall, upon notification, be exempted from motor vehicle tax.

2. The Tribunal shall be exempt from all customs duties, import turnover taxes, prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Tribunal for its official use. Goods imported or purchased under such an exemption shall not be sold or otherwise disposed of in the territory of the host country, except under conditions agreed with the competent authorities. The Tribunal shall also be exempt from all customs duties, import turnover taxes, prohibitions and restrictions on imports and exports in respect of its publications.

3. The Tribunal shall be exempt from all indirect taxes including insurance tax as well as value added tax/turnover tax (Umsatzsteuer) and excise duties which form part of the price of important purchases intended for the official use of the Tribunal. However, exemption from mineral oil tax included in the price of petrol, diesel and heating oil and value added tax/turnover tax (Umsatzsteuer) shall take the form of a refund of these taxes to the Tribunal under the conditions to be agreed upon between the Government and the Tribunal. It is understood, however, that the Tribunal shall not claim exemption from taxes and duties which are no more than charges for public utility services. Goods purchased under an exemption or reimbursement shall not be sold or otherwise disposed of, except in accordance with the conditions agreed upon between the Government and the Tribunal.

Article 16. Funds and freedom from currency restrictions

1. Without being restricted by financial controls, regulations or moratoria of any land, whilst carrying out its activities:

(*a*) the Tribunal may receive and hold funds, gold, securities or currency of any kind and operate accounts in any currency;

(*b*) the Tribunal shall be free to transfer its funds, gold, securities or currency from one country to another or within any country and to convert any currency held by it into any other currency;

(*c*) the Tribunal may receive, hold, negotiate, transfer, convert or otherwise deal with bonds and other financial securities.

2. in exercising its rights under paragraph 1, the Tribunal shall pay due regard to any representations made by the competent authorities insofar as it is considered that effect can be given to such representations without detriment to the interests of the Tribunal.

Article 17. Privileges, immunities, facilities and prerogatives

The privileges, immunities, facilities and prerogatives of the individuals referred to in articles 18 to 22 are granted in the interests of the administration of justice by the Tribunal in order to safeguard the independent performance of their official functions and not for the personal benefit of the individuals themselves.

Article 18. Privileges and immunities for the members and officials of the Tribunal

1. Subject to the provisions of this Agreement and without prejudice to the provisions of article 19, the privileges and immunities to be accorded to the Members and officials of the Tribunal within the territory of the host country shall be consistent with those accorded to diplomatic agents in accordance with the Vienna Convention on Diplomatic Relations of 18 April 1961 and shall in particular be as follows:

(*a*) the Members and the Registrar of the Tribunal, or any official acting as Registrar during his or her absence from duty, shall enjoy the same privileges, immunities, facilities and prerogatives as are accorded by the host country to the heads of diplomatic missions accredited to the host country;

(*b*) the officials of the Tribunal of P-5 level and above shall enjoy the same privileges, immunities, facilities and prerogatives as are accorded by the host country to members of comparable rank of the diplomatic staff of missions established in the host country;

(*c*) the other officials of the Tribunal shall enjoy the same privileges, immunities and facilities as are accorded by the host country to members of comparable rank of diplomatic missions established in the host country;

(*d*) the spouses and dependent relatives forming part of the household of the Members, the. Registrar of the Tribunal and the other officials of the Tribunal shall receive the same treatment as is accorded by the host country to spouses and dependent relatives forming part of the household of members of comparable rank of diplomatic missions established in the host country.

2. The Members shall enjoy the treatment provided for in this article even after expiry of their terms of office, if they continue to exercise their functions.

3. In order to secure complete freedom of speech and complete independence in the discharge of their duties, the Members and officials of the Tribunal shall continue to enjoy immunity from legal process in respect of words spoken and written and all acts done by them in the discharge of their duties even when they are no longer engaged in the business of the Tribunal.

4. Members and officials of the Tribunal shall be given, together with their spouses and dependent relatives forming part of their household, the same repatriation facilities in time of international crises as diplomatic agents are given under the Vienna Convention on Diplomatic Relations of 18 April 1961 and international law.

5. The Members and officials of the Tribunal shall have insurance coverage against third-party risks in respect of vehicles owned or operated by them pursuant to the laws and regulations of the host country.

6. The Government undertakes to issue visas and residence permits, where required, to household employees of Members, of the Registrar or other officials of the Tribunal as speedily as possible; no work permit will be required in such cases.

7. The Members and officials of the Tribunal, together with their spouses and dependent relatives forming part of their households, shall be exempt from national service obligations and alien registration.

8. The officials of the Tribunal shall be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable rank forming part of diplomatic missions established in the host country.

9. The names of the Members, the Registrar and the Deputy Registrar of the Tribunal shall be included in the Diplomatic list.

10. The provisions of this article shall be applicable irrespective of the relations existing between the Government of the country of which such an individual is a national and the host country.

Article 19. Privileges and exemptions with regard to taxes and duties for the members and officials of the Tribunal

The Members and officials of the Tribunal shall enjoy the following privileges and exemptions with regard to taxes, duties and customs duties within the territory of the host country:

(*a*) the Members and the Registrar of the Tribunal, or any official acting as Registrar during his or her absence from duty, shall enjoy the same privileges and exemptions as are accorded by the host country to the heads of diplomatic missions accredited to the host country;

(*b*) the officials of the Tribunal of P-5 level and above shall enjoy the same privileges and exemptions as are accorded by the host country to members of comparable rank of the diplomatic staff of missions established in the host country;

(*c*) the Members and the officials of the Tribunal, irrespective of their ranking, shall enjoy exemption from taxation on the salaries and emoluments paid to them by the Tribunal;

(*d*) the spouses and dependent relatives forming part of the household of a Member or the Registrar of the Tribunal or of officials of the Tribunal of P-5 level and above, shall enjoy the same privileges and exemptions as are accorded to spouses and dependent relatives forming part of the household of diplomatic agents of comparable rank of diplomatic missions established in the host country;

(*e*) the officials of the Tribunal shall 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.

Article 20. Experts appointed under article 289 of the Convention

The privileges, immunities, facilities and prerogatives accorded to Members, their spouses and dependent relatives forming part of their household and domestic staff, in accordance with articles 18 and 19, shall apply *mutatis mutandis* to experts appointed under article 289 of the Convention in the discharge of their duties and to their spouses and dependent relatives forming part of their household and domestic staff while such experts are exercising their functions. The provisions of article 18, paragraph 3, shall apply *mutatis mutandis* to experts appointed under article 289 of the Convention even when they are no longer engaged in the business of the Tribunal.

Article 21. Agents representing parties, counsel and advocates designated to appear before the Tribunal

1. Agents representing parties to proceedings before the Tribunal as well as counsel and advocates appearing before it shall, without prejudice to paragraph 2, be accorded the privileges, immunities and facilities necessary for the independent exercise of their duties during their journey to and from the Headquarters district, and while exercising their functions. They shall be accorded:

(*a*) immunity from any form of personal arrest, search or detention and from seizure of their personal baggage;

(*b*) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host country. An inspection in such a case shall be conducted in the presence of the agent, counsel or advocate concerned;

(*c*) immunity from legal process of every kind in respect of words spoken and written and all acts done by them while discharging their duties as representatives of parties before the Tribunal, which immunity shall continue even after they have ceased to exercise their functions;

(*d*) inviolability of documents and papers;

(*e*) the right to receive papers or correspondence by courier or in sealed bags;

(*f*) exemption in respect of themselves and their spouses from immigration restrictions or alien registration;

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

(*h*) the same repatriation facilities in time of international crises as are accorded to diplomatic agents under the Vienna Convention on Diplomatic Relations of 18 April 1961 and international law.

2. The representatives of States and States Parties who may be agents, counsel or advocates appearing before the Tribunal shall, notwithstanding anything to the contrary in paragraph 1, enjoy the privileges, immunities, facilities and prerogatives which, in accordance with the Vienna Convention on Diplomatic Relations of 18 April 1961 and international law, are accorded to diplomatic agents.

3. For the purposes of paragraph 1, parties to proceedings before the Tribunal shall include States other than States Parties, entities other than States, the International Seabed Authority, natural and juridical persons and sponsoring States or entities representing parties to proceedings in accordance with article 190 of the Convention.

4. The provisions of paragraphs 1 and 2 shall be applicable irrespective of the relations existing between the Government of which such an individual is a national and the host country.

5. Upon receipt of notification from parties to proceedings before the Tribunal as to the appointment of an agent, counsel or advocate, a certification of the status of such representative shall be provided under the signature of the Registrar of the Tribunal and limited to a period reasonably required for the proceedings.

6. The Registrar of the Tribunal shall notify the competent authorities of the appointment of agents, counsel or advocates of parties, indicating the prospective period for which their presence in and travel within the host country will be required.

7. The competent authorities shall accord the privileges, immunities, facilities and prerogatives to agents, counsel and advocates provided in this article upon production of the certification referred to in paragraph 5.

Article 22. Witnesses, experts and persons performing missions

1. Witnesses, experts and persons performing missions by order of the Tribunal shall be accorded the privileges, immunities and facilities necessary for the independent exercise of their functions, while on mission and during their journey to and from the Headquarters district. In particular, they shall be accorded the privileges, immunities and facilities accorded to agents, counsel and advocates under article 21, paragraph 1, subparagraphs (a) to (h), provided that a witness, expert or person performing missions who is a diplomatic agent of a State or a State Party shall be accorded the same treatment accorded to agents, counsel or advocates who are diplomatic agents under article 21, paragraph 2.

2. The federal (Bund), Land (state) or local authorities of the host country shall not impose any impediment to the transit to and from the Headquarters district of persons invited to the Headquarters district by the Tribunal on official business. The competent authorities shall afford any necessary protection to such persons while in transit to or from the Headquarters district. Such persons shall *mutatis mutandis* enjoy the privileges, immunities and facilities accorded to persons performing official missions for the Tribunal in accordance with this article.

3. The provisions of this article shall be applicable irrespective of the relations existing between the Government of which such an individual is a national and the host country.

Article 23. Nationals and permanent residents of the host country

Persons referred to in articles 18 to 22 shall not enjoy the privileges and immunities provided therein if they are German nationals or have their permanent residence in Germany, with the exception of:

(*a*) the exemption from social security provisions provided that they are subject to the social security law of their home State or they participate in a voluntary insurance scheme with adequate benefits;

(*b*) the exemption from taxation on the salaries and emoluments paid to them by the Tribunal; and

(*c*) the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties, which immunity shall continue even after the persons have ceased to exercise their functions.

Article 24. Waiver

1. A State which is a party to proceedings before the Tribunal not only has the right but is under a duty to waive the immunity of agents, counsel and advocates representing or designated by it and of witnesses, experts and persons performing missions referred to in article 22 who are diplomatic agents of the State concerned, in any case where in the opinion of the State concerned the immunity would impede the course of justice and can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded.

2. The right and the duty to waive the immunity of agents, counsel and advocates, representing or designated by an entity other than a State shall lie with the Tribunal, after hearing the individual concerned, where, in its opinion, the immunity is not directly related to or incidental to the performance of official functions and would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded.

3. The right and the duty to waive the immunity of witnesses, experts and persons performing missions referred to in article 22, who are not diplomatic agents, shall lie with the Tribunal, after hearing the individual concerned, where, in its opinion, the immunity is not directly related to or incidental to the performance of official functions and would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded.

4. The right and the duty to waive the immunity of the Registrar, or the Deputy Registrar or any other official of the Tribunal, when acting as Registrar, or experts appointed under article 289 of the Convention, and members of their households shall lie with the Tribunal, after hearing the individual concerned, where, in its opinion, the immunity is not directly related to or incidental to the performance of official functions and would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded.

5. The right and the duty to waive the immunity of other officials of the Tribunal and members of their households shall lie with the Registrar of the Tribunal, with the approval of the President of the Tribunal, and after hearing the individual concerned, where, in the Registrar's opinion, the immunity is not directly related to or incidental to

the performance of official functions and would impede the course of justice and it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which the immunity is accorded.

Article 25. Laissez-passer*, identity cards and notification*

1. The Government shall recognise and accept the United Nations *laissez-passer* issued to Members, officials of the Tribunal and experts appointed under article 289 of the Convention as a valid travel document.

2. Persons referred to in articles 18 to 22 who do not present a United Nations *laissez-passer* shall be immune from immigration restrictions provided that they produce either a valid travel document with an entry visa and evidence of their official capacity or a valid travel document and the competent authorities are notified of their arrival by the Tribunal.

3. The Registrar of the Tribunal shall, on behalf of the Tribunal, furnish persons referred to in articles 20 to 22 with an identity card stating the name, date and place of birth and the number of passport or number of national identity card and bearing a photograph and signature of the person concerned. This identity card shall serve to identify the holder and his official capacity in relation to the Tribunal, to the competent authorities. In the case of a stateless person, the travel documents issued by a State will for the purpose of this paragraph be treated as a passport or a national identity card.

4. The Registrar of the Tribunal shall notify the competent authorities when any person mentioned in article 18 takes up or relinquishes duties, and shall periodically send the competent authorities a list of all such persons with information as to the name, date and place of birth, nationality, home address, functions with the Tribunal and the anticipated duration of service.

5. The Registrar of the Tribunal shall notify the competent authorities of the nomination of agents, counsel and advocates referred to in article 21. When attendance before the Tribunal by a person referred to in article 21 or article 22 is required, the Registrar of the Tribunal shall notify the competent authorities immediately. This information shall state the name, date and place of birth and home address of the person concerned as well as the functions of the person before the Tribunal and the anticipated duration of the functions.

Article 26. Entry, transit and sojourn in the host country

1. The competent authorities shall take all necessary measures to facilitate the entry into and sojourn in the host country, and shall place no impediment in the way of departure from the host country, of the persons referred to in articles 18 to 22 and also ensure them the necessary protection. The competent authorities shall ensure that no impediment is placed in the way of their transit to or from the Headquarters seat and shall afford them the necessary protection.

2. Paragraph 1 shall not apply in the case of general interruptions of transportation, and shall not impair the effectiveness of generally applicable laws relating to the operation of means of transportation.

3. Visas which may be required by persons referred to in articles 18 to 22 shall be granted without charge and as promptly as possible.

4. Applications for visas (where required) from the Members and the Registrar of the Tribunal should be dealt with as speedily as possible. All other holders of United Nations *laissez-passer* should receive the same facilities when their applications for visas are accompanied by a certificate stating that they are travelling on the business of the Tribunal. In addition, all holders of United Nations *laissez-passer* should be granted facilities for speedy travel.

5. Similar facilities to those specified in paragraph 4 should be accorded to witnesses, experts and other persons who, though not the holders of United Nations *laissez-passer*, have a certificate stating that they are travelling on the business of the Tribunal.

6. No activity performed by any person referred to in articles 18 to 22 in an official capacity with respect to the Tribunal shall constitute a reason for preventing the entry into or departure from the territory of the host country of the person or for requiring the person to leave the territory of the host country.

7. It is understood that the persons referred to in articles 18 to 22 are not exempt from any reasonable application of the internationally accepted rules governing quarantine and public health.

Article 27. Maintenance of security and public order

1. Nothing in this Agreement shall affect the right of the host country to take, with .the approval of the President of the Tribunal, the precautions necessary for its security or for the maintenance of public order.

2. If the host country considers it necessary to apply paragraph 1, it shall approach the Tribunal as rapidly as circumstances allow in order to determine by mutual agreement the measures necessary to protect the Tribunal.

Article 28. Responsibility, liability and insurance

1. The host country shall not incur, by reason of the location of the seat of the Tribunal within its territory, any international responsibility for acts or omissions of the Tribunal or of its officials acting or abstaining from acting within the scope of their functions other than the international responsibility which the host country would incur as a State Party.

2. Without prejudice to its immunities under this Agreement or the General Agreement, the Tribunal shall carry insurance to cover liability for any injury or damage arising from the activities of the Tribunal in the host country or from its use of the Headquarters district or buildings erected thereon or vehicles owned or operated by it that may be suffered by persons other than officials of the Tribunal, or by the Government. To this end, the competent authorities shall secure for the Tribunal, at reasonable rates, insurance coverage permitting claims to be submitted directly to the insurer by parties suffering injury or damage. Such claims and liability shall, without prejudice to the privileges and immunities of the Tribunal, be governed by the laws of the host country.

Article 29. Cooperation with the competent authorities

1. The Tribunal shall cooperate at all times with the competent authorities to facilitate to the extent possible the proper administration of justice, secure the observance of police regulations and prevent any abuse of the privileges, immunities and facilities

accorded to officials of the Tribunal referred to in article 18, paragraph 1, subparagraphs (c) and (d), and the persons referred to in articles 19 to 22.

2. If the Government considers that there has been an abuse of privilege or immunity conferred by this Agreement, consultations will be held between the competent authorities and the President of the Tribunal to determine whether any such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to the Government and to the Tribunal, either party may submit the question as to whether such an abuse has occurred for resolution in accordance with the provisions on settlement of disputes under article 33.

3. The Government may only require persons referred to in articles 18 to 22, other than Members, the Registrar or the Deputy Registrar or any other official of the Tribunal when acting as Registrar or representatives of States Parties, to leave the country on account of any activities performed by them which are an abuse of the right of residence in the host country and are not directly related to, or incidental to the performance of, official functions, with the approval of the Minister for Foreign Affairs of the Federal Republic of Germany, after consultation with the Registrar in the case of officials of the Tribunal, and the President of the Tribunal in the case of the other persons herein referred to. Representatives of States Parties other than agents, representing such States Parties in proceedings before the Tribunal may only be required to leave the country in accordance with the diplomatic procedure applicable to diplomatic agents accredited to the host country.

Article 30. Exchange of notes

The Exchange of Notes of 14th December 2004 between the Government and the Tribunal with regard to this Agreement forms an integral part thereof.

Article 31. Supplementary agreements

The Government and the Tribunal may conclude supplementary agreements to this Agreement insofar as this is deemed desirable.

Article 32. Relationship with the General Agreement

The provisions of this Agreement shall be complementary to the provisions of the General Agreement. Insofar as any provision of this Agreement and any provision of the General Agreement relate to the same subject-matter, the two provisions shall, wherever possible, be treated as complementary, so that both provisions shall be applicable and neither shall limit the effect of the other, but in case of conflict, the provisions of this Agreement shall prevail.

Article 33. Settlement of disputes

1. The Tribunal shall make suitable provision for the satisfactory settlement of:

(*a*) disputes arising out of contracts and other disputes of a private law character to which the Tribunal is a party;

(*b*) disputes involving any person within the scope of article 29, paragraph 3, who by reason of his or her official position enjoys immunity, if immunity has not been waived in accordance with article 24.

2. Any dispute between the Government and the Tribunal arising out of or concerning the interpretation or application of this Agreement or of any supplementary agreement, or any question affecting the Headquarters district or the relationship between the Government and the Tribunal which is not settled by consultation, negotiation or other agreed mode of settlement, shall be referred, at the request of either party to the dispute, for a final and binding decision to a panel of three arbitrators, one to be chosen by the Tribunal, one to be chosen by the Government, and the third, who shall be the Chairman of the panel, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the appointment of the third member within three months following the appointment of the first two arbitrators, the Chairman shall be chosen by the Secretary-General of the United Nations within one month of the making of a request by the Tribunal or the Government. If either party to this Agreement has failed to make its appointment of an arbitrator within two months of the appointment of an arbitrator by the other party, the Secretary-General of the United Nations shall, at the request of either party, make such appointment within one month of such a request.

Article 34. Amendments

The provisions of this Agreement may only be amended by agreement between the Federal Republic of Germany and the International Tribunal for the Law of the Sea.

Article 35. Entry into force

This Agreement shall enter into force on the first day of the month following the date of receipt of the last of the notifications by which the Federal Republic of Germany and the Tribunal have informed each other of the completion of their respective formal requirements for the entry into force of this Agreement.

Article 36. Registration

Registration of this Agreement with the Secretariat of the United Nations, in accordance with Article 102 of the Charter of the United Nations, shall be initiated by the Government immediately following its entry into force. The Tribunal shall be informed of registration, and of the United Nations registration number, as soon as this has been confirmed by the Secretariat.

Done at Berlin on 14th December 2004 in duplicate in the German, English and French languages, all language texts being equally authentic.

For the Federal Republic of Germany:	For the International Tribunal for the Law of the Sea:
[*Signed*]	[*Signed*]

5. Organization for the Prohibition of Chemical Weapons

Agreement between the Organization for the Prohibition of Chemical Weapons and the Kingdom of Spain on the privileges and immunities of the OPCW. The Hague, 16 September 2003*

Whereas Article VIII, paragraph 48, of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction provides that the OPCW shall enjoy on the territory and in any other place under the jurisdiction or control of a State Party such legal capacity and such privileges and immunities as are necessary for the exercise of its functions;

Whereas Article VIII, paragraph 49, of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction provides that delegates of States Parties, together with their alternates and advisers, representatives appointed to the Executive Council together with their alternates and advisers, the Director-General and the staff of the Organisation shall enjoy such privileges and immunities as are necessary in the independent exercise of their functions in connection with the OPCW;

Whereas notwithstanding Article VIII, paragraphs 48 and 49 of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, the privileges and immunities enjoyed by the Director-General and the staff of the Technical Secretariat during the conduct of verification activities shall be those set forth in Part II, Section B, of the Verification Annex;

Whereas Article VIII, paragraph 50, of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction specifies that such legal capacity, privileges and immunities are to be defined in agreements between the Organisation and the States Parties,

Now, therefore, the Organisation for the Prohibition of Chemical Weapons and the Kingdom of Spain have agreed as follows:

Article 1. Definitions

In this Agreement:

(*a*) "Convention" means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction of 13 January 1993;

(*b*) "OPCW" means the Organisation for the Prohibition of Chemical Weapons established under Article VIII, paragraph 1, of the Convention;

(*c*) "Director-General" means the Director-General referred to in Article VIII, paragraph 41, of the Convention, or in his absence, the acting Director-General;

(*d*) "Officials of the OPCW" means the Director-General and all members of the staff of the Technical Secretariat of the OPCW who shall have such condition, as established under Article VIII, Section D, paragraph 41, of the Convention;

* Entered into force on 3 July 2007, in accordance with article 12.

(*e*) "State Party" means the State Party to this Agreement;

(*f*) "States Parties" means the States Parties to the Convention;

(*g*) "Representatives of States Parties" means the accredited heads of delegation of States Parties to the Conference of the States Parties and/or to the Executive Council or the Delegates to other meetings of the OPCW;

(*h*) "Experts" means persons who, in their personal capacity, are performing missions authorised by the OPCW, are serving on its organs, or who are, in any way, at its request, consulting with the OPCW;

(*i*) "Meetings convened by the OPCW" means any meeting of any of the organs or subsidiary organs of the OPCW, or any international conferences or other gatherings convened by the OPCW;

(*j*) "Property" means all property, assets and funds belonging to the OPCW or held or administered by the OPCW in furtherance of its functions under the Convention and all income of the OPCW;

(*k*) "Archives of the OPCW" means all records, correspondence, documents, manuscripts, computer and media data, photographs, films, video and sound recordings belonging to or held by the OPCW or any officials of the OPCW in an official function, and any other material which the Director-General and the State Party may agree shall form part of the archives of the OPCW;

(*l*) "Premises of the OPCW" are the buildings or parts of buildings, and the land ancillary thereto if applicable, used for the purposes of the OPCW, including those referred to in Part II, subparagraph 11(b), of the Verification Annex to the Convention.

Article 2. Legal personality

The OPCW shall possess full legal personality. In particular, it shall have the capacity:

(*a*) to contract;

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

(*c*) to institute and act in legal proceedings.

Article 3. Privileges and immunities of the OPCW

1. The OPCW and its 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 OPCW has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

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

3. The archives of the OPCW shall be inviolable, wherever located. The State Party will be allowed to exercise over them all the rights conferred upon it by the Convention.

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

(*a*) the OPCW may hold funds, gold or currency of any kind and operate accounts in any currency;

(*b*) the OPCW may freely transfer its funds, securities, gold and currencies to or from the State Party, to or from any other country, or within the State Party, and may convert any currency held by it into any other currency.

5. The OPCW shall, in exercising its rights under paragraph 4 of this Article, pay due regard to any representations made by the Government of the State Party in so far as it is considered that effect can be given to such representations without detriment to the interests of the OPCW.

6. The OPCW and its property shall be:

(*a*) exempt from all direct taxes, in no case the exemption will cover the taxes that constitute charges for a public utility service that the OPCW has benefited from;

(*b*) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the OPCW for its official use; it is understood, however, that articles imported under such exemption will not be sold in the State Party, except in accordance with conditions agreed upon with the State Party;

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

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

Article 4. Facilities and immunities in respect of communications and publications

1. For its official communications the OPCW shall enjoy, in the territory of the State Party and as far as may be compatible with any international conventions, regulations and arrangements to which the State Party adheres, treatment not less favourable than that accorded by the Government of the State Party to any other Government, including the latter's diplomatic mission, in the matter of priorities, rates and taxes for post and telecommunications, and press rates for information to the media.

2. No censorship shall be applied to the official correspondence and other official communications of the OPCW. The OPCW shall have the right to use codes and to dispatch and receive correspondence and other official communications by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags. Nothing in this paragraph shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between the State Party and the OPCW.

3. The State Party recognises the right of the OPCW to publish and broadcast freely within the territory of the State Party for purposes specified in the Convention, always in accordance with the regulations of the Confidentiality Annex, especially when related to possible implications for national security and industrial confidentiality.

4. All official communications directed to the OPCW and all outward official communications of the OPCW, by whatever means or whatever form transmitted, shall be inviolable. Such inviolability shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, videos, films, sound recordings and software.

Article 5. Representatives of States parties

1. Representatives of States Parties, together with alternates, advisers, technical experts and secretaries of their delegations, at meetings convened by the OPCW, shall, without prejudice to any other privileges and immunities which they may enjoy, while exercising their functions and during their journeys to and from the place of the meeting, enjoy the following privileges and immunities:

(*a*) immunity from personal arrest or detention;

(*b*) immunity from legal process of any kind in respect of words spoken or written and all acts done by them, in their official capacity; such immunity shall continue to be accorded, notwithstanding that the persons concerned may no longer be engaged in the performance of such functions;

(*c*) inviolability for all papers, documents and official material;

(*d*) the right to use codes and to dispatch or receive papers, correspondence or official material by courier or in sealed bags;

(*e*) exemption in respect of themselves and their spouses from immigration restrictions, alien registration or national service obligations while they are visiting or passing through the State Party in the exercise of their functions;

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

(*g*) the same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

2. Where the incidence of any form of taxation depends upon residence, periods during which the persons designated in paragraph 1 of this Article may be present in the territory of the State Party for the discharge of their duties shall not be considered as periods of residence.

3. The privileges and immunities are accorded to the persons designated in paragraph 1 of this Article in order to safeguard the independent exercise of their functions in connection with the OPCW and not for the personal benefit of the individuals themselves. It is the duty of all persons enjoying such privileges and immunities to observe in all other respects the laws and regulations of the State Party.

4. The provisions of paragraphs 1 and 2 of this Article are not applicable in relation to a person who is a national of the State Party.

Article 6. Officials of the OPCW

1. During the conduct of verification activities, the Director-General and the staff of the Technical Secretariat, including qualified experts during investigations of alleged use of chemical weapons referred to in Part XI, paragraphs 7 and 8 of the Verification Annex to the Convention, enjoy, in accordance with Article VIII, paragraph 51, of the Convention,

the privileges and immunities set forth in Part II, Section B, of the Verification Annex to the Convention or, when transiting the territory of non-inspected States Parties, the privileges and immunities referred to in Part II, paragraph 12, of the same Annex.

2. For other activities related to the object and purpose of the Convention, officials of the OPCW shall:

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

(*b*) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

(*c*) enjoy inviolability for all papers, documents and official material, subject to the provisions of the Convention;

(*d*) enjoy the same exemptions from taxation in respect of salaries and emoluments paid to them by the OPCW and on the same conditions as are enjoyed by officials of the United Nations;

(*e*) be exempt, together with their spouses from immigration restrictions and alien registration;

(*f*) be given, together with their spouses, the same repatriation facilities in time of international crises as officials of comparable rank of diplomatic missions;

(*g*) be accorded the same privileges in respect of exchange facilities as are accorded to members of comparable rank of diplomatic missions.

(*h*) enjoy the same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

3. The officials of the OPCW shall be exempt from national service obligations, provided that, in relation to nationals of the State Party, such exemption shall be confined to officials of the OPCW whose names have, by reason of their duties, been placed upon a list compiled by the Director-General of the OPCW and approved by the State Party. Should other officials of the OPCW be called up for national service by the State Party, the State Party shall, at the request of the OPCW, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption in the continuation of essential work.

4. In addition to the privileges and immunities specified in paragraphs 1, 2 and 3 of this Article, the Director-General of the OPCW shall be accorded on behalf of himself and his spouse, the privileges and immunities, exemptions and facilities accorded to diplomatic agents on behalf of themselves and their spouses, in accordance with international law. The same privileges and immunities, exemptions and facilities shall also be accorded to a senior official of the OPCW acting on behalf of the Director-General.

5. Privileges and immunities are granted to officials of the OPCW in the interests of the OPCW, and not for the personal benefit of the individuals themselves. It is the duty of all persons enjoying such privileges and immunities to observe in all other respects the laws and regulations of the State Party. The OPCW shall have the right and the duty to waive the immunity of any official of the OPCW in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the OPCW.

6. The OPCW shall cooperate at all times with the appropriate authorities of the State Party to facilitate the proper administration of justice, and shall 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.

Article 7. Experts

1. Experts shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connection with such functions.

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

(*b*) in respect of words spoken or written or acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer performing official functions for the OPCW;

(*c*) inviolability for all papers, documents and official material;

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

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

(*f*) the same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

2. The privileges and immunities are accorded to experts in the interests of the OPCW and not for the personal benefit of the individuals themselves. It is the duty of all persons enjoying such privileges and immunities to observe in all other respects the laws and regulations of the State Party. The OPCW shall have the right and the duty to waive the immunity of any expert in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the OPCW.

Article 8. Abuse of privilege

1. If the State Party considers that there has been an abuse of a privilege or immunity conferred by this Agreement, consultations shall be held between the State Party and the OPCW to determine whether any such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to the State Party and the OPCW, the question whether an abuse of a privilege or immunity has occurred shall be settled by a procedure in accordance with Article 10.

2. Persons included in one of the categories under Articles 6 and 7 shall not be required by the territorial authorities to leave the territory of the State Party on account of any activities by them in their official capacity. In the case, however, of abuse of privileges committed by any such person in activities outside official functions, the person may be required to leave by the Government of the State Party, provided that the order to leave the country has been issued by the territorial authorities with the approval of the Foreign Minister of the State Party. Such approval shall be given only in consultation with the Director-General of the OPCW. If expulsion proceedings are taken against the person,

the Director-General of the OPCW shall have the right to appear in such proceedings on behalf of the person against whom they are instituted.

Article 9. Travel documents and visas

1. The State Party shall recognise and accept as valid the United Nations *laissez-passer* issued to the officials of the OPCW, in accordance with special OPCW arrangements, for the purpose of carrying out their tasks related to the Convention. The Director-General shall notify the State Party of the relevant OPCW arrangements.

2. The State Party shall take all necessary measures to facilitate the entry into and sojourn in its territory and shall place no impediment in the way of the departure from its territory of the persons included in one of the categories under Articles 5, 6 and 7 above, whatever their nationality, and shall ensure that no impediment is placed in the way of their transit to or from the place of their official duty or business and shall afford them any necessary protection in transit.

3. Applications for visas and transit visas, where required, from persons included in one of the categories under Articles 5, 6 and 7, when accompanied by a certificate that they are travelling in their official capacity, shall be dealt with as speedily as possible to allow those persons to effectively discharge their functions. In addition, such persons shall be granted facilities for speedy travel.

4. The Director-General, the Deputy Director(s)-General and other officials of the OPCW, travelling in their official capacity, shall be granted the same facilities for travel as are accorded to members of comparable rank in diplomatic missions.

5. For the conduct of verification activities visas are issued in accordance with paragraph 10 of Part II, Section B, of the Verification Annex to the Convention.

Article 10. Settlement of disputes

1. The OPCW shall make provision for appropriate modes of settlement of:

(*a*) disputes arising out of contracts or other disputes of a private law character to which the OPCW is a party;

(*b*) disputes involving any official of the OPCW or expert who, by reason of his official position, enjoys immunity, if such immunity has not been waived in accordance with Article 6, paragraph 5, or Article 7, paragraph 2, of this Agreement.

2. Any dispute concerning the interpretation or application of this Agreement, which is not settled amicably, shall be referred for final decision to a tribunal of three arbitrators, at the request of either party to the dispute. Each party shall appoint one arbitrator. The third, who shall be chairman of the tribunal, is to be chosen by the first two arbitrators.

3. If one of the parties fails to appoint an arbitrator and has not taken steps to do so within two months following a request from the other party to make such an appointment, the other party may request the President of the International Court of Justice to make such an appointment.

4. Should the first two arbitrators fail to agree upon the third within two months following their appointment, either party may request the President of the International Court of Justice to make such appointment.

5. The tribunal shall conduct its proceedings in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States, as in force on the date of entry into force of this Agreement.

6. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the parties to the dispute.

Article 11. Interpretation

1. The provisions of this Agreement shall be interpreted in the light of the functions which the Convention entrusts to the OPCW.

2. The provisions of this Agreement shall in no way limit or prejudice the privileges and immunities accorded to members of the inspection team in Part II, Section B, of the Verification Annex to the Convention or the privileges and immunities accorded to the Director-General and the staff of the Technical Secretariat of the OPCW in Article VIII, paragraph 51, of the Convention. The provisions of this Agreement shall not themselves operate so as to abrogate, or derogate from, any provisions of the Convention or any rights or obligations which the OPCW may otherwise have, acquire or assume.

Article 12. Final provisions

1. This Agreement shall enter into force on the date of deposit with the Director-General of an instrument of ratification of the State Party. It is understood that, when an instrument of ratification is deposited by the State Party it will be in a position under its own law to give effect to the terms of this Agreement.

2. This Agreement shall continue to be in force for so long as the State Party remains a State Party to the Convention.

3. The OPCW and the State Party may enter into such supplemental agreements as may be necessary.

4. Consultations with respect to amendment of this Agreement shall be entered into at the request of the OPCW or the State Party. Any such amendment shall be by mutual consent expressed in an agreement concluded by the OPCW and the State Party.

Done in The Hague in duplicate on [. . .], in the English and Spanish languages, each text being equally authentic.

Part Two

LEGAL ACTIVITIES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter III

GENERAL REVIEW OF THE LEGAL ACTIVITIES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

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

1. Membership of the United Nations

As of 31 December 2007, the number of Member States of the United Nations remained at 192.

2. Peace and security

(a) Peacekeeping missions and operations

(i) *Peacekeeping operations and missions established in 2007*

a. The Sudan

On 31 July 2007, the Security Council adopted resolution 1769 (2007) by which it decided to authorize and mandate the establishment, for an initial period of 12 months, of an African Union/United Nations Hybrid operation in Darfur (UNAMID). The Council further decided that the mandate of UNAMID should be as set out in paragraphs 54 and 55 of the report of the Secretary General and the Chairperson of the African Union Commission of 5 June 2007.[1]

Accordingly, the mandate of UNAMID would be, *inter alia,* to contribute to the restoration of necessary security conditions for the safe provision of humanitarian assistance and to facilitate full humanitarian access throughout Darfur and to contribute to the protection of civilian populations under imminent threat of physical violence and prevent attacks against civilians, within its capability and areas of deployment, without prejudice to the responsibility of the Government of the Sudan. UNAMID would also have to monitor and verify the implementation of various ceasefire agreements signed since 2004, and to assist with the implementation of the Darfur Peace Agreement and any subsequent agreements. The new mission was also mandated to assist the political process in order to ensure that it is inclusive and to support the African Union-United Nations joint mediation in its efforts to broaden and deepen commitment to the peace process, as well as to

[1] Report of the Secretary General and the Chairperson of the African Union Commission of 5 June 2007 (S/2007/307/Rev.1).

contribute to a secure environment for economic reconstruction and development, and the sustainable return of internally displaced persons and refugees to their homes. Further, UNAMID would have to contribute to the promotion of respect for and protection of human rights and fundamental freedoms in Darfur, to assist in the promotion of the rule of law in Darfur, including through support for strengthening an independent judiciary and the prison system, in consultation with relevant Sudanese authorities as well as to monitor and report on the security situation at the Sudan's borders with Chad and the Central African Republic.[2]

Moreover, the Council decided that UNAMID should monitor whether any arms or related material are present in Darfur in violation of the Agreements and the measures imposed by Security Council resolution 1556 (2004) of 30 July 2004.

The Security Council further decided that UNAMID, which should incorporate the African Mission in the Sudan (AMIS) personnel and the United Nations Heavy and Light Support Package to AMIS, should consist of up to 19,555 military personnel, including 360 military observers and liaison officers, and an appropriate civilian component including up to 3,772 police personnel and 19 formed police units comprising up to 140 personnel each.

The Council also decided that no later than October 2007, UNAMID should establish an initial operational capability for the headquarters through which operational directives would be implemented, and should establish financial arrangements to cover troops costs for all personnel deployed to AMIS. It also decided that as of October 2007, UNAMID should complete preparations to assume operational command authority over the Light and Heavy Support Package and hybrid personnel in order to perform such tasks under its mandate as its resources and capabilities permit, immediately upon transfer of authority. The Council decided that the transfer of authority should take place as soon as possible and no later than 31 December 2007, after UNAMID had completed all remaining tasks necessary to permit the implementation of all the elements of its mandate.

Finally, acting under Chapter VII of the Charter of the United Nations, the Security Council decided that UNAMID was authorized to take the necessary action in the areas of deployment of its forces, as it deems within its capabilities in order to protect its personnel, facilities, installations and equipment, and to ensure the security and freedom of movement of its own personnel and humanitarian workers as well as to support an early and effective implementation of the Darfur Peace Agreement, prevent the disruption of its implementation and armed attacks, and protect civilians, without prejudice to the responsibility of the Government of the Sudan.

b. Chad and the Central African Republic

The Security Council adopted on 25 September 2007 resolution 1778 (2007), in which it approved the establishment in Chad and the Central African Republic of a multidimensional presence intended to help create the security conditions conducive to a voluntary, secure and sustainable return of refugees and displaced persons, and decided that this

[2] For further details on the operation's tasks see paragraph 55 the report of the Secretary General and the Chairperson of the African Union Commission of 5 June 2007 (S/2007/307/Rev.1).

multidimensional presence should include, for a period of one year, a United Nations Mission in the Central African Republic and Chad (MINURCAT).[3]

The Security Council decided that MINURCAT should have the mandate to select, train, advise and facilitate support to elements of the "*police tchadienne pour la protection humanitaire*"[4] and to liaise with the national army, the gendarmerie and police forces, the nomad national guard, the judicial authorities and prison officials in Chad and the Central African Republic with the view to contribute to the creation of a more secure environment. MINURCAT would also have to liaise with the Chadian Government and the Office of the United Nations High Commissioner for Refugees (UNHCR) in support of their efforts to relocate refugee camps which are in close proximity to the border, and to liaise closely with the Sudanese Government, the African Union, the African Union Mission in the Sudan (AMIS), the African Union/United Nations Hybrid operation in Darfur (UNAMID) which will succeed it, the United Nations Peacebuilding Support Office in the Central African Republic (BONUCA), the Multinational Force of the Central African Economic and Monetary Community (FOMUC) and the Community of Sahelo-Saharan States (CEN-SAD) to exchange information on emerging threats to humanitarian activities in the region.

The Security Council also decided to mandate MINURCAT to contribute to the monitoring and to the promotion and protection of human rights, with particular attention to sexual and gender-based violence, and to recommend action to the competent authorities in order to fight impunity. MINURCAT was also mandated to support efforts aimed at strengthening the capacity of the Governments of Chad and the Central African Republic and civil society through training in international human rights standards, as well as to put and end to recruitment and use of children by armed groups, and to assist the Governments of Chad and, notwithstanding the mandate of BONUCA, the Central African Republic, in the promotion of the rule of law, including through support for an independent judiciary and a strengthened legal system.

The Security Council furthermore decided that MINURCAT should include a maximum of 300 police and 50 military liaison officers and an appropriate number of civilian personnel.

(ii) *Changes in the mandate and/or extensions of time limits of ongoing peacekeeping operations or missions in 2007*

a. 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 resolution 1739 (2007) of 10 January 2007, resolution 1763 (2007) of 29 June 2007 and resolution 1765 (2007) of 16 July 2007, the Security Council extended the mandate of UNOCI and of the French forces which support it,[5] until 30 June 2007, 16 July 2007 and 15 January 2008, respectively.

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[3] See paragraph 36 of the report of the Secretary-General of 10 August 2007 on the recommendations for the deployment of an international presence in the regions of eastern Chad and the north-eastern Central African Republic (S/2007/488).

[4] See also paragraph 5 of Security Council resolution 1778 of 25 September 2007.

[5] See also section d) ii) a. of this chapter.

In its resolution 1739 (2007), the Security Council, having taken note of the report of the Secretary-General dated 4 December 2006, [6] decided that the mandate of UNOCI should also include its contribution to the security of the operations of identification of the population and registration of voters, within its capabilities and its areas of deployment, and that UNOCI should also assist in formulating a plan on the restructuring of the Defence and Security Forces and in preparing possible seminars on security sector reform to be organized by the African Union and ECOWAS.

Furthermore, the Security Council decided that UNOCI should provide as necessary, within is capabilities and its areas of deployment, in close cooperation with the United Nations Programme for Development, logistical support for the Independent Electoral Commission, in particular for the transportation of electoral material, and that the mandate of UNOCI should be expanded to include the support of the Government of Côte d'Ivoire in ensuring the neutrality and impartiality of public media by providing, as necessary, security of the premises of the Radio Télévision Ivoirienne (RTI).

In resolution 1761 (2007) of 20 June 2007, the Security Council decided to extend the mandate of the Group of Experts[7] until 31 October 2007. The Group of Experts would, as set out in resolution 1727 (2006) of 15 December 2006, report, *inter alia,* on the implementation of the measure imposed by Security Council resolutions 1572 (2004) of 15 November 2004 of and 1643 (2005) of 15 December 2005.

b. Ethiopia and Eritrea

The United Nations mission in Ethiopia and Eritrea (UNMEE) was established pursuant to Security Council resolution 1312 (2000) of 31 July 2000. The Security Council by resolution 1741 (2007) of 30 January 2007 and resolution 1767 (2007) of July 2007 extended UNMEE's mandate until 31 July 2007 and 31 January 2008, respectively.

In resolution 1741 (2007), the Council approved the reconfiguration of the military component of UNMEE, as described in paragraphs 24 and 25 of the Special report of the Secretary-General,[8] which included a decrease in the number of military personnel, including military observers.

c. 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. The Security Council adopted resolutions 1742 (2007) of 15 February 2007, 1751 (2007) of 13 April 2007, 1756 (2007) of 15 May 2007 and 1794 (2007) of 21 December 2007, by which it extended the mandate and personnel strength of MONUC until 15 April 2007, 15 may 2007, 31 December 2007 and 31 December 2008, respectively.

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[6] The eleventh progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire dated 4 December 2006 (S/2006/939).

[7] Established pursuant to Security Council resolution 1643 (2005) of 15 December 2005.

[8] Special report of the Secretary-General on Ethiopia and Eritrea dated 15 December 2006 (S/2006/992).

In its resolution 1756 (2007), the Security Council, taking note of the report of the Secretary-General on MONUC dated 20 March 2007,[9] and of its recommendations, decided that MONUC would have the mandate, *inter alia,* to ensure the protection of civilians, humanitarian personnel and United Nations personnel and facilities, as well as to observe and report on the position of armed movements and groups and the presence of foreign military forces in the key areas of volatility. It would also have to monitor the implementation of the measures imposed by resolution 1493 (2003) of 28 July 2003 concerning the prevention of the direct or indirect supply, sale or transfer of arms and any related materials, as amended and expanded by resolution 1596 (2005) of 18 April 2005, and to seize or collect the arms and any related material whose presence in the territory of the Democratic Republic of the Congo violates these measures, and to assist the Government in enhancing its demining capacity.

The Security Council, furthermore, decided that the mandate of MONUC should include the deterrence of any attempt at the use of force to threaten the political process from any armed group, foreign or Congolese, particular in the Eastern part of the Democratic Republic of the Congo, as well as the support of operations led by the integrated brigade of *Forces Armées de la République Démocratique du Congo* (FARDC) deployed in the eastern part of the Democratic Republic of the Congo. MONUC should also facilitate the voluntary demobilization and repatriation of disarmed foreign combatants and their dependents, and contribute to the implementation of the national programme of disarmament, demobilization and reintegration (DDR) of Congolese combatants and their dependents.

Also, the Council decided to mandate MONUC to provide in the short term basic training to the FARDC integrated brigades, with a view to enhancing their capacity to carry out missions; and to continue to develop the capacity of the Congolese national police and related law enforcement agencies by providing technical assistance, training and mentoring support. MONUC was further mandated to advise the Government in strengthening the capacity of the judicial and correctional systems and to contribute to the efforts of the international community to assist the Government in the initial planning process of the reform of the security sector.

Finally, the Security Council decided that MONUC would also have the mandate, *inter alia,* to provide advice to strengthen democratic institutions and process at all levels, to promote national reconciliation and internal political dialogue, to assist in the promotion and protection of human rights, investigate human rights violations with a view to putting and end to impunity, as well as to provide preliminary assistance to the Congolese authorities in the organization, preparation and conduct of local elections and keep the Security Council closely informed of progress in this regard; including by establishing a secure and peaceful environment for the holding of free and transparent elections.

With regard to carrying out the tasks listed in the above-mentioned resolution, the Security Council authorized MONUC to use all necessary means, within the limits of its capacity and in the areas where its units were deployed.

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[9] Twenty-third report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo dated 20 March 2007 (S/2007/156).

In resolution 1794 (2007) the Security Council, taking note of the report of the Secretary-General on MONUC dated 14 November 2007,[10] requested MONUC to attach the highest priority to addressing the crisis in the Kivus in all its dimensions, in particular through the protection of civilians and support for the implementation of the Nairobi Joint Communiqué.

d. Haiti

The United Nations Stabilization Mission in Haiti (MINUSTAH) was established by the Security Council in its resolution 1542 (2004) of 30 April 2004. By the adoption of resolution 1743 (2007) of 15 February 2007 and resolution 1780 (2007) of 15 October 2007, the Security Council decided to extend the mandate of MINUSTAH until 15 October 2007 and 15 October 2008, respectively.

In resolution 1780 (2007) the Security Council also took into account the need to adjust the composition of MINUSTAH and decided that it would now consist of a military component of up to 7,060 troops of all ranks and of a police component of a total of 2,091 officers.[11]

e. Timor-Leste

The United Nations Integrated Mission in Timor-Leste (UNMIT) was established by Security Council in its resolution 1704 (2006) of 25 August 2006. The Security Council, in resolution 1745 (2007) adopted on 22 February 2007, decided to extend the mandate of UNMIT until 26 February 2008.

The Council further decided to increase the authorized force strength of UNMIT by up to 140 police personnel in order to permit the deployment of an additional formed police unit to supplement the existing Formed Police Units particularly during the pre- and post-electoral period.12

f. Liberia

The Security Council established the United Nations Mission in Liberia (UNMIL) by its resolution 1509 (2003) of 19 September 2003. On 30 March 2007, the Council adopted resolution 1750 (2007) and on 20 September 2007 resolution 1777 (2007), by which it extended the mandate of UNMIL until 30 September 2007 and 30 September 2008, respectively.

In resolution 1777 (2007), the Security Council endorsed the Secretary-General's recommendations for a reduction of 2,450 in the number of personnel deployed as part of the military component of UNMIL during the period October 2007 to September 2008, and of

[10] Twenty-fourth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo dated 14 November 2007 (S/2007/671).

[11] See the recommendations made in the report of the Secretary-General on the United Nations Stabilization Mission in Haiti dated 22 August 2007 (S/2007/503).

[12] See joint letter dated 7 December 2006 addressed to the Secretary-General, (S/2006/1022) from President Gusmao, Prime Minister Ramos-Horta and National Parliament President Guterres, requesting that the UNMIT be reinforced with an additional Formed Police Unit.

498 in the number of officers deployed as part of the police component of UNMIL during the period April 2008 and December 2010.[13]

g. Georgia

The United Nations Observer Mission in Georgia (UNOMIG) was established by Security Council resolution 858 (1993) of 24 August 1993. The Council, by resolution 1752 (2007) adopted on 13 April 2007 and resolution 1781 (2007) adopted on 15 October 2007, extended the mandate of UNOMIG until 15 October 2007 and 15 April 2008, respectively.

h. 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 resolution 1754 (2007) adopted on 30 April 2007 and resolution 1783 (2007) adopted on 31 October 2007, extended the mandate of MINURSO until 31 October 2007 and 30 April 2008, respectively.

i. The Sudan

The United Nations Mission in the Sudan (UNMIS) was established by Security Council resolution 1590 (2005) of 24 March 2005. The Council adopted resolution 1755 (2007) of 30 April 2007 and resolution 1784 of 31 October 2007, by which it extended the mandate of UNMIS until 31 October 2007 and 30 April 2008, respectively.

The Council also requested the Secretary-General to appoint urgently a new Special Representative for the Sudan and to report to the Council every three months on the implementation of the mandate of UNMIS.

In Security Council resolution 1769 (2007) of 31 July 2007, the Council decided that the authorized strength of UNMIS should revert to that specified in resolution 1590 (2005) of 24 March 2005 upon the transfer of authority from AMIS to UNAMID.[14]

j. Cyprus

The United Nations Peacekeeping Force in Cyprus (UNFICYP) was established by Security Council resolution 186 of 4 March 1964. The Council, by resolution 1758 (2007) adopted on 15 June 2007 and resolution 1789 (2007) adopted on 14 December 2007, extended the mandate of UNFICYP until 15 December 2007 and 15 June 2008, respectively.

k. 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 1759 (2007) adopted on 20 June 2007 and resolution 1788 (2007) adopted

[13] See section XI of the fifteenth progress report of the Secretary-General on the United Nations Mission in Liberia dated 8 August 2007 (S/2007/479).

[14] See section *(a)* sub-paragraph (i) a.

on 14 December 2007, renewed the mandate of UNDOF until 31 December 2007 and 30 June 2008, respectively.

1. Lebanon

The United Nations Interim Force in Lebanon (UNIFIL) was established by Security Council resolutions 425 (1978) and 426 (1978) of 19 March 1978. Responding to the request of the Government of Lebanon[15] and the recommendation of the Secretary General[16] the Security Council adopted resolution 1773 (2007) on 24 August 2007 and decided to extend the mandate of UNIFIL until 31 August 2008.

(iii) *Other ongoing peacekeeping operations or missions in 2007*

During 2007, there were a number of other ongoing peacekeeping operations or missions, including the United Nations Truce Supervision Organization (UNTSO) in Israel, established by Security Council resolution 50 (1948) of 29 May 1948; the United Nations Military Observer Group (UNMOGIP) in India and Pakistan, 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 operations or missions concluded in 2007*

No peacekeeping operations or missions were concluded in 2007.

(*b*) Political and peacebuilding missions

(i) *Political and peacebuilding missions established in 2007*

a. Nepal

On 23 January 2007, the Security Council adopted resolution 1740 (2007) in which it decided to establish the United Nations Political Mission in Nepal (UNMIN)[17] for an initial period of twelve months under the leadership of a Special Representative of the Secretary-General.

The Council further decided that the mandate of UNMIN would be to monitor the management of arms and armed personnel of both sides, in line with the provisions of the Comprehensive Peace Agreement and to assist the parties in implementing their agreement on the management of arms and armed personnel of both sides through a Joint Monitoring Coordinating Committee, as well as to assist in the monitoring of the ceasefire arrangement. Furthermore, UNMIN would have to provide technical support for the

[15] Letter from the Lebanese Prime Minister to the Secretary-General of 25 June 2007 (S/2007/396).

[16] Letter from the Secretary-General addressed to the President of the Security Council dated 2 August 2007 (S/2007/470).

[17] See the report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process dated 9 January 2007, (S/2007/7).

planning, preparation and conduct of the election of a Constituent Assembly in a free and fair atmosphere, in consultation with the parties, and to provide a small team of electoral monitors to review all technical aspects of the electoral process, and report on the conduct of the election.

b. Lebanon

On 8 February 2007, in a letter addressed to the President of the Security Council, the Secretary-General informed the Council of his intention to establish the Office of the United Nations Special Coordinator for Lebanon. The Special Coordinator for Lebanon would be the Secretary-General's representative in Lebanon responsible for coordinating the work of the United Nations in the country and representing the Secretary-General on all political aspects of the United Nations work there. Among other functions, the Special Coordinator for Lebanon would ensure that the activities of the United Nations country team in Lebanon are well coordinated with the Government of Lebanon, donors and international financial institutions in line with the overall objectives of the United Nations in Lebanon. The Council took note of the Secretary-General's intention.[18]

(ii) *Changes in the mandate and/or extensions of the time limits of ongoing political and peacebuilding missions in 2007*

a. Afghanistan

The United Nations Assistance Mission in Afghanistan (UNAMA) was established by Secur ity Council resolution 1401 (2002) of 28 March 2002. In resolution 1746 (2007) of 23 March 2007, the Security Council decided to extend the mandate of UNAMA until 23 March 2008.

b. Somalia

The United Nations Political Office in Somalia (UNPOS) was established by the Secretary-General on 15 April 1995.[19] On 25 April 2007, in a letter addressed to the President of the Security Council, the Secretary-General informed the members of the Council of his intention to extend the mandate of his Special Representative for Somalia until 8 May 2008, and the Council took note of the Secretary-General's intention while underlining that the Secretary-General might revisit the mandate in, for example, six months, given the possibility that the United Nations might decide to change the nature of its presence in Somalia during this period.[20]

In a letter dated 27 August 2007 addressed to the President of the Security Council,[21] the Secretary-General informed Council members of his intention to upgrade the post

[18] See the exchange of letters from the Secretary-General and the President of the Security Council, dated 8 and 13 February 2007, (S/2007/85 and S/2007/86).

[19] 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).

[20] See the exchange of letters between the Secretary-General and the President of the Security Council, dated 25 and 30 April 2007 (S/2007/243 and S/2007/244).

[21] S/2007/522.

of Head of UNPOS to the level of Under-Secretary-General. In a subsequent letter dated 20 September 2007[22], the Secretary-General recommended that UNPOS be provided with the necessary resources to implement an integrated United Nations approach for Somalia leading to a common United Nations peacebuilding strategy.

Therefore, the main objectives of UNPOS would be to help to strengthen the Transitional Federal Institutions and foster inclusive dialogue between all Somali parties, coordinate United Nations political, security, electoral, humanitarian and development support to the Somali Transitional Federal Institutions, and work with external partners. UNPOS would also support the development of a road map for the Somali peace process in concert with the Transitional Federal Government, the United Nations country team and the international community. UNPOS would work closely with United Nations Headquarters on contingency planning for a possible United Nations peacekeeping mission. Given the crucial role of UNPOS during this critical juncture of the Somali peace process, the Secretary-General informed the members of the Security Council, that it was his intention to continue those above described activities for the biennium 2008–2009. The Security Council took note of the Secretary-General's intention.[23]

c. Iraq

The United Nations Assistance Mission for Iraq (UNAMI) was established by Security Council in its resolution 1500 (2003) of 14 August 2003. On 10 August 2007, the Security Council, adopted resolution 1770 (2007), in which it decided to extend the mandate of UNAMI for another period of twelve months from the date of the resolution.

Welcoming the letter of 6 August 2007 from the Minister of Foreign Affairs of Iraq to the Secretary-General,[24] expressing the view of the Government of Iraq requesting UNAMI to assist Iraqi efforts to build a productive and prosperous nation at peace with itself and its neighbours, the Security Council decided to expand the mandate of UNAMI and decided that it should, *inter alia,* advise, support and assist the Government of Iraq on development of process for holding elections and referendums, on Constitutional review and implementation of constitutional provisions, as well as on facilitating regional dialogue.

The Council furthermore decided that UNAMI should promote, support and facilitate, in coordination with the Government of Iraq, the coordination and delivery of humanitarian assistance and the safe, orderly and voluntary return of refugees and displaced persons; the coordination and implementation of programmes to improve Iraq's capacity to provide essential services for its people; economic reform, capacity-building and the conditions for sustainable development and the promotion of the protection of human rights and judicial and legal reform in order to strengthen the rule of law in Iraq.

On 18 December 2007, the Security Council adopted resolution 1790 (2007) and noted that the presence of the multinational force in Iraq was at the request of the Government of Iraq and, therefore, acting under Chapter VII of the Charter of the United Nations, reaffirmed the authorization for the multinational force as set forth in resolution 1546

[22] S/2007/566.

[23] See the exchange of letters between the Secretary-General and the President of the Security Council dated 27 December and 27 December 2007 (S/2007/762 and S/2007/763).

[24] S/2007/481, annex.

(2004) of 8 June 2004. The Council also decided to extend the mandate of the multinational force as set forth in that resolution until 31 December 2008, taking into consideration the Iraqi Prime Minister's letter dated 7 December 2007[25] and the United States Secretary of State's letter dated 10 December 2007.[26] It 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 2008, and declared that it will terminate the mandate earlier if requested by the Government of Iraq.

In that same resolution, the Security Council decided to extend until 31 December 2008 the arrangements established in resolution 1483 (2003) of 22 May 2003 for the depositing of proceeds from export sales of petroleum, petroleum products, and natural gas into the Development Fund for Iraq and the arrangements referred to in resolutions 1483 (2003) and 1546 (2004) of 8 June 2004 for the monitoring of the Development Fund for Iraq by the International Advisory and Monitoring Board, and 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 2008.

d. Sierra Leone

The United Nations Integrated Office in Sierra Leone (UNIOSIL) was established by Security Council resolution 1620 (2005) of 31 August 2005.

On 18 October 2007, in a letter addressed to the President of the Security Council, the Secretary-General requested that the Council approve the request of UNIOSIL to retain the five additional military liaison officers and 10 civilian police officers, provided for in Security Council resolution 1734 (2006) of 22 December 2006, for a further period of two months, from 31 October to 31 December 2007. The Council approved the request of the Secretary-General.27

On 31 December 2007, the Security Council adopted resolution 1793 (2007) and decided to extend the mandate UNIOSIL until 30 September 2008. The Council further requested the Secretary-General to submit by 31 January 2008 a completion strategy for UNIOSIL including at least a 20 per cent reduction in staff numbers by 31 March 2008, a continued mission at 80 per cent of the current strength until 30 June 2008 and the termination of the mandate of UNIOSOL by 30 September 2008.

e. 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.[28] On 28 November 2007, in a letter addressed to the President of the Security Council, the Secretary-General recommended that the mandate of UNOGBIS be extended

[25] Annexed to Security Council resolution 1790 (2007) of 18 December 2007.

[26] Annexed to Security Council resolution 1790 (2007) of 18 December 2007.

[27] See the exchange of letters between the Secretary-General and the President of the Security Council, dated 9 and 18 October 2007 (S/2007/613 and S/2007/614).

[28] 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).

for an additional year until 31 December 2008. The Council took note of the Secretary-General's recommendation.[29]

f. The Central African Republic

The United Nations Peacebuilding Office in the Central African Republic (BONUCA) was established by the Secretary-General on 15 February 2000.[30] On 28 November 2007, in a letter addressed to the President of the Security Council, the Secretary-General recommended that the mandate of BONUCA be extended for an additional year until 31 December 2008. The Council took note of the Secretary-General's recommendation.[31]

g. West Africa

The United Nations Office for West Africa (UNOWA) was established by the Secretary-General for a period of three years from January 2002.[32] The mandate of UNOWA was later extended, first for a further period of three years until 31 December 2007[33] and then for another period of three years until 31 December 2010.[34]

The Office's mandate included the development of better knowledge and awareness about cross-border and sub-regional problems confronting West Africa, as well as the facilitation by the Special Representative of the Secretary-General, in his capacity of chairman of the Cameroon-Nigeria Mixed Commission, of the implementation of the work plan approved by Cameroon and Nigeria towards the implementation of the 10 October 2002 ruling of the International Court of Justice on the land and maritime boundary dispute between the two countries[35] and helping with the demarcation process.

On 30 November 2007, in a letter addressed to the President of the Security Council, the Secretary-General informed the members of the Security Council of his intention to ask for additional resources from the regular budget for 2008 for the United Nations support team of the Mixed Commission to help advance the peaceful implementation of the ruling of the International Court of Justice. The Council took note of the Secretary-General's intention.[36]

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[29] See the exchange of letters between the Secretary-General and the President of the Security Council dated 28 November and 3 December 2007 (S/2007/700 and S/2007/701).

[30] See the 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).

[31] See the exchange of letters between the Secretary-General and the President of the Security Council dated 28 November and 3 December 2007 (S/2007/702 and S/2007/703).

[32] 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).

[33] See the exchange of letters between the Secretary-General and the President of the Security Council, dated 6 and 25 October 2004 (S/2004/797 and S/2004/858).

[34] See the exchange of letters between the Secretary-General and the President of the Security Council dated 28 November and 21 December 2007, (S/2007/753 and S/2007/754).

[35] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C. J. Reports 2002,* p. 303.

[36] See the exchange of letters between the Secretary-General and the President of the Security Council dated 30 November and 5 December 2007 (S/2007/695 and S/2007/710).

h. Burundi

The United Nations Integrated Office in Burundi (BINUB) was initially established pursuant to Security Council resolution 1719 (2006) of 25 October 2006, in which it decided to establish, for an initial period of 12 months commencing on 1 January 2007. 37 On 19 December 2007, the Council adopted resolution 1791 (2007), by which it decided to extend the mandate of BINUB until 31 December 2007.

(iii) *Other ongoing political and peacebuilding missions in 2007*

The Office of the United Nations Special Coordinator for the Middle East (UNSCO), established by the Secretary-General on 1 October 1999,[38] continued operating through 2007.

(iv) *Political and peacebuilding missions concluded in 2007*

a. Tajikistan

The United Nations Tajikistan Office of Peacebuilding (UNTOP) was established by the Secretary-General on 1 June 2000.[39] On 15 May 2007, in a letter addressed to the President of the Security Council, the Secretary-General informed the members of the Council of his intention to phase down and close UNTOP, whose mandate would expire on 31 May 2007. Given the time period required for this process, and in response to the request of the Government of Tajikistan, it was his intention to continue the activities of UNTOP for a period of two months, until 31 July 2007. The Council took note of the Secretary-General's intention.[40]

b. Côte d'Ivoire

The mandate of the High Representative for the Elections in Côte d'Ivoire, designated pursuant to Security Council resolution 1603 (2005) of 3 June 2005, was terminated by the adoption of Security Council resolution 1765 (2007) of 16 July 2007.

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[37] See also the seventh report of the Secretary-General on the United Nations Operation in Burundi dated 21 June 2006 (S/2006/429) and the addendum thereto dated 14 August 2006 (S/2006/429/Add.1).

[38] 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).

[39] 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).

[40] See the exchange of letters from the Secretary-General and the President of the Security Council, dated 15 and 18 May 2007 (S/2007/296 and S/2007/297).

(*c*) Other peacekeeping matters

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

On 24 July 2007, at its sixty-first session, the General Assembly adopted its resolution 61/291 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,[41] endorsed the proposals, recommendations and conclusions of the Special Committee, contained in paragraphs 15 to 232 of its report,[42] 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*

At its sixty-first session, on 16 May 2007 and 24 July 2007, the General Assembly adopted resolutions 61/267[A] and [B], both entitled "Comprehensive review of a strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations." The Assembly reaffirmed the need for United Nations to implement its policy of zero tolerance of sexual exploitation and abuse in its peacekeeping operations, as recommended by the Special Committee on Peacekeeping Operations,[43] and 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 on its second 2006 resumed session[44] and its 2007 resumed session,[45] and endorsed the proposals, recommendations and conclusions of the Special Committee contained in these reports.

On 21 December 2007, the General Assembly adopted resolution 62/214, in which it adopted the United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel. The purpose of the Strategy was to ensure that victims of sexual exploitation and abuse by United Nations staff and related personnel would receive appropriate assistance and support in a timely manner, as it was imperative that the Organization respond quickly

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[41] For the final text, see *Official Records of the General Assembly, Sixty-first Session, Supplement No. 19* (A/61/19 (Parts I–III)).

[42] For the final text, see *ibid.*, (Part II), chap. III.

[43] See *ibid.*, *Fifty-ninth Session, Supplement No. 19* (A/59/19/Rev.1), (Part I), chap. III, para. 55).

[44] For the final text, see *ibid.*, *Sixty-first Session, Supplement No. 19 (*A/61/19 (Part I)).

[45] For the final text, see *ibid.*, (Part III).

and effectively when sexual exploitation and abuse occur. The Strategy would also enable the United Nations system to facilitate, coordinate and provide assistance and support to victims of sexual exploitation and abuse by United Nations staff and related personnel. The Strategy should be implemented to assist and support complainants, victims and children born as a result of sexual exploitation and abuse by United Nations staff and related personnel in a manner appropriate to the relevant circumstances of each location and with due respect to host country legislation.

The General Assembly called upon relevant organizations of the United Nations system to engage in an active and coordinated manner in the implementation of the Strategy, with the support of civil society working closely with Member States. It also decided to examine, in two years, progress made in the implementation of the Strategy under the agenda item entitled "Follow-up to the outcome of the Millennium Summit".

(iii) *Criminal accountability of United Nations officials and experts on mission*

On 6 December 2007, the General Assembly adopted resolution 62/63. The Assembly, having considered the report of the Group of Legal Experts established by the Secretary-General pursuant to resolution 59/300,[46] the report of the Ad Hoc Committee on the issue,[47] and the note by the Secretariat on criminal accountability of United Nations officials and experts on mission,[48] strongly urged States to take all appropriate measures to ensure that crimes by United Nations officials and experts on mission do not go unpunished, and that the perpetrators of such crimes are brought to justice, without prejudice to the privileges and immunities of such persons and the United Nations under international law, and in accordance with international human rights standards, including due process.

Furthermore, the General Assembly, *inter alia,* decided that the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission should reconvene from 7 to 9 and on 11 April 2008 with the purpose of continuing the consideration of the report of the Group of Legal Experts, in particular its legal aspects, taking into account the views of Member States and the information contained in the note by the Secretariat, and that the work should continue during the sixty-third session of the General Assembly within the framework of a working group of the Sixth Committee.

Lastly, the General Assembly requested the Secretary-General to bring credible allegations that reveal that a crime may have been committed by United Nations officials and experts on mission to the attention of the States against whose nationals such allegations are made, and to request from those States an indication of the status of their efforts to investigate and prosecute crimes of a serious nature, as well as the types of appropriate assistance States may wish to receive from the Secretariat for the purposes of such investigations and prosecutions.

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[46] A/60/980.

[47] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 54* (A/62/54).

[48] A/62/329.

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

(i) *Action of Member States authorized in 2007*

a. Somalia

The Security Council adopted resolution 1744 (2007) on 21 February 2007 and decided to authorize member States of the African Union to establish for a period of six months a mission in Somalia (AMISOM), with the authorization to take all necessary measures as appropriate to carry out its mandate.

The Council decided that AMISOM would have the mandate to support dialogue and reconciliation in Somalia by assisting with the free movement, safe passage and protection of all those involved in a national reconciliation congress, as well as to provide protection to the Transnational Federal Institutions to help them carry out their functions of government, and security for key infrastructure and to assist with implementation of the National Security and Stabilization Plan, in particular the effective re-establishment and training of all-inclusive Somali security forces.

Furthermore, the Security Council mandated AMISOM to contribute to the creation of the necessary security conditions for the provision of humanitarian assistance and to protect its personnel, facilities, installations, equipment and mission, and to ensure the security and freedom of movement of its personnel.

The Security Council also requested the Secretary-General to send a Technical Assessment Mission to the African Union headquarters and Somalia to report on the political and security situation and the possibility of a UN Peacekeeping Operation following the African Union's deployment.

b. Chad and the Central African Republic

In its resolution 1778 (2007) of 28 September 2007 establishing the United Nations Mission in the Central African Republic and Chad (MINURCAT), the Security Council, acting under Chapter VII of the Charter of the United Nations, authorized the European Union to deploy, for a period of one year from the date that its initial operating capability was declared by the European Union in consultation with the Secretary-General, an operation aimed at supporting the elements of the MINURCAT mandate. The functions of the European Union operation would be to contribute to protecting civilians in danger, particularly refugees and displaced persons; to facilitate the delivery of humanitarian aid and the free movement of humanitarian personnel by helping to improve security in the area of operations and to contribute to protecting United Nations personnel, facilities, installations and equipment, and to ensuring the security and freedom of movement of its staff and United Nations and associated personnel.

The Security Council also decided that the European Union operation should be authorized to take all necessary measures, within its capabilities and its area of operation in eastern Chad and the north-eastern Central African Republic, to fulfil the above mentioned functions.

(ii) *Changes in authorization and/or extension of time limits in 2007*

a. Côte d'Ivoire

The Security Council adopted resolutions 1739 (2007) on 10 January 2007, 1763 (2007) on 29 June 2007 and 1765 (2007) on 16 July 2007, by which it extended the mandate of the French forces supporting UNOCI until 30 June 2007, 16 July 2007 and 15 January 2008, respectively.

b. Somalia

In resolution 1744 (2007) of 21 February 2007, the Security Council decided that, having regard to the establishment of African Union Mission to Somalia (AMISOM)[49], the authorization of the Intergovernmental Authority on Development (IGAD) and member States of the African Union to establish a protection and training mission in Somalia and the further measures contained in resolution 1725 (2006) of 6 December 2006 should no longer apply.

AMISOM was authorized by Security Council resolution 1744 (2007) of 21 February 2007. On 20 August 2007, the Security Council adopted resolution 1772 (2007) and decided to authorize member States of the African Union to maintain the mission in Somalia for a further period of six months.

c. Afghanistan

In its resolution 1776 (2007) adopted on 19 September 2007, the Security Council, decided to extend the authorization of the International Security Assistance Force (ISAF), as defined in resolutions 1386 (2001) of 20 December 2001 and 1510 (2003) of 13 October 2003, for a period of 12 months beyond 13 October 2007, and it further authorized the Member States participating at ISAF to take all necessary measures to fulfil its mandate.

d. Bosnia and Herzegovina

The Security Council, in resolution 1785 (2007) of 21 November 2007, authorized the Member States acting through or in cooperation with the European Union to establish for a further period of twelve months, a multinational stabilization force (EUFOR) as a legal successor to SFOR under unified command and control. The Council decided that EUFOR would fulfil its missions in relation to the implementation of the General Framework Agreement for Peace in Bosnia and Herzegovina and the Annexes thereto[50] (the Peace Agreement) in cooperation with the North Atlantic Treaty Organization (NATO) presence in accordance with the arrangements agreed between NATO and the European Union, as communicated to the Security Council in their respective letters of

[49] See section (d), subparagraph *(i)* a.

[50] General Framework Agreement for Peace in Bosnia and Herzegovina and the annexes thereto (S/995/999, annex).

19 November 2004,[51] which recognized that EUFOR would have the main peace stabilization role under the military aspects of the Peace Agreement.

The Security Council further authorized the Member States to take all necessary measures to effect the implementation of and to ensure compliance with Annexes 1-A and 2 of the Peace Agreement, in defence of the EUFOR and NATO presence and to defend themselves from attack or threat of attack and to ensure compliance with the rules and procedures governing command and control of airspace over Bosnia and Herzegovina with respect to all civilian and military air traffic

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

(i) *Somalia*

In resolution 1744 (2007) of 21 February 2007, the Security Council decided that the general and complete embargo on all deliveries of weapons and military equipment to Somalia, imposed by resolution 733 (1992) of 23 January 1992 and further elaborated in resolution 1425 (2002) of 22 July 2002, should no longer apply to supplies of weapons and military equipment, technical training and assistance intended solely for the support of or use by AMISOM.[52] Nor should it apply to such supplies and technical assistance by States intended solely for the purpose of helping develop security sector institutions consistent with the political process set out in resolution 1744 (2007), and in the absence of a negative decision by the Committee established pursuant to resolution 751 (1992) of 24 April 1992, within five working days of receiving a notification from a State wishing to provide such supplies or technical assistance.

In resolution 1766 (2007) adopted on 23 July 2007, the Security Council, acting under Chapter VII of the Charter, stressed the obligation of all States to comply fully with the measures imposed by resolution 733 (1992) and requested the Secretary-General to reestablish, in consultation with the Committee established pursuant to resolution 751 (1992), for a period of six months, the Monitoring Group referred to in resolution 1558 (2004) of 17 August.

(ii) *Iran*

In resolution 1747 (2007) of 24 March 2007, the Security Council, acting under Chapter VII of the Charter of the United Nations, called upon all States to exercise vigilance and restraint regarding the entry into or transit through their territories of individuals who are providing support for Iran's proliferation sensitive nuclear activities or for the development of nuclear weapon delivery systems. In this regard, it decided that all States should notify the Committee established pursuant to resolution 1737 (2006) of 23 December 2006 of the entry into or transit through their territories of the persons designated in the Annex to

[51] See the exchange of letters between the Permanent Representative of the Netherlands to the United Nations and the President of the Security Council dated 19 November 2004 and the exchange of letters between Chargé d'affaires a.i. of the Permanent Mission of Germany to the United Nations (S/2004/915 and S/2004/916).

[52] See section (d), subparagraph *(i)* a.

resolution 1737 (2006) or annex I to this resolution, as well as of additional persons designated by the Security Council or the Committee.

The Security Council further decided that the measures specified in resolution 1737 (2006) concerning the freezing of funds, financial assets and economic resources, should also apply to the persons and entities listed in Annex I to this resolution.

Also, the Council decided that Iran should not supply directly or indirectly from its territory or by its nationals or using its flag vessels or aircraft, any arms or related materiel, and that all States should prohibit the procurement of such items from Iran.

Furthermore, the Security Council called upon all States to exercise vigilance and restraint in the supply, from their territories or by their nationals or using their flag vessels or aircraft of any battle tanks, armoured combat vehicles, large caliber artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems as defined for the purpose of the United Nations Register on Conventional Arms to Iran, and in the provision to Iran of any technical assistance or training, financial assistance related to the supply, manufacture or use of such items in order to prevent a destabilizing accumulation of arms.

The Security Council, finally, called upon all States and international financial institutions not to enter into new commitments for grants, financial assistance, and concessional loans, to the Government of the Islamic Republic of Iran, except for humanitarian and developmental purposes.

(iii) *Rwanda*

The Security Council adopted on 28 March 2007 resolution 1749 (2007) by which it decided to terminate with immediate effect the measures imposed by resolution 1011 (1995) of 16 August 1995 concerning States' obligation to notify all exports from their territories of arms or related materiel to Rwanda to the Committee established by resolution 918 (1994) of 17 May 1994, as well as the obligation of the Government of Rwanda to mark, register and notify to the Committee all imports made by it of arms and related materiel.[53]

(iv) *Liberia*

On 27 April 2007, the Security Council adopted resolution 1753 (2007) by which it decided to terminate the measures on diamonds imposed by resolution 1521 (2003) of 22 December 2003 and renewed by resolution 1731 (2006) of 20 December 2003.

The Security Council also decided to review the termination of the above mentioned measures after consideration of the report of the United Nations Panel of Experts as requested in resolution 1731 (2006) and of the report on the Kimberly Process, with particular focus on the compliance of Liberia with the Kimberly Process Certification Scheme.

On 19 December 2007 the Security Council adopted resolution 1792 (2007) and decided to renew the measures on arms imposed by resolution 1521 (2003) and modified by resolutions 1683 (2006) of 13 June 2006 and 1731 (2006), as well as to renew the meas-

[53] See letter dated 2 March 2007 from the Permanent Representative of Rwanda to the United Nations addressed to the President of the Security Council (S/2007/121) requesting the termination of the measures imposed by paragraph 11 of resolution 1011 (1995).

ures on travel imposed by resolution 1521 (2003) for a further period of 12 months from the date of the adoption of the resolution.

Also, the Security Council decided that Member States should notify the Committee established by resolution 1521 (2003) upon delivery of all arms and related materiel supplied in accordance with resolutions 1521 (2003), 1683 (2006), and 1731 (2006).

Furthermore, the Security Council, adopted resolution 1760 (2007) on 20 June 2007, in which it requested the Secretary-General to establish, for a period of six months, a Panel of Experts consisting of up to three members, drawing as much as possible on the expertise of the members of the Panel of Experts reappointed pursuant to resolution 1731 (2006).

The Council further decided that the Panel of Experts was to undertake the tasks, *inter alia,* of conducting a follow-up assessment mission to Liberia and neighbouring States, in order to investigate the implementation, and any violations, of the measures imposed by resolution 1521 (2003), as well as assessing the impact of and effectiveness of the measures imposed by resolution 1532 (2004) concerning the prevention of former Liberian President Charles Taylor, his family, senior officials or other close allies or associates from using misappropriate funds or property to interfere in the restoration of peace and stability in Liberia and the sub-region. The Panel was also to assess the implementation of forestry legislation, the Government of Liberia's compliance with the Kimberly Process Certification Scheme and the cooperation with other relevant groups of experts

The Council decided, by the adoption of resolution 1792 (2007) of 19 December 2007, to extend the mandate of the Panel of Experts for a further period until 20 June 2008 and requested to Secretary-General to reappoint the current members of the Panel of Experts in all the aspects of its mandate.

(v) *Democratic Republic of the Congo*

The Security Council adopted resolution 1768 (2007) on 31 July 2007 and resolution 1771 (2007) on 10 August 2007, by which it, acting under Chapter VII of the Charter of the United Nations, decided to extend the measures on arms imposed by resolution 1493 (2003) of 28 July 2003, as amended and expanded by resolution 1596 (2005) of 18 April 2005, until 10 August 2007 and 15 February 2008, respectively.[54]

In both resolutions 1768 (2007) and 1771 (2007), the Security Council decided to extend the measures on transport imposed by resolution 1596 (2005), and the financial and travel measures imposed by resolutions 1596 (2005), 1649 (2005) of 21 December 2005 and 1698 (2006) of 31 July 2006, until 10 August 2007 and February 2008, respectively.

In resolution 1768 (2007), the Security Council also decided to extend the mandate of the Group of Experts referred to in resolution 1698 (2006).

In resolution 1771 (2007), the Security Council decided that the measures on arms, mentioned above, should not apply to technical training and assistance agreed to by the Government and intended solely for support of units of the army and police of the Democratic Republic of the Congo that are in process of their integration in the provinces of North and South Kivu and the Ituri district.

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[54] See also the report of the Security Council mission which visited Kinshasa on 20 June 2007 dated 11 July 2007 (S/2007/421).

Still in resolution 1771 (2006), the Council further decided that the conditions specified in resolution 1596 (2005), should not apply to supplies of arms and related materiel as well as technical training and assistance which were consistent with such exemptions noted in the resolution in question.

The Council further requested the Secretary-General to re-establish for a period expiring on 15 February 2008 the Group of Experts established pursuant to resolution 1533 (2004) of 12 March 2004, and expanded pursuant to resolution 1596 (2005). It also requested the Group of Experts to fulfil its mandate as defined in resolution 1698 (2006), to update the Committee[55] on its work as appropriate, and to report to the Council in writing, through the Committee, by January 2008.

(vi) *The Sudan*

The Security Council adopted resolution 1779 (2007) on 28 September 2007, in which it decided to extend the mandate of the Panel of Experts, appointed pursuant to resolution 1591 (2005) of 29 March 2005, for a further period until 15 October 2008.

(vii) *Côte d'Ivoire*

On 29 October 2007, the Security Council adopted resolution 1782 (2007) by which it decided to renew until 31 October 2008 the provisions contained in resolutions 1572 (2004) of 15 November 2004 and 1643 (2005) of 15 December 2005. The Council further decided to review the measures imposed by the end of the period mentioned above and also to carry out a review of the measures during the period mentioned above, once the parties had fully implemented the Ouagadougou political Agreement and after the holding of open, free, fair and transparent presidential and legislative elections in accordance with international standards, or no later than 30 April 2008.[56]

Furthermore, the Security Council underlined that it was fully prepared to impose targeted measures against persons to be designated by the Committee who are determined to be, among other things, a threat to the peace and national reconciliation process in Côte d'Ivoire; attacking or obstructing the action of UNOCI or responsible for serious violations of human rights and international humanitarian law committed in Côte d'Ivoire.

(viii) *Sierra Leone*

The Security Council adopted resolution 1793 (2007) on 31 December 2007 and decided to exempt from the measures imposed by resolution 1171 (1998) of 15 June 1998 concerning travel restrictions, the travel of any witnesses whose presence at trial before the Special Court for Sierra Leone was required.

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[55] Established pursuant to paragraph 8 of resolution 1533 (2004) of 12 March 2004, as expanded pursuant to paragraph 18 of resolution 1596 (2005) of 18 April 2005, paragraph 4 of resolution 1649 (2005) of 21 December 2005 and paragraph 14 of resolution 1698 (2006) of 31 July 2006

[56] See the fourteenth progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire dated 1 October 2007 (S/2007/593), and the reports of the United Nations Group of Experts on Côte d'Ivoire dated 11 June 2007 (S/2007/349, annex) and 21 September 2007 (S/2007/611, annex).

(f) Terrorism

(i) *Security Council Committees*

a. Lebanon

The Security Council, in the resolution 1595 (2005) of 7 April 2005, decided to establish an international independent investigation Commission ("the Commission") based in Lebanon to assist the Lebanese authorities in their investigation of all aspects of the 14 February 2005 terrorist act, including to help to identify its perpetrators, sponsors, organizers and accomplices. On 15 March 2007, in a letter addressed to the President of the Security Council,[57] the Secretary-General welcomed the request of the Lebanese Government transmitted in Prime Minister's letter of 21 February 2007[58] for a further extension of the mandate of the Commission for a period of up to one year, from 15 June 2007. On 27 March 2007, the Security Council, having examined the report of the International Independent Investigation Commission,[59] adopted resolution 1748 (2007) by which it decided to extend the mandate of the Commission until 15 June 2008.

b. Counter-Terrorism Committee (CTC)

The Security Council adopted resolution 1787 (2007) on 10 December 2007 and decided to extend the initial period of the Counter-Terrorism Committee Executive Directorate, referred to in paragraph 2 of resolution 1535 (2004) of 26 March 2004, until 31 March 2008.

The Council further requested the Executive Director of the Counter-Terrorism Committee Executive Directorate, within 60 days of the adoption of this resolution and in consultation with Council members, to recommend such changes as he deemed appropriate to the organizational plan referred to in resolution 1535 (2004), and to submit them to the Counter-Terrorism Committee for its consideration and endorsement prior to the expiration of the period referred to above.

(ii) *Establishment of a special Tribunal for Lebanon*

Pursuant to Security Council resolution 1664 (2006) of 29 March 2006, the United Nations and the Lebanese Republic negotiated an agreement on the establishment of the Special Tribunal for Lebanon. Further to Security Council resolution 1757 (2007) of 30 May 2007, the provisions of the document annexed to it and the Statute of the Special Tribunal thereto attached, entered into force on 10 June 2007.

The mandate of the Special Tribunal for Lebanon is to prosecute persons responsible for the attack of 14 February 2005 resulting in the death of former Prime Minister Rafiq Hariri and in the death or injury of other persons. The Tribunal's jurisdiction could be extended beyond the 14 February 2005 bombing if the Tribunal finds that other attacks that occurred in Lebanon between 1 October 2004 and 12 December 2005 are connected

[57] S/2007/150.

[58] S/2007/159.

[59] S/2007/150.

in accordance with the principles of criminal justice and are of a nature and gravity similar to the attack of 14 February 2005.

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

(i) *Women and peace and security*

In a Presidential Statement dated 7 March 2007,[60] the Security Council reaffirmed its commitment to the full and effective implementation of resolution 1325 (2000) of 31 October 2000 on Women and Peace and Security and recalled the relevant statements of its President as reiterating that commitment.

The Security Council further reaffirmed the important role of women in the prevention and resolution of conflicts and in peacebuilding, and stressed the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution.

Also, the Security Council recognized that an understanding of the impact of armed conflict on women and girls, effective institutional arrangements to guarantee their protection and full participation in the peace process can significantly contribute to the maintenance and promotion of international peace and security.

The Council reaffirmed also the need to implement fully international human rights and humanitarian law including the four Geneva Conventions that protect the rights of women and girls during and after conflicts.

The Council remained deeply concerned by the pervasiveness of all forms of violence against women and girls in armed conflict, including killing, maiming, grave sexual violence, abductions and trafficking in persons. The Council reiterated its utmost condemnation of such practices and called on all parties to armed conflict to take specific measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict.

Furthermore, the Council stressed the need to end impunity for acts of gender-based violence in situations of armed conflict and emphasized the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard stressed the need to exclude these crimes, where feasible, from amnesty provisions.

Lastly, the Security Council requested the Secretary-General to ensure that disarmament, demobilization and reintegration programmes take specific account of the situation of women and girls associated with armed forces and armed groups, as well as their children, and provide for their full access to these programmes.

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[60] S/PRST/2007/5.

(*h*) Missions of the Security Council

(i) *Kosovo*

On 19 April 2007, in a letter addressed to the Secretary-General, the President of the Security Council informed the Secretary-General that the members of the Security Council had decided to send a mission to Kosovo from 24 to 29 April 2007.[61] The mission, which would give the members of the Council the opportunity to inform themselves of the situation on the ground, would travel to Belgrade, Kosovo, Brussels and Vienna and have the objectives to obtain first-hand information on progress made in Kosovo since the adoption of Security Council resolution 1244 (1999) of 12 October 1999. They would receive information directly from the leadership of Serbia and the Provisional Institutions for Self-Government of Kosovo and from representatives of Kosovo's ethnic minority communities on the current political, social and economic situation in Kosovo and on the regional situation, as well as information directly from representatives of the international community, in Brussels and on the ground, on the current political, social and economic situation in Kosovo and on the regional situation.

(ii) *Africa*

On 11 June 2007, in a letter addressed to the Secretary-General, the President of the Security Council informed the Secretary-General that the members of the Security Council had decided to send a mission to Africa from 14 to 21 June 2007, which would travel to Addis Ababa, Khartoum, Accra, Abidjan and Kinshasa.[62]

The terms of references for the mission to Addis Ababa and Accra would be to exchange views on how best to maximize the relationship between the United Nations Security Council and regional organizations, in particular the African Union, including in respect of Chapter VIII of the Charter of the United Nations, and to discuss mechanisms for elaborating closer ties in the fields of conflict prevention, mediation and good offices, peacekeeping and post-conflict reconstruction, including peacebuilding. It would also be an opportunity to identify areas where particular focus is needed to make further progress, to discuss ways and means of supporting and improving in a sustained way the resource base and capacity of the Peace and Security Architecture of the African Union, as well as to exchange views on wider African situations of interest to both the United Nations Security Council and the African Union Peace and Security Council, welcoming enhanced cooperation between the United Nations and the African Union on issues related to, *inter alia,* Sudan, Somalia and the Democratic Republic of Congo. Lastly the mission would commend the efforts of the African Union to achieve lasting peace in Africa, and consider how best to develop closer relations between the United Nations and the African Union, in line with the 10-year plan for capacity-building with the African Union.

The terms of reference for the mission to the Sudan would be to reaffirm the Security Council's commitment to the sovereignty, unity and territorial integrity of the Sudan and

[61] See letter dated 19 April 2007 from the President of the Security Council addressed to the Secretary-General (S/2007/220).

[62] See letter dated 11 June 2007 from the President of the Security Council addressed to the Secretary-General (S/2007/347).

the international community's determination to help the Sudan achieve a peaceful and prosperous development, and to review the implementation of the Comprehensive Peace Agreement. It would also aim to encourage the Government of the Sudan and the non-signatory parties to engage constructively in the Darfur Peace Process with a view to finding lasting peace in the Sudan, in particular support for the forthcoming talks to be convened by the United Nations and African Union special envoys on Darfur. Furthermore it would be mandated\, to encourage the efforts of the African Union, the United Nations in consultation with the Government of the Sudan to achieve without delay full agreement on and full implementation of the Addis Ababa Outcome that provided for a re-energized political process, a strengthened ceasefire and a three-phased approach to peacekeeping: the Light Support Package (phase I), the Heavy Support Package (phase II) and the Hybrid Operation (phase III). Lastly the mission would encourage all parties to fully implement the ceasefire agreement and underscore the need for full implementation by all parties of international obligations, in the political, security and humanitarian fields.

The terms of reference for the mission to Côte d'Ivoire would be, *inter alia,* to welcome the ownership of the peace process by the Ivorian parties in the framework of the Ouagadougou Agreement; to encourage the parties to implement fully and in good faith all the provisions of the Agreement and of the subsequent agreements, and to express the readiness of the Council to help them in this regard. Also, the mission would welcome the fact that Ivorian parties, as well as the Facilitator, stressed that continued United Nations assistance was essential to the peace process and determine with Ivorian parties, and in liaison with the Facilitator, the role of the United Nations in the follow-up of the peace process. Furthermore the mission would reaffirm the commitment of the Security Council to the credibility of the elections, recalling the necessity to implement in a credible manner the operations of disarmament of ex-combatants and militia, of identification of the population and registration of voters, as set out in the Ouagadougou Agreement, and calling upon the parties to ensure an environment favourable to the holding of free, open, fair and transparent elections, in particular by guaranteeing that the media remain neutral. The members of the Security Council would point out that the Council will examine the sanctions regime in order to contribute to the peace process; and encourage the Ivorian parties in implementing the Ouagadougou Agreement, to ensure the protection of vulnerable civilians.

The terms of reference for the mission to the Democratic Republic of the Congo would be, *inter alia,* to reaffirm the commitment of the Security Council to help the Congolese authorities to consolidate peace, democratic governance and the rule of law in the post-transitional period and to stress that the new mandate of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) set out by resolution 1756 (2007), adopted on 15 May 2007, constitutes a significant contribution by the United Nations to this endeavour. Also, the mission would discuss with the Congolese authorities the ways and means of defusing current tensions and engaging in a plan for the long-term stabilization of the eastern part of the country, particularly in the Kivus and Ituri regions, and would call on the Congolese authorities to step up their efforts to put an end to impunity and to ensure effective protection of the population throughout the territory. Lastly, the mission, welcoming the signing in Nairobi on 15 December 2006 of the Security, Stability and Development Pact for the Great Lakes region would encourage the Government of the Democratic Republic of the Congo to ratify the Stability Pact and to fully resume diplomatic relations with all neighbours.

(iii) *Timor-Leste*

On 31 October 2007, in a letter addressed to the Secretary-General, the President of the Security Council informed the Secretary-General that the members of the Security Council had decided to send a mission to Timor-Leste from 24 to 30 November 2007.[63] The terms of reference for the mission would be, *inter alia,* to reaffirm the Security Council's commitment to the sovereignty, independence, territorial integrity and national unity of Timor-Leste and the promotion of long-term stability in the country. Also, the mission would reaffirm the commitment of the Security Council to assist the Timorese people to consolidate peace, democratic governance and the rule of law, in the post-electoral period in Timor-Leste, to support and encourage efforts to ensure accountability and justice and implementation of United Nations recommendations in that regard, and to stress that the mandate of the United Nations Integrated Mission in Timor-Leste (UNMIT) set out in Security Council resolution 1745 (2007) constitutes a significant contribution by the United Nations to this endeavour. Lastly the mission would discuss and exchange views with the Timorese authorities on ways and means to assist the country in developing capacities necessary to build on security and democratic and other gains achieved thus far.

3. Disarmament and related matters[64]

(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 the only body composed of all Member States of the United Nations for in-depth deliberation on relevant disarmament issues.

At its 2007 substantive session in New York, held from 9 to 27 April, the Commission began the second year of its three-year cycle considering two main agenda items: recommendations for achieving the objective of nuclear disarmament and non-proliferation of nuclear weapons, and practical confidence-building measures in the field of conventional weapons, as agreed upon the previous year.[65] The Commission was not able to significantly narrow the gap of discord to set the stage for a successful outcome the following year at its closing session of the three-year cycle. The two working groups were, however, encouraged by their respective chairs to continue consultations on proposed texts. At the final plenary meeting of UNDC on 27 April, the Commission adopted its final report to the General Assembly.[66]

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[63] See letter dated 11 June 2007 from the President of the Security Council addressed to the Secretary-General (S/2007/647).

[64] For detailed information, see *The United Nations Disarmament Yearbook*, vol. 32 (Part I): 2007 and vol. 32 (Part II): 2007 (United Nations publication, Sales No. E.08.IX.1).

[65] See Report of the Disarmament Commission 2005, *Official Records of the General Assembly, Sixtieth Session, Supplement No. 42* (A/60/42).

[66] *Ibid*.

(ii) *Conference on Disarmament*[67]

The Conference on Disarmament held three sessions in 2007, respectively on 22 January to 30 March, 14 May to 29 June and 30 July to 14 September, during which two rounds of informal deliberations were held. Based on the outcome of two rounds of deliberations, the Conference tabled a presidential draft decision,[68] which included a mandate to negotiate an agreement banning the production of fissile material for nuclear weapons use and other explosive devises. It also provided for substantive discussions on other core issues, namely nuclear disarmament, negative security assurances and prevention of an arms race in outer space.[69] However, the Conference was unable to agree on a substantive programme of work. On 13 September, the Conference adopted its report on the 2007 session for consideration by the General Assembly.[70]

(iii) *General Assembly*

On 5 December 2007 the General Assembly adopted, on the recommendation of the First Committee, two resolutions and one decision concerning the institutional make-up of the United Nations' efforts in the field of disarmament, particularly concerning the Disarmament Commission and the Conference on Disarmament, which are highlighted below.

In resolution 62/55, entitled "Report of the Conference of Disarmament", the Assembly requested all States to cooperate with the current and successive Presidents of the Conference to achieve an early commencement of substantive work in 2008.

In resolution 62/54, entitled "Report of the Disarmament Commission", the General Assembly recommended that the Commission consider at its 2008 substantive session recommendations for achieving the objectives of nuclear disarmament and non-proliferation of nuclear weapons, and practical confidence-building measures in the field of conventional weapons.

In decision 62/512, entitled "Review of the implementation of the Declaration on the Strengthening of International Security", the General Assembly decided to include in the provisional agenda of its sixty-fourth session the item entitled "Review of the implementation of the Declaration on the Strengthening of International Security".

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[67] The Conference on Disarmament, established in 1979 as the single multilateral disarmament negotiating forum of the international community, was a result of the First Special Session on Disarmament of the United Nations General Assembly in 1978.

[68] CD/2007/L.1. See also CD/PV.1048.

[69] The three documents constituting the Presidential proposal, CD/2007/L.1, CD/2007/CRP.5 and CD/2007/CRP.6, are annexed to document CD/1828.

[70] CD/1831.

(*b*) Nuclear disarmament and non-proliferations issues

The Conference on Disarmament focused its discussions on the issue of nuclear disarmament. During two rounds of informal deliberations, the Conference did not reach a consensus on its programme of work and no progress was made on the substance.[71]

The first session of the Preparatory Committee for the 2010 Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons was held from 30 April to 11 May 2007 in Vienna. The agenda, which would also guide remaining sessions of the Preparatory Committee in the review cycle until the Review Conference in 2010, was adopted on 8 May 2007. The Committee held a number of meetings, discussing substantive issues. The issues, consisting of three clusters and three specific blocs, included the implementation of the provisions of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT),[72] relating to non-proliferation of nuclear weapons, disarmament and international peace and security; the implementation of the provisions of the Treaty relating to non-proliferation of nuclear weapons, safeguard and nuclear-weapon-free zones; the implementation of the provisions of the Treaty relating to the inalienable right of all parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes, without discrimination and in conformity with Articles I and II, nuclear disarmament and security assurances; regional issues, including with respect to the Middle East and the implementation of the 1995 Middle East resolution;[73] and other provisions of the Treaty, including Article X.

The Fifth Conference on Facilitating the Entry into Force of the Comprehensive Nuclear-Test-Ban Treaty (CTBT) was held from 17 to 18 September 2007 in Vienna. The Conference provided States with an opportunity to review the overall progress made during the past eleven years, with a particular focus on the time elapsed since the last Conference in September 2005. Since the fourth Conference, the Treaty had been ratified by 15 additional States with one new signature, bringing the total number to 140 ratifications and 177 signatures. The participants adopted a Final Declaration and Measures to promote the Entry into Force of CTBT[74] and reaffirmed the determination to end nuclear test explosions or any other nuclear explosions. The Declaration furthermore called upon States to continue their voluntary adherence to a nuclear-weapon-test moratorium and to refrain from acts contrary to the object and purpose of the Treaty prior to its entry into force.

In 2007, the focus of consultations and training by the International Atomic Energy Agency (IAEA) was the conclusion of such legal instruments as the comprehensive safeguard agreements pursuant to the NPT and the additional protocols thereto. Comprehensive safeguard agreements entered into force for one additional State bringing the total number of States with IAEA safeguard agreements to 163.[75] Additional Protocols to safeguard agreements entered into force for five States.

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[71] For more detailed information on the work of the Conference on Disarmament see section (a) above.

[72] United Nations, *Treaty Series*, vol. 729, p. 161.

[73] NPT/CONF.1995/32 (Part I), annex.

[74] Adopted on 18 September 2007 and annexed to the Report of the Conference (CTBT—Art. XIV/2007/6).

[75] At the end of 2006, 30 non-nuclear-weapon States parties to the NPT had yet to bring IAEA agreements into force as required under article III of the Treaty.

The IAEA had, from December 2002 to June 2007, been unable to carry out verification activities in the Democratic People's Republic of Korea (DPRK). In February 2007, an agreement was reached with the DPRK at the Six-Party Talks, and IAEA inspectors were subsequently able to visit DPRK nuclear facilities in June 2007. Discussions concerning the shutdown of the Yongbyon reactor where initiated. By the end of the year the Agency verified the shutdown status of the Yongbyon nuclear facility and, with the cooperation of the DPRK, continued to implement the *ad hoc* monitoring and verification arrangement agreed upon in March of that year.

Four reports were submitted in 2007 by the IAEA Director General to the IAEA Board of Governors on the implementation of its NPT Safeguards Agreement with the Islamic Republic of Iran. According to these report, IAEA had been provided with access to declared nuclear material and facilities, but had however not, since early 2006, received the type of information that Iran had previously been providing, pursuant to the Agreement and as a transparency measure.

On 21 August 2007, an agreement was reached, between Iran and IAEA, on a workplan entitled "Understanding of the Islamic Republic of Iran and IAEA on the Modalities of Resolution of the Outstanding Issues", aiming at the clarification of outstanding issues relevant to Iran's past nuclear activities. During the year, the Agency was able to conclude that answers provided by Iran, in accordance with the workplan, were either consistent or not inconsistent with its findings.

The Subscribing States[76] to the Hague Code of Conduct against Ballistic Missile Proliferation (HCOC)[77] held their Sixth Regular Conference in Vienna from 31 May to 1 June. Amongst the issues discussed by the Conference was the strengthening of confidence-building measures, such as the pre-launch notifications and annual declarations of ballistic missiles, space-launch vehicles and the importance of outreach activities to foster the universalization of HCOC, and thereby, increasing the number of Subscribing States.

(i) *General Assembly*

On 5 December 2007, the General Assembly adopted, on the recommendation of the First Committee, 18 resolutions and 2 decisions concerning nuclear weapons and non-proliferation concerns,[78] of which five are highlighted below.

In resolution 62/19, entitled "Conclusion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons", the General Assembly recommended that further intensive efforts be devoted to the search for a common approach to include in an international, legally-binding instrument, and that the various alternative approaches, particular those discussed in the Conference on Disarmament, be further explored.

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[76] By the end of 2007, the HCOC had 128 subscribing States.

[77] A/57/724.

[78] General Assembly resolutions 62/15, 62/16, 62/18, 62/19, 62/24, 62/25, 62/31, 62/32, 62/34, 62/35, 62/36, 62/37, 62/39, 62/42, 62/46, 62/51, 62/56 and 62/59 and decisions 62/513 and 62/514 of 5 December 2007.

In resolution 62/24, entitled "Follow-up to nuclear disarmament obligations agreed to at the 1995 and 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons", the General Assembly, *inter alia,* called for further efforts to be made by nuclear-weapon States to reduce their nuclear arsenals unilaterally; further reduction of non-strategic nuclear weapons; and a diminishing role for nuclear weapons in security policies.

In resolution 62/25, entitled "Towards a nuclear-weapons-free world: accelerating the implementation of nuclear disarmament commitments", the Assembly welcomed the first session of the Preparatory Committee for the 2010 NPT Review Conference.[79] Also, the General Assembly urged DPRK to rescind its announced withdrawal from NPT.

In resolution 62/37, entitled "Renewed determination towards the total elimination of nuclear weapons", the General Assembly recognized the importance of implementing Security Council resolution 1718 (2006) of 14 October 2006 with regard to the nuclear test proclaimed by DPRK, while welcoming the recent progress achieved by the Six-Party Talks. Furthermore, the Assembly encouraged States to continue to pursue efforts contributing to the reduction of nuclear-weapons related materials; and urged all States that have not yet done so to sign and ratify CTBT.

In resolution 62/59, entitled "Comprehensive Nuclear-Test-Ban Treaty", the General Assembly urged all States to maintain their moratoriums on nuclear weapons test explosions or any other nuclear explosions, and to refrain from acts that would defeat the object and purpose of the Comprehensive Nuclear-Test-Ban Treaty.

(ii) *Security Council*

On 24 March 2007, the Security Council adopted resolution 1747 (2007) and reaffirmed that Iran should without further delay take the steps required by the IAEA Board of Governors in its resolution GOV/2006/14 of 4 February 2006, which were essential to build confidence in the exclusively peaceful purpose of its nuclear programme and to resolve outstanding questions, and, in this context, affirmed its decision that Iran should without further delay take the steps required in paragraph 2 of resolution 1737 (2006) of 23 December 2006.

Also, the Security Council expressed the conviction that the suspension set out in paragraph 2 of resolution 1737 (2006) as well as full, verified Iranian compliance with the requirements set out by the IAEA Board of Governors would contribute to a diplomatic, negotiated solution that guarantees Iran's nuclear programme is for exclusively peaceful purposes, underlined the willingness of the international community to work positively for such a solution, encouraged Iran, in conforming to the above provisions, to re-engage with the international community and with IAEA, and stressed that such engagement would be beneficial to Iran.

Finally, the Council reiterated its determination to reinforce the authority of IAEA, strongly supported the role of the IAEA Board of Governors, commended and encouraged the Director General of IAEA and its secretariat for their ongoing professional and impartial efforts to resolve all outstanding issues in Iran within the framework of IAEA,

[79] See section *(b)* above.

underlined the necessity of IAEA, which is internationally recognized as having authority for verifying compliance with safeguards agreements, including the non-diversion of nuclear material for non-peaceful purposes, in accordance with its Statute, to continue its work to clarify all outstanding issues relating to Iran's nuclear program.

(c) Biological and chemical weapons issues

Following the 2006 Sixth Review Conference, the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (BWC)[80] began in 2007 a new cycle of annual meetings that will lead in 2011 to the Seventh Review Conference.

In accordance with the decision of the Review Conference,[81] the 2007 Meeting of Experts was held in Geneva from 20 to 24 August and the Meeting of States Parties was held from 10 to 14 December. As decided by the Review Conference, States parties considered two main topics in 2007, which are the ways and means to enhance national implementation, including enforcement of national legislation, strengthening of national institutions and coordination among national law enforcement institutions and the regional and subregional cooperation on implementation of BWC.

The Meeting of Experts heard an interim report from the Chairman on activities to secure universal adherence to the Convention. It adopted its own Report by consensus.[82] At their following meeting, the States Parties agreed they could, depending on their particular situation, take it into account when pursuing the goals established at the Meeting. Having recognised the importance of developing a coordinated and harmonised domestic mechanism to implement the obligations of BWC, the States Parties also agreed on the value of moving from adjacency to synergy. They noted that, where appropriate, the establishment of a central body or lead organisation and the creation of a national implementation plan may be useful.[83] Finally, they agreed on the value of promoting international cooperation at all levels, in order to exchange experiences and best practices on the implementation of the Convention.

Further, the Implementation Support Unit (ISU) of BWC was established on 20 August 2007. It presented its first report to the 2007 Meeting of States Parties. Following the Meeting, States parties were urged to inform ISU of their national measures or any updates or changes to them and of any relevant regional and subregional activities, in order to facilitate the sharing of information on national implementation and regional cooperation.

The year 2007 celebrated the tenth anniversary of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC).[84] The twelfth Session of the Conference of the States Parties to the Convention took place in Hague from 5 to 9 November. The Conference decided to proceed

[80] United Nations, *Treaty Series*, vol. 1015, p.163.

[81] BWC/CONF.VI/6.

[82] BWC/MSP/2007/MX/3.

[83] BCW/MSP/2007/5, para. 21.

[84] United Nations, *Treaty Series*, vol. 1974, p. 45.

with the Action Plan on the Universality of the Convention[85] and to review its implementation results at its Fourteenth Session. The Conference also reaffirmed the urgency for States parties to comply with Article VII of the Convention.

The United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) saw its mandate reviewed by the Security Council on 29 June 2007. Acting under Chapter VII of the Charter of the United Nations, the Council decided in its Resolution 1762 (2007) to terminate the mandate of UNMOVIC. Until then, the Commission pursued its activity. It published its compendium on Iraq's proscribed weapons of mass destruction programmes on 27 June, in compliance with the limits imposed on related confidential information.[86]

General Assembly

During the sixty-second session of the General Assembly, a High-Level Meeting was held on 27 September, in cooperation with the Weapons of Mass Destruction Branch of UNODA. The accomplishments of CWC in the field of disarmament were then recognised by the Secretary-General. Also, a panel discussion was held during the First Committee debate in order to commemorate the 10th anniversary of CWC.

On 5 December 2007, the General Assembly adopted, on the recommendation of the First Committee, resolution 62/23 entitled "Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction", in which all States parties to CWC were urged to meet in full and on time their obligations under the Convention. The Assembly also adopted on the same day resolution 62/60 entitled "Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction", in which the Assembly called upon States parties to BWC to participate in the implementation of the decisions reached at the Sixth Review Conference.

(*d*) Conventional weapons issues

Following the decisions[87] of the Third Review Conference of the States Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (CCW),[88] the 2007 session of the Group of Governmental Experts (GGE) took place at Geneva from 19 to 22 June.

The Meeting of the High Contracting Parties to CCW was held at Geneva from 7 to 13 November 2007. At the first plenary meeting, the Meeting adopted its agenda and confirmed the Rules of Procedure as adopted and used by the Third Review Conference.[89] The Chairperson of the Group of Governmental Experts of the High Contracting Parties to the

[85] Adopted at the 23rd Meeting of the Executive Council, on 24 October 2003.

[86] See http://www.unmovic.org/ for the full compendium.

[87] CCW/CONF.III/11 (Part II), decisions 1 and 6, pp. 6–7.

[88] See United Nations, *Treaty Series*, vol. 1341, p. 137.

[89] CCW/CONF.III/11, Part III.

Convention reported on the work of GGE to the Meeting for its consideration.[90] The Meeting had before it, among others, the following documents: Position on Cluster Munitions,[91] Observations on Implementing the Decisions on a Compliance Mechanism[92] of CCW and Prospects for the Work of GGE on the problem of cluster munitions.[93]

The Meeting stressed the importance of accomplishing universal adherence to and compliance with CCW and its annexed Protocols. It requested the Chairperson to consider reporting his endeavours in pursuing this goal of universality to the sixty-third session of the United Nations General Assembly.[94] The Meeting also adopted Reporting Forms[95] and recommended their use by States Parties for the submission of their national reports. It encouraged the submission of such reports on an annual basis.

Also, the First Conference of High Contracting Parties to Protocol V on Explosive Remnants of War to CCW was held on 5 November 2007 in Geneva.

(i) *General Assembly*

On 5 December 2007, the General Assembly adopted, on the recommendation of the First Committee, five resolutions relating to conventional weapons, [96] of which three are listed below.

In resolution 62/22 entitled "Assistance to States for curbing the illicit traffic in small arms and light weapons and collecting them", the General Assembly commended the United Nations and international, regional and other organizations for their assistance to States for curbing the illicit traffic in small arms and light weapons and collecting them.

The General Assembly, in resolution 62/47, entitled "The illicit trade in small arms and light weapons in all its aspects", called upon all States to implement an International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons,[97] through the provision of information to the Secretary-General.

Also, in resolution 62/57, entitled "Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects", the General Assembly called upon all States that had not yet done so to become parties to CCW and the Protocols thereto, as amended, and express their consent to be bound by the Protocols to the Convention and the amendment extending the scope of the Convention and the Protocols thereto to include armed conflicts of a non-international character.

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[90] CCW/MSP/2007/5, para. 24.

[91] CCW/MSP/2007/3, as submitted by the UN Mine Action Team.

[92] CCW/MSP/2007/WP.1, as submitted by the International Committee of the Red Cross.

[93] CCW/MSP/2007/WP.2, as submitted by the Russian Federation.

[94] CCW/MSP/2007/5, para. 29.

[95] CCW/MSP/2007/5, annex VI.

[96] General Assembly resolutions 62/22, 62/40, 62/41, 62/47 and 62/57.

[97] General Assembly resolution 62/47, A/60/88 and Corr.2, annex; see also decision 60/519.

(ii) *Security Council*

At the 5709th meeting of the Security Council, on 29 June 2007, the President of the Security Council made a statement in connection to the Council's consideration of the item entitled "Small arms".[98] On behalf of the Council, he requested the Secretary-General to submit to it a report on small arms on a biennial basis, starting in 2008. He also stressed the need to implement the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects and the international instrument to enable States to identify and trace, in a timely manner, illicit small arms and light weapons.

At the 5776th meeting of the Security Council, on 6 November 2007, the President of the Council made a statement in consideration of the item "The role of regional and subregional organizations in the maintenance of international peace and security" on behalf of the Council.[99] He addressed the issue of illicit trade in small arms and light weapons while stressing the role regional and subregional organizations could potentially play in order to enable States to identify and trace efficiently such arms and weapons.

(e) Regional disarmament activities of the United Nations

(i) *Africa*

The United Nations Regional Centre for Peace and Disarmament in Africa (UNREC) provided throughout the year assistance to African States and regional and subregional organizations in their work on disarmament. Following a workshop organized by UNREC in collaboration with the Togolese government, a proposed national action plan related to the implementation of United Nations Security Council resolution 1325 (2000), adopted on 31 October 2000, was drafted and submitted to the government for its consideration.

In 2007, UNREC carried out the collection of data on small arms and light weapons and kept a regional database and register in accordance with the Small Arms Transparency and Control Regime in Africa project. Also, UNREC and the conventional arms branch of the United Nations Office for Disarmament Affairs (UNODA) organized a regional workshop in Nairobi, Kenya, from 10 to 11 December, on implementing the International Tracing Instrument. Finally, a regional workshop on the implementation of UNSCR 1540 was held by the Centre and the Branch concerned with weapons of mass destruction of UNODA, in Gaborone, Botswana, from 27 to 28 November.

Successfully terminating their work, States parties to the Consultative Mechanism for the reorganization of UNREC[100] adopted the Chairman's report.[101] Following the recommendations it contained, the General Assembly adopted on 22 December 2007 its resolution 62/216 entitled "United Nations Regional Centre for Peace and Disarmament in Africa".

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[98] S/PRST/2007/24.

[99] S/PRST/2007/42.

[100] Established following General Assembly resolution 60/86.

[101] See the Secretary-General's report on UNREC of 26 July 2007, A/62/140.

(ii) *Latin America and the Caribbean*

The year 2007 celebrated the commemoration of the fortieth anniversary of the Treaty for the Prohibition of Nuclear Weapons in Latin America.[102] Succeeding the Oslo Conference, a conference on the main elements and scope of a new treaty in connection with cluster munitions was held in Lima from 23 to 25 May.

The United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UN-LiREC) celebrated in 2007 its twentieth anniversary. Throughout the year, UN-LiREC promoted adherence to international disarmament instruments, assisted in the revision of firearms legislation and provided technical assistance to capacity-building initiatives and weapons destruction events.

In cooperation with the Organization of American States, the United Nations Office on Drugs and Crime and the United Nations Development Programme, UN-LiREC developed the 2007 comparative analysis of firearms legislation. This instrument has been created to allow a better harmonization within the existing legislations on firearms and to enable the removal of outdated legislation. Also, the UN-LiREC legislation tool has been used by regional States in order to elaborate national implementation reports of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects[103] and the Inter-American Convention Against the Illicit Manufacturing and Trafficking of Firearms, Ammunition, Explosives and Related Materials.[104]

(iii) *Asia-Pacific*

In 2007, the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific (RCDP) held two meetings to enhance regional dialogue on disarmament and security-related matters in the region.

RCDP held in Sapporo, Japan, the Nineteenth United Nations Conference on Disarmament issues from 27 to 29 August. Among the discussed topics, there were the revitalization of NPT and regional security, Iran's nuclear programme, the effectiveness of Security Council sanctions and the threat of nuclear terrorism.

In cooperation with the Republic of Korea, RCPD convened the Sixth United Nations-ROK Joint Conference on disarmament and non-proliferation issues in Seoul, from 3 to 5 December. The Conference focused its work on the future of NPT, the international disarmament and non-proliferation machinery, threats posed by missile proliferation and regional efforts in disarmament and non-proliferation.

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[102] Treaty for the Prohibition of Nuclear Weapons in Latin America, United Nations, *Treaty Series*, vol. 634, p. 281.

[103] A/CONF.192/15.

[104] United Nations, *Treaty Series*, vol. 2029, p. 55.

(iv) *General Assembly*

On 5 December 2007, the General Assembly adopted 15 resolutions, on the recommendation of the First Committee, relating to the issue of regional disarmament, [105] of which one is highlighted below.

In resolution 62/44, entitled "Conventional arms control at the regional and subregional level", the General Assembly requested the Conference on Disarmament to consider the formulation of principles that could serve as a framework for regional agreements on conventional arms control.

(f) Other issues

(i) *Terrorism and disarmament*

A new online Counter-Terrorism Handbook was launched by the Secretary-General on 16 February 2007. This instrument was created to provide assistance to Member States to counter terrorism within the framework of the Global Counter-Terrorism Strategy. Also, the Counter-Terrorism Committee focused its work programme on three main areas from 1 January to 30 June 2007, which are monitoring and promoting the implementation of Security Council resolution 1373 (2001),[106] facilitating Technical Assistance to States in a two-fold and proactive way and maintaining dialogue with States on the implementation of Security Council 1624 (2005).[107]

General Assembly

On 5 December 2007, the General Assembly adopted, on the recommendation of the First Committee, resolution 62/33 entitled "Measures to prevent terrorists from acquiring weapons of mass destruction", in which it welcomed the entry into force on 7 July 2007 of the International Convention for the Suppression of Acts of Nuclear Terrorism[108] and called upon all Member States to support international efforts to prevent terrorists from acquiring weapons of mass destruction and their means of delivery.

(ii) *Outer space*

The Outer Space Treaty[109] celebrated the fortieth anniversary of its entry into force in 2007. The year was also marked by the fiftieth anniversary of the launch of Sputnik I, the first artificial satellite to orbit the Earth.

The 2007 Conference on Disarmament addressed the issue of the prevention of an arms race into outer space (PAROS). The improvement of transparency and confidence-

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[105] General Assembly resolutions 62/14, 62/15, 62/16, 62/18, 62/31, 62/35, 62/38, 62/44, 62/45, 62/49, 62/50, 62/52, 62/53, 62/58 and 62/216 of 5 December 2007.

[106] Security Council resotlution 1373 (2001) of 28 September 2001.

[107] Security Council resolution 1624 (2005) of 14 September 2005.

[108] General Assembly resolution 59/290 of 13 April 2005.

[109] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies. United Nations, *Treaty Series*, vol. 610, p. 205.

building measures and the negotiation of a new treaty to prevent placement of weapons in outer space have been discussed.[110]

Also, the First Committee of the General Assembly held a thematic debate on outer space. Different suggestions were persented, including proposals to enhance transparency and confidence-building measures, the creation of a Code of Conduct on space objects and activities and the establishment of a United Nations Coordination Committee to monitor outer space activities.

General Assembly

On 5 December 2007, the General Assembly adopted, on the recommendation of the First Committee, resolution 62/20 entitled "Prevention of an arms race in outer space", in which it reiterated that the Conference on Disarmament has the primary role in the negotiation of a multilateral agreement on the prevention of an arms race in outer space in all its aspects. It also invited the Conference to establish an *ad hoc* committee as early as possible during its 2008 session, as outlined by the mandate contained in its decision of 13 February 1992.

On the same day, in resolution 62/43, entitled "Transparency and confidence-building measures in outer space activities" and adopted on the recommendation of the First Committee, the General Assembly took note of the report of the Secretary-General containing concrete proposals from Member States on international outer space transparency and confidence-building measures and invited all Member States to continue to submit such proposals.

(iii) *Relationship between disarmament and development*

General Assembly

On 5 December 2007, the General Assembly adopted, on the recommendation of the First Committee, resolution 62/27 entitled "Relationship between disarmament and development", in which it urged the international community to devote part of its resources from the implementation of disarmament and arms limitation agreements to economic and social development, and also encouraged the international community to achieve the Millennium Development Goals.

(iv) *Multilateralism and disarmament*

General Assembly

On 5 December 2007, the General Assembly adopted, on the recommendation of the First Committee, resolution 62/27 entitled "Promotion of multilateralism in the area of disarmament and non-proliferation", in which it urged the participation of all interested States in multilateral negotiations on arms regulation, non-proliferation and disarmament in a non-discriminatory and transparent manner. The General Assembly also requested the States parties to the relevant instruments on weapons of mass destruction to consult

[110] For detailed information, see CD/1815, CD/1818 and CD/1829.

and cooperate among themselves in resolving their concerns with regard to cases of non-compliance as well as on implementation and to refrain from resorting or threatening to resort to unilateral actions or directing unverified non-compliance accusations against one another to resolve their concerns.

(v) *Environmental norms and disarmament agreements*

General Assembly

On 5 December 2007, the General Assembly adopted, on the recommendation of the First Committee, resolution 62/28 entitled "Observance of environmental norms in the drafting and implementation of agreements on disarmament and arms control". In the said resolution, the Assembly reaffirmed that international disarmament forums should take fully into account the relevant environmental norms in negotiating treaties and agreements on disarmament and arms limitation. It further called upon States to contribute to ensuring the application of scientific and technological progress within the framework of international security, disarmament and other related spheres, without detriment to the environment or to sustainable development.

4. Legal aspects of peaceful uses of outer space

(*a*) Committee on the Peaceful Uses of Outer Space

The Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space held its forty-sixth session in Vienna from 26 March to 5 April 2007.[111]

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,[112] the Subcommittee took note of their status and also noted with satisfaction that an updated document providing information on the status of treaties and international agreements related to the outer space had been distributed by the Secretariat.[113] The Subcommittee also reconvened its Working Group on the Status and Application of the Five United Nations Treaties on Outer Space. At its 761st meeting, it endorsed the report of the Working Group, which contained, among others, recommendations with regard to adherence to the Convention on Registration of Objects Launched into Outer Space and to the harmonization of practices.[114]

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[111] For the report of the Legal Subcommittee, see A/AC.105/891.

[112] 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).

[113] See ST/SPACE/11/Rev.1/Add.1/Rev.1.

[114] For the report of the Working Group, see A/AC.105/891, annex I.

Under the agenda item concerning information on the activities of international organizations relating to space law, the Subcommittee noted with satisfaction the Secretariat invited different international organizations to report to it on their activities relating to space law. For its forty-seventh session, it agreed such invitation should be extended.

Regarding the item relating to the definition and delimitation of outer space and the character and utilization of the geostationary orbit,[115] the Subcommittee had before it, among other things, a note by the Secretariat entitled "Questionnaire on possible legal issues with regard to aerospace objects: replies from member States"[116] and an analytical summary of the replies received.[117] In accordance with the agreement reached at its thirty-ninth session, the Subcommittee reconvened the Working Group on this item to consider only matters relating to the definition and delimitation of outer space. It subsequently endorsed the report of the Working Group.[118]

In connection with the agenda item entitled "Examination and review of the developments concerning the draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment", the Legal Subcommittee received a report from the observer Unidroit on developments concerning the draft space assets protocol. The Subcommittee noted that the Protocol on Matters Specific to Railway Rolling Stock to the Convention had been adopted and opened for signature in Luxembourg on 23 February 2007. It also noted Unidroit was fully committed to the timely completion of work on the draft space assets protocol and that efforts were made to reconvene by the end of 2007 the Unidroit Committee of Governmental Expert. Finally, the Subcommittee agreed that the item should stay on the agenda for its forty-seventh session in 2008.

The Committee on the Peaceful Uses of Outer Space held its fiftieth session in Vienna from 6 to 15 June 2007. The Committee took note with appreciation of the Legal Subcommittee's report and a number of views were expressed concerning the work of the Subcommittee.[119]

(*b*) General Assembly

On 5 December 2007, the General Assembly adopted, on the recommendation of the First Committee, two resolutions relating to the legal uses of outer space, resolution 62/20 entitled "Prevention of an arms race in outer space," and resolution 62/43 entitled "Transparency and confidence-building measures in outer space activities".

Furthermore, on the same day, on the recommendation of the Fourth Committee, the Assembly adopted resolution 62/101 entitled "Recommendations on enhancing the practice of States and international intergovernmental organizations in registering space

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[115] 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".

[116] A/AC.105/635 and Add.1–15, Add.7/Corr.1 and Add.11/Corr.1.

[117] A/AC.105/C.2/L.249 and Corr.1 and Add.1 and 2.

[118] A/AC.105/891, annex II.

[119] For the report of the Committee on the Peaceful Uses of Outer Space, see *Official Records of the General Assembly, Sixty-second Session, Supplement No. 20* (A/62/20).

objects" and resolution 62/217 entitled "International cooperation in the peaceful uses of outer space". In the former resolution, the Assembly took note of the report of the Legal Subcommittee on its forty-sixth session. It also made recommendations with regard to adherence to the Registration Convention,[120] to the harmonization of practices and in order to achieve the most complete registration of space objects.

5. Human Rights[121]

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

(i) *Human Rights Council*

The Human Rights Council was established in 2006 to replace the Commission on Human Rights.[122] The Council meets as a quasi-standing body in three annual regular sessions and additional special sessions as needed. Reporting to the General Assembly, its agenda and programme of work provide the opportunity to discuss all thematic human rights issues and situations that require the attention of the Assembly. Furthermore, the Council's mandate includes the review on a periodic basis of the fulfilment of the human rights obligations of all countries, including the members of the Council, over a cycle of four years through the newly-established universal periodic review.[123] The Council also decided to assume the thirty-eight country and thematic special procedures existing under the Commission on Human Rights while reviewing the mandate and criteria for the establishment of these special procedures.[124] Moreover, based on the previous "1503 procedure",

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[120] Convention on Registration of Objects Launched into Outer Space, 1975. United Nations, *Treaty Series*, vol. 1023, p. 15.

[121] 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, in particular activities of Special Rapporteurs and selected resolutions on specific human rights issues. Other legal developments in human rights may be found under the section in the present chapter entitled "Peace and security". 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, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Committee on the Rights of Persons with Disabilities). 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. For a complete list of signatories and States parties to international instruments relating to human rights that are deposited with the Secretary-General, see chapter IV of *Multilateral Treaties Deposited with the Secretary-General*, available on the website http://treaties.un.org/Pages/ParticipationStatus.aspx.

[122] General Assembly resolution 60/251 of 15 March 2006. For further details on its establishment, see the *United Nations Juridical Yearbook* for 2006, chapter III, section 6.

[123] The 1st session of review cycle 2008–2011 is 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 homepage of the Human Rights Council, www.ohchr.org/EN/HRBodies/UPRmain.aspx.

[124] See Human Rights Council decision 1/102 of 30 June 2006.

the new confidential complaint procedure of the Council allows individuals and organizations to continue to bring complaints revealing a consistent pattern of gross and reliably attested violations of human rights to the attention of the Council.[125]

In 2007, the Human Rights Council held three regular sessions and one special session dedicated to the human rights situation in Myanmar. [126]

(ii) *Human Rights Council Advisory Committee*

The Human Rights Council Advisory Committee was established pursuant to General Assembly resolution 60/251, adopted on 15 March 2006, to replace the Sub-Commission for the Promotion and Protection of Human Rights as the main subsidiary body of the Human Rights Council. Pursuant to Human Rights Council resolution 5/1 of 18 June 2007, the Human Rights Council Advisory Committee, composed of 18 experts, was established to function as a think-tank for the Council, to work under its direction and to provide expertise in the manner and form requested by the Council, focusing mainly on studies and research-based advice, suggestions for further enhancing its procedural efficiency, as well as further research proposals within the scope of the work set out by the Council. The Advisory Committee is to convene for up to two sessions per year in Geneva, for a maximum of 10 working days. No session was held during 2007.

(iii) *Human Rights Committee*

The Human Rights Committee was established under the International Covenant on Civil and Political Rights of 1966,[127] to monitor the implementation by its State parties of the Covenant and its Optional Protocols. In 2007, the Committee held its eighty-ninth session from 12 to 30 March in New York, and its ninetieth and ninety-first sessions from 9 to 27 July and from 15 October to 2 November, respectively, in Geneva.[128]

(iv) *Committee on Economic, Social and Cultural Rights*

The Committee on Economic, Social and Cultural Rights was established by the Economic and Social Council[129] to monitor the implementation of the International Covenant

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[125] More detailed information on the mandate, work and methods of the Human Rights Council is available online at http://www2.0hchr.org/english/bodies/hrcouncil.

[126] See Report of the Human Rights Council, Fourth session (12 to 30 March 2007), and Fifth session (11 to 18 June 2007), *Official Records of the General Assembly, Sixty-second Session, Supplement No. 53* (A/62/53), and Report of the Human Rights Council, Sixth session (first part: 10 to 28 September 2007, resumed session: 10 to 14 December 2007), and Fifth special session, *Official Records of the General Assembly, Sixty-third Session, Supplement No. 53* (A/63/53).

[127] United Nations, *Treaty Series*, vol. 999, p. 171.

[128] The reports of the eighty-ninth and ninetieth sessions can be found in *Official Records of the General Assembly, Sixty-second Session, Supplement No. 40* (A/62/40) and the report of the ninety-first session can be found in *Official Records of the General Assembly, Sixty-third Session, Supplement No. 40* (A/63/40).

[129] Economic and Social Council resolution 1985/17 of 28 May 1985.

on Economic, Social and Cultural Rights of 1966[130] by its States parties. In 2007, the Committee held its thirty-eighth and thirty-ninth sessions from 30 April to 18 May and from 5 to 23 November respectively, in Geneva.[131]

(v) *Committee on the Elimination of Racial Discrimination*

The Committee on the Elimination of Racial Discrimination was established under the Convention on the Elimination of All Forms of Racial Discrimination of 1966,[132] to monitor the implementation of the Convention by its States parties. In 2007, the Committee held its seventieth and seventy-first sessions from 19 February to 9 March and from 30 July to 17 August in Geneva.[133]

(vi) *Committee on the Elimination of Discrimination against Women*

The Committee on the Elimination of Discrimination against Women was established under the Convention on the Elimination of All Forms of Discrimination against Women of 1979,[134] to monitor the implementation of the Convention by its States parties. In 2007, the Committee held in New York its thirty-seventh session from 15 January to 2 February, its thirty-eighth session from 14 May to 1 June and its thirty-ninth session from 23 July to 10 August.[135]

(vii) *Committee against Torture*

The Committee against Torture was established under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984,[136] to monitor the implementation of the Convention by its States parties. In 2007, the Committee held its thirty-eighth and thirty-ninth sessions from 30 April to 18 May and from 5 to 23 November, respectively, in Geneva.[137] The Subcommittee on Prevention of Torture established in October 2006 under the Optional Protocol to the Convention against Tor-

[130] United Nations, *Treaty Series*, vol. 993, p. 3.

[131] The reports of the sessions can be found in *Official Records of the Economic and Social Council, 2008, Supplement No. 2* (E/2008/22- E/C.12/2007/3).

[132] United Nations, *Treaty Series*, vol. 660, p. 195.

[133] The respective reports can be found in *Official Records of the General Assembly, Sixty-second Session, Supplement No. 18* (A/62/18).

[134] United Nations, *Treaty Series*, vol. 1249, p. 13.

[135] The respective reports can be found in *Official Records of the General Assembly, Sixty-second Session, Supplement No. 38* (A/62/38).

[136] United Nations, *Treaty Series*, vol. 1465, p. 85.

[137] The respective reports can be found in *Official Records of the General Assembly, Sixty-first Session, Supplement No. 44* (A/61/44) and *Official Records of the General Assembly, Sixty-second Session, Supplement No. 44* (A/62/44).

ture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[138] met for the first time in Geneva on 19 February 2007.

(viii) *Committee on the Rights of the Child*

The Committee on the Rights of the Child was established under the Convention on the Rights of the Child of 1989,[139] to monitor the implementation of this Convention by its States parties. In 2007, the Committee held its forty-fourth, forty-fifth, and forty-sixth sessions in Geneva, from 15 January to 2 February, from 21 May to 8 June, and from 17 September to 5 October, respectively.[140] The Committee on the Rights of the Child adopted during its forty-fourth session, General Comment No. 10, on the children's rights in Juvenile Justice, in which the Committee specified the interpretation of relevant provisions of the Convention of the Right of the Child.[141]

(ix) *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 of 1990,[142] to monitor the implementation of the Convention by its States parties in their territories. In 2007, the Committee held its sixth and seventh sessions from 23 to 27 April and from 26 to 30 November, respectively, in Geneva.[143]

(x) *Committee on the Rights of Persons with Disabilities*

On 30 March 2007, the Convention on the Rights of Persons with Disabilities and its Optional Protocol, which had been adopted on 13 December 2006 at the United Nations Headquarters in New York, was opened for signature. The Convention was signed by 82 States and ratified by one State, and the Optional Protocol was signed by 44 States, making it the highest number of signatories in history to a United Nations Convention on its opening day. The Committee on the Rights of Persons with Disabilities is the body of independent experts established under the Convention, which has the mandate to monitor

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[138] The Optional Protocol was adopted in General Assembly resolution 57/199 on 18 December 2002. For further information on the mandate of the Subcommittee, see the *United Nations Juridical Yearbook* for 2006, chapter III, section 6.

[139] United Nations, *Treaty Series*, vol. 1577, p. 3.

[140] The reports can be found respectively in documents CRC/C/44/3, CRC/C/45/3 and CRC/C/46/3.

[141] For more detail on General Comment No. 10 refer to the section on the rights of the child, chapter 6. (h) *(i)* Rights of the Child. 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).

[142] General Assembly resolution 45/158 of 18 December 1990.

[143] The reports can be found in Official *Records of the General Assembly, Sixty-second Session, Supplement No. 48* (A/62/48) and *ibid., Sixty-third Session, Supplement No. 48* (A/63/48).

its implementation by the States Parties, once the Convention has entered into force. The Committee shall meet in Geneva and normally hold two sessions per year.

Under the Convention, all States parties have the obligation to submit regular reports to the Committee on how they implement the rights contained therein, initially within two years of accepting the Convention, and thereafter every four years. The Committee is to examine each report and make such suggestions and general recommendations on the report, as it considers appropriate, and forward them to the State party concerned.

Furthermore, under the Optional Protocol to the Convention, the Committee has competence to examine individual complaints relating to alleged violations of the Convention by States parties to the Protocol.

(*b*) Racism, racial discrimination, xenophobia and all forms of discrimination

(i) *Human Rights Council*

During 2007, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Doudou Diène, submitted his annual report to the Human Rights Council,[144] which included an updated study on the issue of political platforms which promote or incite racial discrimination,[145] and a report on the manifestations of defamation of religions and in particular on the serious implications of Islamophobia on the enjoyment of all rights.[146]

In his annual report, among other things, the Special Rapporteur recommended that the Human Rights Council remind member States of the link between efforts to combat racism, racial discrimination and xenophobia and the construction of democratic, interactive and egalitarian multiculturalism. In a similar vein, he invited the Human Rights Council to draw the attention of member States to the historical and cultural depth of racism and recalled that efforts to combat racism must involve economic, social and political measures and relate to the question of identity, namely the dialectic between respect for the cultural and religious identities of minority groups and communities and the promotion of cross-fertilization and interaction between all national communities. To this end, the Special Rapporteur recommended that the Council draw the attention of member States to the importance of developing an intellectual front against racism and, consequently, of combating, through education and information, ideas and concepts likely to incite or legitimize racism, racial discrimination or xenophobia, in particular via the Internet.

(ii) *General Assembly*

On 18 December 2007, the General Assembly adopted resolution 62/142 on the "Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance", and on 22 December 2007, it adopted resolution 62/220 entitled "Global efforts for the total elimination of racism, racial

[144] A/HRC/4/19.

[145] A/HRC/5/10.

[146] A/HRC/6/6.

discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action".

In the former resolution, the Assembly, after taking into account the report of the Special Rapporteur,[147] reaffirmed the condemnation of the persistence and resurgence of neo-Nazism, neo-Fascism and violent nationalist ideologies based on racial and national prejudice and stated that those phenomena could never be justified in any instance or in any circumstances. It also expressed deep concern about the glorification of the Nazi movement, as well as about recurring attempts to desecrate or demolish monuments erected in remembrance of those who fought against Nazism during the Second World War. Furthermore, the Assembly stressed that such practices fuel contemporary forms of racism, racial discrimination, xenophobia and related intolerance and contribute to the spread and multiplication of various extremist political parties, movements and groups.

In the latter resolution, the Assembly, *inter alia,* expressed deep concern at recent attempts to establish hierarchies among emerging and resurgent forms of racism, racial discrimination, xenophobia and related intolerance, and urged States to adopt measures to address these scourges with the same emphasis and vigour with a view to preventing this practice and protecting the victims. Furthermore, the Assembly reaffirmed that universal adherence to, and full implementation of, the International Convention on the Elimination of All Forms of Racial Discrimination[148] were of paramount importance for the fight against racism, racial discrimination, xenophobia and related intolerance, including contemporary forms of racism and racial discrimination, and for the promotion of equality and non-discrimination in the world.

(*c*) Right to development and poverty reduction

(i) *Human Rights Council*

In 2007, Mr. Arjun Sengupta, the Independent Expert on the question of human rights and extreme poverty, submitted his third report to the Human Rights Council,[149] in which he further explored the link between human rights and extreme poverty and the value added of viewing extreme poverty in terms of violation or denial of human rights.

Still in 2007, the Working Group on the right to development also submitted its report on its eighth session to the Council.[150] In the said report, the Working Group recognized that the right-to-development criteria would benefit from further review of their structure, coverage of aspects of international cooperation identified under the Eight Millennium Development Goals and of the methodology for their application. The current objective of such elaboration should be to enhance the criteria as a practical tool for evaluating global development partnerships from the perspective of the right to development, including by actors in the relevant partnerships themselves.

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[147] A/63/306.

[148] United Nations, *Treaty Series*, vol. 660, p. 195.

[149] A/HRC/5/3.

[150] A/HRC/4/47.

(ii) *General Assembly*

The General Assembly adopted on 18 December 2007 resolution 62/151 entitled "Globalization and its impact on the full enjoyment of all human rights", in which it underlined the urgent need to establish an equitable, transparent and democratic international system to strengthen and broaden the participation of developing countries in international economic decision-making and norm-setting. Moreover, the Assembly affirmed that globalization was a complex process of structural transformation, with numerous interdisciplinary aspects, which had an impact on the enjoyment of civil, political, economic, social and cultural rights, including the right to development and also that the international community should strive to respond to the challenges and opportunities posed by globalization in a manner that ensures respect for the cultural diversity of all.

In its resolution 62/161 on "The right to development", which was adopted on the same day, the General Assembly, *inter alia,* stressed that the primary responsibility for the promotion and protection of all human rights lies with the State, reaffirmed that States have the primary responsibility for their own economic and social development and that the role of national policies and development strategies could not be overemphasized. It also reaffirmed the primary responsibility of States to create national and international conditions favourable to the realization of the right to development, as well as their commitment to cooperate with each other to that end, and recognized the need for strong partnerships with civil society organizations and the private sector in pursuit of poverty eradication and development, as well as for corporate social responsibility.

(*d*) Right of peoples to self-determination

(i) *Universal realization of the right of peoples to self-determination*

General Assembly

On 18 December 2007, the General Assembly adopted the resolution 62/144 on the "Universal realization of the right of peoples to self-determination", in which it reaffirmed that the universal realization of the right of all peoples, including those under colonial, foreign and alien domination, to self-determination was a fundamental condition for the effective guarantee and observance of human rights and for the preservation and promotion of such rights. It also declared its firm opposition to acts of foreign military intervention, aggression and occupation, since these have resulted in the suppression of the right of peoples to self-determination and other human rights in certain parts of the world.

(ii) *Mercenaries*

a. Human Rights Council

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 to the Human Rights Council,[151] in which it recommended that States regulate the structure and transnational nature of the private military and private security companies (PMSC)

[151] A/HRC/4/42.

industry and its global reach, as well as the exponential growth of the numbers and activities of PMSCs in different regions. Therefore, it recommended thresholds of permissible activities, enhanced regulation and oversight of PMSCs at the national level, including the establishment of regulatory systems of registration and licensing of PMSCs and individuals working for them. Such regulation should include defining minimum requirements for transparency and accountability of firms, screening and vetting of personnel, and establish a monitoring system including parliamentary oversight. States should impose a specific ban on PMSCs intervening in internal or international armed conflicts or actions aiming at destabilizing constitutional regimes. The Working Group further recommended human rights components in education and training programmes to be offered to the staff of PMSCs, including on international humanitarian law, international human rights law, and United Nations standards on the use of force.

b. General Assembly

On 18 December 2007, the General Assembly adopted resolution 62/145 entitled "Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination". The Assembly, after having taken note of the report[152] of the Working Group on the use of mercenaries and the recommendations therein, encouraged States that import the military assistance, consultancy and security services provided by private companies, to establish regulatory national mechanisms for the registering and licensing of those companies, in order to ensure that imported services provided by those private companies neither impede the enjoyment of human rights nor violate human rights in the recipient country. The Assembly also called upon States to investigate the possibility of mercenary involvement whenever and wherever criminal acts of a terrorist nature occur and to bring to trial those found responsible or to consider their extradition. Furthermore, it condemned any form of impunity granted to perpetrators of mercenary activities and to those responsible for the use, recruitment, financing and training of mercenaries, and urged all States, in accordance with their obligations under international law, to bring them, without distinction, to justice.

(*e*) Economic, social and cultural rights

(i) *Right to food*

a. Human Rights Council

The Special Rapporteur on the right to food, Mr. Jean Ziegler, submitted his report[153] to the Council, in which he expressed his grave concern for the rise of hunger around the world despite commitments made to improve the situation, and focused especially on the children and their human right to food. In this context, the Rapporteur recommended among other things, that governments adopt an adequate legal framework to ensure the right to food for all, including and in particular for the most vulnerable. This framework should include a clear definition of the right to food and the obligations of the government to respect, protect and fulfil this right, without discrimination, as well as provisions for

[152] A/62/301.

[153] A/HRC/4/30.

strong, independent and adequately financed monitoring mechanisms. He also suggested that school meal programmes should be universalized and should ensure adequate nutrition for all children, and that governments should recognize that refugees from hunger have the right to seek asylum and the right to temporary refuge during famine episodes.

b. General Assembly

The Special Rapporteur on the right to food submitted his seventh report[154] to the General Assembly, where he focused on the possible negative impact of biofuels on the right to food, as and the risk of creating a battle between food and fuel that would leave the poor and hungry in developing countries at the mercy of rapidly rising prices for food, land and water. Therefore, the Special Rapporteur strongly recommended that instead of using food crops, biofuels should be made exclusively from non-food plants and agricultural wastes.

The Assembly adopted resolution 62/164, dated 18 December 2007 and entitled "The right to food", in which, among other things, it stressed the importance of international development cooperation and assistance for the realization of the right to food and the achievement of sustainable food security, in particular in activities related to disaster risk reduction and in emergency situations such as natural and man-made disasters, diseases and pests. The Assembly also called upon Member States, the United Nations system and other relevant stakeholders, to support national efforts aimed at responding rapidly to the food crises currently occurring across Africa, and expressed its deep concern that funding shortfalls were forcing the World Food Programme to cut operations across different regions, including in Southern Africa. Furthermore, it invited all relevant international organizations, including the World Bank and the International Monetary Fund, to promote policies and projects that have a positive impact on the right to food, to ensure that partners respect the right to food in the implementation of common projects, to support strategies of Member States aimed at the fulfilment of the right to food and to avoid any actions that could have a negative impact on the realization of the right to food.

(ii) *Right to education*

Human Rights Council

In 2007, Mr. Vernor Muñoz Villalobos, the Special Rapporteur on the right to education decided to focus in his annual report to the Human Rights Council,[155] on the right of persons with disabilities to inclusive education. The Special Rapporteur observed that the paradigm of inclusive education was a response to the limitations of traditional education, described as patriarchal, utilitarian and segregational, as well as to the shortcomings of special education and policies to integrate learners with special needs into mainstream educational systems. In his report, he recommended a series of legislative, policy and financial measures that need to be adopted in order to give effect to this right and he also identified some of the obstacles that prevent the fulfilment of the right to inclusive education.

[154] A/62/289.

[155] A/HRC/4/29.

The Human Rights Council adopted resolution 6/10 on 28 September 2007, entitled "United Nations declaration on human rights education and trainings", in which the Council requested the Human Rights Council Advisory Committee to prepare a draft declaration on human rights education and training, to be presented for its consideration by the Council.

(iii) *Right to adequate standard of living, including adequate housing and to be free of adverse effects of toxic waste*

Human Rights Council

In his 2007 report to the Human Rights Council,[156] Mr. Miloon Kothari, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, aimed at providing practical and operational tools to promote, monitor and implement the human right to adequate housing, as well as identifying a normative gap—the non-recognition in international human rights law of the human right to land. He therefore suggested to States to recognize the right to land as a human right and strengthen its protection in international human rights law, as such recognition would promote the right to adequate housing, including protection against forced evictions. Furthermore, he urged States to give priority to agrarian reform, to land and wealth redistribution and also urged them to enact and implement legislation to check forced evictions and segregation, growth of the land mafia and cartels, as well as uncontrolled property speculation.

On 14 December 2007, the Human Rights Council adopted resolution 6/27 on the "Adequate housing as a component of the right to an adequate standard of living", based on some of the recommendations presented by the Special Rapporteur.

Still the same year, 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, presented his report to the Human Rights Council,[157] in which he dealt with the adverse effect on the enjoyment of human rights of the voluntary or incidental release of toxic and dangerous products in contemporary armed conflicts. Therefore, the Rapporteur recommended that parties to armed conflicts respect international humanitarian law, notably by taking into account the potential consequences of the release of toxic and dangerous products on the life and health of the civilian population and on the environment, and be fully aware of their responsibility in this regard when evaluating the lawfulness of an attack.

(iv) *Right to health*

a. Human Rights Council

Mr. Paul Hunt, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, submitted his report to the Council,[158]

[156] A/HRC/4/18.

[157] A/HRC/5/5.

[158] A/HRC/4/28.

in which he chose to focus on the progress made in the health and human rights movement to integrate human rights into health policies at the national and international levels.

b. General Assembly

In 2007, the Special Rapporteur also presented a report to the General Assembly,[159] in which he concluded that the right to the highest attainable standard of health not only encompassed medical care but also underlying determinants of health, such as safe water, adequate sanitation, healthy occupational and environmental conditions, and freedom from discrimination. He also observed that too often, a disproportionate amount of attention was devoted to medical care at the expense of the underlying determinants of health.

(v) *Cultural rights*

Human Rights Council

On 27 September 2007, the Human Rights Council adopted resolution 6/1 entitled "Protection of cultural rights and property in situation of armed conflicts", in which it emphasized that each party to an armed conflict is committed under international law to take all necessary steps to protect cultural property through safeguarding of and respect for such property, including cultural property situated in occupied territories.

Further, on 28 September 2007, the Council adopted resolution 6/11 on the "Protection of cultural heritage as an important component for the promotion and protection of cultural rights". In the said resolution, the Council recognized that intentional destruction of cultural heritage may constitute advocacy and incitement to national, racial or religious hatred and thereby violate fundamental principles of international human rights law, and further underlined that States bear responsibility for intentional destruction or failure to take appropriate measures to prohibit, prevent, stop and punish any such destruction of cultural heritage of great importance for humanity, to the extent provided for by international law.

(*f*) Civil and political rights

(i) *Torture*

a. Human Rights Council

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Manfred Nowak, submitted his report to the Human Rights Council.[160] In his report, the Rapporteur called on States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[161] to make use of their rights and obligations under the Convention to exercise universal jurisdiction. Further, he proposed that consideration be given to devising mechanisms to hold accountable those States in which torture is systematic or widespread, for example by requiring that those States contribute adequate funds to the United Nations Voluntary Fund for Victims of Torture. In addition,

[159] A/62/214.

[160] A/HRC/4/33.

[161] United Nations, *Treaty Series*, vol. 1465, p. 85.

he suggested that the respective costs for treatment of torture victims should ideally be borne by the individual perpetrators, their superiors and the authorities directly responsible. He observed that if States provided effective remedies ensuring that the individual perpetrators would be held accountable to pay all the costs of long-term rehabilitation for torture victims, this may have a stronger deterrent effect than criminal punishments.

b. General Assembly

The Special Rapporteur also submitted a report to the General Assembly,[162] in which he drew the attention of the Assembly to his observations relating to the role of forensic expertise in combating impunity. He noted that notwithstanding binding obligations to fight impunity under the Convention against Torture, authorities were often reluctant to carry out criminal investigations and prosecutions into torture allegations, with the result that impunity was allowed to continue unchecked. A major obstacle was the lack of independent, thorough and comprehensive investigations, including effective documentation of the evidence of torture. Thus, he viewed forensic science as indispensable to correlate medical findings with a victim's allegations.

On 18 December 2007, the General Assembly adopted its resolution 62/148, entitled "Torture and other cruel, inhuman or degrading treatment or punishment", in which it condemned all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified. Further, it called upon all States to implement fully the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment and stressed that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority. He added that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible, brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act was found to have been committed. Furthermore, the Rapporteur encouraged all States to ensure that persons convicted of torture or other cruel, inhuman or degrading treatment or punishment, have no subsequent involvement in the custody, interrogation or treatment of any person under arrest, detention, imprisonment or other deprivation of liberty.

(ii) *Enforced disappearances*

Human Rights Council

The Working Group on Enforced or Involuntary Disappearances submitted its 2007 report to the Human Right Council.[163] In March 2007, the Working Group adopted a general comment to provide a construction of the definition of enforced disappearance, in which it is specified that according to the Declaration on the Protection of All Persons from Enforced Disappearance,[164] such disappearances occur when persons are arrested, detained or abduct-

[162] A/62/218.

[163] A/HRC/7/2.

[164] General Assembly resolution 47/133 of 18 December 1992.

ed against their will, or otherwise deprived of their liberty by officials of different branches of government, or by organized groups (e.g. paramilitary groups) or private individuals acting on behalf of, or with the support, consent or acquiescence of the government, followed by a refusal to disclose the fate or whereabouts of the persons concerned, or a refusal to acknowledge the deprivation of their liberty, placing such persons outside the protection of the law.

(iii) *Freedom of opinion and expression*

Human Rights Council

Mr. Ambeyi Ligabo, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression presented his fifth general report,[165] in which, among other things, he recommended that all States guarantee freedom of opinion and expression on the Internet by extending to websites contributors and bloggers the same legal protection as media professionals and that Internet providers and websites registration with national authorities should not be subject to any specific requirement other than necessary legislative provisions protecting against child pornography. Further, the Special Rapporteur recommended to governments to decriminalize defamation and similar offences, which should only be dealt with under civil law. He also urged States to release immediately and unconditionally all journalists detained because of their media-related activities and emphasized that under no circumstances should criticism of the nation, its symbols, the government, its members or their actions be seen as an offence.

(iv) *Freedom of religion or belief*

a. Human Rights Council

The Special Rapporteur on the freedom of religion or belief, Ms. Asma Jahangir, submitted her annual report to the Human Rights Council on the activities she undertook in 2007.[166] In her report, she highlighted worrying situations where the freedom to adopt, change or renounce a religion or belief has been infringed, for example when State agents try to convert, reconvert or prevent the conversion of persons. Furthermore, the Special Rapporteur also stressed that since believers are in a situation of special vulnerability whenever they find themselves in places of worship, States should pay increased attention to attacks on such places and ensure that all perpetrators of this kind of attacks are properly prosecuted and tried.

On 30 March 2007, the Human Rights Council adopted resolution 4/9 entitled "Combating defamations of religions", in which it expressed concern at negative stereotyping of religions and manifestations of intolerance and discrimination in matters of religion or belief.

Further, on 14 December 2007, the Council adopted resolution 6/37 entitled "Elimination of all forms of intolerance and of discrimination based on religion or belief".

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[165] A/HRC/4/27.

[166] A/HRC/6/5.

b. General Assembly

The Special Rapporteur on the freedom of religion or belief also presented an interim report to the General Assembly at its sixty-second session,[167] in which she discussed two substantive issues that arose from some communications received. Firstly, the situation of refugees, asylum-seekers and internally displaced persons showed that these individuals are in a situation of vulnerability that may also have a link to their freedom of religion or belief. Secondly, atheists and non-theists made the Special Rapporteur aware of their concerns relating to blasphemy laws, education issues, equality legislation, as well as official consultations only held with religious representatives. Therefore, the Special Rapporteur reiterated that the right to freedom of religion or belief applied equally to atheistic and non-theistic, as well as atheistic beliefs, and that the right not to profess any religion or belief was also protected.

During its sixty-second session the General Assembly adopted two resolutions relating to this matter, both on 18 December 2007. In resolution 62/154 on "Combating defamation of religions", the Assembly emphasized that everyone has the right to hold opinions without interference and the right to freedom of expression, and that the exercise of these rights carried with it special duties and responsibilities and may therefore be subject to limitations, as provided for by law, which are necessary for respect of the rights or reputations of others, protection of national security or of public order, public health or morals and respect for religions and beliefs. It also urged States to take action to prohibit the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, as well as to provide, within their respective legal and constitutional systems, adequate protection against acts of hatred, discrimination, intimidation and coercion resulting from defamation of religions, and to ensure that all public officials, including members of law enforcement bodies, the military, civil servants and educators respect people regardless of their different religions and beliefs in the course of their official duties.

In resolution 62/157, entitled "Elimination of all forms of intolerance and of discrimination based on religion or belief", the General Assembly, *inter alia,* urged States to ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without distinction, including the right to change one's religion or belief and that no one is deprived of the right to life, liberty or security of person, or subjected to torture, arbitrary arrest or detention because of religion or belief, and ensure to bring to justice all perpetrators of violations of these rights. It also urged States to ensure the right of all persons to worship or assemble in connection with a religion or belief and to establish and maintain places for these purposes, as well as the right of all persons to write, issue and disseminate relevant publications in these areas, and the right to establish and maintain religious, charitable or humanitarian institutions.

[167] A/62/280.

(v) *Administration of justice, arbitrary detention and extrajudicial, summary and arbitrary execution*

a. Human Rights Council

The Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Philip Alston, submitted his annual report to the Human Rights Council.[168] In the said report, Mr. Alston reaffirmed his mandate as Special Rapporteur over scrutinizing alleged violations of both human rights and humanitarian law, even if committed in the context of an armed conflict. He also focused on the notion of "the most serious crimes" for which only, under international law, the death penalty may be applied. In this regard, he concluded that this standard should not be interpreted subjectively by each individual country and that the death penalty therefore only could be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life. Moreover, he also considered the issue of mandatory death penalty for certain crimes, and concluded that it was illegal under international human rights law.

The Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy, presented his report to the Human Rights Council,[169] in which he recommended that as far as the administration of justice was concerned, it was imperative that legislation relating to states of emergency should prevent in all cases, measures that invalidate the provisions of the Constitution, basic law and legislation, relating to the appointment, mandate and privileges and immunities of members of the judiciary, their independence and impartiality. Any measures limiting the jurisdiction of the courts to consider whether the declaration of a state of emergency is compatible with the laws, Constitution and obligations under international law, and to consider whether any measure adopted by a public authority is compatible with the declaration of the state of emergency or to try criminal cases, including offences relating to the state of emergency, should be also prevented.

b. General Assembly

The Special Rapporteur on extrajudicial, summary or arbitrary executions presented a report to the General Assembly,[170] which coincided with the twenty-fifth anniversary of the creation of the mandate on extrajudicial, summary or arbitrary executions. The Special Rapporteur therefore decided to reflect on the functioning of the mandate during this period, and in this context, drew attention to some of the factors which have hindered the effectiveness of the techniques used by the special procedures mandate holders. He recommended to the Human Rights Council and the General Assembly to take steps to complement their recent efforts to "reform" the system with the view to actually strengthen the ability of the special procedures system to prevent and respond to serious violations of human rights, especially to address the problem of States' non-cooperation in response to requests by special procedures mandate holders for visits.

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[168] A/HRC/4/20.

[169] A/HRC/4/25.

[170] A/62/265.

In 2007, the Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy, submitted his third report to the General Assembly.[171] In his report, the Special Rapporteur offered a general panorama of the situations and circumstances that have the most impact on the independence of the judiciary, from the operational to the structural. He observed, for example, that in the majority of countries, judicial actors are unable to discharge their functions independently when their own and their families' protection and safety are jeopardized. He also drew the attention of the General Assembly to the repeated violations of the right to a fair trial and other human rights, which may occur during states of emergency. Finally, in view of the importance of the administration of justice for the rule of law and the democratic system, he stressed that the United Nations should, in its support and technical cooperation activities, promote the theme of justice, especially with respect to countries which are in transition or are recovering from an armed conflict having seriously impacted the nation building.

On 18 December 2007, the General Assembly adopted resolution 62/158 entitled "Human rights in the administration of justice", in which it invited States to make use of technical assistance offered by the relevant United Nations programmes in order to strengthen national capacities and infrastructures in the field of the administration of justice. It also invited governments, relevant international and regional bodies, national human rights institutions and non-governmental organizations to devote particular attention to the issue of women in prison, including the children of women in prison, with the view to identifying and addressing the gender-specific aspects and challenges related to this problem.

(vi) *Integration of human rights of women and gender perspective*

a. Human Rights Council

The Special Rapporteur on violence against women, its causes and consequences, Ms. Yakin Ertürk, presented her first annual thematic report to the Human Rights Council,[172] in which she focused on the question of the intersections between culture and violence against women, and the fact that identity politics and cultural relativist paradigms are increasingly employed to constrain the rights of women. In this context, the Rapporteur suggested a viable strategy in addressing the issue of culture and violence against women, which should include the problematization of culture as historically constructed and representing diverse subject positions and interests, the application of a political-economy perspective to understanding cultural practices and the approach all forms of violence against women as a continuum and intersectional with other forms of inequality.

[171] A/62/207.

[172] A/HRC/4/34.

b. General Assembly

The General Assembly adopted on 18 December 2007, seven resolutions under the agenda item "Advancement of women", among which three are highlighted below.[173] In resolution 62/132, the Assembly called upon all governments to incorporate a human rights and gender perspective in legislation and policies on international migration and on labour and employment, for the prevention and protection of migrant women from violence and discrimination, exploitation and abuse, and to take effective measures to ensure that these do not reinforce discrimination and bias against women. It also called upon them to adopt or strengthen measures to protect the human rights of women migrant workers, regardless of their immigration status, including in policies that regulate the recruitment and deployment of women migrant workers, as well as to put in place penal and criminal sanctions to punish perpetrators and intermediaries of violence against women migrant workers, and redress and justice mechanisms that victims can access effectively.

By resolution 62/136, entitled "Improvement of the situation of women in rural areas", the General Assembly called upon States to ensure that the perspectives of rural women are taken into account and that they participate in the policies and activities related to emergencies, including natural disasters, humanitarian assistance, peacebuilding and post-conflict reconstruction. It also urged States to develop specific assistance programmes and advisory services to promote economic skills of rural women in banking, modern trading and financial procedures, to provide microcredit and other financial and business services to a greater number of women in rural areas, as well as to design and revise laws to ensure that, where private ownership of land and property exists, rural women are accorded full and equal rights to own land and other property, including through the right to inheritance.

In resolution 62/134, entitled "Eliminating rape and other forms of sexual violence in all their manifestations, including in conflicts and related situations", the Assembly urged States to end impunity by ensuring that all rape victims have equal protection under the law and equal access to justice, and by investigating, prosecuting and punishing any person responsible for rape and other forms of sexual violence in the course of achieving political or military objectives, including in detention and in jails, and regardless of the sex or age of the victim. It also urged States to provide victims with access to appropriate health care and to rehabilitation, social reintegration and, as appropriate, effective and sufficient compensation, as well as to conduct public education and awareness campaigns at the national and grass-roots levels in order to raise awareness about the causes and consequences of rape and other forms of sexual violence. Further, the Assembly called upon States to establish reception centres and shelters for victims, to take other appropriate measures to promote and protect women's rights, and to provide protection, safe shelter, medical assistance, including sexual and reproductive health care, all necessary medications, including antiretroviral drugs and antibiotics, counselling for victims and

[173] The other resolutions adopted under this agenda item are: 62/133 on the "Intensification of efforts to eliminate all forms of violence against women", 62/135 "United Nations Development Fund for Women", 62/137 "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" and 62/218 "Convention on the Elimination of All Forms of discrimination against Women".

their families, comprehensive information and education, legal aid, rehabilitation, and reintegration of victims and their offspring into society.

(vii) *Victims of trafficking*

Human Rights Council

The Special Rapporteur on trafficking in persons, especially in women and children, Ms. Sigma Huda, presented her report to the Human Rights Council.[174] In her report, she made a thematic study on forced marriages in the context of trafficking in persons, defined what amounts to a forced marriage and listed different forms of existing forced marriages. With the view to prevent such forced marriages, the Rapporteur recommended that States adopt marriage legislation stipulating that 18 years of age was the minimum statutory age for marriage, and ensure that the legislation applies equally to women and men. She further recommended that States amend their immigration legislation so that victims of forced marriages are not dependent upon their spouses for legal immigration status, but can obtain residence permits independently of their continued relation to their husbands. She also suggested that governments should recognize forced marriage, especially in the context of trafficking in persons, as a condition giving rise to a claim of asylum. Furthermore, she called upon States to ensure that persons holding dual nationality, who appear to be more vulnerable to forced marriage in the name of "protecting their individual ethnicity and tradition", are made aware of the laws on marriages of the countries in which they live. Finally she recommended that States ensure that men who apply for visas for a foreign spouse undergo background and criminal-record checks, and that the issuing of such visas be monitored in order to identify men who have a history of serial forced or broker-facilitated marriages, and that States should consider simplifying the nullification process for a forced marriage.

(*g*) Rights of the child

(i) *Committee on the Rights of the Child*

In 2007, the Committee on the Rights of the Child adopted its general comment No. 10 dealing with the issue of children's rights in juvenile justice.[175] In its comment, the Committee expressed its concern about the lack of information on the measures that States parties have taken to prevent children from coming into conflict with the law. The Committee viewed this situation as a possible result of a lack of a comprehensive policy for the field of juvenile justice and as explaining why many States parties are providing only very limited statistical data on the treatment of children in conflict with the law. It also recalled that in order to have an administration of juvenile justice complying with the Committee's standards, the juvenile justice should promote the use of alternative measures such as diversion and restorative justice, and that in all decisions taken in this context, the best interests of the child should be a primary consideration. Therefore, the Committee drew

[174] A/HRC/4/23.

[175] A/CRC/C/GC/10.

the attention of States to the core principles and elements to have a comprehensive policy towards juvenile.

(ii) *Human Rights Council*

The Special Representative of the Secretary-General for children and armed conflict, Ms. Radhika Coomaraswamy, presented her report to the Human Rights Council.[176] She encouraged States to strengthen national and international measures to prevent the recruitment of children to the armed forces/groups and their use in hostilities, in particular by signing and ratifying the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,[177] and by enacting legislation that explicitly prohibits the recruitment of children under the age of 15 years into armed forces/groups and their direct participation in hostilities.

The Special Rapporteur on the sale of children, child prostitution and child pornography, Mr. Juan Miguel Petit, presented his report to the Human Rights Council,[178] in which he dealt, among other things, with the issue of the illegal trafficking of children's organs and tissues. Even if the worrying allegations received in this regard remained in most cases unsubstantiated, the Special Rapporteur was of the view that it was important to examine this question so as to better assess it in order to provide better protection for children. Thus, the Rapporteur recommended that States establish a centralized transplant agency in charge of coordinating receivers' needs and donors' situation, establishing transparent and equitable waiting lists for each category of organs, regions and all age groups. He further suggested to clearly prohibit the sale of one's organs and tissues so as to eradicate demand for this traffic, as well as to penalize heavily those who do so, and to ensure that all children under the age of 18 are protected from becoming donors of organ and tissue transplantation. The only exception being in cases where an immediate family member is at a life-threatening risk, no suitable donor has been found, the donor's consent has been given, and this transplant will not cause a threat, immediate or future, to the donor while the transplant will bring substantial health improvement to the receiver.

(iii) *General Assembly*

On 18 December 2007, the General Assembly adopted four resolutions under the agenda item relating to the promotion and protection of the rights of children, of which three are highlighted below.[179] In its resolution 26/138 on "Supporting efforts to end obstetric fistula", the Assembly recognized the interlinkages between poverty, malnutrition, lack of or inadequate or inaccessible health services, early childbearing, early marriage of the girl child and gender discrimination, as root causes of obstetric fistula. It also recognized that as poverty remained the main social risk factor, the eradication of poverty was critical to meeting the needs and protecting and promoting the rights of girls. It stressed the need to address the social issues that contribute to the problem of obstetric fistula, such as

[176] A/HRC/4/45.

[177] Adopted by General Assembly resolution 54/263 of 25 May 2000.

[178] A/HRC/4/31.

[179] The fourth resolution was resolution 62/139 entitled "World Autism Awareness Day".

early marriage of the girl child, early pregnancy, lack of access to sexual and reproductive health, lack of or inadequate education of girls, poverty and low status of women and girls. Further, the Assembly urged States to enact and strictly enforce laws concerning the minimum legal age of consent and the minimum age for marriage, and to raise the minimum age for marriage where necessary.

The Assembly also adopted resolution 62/140 on "The girl child", in which it called upon States and the international community to recognize the right to education on the basis of equal opportunity and non-discrimination by making primary education compulsory and available, free to all children, and secondary education generally available and accessible to all, in particular for girls and children from low-income families. It also urged States to improve the situation of girl children living in great poverty, and to enact and enforce legislation to protect girls from all forms of violence and exploitation, including female infanticide and prenatal sex selection, female genital mutilation and early and forced marriage.

In resolution 62/141 entitled "Rights of the child", the Assembly reaffirmed that the general principles of, *inter alia,* the best interests of the child, non-discrimination, participation and survival and development provide the framework for all actions concerning children, including adolescents. It also urged all States to respect and promote the right of girls and boys to express themselves freely, to ensure that their views are given due weight, in accordance with their age and maturity, in all matters affecting them, and to involve children, including children with special needs, in decision-making processes. The Assembly further encouraged States to adopt and enforce laws and improve the implementation of policies and programmes to protect children growing up without parents or caregivers, recognizing that where alternative care is necessary, family and community-based care should be promoted over placement in institutions. It also called upon States to take all necessary measures to prevent and combat illegal adoptions and all adoptions that are not in the best interests of the child, and in the penal context, it called upon those States in which the death penalty has not been abolished, to abolish by law, as soon as possible, the death penalty and life imprisonment without possibility of release for those under the age of 18 years at the time of the commission of the offence.

(*h*) Migrants

(i) *Human Rights Council*

Mr. Jorge Bustamante, Special Rapporteur on the human rights of migrants, presented his second annual report to the Human Rights Council.[180] In the said report, the Rapporteur summarized responses of Member States to a questionnaire on the "Impact of certain laws and administrative measures on migrants" he had formulated, in particular in regard of the questions of antecedents, border control expulsion, conditions for admission/stay, the rights of migrants and their protection.

[180] A/HRC/4/24.

(ii) *General Assembly*

On 18 December 2007, the General Assembly adopted resolution 62/156 entitled "Protection of migrants". In the said resolution, the Assembly requested States to adopt concrete measures to prevent the violation of the human rights of migrants while in transit, including at borders checkpoints, and to train public officials to treat migrants respectfully and in accordance with the law, as well as to prosecute any act of violation of the human rights of migrants including, *inter alia,* arbitrary detention, torture and violations of the right to life as extrajudicial executions, during their transit from their country of origin to the country of destination and *vice versa.* It also urged States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations, and take into account the principle of the best interest of the child and family reunification. Furthermore, the Assembly underlined the right of migrants to return to their country of citizenship, and encouraged all States to remove obstacles that may prevent the safe, unrestricted and expeditious transfer of remittances of migrants to their country of origin or to any other countries, and welcomed immigration programmes, adopted by some countries that allow migrants to integrate fully into the host countries, facilitate family reunification and promote a harmonious, tolerant and respectful environment.

(*i*) Internally displaced persons

(i) *Human Rights Council*

On 20 March 2007, Mr. Walter Kälin, the Representative of the Secretary-General on human rights of internally displaced persons, presented his third report to the Human Rights Council, in which he recommended, *inter alia,* that governments develop national policies and strategies dealing with all stages of displacement—measures to prevent displacement, provide protection during displacement and find durable solutions—which are consistent with the Guiding Principles, and take the necessary measures, particularly in the financial sphere, to ensure their effective implementation.[181]

Furthermore, he recommended that within the framework of any peace processes in which they may be involved, governments should ensure that the specific needs and fundamental rights of displaced persons are taken into consideration, particularly with respect to the freedom to choose whether or not to return to their places of origin, to remain in the place of displacement or to move to a different part of the country. Governments should ensure that they establish and maintain an economic and social environment favourable to the safe and dignified return of such persons, and particularly, that displaced persons are consulted on any issues involving them, at all stages of the process. Furthermore, he added that governments should also devote particular attention to issues relating to community reconciliation and 'living together again' in order to allow displaced persons to return home permanently and to ensure that peace is sustainable.

In 2007, as part of his mandate which includes research activities, the Special Representative drafted the "Operational Guidelines on Human Rights and Natural Disasters", which were drawn on relevant international human rights law, existing standards and

[181] A/HRC/4/38 and Corr.1 and Add.1–5.

policies pertaining to humanitarian action, and human rights guidelines on humanitarian standards in situations of natural disaster.[182]

(ii) *General Assembly*

On 18 December 2007, the General Assembly adopted resolution 62/153 entitled "Protection of and assistance to internally displaced persons" in which, *inter alia,* it took note with appreciation of the report of the Representative of the Secretary-General on the human rights of internally displaced persons,[183] and of his conclusions and recommendations. The Assembly commended him for the activities undertaken so far, and encouraged him to further continue his efforts and his work on the matter. The Assembly also called upon governments to provide protection and assistance, including reintegration and development assistance, to internally displaced persons, and to facilitate the efforts of relevant United Nations agencies and humanitarian organizations in these respects, including by further improving access to internally displaced persons.

(*j*) Minorities

Human Rights Council

The Independent Expert on minority issues, Ms. Gay McDougall, presented her second report to the Human Rights Council,[184] in which she recommended that States establish mechanisms for meaningful dialogue with representatives of minority communities about development policies, particularly at the local government level and that at the national level, and also establish statutory bodies composed of representatives of minority communities mandated to review and monitor government policy that may affect minorities. Further, she stressed the need that governments strengthen the legal and regulatory framework for addressing direct and indirect discrimination in both public and private spheres, as effective non-discrimination laws in key sectors such as employment and education can reduce obstacles that minorities face in overcoming poverty. In her view, governments should also adopt and enforce laws that safeguard the equal rights of minorities to land and property and land laws should recognize a variety of forms of ownership, both individual and collective.

(*k*) Indigenous people

(i) *Human Rights Council*

In 2007, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Dr. Rodolfo Stavenhagen, presented two reports to the Human Rights Council,[185] which were considered by the Council at its fourth and sixth sessions, respectively. In the report considered at the fourth session, among other things, the Special Rapporteur presented a study of "best practices" in the implementation of the

[182] A/HRC/4/38. Add.1.

[183] A/62/227.

[184] A/HRC/4/9.

[185] A/HRC/4/32 and A/HRC/6/15.

recommendations included in his previous reports. He also noted the continuing trend towards a decline in the resources of indigenous people, reduction of their land and territorial base, and progressive and accelerated loss of control over their natural resources, in particular their forests. In this context, he noted the rise of patterns of criminalization of indigenous social protest, making it harder to achieve a negotiated and democratic solution to their legitimate demands. Furthermore, the growing incidence of migration among indigenous people was viewed as one of the expressions of globalization and of the inequality and poverty it engendered. It was observed that indigenous migrants were particularly subject to violations of their human rights in agricultural and mining work, in the urban environment and at the international level.

In his report considered at the Council's sixth session, the Special Rapporteur focused on the implications of the human rights-based approach to development, as indigenous peoples are identified as human rights holders, the realization of their rights is viewed as the main objective of development. In this regard, he recommended that no development activities should be allowed to run counter to the general principles of the human rights of indigenous peoples. Accordingly, there must be a requirement for the conduct of social, cultural and environmental impact studies for projects to be carried out in the lands and areas occupied by indigenous peoples, and social and development policies and programmes relating to indigenous peoples must be based on the free, prior and informed consent of the communities concerned.

(ii) *General Assembly*

On 13 September 2007, at the end of its sixty-first session, the General Assembly adopted resolution 61/295 entitled "United Nations Declaration on the Rights of Indigenous people", in which it adopted the said Declaration contained in the annex, which had been adopted previously by the Human Rights Council in its resolution 1/2 of 29 June 2006.

On 18 December 2007, the General Assembly adopted decision 62/529, by which it took note of the note of the fourth report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, transmitted by the Secretary-General to the General Assembly.[186]

(*l*) Terrorism and human rights

(i) *Human Rights Council*

In 2007, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr. Martin Scheinin, submitted two reports to the Human Rights Council,[187] to be considered at the fourth and sixth sessions of the Council, respectively. In the report presented at the fourth session, the Special Rapporteur focused on two thematic issues: "profiling" in the context of countering terrorism and "shoot-to-kill" policies in the context of combating suicide attacks. He stressed that terrorist-profiling practices based on "race" were incompatible with human rights and that

[186] A/62/286 and Corr.1.

[187] A/HRC/4/26 and A/HRC/6/17.

differential treatment based on ethnicity, national origin and/or religion was only compatible with the principle of non-discrimination if it was a proportionate means of countering terrorism. He further noted that current profiling practices regularly failed to meet this demanding proportionality requirement. He recommended either universal or random security checks as preferred alternatives that were non-discriminatory and impossible for terrorists to evade. The Rapporteur highlighted that current profiling practices combined with shoot-to-kill policies or other forms of relaxing standards related to the use of firearms could have lethal consequences for totally innocent individuals. He therefore urged States to develop adequate training for all law-enforcement personnel, including private security agencies, and in this way ensure that human rights standards guide counter-terrorism measures and not *vice versa*.

In the report considered by the Council at its sixth session, the Special Rapporteur discussed the negative impact that counter-terrorism measures can have on human rights and fundamental freedoms, and the role of promoting economic, social and cultural rights in preventing terrorism. He also, *inter alia,* urged States not to apply their counter-terrorism laws and measures to social movements or protests by indigenous peoples or minority communities who claim recognition and full protection for their economic, social and cultural rights, including the right to enjoy their own distinctive culture, which is often associated with lands and specific forms of livelihood. He recommended strict adherence to the principle that terrorism should be defined through its inexcusable methods of violence against bystanders and its intention to create fear among the general population rather than through its political or other aims, which often overlap with the aims of social movements that have nothing to do with terrorist acts.

(ii) *General Assembly*

In its resolution 62/159 entitled "Protection of human rights and fundamental freedoms while countering terrorism", adopted on 18 December 2007, the General Assembly, among other things, reaffirmed that counter-terrorism measures should be implemented in full consideration of the human rights of persons belonging to minorities and must not be discriminatory on grounds such as race, colour, sex, language, religion or social origin. It also urged States to fully respect non-refoulement obligations under international refugee and human rights law and, at the same time, to review, with full respect for these obligations and other legal safeguards, the validity of a refugee status decision in an individual case if credible and relevant evidence comes to light that indicates that the person in question has committed any criminal acts, including terrorist acts, falling under the exclusion clauses under international refugee law.

(*m*) Promotion and protection of human rights

(i) *International cooperation and universal implementation of international human rights instruments*

a. Human Rights Council

On 23 March 2007, the Human Rights Council adopted resolution 4/1 "Question of the realization in all countries of economic, social and cultural rights", in which it *inter*

alia, called upon all States to give full effect to economic, social and cultural rights and to consider signing and ratifying, and the States parties to implement, the International Covenant on Economic, Social and Cultural Rights.

b. General Assembly

On 18 December 2007, the General Assembly adopted five resolutions relating to international cooperation, universal instruments and transnational cooperation, of which two are highlighted below.[188] In resolution 62/147 on "International Covenants on Human Rights", the General Assembly called for the strictest compliance by States parties with their obligations under the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and, where applicable, the Optional Protocols to the International Covenant on Civil and Political Rights. The Assembly stressed the importance of avoiding the erosion of human rights by derogation, and recalled that certain rights were recognized as non-derogable in any circumstances, and underlined the exceptional and temporary nature of any such derogations. Further, it urged all States to publish the texts of the International Covenants on Human Rights and the Optional Protocols to the International Covenant on Civil and Political Rights in as many local languages as possible and to make them known as widely as possible to all individuals within their jursidiction.

The General Assembly also adopted resolution 62/166 entitled "Respect for the purposes and principles contained in the Charter of the United Nations to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms and in solving international problems of a humanitarian character", in which, among other things, it reaffirmed that the responsibility for managing worldwide economic and social development, the promotion and protection of human rights and threats to international peace and security must be shared among the nations of the world, and should be exercised multilaterally and that, as the most universal and most representative organization in the world, the United Nations must play the central role. The Assembly also called upon Member States to refrain from enacting or enforcing unilateral coercive measures as tools of political, military or economic pressure against any country, in particular against developing countries, which would prevent those countries from exercising their right to decide of their own free will their own political, economic and social systems.

(ii) *Human rights defenders*

General Assembly

In its resolution 62/152 entitled "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recog-

[188] The other resolutions adopted were: 62/160 on "Enhancement of international cooperation in the field of human rights", 62/163 entitled "Promotion of peace as a vital requirement for the full enjoyment of all human rights by all" and 62/165 entitled "Strengthening the United Nations action in the field of human rights through the promotion of international cooperation and the importance of nonselectivity, impartiality and objectivity".

nized Human Rights and Fundamental Freedoms" dated 18 December 2007, the General Assembly called upon all States to ensure, protect and respect the freedom of expression and association of human rights defenders and to facilitate registration if required. Furthermore, it urged States to ensure that any measures to combat terrorism and preserve national security comply with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights. Furthermore, it urged States to take appropriate measures to address the question of impunity for attacks, threats and acts of intimidation against human rights defenders and their relatives, including by ensuring that complaints from human rights defenders are promptly investigated and addressed in a transparent, independent and accountable manner.

(*n*) Miscellaneous

(i) *Effects of economic reforms policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights*

Human Rights Council

Mr. Bernards Mudho, the Independent Expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights, submitted his annual report to the Human Rights Council.[189] In his report, he reviewed possible human rights implications of standard reform policies promoted by the multilateral financial institutions. While recognizing the importance of broad macroeconomic stability for growth, development and realization of human rights, he underlined the equally important need for country-specific solutions instead of one-size-fits-all stability thresholds and macroeconomic schemes. In examining the reform policy of privatization of State enterprises, the Expert highlighted its possible positive impact on the human rights situation, but cautioned that careful consideration should be given to all the functions and purposes that a public enterprise serve, in particular with regards to accessibility to goods and services that result in the realization of pertinent human rights. Concerning trade reform policies, he further called for sound economic and social impact assessments, allowing for a careful design and scheduling of reform steps, including adequate transition periods, balanced exclusion of strategic products from liberalization, as well as human rights-inspired safeguard clauses. He added that trade liberalization should be combined with measures to improve the productive capacity of the poor country's economy and to strengthen its competitiveness on the global market. Finally, he addressed the issue of structural reforms in health and education sectors, which should always be guided by countries' international human rights obligations. For instance, user fees are, in general, an obstacle to the full enjoyment of human rights in these two sectors. Therefore, pertinent reform programmes should take into account both the obligations for a progressive abolition of service fees and avoidance of imposition of user fees or other charges.

On 30 March 2007, the Human Rights Council adopted resolution 4/5 on "Globalization and its impact on the full enjoyment of all human rights", in which it emphasized that

[189] A/HRC/4/10.

development should be at the centre of the international economic agenda and that coherence between national development strategies and international obligations and commitments will contribute to the creation of an enabling environment for development, conducive to the full realization of all human rights for all.

(ii) *Human rights and transnational corporations and other business enterprises*

Human Rights Council

The Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Mr. John Ruggie, presented his Report to the Human Rights Council,[190] in which he identified areas of fluidity in the business and human rights constellation that may be seen, in some respects, as hopeful signs. By far, the most consequential legal development was the gradual extension under domestic jurisdiction of liability to companies for international crimes, thus reflecting international standards. Judging from the treaty body commentaries, as well as his questionnaire survey of States, the Special Representative stressed that not all States' structures as a whole appear to have internalized the full meaning of the State's duty to protect, nor its implications with regard to preventing and punishing abuses by non-States actors, including businesses. The Special Representative further observed that States did not seem to be taking full advantage of the many legal and policy tools at their disposal to meet their treaty obligations.

(iii) *Human rights and universal coercive measures*

a. Human Rights Council

On 28 September 2007, the Human Rights Council adopted its resolution 6/7 entitled "Human Rights and unilateral coercive measures".

b. General Assembly

Later, on 18 December 2007, the General Assembly adopted a resolution 62/162 also entitled "Human rights and universal coercive measures", in which the Assembly, similarly to the Council, urged all States not to adopt any unilateral measures that impede the full achievement of economic and social development by the population of the affected countries, in particular children and women, that hinder their well-being and that create obstacles to the full enjoyment of their human rights, including the right to an adequate standard of living, the right to health and right to food, as well as to ensure that food and medicine are not used as tools for political pressure. The Assembly strongly objected to the extraterritorial nature of those measures which, in addition, threaten the sovereignty of States, and called upon all Member States to neither recognize those measures nor to apply them, as well as to take administrative or legislative measures to counteract the extraterritorial applications or effects of unilateral coercive measures.

[190] A/HRC/4/35.

6. Women[191,192]

(*a*) Commission on the Status of Women

The Commission on the Status of Women was established by the Economic and Social Council in its resolution 11 (II) of 21 June 1946 as a functional commission in order to deal 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 fifty-first session from 26 February to 9 March 2007 in New York. In accordance with the multi-year programme of work adopted by the Economic and Social Council in its resolution 2006/9 of 25 July 2006, the Commission considered as its priority theme "The elimination of all forms of discrimination and violence against the girl child" and evaluated the progress in the implementation of the agreed conclusions from the forty-eighth session of the Commission on the role of men and boys in achieving gender equality.[193]

During its fifty-first session, the Commission adopted a number of resolutions for the attention of the Economic and Social Council, of which two are highlighted below.

In resolution 51/2 entitled "Ending female genital mutilation", the Commission, *inter alia,* urged States to ensure the national implementation of international and regional commitments and obligations, as well as their translation and wide distribution to the population and the judiciary. It further urged States to review, revise, amend or abolish all laws, regulations, policies, practices and customs that discriminate against women or have discriminatory impact on women and girls and to ensure that provisions of multiple legal systems comply with human rights obligations, commitments and principles. It also urged States to take all necessary measures to protect girls and women from female genital mutilation, including by enacting and enforcing legislation to prohibit this form of violence and to end impunity.

In resolution 51/3 entitled "Forced marriage of the girl child", the Commission urged States to enact and strictly enforce laws to ensure that marriage is entered into only with the free and full consent of the intending spouses and, in addition, to enact and strictly enforce laws concerning the minimum age for marriage. It also urged States to develop, support and implement initiatives ensuring that the rights of the girl child are not violated by forced marriage, forced early sexual activities or harmful traditional practices.

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[191] See also the Human rights section of the present chapter.

[192] For a complete list of signatories and States parties to international instruments relating to women that are deposited with the Secretary-General, see the chapters relating to human rights and the status of women in chapters IV and XVI of *Multilateral Treaties Deposited with the Secretary-General*, available on the website http://treaties.un.org/Pages/ParticipationStatus.aspx.

[193] Economic and Social Council resolution 2004/11.

(*b*) Economic and Social Council

On 24 July 2007, the Economic and Social Council adopted, on the recommendation of the Commission on the Status of Women, resolution 2007/7 entitled "Situation of and assistance to Palestinian women". On 27 July 2007, following a draft resolution submitted by the Vice-President of the Council on the basis of informal consultations, the Economic and Social Council adopted resolution 2007/37 on the "Future work to strengthen the International Research and Training Institute for the Advancement of Women".

(*c*) General Assembly

On 18 December 2007, the General Assembly adopted eight resolutions on the recommendation of the Third Committee,[194] of which two are highlighted below.

In its resolution 62/137 entitled "Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly", the Assembly, *inter alia,* took note with appreciation of the report of the Secretary-General on this item[195] and 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[196] were mutually reinforcing in achieving gender equality and the empowerment of women. Further, it reaffirmed that States had an obligation to exercise due diligence to prevent violence against women and girls, provide protection to the victims and to investigate, prosecute and punish the perpetrators of violence against women and girls, and that failure to do so violated and impaired or nullified the enjoyment of their human rights and fundamental freedoms. It also reaffirmed the commitment made at the 2005 World Summit to the full and effective implementation of Security Council Resolution 1325 (2000) of 31 October 2000.

In its resolution 62/140 entitled "The girl child", the Assembly stressed the need for full and urgent implementation of the rights of the child girl as provided to her under human rights instruments, and urged States to consider signing, ratifying or acceding to the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women as a matter of priority. The Assembly also requested all human rights treaty bodies and the human rights mechanisms of the Human Rights Council to adopt regularly and systematically a gender perspective in the implementation of their mandate.

In addition, on 22 December 2007, also on the recommendation of the Third Committee, the Assembly adopted resolution 62/218 entitled "Convention on the Elimination of All Forms of Discrimination against Women". In this resolution, the Assembly welcomed the report of the Secretary-General on the status of the Convention, welcomed the adoption by the Committee of revised reporting guidelines and strongly urged States parties to the Convention to take appropriate measures to reach acceptance of the amendment to

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[194] General Assembly resolutions 62/132, 62/133, 62/134, 62/135, 62/136, 62/137, 62/138 and 62/140.

[195] A/62/178.

[196] United Nations, *Treaty Series*, vol. 1249, p. 13.

article 20, paragraph 1, of the Convention by a two-third majority of States parties so it can enter into force.

Finally, on 19 December 2007, the General Assembly adopted, on the recommendation of the Second Committee, resolution 62/206 entitled "Women in development", in which the Assembly encouraged Governments, the private sector, non-governmental organizations and other actors of civil society to promote and protect the rights of women workers, to take action to remove structural and legal barriers as well as stereotypical attitudes to gender equality at work. The Assembly also urged all Member States to take appropriate measures to eliminate discrimination against women with regard to their access to bank loans, mortgages and other forms of financial credit, giving special attention to poor, uneducated women, and to support women's access to legal assistance.

7. Humanitarian matters

(a) Economic and Social Council

On 17 July 2007, the Economic and Social Council adopted resolution 2007/3 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 on this item.[197] It also took note of the report of the Secretary-General on the Central Emergency Response Fund[198] and on strengthening emergency relief, rehabilitation, reconstruction, recovery and prevention in the aftermath of the Indian Ocean tsunami disaster.[199] It further took note of the Note by the Secretary-General transmitting the report of the Joint Inspection Unit, entitled "Towards a United Nations humanitarian assistance programme for disaster response and reduction: Lessons learned from the Indian Ocean tsunami disaster",[200] and the note by the Secretary-General transmitting his comments and those of the United Nations System Chief Executives Board for Coordination thereon.[201]

(b) General Assembly

On 17 December 2007, the General Assembly adopted, without reference to a Main Committee, resolution 62/94 entitled "Strengthening of the coordination of emergency humanitarian assistance of the United Nations". In this resolution, the Assembly reaffirmed the importance of the Hyogo Framework for Action 2005–20015: Building the Resilience of Nations and Communities to Disasters,[202] and the obligation of all States and parties to an armed conflict to protect civilians in armed conflicts in accordance with international humanitarian law. It 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, as pro-

[197] A/62/87-E/2007/70.

[198] A/62/72-E/2007/73.

[199] A/62/83-E/2007/67.

[200] A/61/699-E/2007/8.

[201] A/61/699/Add.1-E/2007/8/Add.1.

[202] A/CONF.206/6 and Corr.1, chap. I, resolution 2.

vided for by national law and obligations by international law. It recognized the Guiding Principles on Internal Displacement[203] as an important international framework for the protection of internally displaces persons.

On the same day, the General Assembly adopted, without reference to a Main Committee, resolution 62/95 entitled "Safety and security of humanitarian personnel and protection of United Nations personnel", in which the Assembly welcomed the report of the Secretary-General on this item.[204] It also called upon all States to consider becoming parties to and to respect fully their obligations under the relevant international instruments. 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 the inviolability of United Nations premises. It recalled with appreciation the adoption of the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel and called upon all States to consider signing and ratifying the Protocol. It finally called upon all other parties involved in armed conflicts to refrain from abducting humanitarian personnel or United Nations and associated personnel or detaining them in violation of the relevant conventions and applicable international humanitarian law.

On 18 December 2007, the General Assembly adopted, on the recommendation of the Third Committee, resolution 62/166 entitled "Respect for the purposes and principles contained in the Charter of the United Nations to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms and in solving international problems of a humanitarian character", in which it reiterated the solemn commitment of all States to enhance international cooperation in the field of human rights and in the solution to international problems of a humanitarian character in full compliance with the Charter of the United Nations.

8. Environment[205]

The General Assembly adopted, on the recommendation of the Second Committee, several resolutions related to the environment,[206] six of which, all adopted on 19 December 2007, are highlighted below.

In resolution 62/189 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 took note of the report of the Secretary-General on this item.[207] It called for the effective implementation of the commitments, programmes and time-bound targets adopted at the World Summit on Sustainable Development and for

[203] E/CN.4/1998/53/Add.2, annex.

[204] A/62/324 and Corr.1.

[205] See also General Assembly resolution 60/1 of 16 September 2005 on "2005 World Summit Outcome".

[206] See also General Assembly resolutions 62/86 entitled "Protection of global climate for present and future generations of mankind" adopted on 10 December 2007; and 62/188 on "Oil slick on Lebanese shores", 62/191 on "Follow-up to and Implementation of the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States; and 62/196 on "Sustainable mountain development", adopted on 19 December 2007.

[207] A/62/262.

the fulfilment of the provisions relating to the means of implementation, as contained in the Johannesburg Plan of Implementation. It also reaffirmed the objective of strengthening the implementation of Agenda 21 and the need to promote corporate responsibility and accountability as envisaged by the Johannesburg Plan of Implementation.

In its resolution 62/192 on "International Strategy for Disaster Reduction", the General Assembly called upon the United Nations system, and invited the international financial institutions and regional banks and other regional and international organizations, to support, in a timely and sustained manner, the efforts led by disaster-stricken countries for disaster risk reduction in post-disaster recovery and rehabilitation processes. It further recognized that each State has the primary responsibility for its own sustainable development and for taking effective measures to reduce disaster risk, including for the protection of people on its territory, infrastructure and other national assets from the impact of disasters, including the implementation of and follow-up to the Hyogo Framework for Action.

In addition, in resolution 62/193, entitled "Implementation of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa", the Assembly took note of the report[208] of the Secretary-General on the implementation of the said Convention.[209] It welcomed the adoption by the Conference of the Parties to the Convention at its eighth session, in its decision 3/COP.8, of the ten-year strategic plan and framework to enhance the implementation of the Convention (2008–2018).[210] It further noted the decision taken by the Council of the Global Environment Facility in December 2006 to invite the fourth Assembly of the Facility to amend the Instrument for the Establishment of the Restructured Global Environment Facility so as to list the United Nations Convention to Combat Desertification among the conventions for which the Facility plays the role of financial mechanism.[211]

In resolution 62/194 on "Convention on Biological Diversity", the General Assembly encouraged developed countries parties to the Convention[212] to contribute to the relevant trust funds of the Convention, in particular so as to enhance the full participation of the developing countries parties in all of its activities. It also urged all Member States to fulfil their commitments to significantly reduce the rate of loss of biodiversity by 2010, and it emphasized that this would require an appropriate focus on the loss of biodiversity in their relevant policies and programmes and the continued provision of new and additional financial and technical resources to developing countries, including through the Global Environment Facility. Moreover, it urged parties to the Convention to facilitate the transfer of technology for the effective implementation of the Convention in accordance with its provisions.

Also, in resolution 62/195 entitled "Report of the Governing Council of the United Nations Environment Programme on its twenty-fourth session", the Assembly took note of the report of the Governing Council of the United Nations Environment Programme on

[208] A/62/276, annex II.

[209] United Nations, *Treaty Series*, vol. 1954, p. 3.

[210] A/C.2/62/7, annex.

[211] Global Environment Facility, document GEF/C.30/7. Available from http://www.gefweb.org.

[212] United Nations, *Treaty Series* , vol. 1760, p. 79.

its twenty-fourth session[213] and the decisions contained therein.[214] It decided to declare the decade 2010–2020 as the United Nations Decade for Deserts and the Fight against Desertification, it stressed the need to further advance and fully implement the Bali Strategic Plan for Technology Support and Capacity-building[215] and noted the request by the Governing Council to the Executive Director of the United Nations Environment Programme to prepare a medium-term strategy for the period 2010–2013.[216]

Further, in resolution 62/197 on "Promotion of new and renewable sources of energy", the Assembly called upon Governments, as well as relevant international and regional organizations and other relevant stakeholders, to combine, as appropriate, the increased use of new and renewable energy resources, more efficient use of energy, greater reliance on advanced energy technologies, including cleaner fossil fuel technologies, and the sustainable use of traditional energy resources, which could meet the growing need for energy services in the longer term to achieve sustainable development.

9. Law of the Sea

(*a*) Reports of the Secretary-General[217]

The Secretary-General, in his reports to the General Assembly at its sixty-second and sixty-third 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[218] (the Convention) 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 2007. 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 provided an overview of State practice, maritime claims and delimitation of maritime zones.[219]

The reports also outlined the work carried out in 2007 by the three bodies established by the Convention, namely, the International Seabed Authority (ISA), the International Tribunal for the Law of the Sea (ITLOS)[220] and the Commission on the Limits of the Continental Shelf (CLCS).

ISA held its thirteenth session, during which its Council continued the consideration of the draft regulations on prospecting and exploration for polymetallic sulphides. At the

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[213] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 25* (A/62/25).

[214] *Ibid.*, annex I.

[215] UNEP/GC.23/6/Add.1 and Corr.1, annex.

[216] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 25* (A/62/25), annex I, decision 24/9, para. 13.

[217] A/62/66 and Add.1 and 2; A/62/260 and A/63/63. Information contained in the report 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.

[218] United Nations, *Treaty Series*, vol. 1833, p. 3.

[219] See A/62/66, chapter III, A/62/66/Add.1, chapter III; and A/63/63, chapter III.

[220] For the work of the Tribunal, see chapter VII below.

same session, the Legal and Technical Commission of ISA began its examination of the draft regulations on prospecting and exploration for cobalt-rich ferromanganese crusts.[221]

In 2007, CLCS held its nineteenth and twentieth sessions,[222] during which it continued the examination of the submissions made, respectively, by Brazil, by Australia, by Ireland, by New Zealand as well as the joint submission made by France, Ireland, Spain and the United Kingdom of Great Britain and Northern Ireland. At the nineteenth session, CLCS began the consideration of the submission made by Norway and adopted recommendations in regard to the submissions made, respectively, by Brazil and by Ireland for the area abutting the Porcupine Abyssal Plain. At the twentieth session, CLCS began the consideration of the submission made by France in respect of the areas of French Guiana and New Caledonia. In 2007, CLCS also received a submission made by Mexico.

The reports of the Secretary-General paid special attention to marine genetic resources, the topic chosen for the eighth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea by, *inter alia,* analyzing the legal framework applicable, both within and beyond areas of national jurisdiction, to activities related to marine genetic resources.[223] The eighth meeting was held in New York from 25 to 29 June 2007.[224]

These reports also addressed developments relating to international shipping activities;[225] people at sea;[226] maritime security and safety;[227] marine science and technology;[228] marine biological diversity;[229] protection and preservation of the marine environment and sustainable development;[230] climate change;[231] international cooperation and coordination,[232] including progress regarding the "assessment of assessments"[233] launched by General Assembly resolution 60/30 of 29 November 2005 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; and the capacity-building activities of the Division for Ocean Affairs and the Law of the Sea. [234]

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[221] For more information on the thirteenth session of ISA see A/62/66/Add.1, chapter III, section C.

[222] For more information on the nineteenth and twentieth sessions of CLCS see A/62/66/Add.1, chapter III, section B; A/63/63, chapter IV, section B, as well as CLCS/54 and CLCS/56.

[223] See A/62/66, chapter X. For the overview of the applicable legal regime, see A/62/169, section 2 (d).

[224] See A/62/169.

[225] See A/62/66, chapter V; and A/62/66/Add.1, chapter IV.

[226] See A/62/66, chapter VI; and A/62/66/Add.1, chapter V.

[227] See A/62/66, chapter VII; A/62/66/Add.1, chapter VI; and A/63/63, chapter V.

[228] See A/62/66, chapter VIII; A/62/66/Add.1, chapter VII; and A/63/63, chapter VI.

[229] See A/62/66, chapter XI; A/62/66/Add.1, chapter IX; and A/63/63, chapter VIII.

[230] See A/62/66, chapter XII; A/62/66/Add.1, chapter X; and A/63/63, chapter IX.

[231] See A/62/66, chapter XIII; A/62/66/Add.1, chapter XI; and A/63/63, chapter X.

[232] See A/62/66, chapter XV; A/62/66/Add.1, chapter XIII; and A/63/63, chapter XII.

[233] See A/62/66/Add.1, chapter XIII.B; and A/63/63, chapter XII.B.

[234] See A/62/66, chapter XVI; A/62/66/Add.1, chapter XIV; and A/63/63, chapter XIII.

The Secretary-General reported also on the settlement of disputes relating to law of the sea matters by the ITLOS, the International Court of Justice[235] and the Arbitral Tribunal established in the case between Guyana and Suriname, which rendered its award on 17 September 2007.[236] Having found that it had jurisdiction to consider the parties' maritime delimitation claims, the Arbitral Tribunal established a single maritime boundary between Guyana and Suriname that differed from the boundaries claimed by either of the parties in their pleadings. The Arbitral Tribunal additionally held that both Guyana and Suriname violated their obligations under the Convention to make every effort to enter into provisional arrangements of a practical nature and not to hamper or jeopardize the reaching of a final agreement. Moreover, Suriname was found to have acted unlawfully when it expelled a drilling rig licensed by Guyana from the disputed area.

Pursuant to a request contained in General Assembly resolution 61/222 of 20 December 2006, the Secretary-General reported on issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction[237] in order to assist the second meeting of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction in 2008, in preparing its agenda. The reports addressed the environmental impacts of anthropogenic activities on marine biological diversity beyond areas of national jurisdiction; 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 provided, *inter alia,* an overview of the existing legal framework, which is based on the Convention, as complemented by a number of specialized instruments and also an overview of the intellectual property aspects relevant to marine genetic resources.

The Secretary-General also published his annual report on fisheries issues,[238] providing an overview on steps and initiatives taken or recommended by the international community to improve the conservation and management of fishery resources and other marine living resources with a view to achieving sustainable fisheries and protecting marine ecosystems and biodiversity. The report emphasized the importance of the full implementation by States of all international fishery instruments, whether legally binding or voluntary, which promote the conservation and management and sustainable use of marine living resources. It also underscored the importance of cooperation among States, directly or through subregional and regional fisheries management organizations or arrangements, to address unsustainable fishing practices and promote sustainable fisheries in areas beyond national jurisdiction, including through implementing their responsibilities as flag States improving governance of such organizations or arrangements and cooperating in the establishment of new organizations or arrangements where none exist.

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[235] For the work of the International Court of Justice, see chapter VII, below.

[236] See http://www.pca-cpa.org/showpage.asp?pag_id=1147.

[237] A/62/66/Add.2.

[238] A/62/260.

(*b*) General Assembly

The General Assembly commenced its consideration of the agenda item "oceans and the law of the sea" on 10 December 2007, which coincided with the twenty-fifth anniversary of the opening for signature of the United Nations Convention on the Law of the Sea. On 22 December 2007, the General Assembly adopted, without reference to a Main Committee, resolution 62/215 entitled "Oceans and the law of the sea".

The resolution, divided into 17 sections, and covered a range of ocean issues, such as the implementation of the United Nations Convention on the Law of the Sea and related agreements and instruments; capacity-building; the Meeting of States Parties; peaceful settlement of disputes; the Area; effective functioning of the International Seabed Authority and the International Tribunal for the Law of the Sea; the continental shelf and the work of the Commission on the Limits of the Continental Shelf; maritime safety and security and flag State implementation; marine environment and marine resources; marine biodiversity; marine science; the "assessment of assessments" a preparatory stage towards the establishment of the regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects; the open-ended informal consultative process on oceans and the law of the sea; coordination and cooperation; and the activities of the Division for Ocean Affairs and the Law of the Sea.

On 18 December 2007, the General Assembly also adopted, without reference to a Main Committee, resolution 62/177 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". The resolution, divided into 13 sections, addressed a number of issues, including, measures to achieve sustainable fisheries; implementation of the Fish Stocks Agreement; implementation of related fisheries instruments; illegal, unreported and unregulated fishing; monitoring, control and surveillance and compliance and enforcement; fishing overcapacity; large-scale pelagic drift-net fishing; fisheries by-catch and discards; subregional and regional cooperation; responsible fisheries in the marine ecosystem; capacity-building; and cooperation within the United Nations system.

10. Crime prevention and criminal justice[239]

(*a*) Commission on Crime Prevention and Criminal Justice

The Commission on Crime Prevention and Criminal Justice was established by the Economic and Social Council in its resolution 1992/1 of 6 February 1992 as a functional commission in order to deal with a broad scope of policy matters in this field, including combating national and transnational crime, including organized crime, economic crime and money laundering; promoting the role of criminal law in environmental protection;

[239] 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.

crime prevention in urban areas, including juvenile crime and violence; and improving the efficiency and fairness of criminal justice administration systems. Aspects of these principal themes are selected for discussion at each of its annual sessions.

The regular and reconvened sixteenth session of the Commission on Crime Prevention and Criminal Justice was held in Vienna on 28 April 2006 and from 23 to 27 April and 29 to 30 November 2007.[240] 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 crime prevention and criminal justice responses to urban crime.

(*b*) Economic and Social Council

On 26 July 2007, the Economic and Social Council adopted, on the recommendation of the Commission of Crime Prevention and Criminal Justice, several resolutions on the topic of crime prevention and criminal justice, which are outlined below.

In resolution 2007/20 entitled "International cooperation in the prevention, investigation, prosecution and punishment of economic fraud and identity-related crime", the Council welcomed the report of the Secretary-General on the results of the second meeting of the Intergovernmental Expert Group to Prepare a Study on Fraud and the Criminal Misuse and Falsification of Identity.[241] In the resolution, the Council encouraged Member States to consider the report and, as appropriate and consistent with their domestic law and relevant international instruments, to avail themselves of its recommendations when developing effective strategies for responding to the problems addressed in the report. Furthermore, the Council decided to include "Economic fraud and identity-related crime" as a potential thematic topic for discussion by the Commission on Crime Prevention and Criminal Justice at one of its future sessions.

The Council also adopted resolution 2007/21 entitled "Information-gathering instrument in relation to United Nations standards and norms in crime prevention and criminal justice". In this resolution, the Council approved the questionnaire on United Nations standards and norms related primarily to victim issues,[242] and requested the Secretary-General to forward the questionnaire to Member States. It further requested the Secretary-General to convene an open-ended intergovernmental meeting of experts and, in cooperation with the institutes of the United Nations Crime Prevention and Criminal Justice Programme network, to design an information-gathering instrument in relation to United Nations standards and norms relating to the independence of the judiciary and integrity of criminal justice personnel.

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[240] For the consolidated report of the regular and reconvened sixteenth session of the Commission, see *Official Records of the Economic and Social Council, 2007, Supplement No. 10* (E/2007/30/Rev.1 and E/CN.15/2007/17/Rev.1).

[241] E/CN.15/2007/8 and Add. 1–3.

[242] The questionnaire is annexed to the report of the Secretary-General on the work of the Intergovernmental Expert Group to Develop an Information-Gathering Instrument on United Nations Standards and Norms Related Primarily to Victim Issues, see E/CN.15/2007/3, annex I.

In resolution 2007/22 entitled "Strengthening basic principle of judicial conduct", adopted following the report of the Secretary-General on the same topic,[243] the Council invited Member States to continue to encourage their judiciaries to take into consideration the Bangalore Principles of Judicial Conduct,[244] when reviewing or developing rules with respect to the professional and ethical conduct of members of the judiciary. The Council further requested the United Nations Office on Drugs and Crime (UNODC) to convene an open-ended intergovernmental expert group, involving, among others, the Judicial Group on Strengthening Judicial Integrity, to finalize the guide on strengthening judicial integrity and capacity. Finally, the Council requested the Secretariat to submit the Bangalore Principles on Judicial Conduct and the commentary on the Bangalore Principles to the Conference of the States Parties to the United Nations Convention against Corruption[245] at its second session.

The Council also adopted resolution 2007/23, entitled "Supporting national efforts for child justice reform, in particular through technical assistance and improved United Nations system-wide coordination", in which it noted the report of the independent expert for the United Nations study on violence against children.[246] The Council, alarmed by the finding in the report that the majority of children in detention have not been convicted of a crime but were awaiting trial, urged Member States to pay particular attention to the issue of child justice and to take into consideration applicable United Nations standards and norms for the treatment of children in conflict with the law, particularly those deprived of their liberty. Furthermore, the Council urged UNODC to explore ways in which preventing and responding to violence against children can be incorporated in its technical cooperation activities in the area of children and the justice system.

In its resolution 2007/24 entitled "International cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa", the Council commended the initiation by UNODC of work focused on providing long-term sustainable technical assistance in the area of criminal justice reform to Member States in post-conflict situations. The Council further requested UNODC to convene an open-ended intergovernmental meeting of experts to study ways and means of strengthening access to legal aid in the criminal justice system. The Commission on Crime Prevention and Criminal Justice was requested by the Council to include the issue of penal reform and the reduction of prison overcrowding, including the provision of legal aid in criminal justice systems, as a potential thematic topic for discussion by the Commission at one of its future sessions.

Finally, on the same date, the Economic and Social Council also adopted resolutions on the follow-up to the Eleventh United Nations Congress on Crime Prevention and Criminal Justice and preparations for the Twelfth United Nations Congress on Crime Prevention and Criminal Justice (resolution 2007/17), on technical assistance for implementing

[243] For the report of the Secretary-General entitled "Strengthening basic principles of judicial conduct", see E/CN.15/2007/12.

[244] See Economic and Social Council resolution 2006/23, annex.

[245] Convention contained in A/58/422, annex.

[246] For the report of the independent expert for the United Nations study on violence against children, see A/61/299, submitted to the General Assembly pursuant to Assembly resolution 60/231 of 23 December 2005.

the international conventions and protocols relation to terrorism (resolution 2007/18), and on the strategy for the period 2008–2011 for UNODC (resolution 2007/19).

(*c*) General Assembly

On 18 December 2007, the General Assembly adopted, on the recommendation of the Third Committee,[247] resolution 62/173 entitled "Follow-up of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice and preparations for the Twelfth United Nations Congress on Crime Prevention and Criminal Justice". The General Assembly took note of the report of the Intergovernmental Group of Experts on Lessons Learned from United Nations Congresses on Crime Prevention and Criminal Justice,[248] and endorsed its conclusions and recommendations. Furthermore, in the said resolution, the General Assembly reiterated its invitation to Member States to implement the Bangkok Declaration[249] and the recommendations by the Eleventh Congress on Crime Prevention and Criminal Justice[250] in formulating legislation and policy directives, where appropriate. Finally, the Assembly considered that the Twelfth United Nations Congress on Crime Prevention and Criminal Justice is to be held in 2010.

Furthermore, on the same date, the General Assembly adopted, on the recommendation of the Third Committee,[251] resolution 62/174 entitled "United Nations African Institute for the Prevention of Crime and the Treatment of Offenders".[252] In the said resolution, the Assembly commended, among others, the United Nations African Institute for the Prevention of Crime and the Treatment of Offenders for its efforts to promote and coordinate regional technical cooperation activities related to crime prevention and criminal justice systems in Africa, and urged States Members of the Institute to continue to make every possible effort to meet their obligations to the Institute.

Still on the same date, the General Assembly adopted resolutions on technical assistance for implementing the international conventions and protocols related to terrorism (resolution 62/172), on strengthening the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity (resolution 62/175), and on international cooperation against the world drug problem (resolution 62/176).

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[247] For the report of the Third Committee, see A/62/440.

[248] E/CN.15/2007/6.

[249] Resolution 60/177, annex (entitled: "Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice").

[250] See *Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Bangkok, 18–25 April 2005: report prepared by the Secretariat* (United Nations publication, Sales No. E.05.IV.7).

[251] For the report of the Third Committee, see A/62/440.

[252] For the report of the Secretary-General entitled "African Institute for the Prevention of Crime and the Treatment of Offenders", see A/62/127. The report describes the operations of the African Institute for the prevention of Crime and the Treatment of Offenders; including the substantive programme and activities it has developed to support the countries of the region in the area of crime prevention and criminal justice.

11. International Drug Control[253]

(*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 was structured in two distinct segments; one relating to its normative functions and one to its role as governing body of the United Nations International Drug Control Programme. The Commission also convenes ministerial-level segments of its sessions to focus on specific themes. During its fiftieth session, held on 17 March 2006 and 12 to 16 March and 27 to 28 November 2007, in Vienna,[254] the Commission held a thematic debate on new challenges for controlling precursor chemicals.

The Commission adopted 13 resolutions that were brought to the attention of the Economic and Social Council, of which seven are highlighted below.[255]

In resolution 50/1 entitled "Follow-up to the Second Ministerial Conference on Drug Trafficking Routes from Afghanistan", the Commission welcomed the Paris Pact initiative emerging from the Paris Statement,[256] as well as the report of the Executive Director of the United Nations Office on Drugs and Crime (UNODC) on the implementation of the Paris Pact initiative[257] and the outcome of the Second Ministerial Conference on Drug Trafficking Routes from Afghanistan,[258] in continuation of the Paris Pact initiative. The Commission called upon States to, *inter alia,* strengthen international and regional cooperation to counter the threat to the international community posed by the illicit production of drugs in Afghanistan and to continue to take concerted measures in the framework of the Paris Pact initiative. Moreover, the Commission urged the Member States and UNODC to promote the implementation of the Moscow Declaration[259] adopted by the Second Ministerial Conference on Drug Trafficking Routes from Afghanistan and the recommendations of the Conference.

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[253] 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.

[254] For the consolidated report of regular and reconvened 50th session of the Commission, see *Official Records of the Economic and Social Council, 2007, Supplement No. 8* (E/2007/28/Rev. 1).

[255] The Commission also adopted, on the same date, resolutions on Improving the quality and performance of drug analysis laboratories (50/4), on identifying sources of precursors used in illicit drug manufacture (50/5), on promoting collaboration on the prevention of diversion of precursors (50/6), on strengthening international support for Haiti in combating the drug problem (50/8), on the se of drug characterization and chemical profiling in support of drug law enforcement intelligence-gathering and operational work, as well as trend analysis (50/9), on international cooperation in preventing the illegal distribution of internationally controlled licit substances via the Internet (50/11), and on budget outline for the biennium 2008–2009 for the Fund of the United Nations International Drug Control Programme (50/13).

[256] See S/2003/641, annex.

[257] E/CN.7/2007/90, annex.

[258] A/61/208-S/2006/598, annex

[259] *Ibid.*

The Commission also adopted resolution 50/2 entitled "Provisions regarding travelers under medical treatment with internationally controlled drugs", in which it urged States parties to the Single Convention on Narcotic Drugs of 1961[260] and the Convention on Psychotropic Substances of 1971[261] to notify, through their competent authorities, the International Narcotics Control Board of restrictions in their national jurisdictions currently applicable to travelers under medical treatment with internationally controlled drugs. The Commission also requested the Member States to notify the International Narcotics Control Board immediately of any changes in their national jurisdictions in the scope of control of narcotic drugs and psychotropic substances relevant to travelers under medical treatment with internationally controlled drugs.

In its resolution 50/3 entitled "Responding to the threat posed by the abuse and diversion of ketamine", the Commission, *inter alia,* noted the efforts made to discuss in international forums on drug law enforcement the placing of ketamine on the list of substances controlled under the Convention on Psychotropic Substances of 1971 in order to better control and limit abuse of and trafficking in that substance.

The Commission, in its resolution 50/7 on "Strengthening the security of import and export documents relating to controlled substances", urged all Member States to pay attention to security measures concerning import and export documents issued by Member States for operations covered by the international drug control treaties, and urged all States parties to the Convention Abolishing the Requirement of Legalization for Foreign Public Documents[262] to give full effect to the Convention with respect to all documents of international trade in controlled substances.

Furthermore, the Commission adopted resolution 50/10 entitled "Prevention of diversion of drug precursors and other substances used for the illicit manufacture of narcotic drugs and psychotropic substances", in which it recalled article 2 of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents. In this resolution, the Commission called upon Member States, *inter alia,* to develop further, and to the extent possible, voluntary monitoring systems to complement their national laws and regulations by further fostering cooperation between competent authorities and industrial sectors concerned and operators along the supply and demand chain. It also encouraged Member States to review, where appropriate and possible, their national legislation with a view to facilitating the exchange of samples of precursors with authorized drug and precursor analysis laboratories by facilitating the issuing of such an import or export permit when required.

Finally, in resolution 50/12 entitled "Measures to meet the goal of establishing by 2009 the progress achieved in implementing the declarations and measures adopted by the General Assembly at its twentieth special session", the Commission recalled, *inter alia,* the Political Declaration adopted by the Assembly at its twentieth special session,[263] and recognized that the international drug control treaties and the outcome of the twentieth special session of the General Assembly, especially the Political Declaration, the Declaration on

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[260] United Nations, *Treaty Series*, vol. 520, p. 151, as amended by the 1972 Protocol (*Ibid.,* vol. 976, p. 105).

[261] *Ibid.,* vol. 1019, p. 175.

[262] *Ibid.*, vol. 527, p. 189.

[263] General Assembly resolution S-20/2, annex.

the Guiding Principles of Drug Demand Reduction[264] and the measures to enhance international cooperation to counter the world drug problem, together constitute a comprehensive framework for drug control activities by States and relevant international organizations. Furthermore, the Commission stressed that, following a global assessment by States, there should be a period of reflection by States, based on the fundamental principles of the international drug control treaties and giving due regard to measures that have led to positive outcomes and aspects that require greater effort. It acknowledged the need to conduct a proper and thorough assessment of the programmes to implement the declarations and measures adopted by the General Assembly at its twentieth special session. The Commission decided also to convene a high-level segment, open to all States Members, during its fifty-second session, in 2009, and that at its fifty-first session, the thematic debate should be devoted to a discussion by Member States on progress made in meeting the goals and targets set at the twentieth session of the General Assembly.

(*b*) Economic and Social Council

On 25 July 2007, the Economic and Social Council adopted, on the recommendation of the Commission on Narcotic Drugs, its resolution 2007/9 entitled "The need for a balance between demand for and supply of opiates used to meet medical and scientific needs". In this resolution, the Council urged all governments of all producers countries of narcotic drugs, including opiates, to adhere strictly to the provisions of the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol and to take effective measures to prevent the illicit production or diversion of opiate raw materials to illicit channels.

Furthermore, on the same date, the Council adopted resolution 2007/12 entitled "Strategy for the period 2008–2011 for the United Nations Office on Drugs and Crime", in which the Council approved, on the recommendation of the Commission on Narcotic Drugs, the strategy for the period 2008–2011 for UNODC.

Still on the same date and on the recommendation of the Commission on Crime Prevention and Criminal Justice, the Council adopted the following resolutions: "Improvement of drug abuse data collection by Member States in order to enhance data reliability and the comparability of information provided" (2007/10) and "Support to the counter-narcotic measures and programmes of Afghanistan" (2007/11).

(*c*) General Assembly

On 18 December 2007, the General Assembly adopted, on the recommendation of the Third Committee,[265] resolution 62/176 on "International cooperation against the world drug problem". In the said resolution, the Assembly reaffirmed the Political Declaration adopted by the General Assembly at its twentieth session[266] and the importance of meeting the objectives targeted for 2008. The Assembly, furthermore, called upon all States to strengthen international cooperation among judicial and law enforcement authorities in order to prevent and combat illicit drug trafficking, including by establishing and strength-

[264] General Assembly resolution S-20/2, annex.

[265] For the report of the Third Committee, see A/62/441.

[266] General Assembly resolution S-20/2 of 10 June 1998, annex.

ening regional mechanisms, providing technical assistance, and establishing effective methods for cooperation, in particular in the areas of air, maritime, port and border control and in the implementation of extradition treaties. The Assembly further urged States to strengthen their actions aimed at preventing and combating the laundering of proceeds derived from drug trafficking and related criminal activities, and to improve information-sharing among financial institutions and agencies in charge of preventing and detecting the laundering of such proceeds.

12. Refugees and displaced persons[267]

(*a*) Executive Committee of the Programme of the United Nations High Commissioner for Refugees[268]

The Executive Committee of the Programme of the United Nations High Commissioner for Refugees (UNHCR) was established by the Economic and Social Council in 1958 and functions as a subsidiary organ of the General Assembly to which it reports through the Third Committee. The Executive Committee meets annually in Geneva to review and approve the programmes and budget of UNHCR, and advise it on international protection issues and discuss a wide range of other items with UNHCR and its intergovernmental and non-governmental partner. The fifty-eight session of the Executive Committee was held in Geneva from 1 to 5 October 2007,[269] during which it adopted a number of conclusions.

In its first conclusion entitled "Conclusion on Children at Risk", the Executive Committee affirmed, in the light of recent international developments in relation to the protection of children, that children, because of their age, social status and physical and mental development, were often more vulnerable than adults in situations of forced displacement. The Executive Committee recalled that the protection of children was primarily the responsibility of States, whose full and effective cooperation, action and political resolve were required to enable UNHCR to fulfill its mandated functions. However, it recognized the varied means and capacity of host countries, and reaffirmed its call to the international community to mobilize the financial and other resources necessary to ensure the provision of protection. In this regard, the Conclusion adopted by the Executive Committee provided operational guidance for States, UNHCR and relevant agencies and partners, including through identifying components that may form part of a comprehensive child protection system.

In the above mentioned Conclusion, the Executive Committee adopted guidance, *inter alia,* on fundamentals of child protection and recognized the principle that children should be among the first to receive protection and assistance. Moreover, it recognized the approach that States, UNHCR, and other relevant agencies and partners should assure to the child who

[267] For a complete list of signatories and States parties to international instruments relating to refugees that are deposited with the Secretary-General, see chapter V of *Multilateral Treaties Deposited with the Secretary-General*, available on the website http://treaties.un.org/Pages/ParticipationStatus.aspx.

[268] For detailed information and documents regarding this topic generally, see the website of UNHCR at http://www.unhcr.org.

[269] For the report of the fifty-eight session of the Executive Committee, see *Official Records of the General Assembly, Sixty-second Session, Supplement No. 12A* (A/62/12/Add. 1).

was capable of forming his or her own views, the right to express those views freely in all matters affecting the child, and that mechanisms exist to inform children and adults alike of children's rights and options. The Executive Committee also recognized a right-based approach, which recognized children as active subjects of rights, and according to which all interventions were consistent with States' obligations under relevant international law.

In the same Conclusion, the Executive Committee called on States, UNHCR and other relevant agencies and partners to put in place modalities for early and continuous identification of children at heightened risk, such as risks in the wider protection environment and risks resulting from individual circumstances. Hereto, the Executive Committee recognized that individual, careful and prompt registration of children and the systematic collection and analysis of age-and sex-disaggregated data and of data on children with specific needs, could be useful in the identification of children in heightened risk.

With regards to preventing children from begin put at heightened risk, the Executive Committee furthermore listed non-exhaustively general prevention, response and solution measures. The measures included, *inter alia,* to strengthen or promote the establishment of child protection committees, to develop child and gender-sensitive national asylum procedures, and to address, on a priority basis, the concerns of children in protracted refugee situations. The Committee further recommended prevention, response and solution measures in order to address specific wider environmental or individual risk factors, such as providing individual documentation evidencing children's status and taking appropriate measures to prevent the unlawful recruitment or use of children by armed forces or groups.

(*b*) Human Rights Council

The Human Rights Council continued its effort to protect the rights of internally displaced persons, and adopted during its sixth session on 14 December 2007[270] resolution 6/32 entitled "Mandate of the Representative of the Secretary-General on the human rights of internally displaced persons". In the said resolution, the Council noted the report of the Secretary-General[271] on the performance and effectiveness of the new mechanism on internal displacement submitted to the Commission on Human Rights at its sixty-second session, and commended the Representative of the Secretary-General for the activities undertaken to date. The Council recognized the Guiding Principles on Internal Displacement[272] as an important international framework for the protection of internally displaced persons, and in this regard called for international support to capacity building efforts of States. Furthermore, in the same resolution, the Council decided to extend the mandate of the Representative of the Secretary-General on the human rights of internally displaced into all relevant parts of the United Nations system, and requested the Representative in carrying out his mandate, *inter alia,* to continue to use the Guiding Principles on Internal Displacement in his dialogue with governments and other relevant actors.

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[270] For the report of the sixth session of the Human Rights Council, see *Official Records of the General Assembly, Sixty-third Session, Supplement No. 53* (A/63/53).

[271] E/CN.4/2006/69.

[272] For the Guiding Principles on Internal Displacement, see report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39, Addendum, E/CN.4/1998/53/Add.2.

(*c*) General Assembly[273]

On 18 December 2007, the General Assembly adopted, on the recommendation of the Third Committee,[274] resolution 62/125 entitled "Assistance to refugees, returnees and displaced persons in Africa". In the said resolution, the Assembly noted the need for African States to address resolutely root causes of all forms of forced displacement in Africa and to foster peace, stability and prosperity throughout the African continent so as to forestall refugee flows. It also noted with great concern that, despite all of the efforts made so far by the United Nations, the African Union and others, the situation of refugees and displaced persons in Africa remained precarious. The Assembly further welcomed decision on the situation of refugees, returnee and displaced persons in Africa adopted by the Executive Council of the African Union,[275] and noted the initiatives taken by the African Union and the African Commission on Human and Peoples' Rights. Moreover, the General Assembly reaffirmed the importance of timely and adequate assistance and protection for refugees, returnees and displaced persons, and condemned all acts that pose a threat to the personal security and wellbeing of refugees and asylum-seekers. The Assembly called upon the international donor community to provide financial and material assistance that allows for the implementation of community-based development programmes that benefit both refugees and host communities, and appealed to the international community to respond positively, in the spirit of solidarity and burden and responsibility-sharing, to the third-country resettlement needs of African refugees.

Also on 18 December 2007, the General Assembly adopted resolution 62/153 entitled "Protection of and assistance to internally displaced persons". The General Assembly, deeply disturbed by the alarmingly high numbers of internally displaced persons throughout the world, noted the growing awareness of the international community of the issue of internally displaced persons worldwide and the urgency of addressing the root causes of there displacement and finding durable solutions. The Assembly expressed its appreciation to those Governments and intergovernmental and non-governmental organizations that have provided protection and assistance to internally displaced persons and have supported the work of the Representative of the Secretary-General on the human rights of internally displaced persons.[276] Finally, the Assembly called upon Governments to provide protection and assistance, including reintegration and development assistance, to internally displaced persons, and to facilitate the efforts of relevant United Nations agencies and humanitarian organizations in these respect.

Also in the area of technical assistance and capacity-building, the General Assembly, on the same date, adopted resolutions on the enlargement of the Executive Committee of

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[273] For resolutions dealing with refugees in particular regional areas, see the following resolutions adopted by the General Assembly: 62/102 of 17 December 2007 (Assistance to Palestine refugees), 62/103 of 17 December 2007 (Persons displaced as a result of the June 1967 and subsequent hostilities), 62/104 of 17 December 2007 (Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East), and 62/105 of 17 December 2007 (Palestine refugees' properties and their revenues).

[274] For report of the Third Committee, see A/62/431.

[275] For the report of the tenth ordinary session of the African Union, held in Addis Ababa on 25 and 26 January 2007, see document EX.CL/Dec.315–347(X).

[276] For the note of the Representative of the Secretary-General entitled "Protection of and assistance to internally displaced persons", see A/62/227.

the Programme of UNHCR (resolution 62/123) and on the Office of UNHCR (resolution 62/124).

13. International Court of Justice[277]

(a) Organization of the Court

In 2007 the composition of the Court was as follows:

President: Dame 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 of America); Hisashi Owada (Japan); Bruno Simma (Germany); Peter Tomka (Slovakia); Ronny Abraham (France); Kenneth Keith (New Zealand); Bernardo Sepúlveda-Amor (Mexico); Mohamed Bennouna (Morocco); 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, comprising five judges, including the President and Vice-President, and two substitutes, which the Court is required to form annually, in accordance with Article 29 of the Statute, to ensure the speedy dispatch of business, is composed as follows:

Members

President: Dame Rosalyn Higgins
Vice-President: Awn Shawkat Al-Khasawneh
Judges: Gonzalo Parra-Aranguren, Thomas Buergenthal, Leonid Skotnikov

Substitute Members

Judges: Abdul G. Koroma and Ronny Abraham

(b) Jurisdiction of the Court[278]

On 9 July 2007, Japan made a new declaration recognizing the compulsory jurisdiction of the Court, which reads as follows:

> "I have the honour, by direction of the Minister for Foreign Affairs, to declare on behalf of the Government of Japan that, in conformity with paragraph 2 of Article 36 of the Statute of the International Court of Justice, Japan recognizes as compulsory *ipso facto* and without

[277] 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-second Session, Supplement No. 4* (A/62/4) and *ibid.*, *Sixty-third Session, Supplement 4* (A/63/4). Information about the cases before the International Court of Justice during 2007 is contained in chapter VII below.

[278] For more information regarding the States that have made declarations recognizing the compulsory jurisdiction of the Court, see chapter I of *Multilateral Treaties Deposited with the Secretary-General*, available on the website http://treaties.un.org/Pages/ParticipationStatus.aspx.

special agreement, in relation to any other State accepting the same obligation and on condition of reciprocity, the jurisdiction of the International Court of Justice, over all disputes arising on and after 15 September 1958 with regard to situations or facts subsequent to the same date and being not settled by other means of peaceful settlement.

This declaration does not apply to disputes which the parties thereto have agreed or shall agree to refer for final and binding decision to arbitration or judicial settlement.

This declaration does not apply to any dispute in respect of which any other party to the dispute has accepted the compulsory jurisdiction of the International Court of Justice only in relation to or for the purpose of the dispute; or where the acceptance of the Court's compulsory jurisdiction on behalf of any other party to the dispute was deposited or notified less than twelve months prior to the filing of the application bringing the dispute before the Court.

This declaration shall remain in force for a period of five years and thereafter until it may be terminated by a written notice.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

9 July 2007.

[*Signed*] Kenzo Oshima
Permanent Representative of Japan
to the United Nations"

(c) General Assembly

At its sixty-second session, the General Assembly adopted on 1 November 2007, without reference to a Main Committee, decision 62/509, in which the Assembly took note of the report of the International Court of Justice for the period from 1 August 2006 to 31 July 2007.[279]

On 5 December 2007, the General Assembly adopted resolution 62/39 on the "Follow-up to the advisory opinion of the International Court of Justice on the *Legality of the Threat or Use of Nuclear Weapons*",[280] in which the Assembly underlined once again the unanimous conclusion of the International Court of Justice that there exists an obligation to pursue in good faith and bring to conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.

14. International Law Commission[281]

(a) Membership of the Commission

On 16 November 2006, the General Assembly elected by secret ballot the members of the Commission for the quinquennium 2007 to 2011. The thirty-four members of the International Law Commission were elected according to the pattern set up in paragraph 3 of resolution 36/39 of 18 November 1981. Thus, the allocation of seats on the Commission

[279] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 4* (A/62/4).

[280] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226.

[281] 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.

for the five-year term beginning on 1 January 2007 was as follows: eight nationals from African States; seven nationals from Asian States; four nationals from Eastern European States; seven nationals from Latin American and Caribbean States; and eight nationals from Western European and other States.

The membership of the Commission at its fifty-ninth session consisted of Mr. Ali Mohsen Fetais Al-Marri (Qatar); Mr. Ian Brownlie (United Kingdom of Great Britain and Northern Ireland); Mr. Lucius Caflisch (Switzerland); Mr. Enrique Candioti (Argentina); Mr. Pedro Comissário Afonso (Mozambique); Mr. Christopher John Robert Dugard (South Africa); Ms. Paula Escarameia (Portugal); Mr. Salifou Fomba (Mali); Mr. Giorgio Gaja (Italy); Mr. Zdzisław Galicki (Poland); Mr. Hussein A. Hassouna (Egypt); Mr. Mahmoud D. Hmoud (Jordan); Ms. Marie G. Jacobsson (Sweden); Mr. Maurice Kamto (Cameroon); Mr. Fathi Kemicha (Tunisia); Mr. Roman Anatolyevitch Kolodkin (Russian Federation); Mr. Donald M. McRae (Canada); Mr. Teodor Viorel Melescanu (Romania); Mr. Bernd H. Niehaus (Costa Rica); Mr. Georg Nolte (Germany); Mr. Bayo Ojo (Nigeria); Mr. Alain Pellet (France); Mr. A. Rohan Perera (Sri Lanka); Mr. Ernest Petrič (Slovenia); Mr. Gilberto Vergne Saboia (Brazil); Mr. Narinder Singh (India); Mr. Eduardo Valencia-Ospina (Colombia); Mr. Edmundo Vargas Carreño (Chile); Mr. Stephen C. Vasciannie (Jamaica); Mr. Marcelo Vázquez-Bermúdez (Ecuador); Mr. Amos S. Wako (Kenya); Mr. Nugroho Wisnumurti (Indonesia); Ms. Hanqin Xue (China); and Mr. Chusei Yamada (Japan).

(*b*) Fifty-ninth session of the Commission

The International Law Commission held the first part of its fifty-ninth session from 7 May to 5 June and the second part of the session from 9 July to 10 August 2007 at its seat at the United Nations Office at Geneva.[282] The Commission considered the following topics.

Concerning the topic "Reservations to Treaties", the Commission considered the eleventh and twelfth reports[283] of the Special Rapporteur, Mr. Alain Pellet, on the formulation and withdrawal of acceptances and objections and on the procedure for acceptances of reservations respectively, and referred to the Drafting Committee 35 draft guidelines in this regard. The Commission also adopted nine draft guidelines, together with their respective commentaries, on the incompatibility of a reservation with the object and purpose of the treaty; determination of the object and purpose of the treaty; vague or general reservations; reservations to a provision reflecting a customary norm; reservations contrary to a rule of *jus cogens;* reservations to provisions relating to non-derogable rights; reservations relating to internal law; the reservations to general human rights treaties and reservations to treaty provisions concerning dispute settlement or the monitoring of the implementation of the treaty.

Concerning the topic "Shared Natural Resources", the Commission considered the fourth report[284] of the Special Rapporteur (Mr. Chusei Yamada), which focused on the relationship between the work on transboundary aquifers and any future work on oil and gas, and recommended that the Commission should proceed with the second reading on

[282] For the report of the International Law Commission on the work of its fifty-ninth session, see *Official Records of the General Assembly, Sixty-second Session, Supplement No. 10* (A/62/10).

[283] A/CN.4/574 and A/CN.4/584.

[284] A/CN.4/580.

the draft articles on the law of transboundary aquifers independently of any future consideration of oil and gas. The Commisison also established a Working Group on Shared Natural Resources, under the chairmanship of Mr. Enrique Candioti, to assist the Special Rapporteur in considering his future programme of work, taking into account the views expressed in the Commission. It was also decided to circulate the questionnaire prepared by the Working Group and addressed to governments asking for information on their practice regarding oil and gas.

Concerning the topic "Expulsion of aliens", the Commission considered the second and third reports[285] of the Special Rapporteur, Mr. Maurice Kamto,, dealing with the scope of the topic and definitions, as well as with certain provision limiting the right of a State to expel an alien. The Commission also decided to refer to the Drafting Committee seven draft articles.

With regard to the topic "Effects of armed conflicts on treaties", the Commission considered the third report[286] of the Special Rapporteur on the topic, Mr. Ian Brownlie, and decided to establish a Working Group under the chairmanship of Mr. Lucius Caflish to provide further guidance regarding several issues identified by the Commission, namely: the matters related to the scope of the draft articles; the question concerning draft articles 3, 4 and 7 as proposed by the Special Rapporteur in his third report; and the other matters raised during the debate in the plenary. The Commission also decided to refer to the drafting Committee some draft articles, together with the guidance recommended by the Working Group. The Commission also approved the recommendation of the Working Group to circulate a note to international organizations requesting information about their practice with regard to the effect of armed conflicts on treaties involving them.

As regards the topic "Responsibility of international organizations", the Commission considered the fifth report[287] of the Special Rapporteur, Mr. Giorgio Gaja, which focused on content of the international responsibility of an international organization, as well as written comments received from international organizations.[288] The Commission decided to refer 15 draft articles to the Drafting Committee and later adopted them, together with the commentaries thereto.

Concerning the topic "The obligation to extradite or prosecute (*aut dedere aut judicare*), the International Law Commission considered the second report[289] of the Special Rapporteur, Mr. Zdzislaw Galicki, containing one draft article on the scope of application and a proposal of plan for further development, as well as comments and information received from Governements.[290]

Finally, the Commission decided to include on its programme of work the topic "Protection of persons in the event of disasters and appointed Mr. Eduardo Valencia-Ospina as Special Rapporteur, as well as the topic "Immunity of State officials from foreign criminal jurisdiction" with Mr. Roman A. Kolodkin as Special Rapporteur. The Commission also

[285] A/CN.4/573 and Corr. 1 and A/CN.4/581.

[286] A/CN.4/578.

[287] A/CN.4/583.

[288] A/CN.4/545, A/CN.4/547, A/CN.4/556, and A/CN.4/568 and Add.1 and A/CN.4/582.

[289] A/CN.4/585 and Corr.1.

[290] A/CN. 4/579 and Add.1–4.

decided to establish an open-ended Working Group on the "Most-favoured-Nation clause" under the chairmanship of Mr. Donald McRae (Canada) to examine the possibility to include this topic in its long-term programme of work.

(c) Sixth Committee

The Sixth Committee considered the agenda item 82 entitled "the Report of the International Law Commission on the work of its fifty-ninth session" at its 18th to 26th and 28th meetings, from 29 October to 6 November and on 19 November 2007.

The Chairman of the International Law Commission at its fifty-ninth session, Mr. Ian Brownlie, introduced the report of the Commission: chapters I to III, VI to VIII and X at the 18th meeting on 29 October, and chapters IV, V and IX at the 22nd meeting, on 1 November 2007.

At the 28th meeting of the Committee, on 19 November 2007, the representative of Morocco, on behalf of the Bureau, introduced a draft resolution entitled "Report of the International Law Commission on the work of its fifty-ninth session",[291] which was adopted without a vote at the same meeting.

(*d*) General Assembly

On 6 December 2007, the General Assembly adopted, on the recommendation of the Sixth Committee,[292] resolution 62/66 entitled "Report on the work of the International Law Commission on the work of its fifty-ninth session". In the said resolution, the Assembly took note of the report of the International Law Commission and recommended that the Commission continue its work on the topics in its current programme, taking into account the comments and observations of governments, whether submitted in writing or expressed orally in debates in the General Assembly.

Furthermore, the Assembly drew the attention of Governments to the importance for the Commission of having their views on the various aspects involved in the topics of the Reservations to treaties; Shared natural resources; Expulsion of aliens; the Responsibility of international organizations; and the Obligation to extradite or prosecute (*aut dedere aut judicare*). It also invited governments to provide information to the International Law Commission regarding their practice with regard to the topics "Expulsion of aliens" and "The obligation to extradite or prosecute (*aut dedere aut judicare),* "Effects of armed conflicts on treaties", as well as their comments and observations on the draft articles and commentaries on the law of transboundary aquifers adopted on first reading by the Commission at its fifty-eighth session. Further, the Assembly took note of the decision of the Commission to include the topics "Protection of persons in the event of disasters" and "Immunity of State officials from foreign criminal jurisdiction" in its programme of work. It finally requested the Secretary-General to establish a trust fund to accept voluntary contributions so as to address the backlog relating to the *Yearbook of the International Law Commission.*

[291] A/C.6/62/L.18.

[292] A/62/450.

15. United Nations Commission on International Trade Law

(*a*) United Nations Commission on International Trade Law[293]

The United Nations Commission on International Trade Law (UNCITRAL) held its fortieth session in Vienna in two parts from 25 June to 12 July (part I) and from 10 to 14 December 2007 (part II). The Commission adopted the report of its fortieth session (part I)[294] on 6 July and the report of its resumed fortieth session (part II)[295] on 14 December 2007.

During the first part of the session, the Commission took note of the reports of Working Group VI (Security Interests) on its eleventh[296] and twelfth[297] sessions, at which the Group continued its work on developing a legislative guide on secured transactions. The Commission decided that future work should be undertaken with a view to preparing an annex to the draft Guide on certain types of securities, taking into account work by other organizations, in particular UNIDROIT. The Commission decided to entrust Working Group VI with the preparation of an annex to the draft Guide dealing specifically with security rights in intellectual property and requested the Secretariat to consider possible work on financial contracts at a future session. During its resumed session, the Commission adopted the UNCITRAL Legislative Guide on Secured Transactions and authorized the Secretariat to finalize the text of the Guide pursuant to deliberations of that session. The Commission recommended that all States give favourable consideration to the Legislative Guide when they revise or adopt their national laws, and requested the Secretary-General to ensure broad dissemination of the text to Governments and other interested institutions.

The Commission took note of the reports of Working Group I (Procurement) on its tenth[298] and the eleventh[299] sessions, at which the Group continued its work on the elaboration of proposals for the revision of the Model Law on Procurement of Goods, Construction and Services. The Commission further noted the topics considered by the Working Group, including the use of electronic means of communication in the procurement process, aspects of the publication of procurement-related information and forthcoming procurement opportunities, electronic reverse auctions, abnormally low tenders, and framework agreements. The Commission decided to consider the Group's drafted materials on framework agreements at its next session. It also took note of the Group's decision to add the issue of conflicts of interest to the list of topics to be considered in the revision of the Model Law and its Guide to Enactment.

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[293] Detailed information and documents regarding the work of he Commission may be found on the Commission's website at http://www.uncitral.org/uncitral/en/index.html.

[294] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 17* (A/62/17), Part I.

[295] *Ibid.*, Part II.

[296] A/CN.9/617.

[297] A/CN.9/620.

[298] A/CN.9/615.

[299] A/CN.9/623.

The Commission also considered reports of Working Group II (Arbitration and Conciliation) on its forty-fifth[300] and forty-sixth[301] sessions. It commended the Working Group for the progress made on the revision of the UNCITRAL Arbitration Rules. It was agreed to maintain the topic of online dispute resolution on the agenda of the Working Group and to consider, at least in the initial phase, the implications of electronic communications in the context of the revision of the UNCITRAL Arbitration Rules.

In the context of the ongoing project to monitor the legislative implementation of the 1958 New York Convention,[302] the Commission was informed of a written report to be presented at its forty-first session in 2008, on the occasion of the fiftieth anniversary of the New York Convention. The Commission also supported a proposal that the recommendation adopted by the Commission at its thirty-ninth session in 2006 regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the New York Convention, be circulated to States in order to seek comments on the impact of that recommendation in their jurisdictions.

The Commission discussed reports of Working Group III (Transport Law) on its eighteenth[303] and nineteenth[304] sessions. At those sessions, the Group largely completed its second reading and commenced its third reading of the draft Convention on the carriage of goods [wholly or partly] [by sea]. It made significant progress on such issues as transport documents and electronic transport records, shipper's liability for delay, time for suit, limitation of the carrier's liability, the relationship of the draft Convention with other conventions, general average, jurisdiction and arbitration. Some serious concerns were raised regarding the treatment of certain substantive issues in the draft Convention, such as freedom of contract in volume contracts, and it was suggested that those issues should receive further examination prior to finalization of the draft Convention.

The Commission had before it the reports of Working Group V (Insolvency Law) on its thirty-first[305] and thirty-second[306] sessions, which reflected the progress made with regard to consideration of the treatment of enterprise groups in insolvency. The Commission took note of the Working Group's agreement that the Insolvency Guide and the UNCITRAL Model Law on Cross-Border Insolvency provided a sound basis for the unification of insolvency law, and that the current work on enterprise groups was intended to complement those texts, not to replace them. It also noted concerns with respect to some components of that work, in particular substantive consolidation and its effect on the separate identity of individual members of a corporate group. In addition, the possibility of submitting a solvent member of an enterprise group to collective procedures was seriously questioned.

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[300] A/CN.9/614.

[301] A/CN.9/619.

[302] Convention on the Recognition and Enforcement of Foreign Arbitral Awards. United Nations, *Treaty Series,* vol. 330, p. 3.

[303] A/CN.9/616.

[304] A/CN.9/621.

[305] A/CN.9/618.

[306] A/CN.9/622.

With regard to case law on UNCITRAL texts (CLOUT) and digests of case law, the Commission noted that as of 18 April 2007, 63 issues of compiled case-law abstracts from the CLOUT system had been prepared for publication, dealing with 686 cases, relating mainly to the United Nations Sales Convention[307] and the UNCITRAL Model Law on International Commercial Arbitration. The Commission expressed its appreciation to the national correspondents and other contributors for developing the CLOUT system. It noted that the digest of case law on the United Nations Sales Convention, published in December 2004, had been reviewed and edited, and that the revised draft would be presented to the CLOUT national correspondents meeting on 5 July 2007.

(*b*) General Assembly

On 6 December 2007, the General Assembly adopted resolution 62/64, on the recommendation of the Sixth Committee, in which it took note of the report of the Commission on the work of the first part of its fortieth session, commended the Commission for the progress made in its work on secured transactions, procurement, transport law, arbitration, 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.

16. Legal questions dealt with by the Sixth Committee and other related subsidiary bodies of the General Assembly

During the sixty-second 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 2007.[308] The resolutions of the General Assembly described in this section were all adopted on the recommendation of the Sixth Committee[309] and without a vote.

(*a*) Responsibility of States for internationally wrongful acts

The draft articles on the responsibility of States for internationally wrongful acts were prepared by the International Law Commission, and were submitted to the General

[307] United Nations Convention on Contracts for the International Sales of Goods, United Nations, *Treaty Series* , vol. 1489, p. 3.

[308] 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/law/lindex.htm.

[309] 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 in 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.

Assembly at its fifty-sixth session, in 2001.[310] The Assembly took note of the draft articles and commended them to the attention of governments without prejudice to the question of their future adoption or other appropriate action. It also decided to include in the provisional agenda of its fifty-ninth session an item entitled "Responsibility of States for internationally wrongful acts".[311]

Thus, at its fifty-ninth session, the General Assembly requested, in resolution 59/35 of 12 December 2004, the Secretary-General to invite Governments to submit their written comments on any future action regarding the articles; to prepare an initial compilation of decisions of international courts, tribunals and other bodies referring to the articles and to invite governments to submit information on their practice in that regard and to submit that material well in advance of its sixty-second session.[312]

(i) *Sixth Committee*

The Sixth Committee considered the question of responsibility of States for internationally wrongful acts at its 12th, 13th, 27th and 28th meetings, on 23 October, and 12 and 19 November 2007.[313]

It was noted during the general debate, with reference to the compilation prepared by the Secretary-General[314] that the articles on State responsibility had become an authoritative statement of the rules on State responsibility and were being extensively referred to in practice.

Some delegations praised the International Law Commission for its codification of the rules on State responsibility and its strengthening of the concepts of *jus cogens* and the international community as a whole. Support was expressed for the reference in the articles to a special regime of responsibility for serious breaches of obligations under peremptory norms of general international law. Critical observations were made on the articles referring to countermeasures and the invocation of responsibility by States other than the injured State, on the lack of any dispute settlement mechanism, and on the primary role attributed in the articles to state of necessity as a measure precluding wrongfulness.

Regarding future action on the articles, a number of delegations considered that negotiations on a convention would reopen controversial points and jeopardize the delicate balance built in the articles. They also pointed out that an ensuing convention might be ratified only by a small number of States. Of these delegations, some supported the adoption of a resolution endorsing the articles, while others proposed that a decision on future action be postponed for a few years to ensure further consolidation of the articles. It was also suggested that the General Assembly could commend once again the articles to the attention of governments and express its satisfaction that the articles were being extensively referred

[310] See Report of the International Law Commission on the work of its fifty-third session, *Official Records of the General Assembly, Supplement No. 10* (A/56/10).

[311] General Assembly resolution 56/83 of 12 December 2001.

[312] General Assembly resolution 59/35 of 2 December 2004.

[313] For the report of the Sixth Committee, see A/62/446. For the summary records, see A/C.6/62/SR.12, 13, 27 and 28.

[314] A/62/62, Corr.1 and Add.1.

to in practice. Another proposal was that the General Assembly adopt a declaration with the articles and consider the adoption of a convention at a later stage.

Other delegations favoured an immediate decision on the future of the articles, emphasizing that the adoption of a convention would be the most logical and preferable outcome of the work of the International Law Commission and would ensure legal certainty in the field. They proposed the convening without delay of an international conference to this end. Some delegations, while supporting the adoption of a convention, proposed the creation of an *ad hoc* committee or a working group in the context of the General Assembly with a mandate to discuss the issue.

The proposal was also made that the General Assembly request once again that the Secretary-General invite governments to submit their comments on future action on the articles, and that he submit, in due course, an updated version of the compilation referred to above.

Some other delegations warned against any further action on the articles and opposed their adoption through a convention.

At the 27th meeting, on 12 November 2007, the representative of Poland, on behalf of the Bureau, introduced a draft resolution entitled "Responsibility of States for internationally wrongful acts". At its 28th meeting, on 19 November 2007, the Committee adopted the draft resolution without a vote.[315]

(ii) *General Assembly*

The General Assembly adopted resolution 62/61, entitled "Responsibility of States for internationally wrongful acts", in which it commended once again the articles on responsibility of States for internationally wrongful acts to the attention of Governments, without prejudice to the question of their future adoption or other appropriate action. It also requested the Secretary-General to invite governments to submit their written comments on any future action regarding the articles, to update the compilation of decisions of international courts, tribunals and other bodies referring to the articles, and to invite governments to submit information on their practice in this regard. The Assembly requested the Secretary-General to submit this material well in advance of its sixty-fifth session.

(*b*) United Nations programme of assistance in the teaching, study, dissemination and wider appreciation of international law

The United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law was established by the General Assembly at its twentieth session, in 1965,[316] to provide direct assistance in the field of international law by means of fellowship programmes, regional courses and symposia in international law, as well as through the preparation and dissemination of publications and other information

[315] See the report of the Sixth Committee, A/62/446.

[316] General Assembly resolution 2099 (XX) of 20 December 1965.

relating to international law. The Assembly authorized the continuation of the Programme at its annual sessions until its twenty-sixth session, and thereafter biennially.[317]

(i) *Sixth Committee*

The Sixth Committee considered the item at its 27th and 28th meetings, on 12 and 19 November 2007.[318]

At the 27th meeting, the Chairman of the Advisory Committee on the Programme of Assistance, introduced and orally revised a draft resolution entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law".[319] At its 28th meeting, on 19 November 2007, the Committee adopted the draft resolution, as orally revised, without a vote.

(ii) *General Assembly*

On 6 December 2007, General Assembly adopted resolution 62/62, in which it took note with satisfaction of the report of the Secretary-General on the implementation of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law.[320] It approved the guidelines and recommendations contained in section III of the report, and authorized the Secretary-General to carry out in 2006 and 2007 the activities specified in the said report. Furthermore, the Assembly noted with satisfaction the efforts made to revitalize the United Nations Audiovisual Library of International Law, and urged States to make voluntary contributions to enable the development and maintenance of the Library.

The General Assembly also decided to appoint the following twenty-five Member States as members of the Advisory Committee on the Programme of Assistance for a period of four years beginning on 1 January 2008: Canada, Colombia, Cyprus, Czech Republic, Ethiopia, France, Germany, Ghana, Iran (Islamic Republic of), Italy, Jamaica, Kenya, Lebanon, Malaysia, Mexico, Nigeria, Pakistan, Portugal, Russian Federation, the Sudan, Trinidad and Tobago, Ukraine, United Republic of Tanzania, United States of America and Uruguay.

(*c*) Criminal accountability of United Nations officials and experts on mission

At its sixty-first session, in 2006, the General Assembly decided that the agenda item entitled "Comprehensive review of the whole question of peacekeeping operations in all their aspects", which had been allocated to the Special Political and Decolonization Committee (Fourth Committee), should also be referred to the Sixth Committee for discus-

[317] For further information on the Programme, see http://www.un.org/law/programmeofassistance/.

[318] For the report of the Sixth Committee, see A/62/447. For the summary records, see A/C.6/62/SR.27 and 28.

[319] A/C.6/62/L.12.

[320] A/62/503.

sion of 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.[321] At the same session, the General Assembly decided to establish an *ad hoc* committee for the purpose of considering the report of the Group of Legal Experts, in particular its legal aspects, and decided to include in the provisional agenda of its sixty-second session the item entitled "Criminal accountability of United Nations officials and experts on mission".[322]

(i) *Sixth Committee*

The Sixth Committee considered the topic of criminal accountability of United Nations officials and experts on mission at its 6th, 7th, 17th, 27th and 28th meetings, on 15 and 26 October, and on 12 and 19 November 2007.[323]

At the 6th meeting, on 15 October 2007, the Chairperson of the Ad Hoc Committee on Criminal Accountability of United Nations officials and experts on mission introduced the report of the Ad Hoc Committee.[324] On the recommendation of the Ad Hoc Committee, the Sixth Committee established a working group with a view to continuing the consideration of the report of the Group of Legal Experts. The Working Group held four meetings, on 15, 16, 17 and 23 October. On 26 October, the Chairperson of the Working Group presented an oral report on the work of the Working Group to the Committee.[325]

During the general debate, several delegations underlined the seriousness of the problem and the fact that criminal conduct by United Nations officials and experts on mission constituted a breach of trust which affects the image, credibility and efficiency of the organization. The need for eliminating impunity and implementing a zero-tolerance policy with respect to serious crimes committed by United Nations personnel was emphasized. Several delegations also recognized the existence of jurisdictional gaps that may lead to impunity, especially in situations where the host State was unable to exercise its criminal jurisdiction with respect to an alleged offender, and where the State of nationality of the alleged offender was not in a position to assert its jurisdiction over crimes committed in the host State.

Some delegations supported the elaboration of a convention requiring the State of nationality to establish criminal jurisdiction over its nationals. It was noted that a convention would provide clarity on the basis for the exercise of criminal jurisdiction and on the categories of individuals and crimes subject to that jurisdiction. Moreover, it was stated that a convention would facilitate cooperation between States, and between States and the United Nations, in the field of investigations, extradition, mutual assistance and information-sharing. The draft convention presented by the Group of Legal Experts was viewed by some delegations as a good basis for discussion. Some other delegations considered it premature for the Sixth Committee to discuss the adoption of a convention

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[321] A/60/980.

[322] General Assembly resolution 61/29 of 4 December 2006.

[323] For the report of the Sixth Committee, see A/62/448. For the summary records, see A/C.6/62/SR.6, 7, 17 27 and 28.

[324] A/62/54. See also the Secretariat's note, contained in document A/62/329.

[325] A/C.6/62/SR. 17.

and suggested that the Committee focus its work on substantive matters which required further consideration. Doubts were raised on the necessity of a convention in order to address the current problems. In this regard, it was observed that more information was needed from the Secretariat on the practical problems to be addressed, before starting to negotiate a convention.

Some delegations believed that the response to the problem should not be limited to United Nations personnel on peacekeeping operations, but should be extended to all United Nations personnel finding themselves in the area of a United Nations operation. It was also held that personnel engaged in a Chapter VII operation should be covered. According to another view, efforts should focus, for the time being, on peacekeeping personnel. While several delegations considered that military members of national contingents should not be covered, the view was expressed in favour of their inclusion within the present topic. Conflicting opinions were expressed on the inclusion of military observers and members of civilian police.

Some delegations were of the view that the crimes to be covered were not only those against the person, but also included serious economic crimes. It was observed that the notion of "serious crime" needed to be clearly defined and that reference to a threshold of punishment may not be sufficient in this regard.

According to some delegations, priority should be given to the jurisdiction of the host State, while the jurisdiction of the State of nationality should be envisaged only in case of incapacity by the host State to exercise its jurisdiction in compliance with recognized standards of due process and human rights. According to another view, priority should be given to the exercise of jurisdiction by the State of nationality of the alleged offender. It was observed that the establishment of a universal jurisdiction regime was probably unnecessary in order to address the current problems.

Several delegations supported the adoption of short-term measures as suggested by the Secretary-General, including a General Assembly resolution calling upon States to establish jurisdiction over their nationals who have allegedly committed a serious crime in the context of a United Nations operation. Some delegations underlined the importance of adopting preventive measures, including by means of appropriate trainings. It was proposed that a policy of aid to victims be set up. While some delegations stressed the need for improving the Organization's capacity with respect to the collection of evidence, concern was also expressed about the use in criminal proceedings of evidence gathered for purposes of administrative investigations. It was also stated that the Secretariat should play a greater role by strengthening its mechanisms of oversight and discipline.

Some delegations called for a clearer and more uniform practice with regard to the waiver of immunities of United Nations personnel. A proposal was made that the scope of such immunities be restricted.

Finally, some delegations pointed to the need for cooperation on this item between the Sixth Committee and the Fourth Committee, as well as the Special Committee on Peacekeeping Operations. Support was expressed for the convening of an Ad Hoc Committee to continue the consideration of this topic.

At the 27th meeting, on 12 November 2007, the representative of Greece, on behalf of the Bureau, introduced a draft resolution entitled "Criminal accountability of United

Nations officials and experts on mission".[326] At the same meeting, the Committee adopted the draft resolution without a vote.[327]

(ii) *General Assembly*

In its resolution 62/63, the General Assembly strongly urged States to take all appropriate measures to ensure that crimes by United Nations officials and experts on mission do not go unpunished and that the perpetrators of such crimes are brought to justice, without prejudice to the privileges and immunities of such persons and the United Nations under international law, and in accordance with international human rights standards, including due process. The Assembly also urged all States to consider establishing, to the extent that they have not yet done so, jurisdiction, particularly over crimes of a serious nature, as known in their existing domestic criminal laws, committed by their nationals while serving as United Nations officials or experts on mission. The Assembly further encouraged all States to cooperate with each other and with the United Nations in the exchange of information and in facilitating the conduct of investigations and, as appropriate, prosecution of United Nations officials and experts on mission who are alleged to have committed crimes of a serious nature, in accordance with their domestic laws and applicable United Nations rules and regulations. Furthermore, it requested the Secretary-General to bring credible allegations that reveal that a crime may have been committed by United Nations officials and experts on mission to the attention of the States against whose nationals such allegations are made, and to request from those States an indication of the status of their efforts to investigate and, as appropriate, prosecute crimes of a serious nature, as well as the types of appropriate assistance States may wish to receive from the Secretariat for the purposes of such investigations and prosecutions. Finally, the Assembly requested the Secretary-General to report to it at its sixty-third session on the implementation of the present resolution on the basis of information received from Governments.

(*d*) Diplomatic protection

The International Law Commission adopted at its fifty-eighth session, in 2006, the draft articles on diplomatic protection, and recommended in its report to the General Assembly that the Assembly elaborate a convention on the basis of the draft articles.[328] At its sixty-first session, during the same year, the General Assembly took note of the draft articles, and invited Governments to submit comments concerning the recommendations of the Commission.[329]

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[326] A/C.6/62/L.10.

[327] Report of the Sixth Committee, A/62/448. For the summary records, see A/C.6/62/SR.28.

[328] International Law Commission, Report on the work of its fifty-eighth session, *Official Records of the General Assembly, Sixty-First Session, Supplement No. 10* (A/61/10).

[329] General Assembly resolution 31/35 of 4 December 2006.

(i) *Sixth Committee*

The Sixth Committee considered this agenda item entitled "Diplomatic Protection" at its 10th, 27th and 28th meetings, on 19 October and on 12 and 19 November 2007.[330]

During the general debate, all speakers expressed their gratitude to the International Law Commission, and its Special Rapporteur, Mr. John Dugard of South Africa, for the completion of the work on the draft articles on diplomatic protection.

As regards the recommendation of the Commission that the General Assembly adopt an international convention on the basis of the draft articles, several delegations expressed support for the adoption of the draft articles in the form of a convention. It was proposed that an ad hoc committee be established with a mandate to elaborate an international convention. Other similar suggestions included the establishment of a working group of the Sixth Committee to consider the draft articles.

A number of delegations preferred to allow more time for reflection and for the evolution of State practice on the basis of the draft articles. Proposals included to maintain the item of the agenda of the General Assembly, including on a triennial basis, or revisiting the topic in 2012, and to take note of the draft articles attaching them to the General Assembly's resolution and commending them to Governments without prejudice to any future action to be taken on them. Opposition was expressed to attaching the draft articles to a General Assembly resolution, which might render them mere "guidelines".

In terms of substantive suggestions, it was proposed that draft article 6 be refined to clarify that once diplomatic protection has been exercised by one State, another State of nationality would be precluded from doing so too. It was noted that draft article 7, on multiple nationality, had created confusion in the area of consular law. It was maintained that the requirement of preponderance needed to be reconsidered in light of globalization. The view was also expressed that draft article 8, on the protection of refugees and stateless persons, set too high a threshold. Concerns were further expressed regarding draft articles 11 and 12 on the protection of shareholders of companies. Other suggestions included deleting draft article 13 on the protection of other legal persons and draft article 19 on "recommended practice". It was also suggested that a stronger emphasis be placed on the "right" of the individual to diplomatic protection, especially in the context of *jus cogens* violations.

At the 27th meeting, on 12 November 2007, the delegation of South Africa, on behalf of the Bureau, introduced a draft resolution, entitled "Diplomatic protection".[331] At the 28th meeting, on 19 November, the Committee adopted this draft resolution without a vote.[332]

(ii) *General Assembly*

In its resolution 62/67, adopted on 6 December 2007, the General Assembly welcomed the conclusion of the work of the International Law Commission on diplomatic protection and its adoption of the draft articles and commentary on the topic. It also commended

[330] Report of the Sixth Committee, A/62/451. For the summary records, see A/C.6/62/SR.10, 27 and 28.

[331] A/C.6/62/L.13.

[332] Report of the Sixth Committee, A/62/451.

the articles on diplomatic protection presented by the Commission to the attention of Governments, and invited them to submit in writing to the Secretary-General any further comments concerning the recommendation by the Commission to elaborate a convention on the basis of the articles. The Assembly decided to include in the provisional agenda of its sixty-fifth session an item entitled "Diplomatic protection" and to further examine, within the framework of a working group of the Sixth Committee, in light of the written comments of governments, as well as views expressed in the debates held at the sixty-second session of the General Assembly, the question of a convention on diplomatic protection, or any other appropriate action, on the basis of the above-mentioned articles.

(*e*) Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm

Following a recommendation by the General Assembly in resolution 3071 (XXVIII) of 30 November 1973, the International Law Commission included the topic "International liability for injurious consequences arising out of acts not prohibited by international law" in its programme of work in 1978.

In 1997, the Commission decided to deal first with prevention aspects of the topic under the subtitle "Prevention of transboundary damage from hazardous activities". The Commission at its fifty-third session, in 2001, completed the draft articles on prevention of transboundary harm from hazardous activities and recommended to the General Assembly the elaboration of a convention on the basis of the draft articles.[333]

In 2002, at its fifty-fourth session, the Commission resumed work on the liability aspects of the topic under the subtitle "International liability in case of loss from transboundary harm arising out of hazardous activities".[334] At its fifty-eighth session, in 2006, the Commission completed the liability aspects by adopting draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities (see A/61/10, chap. V.E), and recommended to the General Assembly that it endorse the draft principles by a resolution and urge States to take national and international action to implement them.[335]

(i) *Sixth Committee*

The Sixth Committee considered the item entitled "Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm" at its 12th and 28th meetings, on 23 October and 19 November 2007.[336]

During the general debate, the main focus of the interventions was on the final form that two draft draft instruments should take. However, some delegations also commented

[333] Report of the International Law Commission, *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10).

[334] Report of the International Law Commission, *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10).

[335] Report of the International Law Commission, *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10, chap.V.E).

[336] For the report of the Sixth Committee, see A/62/452. For the summary records, see A/C.6/62/SR.12 and 28.

on the substantive aspects of the draft articles on prevention of transboundary harm from hazardous activities and the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities.

It was recalled that the International Law Commission had recommended that the General Assembly adopt an international convention on the basis of the draft articles on prevention, while the draft principles be endorsed in a resolution. In this regard, some delegations expressed support for the adoption of the draft articles in the form of a convention and were of the view that such a convention could also include elements of the draft principles on the allocation of loss. Preference was voiced for adopting the two texts as non-binding instruments. In addition, a view was expressed against the elaboration of a convention. It was further suggested that the General Assembly take note of the work on the two aspects of the topic and encourage States to make use of the articles and principles in the context of specific situations. Some other delegations suggested that the Assembly welcome the draft articles on prevention and commend them to the attention of governments without prejudice to their adoption as a convention, and considered that the General Assembly should encourage States to be guided by both the articles and the principles in the conduct of their relations.

According to another view, the issues of prevention and liability should be dealt with together on equal footing and it was not considered appropriate to advance further on the topic until the law on international responsibility of States for internationally wrongful acts had been consolidated.

Some other delegations were of the opinion that future action should be deferred on the draft texts to allow more time for reflection and for the further evolution of State practice on these issues. In this regard, it was suggested that the question be revisited within 3 to 5 years. It was also suggested that a working group of the Sixth Committee be established to clarify some of the substantive difficulties highlighted during the debate and thereafter consider the final form of the draft principles.

At the 28th meeting, on 19 November 2007, the representative of New Zealand, on behalf of the Bureau, introduced a draft resolution entitled "Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm",[337] which was adopted at the same meeting without a vote.[338]

(ii) *General Assembly*

In its resolution 62/68, adopted on 6 December 2007, the General Assembly welcomed the conclusion of the work of the International Law Commission on prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm and its adoption of the respective draft articles and draft principles and commentaries on the subjects. The Assembly commended the articles on prevention of transboundary harm from hazardous activities to the attention of governments, without prejudice to any future action, as recommended by the Commission regarding the articles, and commended once again the principles on the allocation of loss in the case of transboundary harm aris-

[337] A/C.6/62/L.19.

[338] Report of the Sixth Committee, A/62/452.

ing out of hazardous activities to the attention of governments, without prejudice to any future action, as recommended by the Commission regarding the principles. Further, it invited governments to submit comments on any future action, in particular on the form of the respective articles and principles, bearing in mind the recommendations made by the Commission in that regard, including in relation to the elaboration of a convention on the basis of the draft articles, as well as on any practice in relation to the application of the articles and principles. Finally, the Assembly decided to include in the provisional agenda of its sixty-fifth session the item entitled "Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm".

(*f*) 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*

The item entitled "Need to consider suggestions regarding the review of the Charter of the United Nations" was included in the agenda of the twenty-fourth session of the General Assembly, in 1969, at the request of Colombia.[339] 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 proposals that Governments might make with a view to enhancing the ability of the United Nations to achieve its purposes, as well as other suggestions for the more effective functioning of the United Nations that might not require amendments to the Charter.[340]

Meanwhile, another item, entitled "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 in relations between States", was included in the agenda of the twenty-seventh session of the General Assembly at the request of Romania.[341]

At its thirtieth session, 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.[342] Since its thirtieth session, the General Assembly has reconvened the Special Committee every year.

In 2007, the Special Committee from 7 to 15 March met at United Nations Headquarters, in accordance with General Assembly resolution 61/38 of 4 December 2004. The topics considered included the maintenance of international peace and security, in particular the question of sanctions, and the strengthening of the role of the Organization; the peaceful settlement of disputes; the proposals concerning the abolition of the Trusteeship Council,

[339] A/7659.

[340] General Assembly resolution 3349 (XXIX) of 17 December 1974.

[341] A/8792.

[342] General Assembly resolution 3499 (XXX) of 15 December 1975.

the publications *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council,* as well as the working methods of the Committee and the identification of new subjects.

At its 252nd meeting, on 15 February 2007, the Special Committee adopted the report of its 2007 session, in which it presented a number of recommendations to the General Assembly. [343]

(ii) *Sixth Committee*

The Sixth Committee considered this item at its 8th, 9th, 27th and 28th meetings, on 16 and 17 October and on 12 and 19 November 2007.[344]

At the 8th meeting of the Committee, the Chairman of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization introduced the report of the Special Committee.

During the general debate, some delegations expressed the view that sanctions constituted an important tool for the maintenance of international peace and security, but emphasized that they should be clearly defined, targeted, limited in duration and periodically reviewed. Others pointed out that sanctions should only be imposed in conformity with rules of international law, including the Charter of the United Nations, and as a last resort after all peaceful means of settlement of disputes under Chapter VI of the Charter had been exhausted.

Delegations expressed divergent views on the implementation of Article 50 of the Charter, especially regarding the obligation of the Security Council to assist third States affected by sanctions. Some delegations sought the establishment of a mechanism to assist third States at the time of the imposition of sanctions by the Security Council. Other delegations welcomed the progress of work of the Security Council Informal Working Group on General Issues of Sanctions. It was noted in this regard, that currently all sanctions imposed by the Security Council were targeted and that no State had requested assistance in the past 5 years. While acknowledging the efforts made in and outside the United Nations, the need to establish an effective mechanism for listing and de-listing procedures was underlined.

Some Speakers expressed their concerns about the use of unilateral sanctions against some developing States, which, according to them, constituted breaches of international law. A delegation suggested that the International Law Commission should consider the unlawful imposition of sanctions in its work on the Responsibility of International Organizations.

Some speakers expressed support for the consideration of the revised working paper introduced by the Russian Federation[345] in a working group to be established by the Sixth Committee for this purpose. However, the proposed working group could not be established during the current session, and consequently, the proposal was considered in the format of informal consultations.

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[343] *Officials records of the General Assembly, Sixty-second session, Supplement No. 33* (A/62/33).

[344] For the report of the Sixth Committee, see A/62/453. For the summary records, see A/C.6/62/SR.8, 9, 27 and 28.

[345] A/C.6/62/L.6.

At the 27th meeting of the Committee, the representative of Egypt, on behalf of the Bureau, 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".[346] At its 28th meeting, the Committee adopted this draft resolution without a vote.

(iii) *General Assembly*

On 6 December 2007, General Assembly adopted resolution 62/69 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 on the Charter of the United Nations and on the Strengthening of the Role of the Organization.

Furthermore, the Assembly requested that during its next session in 2008, the Special Committee, *inter alia,* continue its consideration of all proposals concerning the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations and also 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.

Finally, the General Assembly commended the Secretary-General for the progress made in the preparation of studies of the *Repertory of Practice of United Nations Organs,* including the increased use of the internship programme of the United Nations and the wider cooperation with academic institutions for this purpose, as well as the progress made towards updating the *Repertoire of the Practice of the Security Council.*

(*g*) The rule of law at the national and international levels

This item was included in the provisional agenda of the sixty-first session at the request of Liechtenstein and Mexico.[347]

At the same session, the General Assembly requested the Secretary-General to seek the views of Member States on matters pertaining to the rule of law at the national and international levels and to submit a report thereon at its sixty-second session, and further 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. It further recommended that the Sixth Committee should annually choose one or two sub-topics to facilitate a focused discussion for the subsequent session, without prejudice to the consideration of the item as a whole.[348]

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[346] A/C.6/62/L.11.

[347] A/61/142.

[348] General Assembly resolution 61/39 of 4 December 2006.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 14th, 15th, 16th and 28th meetings, on 25 and 26 October and on 19 November 2007.[349]

During the general debate, delegations expressed support for the inclusion of this item on the agenda of the Sixth Committee, while indicating that the duplication of work being done in other fora should be avoided. Some delegations were of the view that the Committee should first try to reach a common definition of the rule of law, whereas others considered that the understanding of the concept was sufficiently shared within the Committee, for it to be in a position to start studying further aspects of the topic. Delegations stated that consideration of this item by the Committee should be action-oriented and focused on concrete outcomes.

Delegations welcomed the report of the Secretary-General reflecting the views expressed by Member States on the rule of law,[350] as well as the interim report on the preparation of an inventory of all rule of law activities undertaken by United Nations entities.[351]

The importance of the rule of law both at the national and international levels, and within the Organization itself was emphasized. While some delegations indicated that the General Assembly should give balanced consideration to the national and international aspects of the rule of law, others considered that, as a matter of priority, specific attention should be devoted to what was termed the "international rule of law". Several delegations described their actions to promote the rule of law at the national level and indicated that international assistance in that field should be provided at the request and with the consent of the national authorities.

As to concrete sub-topics that could be chosen to facilitate a focused discussion of the item, during the discussions, delegations suggested the following: technical assistance and capacity-building, especially for the implementation and interpretation of international obligations and in post-conflict situations; implementation in good faith of international obligations; the role of international tribunals in the peaceful settlement of disputes and the review of corresponding provisions in treaties; coordination and effectiveness of rule of law assistance; strengthening and development of criminal justice at the international and national levels; transitional justice at the national level; and identification of the concept and scope of the rule of law at the national and international levels.

At the 28th meeting, on 19 November 2007, the representative of Liechtenstein introduced and orally revised, on behalf of the Bureau, a draft resolution entitled "The rule of law at the national and international levels",[352] which was adopted, as orally revised, and without a vote at the same meeting.[353]

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[349] For the report of the Sixth Committee, see A/62/454. For the summary records, see A/C.6/62/SR.14, 15, 16 and 28.

[350] A/62/121 and Add.1.

[351] A/62/261.

[352] A/C.6/62/L.9.

[353] Report of the Sixth Committee, A/62/454.

(ii) *General Assembly*

On 6 December 2007, General Assembly adopted resolution 62/70, in which it reiterated its request to 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. The Assembly also reiterated its request to the Secretary-General to prepare and submit at its sixty-third session, after having sought the views of Member States, 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. Further, it invited the International Court of Justice, the United Nations Commission on International Trade Law and the International Law Commission to comment, in their respective reports to the General Assembly, on their current roles in promoting the rule of law, and requested the Secretary-General to provide details on the staffing and other requirements for the rule of law unit in the Executive Office of the Secretary-General.

(*h*) Measures to eliminate international terrorism

(i) *Ad hoc Committee established by General Assembly resolution 51/210 of 17 December 1996*

On 17 December 1996, the General Assembly adopted resolution 51/210, in which it 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 2007, the Ad Hoc Committee held its eleventh session on 5, 6 and 15 February 2007, in accordance with the General Assembly resolution 61/40 of 4 December 2006. Its mandate was to continue to elaborate the draft comprehensive convention on international terrorism and continue to discuss the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

The Ad Hoc Committee held its 38th and 39th plenary meetings on 5 and 15 February 2007, respectively.[354] In addition, the coordinator of the comprehensive convention held separate informal consultation and bilateral contacts on the matter.

[354] For the report of the Ad Hoc Committee, see *Official Records of the General Assembly, Sixty-second Session, Supplement No. 37* (A/62/37).

(ii) *Sixth Committee*

The Sixth Committee considered the agenda item entitled "Measures to eliminate international terrorism" at its 3rd to 5th, 16th and 28th meetings, on 10, 11 and 26 October and 19 November 2007.[355]

At its 1st meeting, on 8 October, the Sixth Committee established a Working Group to carry out the mandate of the Ad Hoc Committee established by General Assembly resolution 51/210, as contained in resolution 61/40. The Working Group held three meetings, on 11, 15 and 18 October. Informal consultations were also held on the resolution on this item.

At the 3rd meeting, on 10 October, the Chairman of the Ad Hoc Committee established by General Assembly resolution 51/210 introduced the report of the Ad Hoc Committee,[356] and at the 16th meeting, on 26 October, the Chairman of the Working Group presented an oral report on the work of the Working Group and on the results of the bilateral contacts with delegations which were held intersessionally and on 16 and 17 October.[357]

During the general debate on this item, delegations welcomed the adoption of the United Nations Global Counter-Terrorism Strategy, reiterated their commitment to it and called for enhancing international cooperation to fully implement the Strategy and its plan of action, and the importance of reviewing and updating the Strategy in the light of new developments was underlined. The Sixth Committee was invited to focus on the legal and technical aspects of the matter, including the finalization of the draft comprehensive convention on international terrorism. Delegations acknowledged with appreciation the efforts of the Counter-Terrorism Task Force in promoting the implementation of the Strategy in 2007 and support was expressed for the institutionalization of the Task Force and its funding through the United Nations regular budget.

With regard to the work of the Ad Hoc Committee established by General Assembly resolution 51/210, delegations recalled that the conclusion of the draft comprehensive convention on international terrorism remained a priority for the General Assembly and called for its early conclusion.

At the 28th meeting, on 19 November 2007, the representative of Canada, on behalf of the Bureau, introduced a draft resolution entitled "Measures to eliminate international terrorism".[358] At the same meeting, the Secretary of the Committee made a statement regarding the financial implications of the draft resolution and the Committee adopted this draft resolution without a vote.[359]

(iii) *General Assembly*

On 6 December 2007, the General Assembly adopted resolution 62/71, entitled "Measures to eliminate international terrorism". In the said resolution, the Assembly, *inter alia,*

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[355] For the report of the Sixth Committee, see A/62/455. For the summary records, see A/C.6/62/SR.3, 4, 5, 16 and 28.

[356] A/62/37.

[357] A/C.6/62/SR.16.

[358] A/C.6/62/L.14.

[359] Report of the Sixth Committee, A/62/455.

strongly condemned all acts, methods and practices of terrorism in all its forms and manifestations as criminal and unjustifiable, wherever and by whomsoever committed, and reiterated its call upon all States to adopt further measures in accordance with the Charter of the United Nations and the relevant provisions of international law, including international standards of human rights, to prevent terrorism and to strengthen international cooperation in combating terrorism. The Assembly furher reiterated its call upon all States, with the aim of enhancing the efficient implementation of relevant legal instruments, to intensify, as and where appropriate, the exchange of information on facts related to terrorism and, in so doing, to avoid the dissemination of inaccurate or unverified information and to refrain from financing, encouraging, providing training for or otherwise supporting terrorist activities. Furthermore, the Assembly noted with appreciation and satisfaction that, consistent with the call contained in paragraphs 11 and 12 of resolution 61/40, a number of States became parties to the relevant conventions and protocols referred to therein, thereby realizing the objective of wider acceptance and implementation of those conventions, and, in this regard, welcomed in particular the entry into force on 7 July 2007 of the International Convention for the Suppression of Acts of Nuclear Terrorism.[360]

(*i*) Administration of justice at the United Nations

The item "Administration of Justice at the United Nations" was included in the provisional 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.

On 21 September 2007, the General Assembly, upon the recommendation of the General Committee, decided to include the item "Administration of justice at the United Nations" in its agenda and to allocate it both to the Fifth and Sixth Committees in the light of General Assembly resolution 61/261 of 4 April 2007.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 2nd, 17th and 28th meetings, on 8 and 26 October, and on 19 November 2007.[361]

At its 1st meeting, on 8 October 2007, the Sixth Committee decided to establish a working group on the Administration of justice at the United Nations to fulfil the mandate entrusted to the Committee by General Assembly resolution 61/261 of 4 April 2007. At the same meeting, the Sixth Committee elected Mr. Ganeson Sivagurunathan (Malaysia) as Chairman of the Working Group. The Committee also decided to open the Working Group to all States members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency. The Working Group held eleven meetings from 8 to 19 October and on 25 October 2007. At the 17th meeting, on 26 October 2007, the Chairman of the Working Group presented an oral report on the work of the Working Group.[362]

[360] Convention contained in General Assembly resolution 59/290 of 13 April 2005.

[361] For the report of the Sixth Committee, see A/62/458. For the summary records, see A/C.6/62/SR.2, 17 and 28.

[362] A/C.6/62/SR.17.

During the general debate, delegations supported the implementation of a new system of administration of justice that would ensure the protection of employees' rights while enhancing accountability of employees and managers. The new system should be independent, transparent, professionalized, adequately resourced and decentralized. Support was expressed for the establishment of a two-tier system, although a preference was also expressed for a single tribunal comprising a first instance and an appellate chamber. Several delegations declared their commitment to undertake the necessary efforts in order to implement the new system by 1 January 2009. However, it was also noted that many issues remained to be thoroughly considered.

Delegations pointed to the need for coordination between the work of the Fifth and Sixth Committees on this item. Several delegations underlined the role of the Sixth Committee in providing advice to the Fifth Committee with a view to ensuring respect for the rule of law and due process in the new system; however, it was also observed that the Sixth Committee should take due account of budgetary constraints. It was proposed that the Sixth Committee focus its work on the formal system, including its relation to the informal system and disciplinary procedures, and on the draft elements of statutes for the two instances proposed by the Secretary-General. According to another view, it was premature for the Sixth Committee to begin a detailed consideration of the wording of the statutes. It was suggested that the Sixth Committee consider a certain number of issues, including: the scope *ratione personae* of the new system; legal assistance to, and legal representation of staff; the right to a fair hearing; the implementation of a mechanism of management evaluation to be conducted within a specified time-limit; selection, appointment and dismissal of judges; powers of judges; registries; as well as interim measures for the transitional period.

Divergent views were expressed on the scope *ratione personae* of the new system. While concern was expressed about covering individuals other than staff members, it was also proposed that the new system be made accessible to individual contractors who are currently deprived of access to effective means of dispute resolution, and to experts on mission. It was observed that individuals who would be excluded from the system, such as volunteers and interns, should nevertheless be provided with effective remedies. Concern was expressed about conferring *locus standi* upon staff associations.

Several delegations emphasized the importance of strengthening the role of the Ombusdman and supported the creation of a Mediation Division within the Office of the Ombudsman. The need to preserve the confidentiality of discussions in the informal system, as well as the inadmissibility in the formal system of statements made during the mediation process, were also underlined.

Several delegations supported the establishment of an Internal Justice Council for the selection of judges. Some delegations were of the view that judges of the United Nations Dispute Tribunal should be elected by the General Assembly, instead of being appointed by the Secretary-General as proposed in his report. Divergent views were expressed as to the number of judges that would decide a case on first instance. While some delegations favored decisions by a single judge, other delegations favored a panel of three judges in order to ensure that diversity in nationalities, cultures, religions and legal traditions be duly reflected in the decision-making process.

At the 28th meeting, on 19 November 2007, the representative of Malaysia, on behalf of the Bureau, introduced a draft decision entitled "Administration of justice at the United

Nations".[363] The Secretary of the Committee made a statement regarding the financial implications of this draft decision and thereafter, the Committee adopted the draft decision without a vote.[364]

(ii) *General Assembly*

On 6 December 2007, the General Assembly adopted decision 62/519, in which it took note of the conclusions of the Sixth Committee on the administration of justice at the United Nations following its consideration of the legal aspects of the report of the Secretary-General, and it requested the Secretary-General to respond to the requests for information contained in the conclusions of the Sixth Committee. The Assembly also decided to establish an *Ad Hoc* Committee on the Administration of Justice at the United Nations, to be open to all States Members of the United Nations, members of the specialized agencies or members of the International Atomic Energy Agency, for the purpose of continuing the work on the legal aspects of the item, taking into account the results of the deliberations of the Sixth Committee on the item, previous decisions of the Assembly and any further decisions that the Assembly may take during its sixty-second session prior to the meeting of the *Ad Hoc* Committee.

(j) 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 of America as the host country, 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; and public relations issues with New York as the host city.[365] In 2007, 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 of Great Britain and Northern Ireland and United States of America.

In 2007, the Committee held four meetings, its 232nd meeting, on 5 March 2007; its 233rd meeting, on 9 July 2007; its 234th meeting, on 5 October 2007; its 235th meeting, on 31 October 2007. At its 235th meeting, the Committee approved various recommendations and conclusions dealing with the said matters.[366]

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[363] A/C.6/62/L.22.

[364] Report of the Sixth Committee, A/62/458.

[365] Resolution 2819 (XXVI) of 15 December 1971.

[366] Report of the Committee on Relations with the Host Country, *Official Records of the General Assembly, Sixty-Second Session, Supplement No. 26* (A/62/26).

(ii) *Sixth Committee*

The Sixth Committee considered the item at its 27th meeting, on 12 November 2007.[367] The Chairman of the Committee on Relations with the Host Country introduced the report of the Committee.[368]

During the general debate, 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,[369]of 1946 and the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations[370] of 1947 (Headquarters Agreement), to accord full facilities for the normal functioning of the missions accredited to the United Nations. A reference was also made to instances of travel restrictions, delay in the issuance of entry visas and to the imposition of municipal property and gasoline taxes on diplomatic missions.

The United States of America confirmed its commitment to fulfil its obligations under international law and highlighted, in particular, the success achieved in the implementation of the Parking Programme and the introduction of special screening procedures for diplomats at its airports. It was also pointed out that restrictions on private non-official travel of members of certain missions did not violate international law.

At the 27th meeting, the representative of Cyprus, speaking also on behalf of Bulgaria, Canada, Costa Rica and Côte d'Ivoire, introduced a draft resolution entitled "Report of the Committee on Relations with the Host Country",[371] which was adopted by the Committee without a vote, at the same session.[372]

(iii) *General Assembly*

On 6 December 2007, General Assembly adopted resolution 62/72, in which it endorsed the recommendations and conclusions of the Committee on Relations with the Host Country. The Assembly considered that the maintenance of appropriate conditions for the normal work of the delegations and the missions accredited to the United Nations and the observance of their privileges and immunities were in the interest of the United Nations and all Member States, and it requested the host country to continue to solve, through negotiations, problems that might arise and to take all measures necessary to prevent any interference with the functioning of missions. The Assembly also 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 and if violations occur to ensure that such cases are properly investigated and remedied, in accordance with applicable law.

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[367] For the report of the Sixth Committee, see A/62/459. For the summary records, see A/C.6/62/SR.27.

[368] A/62/26 and Corr.1.

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

[370] United Nations, *Treaty Series*, vol. 11, p. 11.

[371] A/C.6/62/L.15.

[372] Report of the Sixth Committee, A/62/459.

Furthermore, the Assembly noted the problems experienced by some permanent missions in connection with the implementation of the Parking Programme for Diplomatic Vehicles, and welcomed the conduct of the second review of the implementation of this Programme. It also requested the host country to consider removing the remaining travel restrictions imposed by it on staff of certain missions and staff members of the Secretariat of certain nationalities, and 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.

Finally, the Assembly welcomed the exercise by the Chairman of the Committee of his good offices in addressing concerns pertaining to safety and security at the Headquarters District through the reasonable application of fire protection regulations of the appropriate authorities of the host country, including fire protection standards and consistent local codes and fire regulations, in accordance with the Headquarters Agreement and the Convention on the Privileges and Immunities of the United Nations, in order to ensure the safety of all personnel in the Headquarters District, while respecting the status of the Organization.

(*k*) Observer status in the General Assembly

(i) *Sixth Committee*

The Committee considered requests for observer status in the General Assembly for the Regional Centre on Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, the Italian-Latin American Institute, the Energy Charter Conference, the Eurasian Development Bank, the Conference on International and Confidence-Building Measures in Asia, and for the Cooperation Council for the Arab States of the Gulf.

At its 10th and 13th meetings, on 19 and 23 October 2007, the Committee considered draft resolutions[373] on the questions of observer status for the Regional Centre on Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa and Bordering States, the Italian-Latin American Institute, the Energy Charter Conference, and the Eurasian Development Bank. On 23 October 2007, the Committee adopted the draft resolutions without a vote.[374]

At its 25th and 27th meetings, on 5 and 12 November 2007, the Committee considered the draft resolutions[375] on the questions of observer status of the Conference on Interaction and Confidence-building Measures in Asia and the Cooperation Council for Arab States of the Gulf. On 12 November 2007, the Committee adopted the draft resolutions without a vote.[376]

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[373] A/C.6/62/L.2/Rev.1, A/C.6/62/L.5, A/C.6/62/L.3 and Corr.1 and A/C.6/62/L.4.

[374] For the report of the Sixth Committee, see A/62/460, A/62/461, A/62/462 and A/62/463, respectively. For the Summary Records, see A/C.6/62/SR.10 and A/C.6/62/SR.13.

[375] A/C.6/62/L.8 and A/C.6/62/L.7.

[376] For the report of the Sixth Committee, see A/62/522, and A/62/523, respectively. For the summary records, see A/C.6/62/SR.25 and A/C.6/62/SR.27.

(ii) *General Assembly*

On 6 December 2007, General Assembly adopted resolutions 62/73, 62/74, 62/75, 62/76, 62/77, and 62/78, in which it decided to invite the Regional Centre on Small Arms and Light Weapons in the Great Lakes Region, the Horn of Africa and Bordering States, the Italian-Latin American Institute, the Energy Charter Conference, the Eurasian Development Bank, the Conference on International and Confidence-Building Measures in Asia, and for the Cooperation Council for the Arab States of the Gulf, respectively, to participate in the sessions and the work of the General Assembly in their capacity of observers.

17. *Ad hoc* international criminal tribunals[377]

(a) Organization of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)

(i) *Organization of ICTY*

Through 2007, Judge Fausto Pocar (Italy) continued to serve as President, following his re-election at the plenary meeting of Judges in September 2007, and Judge Kevin Parker (Australia) continued to serve as Vice-President, following his re-election at the same time.

The Chambers of the Tribunal were thus composed of 14 permanent judges, 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 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 during this period have been Krister Thelin (Sweden), Janet Nosworthy (Jamaica), Frank Höpfel (Austria), Árpád Prandler (Hungary), Stefan Trechsel (Switzerland), Antoine Kesia-Mbe Mindua (Democratic Republic of the Congo), Ali Nawaz Chowhan (Pakistan), Tsvetana Kamenova (Bulgaria), Kimberly Prost (Canada), Ole Bjørn Støle (Norway), Frederik Harhoff (Denmark), and Flavia Lattanzi (Italy).

(ii) *Organization of ICTR*

Until 29 May 2007, Judge Erik Møse (Norway) served as President of the Tribunal and Judge Arlette Ramaroson (Madagascar) as Vice-President. On 21 May 2007, Judge Charles

[377] 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 of the present publication.

Michael Dennis Byron (Saint Kitts and Nevis) was elected as President of the Tribunal and Judge Khalida Rachid Khan (Pakistan) was elected Vice-President.

Trial Chamber I was composed of Judges Erik Møse (Norway), Jai Ram Reddy (Fiji) and Sergei Alekseevich Egorov (Russian Federation) as permanent judges. Judge Florence Rita Arrey, *ad litem* Judge in Trial Chamber III, also served in Trial Chamber I.

Trial Chamber II was composed of Judges William H. Sekule (United Republic of Tanzania), Arlette Ramaroson (Madagascar) and Asoka J. N. de Silva (Sri Lanka) as permanent judges. Judges Solomy Balungi Bossa (Uganda), Lee Gacuiga Muthoga (Kenya), Emile Francis Short (Ghana), Taghrid Hikmet (Jordan) and Seon Ki Park (Republic of Korea), served as *ad litem* judges. In addition, Judge Khalida Rashid Khan, a permanent judge in Trial Chamber III, served in Trial Chamber II for the *Bizimungu et al.* case.

Trial Chamber III was composed of Judges Dennis Charles Michael Byron (Saint Kitts and Nevis), Khalida Rashid Khan (Pakistan) and Inés Mónica Weinberg de Roca (Argentina), as permanent Judges. Judges Florence Rita Arrey (Cameroon), Gberdao Gustave Kam (Burkina Faso), Robert Fremr (Czech Republic) and Vagn Joensen (Denmark), served as *ad litem* judges. Judges Lee Gacuiga Muthoga and Emile Francis Short, *ad litem* judges in Trial Chamber II, also served in Trial Chamber III.

(iii) *Composition of the Appeals Chamber*

In 2007, 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), Andresia Vaz (Senegal), Theodor Meron (United States of America), and Wolfgang Schomburg (Germany).

(*b*) General Assembly

On 15 October 2007, the Assembly adopted decisions 62/505 and 62/506 in which it took note of the respective reports of ICTR[378] and ICTY.[379]

On 22 December 2007, on the recommendation of the Fifth Committee, the General Assembly also adopted resolutions 62/229 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 62/230 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".

[378] A/62/284-S/2007/502.

[379] A/62/175-S/2007/469.

(c) Security Council

On 14 September 2007, the Security Council decided in its resolution 1774 (2007) to reappoint Mr. Hassan Bubacar Jallow as Prosecutor of the International Criminal Tribunal for Rwanda with effect from 15 September 2007 for a four-year term. Also on the same day, the Council adopted resolution 1775 (2007), in which it decided to, notwithstanding the provisions of article 16 (4) of the Statute, extend for a final period the appointment of Ms. Carla Del Ponte as Prosecutor of the International Criminal Tribunal for the former Yugoslavia with effect from 15 September 2007 until 31 December 2007, with the view to ensure a smooth transition before the appointment of her successor. Finally, on 28 November 2007, the Security Council adopted resolution 1786 (2007), in which it decided to appoint Mr. Serge Brammertz as the new Prosecutor of the International Tribunal for the former Yugoslavia, with effect from 1 January 2008, for a four-year term.

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

1. Universal Postal Union

At its annual session, the Universal Postal Union (UPU) Postal Operations Council examined questions relating to the electronic transmission of postal data between postal administrations (use of electronic networks, transmission security, data protection), and the use of electronic databases required by UPU bodies (creation and hosting of databases and aggregation of data stored in these databases). It felt that these questions needed further study.[380]

At its 2007 session, the UPU Council of Administration approved a draft new Postal Payment Services Agreement,[381] after acknowledging the need to formalize the principles applying to postal payment services in the relevant Agreement[382] – accessibility, non-discrimination, simplicity of processing, issue in the designation country's currency, payment of the full amount agreed at the time of issue, pricing (affordability and transparency), remuneration, consumer protection, separation of payment order systems from financial flow systems (no conditionality link) and compliance with the Financial Action Task Force recommendations – and taking into account the specific characteristics regarding the electronic transmission of payment orders.

In 2007, the UPU Council of Administration also approved the establishment of Rules for non-core staff,[383] which now apply to staff engaged to carry out projects financed from the Union's extrabudgetary funds and certain other short-term projects.

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[380] POC 2007-Doc 13 and annex 1.

[381] CA C2 2007-Doc 7b. Rev.1.

[382] CA C2 2007-Doc 7a and CA C2 PPS *ad hoc* Group 2007.1-Doc 5.

[383] CA 2007-Doc 6c, annexe 1, Pièce 2.

2. International Labour Organization

(*a*) Membership

Brunei Darussalam became the 180th member of the International Labour Organization (ILO) and was admitted under article 1.3 of the ILO Constitution on 17 January 2007.

The Republic of the Marshall Islands became the 181st member of the International Labour Organization and was admitted under the article 1.3 of the ILO Constitution on 3 July 2007.

(*b*) Resolutions and recommendations adopted by the International Labour Conference during its 96th session (Geneva, June 2007)

At the 96th session of the International Labour Conference, Geneva, the following recommendation and resolutions were adopted.

(i) *Recommendation*

– Work in Fishing Recommendation, 2007 (R199)[384]

(ii) *Resolutions*[385]

– Resolution concerning the promotion of sustainable enterprises;
– Resolution concerning strengthening the International Labour Organization's capacity;
– Resolution concerning promotion of the ratification of the Work in Fishing Convention, 2007;
– Resolution concerning Port State control;
– Resolution concerning tonnage measurement and accommodation;
– Resolution concerning the promotion of Welfare for fishers;
– Resolution concerning the assessment of contribution of new member States;
– Resolution concerning the scale of assessments of contributions to the budget for the 2008–2009 financial period;
– Resolution concerning the composition of the Administrative Tribunal of the International Labour Organization;
– Resolution concerning the treatment of proceeds from transfer or sale of land;

[384] Recommendation contained in the 2007 report of the Committee on the fishing sector (ILC96-PR12–205-En.doc). See also http://www.ilo.org/ilolex/english/recdisp1.htm.

[385] The resolutions are contained in the 2007 reports adopted by the Selection Committee (ILC96-PR2–1-2007–05–0258–1-En.doc/v2), the Credential Committee (ILC96-PR4A-2007–05–0239–1-En.doc; ILC96-PR4B-8-En.doc; and ILC96-PR4C-281-En.doc), the Committee on the application of standards (ILC96-PR22-Part One-214-En.doc), the Committee on the fishing sector (ILC96-PR12–205-En.doc), the Committee on sustainable enterprises (ILC96-PR15–212-En.doc) and the Committee on strengthening the International Labour Organization's capacity (ILC96-PR23–219-En.doc), respectively.

– Resolution concerning the adoption of Program and Budget for 2008–2009 and the allocation of the budget of income among member States;
– Resolution concerning the extension of the validity of the Interim Provisions concerning the verification of credentials.

3. International Monetary Fund

(*a*) Membership issues

(i) *Accession to membership*

The Republic of Montenegro joined the International Monetary Fund (IMF) on 18 January 2007. Accordingly, the total membership of the IMF as of 31 December 2007 increased to 185 member countries.

(ii) *Status and obligations under article VIII or article XIV of the IMF's Articles of Agreement*

Under article VIII, sections 2, 3, and 4 of the IMF's Articles of Agreement,[386] members of the IMF may not, without the IMF's approval, (i) impose restrictions on the making of payments and transfers for current international transactions; or (ii) engage in any discriminatory currency arrangements or multiple currency practices. Notwithstanding these provisions, pursuant to article XIV, aection 2 of the IMF's Articles of Agreement, when a member joins the IMF, it may notify the IMF that it intends to avail itself of the transitional arrangements under article XIV of the IMF's Articles of Agreement that allow the member to maintain and adapt to changing circumstances the restrictions on payments and transfers for current international transactions that were in effect on the date on which it became a member. Article XIV of the IMF's Articles of Agreement does not, however, permit a member, after it joins the IMF, to introduce new restrictions on the making of payments and transfers for current international transactions without the IMF's approval.

Members that maintain restrictions under article XIV, section 2 are required to consult with the IMF annually on the further retention of such restrictions. Members may notify the IMF at any time that they accept the obligations of article VIII, sections 2, 3, and 4 of the IMF's Articles of Agreement and no longer avail themselves of the transitional provisions of article XIV. The IMF has stated that, before members notify the IMF that they are accepting the obligations of article VIII, sections 2, 3 and 4, it would be desirable that, as far as possible, members eliminate measures that would require IMF approval and satisfy themselves that they are not likely to need recourse to such measures in the foreseeable future. Where necessary, and if requested by a member, the IMF also provides

[386] Adopted at the United Nations Monetary and Financial Conference, Bretton Woods, New Hampshire, July 22, 1944. Entered into force December 27, 1945. Amended effective July 28, 1969, by the modifications approved by the Board of Governors in Resolution No. 23–5, adopted May 31, 1968; amended effective April 1, 1978, by the modifications approved by the Board of Governors in Resolution No. 31–4, adopted April 30, 1976; and amended effective November 11, 1992, by the modifications approved by the Board of Governors in Resolution No. 45–3, adopted June 28, 1990.

technical assistance to help the member remove its exchange restrictions and multiple currency practices.

On January 18, 2007, the Republic of Montenegro formally notified the IMF of its acceptance of the obligations of article VIII, sections 2, 3, and 4 of the IMF's Articles of Agreement. The total number of countries that have accepted these obligations, as of 31 December 2007, increased to 166.

(iii) *Overdue financial obligations to IMF*

As of 31 December 2007, members with protracted arrears (i.e., financial obligations that are overdue by six months or more) to the IMF were Liberia, Somalia, Sudan and Zimbabwe.

Article XXVI, section 2 (a) of the IMF's Articles of Agreement provides that if "a member fails to fulfill any of its obligations under this Agreement, the [IMF] may declare the member ineligible to use the general resources of the [IMF]." Such declarations of ineligibility were in place as at the end of December 2007 with respect to the four above-mentioned IMF members.

(iv) *Suspension of voting rights and compulsory withdrawal from IMF*

After the expiration of a reasonable period following a declaration of ineligibility, if a "member persists in its failure to fulfill any of its obligations under [the IMF's Articles of] Agreement, the [IMF] may, by a seventy percent majority of the total voting power, suspend the voting rights of the member" pursuant to article XXVI, section 2 (b) of the IMF's Articles of Agreement. During the period of such suspension, the provisions of Schedule L on the Suspension of Voting Rights of the IMF's Articles of Agreement apply. Schedule L spells out detailed steps to be implemented following a suspension of voting rights in the IMF. If, after the expiration of a reasonable period following the decision of suspension, a member persists in its failure to fulfill any of its obligations under the IMF's Articles of Agreement, the member may be required to withdraw from IMF membership. However, under Section 22 of the IMF's By-Laws, "[b]efore any member is required to withdraw from membership in the [IMF], the matter shall be considered by the Executive Board, which shall inform the member in reasonable time of the complaint against it and allow the member an adequate opportunity for stating its case both orally and in writing. The Executive Board shall then recommend to the Board of Governors the action it deems appropriate." The decision of the Board of Governors to require a member to withdraw from IMF membership must be carried by a majority of Governors having eighty-five percent of the total voting power, as provided by article XXVI, section 2 (c) of the IMF's Articles of Agreement.

There were two countries for whom a suspension of voting and related rights was in effect in 2007 – Liberia and Zimbabwe. Liberia's rights were suspended on 5 March 2003 and Zimbabwe's rights were suspended on 6 June 2003.

(*b*) Issues pertaining to representation at IMF

(i) *Liberia*

As a consequence of the suspension of Liberia's voting and related rights in March 2003, as discussed above, the Governor and Alternate Governor for Liberia in the IMF ceased to hold office pursuant to Paragraph 3 (a) of Schedule L on the Suspension of Voting Rights of the IMF's Articles of Agreement. This situation continued throughout 2007.

(ii) *Somalia*

In October 1992, the IMF found that there was no effective government for Somalia with which the IMF could carry on its activities. Since then, the positions of the Governor and Alternate-Governor for Somalia in the IMF have been vacant.

(iii) *Zimbabwe*

As a consequence of the suspension of Zimbabwe's voting and related rights in June 2003, as discussed above, the Governor and Alternate Governor for Zimbabwe in the IMF ceased to hold office pursuant to paragraph 3 (a) of Schedule L on the Suspension of Voting Rights of the IMF's Articles of Agreement. This situation continued throughout 2007.

(*c*) Key policy decisions of IMF

In 2007, the IMF took steps in moving ahead with a number of major policy reforms that would allow the IMF to meet the evolving needs of its members and to adjust to changes in the global economy, in particular, the Executive Board discussed a package of quota and voice reforms to improve the IMF's governance structure, and a new income and expenditure framework. Final decisions on these measures were adopted in 2008, and thus, they are not covered in this section. The Executive Board also intensified its efforts to further strengthen and modernize the Fund's surveillance activities, which led to the adoption of a new decision on bilateral surveillance as set forth below.

(i) *Surveillance*

On June 15, 2007, the Executive Board adopted a new Decision on Bilateral Surveillance over Members' Policies (the "Decision"), completing its review of the 1977 Decision on Surveillance Over Exchange Rate Policies, and repealing and replacing the 1977 Decision. Part I of the Decision sets out the scope and modalities of the IMF's oversight of members' obligations, Part II establishes principles for the guidance of members in the conduct of their exchange rate policies, while the procedures for surveillance are outlined in Part III.

The new Decision does not create new obligations for members, but updates the 1977 Decision in a number of important ways:

– In order to help focus surveillance on issues crucial to international monetary and financial stability, the new Decision introduces a concept of "external stability" as an

organizing principle for bilateral surveillance. External stability encompasses both the current account of the balance of payments – and thereby also issues of exchange rate misalignment – and the capital account of the balance of payments. In this connection, the new Decision also elaborates on the scope of bilateral surveillance in the context of currency unions.

– The new Decision specifies the essential modalities of effective surveillance. It underscores the collaborative nature of surveillance, the importance of dialogue and persuasion, and the need for candor and evenhandedness. It also emphasizes the importance of paying due regard to country circumstances and the need for a multilateral and medium-term perspective.

– The new Decision clarifies the concept of exchange rate manipulation in order to gain an unfair competitive advantage over other members, which is prohibited under Article IV, Section 1(iii) of the Fund's Articles. In particular, the new Decision relates exchange rate manipulation to the concept of fundamental exchange rate misalignment.

– The new Decision provides more complete guidance to members for the conduct of their exchange rate policies, so as to cover major causes of external stability rooted in these policies. In particular, the new Decision establishes a new principle for the guidance of members' exchange rate policy, recommending that members avoid exchange rate policies that result in external instability, regardless of the purpose of such policies.

– Overall, the new Decision is better aligned with current practices, covering both exchange rate policies, and relevant domestic economic and financial policies.

4. International Civil Aviation Organization

(*a*) Membership

Montenegro deposited, on 12 February with the Government of the United States, its notification of adherence to the Convention on International Civil Aviation, 1944,[387] thus bringing the number of the International Civil Aviation Organization (ICAO) member States to 190.

(*b*) Other major legal developments

(i) *International air law*

In 2007, the Organization was particularly active in the development of international air law under the following six items of the General Work Programme of the Legal Committee:[388]

(*a*) *Compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks.* The Council Special Group on this subject completed its work on the draft Convention on Compensation for Damage Caused by

[387] 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.

[388] See ICAO doc. A.36.WP.8.LE.2.en.doc.

Aircraft to Third Parties in case of Unlawful Interference, and the draft Convention on Compensation for Damage Caused by Aircraft to Third Parties. The Council subsequently decided to convene in Montreal, from 21 April to 2 May 2008, the 33rd Session of the Legal Committee to further develop the texts of the draft Conventions.[389]

(*b*) *Acts or offences of concern to the international aviation community and not covered by existing air law instruments.* A Special Sub-Committee of the Legal Committee was established to prepare one or more draft instruments addressing the new and emerging threats to civil aviation. At its first meeting in July, the Sub-Committee developed preliminary drafts of new instruments. The Council decided in November to convene the second meeting of the Sub-Committee in February 2008 to consider the issue of the unlawful transport by air of fugitives and particularly dangerous goods.

(*c*) *Consideration, with regard to CNS/ATM systems including global navigation satellite systems (GNSS), and the regional multinational organisms, of the establishment of a legal framework.* The term "the regional multinational organisms" was added to this item by the Assembly at its 36th Session. It is expected that the Members of the European Civil Aviation Conference will develop a model of a regional legal framework, which could then be distributed through ICAO to its Member States.

(*d*) *International interests in mobile equipment (aircraft equipment).* On behalf of the Council in its capacity as the Supervisory Authority of the International Registry, the Secretariat continued monitoring the operation of the Registry to ensure that it functions efficiently in accordance with Article 17 of the Cape Town Convention of 2001. At its second meeting, the Commission of Experts of the Supervisory Authority of the International Registry reviewed a number of changes proposed by the Registrar to the Regulations and Procedures for the International Registry and recommended their approval by the Council.

(*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.

(*f*) *United Nations Convention on the Law of the Sea*[390] *– Implications, if any, for the application of the Chicago Convention, its annexes and other international air law instruments.* The Secretariat pursued its monitoring activities in this area.

(ii) *Legal seminar*

As part of its outreach activities, the Legal Bureau held a seminar in Lima from 29 to 31 October 2007, for States to which the South American and North American, Central American and Caribbean Offices are accredited. The intention was primarily to inform and update government officials on a variety of air law subjects undergoing rapid evolution, in particular those relating to aviation security and the "Compensation for Damage Caused by Aircraft to Third Parties Arising from Acts of Unlawful Interference or from General Risks". The seminar also covered the ratification and implementation of international air

[389] See Council working papers C-WP/13031 and C-WP/13087.

[390] United Nations, *Treaty Series,* vol. 1833, p. 3.

law instruments, as well as other topics of interest, such as the Montreal Convention of 1999[391] and international interests in mobile equipment. Administrative packages were made available on the secure ICAO-NET website to further help States in the ratification of civil aviation treaties.

(iii) *Model legislation*

An ICAO/Aviation Pilots' Union Association of Mexico (ASP A) Regional Seminar, "The Protection of Safety Information Sources as an Essential Building Block of Safety Management Systems (SMS)", was held in Mexico City. The purpose was to present Attachment E (Legal Guidance for the Protection of Information from Safety Data Collection and Processing Systems) to annex 13 to the Convention on International Civil Aviation – Aircraft Accident and Incident Investigation. ICAO supervised the development of the guidance material.

5. United Nations Educational, Scientific and Cultural Organization

(*a*) International regulations

(i) *Entry into force of instruments previously adopted*

Within the period covered by this review, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions[392] adopted in Paris on 20 October 2005 entered into force on 18 March 2007. The Protocol on the Privileges and Immunities of the European Organization for Nuclear Research adopted in Geneva on 18 March 2004 entered also into force on 22 February 2007.[393]

(ii) *Proposal concerning the preparation of new instruments*

a. Draft of the declaration of principles relating to cultural objects displaced in connection with the Second World War

In pursuance of the resolution 45 of the 33rd session of the General Conference (2005), the Director-General submitted to the 34th session of the General Conference (2007) for possible adoption a draft declaration of principles relating to cultural objects displaced in connection with the Second World War which embodies the principles providing general guidance for bilateral or multilateral interstate negotiations in order to facilitate the conclusion of agreements on cultural objects displaced in connection with the Second World War.

By its resolution 43, the 34th session of the General Conference invited the Director-General to convene an intergovernmental meeting of experts (to be funded from extrabudgetary funds) to explore further the possibility of arriving at a consensus recom-

[391] Convention for the Unification of Certain Rules for International Carriage, United Nations, *Treaty Series,* vol. 2242, p. 309.

[392] UNESCO Doc. CLT-2005/CONVENTION DIVERSITE-CULT. REV.

[393] The Director of UNESCO is the Depositary of the said Protocol.

mendation on the basis of the text adopted in March 2007, to be submitted to the General Conference at its 35th session (2009). The General Conference decided also to suspend further consideration of the above-mentioned draft declaration until its 35th session.[394]

b. Preliminary study of the technical and legal aspects of a possible international standard-setting instrument for the protection of indigenous and endangered languages

At its April 2007 session, the Executive Board invited the Director-General to conduct a preliminary study of the technical and legal aspects of a possible international standard-setting instrument for the protection of indigenous and endangered languages, including a study of the outcomes from the programmes implemented by UNESCO related to this issue. The Executive Board invited also the Director-General to submit such a preliminary study to the Executive Board for examination at its 179th session (2008), and to convene a meeting of experts, including representatives of indigenous peoples, to assist him in the preparation of such a preliminary study, and to seek extrabudgetary funding for it (176 EX/Decision 59).

(*b*) Human rights

Examination of cases and questions concerning the exercise of human rights coming within UNESCO's fields of competence

The Committee on Conventions and Recommendations met in private sessions at UNESCO Headquarters from 11 to 13 April 2007 and from 25 to 29 September 2007 in order to examine communications which had been transmitted to it in accordance with decision 104 EX/3.3 of the Executive Board.[395]

At its April 2007 session, the Committee examined 20 communications of which 2 were examined with a view to determining their admissibility or otherwise, 16 were examined as to their substance, and 2 were examined for the first time. One communication was struck from the list because it was considered as having been settled. The examination of the 19 was deferred. The Committee presented its report to the Executive Board at its 176th session.[396]

At its September 2007 session, the Committee examined 27 communications of which 2 were examined with a view to determining their admissibility, 17 were examined as to their substance, and no new communications were submitted to the Committee. One communication was struck from the list because it was considered as having been settled. Two communications were suspended. The examination of the 26 was deferred. The Committee presented its report to the Executive Board at its 177th session.[397]

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[394] See Records of the General Conference, 34th session, Paris, 16 October–2 November 2007, v. 1: Resolutions.

[395] 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.

[396] See doc. 176 EX/69.

[397] See doc. 177 EX/74.

6. World Meteorological Organization

(*a*) Amendment to the preamble of the World Meteorological Organization (WMO) Convention (Washington, 11 October 1947)

During its fifteenth session (Geneva, 7–25 May 2007), the World Meteorological Congress considered a proposal[398] of the Executive Council's Task Team to Explore and Assess Possible Changes to the WMO Convention,[399] referred to it by the fifty-eighth session of the Executive Council.[400] Congress adopted the following resolution amending the Preamble of the WMO Convention[401] in accordance with article 28 (c) of the Convention:

Resolution 44 (Cg-XV)[402]

AMENDMENT TO THE PREAMBLE OF THE CONVENTION OF THE WORLD METEOROLOGICAL ORGANIZATION

THE CONGRESS,

Considering the success and the achievements of WMO in its existence since it was established in 1950,

Considering further the need to have a basic document that reflects and makes clear the scope and responsibilities of the Organization and the understanding that the Members have of their Organization,

Considering the fact that WMO is the United Nations specialized agency responsible for meteorology,

Considering further that WMO, along with other agencies and programmes of the United Nations and other international organizations, each within the framework of its own mandate, is responsible for relevant aspects of hydrology, the climate and the environment,

Noting the Geneva Declaration adopted by the Members participating in the Thirteenth World Meteorological Congress, held in Geneva from 4 to 26 May 1999 (*Abridged Final Report with Resolutions of the Thirteenth World Meteorological Congress* (WMO-No. 902), Annex IV),

Decides:

That the text of the Considerata of the Convention,

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[398] Abridged final report with resolutions of the fifty-sixth Session of the Executive Council, General Summary §13.1.10 (WMO- N0.977).

[399] Established at the Fifty-third Session of the Executive Council, Abridged Final Report with Resolutions, General Summary §17.2.1 to 17.2.5 (WMO-No. 929).

[400] Abridged final report with resolutions of the fifty-eighth Session of the Executive Council, General Summary §10.2.1 to 10.2.7 (WMO-No. 1007).

[401] United Nations, *Treaty Series,* vol. 77, p. 144.

[402] Abridged final report with resolutions of the fifteenth World Meteorological Congress (WMO-No. 1026).

"With a view to coordinating, standardizing and improving world meteorological and related activities, and to encouraging an efficient exchange of meteorological and related information between countries in the aid of human activities, the contracting States agree to the present Convention, as follows:"

shall be replaced by the following new preamble:

"Considering the need for sustainable development, the reduction of loss of life and property caused by natural disasters and other catastrophic events related to weather, climate and water, as well as safeguarding the environment and the global climate for present and future generations of humankind,

Recognizing the importance of an integrated international system for the observation collection, processing and dissemination of meteorological, hydrological and related data and products,

Reaffirming the vital importance of the mission of the National Meteorological, Hydrometeorological and Hydrological Services in observing and understanding weather and climate and in providing meteorological, hydrological and related services in support of relevant national needs, which should include the following areas:

(a) Protection of life and property,

(b) Safeguarding the environment,

(c) Contributing to sustainable development,

(d) Promoting long-term observation and collection of meteorological, hydrological and climatological data, including related environmental data,

(e) Promotion of endogenous capacity-building,

(f) Meeting international commitments,

(g) Contributing to international cooperation,

Recognizing also that Members need to work together to coordinate, standardize, improve and encourage efficiencies in the exchange of meteorological, climatological, hydrological and related information between them, in the aid of human activities,

Considering that meteorology is best coordinated at the international level by one responsible international organization,

Considering further the need for a close cooperation with other international organizations also working in the areas of hydrology, climate and environment,

The contracting States agree to the present Convention, as follows:"

Further decides that these amendments, which do not create new obligations and which are adopted in accordance with article 28 (c) of the Convention, shall come into force on 1 June 2007.

(*b*) Amendments to the General Regulations (First Congress, 1951)

(i) *Amendments to General Regulations concerning the period for conducting elections by correspondence of certain offices of constituent bodies*

On the recommendation of the Executive Council, at its 15th session, the World Meteorological Congress amended General Regulations 15, 16, 71, 91 and 92 in order to reduce the minimum period required for the organization of elections by correspondence where the office of Third Vice-President or of President of a Regional Association or a Technical Commission becomes vacant between two sessions of the constituent body concerned. To this end, Congress adopted Resolution 46.[403]

(ii) *Amendment to the annex III of the General Regulations of the terms of reference of the technical commissions*

In line with recent developments concerning the scope of activities of two technical commissions, namely the Commission for Atmospheric Sciences and the Commission for Climatology, Congress decided to revise their respective terms of reference through its Resolution 47.[404]

(iii) *Amendments to General Regulation 29 (b)*

At its fifteenth session, the World Meteorological Congress endorsed the proposal made by the Commission for Hydrology[405] to suppress the automatic establishment of a Subcommittee on Hydrology and amended accordingly General Regulation 29 (b) through its Resolution 48.[406]

(*c*) Emblem and flag of the WMO

On the recommendation of the Executive Council,[407] the World Meteorological Congress adopted at its fifteenth session a revised emblem for the WMO with effect from 1 July 2007 through the following resolution:

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[403] Abridged final report with resolutions of the fifteenth World Meteorological Congress (WMO-No. 1026).

[404] *Ibid.*

[405] Abridged final report with resolutions and recommendations of the twelfth Session of the Commission for Hydrology, General Summary §4.4 and 4.5 (WMO-No. 979).

[406] Abridged final report with resolutions of the fifteenth World Meteorological Congress (WMO-No. 1026).

[407] Abridged final report with resolutions of the fifty-seventh Session of the Executive Council, General Summary §11.2.5 (WMO-No. 988).

Resolution 45 (Cg-XV)[408]

EMBLEM AND FLAG OF THE WORLD METEOROLOGICAL ORGANIZATION

The Congress,

Considering:

(1) The adoption in 1955 of a WMO emblem and its modification by Fifth Congress,

(2) Resolution 2 (EC-X) – Legal protection of the name and emblem of the World Meteorological Organization,

(3) The adoption by Fifth Congress (agenda item 3.8) of the flag of the Organization comprising the official emblem centered on a United Nations blue background, the emblem appearing in white,

(4) The results of the consultation of all Members regarding possible changes to the WMO emblem, held in 2005,

(5) Resolution 20 (EC-LVII) – WMO emblem and flag,

Recognizing:

(1) That it is desirable to mark the more than 50 years of existence of the Organization by changing the colour of the wind rose superimposed on the United Nations emblem to gold,

(2) That it is also desirable to enhance the visibility and the distinctiveness of the WMO emblem by adding at the bottom of the emblem the full name of the Organization in Arabic and Chinese, and its abbreviation in the other four official languages, English, French, Russian and Spanish,

(3) That it is necessary to strengthen the protection of the name of the Organization, its emblem and flag, including through the adoption of precise guidelines,

Decides:

(1) That the design referred to above shall be the emblem and distinctive sign of the World Meteorological Organization and shall be used for the flag of the Organization;

(2) That the Secretary-General shall maintain the flag code and regulations concerning the dimensions, proportions and use of the flag;

(3) That the Secretary-General shall adopt guidelines concerning the use and reproduction of the WMO emblem and official seal;

(4) That Members of the World Meteorological Organization should maintain within their own jurisdiction appropriate measures as are necessary to prevent the use, without authorization by the Secretary-General, and in particular for commercial purposes by means of trademarks or commercial labels, of the emblem and the name of the World Meteorological Organization, and of abbreviations of that name through the use of its initial letters.

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[408] Abridged final report with resolutions of the fifteenth World Meteorological Congress (WMO-No. 1026).

7. International Maritime Organization

(*a*) Membership of the Organization

As of 31 December 2007, the membership of the International Maritime Organization (IMO) stands at 167.

(*b*) Review of the legal activities of IMO

The Legal Committee (hereinafter the Committee) met only once in 2007 due to the Diplomatic Conference on the Removal of Wrecks.[409] The Committee held its ninety-third session from 22 to 26 October 2007.[410]

(i) *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 took note of 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 noted that, following its invitation at the ninety-second session to reconvene the Group, the IMO and ILO Secretariats would arrange for their seventh meeting to be held during the first quarter of 2008.

There was consensus that the Group should be reconvened as soon as possible. It was suggested that the Group should focus on practical and long-term sustainable solutions. It was also proposed that the Group should be particularly cautious when considering the adoption of mandatory instruments aimed at proposing long-term solutions. In this regard, it was noted that the Group should first demonstrate the existence of gaps in international law before considering further rules.

Some delegations commended the database on abandonment of seafarers as a useful tool and concern was expressed that there were still unresolved cases of abandonment. Concern was also expressed at the lack of prompt action by some States to deal with reported cases of abandonment involving ships flying their flag, and the consequent burden imposed upon port States to provide humanitarian assistance. In this regard, reference was made to the need for effective legal mechanisms to ensure that shipowners were made liable to pay for the related costs.

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[409] LEG/CONF.16 of 14 May 2007.

[410] The report of the Legal Committee is contained in document LEG 93/13.

(ii) *Fair treatment of seafarers in the event of a maritime accident*

The Committee continued its consideration of the report of the *Ad Hoc* Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident, which had met during its ninety-second session with a view to revising the Guidelines on fair treatment of seafarers in the event of a maritime accident. The Committee noted that the Group had not reached a consensus on any proposed changes, with one exception: the revision of paragraph 1 (6) in the introduction section, to insert the words "where applicable" after the words "employment agreement". The Committee agreed that there was no compelling need to revise the Guidelines merely to introduce this modification.

The Committee reiterated its concern regarding the fair treatment of seafarers and agreed that it would be appropriate to gain experience with the current Guidelines before considering any revisions. It was suggested that the Guidelines should be widely disseminated and their application encouraged. In this regard, the Committee agreed that the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident should be reconvened to monitor the implementation of the Guidelines on the basis of the terms of reference approved by the ILO Governing Body, including an additional term concerning the collection of information. The Committee requested the IMO and ILO Secretariats to consult with a view to determining an appropriate time and place for its next meeting.

The Committee noted that the Maritime Safety Committee (MSC), at its eighty-third session (3–12 October 2007), had agreed to include in the draft Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident a provision creating an obligation on Contracting Parties, to ensure that a seafarer from whom evidence is sought in a casualty investigation "be informed, and allowed access to legal advice, regarding" the risk of self-incrimination.

The Committee noted the suggestion that there was some confusion between investigations into accidents as a matter of technical information-gathering and administrative process, and investigations that had implications under criminal law. The view was expressed that the work of the MSC, in the context of the aforementioned Code, presumably dealt with the technical and administrative aspects, and, accordingly, the Joint IMO/ILO *Ad Hoc* Expert Working Group should concentrate on legal aspects.

(iii) *Monitoring the implementation of the International convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substance by sea, 1996 (HNS Convention)*[411]

The Committee noted the decision of the 1992 Assembly of the International Oil Pollution Compensation (IOPC) Funds to establish an HNS Focus Group to develop a draft protocol to the HNS Convention, with a view to providing legally binding solutions to three issues which had been identified as inhibiting the entry into force of the HNS Convention, namely, contributions to the Liquified Natural Gas account; the concept of receiver; and the non-submission of reports on contributing cargo. The draft protocol would be submitted for the consideration and approval by the Legal Committee at its ninety-fourth

[411] LEG/CONF.10/8/2 of 9 May 1996.

session, with a view to holding, as soon as possible thereafter, a diplomatic conference to consider and adopt it.

Differing views were expressed regarding the mandate of the IOPC Funds Assembly to develop a protocol, instead of implementing the present text of the Convention. Most delegations that spoke commended the initiative taken by the IOPC Funds Assembly as the way forward, which would speed up the entry into force of the HNS Convention, since the issues that had been identified could not be resolved within the framework of the existing HNS Convention. Other delegations considered that, in dispensing with the present text of the HNS Convention, and pursuing a protocol, the IOPC Funds Assembly was exceeding the mandate bestowed upon it by the Diplomatic Conference which adopted the HNS Convention, which was restricted to administrative and organizational activities; they also noted that the decision taken by the IOPC Funds Assembly to propose the development of an amending protocol compromised the position of existing Contracting States, as well as that of future European Union Contracting States. It also impeded the progress towards ratification of the Convention by several States with large volumes of contributing cargo, whose preparations to implement the treaty in its present form were in an advanced stage.

The Committee expressed its readiness to consider any proposals that might be put forward by the Focus Group. In so doing, it noted the commitment of the Focus Group to maintain the principle of shared responsibility of shipping and cargo interests and to restrict the scope of the draft protocol to provisions aimed at resolving the three key issues.

Furthermore, the 2000 Protocol on preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances,[412] entered into force on 14 June 2007, twelve months following the deposit by Portugal, the fifteenth Contracting State, in accordance with its article 18.

(iv) *Report on the International conference on the removal of wrecks, 2007*

The Committee noted the report on the successful outcome of the International conference on the removal of wrecks held in Nairobi from 14 to 18 May 2007, and the action resulting from the adoption of the Nairobi International Convention on the Removal of Wrecks, 2007.[413] The Convention will be open for signature at IMO from 19 November 2007 to 18 November 2008, and will thereafter remain open for accession, in accordance with the terms of article 17. In accordance with article 18 of the Convention, it shall enter into force 12 months following the date on which ten States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General in accordance with article 17.

The Committee considered, in particular, a resolution of the Conference inviting it to develop a model for a single insurance certificate, which might be issued by States Par-

[412] The International Maritime Organization is the depositary of this instrument.

[413] See LEG/CONF.16/20 of 23 May 2007 (Resolutions); and LEG/CONF.16/21 of 22 May 2007(Final Act of the International Conference on the Removal of Wrecks, 2007). Texts adopted at the Conference. The text of the Convention is reproduced in chapter IV.B of this publication.

ties in respect of each and every ship under the relevant IMO liability and compensation conventions.

The Committee agreed to develop a single model insurance certificate and requested the Secretariat to prepare a draft instrument for consideration at its ninety-fourth session.

(v) *Matters arising from the ninety-seventh and ninety-eighth sessions of the Council*

The Committee took note of the information provided by the Secretariat on matters arising from the ninety-seventh and ninety-eighth sessions of the Council.

In particular, the Committee noted the information provided by the Secretariat on the request made by the Council, at its ninety-seventh session, that the Committee submits specific proposals on how IMO might contribute to the United Nations Counter-Terrorist Strategy, as formulated in resolution 60/288, adopted by the United Nations General Assembly on 8 September 2006. In this regard, the Committee proposed that Member States consider, as a priority, the promotion of the prompt ratification and entry into force of the 2005 Protocols to the 1988 Convention for the suppression of unlawful acts against the safety of maritime navigation[414] (SUA treaties), adopted as a consequence of the work of the Committee. The Committee also encouraged the continuation of technical co-operation activities, to ensure the availability of adequate capacity-building in developing countries, to enable the SUA treaties to be effectively implemented, once they had entered into force.

(vi) *Technical co-operation activities related to maritime legislation*

The Committee noted the outcome of the national seminars on maritime legislation dealing with implementation of the SUA treaties, held in Thailand and Sri Lanka in April 2007 as well as the outcome of technical co-operation activities on maritime legislation from July 2006 to June 2007.

The Committee noted that legal assistance may be needed not only to support the implementation of the SUA treaties but also to develop legislation to allow for prosecution or extradition in cases of piracy and armed robbery. Additionally, it was noted that the SUA treaties did not only address terrorism but also offences involving proliferation, which should also be reflected in implementing legislation.

The Committee noted the information provided by the representative of the Intergovernmental Oceanographic Commission (IOC) of United Nations Educational, Scientific and Cultural Organization (UNESCO) concerning the guidelines IOC was developing, together with IMO, on how IMO Member States might address the effects of tsunamis on coastal and harbour operations. It also noted that new legal instruments may be required since Member States need to develop their own strategy for addressing tsunami-related evacuation measures for harbours.

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[414] United Nations, *Treaty Series,* vol. 1678, p. 201.

(vii) *Work programme*

a. Planned outputs for the 2008–2009 biennium

The Committee noted that its current guidelines on work methods and organization of work call on the Committee, at each session, to examine its work programme and review the allocation of meeting weeks and its future work programme to ensure all items to be addressed fall within the Organization's Strategic Plan. The Committee introduced several amendments to its work programme.

b. Review of guidelines on methods of work

The Committee took note of the decision of the Council, at its ninety-seventh session, that it would be appropriate and beneficial that the Legal Committee, taking into consideration its differing needs, should harmonize its work methods with those of the Maritime Safety Committee and the Marine Environment Protection Committee.

The Committee also took note of the outcome of a subsequent meeting of the Chairmen and Secretaries of the five IMO Committees, held in June 2007, which considered how best this harmonization might be achieved.

The Committee established a working group to look into the question of harmonizing its work methods with those of other Committees.

c. Proposal to reduce the number of sessions of the Committee from four to three in the 2008–2009 biennium

The Committee agreed to reduce the number of its sessions in the 2008–2009 biennium from four to three, so that only one session would be held, in the autumn of 2008. In doing so, the Committee noted that this agreement should not detract from the importance of the work of the Legal Committee, particularly its ongoing work in relation to the protection of seafarers.

(viii) *Any other business*

a. Capacity building when developing new instruments or amending existing ones

The Committee noted that the International Conference on the Removal of Wrecks, held from 14 to 18 May 2007, when adopting the Nairobi International Convention on the Removal of Wrecks, 2007, had adopted a resolution on promotion of technical cooperation and assistance and had also invited the Committee to develop guidelines on the implementation of the Convention. It decided that there was no need, at this stage, to consider the development of such guidelines, but that it might revisit the issue at a future session.

The Committee also noted that a draft resolution on "Capacity-building when developing new instruments", approved by MSC 83 to be submitted to the Assembly, at its twenty-fifth regular session, if adopted, would apply to the work of all Committees, including the Legal Committee.

The Committee, in principle, approved the draft Assembly resolution, but noted that the word "after" in the second operative paragraph, if maintained, might have the unfortunate effect of slowing down the process of the adoption of legal instruments, since it required the assessment of implications for capacity building to be made before embarking on the development of new instruments or the amendment of existing ones. Accordingly, the Committee agreed to suggest to the Assembly that the word "after" be replaced by the words "during or in parallel with".

b. Measures to protect crews and passengers from crimes committed on vessels

The Committee considered proposals for an international instrument to facilitate expeditious investigation of shipboard offences with possible involvement of the substantially interested State on its request. It also considered proposals for guidelines for national legislation on maritime criminal acts, in the light of the expanding problem of serious maritime criminal acts, including piracy.

The Committee held an extensive discussion, with a view to deciding, in the first instance, whether the subject of crimes at sea should be reinstated as a separate item in its work programme, and, if so, whether it should pursue the format of a draft convention or guidelines for model legislation. Accordingly, the Committee decided not to reinstate this item on its work programme but encouraged delegations and the Comité Maritime International (CMI) to continue with the consideration of this subject with a view to harmonizing legislation and strengthening the implementation of existing international law.

(c) Amendments to treaties

(i) 2007 amendments to the annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973[415]

These amendments were adopted by the Marine Environment Protection Committee on 13 July 2007 by resolution MEPC.164(56). At the time of their adoption, the Marine Environment Protection Committee determined that the amendments shall be deemed to have been accepted on 1 June 2008 and shall enter into force on 1 December 2008 unless, prior to 1 June 2008 not less than one-third of the Parties or Parties the combined merchant fleets of which constitute not less than 50% of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As of 31 December 2007, no such notification of objection had been received.

(ii) 2007 amendments to the list of substances annexed to the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973[416]

These amendments were adopted by the Marine Environment Protection Committee on 13 July 2007 by resolution MEPC.165(56). At the time of their adoption, the Marine

[415] United Nations, *Treaty Series,* vol. 1340, p. 62.

[416] United Nations, *Treaty Series,* vol. 1313, p. 4.

Environment Protection Committee determined that the amendments shall be deemed to have been accepted at the end of the period of six months after they have been communicated, unless within that period, an objection to the amendments has been communicated by not less than one-third of the parties to the Protocol, and shall enter into force three months after they have been deemed to have been accepted. As of 31 December 2007, no such notification of objection had been received.

(iii) 2007 amendments to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code)

These amendments were adopted by the Marine Environment Protection Committee on 13 July 2007 by resolution MEPC.166(56). 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 2008 and shall enter into force on 1 January 2009 unless, prior to 1 July 2008 not less than one-third of the 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 2007, no such notification of objection had been received.

(iv) 2007 (chapters IV and VI) amendments to the International Convention for the Safety of Life at Sea (SOLAS), 1974[417]

These amendments were adopted by the Maritime Safety Committee on 12 October 2007 by resolution MSC.239(83). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 January 2009 and shall enter into force on 1 July 2009 unless, prior to 1 January 2009, 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 2007, no such notification of objection had been received.

(v) 2007 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 12 October 2007 by resolution MSC.240(83). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 January 2009 and shall enter into force on 1 July 2009 unless, prior to 1 January 2009, more than one-third of the Parties to the 1988 SOLAS Protocol, or Parties, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As of 31 December 2007, no such notification of objection had been received.

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[417] United Nations, *Treaty Series,* vol. 1184, p. 28.

(vi) 2007 amendments to the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships (INF Code) (under SOLAS 1974)

These amendments were adopted by the Maritime Safety Committee on 12 October 2007 by resolution MSC.241(83). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 January 2009 and shall enter into force on 1 July 2009 unless, prior to 1 January 2009, 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 2007, no such notification of objection had been received.

(vii) 2007 amendments to the International Regulations for Preventing Collisions at Sea, 1972[418]

These amendments were adopted by the Assembly by resolution A.1004(25) on 29 November 2007. The amendments will enter into force on 1 December 2009 unless, by 1 June 2008 more than one-third of the Contracting Parties to the Convention have notified their objection to the amendments. As of 31 December 2007, no such notification of objection had been received.

8. World Health Organization

(*a*) Constitutional developments

No new member States joined the World Health Organization (WHO) in 2007. Also, 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) (IHR)

The International Health Regulations (2005)[419] ("IHR (2005)" or "Regulations") entered into force on 15 June 2007 in accordance with article 22 of the Constitution of the World Health Organization and article 59 of the Regulations. In 2007, the IHR (2005) became binding on 193 States.[420]

Annex 9 of the IHR (2005) reproduces the Health Part of the Aircraft General Declaration from the *International Standards and Recommended Practices – Facilitation* (annex

[418] United Nations, *Treaty Series,* vol. 1050, p. 18.

[419] The text of the International Health Regulations (2005) is annexed to World Health Assembly resolution WHA58.3 of 23 May 2005 and is available in Arabic, Chinese, English, French, Russian and Spanish at http://www.who.int/ihr.

[420] For the complete list of State Parties to the IHR, see http://www.who.int/ihr.

9 to the Convention on International Civil Aviation) of the International Civil Aviation Organization (ICAO).[421] After ICAO completed Amendment 20 to that document, the Health Part of the Aircraft General Declaration in annex 9 of the IHR (2005) was replaced, as requested by World Health Assembly resolution WHA58.3 of 23 May 2005, with the version as revised by ICAO. The revised Health Part of the Aircraft General Declaration entered into force on 15 July 2007.

The Influenza Pandemic Task Force, established pursuant to World Health Assembly resolution WHA59.2 of 26 May 2006 as a temporary mechanism until the IHR (2005) entered into force, was accordingly dissolved as of 15 June 2007.

Pursuant to resolution WHA58.3, an IHR Roster of Experts foreseen in article 47 of the IHR (2005) was established.

In resolution WHA60.14 of 21 May 2007, "Poliomyelitis: mechanism for management of potential risks to eradication",[422] the Health Assembly requested the Director-General "to continue to examine and disseminate measures that Member States can take for reducing the risk and consequences of international spread of polioviruses, including, if and when needed, the consideration of temporary or standing recommendations, under the International Health Regulations (2005), if such a recommendation were made, the financial and operational issues arising from its implementation, and lessons drawn, should be reported to the Health Assembly". In addition, in resolution WHA60.28 of 23 May 2007 concerning "Pandemic influenza preparedness: sharing of influenza viruses and access to vaccines and other benefits,"[423] the Health Assembly reaffirmed the obligations of States Parties under the IHR (2005).

(iii) *Amendments to the Financial Regulations and Financial Rules*

In resolution WHA60.9,[424] passed on 21 May 2007, the World Health Assembly endorsed the introduction of the International Public Sector Accounting Standards (IPSAS). It also adopted amendments to (a) Financial Regulation 4.4 in order to clarify operation of the exchange rate facility, to be effective as from 1 January 2008, and to (b) Financial Regulation 4.5 in order to permit regular budget resources to be earned forward to pay for commitments made before the end of a financial period and undertaken by the end of the first year of the next financial period. Lastly, the Sixtieth World Health Assembly deleted Financial Regulations 6.5 and 8.2 in order to terminate the financial incentive scheme that has failed to encourage prompt payment of Member States' assessments, to be effective as from 1 January 2008.

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[421] Available at http://www.icao.int/icaonet.

[422] Contained in doc. WHASS1/2006–WHA60/2007/REC/1.

[423] *Ibid.*

[424] *Ibid.*

(iv) Medium-term strategic plan 2008–2013

The sixtieth World Health Assembly endorsed the medium-term strategic plan 2008–2013 in resolution WHA 60.11 on 21 May 2007.[425] In addition, it decided to review the plan every two years in conjunction with the proposed program budget, with a view to revising the plan, including its indicators and targets, as may be necessary. The medium-term strategic plan provides a flexible framework to guide and ensure continuity in the preparation of biennial program budgets and operational plans over three bienniums in line with the global health agenda established in the Eleventh General Program of Work.

(v) 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. The Intergovernmental Working Group on Public Health, Innovation and Intellectual Property held its first session in December 2006, and its second session from 5–10 November 2007. Both sessions were held in Geneva.

At the sixtieth World Health Assembly in May 2007, member States reviewed progress made by the Working Group and adopted resolution WHA60.30[426] to guide further the ongoing process.

At the request of the Working Group, and following the discussions at the Health Assembly, the Secretariat prepared a revised working document, building on inputs of Member States during the first session of the Working Group and the submissions subsequently received. The draft global strategy and plan of action formed the basis for negotiations at the second session. The document included a narrative draft global strategy section followed by a draft Plan of Action matrix. The narrative section addressed the context, the aim and the focus, followed by discussion of the eight elements (and corresponding sub-elements and specific actions). The draft plan of action matrix included a listing of potential stakeholders, time frame for action and progress indicators.

In its second session, the Working Group considered the global strategy and plan of action. Its work was undertaken through two drafting groups and a sub-group. The drafting groups considered all components of the global strategy. However due to time constraints, two elements of the strategy (Element 5: management of intellectual property; and Element 6: improving delivery and access) were not discussed in their entirety. The second session was adjourned and the Working Group agreed to hold its resumed second session in April 2008 in order to finalize the draft global strategy and plan of action.

(vi) Host agreement with the Government of Malaysia

On 12 December, 2007, WHO signed an Agreement with the Government of Malaysia concerning the establishment of the WHO Global Service Centre. This host agreement sets out, *inter alia,* privileges and immunities accorded to WHO by the government of Malay-

[425] Contained in doc. WHASS1/2006–WHA60/2007/REC/1.

[426] *Ibid.*

sia. The agreement provides, for example, that the exemption from jurisdiction for all acts performed in the discharge of official duties applies to all officials of the Organization, including officials who are Malaysian nationals or permanent residents of Malaysia. The Global Service Centre will provide worldwide and round-the-clock management support to the Organization, including its regional and country offices.

(vii) Conference of the Parties to the WHO Framework Convention on Tobacco Control[427]

The second session of the Conference of the Parties to the 2003 WHO Framework Convention on Tobacco Control was held in Bangkok, Thailand, from 30 June to 6 July 2007. The meeting made important strides forward in the efforts to control tobacco use globally. One notable decision concerned the negotiation of a protocol on illicit trade in tobacco products, which established an intergovernmental negotiating body to develop this first protocol to the Convention.

The Conference adopted guidelines on the implementation of article 8 of the WHO Framework Convention on Tobacco Control (protection from exposure to tobacco smoke) and also established the process for developing five other guidelines on different Articles, namely protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry (article 5.3), regulation of the contents and disclosures of tobacco products (articles 9 and 10), packaging and labelling (Article 11), education, communication, training and public awareness (article 12) and tobacco advertising, promotion and sponsorship (Article 13).

Other decisions included extending the mandate of the study group on economically sustainable alternatives to tobacco growing and elaborating a first report on tobacco dependence and cessation (Article 14). The Conference also adopted the budget and workplan for the period 2008–2009 and a decision on financial resources and mechanisms of assistance for the implementation of the Convention. The Conference also welcomed the establishment of the permanent Convention Secretariat in June 2007 and the appointment of its Executive Secretary.

In 2007, the following States became Parties to the WHO Framework Convention on Tobacco Control: Angola, Bahrain, Congo, Gambia, Grenada, Guinea, Kazakhstan, Uganda, United Republic of Tanzania and Yemen. There were 151 parties to the Convention at the end of 2007.

9. International Atomic Energy Agency

(*a*) Membership

In 2007, Palau became a member State of the International Atomic Energy Agency (IAEA). By the end of the year, there were 144 member States.

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[427] United Nations, *Treaty Series* , vol. 2302, p. 166.

(*b*) Privileges and immunities

In 2007, Iceland, Montenegro and Nigeria became party to the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, 1959.[428] By the end of the year, there were 78 States parties.

(*c*) Legal instruments

(i) *Convention on the Physical Protection of Nuclear Material, 1979*[429]

In 2007, Cape Verde, Comoros, El Salvador, Guyana, Montenegro, Nigeria, Palau, South Africa and Yemen became party to the Convention. By the end of the year, there were 130 parties.

(ii) *Amendment to the Convention on the Physical Protection of Nuclear Material, 2005*

In 2007, Algeria, India, Kenya, Nigeria, Poland, Romania and Spain adhered to the Amendment. By the end of the year, there were 13 contracting States.

(iii) *Convention on Early Notification of a Nuclear Accident, 1986*[430]

In 2007, Mali and Montenegro became party to the Convention. By the end of the year, there were 101 parties.

(iv) *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986*[431]

In 2007, Mali and Montenegro became party to the Convention. By the end of the year, there were 99 parties.

(v) *Convention on Nuclear Safety, 1994*[432]

In 2007, Nigeria became party to the Convention. By the end of the year, there were 60 parties.

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[428] United Nations, *Treaty Series,* vol. 374, p. 147.

[429] United Nations, *Treaty Series,* vol. 1456, p. 101.

[430] United Nations, *Treaty Series,* vol. 1439, p. 275.

[431] United Nations, *Treaty Series,* vol. 1457, p. 133.

[432] United Nations, *Treaty Series,* vol. 1963, p. 293.

(vi) *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 1997*[433]

In 2007, Kyrgyzstan, Nigeria and South Africa became party to the Joint Convention. By the end of the year, there were 45 parties.

(vii) *Vienna Convention on Civil Liability for Nuclear Damage, 1963*[434]

In 2007, Nigeria and Montenegro became Party to the Convention. By the end of the year, there were 35 parties.

(viii) *Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage, 1997*[435]

In 2007, 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*[436]

In 2007, Turkey became party to the Joint Protocol. By the end of the year, there were 25 parties.

(x) *Convention on Supplementary Compensation for Nuclear Damage, 1997*[437]

In 2007, 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*[438]

In 2007, the status of the Protocol remained unchanged with 2 parties.

(xii) *Revised Supplementary Agreement Concerning the Provision of Technical Assistance by the IAEA (RSA)*[439]

In 2007, Honduras and Slovenia concluded the RSA Agreement. By the end of the year, there were 109 member States which concluded the RSA Agreement with the Agency.

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[433] United Nations, *Treaty Series,* vol. 2153, p. 303.

[434] United Nations, *Treaty Series,* vol. 1063, p. 265.

[435] INFCIRC/566.

[436] United Nations, *Treaty Series,* vol. 1672, p. 293.

[437] INFCIRC/567.

[438] INFCIRC/500/Add.3.

[439] INFCIRC/267.

(xiii) *Fourth Agreement to Extend the 1987 Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (RCA)*[440]

In 2007, Bangladesh, China, India, Indonesia, Japan, Republic of Korea, Malaysia, Myanmar, Pakistan, Philippines, Singapore, Sri Lanka and Vietnam became party to the Fourth Agreement. By the end of the year, there were 13 parties.

(xiv) *African Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (AFRA) (Third Extension)*[441]

In 2007, Chad, Gabon, Kenya and Mauritania became party to the Third Extension. By the end of the year, there were 30 parties.

(xv) *Co-operation Agreement for the Promotion of Nuclear Science and Technology in Latin America and the Caribbean (ARCAL)*[442]

In 2007, Uruguay became party to the Agreement. By the end of the year, there were 14 parties.

(xvi) *Co-operative Agreement for Arab States in Asia for Research, Development and Training Related to Nuclear Science and Technology (ARASIA)*[443]

In 2007, 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*[444]

In 2007, China, India, Japan, the Republic of Korea, the Russian Federation, the United States of America and EURATOM adhered to the Agreement. Thus, the Agreement, pursuant to Article 22, entered into force thirty days after the deposit of instruments of ratification, acceptance or approval 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, i.e. on 24 October 2007.

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[440] INFCIRC/167/Add.22.

[441] INFCIRC/377.

[442] INFCIRC/582.

[443] INFCIRC/613/Add.1.

[444] INFCIRC/702.

(xviii) *Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project*[445]

In 2007, China, India, Japan, the Republic of Korea, the Russian Federation and Euratom adhered to the Agreement. Thus, the Agreement, pursuant to Article 25, entered into force thirty days after the deposit of instruments of ratification, acceptance or approval by the People's Republic of China, Euratom, the Republic of India, Japan, the Republic of Korea and the Russian Federation, i.e. on 24 October 2007.

(*d*) Legislative assistance activities

During 2007, the Agency provided bilateral assistance in drafting national nuclear legislation to 25 member States. Under the legal fellowship programme, 3 fellowships of 4 months each were granted to individuals from the African member States to receive training at Agency Headquarters in order to acquire practical and international nuclear law experience.

In April 2007, the Agency participated in the 16th Session of the Commission on Crime Prevention and Criminal Justice in Vienna, Austria and delivered a statement on "facilitating the ratification and implementation of the international instruments to prevent and combat nuclear terrorism". Also in April, the Agency took part in a Regional Workshop on the Suppression of Acts of Nuclear Terrorism co-organized by the Organization for Security and Cooperation in Europe and the United Nations Office on Drugs and Crime, which was held in Uzbekistan. A meeting for senior government officials from the Latin American and Caribbean States region was held in June in Vienna, Austria, on the International Legal Framework for Nuclear Safety, Security and Safeguards. The meeting was attended by representatives from 19 member States of the region.

Throughout the year, the IAEA organized several training courses, workshops and national seminars as follows: a training course on radiation safety for lawyers was held in Syria in March; a workshop on the International Legal Framework Applicable to the Shipment of Russian Origin Research Reactors Spent Fuel to the Russian Federation was held in Romania in cooperation with the European Commission in April; and two national seminars on the legal aspects of nuclear safety, security, safeguards and liability were held in Ghana and Indonesia in May and June respectively.

Under the new IAEA International Law Series, one publication was issued setting out the explanatory texts on the nuclear liability instruments concluded under the IAEA's auspices which were finalized as a comprehensive study of the Agency's nuclear liability regime by the International Expert Group on Nuclear Liability (INLEX). In particular, the texts examine the 1997 Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage[446] and the Convention on Supplementary Compensation for Nuclear Damage adopted in 1997.

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[445] INFCIRC/703.

[446] United Nations, *Treaty Series,* vol. 2241, p. 270.

(*e*) Convention on Nuclear Safety[447]

In preparation for the Fourth Review Meeting (RM) of the Contracting Parties to the Convention on Nuclear Safety to be held from 14 to 25 April 2008, an Organizational Meeting of the Contracting Parties was held from 24 to 27 September 2007. In accordance with the Rules of Procedure and Financial Rules of the Convention on Nuclear Safety, the primary purpose of the meeting was to elect the Officers of the Review Meeting (President, Vice-Presidents, Country Group Chairs, Country Group Vice-Chairs, Country Group Coordinators and Country Group Rapporteurs), as well as to establish Country Groups. The meeting also considered some of the proposals forwarded by the contracting parties in anticipation of the Fourth Review meeting, including on how to further improve the effectiveness and efficiency of the review process under the Convention on Nuclear Safety.

(*f*) Code of Conduct on the Safety and Security of Radioactive Sources and the supplementary Guidance on the Import and Export of Radioactive Sources

The Code of Conduct on the Safety and Security of Radioactive Sources (the Code of Conduct)[448] 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 90 States as of the end of 2007.

Throughout 2007, work has continued to facilitate the implementation of the Code of Conduct's supplementary Guidance on the Import and Export of Radioactive Sources (the Guidance). Further to General Conference resolution GC(48)/RES/10.D, 45 States had written to the IAEA Director General by the end of 2007, indicating their commitment to follow the Guidance.

The first international Open-ended Meeting of Technical and Legal Experts for Sharing of Information as to States' Implementation of the Code of Conduct and its supplementary Guidance on the Import and Export of Radioactive Sources was held from 25 to 29 June 2007. The objective of the meeting was to promote a wide exchange of information on national implementation of the Code of Conduct and the Guidance. In line with the non-legally binding nature of the Code of Conduct and the Guidance, participation in the meeting and presentation of papers was on a voluntary basis and the meeting was open to all member and non-member States of the IAEA, whether or not they had made a political commitment to the Code and/or to the Guidance. The second such international meeting will be held from 26 to 28 May 2008.

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[447] United Nations, *Treaty Series,* vol. 1963, p. 293.

[448] INFCIRC/663.

(*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 and subsequently endorsed by the General Conference in September 2004.

As recommended by the December 2005 open-ended meeting, periodic meetings were held to exchange information and experiences in the application of the Code of Conduct. Two regional meetings were held in 2007 for Asia and the Pacific and Latin America and Caribbean regions. These meetings allowed participating countries to exchange information and views on the recommendations in the Code of Conduct, to discuss the results of self assessments made on the status of research reactor safety and to identify needs for assistance in applying the Code of Conduct.

Preparations were started for an international meeting on the application of the Code of Conduct in 2008, close to the Fourth Review Meeting of the Contracting Parties to the Convention on Nuclear Safety.

(*h*) Safeguards Agreements

During 2007, a Safeguards Agreement pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons[449] (NPT) with Burundi[450] entered into force. A Safeguards Agreement pursuant to the Additional Protocol I of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Tlatelolco Treaty) entered into force for France.[451] In addition, Hungary,[452] Malta[453] and Poland[454] acceded to the Safeguards Agreement between the IAEA, European Atomic Energy Community (Euratom) and the non-nuclear-weapon States of Euratom. A Safeguards Agreement was signed by Bahrain but had not entered into force as of December 2007. Safeguards Agreements with Chad, Montenegro, Mozambique and Timor-Leste pursuant to the NPT were approved by the IAEA Board of Governors. In addition, an agreement with Pakistan[455] for the application of safeguards in connection with the supply of a nuclear power station entered into force on 22 February 2007.

In 2007, Protocols Additional to the Safeguards Agreements between the IAEA and Burundi,[456] Kazakhstan,[457] Malawi,[458] Mauritius,[459] Niger,[460] Nigeria,[461] Russian Federa-

[449] United Nations, *Treaty Series,* vol. 729, p. 161.

[450] Reproduced in IAEA Document: INFCIRC/719.

[451] Reproduced in IAEA Document: INFCIRC/718.

[452] Reproduced in IAEA Document: INFCIRC/193/Add.15.

[453] Reproduced in IAEA Document: INFCIRC/193/Add.15.

[454] Reproduced in IAEA Document: INFCIRC/193/Add.13.

[455] Reproduced in IAEA Document: INFCIRC/705.

[456] Reproduced in IAEA Document: INFCIRC/719/Add.1.

[457] Reproduced in IAEA Document: INFCIRC/504/Add.1.

[458] Reproduced in IAEA Document: INFCIRC/409/Add.1.

[459] Reproduced in IAEA Document: INFCIRC/190/Add.1.

[460] Reproduced in IAEA Document: INFCIRC/664/Add.1.

[461] Reproduced in IAEA Document: INFCIRC/358/Add.1.

tion[462] and The Former Yugoslav Republic of Macedonia[463] entered into force. In addition, Hungary,[464] Malta[465] and Poland[466] acceded to the Protocol Additional to the Safeguards Agreement between the IAEA, Euratom and the non-nuclear-weapon States of Euratom. Additional Protocols were signed by Dominican Republic, Kyrgyz Republic and Viet Nam but had not entered into force as of December 2007. Additional Protocols with Chad, Côte d'Ivoire, Montenegro, Mozambique and Timor-Leste were approved by the IAEA Board of Governors in 2007.

10. World Intellectual Property Organization

(*a*) Introduction

In the year 2007, 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 2007, the WIPO Technical Assistance and Capacity Building (TACB) activities continued to be directed towards the integration of Intellectual Property (IP) in national development polices and programs in accordance with WIPO's Strategic Goal Two, created within the framework of the United Nations Millennium Development Goals. The technical assistance program and activities have been designated in close consultation with member States, Intergovernmental Organizations and Non-governmental Organizations and particularly with developing countries and least developed countries (LDCs) with which an intensified cooperation has been tailored to respond to the diverse and specific needs in important IP areas.

In the period under review, substantive legislative and technical assistance was provided in support of national IP building capacity in areas such as: IP infrastructure and exploitation of IP systems; human resources development; information technology; Genetic Resources; Traditional Knowledge and Folklore and protection of traditional cultural expressions; Small and Medium-Sized Enterprises; and the establishment of collective management societies.

The WIPO General Assembly decided, at its thirty-fourth sessions held from 24 September to 3 October 2007, after having reviewed the discussions during the two sessions of the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA), to establish a Committee on Development and Intellectual Property (CDIP). The CDIP, whose first session took place early March 2008, is mandated to develop a work-program for implementation of recommendations adopted in relation to the WIPO Development

[462] Reproduced in IAEA Document: INFCIRC/327/Add.1.

[463] Reproduced in IAEA Document: INFCIRC/610/Add.2.

[464] Reproduced in IAEA Document: INFCIRC/193/Add.16.

[465] Reproduced in IAEA Document: INFCIRC/193/Add.16.

[466] Reproduced in IAEA Document: INFCIRC/193/Add.14.

Agenda; monitor, assess, discuss and report on the implementation of all recommendations adopted by the PCDA by coordinating with relevant WIPO bodies and finally to discuss IP and development-related issues as agreed by the CDIP as well as those decided by the WIPO General Assembly.

(*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, the 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 on the Law of Patents (SCP)*

At its thirty-fourth sessions, held from 24 September to 3 October 2007, the WIPO General Assembly decided that a Report on the International Patent System be prepared by the Secretariat of WIPO and be submitted for discussion to the next session of the SCP which will take place in June 2008. The Report provides a frame of the current situation of the international patent system and attempts to cover the different needs and interests of Member States mainly on broader issues such as the economic rationale of the patent system and its role in innovation and technology dissemination as well as the legal and organizational aspects relating to the patent system.

During the period under review, the Committee continued constructive discussions on the future work plan related to the draft of the Substantive Patent Law Treaty (SPLT). However, the debate revealed that some existing differences on the harmonization of national patent laws could not yet be resolved. It was therefore considered that negotiations on the SPLT should continue in the attempt to strike a balance between the rigidities demanded by an upward harmonization of national patent laws and the safeguard of the existing flexibilities and national policy space.

(ii) *Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT)*

The SCT continued to concentrate its work on new types of marks, the trademark opposition procedure, trademarks and their relation with literary and artistic works, and on industrial design protection issues. The Committee continued to pursue its objective to modernize the international legal framework for trademark office administrative procedures and to find a common working field from diverging national and regional approaches in the area of trademarks, industrial designs and geographical indications law, including the law of unfair competition.

(iii) *Standing Committee on Copyright and Related Rights (SCCR)*

Two special sessions of the SCCR took place respectively in January and June 2007, to reach an agreement on and finalize the objectives, specific scope and object of protection, with a view to submitting the results to a possible Diplomatic Conference on the protection of the rights of broadcasting organizations. However, although the Committee urged that efforts to conclude a treaty on protection of broadcasting organizations be continued, it was felt that there was a need to take time to reflect before proceeding further to explore a possible agreement.

(iv) *Standing Committee on Information Technologies*

The Standards and Documentation Working Group of the Standing Committee on Information Technologies held its eighth session from 19 to 22 March 2007, during which were 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*

During the period under review, a total of 158,400 international patent applications were filed representing a 5.9 per cent rate of growth from the previous year. The most notable growth came from North East Asian countries which accounted for over 25.4 per cent of all international patent applications.

Two new States adhered in 2007 to the Patent Cooperation Treaty,[467] namely Bahrain and Malta, bringing the total number of contracting Parties to 139.

(ii) *Trademarks*

The international trademark registration system continued to significantly grow in 2007, with 39,945 new international trademark applications which represent a growth of 9.5 per cent as compared to 2006. A considerable growth of 10.5 per cent was also reported by developing countries which accounted for 2,108 filings during the period under review.

In 2007, with the adherence of Azerbaijan, Oman and San Marino to the Madrid Protocol,[468] the number of contracting parties rose to 74.

(iii) *Industrial designs*

In 2007, the Secretariat recorded 1,147 registrations of industrial designs. The number of designs contained in those registrations was 6,579.

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[467] United Nations, *Treaty Series,* vol. 1160, p. 231.

[468] United Nations, *Treaty Series,* vol. 828, p. 391.

During the year under review, Albania, Armenia, the European Community and Mongolia became party to the Geneva Act of the Hague Agreement,[469] bringing the total number of Contracting Parties to 25.

(iv) *Appellations of origin*

In 2007, the Secretariat inscribed 15 new appellations of origin, which brought to 810 the total number of appellations of origin in force under the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (Lisbon Agreement).[470]

The total number of contracting parties of the Lisbon Agreement is 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 eleventh session held in July 2007 reviewed the progress made on its substantive agenda particularly with the contribution of the enhanced participation of representatives of indigenous and local communities which was made possible by various initiatives including the successful launch of the WIPO Voluntary Fund, as well as from the participation of various intergovernmental organizations.

(ii) *The WIPO Arbitration and Mediation Center*

During the period under review, the WIPO Arbitration and Mediation Center carried out some 150 arbitration and mediation proceedings and processed over 26,000 disputes in the area of domain names. More than 11,000 of those were received under the Uniform Domain Name Dispute Resolution Policy, the policy that applies to all registration in generic top-level domains as well as under related policies for country code top-level Domains.

(iii) *New members and new accessions*[471]

In 2007, 31 new instruments of ratification and/or 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 party to the corresponding treaty by the end of 2007.

(*a*) Convention Establishing the World Intellectual Property Organization: 0 (184);

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[469] United Nations, *Treaty Series,* vol. 2279, p. 31.

[470] United Nations, *Treaty Series,* vol. 923, p. 189 and 205.

[471] For the texts and status of the conventions listed in this section, see under "Treaties" at http://wipo.int.

(*b*) Paris Convention for the Protection of Industrial Property: 2 (173);

(*c*) Berne Convention for the Protection of Literary and Artistic Works: 0 (163);

(*d*) Patent Cooperation Treaty: 2(139);

(*e*) Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks: 3(74);

(*f*) Trademark Law Treaty: 2(40);

(*g*) Patent Law Treaty: 3 (17);

(*h*) Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods: 0 (35);

(*i*) Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks: 1 (82);

(*j*) Locarno Agreement Establishing an International Classification for Industrial Designs: 1 (49);

(*k*) Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks: 1 (24);

(*l*) WIPO Copyright Treaty: 3 (64);

(*m*) WIPO Performances and Phonograms Treaty: 3 (62);

(*n*) Lisbon Agreement for the Protection of Appellations of Origin and their International Registration: 0 (26);

(*o*) Strasbourg Agreement Concerning the International Patent Classification: 2 (58);

(*p*) Nairobi Treaty on the Protection of the Olympic Symbol: 0(46);

(*q*) Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure: 2 (68);

(*r*) Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations: 2 (86);

(*s*) Hague Agreement Concerning the International Registration of Industrial Designs: 3 (48);

(*t*) Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite: 1 (30);

(*u*) Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms: 0 (76).

11. 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 WTO's 150th member on 11 January 2007. The accession package of the Kingdom of Tonga was adopted at the Sixth WTO Ministerial Conference (15 December 2006). Tonga became the WTO's 151st member on 27 July 2007.

(ii) Ongoing accessions

As of the date of this document, the following applicants are in the process of accession to the WTO (in alphabetical order):

Afghanistan
Algeria
Andorra
Azerbaijan
Bahamas
Belarus
Bhutan
Bosnia and Herzegovina
Cape Verde
Comoros, Union of the
Ethiopia
Iran
Iraq
Kazakhstan
Lao People's Democratic Republic
Lebanese Republic
Liberia
Libyan Arab Jamahiriya
Montenegro
Russian Federation
Samoa
Sao Tomé and Principe
Serbia
Seychelles
Sudan
Tajikistan
Ukraine
Uzbekistan
Vanuatu[473]
Yemen

– The General Council approved Cape Verde's accession package on 18 December 2007. Cape Verde will become a WTO member 30 days after informing the WTO of the domestic ratification of its accession package.

Of the remaining accessions:

– 22 applicants have submitted a Memorandum on the Foreign Trade Regime – a key document containing the factual information needed for activating the work of the Working Party;
– 22 Working Parties have held their first meeting;
– 20 applicants have tabled their offers on goods and/or services to initiate bilateral market access negotiations with interested Members; and
– A draft Working Party Report or Elements of a draft Report (a document that lays down the basis for the draft Working Party Report) has been prepared for 8 applicants.

[472] Final meeting of the Working Party on the Accession of Vanuatu was held on 29 October 2001.

A Working Party has not yet been established to examine a request for accession from Syria[473] and Equatorial Guinea.[474]

(*b*) Dispute settlement

During 2007, 13 requests for consultations were received pursuant to article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes. The Dispute Settlement Body established panels in the following cases:

- Mexico—Definitive countervailing measures on olive oil from the European Communities (WT/DS341);
- Chile—Provisional Safeguard Measure on Certain Milk Products / Definitive Safeguard Measure on Certain Milk Products (WT/DS351, WT/DS356);
- India—Measures affecting the importation and sale of wines and spirits from the European Communities (WT/DS352);
- United States—Continued Existence and Application of Zeroing Methodology (WT/DS350);
- India—Additional and Extra-Additional Duties on Imports from the United States (WT/DS360);
- Brazil—Anti-Dumping Measures on imports of Certain Resins from Argentina (WT/DS355);
- China—Certain Measures Granting Refunds, Reductions or Exemptions from Taxes and other Payment (WT/DS358);
- China—Certain Measures Granting Refunds, Reductions or Exemptions from Taxes and Other Payments (WT/DS359);
- China—Measures Affecting the Protection and Enforcement of Intellectual Property Rights (WT/DS361);
- Colombia—Indicative Prices and Restrictions on Ports of Entry (WT/DS366);
- China—Measures Affecting Trading Rights and Distribution Services for certain Publications and Audiovisual Entertainment Products (WT/DS363);
- United States—Domestic Support and Export Credit Guarantees for Agricultural Products (WT/DS365);
- United States—Subsidies and Other Domestic Support for Corn and other Agricultural Products (WT/DS357);
- Australia—Measures Affecting the Importation of Apples from New Zealand (WT/DS367).

During 2007, the Dispute Settlement Body adopted Panel Reports and Appellate Body Reports in the following cases:

- United States—Measures Relating to Zeroing and Sunset Reviews WT/DS322 (Appellate Body and Panel reports);

[473] Documents WT/ACC/SYR/1, 2 and 3.

[474] Document WT/ACC/GNQ/1.

- United States—Anti-Dumping Measure on Shrimp from Ecuador (WT/DS335) (Panel report);
- Mexico—Dumping Duties on Steel Pipes and Tubes from Guatemala (WT/DS331) (Panel report);
- Turkey—Measures Affecting the Importation of Rice (WT/DS334) (Panel report);
- Brazil—Measures Affecting Imports of Retreaded Tyres (WT/DS332) (Panel and Appellate Body reports);
- Japan—Countervailing Duties on Dynamic Random Access Memories from Korea (WT/DS336) (Panel and Appellate Body reports).

(*c*) Waivers under article IX of the WTO Agreement[475]

MEMBER	TYPE	DECISION OF	EXPIRY	DOCUMENT
Argentina	Introduction of Harmonized System 1996 changes into WTO Schedules of Tariff Concessions Extension of Time-Limit	27 July 2007	30 April 2008	WT/L/692
Panama	Introduction of Harmonized System 1996 changes into WTO Schedules of Tariff Concessions Extension of Time-Limit	27 July 2007	30 April 2008	WT/L/693
Argentina, Australia, Brazil, China, Costa Rica, Croatia, El Salvador, European Communities, Iceland, India, Republic of Korea, Mexico, New Zealand, Nicaragua, Norway, Singapore, Chinese Taipei, Thailand, United States, and Uruguay	Introduction of Harmonized System 2002 changes into WTO Schedules of Tariff Concessions	18 December 2007	31 December 2008	WT/L/712

[475] Marrakech Agreement establishing the WTO, 15 April 1994. United Nations, *Treaty Series,* vols. 1867, 1868 and 1869, p. 3, and annex A in volumes 1890, 1895, 1915 and 1928.

MEMBER	TYPE	DECISION OF	EXPIRY	DOCUMENT
Argentina, Australia, Brazil, Canada , Costa Rica, Croatia, El Salvador, European Communities, Guatemala, Honduras; Hong Kong, China; India, Korea; Macao, China; Malaysia, Mexico, New Zealand, Nicaragua, Norway, Pakistan, Singapore, Switzerland, Thailand, United States, and Uruguay	Introduction of Harmonized System 2007 changes into WTO Schedules of Tariff Concessions	18 December 2007	31 December 2008	WT/L/713
United States	Former Territory of the Pacific Islands	27 July 2007	31 December 2016	WT/L/694
Mongolia	Export duties on raw cashmere	27 July 2007	29 January 2012	WT/L/695

12. Organisation for the Prohibition of Chemical Weapons

(*a*) Membership

In 2007 one State, namely Barbados, became party to the Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and on their Destruction[476] (hereinafter "the Chemical Weapons Convention" or "CWC"). At the end of the year the number of State parties stood at 182.

(*b*) Destruction of chemical weapons

Under article III, paragraph 1, of the Chemical Weapons Convention, each State party shall declare whether it owns or possesses chemical weapons. As at the end of 2007, six State Parties had declared the possession of chemical weapons. Under Article I, paragraph 2, of the Chemical Weapons Convention "Each State Party undertakes to destroy chemical weapons it owns or possesses, or that are located in any place under its jurisdiction or control [. . .]". Such destruction was to be concluded not later than 10 years after entry into force of the Convention, i.e. on 29 April 2007 (see article IV, paragraph 6, of the CWC). However, the CWC makes provision for an extension of the deadline for completing the destruction of the declared chemical weapons stockpiles for up to five years (i.e. until 29 April 2012) on the request of a State party. At its eleventh session, held from 5 to 8 December 2006, the Conference of the State parties of

[476] United Nations, *Treaty Series,* vol. 1974, p. 45.

the Organization for the Prohibition of Chemical Weapons (OPCW) approved such requests for extensions of the deadline made by possessor State parties.

In July 2007, Albania became the first State party to complete the destruction of its entire stockpile of chemical weapons declared to the OPCW, and at the end of 2007, there were five State parties remaining with declared chemical weapons stockpiles.

(*c*) Legal status, privileges and immunities and international agreements

Article VIII, paragraphs 48 and 49, of the CWC provides for privileges and immunities to the OPCW, delegates of States, representatives appointed to the Executive Council, the Director-General and the staff of the OPCW as are necessary for the independent exercise of their functions. These privileges and immunities must be defined in agreements concluded between States parties and the OPCW pursuant to Article VIII, paragraph 50, of the CWC. In addition, there are provisions for privileges and immunities enjoyed during the conduct of verification activities set forth in part II, section B, of the annex of the CWC on Implementation and Verification (hereinafter "the Verification Annex").

During 2007 the OPCW signed three agreements with State Parties on the privileges and immunities of the OPCW: Burkina Faso on 7 February 2007; the Eastern Republic of Uruguay on 20 February 2007; and the Republic of Chile on 30 October 2007. None of these agreements had entered into force as of December 2007. On 3 July 2007 the Agreement between the OPCW and the Kingdom of Spain on the Privileges and Immunities of the OPCW, which had been signed on 16 September 2003, entered into force upon receipt of the instrument of ratification of the Kingdom of Spain.

In addition, pursuant to paragraph 3 of part III of the Verification Annex to the Chemical Weapons Convention, each State Party must conclude facility agreements with the OPCW for certain declared facilities that are subject to on-site inspections. Facility agreements may also be negotiated for other declared facilities that are subject to on-site inspections. During the reporting period seven facility agreements were concluded between the OPCW and the United States of America. They were signed on 8 February 2007 and entered into force on the same day. One further facility agreement concluded during 2007 was between the OPCW and the Italian Republic. This agreement was signed on 29 June 2007 and entered into force on the same day.

During 2007 the OPCW also concluded the following instruments:

The European Community entered into a Contribution Agreement with the OPCW, in support of the OPCW activities within the framework of implementation of the European Union Strategy against Proliferation of Weapons of Mass Destruction. This agreement was signed on 23 August 2007 and entered into force on the same day.

Four memoranda of understanding regarding sample preparation and evaluation of results for the 22nd official OPCW Proficiency Test were concluded between the OPCW and laboratories in various State Parties. Two memoranda of understanding were signed on 14 March 2007 with laboratories in China and USA respectively. On 18 September 2007, a memorandum of understanding was signed with a laboratory in the United Kingdom and on 31 July 2007, a memorandum of understanding was signed with a laboratory in Poland. The four memoranda entered into force on the dates of their respective signatures.

An arrangement for a training course was also concluded between the OPCW and the Republic of Serbia. It was signed and entered into force on 6 June 2007.

Finally, a Memorandum of Understanding regarding voluntary contributions to support the cost of the design and production of a memorial to the victims of chemical warfare, which had been signed between the OPCW and the Ministry of Foreign Affairs of the Kingdom of the Netherlands on 28 July 2006, entered into force on 9 May 2007.

(*d*) Review of the Chemical Weapons Convention

Article VIII, paragraph 22, of the Chemical Weapons Convention provides that no later than one year after the expiry of the fifth and the tenth year after the entry into force of the Convention, the Conference shall convene in special sessions to undertake reviews of the operation of the Convention (hereinafter referred to as "Review Conference").

An Open-Ended Working Group for preparations for the Second Review Conference (that had been scheduled for 17 to 28 April 2008) was established by the Executive Council of the OPCW at its forty-third Session,[477] at the recommendation of the Conference of the State Parties at its tenth Session.[478] The Open-Ended Working Group held 11 meetings in 2007, at which it considered issues including, among other issues, the role of the Convention in enhancing international peace and security, the measures to ensure universality, and the implications of scientific and technological developments for the provision of assistance and protection against chemical weapons and for the national implementation of the Convention.

Meetings of State parties and chemical industry representatives and non-governmental organisations for the preparation of the Second Review Conference were also held on 11 June and 19 November 2007, respectively.

(*e*) OPCW legislative assistance activities

Throughout 2007, the Technical Secretariat of the OPCW, upon request, continued to render assistance in a tailored and systematic manner to State parties that were yet to adopt legislative or administrative measures to implement their obligations under the Convention. Such implementation support was aimed particularly at helping State parties to establish or designate a National Authority to serve as the national focal point for effective liaison with the OPCW and other State Parties as required by article VII, paragraph 4 of the CWC, and to adopt legislation, including penal legislation as required by article VII, paragraph 1, of the CWC.

In its implementation support efforts, the Technical Secretariat of the OPCW was guided by the decision on the plan of action regarding the implementation of article VII obligations adopted by the Conference of the State parties on 24 October 2003 and its follow-up decisions dated 11 November 2005 and 6 December 2006, respectively. During its twelfth session, the Conference of the State Parties adopted a new decision regarding the implemen-

[477] EC-43/2, dated 6 December 2005.

[478] C-10/5, dated 11 November 2005.

tation of article VII.[479] The Conference emphasised the importance for those State parties that have not yet established or designated their national authority or have not yet adopted comprehensive implementing legislation to keep the OPCW informed of the steps taken, the difficulties encountered in this process, and of their assistance requirements so as to allow assistance rendered by the OPCW to effectively address their needs, practical national implementation issues and concerns on *inter alia,* matters related to industry and trade.

During 2007, the Technical Secretariat continued making use of a variety of tools to provide assistance to State parties upon request. It contributed to 30 training courses, workshops, on-site technical assistance visits and other activities related to national implementation for officials, including those from National Authorities, customs, industry and national parliaments. Among these events, three thematic workshops focussed on legislative drafting alone. Three meetings were held for parliamentarians, at the national level in Liberia and Peru, and at the regional level for State parties in Latin America and the Caribbean. The role of parliamentarians for early adoption of national implementing legislation was also discussed during the Ninth Annual Meeting of National Authorities in November 2007. The regional and sub-regional meetings and workshops for National Authorities from Africa, Asia, Eastern Europe, and Latin America and the Caribbean offered further opportunities of assistance in promoting awareness about the Convention's requirement and training the personnel of National Authorities and gave rise to discussion, including during bilateral consultations, on the practical aspects of national implementation.

In addition, in 2007, the Technical Secretariat also reviewed and provided comments on 44 drafts of implementing legislation and subsidiary regulations that had been submitted by 35 State parties. It continued to provide information on implementing legislation and on administrative measures for implementation at the request of State parties.

In developing its implementation support plan for 2007, the Technical Secretariat took account of the particular requirements of those State parties that had recently joined the Chemical Weapons Convention and had requested such assistance.

The Secretariat continued to maintain informal working contact with State 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.

At of 31 December 2007, 175 out of 182 State parties (96 per cent) had designated or established a National Authority while 78 State parties (43 per cent) had comprehensive implementing legislation in place.

[479] C-12/DEC.9, dated 9 November 2007.

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

[No treaty concerning international law was concluded under the auspices of the United Nations in 2007.]

B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations

1. International Labour Organization

Work in Fishing Convention. Geneva, 14 June 2007*

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its ninety-sixth Session on 30 May 2007, and

Recognizing that globalization has a profound impact on the fishing sector, and

Noting the ILO Declaration on Fundamental Principles and Rights at Work, 1998, and

Taking into consideration the fundamental rights to be found in the following international labour Conventions: the Forced Labour Convention, 1930 (No. 29), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Abolition of Forced Labour Convention, 1957 (No. 105), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and

Noting the relevant instruments of the International Labour Organization, in particular the Occupational Safety and Health Convention (No. 155) and Recommendation (No. 164), 1981, and the Occupational Health Services Convention (No. 161) and Recommendation (No. 171), 1985, and

* Adopted by the International Labour Conference at its 96th session.

Noting, in addition, the Social Security (Minimum Standards) Convention, 1952 (No. 102), and considering that the provisions of Article 77 of that Convention should not be an obstacle to protection extended by Members to fishers under social security schemes, and

Recognizing that the International Labour Organization considers fishing as a hazardous occupation when compared to other occupations, and

Noting also Article 1, paragraph 3, of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), and

Mindful of the core mandate of the Organization, which is to promote decent conditions of work, and

Mindful of the need to protect and promote the rights of fishers in this regard, and

Recalling the United Nations Convention on the Law of the Sea, 1982, and

Taking into account the need to revise the following international Conventions adopted by the International Labour Conference specifically concerning the fishing sector, namely the Minimum Age (Fishermen) Convention, 1959 (No. 112), the Medical Examination (Fishermen) Convention, 1959 (No. 113), the Fishermen's Articles of Agreement Convention, 1959 (No. 114), and the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126), to bring them up to date and to reach a greater number of the world's fishers, particularly those working on board smaller vessels, and

Noting that the objective of this Convention is to ensure that fishers have decent conditions of work on board fishing vessels with regard to minimum requirements for work on board; conditions of service; accommodation and food; occupational safety and health protection; medical care and social security, and

Having decided upon the adoption of certain proposals with regard to work in the fishing sector, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this fourteenth day of June of the year two thousand and seven the following Convention, which may be cited as the Work in Fishing Convention, 2007.

Part I. Definitions and scope

Definitions

Article 1

For the purposes of the Convention:

(*a*) *commercial fishing* means all fishing operations, including fishing operations on rivers, lakes or canals, with the exception of subsistence fishing and recreational fishing;

(*b*) *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;

(*c*) *consultation* means consultation by the competent authority with the representative organizations of employers and workers concerned, and in particular the representative organizations of fishing vessel owners and fishers, where they exist;

(*d*) *fishing vessel owner* means the owner of the fishing vessel or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the vessel from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on fishing vessel owners in accordance with the Convention, regardless of whether any other organization or person fulfils certain of the duties or responsibilities on behalf of the fishing vessel owner;

(*e*) *fisher* means every person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel, including persons working on board who are paid on the basis of a share of the catch but excluding pilots, naval personnel, other persons in the permanent service of a government, shore-based persons carrying out work aboard a fishing vessel and fisheries observers;

(*f*) *fisher's work agreement* means a contract of employment, articles of agreement or other similar arrangements, or any other contract governing a fisher's living and working conditions on board a vessel;

(*g*) *fishing vessel* or *vessel* means any ship or boat, of any nature whatsoever, irrespective of the form of ownership, used or intended to be used for the purpose of commercial fishing;

(*h*) *gross tonnage* means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969, or any instrument amending or replacing it;

(*i*) *length* (L) shall be taken as 96 per cent of the total length on a waterline at 85 per cent of the least moulded depth measured from the keel line, or as the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that be greater. In vessels designed with rake of keel, the waterline on which this length is measured shall be parallel to the designed waterline;

(*j*) *length overall* (LOA) shall be taken as the distance in a straight line parallel to the designed waterline between the foremost point of the bow and the aftermost point of the stern;

(*k*) *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 fishers on behalf of, or placing fishers with, fishing vessel owners;

(*l*) *skipper* means the fisher having command of a fishing vessel.

Scope

Article 2

1. Except as otherwise provided herein, this Convention applies to all fishers and all fishing vessels engaged in commercial fishing operations.

2. In the event of doubt as to whether a vessel is engaged in commercial fishing, the question shall be determined by the competent authority after consultation.

3. Any Member, after consultation, may extend, in whole or in part, to fishers working on smaller vessels the protection provided in this Convention for fishers working on vessels of 24 metres in length and over.

Article 3

1. Where the application of the Convention raises special problems of a substantial nature in the light of the particular conditions of service of the fishers or of the fishing vessels' operations concerned, a Member may, after consultation, exclude from the requirements of this Convention, or from certain of its provisions:

(*a*) fishing vessels engaged in fishing operations in rivers, lakes or canals;

(*b*) limited categories of fishers or fishing vessels.

2. In case of exclusions under the preceding paragraph, and where practicable, the competent authority shall take measures, as appropriate, to extend progressively the requirements under this Convention to the categories of fishers and fishing vessels concerned.

3. Each Member which ratifies this Convention shall:

(*a*) in its first report on the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation:

(i) list any categories of fishers or fishing vessels excluded under paragraph 1;

(ii) give the reasons for any such exclusions, stating the respective positions of the representative organizations of employers and workers concerned, in particular the representative organizations of fishing vessel owners and fishers, where they exist; and

(iii) describe any measures taken to provide equivalent protection to the excluded categories; and

(b) in subsequent reports on the application of the Convention, describe any measures taken in accordance with paragraph 2.

Article 4

1. Where it is not immediately possible for a Member to implement all of the measures provided for in this Convention owing to special problems of a substantial nature in the light of insufficiently developed infrastructure or institutions, the Member may, in accordance with a plan drawn up in consultation, progressively implement all or some of the following provisions:

(*a*) Article 10, paragraph 1;

(*b*) Article 10, paragraph 3, in so far as it applies to vessels remaining at sea for more than three days;

(*c*) Article 15;

(*d*) Article 20;

(*e*) Article 33; and

(*f*) Article 38.

2. Paragraph 1 does not apply to fishing vessels which:

(*a*) are 24 metres in length and over; or

(*b*) remain at sea for more than seven days; or

(*c*) normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf, whichever distance from the coastline is greater; or

(*d*) are subject to port State control as provided for in Article 43 of this Convention, except where port State control arises through a situation of force majeure,

nor to fishers working on such vessels.

3. Each Member which avails itself of the possibility afforded in paragraph 1 shall:

(*a*) in its first report on the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation:

(i) indicate the provisions of the Convention to be progressively implemented;

(ii) explain the reasons and state the respective positions of representative organizations of employers and workers concerned, and in particular the representative organizations of fishing vessel owners and fishers, where they exist; and

(iii) describe the plan for progressive implementation; and

(*b*) in subsequent reports on the application of this Convention, describe measures taken with a view to giving effect to all of the provisions of the Convention.

Article 5

1. For the purpose of this Convention, the competent authority, after consultation, may decide to use length overall (LOA) in place of length (L) as the basis for measurement, in accordance with the equivalence set out in Annex I.* In addition, for the purpose of the paragraphs specified in Annex III of this Convention, the competent authority, after consultation, may decide to use gross tonnage in place of length (L) or length overall (LOA) as the basis for measurement in accordance with the equivalence set out in Annex III.

2. In the reports submitted under article 22 of the Constitution, the Member shall communicate the reasons for the decision taken under this Article and any comments arising from the consultation.

Part II. General principles

Implementation

Article 6

1. Each Member shall implement and enforce laws, regulations or other measures that it has adopted to fulfil its commitments under this Convention with respect to fishers and fishing vessels under its jurisdiction. Other measures may include collective agreements, court decisions, arbitration awards, or other means consistent with national law and practice.

2. Nothing in this Convention shall affect any law, award or custom, or any agreement between fishing vessel owners and fishers, which ensures more favourable conditions than those provided for in this Convention.

* Annexes I, II and III to the present Convention are not reproduced herein.

Competent authority and coordination

Article 7

Each Member shall:

(*a*) designate the competent authority or authorities; and

(*b*) establish mechanisms for coordination among relevant authorities for the fishing sector at the national and local levels, as appropriate, and define their functions and responsibilities, taking into account their complementarities and national conditions and practice.

Responsibilities of fishing vessel owners, skippers and fishers

Article 8

1. The fishing vessel owner has the overall responsibility to ensure that the skipper is provided with the necessary resources and facilities to comply with the obligations of this Convention.

2. The skipper has the responsibility for the safety of the fishers on board and the safe operation of the vessel, including but not limited to the following areas:

(*a*) providing such supervision as will ensure that, as far as possible, fishers perform their work in the best conditions of safety and health;

(*b*) managing the fishers in a manner which respects safety and health, including prevention of fatigue;

(*c*) facilitating on-board occupational safety and health awareness training; and

(*d*) ensuring compliance with safety of navigation, watchkeeping and associated good seamanship standards.

3. The skipper shall not be constrained by the fishing vessel owner from taking any decision which, in the professional judgement of the skipper, is necessary for the safety of the vessel and its safe navigation and safe operation, or the safety of the fishers on board.

4. Fishers shall comply with the lawful orders of the skipper and applicable safety and health measures.

Part III. Minimum requirements for work on board fishing vessels

Minimum age

Article 9

1. The minimum age for work on board a fishing vessel shall be 16 years. However, the competent authority may authorize a minimum age of 15 for persons who are no longer subject to compulsory schooling as provided by national legislation, and who are engaged in vocational training in fishing.

2. The competent authority, in accordance with national laws and practice, may authorize persons of the age of 15 to perform light work during school holidays. In such cases, it shall determine, after consultation, the kinds of work permitted and shall prescribe the conditions in which such work shall be undertaken and the periods of rest required.

3. The minimum age for assignment to activities on board fishing vessels, which by their nature or the circumstances in which they are carried out are likely to jeopardize the health, safety or morals of young persons, shall not be less than 18 years.

4. The types of activities to which paragraph 3 of this Article applies shall be determined by national laws or regulations, or by the competent authority, after consultation, taking into account the risks concerned and the applicable international standards.

5. The performance of the activities referred to in paragraph 3 of this Article as from the age of 16 may be authorized by national laws or regulations, or by decision of the competent authority, after consultation, on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons concerned have received adequate specific instruction or vocational training and have completed basic pre-sea safety training.

6. The engagement of fishers under the age of 18 for work at night shall be prohibited. For the purpose of this Article, "night" shall be defined in accordance with national law and practice. It shall cover a period of at least nine hours starting no later than midnight and ending no earlier than 5 A.M. An exception to strict compliance with the night work restriction may be made by the competent authority when:

(*a*) the effective training of the fishers concerned, in accordance with established programmes and schedules, would be impaired; or

(*b*) the specific nature of the duty or a recognized training programme requires that fishers covered by the exception perform duties at night and the authority determines, after consultation, that the work will not have a detrimental impact on their health or well-being.

7. Nothing in this Article shall affect any obligations assumed by the Member arising from the ratification of any other international labour Convention.

Medical examination

Article 10

1. No fishers shall work on board a fishing vessel without a valid medical certificate attesting to fitness to perform their duties.

2. The competent authority, after consultation, may grant exemptions from the application of paragraph 1 of this Article, taking into account the safety and health of fishers, size of the vessel, availability of medical assistance and evacuation, duration of the voyage, area of operation, and type of fishing operation.

3. The exemptions in paragraph 2 of this Article shall not apply to a fisher working on a fishing vessel of 24 metres in length and over or which normally remains at sea for more than three days. In urgent cases, the competent authority may permit a fisher to work on such a vessel for a period of a limited and specified duration until a medical certificate can be obtained, provided that the fisher is in possession of an expired medical certificate of a recent date.

Article 11

Each Member shall adopt laws, regulations or other measures providing for:

(*a*) the nature of medical examinations;

(*b*) the form and content of medical certificates;

(*c*) the issue of a medical certificate by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognized by the competent authority as qualified to issue such a certificate; these persons shall enjoy full independence in exercising their professional judgement;

(*d*) the frequency of medical examinations and the period of validity of medical certificates;

(*e*) the right to a further examination by a second independent medical practitioner in the event that a person has been refused a certificate or has had limitations imposed on the work he or she may perform; and

(*f*) other relevant requirements.

Article 12

In addition to the requirements set out in Article 10 and Article 11, on a fishing vessel of 24 metres in length and over, or on a vessel which normally remains at sea for more than three days:

1. The medical certificate of a fisher shall state, at a minimum, that:

(*a*) the hearing and sight of the fisher concerned are satisfactory for the fisher's duties on the vessel; and

(*b*) the fisher is not suffering from any medical condition likely to be aggravated by service at sea or to render the fisher unfit for such service or to endanger the safety or health of other persons on board.

2. The medical certificate shall be valid for a maximum period of two years unless the fisher is under the age of 18, in which case the maximum period of validity shall be one year.

3. If the period of validity of a certificate expires in the course of a voyage, the certificate shall remain in force until the end of that voyage.

Part IV. Conditions of service

Manning and hours of rest

Article 13

Each Member shall adopt laws, regulations or other measures requiring that owners of fishing vessels flying its flag ensure that:

(*a*) their vessels are sufficiently and safely manned for the safe navigation and operation of the vessel and under the control of a competent skipper; and

(*b*) fishers are given regular periods of rest of sufficient length to ensure safety and health.

Article 14

1. In addition to the requirements set out in Article 13, the competent authority shall:

(*a*) for vessels of 24 metres in length and over, establish a minimum level of manning for the safe navigation of the vessel, specifying the number and the qualifications of the fishers required;

(*b*) for fishing vessels regardless of size remaining at sea for more than three days, after consultation and for the purpose of limiting fatigue, establish the minimum hours of rest to be provided to fishers. Minimum hours of rest shall not be less than:

(i) ten hours in any 24-hour period; and

(ii) 77 hours in any seven-day period.

2. The competent authority may permit, for limited and specified reasons, temporary exceptions to the limits established in paragraph 1(b) of this Article. However, in such circumstances, it shall require that fishers shall receive compensatory periods of rest as soon as practicable.

3. The competent authority, after consultation, may establish alternative requirements to those in paragraphs 1 and 2 of this Article. However, such alternative requirements shall be substantially equivalent and shall not jeopardize the safety and health of the fishers.

4. Nothing in this Article shall be deemed to impair the right of the skipper of a vessel to require a fisher to perform any hours of work necessary for the immediate safety of the vessel, the persons on board or the catch, or for the purpose of giving assistance to other boats or ships or persons in distress at sea. Accordingly, the skipper may suspend the schedule of hours of rest and require a fisher to perform any hours of work necessary until the normal situation has been restored. As soon as practicable after the normal situation has been restored, the skipper shall ensure that any fishers who have performed work in a scheduled rest period are provided with an adequate period of rest.

Crew list

Article 15

Every fishing vessel shall carry a crew list, a copy of which shall be provided to authorized persons ashore prior to departure of the vessel, or communicated ashore immediately after departure of the vessel. The competent authority shall determine to whom and when such information shall be provided and for what purpose or purposes.

Fisher's work agreement

Article 16

Each Member shall adopt laws, regulations or other measures:

(*a*) requiring that fishers working on vessels flying its flag have the protection of a fisher's work agreement that is comprehensible to them and is consistent with the provisions of this Convention; and

(*b*) specifying the minimum particulars to be included in fishers' work agreements in accordance with the provisions contained in Annex II.

Article 17

Each Member shall adopt laws, regulations or other measures regarding:

(*a*) procedures for ensuring that a fisher has an opportunity to review and seek advice on the terms of the fisher's work agreement before it is concluded;

(*b*) where applicable, the maintenance of records concerning the fisher's work under such an agreement; and

(*c*) the means of settling disputes in connection with a fisher's work agreement.

Article 18

The fisher's work agreement, a copy of which shall be provided to the fisher, shall be carried on board and be available to the fisher and, in accordance with national law and practice, to other concerned parties on request.

Article 19

Articles 16 to 18 and Annex II do not apply to a fishing vessel owner who is also single-handedly operating the vessel.

Article 20

It shall be the responsibility of the fishing vessel owner to ensure that each fisher has a written fisher's work agreement signed by both the fisher and the fishing vessel owner or by an authorized representative of the fishing vessel owner (or, where fishers are not employed or engaged by the fishing vessel owner, the fishing vessel owner shall have evidence of contractual or similar arrangements) providing decent work and living conditions on board the vessel as required by this Convention.

Repatriation

Article 21

1. Members shall ensure that fishers on a fishing vessel that flies their flag and that enters a foreign port are entitled to repatriation in the event that the fisher's work agreement has expired or has been terminated for justified reasons by the fisher or by the fishing vessel owner, or the fisher is no longer able to carry out the duties required under the work agreement or cannot be expected to carry them out in the specific circumstances. This also applies to fishers from that vessel who are transferred for the same reasons from the vessel to the foreign port.

2. The cost of the repatriation referred to in paragraph 1 of this Article shall be borne by the fishing vessel owner, except where the fisher has been found, in accordance with national laws, regulations or other measures, to be in serious default of his or her work agreement obligations.

3. Members shall prescribe, by means of laws, regulations or other measures, the precise circumstances entitling a fisher covered by paragraph 1 of this Article to repatria-

tion, the maximum duration of service periods on board following which a fisher is entitled to repatriation, and the destinations to which fishers may be repatriated.

4. If a fishing vessel owner fails to provide for the repatriation referred to in this Article, the Member whose flag the vessel flies shall arrange for the repatriation of the fisher concerned and shall be entitled to recover the cost from the fishing vessel owner.

5. National laws and regulations shall not prejudice any right of the fishing vessel owner to recover the cost of repatriation under third party contractual agreements.

Recruitment and placement

Article 22

Recruitment and placement of fishers

1. Each Member that operates a public service providing recruitment and placement for fishers shall ensure that the service forms part of, or is coordinated with, a public employment service for all workers and employers.

2. Any private service providing recruitment and placement for fishers which operates in the territory of a Member shall do so in conformity with a standardized system of licensing or certification or other form of regulation, which shall be established, maintained or modified only after consultation.

3. Each Member shall, by means of laws, regulations or other measures:

(*a*) prohibit recruitment and placement services from using means, mechanisms or lists intended to prevent or deter fishers from engaging for work;

(*b*) require that no fees or other charges for recruitment or placement of fishers be borne directly or indirectly, in whole or in part, by the fisher; and

(*c*) determine the conditions under which any licence, certificate or similar authorization of a private recruitment or placement service may be suspended or withdrawn in case of violation of relevant laws or regulations; and specify the conditions under which private recruitment and placement services can operate.

Private employment agencies

4. A Member which has ratified the Private Employment Agencies Convention, 1997 (No. 181), may allocate certain responsibilities under this Convention to private employment agencies that provide the services referred to in paragraph 1(b) of Article 1 of that Convention. The respective responsibilities of any such private employment agencies and of the fishing vessel owners, who shall be the "user enterprise" for the purpose of that Convention, shall be determined and allocated, as provided for in Article 12 of that Convention. Such a Member shall adopt laws, regulations or other measures to ensure that no allocation of the respective responsibilities or obligations to the private emloyment agencies providing the service and to the "user enterprise" pursuant to this Convention shall preclude the fisher from asserting a right to a lien arising against the fishing vessel.

5. Notwithstanding the provisions of paragraph 4, the fishing vessel owner shall be liable in the event that the private employment agency defaults on its obligations to a fisher for whom, in the context of the Private Employment Agencies Convention, 1997 (No. 181), the fishing vessel owner is the "user enterprise".

6. Nothing in this Convention shall be deemed to impose on a Member the obligation to allow the operation in its fishing sector of private employment agencies as referred to in paragraph 4 of this Article.

Payment of fishers

Article 23

Each Member, after consultation, shall adopt laws, regulations or other measures providing that fishers who are paid a wage are ensured a monthly or other regular payment.

Article 24

Each Member shall require that all fishers working on board fishing vessels shall be given a means to transmit all or part of their payments received, including advances, to their families at no cost.

Part V. Accommodation and food

Article 25

Each Member shall adopt laws, regulations or other measures for fishing vessels that fly its flag with respect to accommodation, food and potable water on board.

Article 26

Each Member shall adopt laws, regulations or other measures requiring that accommodation on board fishing vessels that fly its flag shall be of sufficient size and quality and appropriately equipped for the service of the vessel and the length of time fishers live on board. In particular, such measures shall address, as appropriate, the following issues:

(*a*) approval of plans for the construction or modification of fishing vessels in respect of accommodation;

(*b*) maintenance of accommodation and galley spaces with due regard to hygiene and overall safe, healthy and comfortable conditions;

(*c*) ventilation, heating, cooling and lighting;

(*d*) mitigation of excessive noise and vibration;

(*e*) location, size, construction materials, furnishing and equipping of sleeping rooms, mess rooms and other accommodation spaces;

(*f*) sanitary facilities, including toilets and washing facilities, and supply of sufficient hot and cold water; and

(*g*) procedures for responding to complaints concerning accommodation that does not meet the requirements of this Convention.

Article 27

Each Member shall adopt laws, regulations or other measures requiring that:

(*a*) the food carried and served on board be of a sufficient nutritional value, quality and quantity;

(*b*) potable water be of sufficient quality and quantity; and

(*c*) the food and water shall be provided by the fishing vessel owner at no cost to the fisher. However, in accordance with national laws and regulations, the cost can be recovered as an operational cost if the collective agreement governing a share system or a fisher's work agreement so provides.

Article 28

1. The laws, regulations or other measures to be adopted by the Member in accordance with Articles 25 to 27 shall give full effect to Annex III concerning fishing vessel accommodation. Annex III may be amended in the manner provided for in Article 45.

2. A Member which is not in a position to implement the provisions of Annex III may, after consultation, adopt provisions in its laws and regulations or other measures which are substantially equivalent to the provisions set out in Annex III, with the exception of provisions related to Article 27.

Part VI. Medical care, health protection and social security

Medical care

Article 29

Each Member shall adopt laws, regulations or other measures requiring that:

(*a*) fishing vessels carry appropriate medical equipment and medical supplies for the service of the vessel, taking into account the number of fishers on board, the area of operation and the length of the voyage;

(*b*) fishing vessels have at least one fisher on board who is qualified or trained in first aid and other forms of medical care and who has the necessary knowledge to use the medical equipment and supplies for the vessel concerned, taking into account the number of fishers on board, the area of operation and the length of the voyage;

(*c*) medical equipment and supplies carried on board be accompanied by instructions or other information in a language and format understood by the fisher or fishers referred to in subparagraph (b);

(*d*) fishing vessels be equipped for radio or satellite communication with persons or services ashore that can provide medical advice, taking into account the area of operation and the length of the voyage; and

(*e*) fishers have the right to medical treatment ashore and the right to be taken ashore in a timely manner for treatment in the event of serious injury or illness.

Article 30

For fishing vessels of 24 metres in length and over, taking into account the number of fishers on board, the area of operation and the duration of the voyage, each Member shall adopt laws, regulations or other measures requiring that:

(*a*) the competent authority prescribe the medical equipment and medical supplies to be carried on board;

(*b*) the medical equipment and medical supplies carried on board be properly maintained and inspected at regular intervals established by the competent authority by responsible persons designated or approved by the competent authority;

(*c*) the vessels carry a medical guide adopted or approved by the competent authority, or the latest edition of the International Medical Guide for Ships;

(*d*) the vessels have access to a prearranged system of medical advice to vessels at sea by radio or satellite communication, including specialist advice, which shall be available at all times;

(*e*) the vessels carry on board a list of radio or satellite stations through which medical advice can be obtained; and

(*f*) to the extent consistent with the Member's national law and practice, medical care while the fisher is on board or landed in a foreign port be provided free of charge to the fisher.

Occupational safety and health and accident prevention

Article 31

Each Member shall adopt laws, regulations or other measures concerning:

(*a*) the prevention of occupational accidents, occupational diseases and work-related risks on board fishing vessels, including risk evaluation and management, training and on-board instruction of fishers;

(*b*) training for fishers in the handling of types of fishing gear they will use and in the knowledge of the fishing operations in which they will be engaged;

(*c*) the obligations of fishing vessel owners, fishers and others concerned, due account being taken of the safety and health of fishers under the age of 18;

(*d*) the reporting and investigation of accidents on board fishing vessels flying its flag; and

(*e*) the setting up of joint committees on occupational safety and health or, after consultation, of other appropriate bodies.

Article 32

1. The requirements of this Article shall apply to fishing vessels of 24 metres in length and over normally remaining at sea for more than three days and, after consultation, to other vessels, taking into account the number of fishers on board, the area of operation, and the duration of the voyage.

2. The competent authority shall:

(*a*) after consultation, require that the fishing vessel owner, in accordance with national laws, regulations, collective bargaining agreements and practice, establish on-board procedures for the prevention of occupational accidents, injuries and diseases, taking into account the specific hazards and risks on the fishing vessel concerned; and

(*b*) require that fishing vessel owners, skippers, fishers and other relevant persons be provided with sufficient and suitable guidance, training material, or other appropriate

information on how to evaluate and manage risks to safety and health on board fishing vessels.

3. Fishing vessel owners shall:

(*a*) ensure that every fisher on board is provided with appropriate personal protective clothing and equipment;

(*b*) ensure that every fisher on board has received basic safety training approved by the competent authority; the competent authority may grant written exemptions from this requirement for fishers who have demonstrated equivalent knowledge and experience; and

(*c*) ensure that fishers are sufficiently and reasonably familiarized with equipment and its methods of operation, including relevant safety measures, prior to using the equipment or participating in the operations concerned.

Article 33

Risk evaluation in relation to fishing shall be conducted, as appropriate, with the participation of fishers or their representatives.

Social security

Article 34

Each Member shall ensure that fishers ordinarily resident in its territory, and their dependants to the extent provided in national law, are entitled to benefit from social security protection under conditions no less favourable than those applicable to other workers, including employed and self-employed persons, ordinarily resident in its territory.

Article 35

Each Member shall undertake to take steps, according to national circumstances, to achieve progressively comprehensive social security protection for all fishers who are ordinarily resident in its territory.

Article 36

Members shall cooperate through bilateral or multilateral agreements or other arrangements, in accordance with national laws, regulations or practice:

(*a*) to achieve progressively comprehensive social security protection for fishers, taking into account the principle of equality of treatment irrespective of nationality; and

(*b*) to ensure the maintenance of social security rights which have been acquired or are in the course of acquisition by all fishers regardless of residence.

Article 37

Notwithstanding the attribution of responsibilities in Articles 34, 35 and 36, Members may determine, through bilateral and multilateral agreements and through provisions adopted in the framework of regional economic integration organizations, other rules concerning the social security legislation to which fishers are subject.

PROTECTION IN THE CASE OF WORK-RELATED SICKNESS, INJURY OR DEATH

Article 38

1. Each Member shall take measures to provide fishers with protection, in accordance with national laws, regulations or practice, for work-related sickness, injury or death.

2. In the event of injury due to occupational accident or disease, the fisher shall have access to:

(*a*) appropriate medical care; and

(*b*) the corresponding compensation in accordance with national laws and regulations.

3. Taking into account the characteristics within the fishing sector, the protection referred to in paragraph 1 of this Article may be ensured through:

(*a*) a system for fishing vessel owners' liability; or

(*b*) compulsory insurance, workers' compensation or other schemes.

Article 39

1. In the absence of national provisions for fishers, each Member shall adopt laws, regulations or other measures to ensure that fishing vessel owners are responsible for the provision to fishers on vessels flying its flag, of health protection and medical care while employed or engaged or working on a vessel at sea or in a foreign port. Such laws, regulations or other measures shall ensure that fishing vessel owners are responsible for defraying the expenses of medical care, including related material assistance and support, during medical treatment in a foreign country, until the fisher has been repatriated.

2. National laws or regulations may permit the exclusion of the liability of the fishing vessel owner if the injury occurred otherwise than in the service of the vessel or the sickness or infirmity was concealed during engagement, or the injury or sickness was due to wilful misconduct of the fisher.

PART VII. COMPLIANCE AND ENFORCEMENT

Article 40

Each Member shall effectively exercise its jurisdiction and control over vessels that fly its flag by establishing a system for ensuring compliance with the requirements of this Convention including, as appropriate, inspections, reporting, monitoring, complaint procedures, appropriate penalties and corrective measures, in accordance with national laws or regulations.

Article 41

1. Members shall require that fishing vessels remaining at sea for more than three days, which:

(*a*) are 24 metres in length and over; or

(*b*) normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf, whichever distance from the coastline is greater,

carry a valid document issued by the competent authority stating that the vessel has been inspected by the competent authority or on its behalf, for compliance with the provisions of this Convention concerning living and working conditions.

2. The period of validity of such document may coincide with the period of validity of a national or an international fishing vessel safety certificate, but in no case shall such period of validity exceed five years.

Article 42

1. The competent authority shall appoint a sufficient number of qualified inspectors to fulfil its responsibilities under Article 41.

2. In establishing an effective system for the inspection of living and working conditions on board fishing vessels, a Member, where appropriate, may authorize public institutions or other organizations that it recognizes as competent and independent to carry out inspections and issue documents. In all cases, the Member shall remain fully responsible for the inspection and issuance of the related documents concerning the living and working conditions of the fishers on fishing vessels that fly its flag.

Article 43

1. A Member which receives a complaint or obtains evidence that a fishing vessel that flies its flag does not conform to the requirements of this Convention shall take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found.

2. If a Member, in whose port a fishing vessel calls in the normal course of its business or for operational reasons, receives a complaint or obtains evidence that such vessel does not conform to the requirements of this Convention, it may prepare a report addressed to the government of the flag State of the vessel, with a copy to the Director-General of the International Labour Office, and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health.

3. In taking the measures referred to in paragraph 2 of this Article, the Member shall notify forthwith the nearest representative of the flag State and, if possible, shall have such representative present. The Member shall not unreasonably detain or delay the vessel.

4. For the purpose of this Article, the complaint may be submitted by a fisher, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the vessel, including an interest in safety or health hazards to the fishers on board.

5. This Article does not apply to complaints which a Member considers to be manifestly unfounded.

Article 44

Each Member shall apply this Convention in such a way as to ensure that the fishing vessels flying the flag of any State that has not ratified this Convention do not receive more favourable treatment than fishing vessels that fly the flag of any Member that has ratified it.

Part VIII. Amendment of annexes I, II and III

Article 45

1. Subject to the relevant provisions of this Convention, the International Labour Conference may amend Annexes I, II and III. The Governing Body of the International Labour Office may place an item on the agenda of the Conference regarding proposals for such amendments established by a tripartite meeting of experts. The decision to adopt the proposals shall require a majority of two-thirds of the votes cast by the delegates present at the Conference, including at least half the Members that have ratified this Convention.

2. Any amendment adopted in accordance with paragraph 1 of this Article shall enter into force six months after the date of its adoption for any Member that has ratified this Convention, unless such Member has given written notice to the Director-General of the International Labour Office that it shall not enter into force for that Member, or shall only enter into force at a later date upon subsequent written notification.

Part IX. Final provisions

Article 46

This Convention revises the Minimum Age (Fishermen) Convention, 1959 (No. 112), the Medical Examination (Fishermen) Convention, 1959 (No. 113), the Fishermen's Articles of Agreement Convention, 1959 (No. 114), and the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126).

Article 47

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 48

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 12 months after the date on which the ratifications of ten Members, eight of which are coastal States, have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification is registered.

Article 49

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 com-

municated 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 50

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications, declarations 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 last of the ratifications required to bring the Convention into force, 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 51

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, declarations and denunciations registered by the Director-General.

Article 52

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 in whole or in part, taking into account also the provisions of Article 45.

Article 53

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 49 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 54

The English and French versions of the text of this Convention are equally authoritative.

2. International Maritime Organization

Nairobi International Convention on the Removal of Wrecks, 2007. Nairobi, 18 May 2007*

Preamble

The States Parties to the present Convention,

Conscious of the fact that wrecks, if not removed, may pose a hazard to navigation or the marine environment,

Convinced of the need to adopt uniform international rules and procedures to ensure the prompt and effective removal of wrecks and payment of compensation for the costs therein involved,

Noting that many wrecks may be located in States' territory, including the territorial sea,

Recognizing the benefits to be gained through uniformity in legal regimes governing responsibility and liability for removal of hazardous wrecks,

Bearing in mind the importance of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, and of the customary international law of the sea, and the consequent need to implement the present Convention in accordance with such provisions,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Convention:

1. "Convention area" means the exclusive economic zone of a State Party, established in accordance with international law or, if a State Party has not established such a zone, an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.

2. "Ship" means a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources.

3. "Maritime casualty" means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it, resulting in material damage or imminent threat of material damage to a ship or its cargo.

4. "Wreck", following upon a maritime casualty, means:

(*a*) a sunken or stranded ship; or

(*b*) any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or

* Adopted by the International Conference on the Removal of Wrecks on 18 May 2007 (LEG/CONF.16/19).

(*c*) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or

(*d*) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.

5. "Hazard" means any condition or threat that:

(*a*) poses a danger or impediment to navigation; or

(*b*) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States.

6. "Related interests" means the interests of a coastal State directly affected or threatened by a wreck, such as:

(*a*) maritime coastal, port and estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;

(*b*) tourist attractions and other economic interests of the area concerned;

(*c*) the health of the coastal population and the wellbeing of the area concerned, including conservation of marine living resources and of wildlife; and

(*d*) offshore and underwater infrastructure.

7. "Removal" means any form of prevention, mitigation or elimination of the hazard created by a wreck. "Remove", "removed" and "removing" shall be construed accordingly.

8. "Registered owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship at the time of the maritime casualty. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the operator of the ship, "registered owner" shall mean such company.

9. "Operator of the ship" means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibilities established under the International Safety Management Code, as amended.

10 "Affected State" means the State in whose Convention area the wreck is located.

11. "State of the ship's registry" means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State whose flag the ship is entitled to fly.

12. "Organization" means the International Maritime Organization.

13. "Secretary-General" means the Secretary-General of the Organization.

Article 2. Objectives and general principles

1. A State Party may take measures in accordance with this Convention in relation to the removal of a wreck which poses a hazard in the Convention area.

2. Measures taken by the Affected State in accordance with paragraph 1 shall be proportionate to the hazard.

3. Such measures shall not go beyond what is reasonably necessary to remove a wreck which poses a hazard and shall cease as soon as the wreck has been removed; they shall not unnecessarily interfere with the rights and interests of other States including the State of the ship's registry, and of any person, physical or corporate, concerned.

4. The application of this Convention within the Convention area shall not entitle a State Party to claim or exercise sovereignty or sovereign rights over any part of the high seas.

5. States Parties shall endeavour to co-operate when the effects of a maritime casualty resulting in a wreck involve a State other than the Affected State.

Article 3. Scope of application

1. Except as otherwise provided in this Convention, this Convention shall apply to wrecks in the Convention area.

2. A State Party may extend the application of this Convention to wrecks located within its territory, including the territorial sea, subject to article 4, paragraph 4. In that case, it shall notify the Secretary-General accordingly, at the time of expressing its consent to be bound by this Convention or at any time thereafter. When a State Party has made a notification to apply this Convention to wrecks located within its territory, including the territorial sea, this is without prejudice to the rights and obligations of that State to take measures in relation to wrecks located in its territory, including the territorial sea, other than locating, marking and removing them in accordance with this Convention. The provisions of articles 10, 11 and 12 of this Convention shall not apply to any measures so taken other than those referred to in articles 7, 8 and 9 of this Convention.

3. When a State Party has made a notification under paragraph 2, the "Convention area" of the Affected State shall include the territory, including the territorial sea, of that State Party.

4. A notification made under paragraph 2 above shall take effect for that State Party, if made before entry into force of this Convention for that State Party, upon entry into force. If notification is made after entry into force of this Convention for that State Party, it shall take effect six months after its receipt by the Secretary-General.

5. A State Party that has made a notification under paragraph 2 may withdraw it at any time by means of a notification of withdrawal to the Secretary-General. Such notification of withdrawal shall take effect six months after its receipt by the Secretary-General, unless the notification specifies a later date.

Article 4. Exclusions

1. This Convention shall not apply to measures taken under the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, as amended, or the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973, as amended.

2. This Convention shall not apply to any warship or other ship owned or operated by a State and used, for the time being, only on Government non-commercial service, unless that State decides otherwise.

3. Where a State Party decides to apply this Convention to its warships or other ships as described in paragraph 2, it shall notify the Secretary-General, thereof, specifying the terms and conditions of such application.

4. (*a*) When a State Party has made a notification under article 3, paragraph 2, the following provisions of this Convention shall not apply in its territory, including the territorial sea:

(i) Article 2, paragraph 4;

(ii) Article 9, paragraphs 1, 5, 7, 8, 9 and 10; and

(iii) Article 15.

(*b*) Article 9, paragraph 4, insofar as it applies to the territory, including the territorial sea of a State Party, shall read:

> Subject to the national law of the Affected State, the registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner. Before such removal commences, the Affected State may lay down conditions for such removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.

Article 5. Reporting wrecks

1. A State Party shall require the master and the operator of a ship flying its flag to report to the Affected State without delay when that ship has been involved in a maritime casualty resulting in a wreck. To the extent that the reporting obligation under this article has been fulfilled either by the master or the operator of the ship, the other shall not be obliged to report.

2. Such reports shall provide the name and the principal place of business of the registered owner and all the relevant information necessary for the Affected State to determine whether the wreck poses a hazard in accordance with article 6, including:

(*a*) the precise location of the wreck;

(*b*) the type, size and construction of the wreck;

(*c*) the nature of the damage to, and the condition of, the wreck;

(*d*) the nature and quantity of the cargo, in particular any hazardous and noxious substances; and

(*e*) the amount and types of oil, including bunker oil and lubricating oil, on board.

Article 6. Determination of hazard

When determining whether a wreck poses a hazard, the following criteria should be taken into account by the Affected State:

(*a*) the type, size and construction of the wreck;

(*b*) depth of the water in the area;

(*c*) tidal range and currents in the area;

(*d*) particularly sensitive sea areas identified and, as appropriate, designated in accordance with guidelines adopted by the Organization, or a clearly defined area of the exclusive

economic zone where special mandatory measures have been adopted pursuant to article 211, paragraph 6, of the United Nations Convention on the Law of the Sea, 1982;

(*e*) proximity of shipping routes or established traffic lanes;

(*f*) traffic density and frequency;

(*g*) type of traffic;

(*h*) nature and quantity of the wreck's cargo, the amount and types of oil (such as bunker oil and lubricating oil) on board the wreck and, in particular, the damage likely to result should the cargo or oil be released into the marine environment;

(*i*) vulnerability of port facilities;

(*j*) prevailing meteorological and hydrographical conditions;

(*k*) submarine topography of the area;

(*l*) height of the wreck above or below the surface of the water at lowest astronomical tide;

(*m*) acoustic and magnetic profiles of the wreck;

(*n*) proximity of offshore installations, pipelines, telecommunications cables and similar structures; and

(*o*) any other circumstances that might necessitate the removal of the wreck.

Article 7. Locating wrecks

1. Upon becoming aware of a wreck, the Affected State shall use all practicable means, including the good offices of States and organizations, to warn mariners and the States concerned of the nature and location of the wreck as a matter of urgency.

2. If the Affected State has reason to believe that a wreck poses a hazard, it shall ensure that all practicable steps are taken to establish the precise location of the wreck.

Article 8. Marking of wrecks

1. If the Affected State determines that a wreck constitutes a hazard, that State shall ensure that all reasonable steps are taken to mark the wreck.

2. In marking the wreck, all practicable steps shall be taken to ensure that the markings conform to the internationally accepted system of buoyage in use in the area where the wreck is located.

3. The Affected State shall promulgate the particulars of the marking of the wreck by use of all appropriate means, including the appropriate nautical publications.

Article 9. Measures to facilitate the removal of wrecks

1. If the Affected State determines that a wreck constitutes a hazard, that State shall immediately:

(*a*) inform the State of the ship's registry and the registered owner; and

(*b*) proceed to consult the State of the ship's registry and other States affected by the wreck regarding measures to be taken in relation to the wreck.

2. The registered owner shall remove a wreck determined to constitute a hazard.

3. When a wreck has been determined to constitute a hazard, the registered owner, or other interested party, shall provide the competent authority of the Affected State with evidence of insurance or other financial security as required by article 12.

4. The registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner. Before such removal commences, the Affected State may lay down conditions for such removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.

5. When the removal referred to in paragraphs 2 and 4 has commenced, the Affected State may intervene in the removal only to the extent necessary to ensure that the removal proceeds effectively in a manner that is consistent with considerations of safety and protection of the marine environment.

6. The Affected State shall:

(*a*) set a reasonable deadline within which the registered owner must remove the wreck, taking into account the nature of the hazard determined in accordance with article 6;

(*b*) inform the registered owner in writing of the deadline it has set and specify that, if the registered owner does not remove the wreck within that deadline, it may remove the wreck at the registered owner's expense; and

(*c*) inform the registered owner in writing that it intends to intervene immediately in circumstances where the hazard becomes particularly severe.

7. If the registered owner does not remove the wreck within the deadline set in accordance with paragraph 6(a), or the registered owner cannot be contacted, the Affected State may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

8. In circumstances where immediate action is required and the Affected State has informed the State of the ship's registry and the registered owner accordingly, it may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

9. States Parties shall take appropriate measures under their national law to ensure that their registered owners comply with paragraphs 2 and 3.

10. States Parties give their consent to the Affected State to act under paragraphs 4 to 8, where required.

11. The information referred to in this article shall be provided by the Affected State to the registered owner identified in the reports referred to in article 5, paragraph 2.

Article 10. Liability of the owner

1. Subject to article 11, the registered owner shall be liable for the costs of locating, marking and removing the wreck under articles 7, 8 and 9, respectively, unless the registered owner proves that the maritime casualty that caused the wreck:

(*a*) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character;

(*b*) was wholly caused by an act or omission done with intent to cause damage by a third party; or

(*c*) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

2. Nothing in this Convention shall affect the right of the registered owner to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

3. No claim for the costs referred to in paragraph 1 may be made against the registered owner otherwise than in accordance with the provisions of this Convention. This is without prejudice to the rights and obligations of a State Party that has made a notification under article 3, paragraph 2, in relation to wrecks located in its territory, including the territorial sea, other than locating, marking and removing in accordance with this Convention.

4. Nothing in this article shall prejudice any right of recourse against third parties.

Article 11. Exceptions to liability

1. The registered owner shall not be liable under this Convention for the costs mentioned in article 10, paragraph 1 if, and to the extent that, liability for such costs would be in conflict with:

(*a*) the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended;

(*b*) the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended;

(*c*) the Convention on Third Party Liability in the Field of Nuclear Energy, 1960, as amended, or the Vienna Convention on Civil Liability for Nuclear Damage, 1963, as amended; or national law governing or prohibiting limitation of liability for nuclear damage; or

(*d*) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended;

provided that the relevant convention is applicable and in force.

2. To the extent that measures under this Convention are considered to be salvage under applicable national law or an international convention, such law or convention shall apply to questions of the remuneration or compensation payable to salvors to the exclusion of the rules of this Convention.

Article 12. Compulsory insurance or other financial security

1. The registered owner of a ship of 300 gross tonnage and above and flying the flag of a State Party shall be required to maintain insurance or other financial security, such as a guarantee of a bank or similar institution, to cover liability under this Convention in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases not exceeding an amount calculated in accordance with article 6 (1) (b) of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship of 300 gross tonnage and above by the appropriate authority of the State of the ship's registry after determining that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party, such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This compulsory insurance certificate shall be in the form of the model set out in the annex to this Convention, and shall contain the following particulars:

(*a*) name of the ship, distinctive number or letters and port of registry;

(*b*) gross tonnage of the ship;

(*c*) name and principal place of business of the registered owner;

(*d*) IMO ship identification number;

(*e*) type and duration of security;

(*f*) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and

(*g*) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other security.

3. (*a*) A State Party may authorize either an institution or an organization recognized by it to issue the certificate referred to in paragraph 2. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation.

(*b*) A State Party shall notify the Secretary-General of:

(i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognized by it;

(ii) the withdrawal of such authority; and

(iii) the date from which such authority or withdrawal of such authority takes effect.

An authority delegated shall not take effect prior to three months from the date on which notification to that effect was given to the Secretary-General.

(*c*) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not maintained. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.

4. The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages and, where the State so decides, the official language(s) of the State may be omitted.

5. The certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authorities issuing or certifying the certificate.

6. An insurance or other financial security shall not satisfy the requirements of this article if it can cease for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2 before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5 unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification, which results in the insurance or security no longer satisfying the requirements of this article.

7. The State of the ship's registry shall, subject to the provisions of this article and having regard to any guidelines adopted by the Organization on the financial responsibility of the registered owners, determine the conditions of issue and validity of the certificate.

8. Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organization or other international organizations relating to the financial standing of providers of insurance or financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate required by paragraph 2.

9. Certificates issued and certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as certificates issued or certified by them, even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by this Convention.

10. Any claim for costs arising under this Convention may be brought directly against the insurer or other person providing financial security for the registered owner's liability. In such a case the defendant may invoke the defences (other than the bankruptcy or winding up of the registered owner) that the registered owner would have been entitled to invoke, including limitation of liability under any applicable national or international regime. Furthermore, even if the registered owner is not entitled to limit liability, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defence that the maritime casualty was caused by the wilful misconduct of the registered owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the registered owner against the defendant. The defendant shall in any event have the right to require the registered owner to be joined in the proceedings.

11. A State Party shall not permit any ship entitled to fly its flag to which this article applies to operate at any time unless a certificate has been issued under paragraphs 2 or 14.

12. Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security to the extent required by paragraph 1 is in force in respect of any ship of 300 gross tonnage and above, wherever registered, entering

or leaving a port in its territory, or arriving at or leaving from an offshore facility in its territorial sea.

13. Notwithstanding the provisions of paragraph 5, a State Party may notify the Secretary-General that, for the purposes of paragraph 12, ships are not required to carry on board or to produce the certificate required by paragraph 2, when entering or leaving a port in its territory, or arriving at or leaving from an offshore facility in its territorial sea, provided that the State Party which issues the certificate required by paragraph 2 has notified the Secretary-General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under paragraph 12.

14. If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authority of the State of registry, stating that it is owned by that State and that the ship's liability is covered within the limits prescribed in paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2.

Article 13. Time limits

Rights to recover costs under this Convention shall be extinguished unless an action is brought hereunder within three years from the date when the hazard has been determined in accordance with this Convention. However, in no case shall an action be brought after six years from the date of the maritime casualty that resulted in the wreck. Where the maritime casualty consists of a series of occurrences, the six-year period shall run from the date of the first occurrence.

Article 14. Amendment provisions

1. At the request of not less than one-third of States Parties, a conference shall be convened by the Organization for the purpose of revising or amending this Convention.

2. Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to this Convention, as amended.

Article 15. Settlement of disputes

1. Where a dispute arises between two or more States Parties regarding the interpretation or application of this Convention, they shall seek to resolve their dispute, in the first instance, through negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice.

2. If no settlement is possible within a reasonable period of time not exceeding twelve months after one State Party has notified another that a dispute exists between them, the provisions relating to the settlement of disputes set out in part XV of the United Nations Convention on the Law of the Sea, 1982, shall apply *mutatis mutandis*, whether or not the States party to the dispute are also States Parties to the United Nations Convention on the Law of the Sea, 1982.

3. Any procedure chosen by a State Party to this Convention and to the United Nations Convention on the Law of the Sea, 1982, pursuant to article 287 of the latter, shall apply to the settlement of disputes under this article, unless that State Party, when ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, chooses another procedure pursuant to Article 287 for the purpose of the settlement of disputes arising out of this Convention.

4. A State Party to this Convention which is not a Party to the United Nations Convention on the Law of the Sea, 1982, when ratifying, accepting, approving or acceding to this Convention or at any time thereafter shall be free to choose, by means of a written declaration, one or more of the means set out in article 287, paragraph 1, of the United Nations Convention on the Law of the Sea, 1982, for the purpose of settlement of disputes under this Article. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is party, which is not covered by a declaration in force. For the purpose of conciliation and arbitration, in accordance with annexes V and VII of the United Nations Convention on the Law of the Sea, 1982, such State shall be entitled to nominate conciliators and arbitrators to be included in the lists referred to in annex V, article 2, and Annex VII, article 2, for the settlement of disputes arising out of this Convention.

5. A declaration made under paragraphs 3 and 4 shall be deposited with the Secretary-General, who shall transmit copies thereof to the States Parties.

Article 16. Relationship to other conventions and international agreements

Nothing in this Convention shall prejudice the rights and obligations of any State under the United Nations Convention on the Law of the Sea, 1982, and under the customary international law of the sea.

Article 17. Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature at the Headquarters of the Organization from 19 November 2007 until 18 November 2008 and shall thereafter remain open for accession.

(*a*) States may express their consent to be bound by this Convention by:

(i) signature without reservation as to ratification, acceptance or approval; or

(ii) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(iii) accession.

(*b*) Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

Article 18. Entry into force

1. This Convention shall enter into force twelve months following the date on which ten States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.

2. For any State which ratifies, accepts, approves or accedes to this Convention after the conditions in paragraph 1 for entry into force have been met, this Convention shall enter into force three months following the date of deposit by such State of the appropriate instrument, but not before this Convention has entered into force in accordance with paragraph 1.

Article 19. Denunciation

1. This Convention may be denounced by a State Party at any time after the expiry of one year following the date on which this Convention comes into force for that State.

2. Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, following its receipt by the Secretary-General.

Article 20. Depositary

1. This Convention shall be deposited with the Secretary General.

2. The Secretary-General shall:

(*a*) inform all States which have signed or acceded to this Convention of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) the date of entry into force of this Convention;

(iii) the deposit of any instrument of denunciation of this Convention, together with the date of the deposit and the date on which the denunciation takes effect; and

(iv) other declarations and notifications received pursuant to this Convention;

(*b*) transmit certified true copies of this Convention to all States that have signed or acceded to this Convention.

3. As soon as this Convention enters into force, a certified true copy of the text shall be transmitted by the Secretary-General to the Secretary-General of the United Nations, for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 21. Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

Done in Nairobi this eighteenth day of May two thousand and seven.

In witness whereof the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Convention.

ANNEX. CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF LIABILITY FOR THE REMOVAL OF WRECKS

Issued in accordance with the provisions of article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007

Name of Ship	Gross tonnage	Distinctive number or letters	IMO Ship Identi-fication Number	Port of Registry	Name and full address of the principal place of business of the registered owner

This is to certify that there is in force, in respect of the above-named ship, a policy of insurance or other financial security satisfying the requirements of article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007.

Type of Security. . . . . .

Duration of Security. . . . . .

Name and address of the insurer(s) and/or guarantor(s)

Name . . . . . .

Address. . . . . .

. . . . . .

This certificate is valid until. . . . .

Issued or certified by the Government of . . . .

. . . . . .

(Full designation of the State)

OR

The following text should be used when a State Party avails itself of article 12, paragraph 3:

The present certificate is issued under the authority of the Government of. . . . . (full designation of the State) by. . . . . (name of institution or organization)

At. . . . . On. . . . . .

(Place) (Date)

. . . . . .

(Signature and Title of issuing or certifying official)

Explanatory Notes:

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the Certificate is issued.

2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.

3. If security is furnished in several forms, these should be enumerated.

4. The entry "Duration of Security" must stipulate the date on which such security takes effect.

5. The entry "Address" of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.

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. 1320 (27 July 2007): Applicant* v. *The Secretary-General of the United Nations*[3]

Disciplinary procedure—Question whether evidence was illegally obtained—Possible application of foreign law by the Tribunal in case of lacuna in the United Nations law—Burden of proof on the Applicant to demonstrate a violation of a foreign law—Forging of documents not befitting an international civil servant—*Prima facie* case of misconduct—Proportionality of sanctions may be assessed by the Tribunal—Rights of due process of the Applicant

The Applicant entered service at the United Nations on 22 May 1973 as an Usher at the United Nations Office at Geneva (UNOG) at the G-1 level on a short-term contract.

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[1] In view of the large number of judgements which were rendered in 2007 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. 1317 to 1345 of the United Nations Administrative Tribunal, Judgments Nos. 2569 to 2666 of the Administrative Tribunal of the International Labour Organization, Decisions Nos. 357 to 377 of the World Bank Administrative Tribunal, and Judgments No. 2007–1 to 2007–8 of the International Monetary Fund Administrative Tribunal, see, respectively, documents AT/DEC/1317 to AT/DEC/1345; *Judgements of the Administrative Tribunal of the International Labour Organization: 102nd and 103rd Sessions; World Bank Administrative Tribunal Reports, 2007; and International Monetary Fund Administrative Tribunal Reports, Judgements No. 2007–1 to 2007–8*.

[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] Jacqueline R. Scott, Vice-President; Julio Barboza and Brigitte Stern, Members.

Thereafter, his contract was renewed and he received a series of promotions. At the time of the events which gave rise to his Application, he held a permanent appointment and was serving at the P-5 level, as a Security Sergeant, Security and Safety Section (SSS), UNOG.

On 22 January 1999 and 17 December 1999, two anonymous letters containing accusations of highly insulting language against United Nations officials were faxed and copied to all SSS staff. A preliminary investigation was initiated by SSS Investigators and it revealed that both anonymous letters had been faxed from a public machine of the Palais des Nations, and that the transmission fees charged to send the faxes were paid for with a Euro card and a Visa card. On 21 December 1999, an SSS Investigator obtained informal information that the Applicant was the holder of the Visa card used to pay for the anonymous fax of 17 December 1999, information that was later confirmed by the Corner Bank Card Centre.

On 6 January 2000, the Director of Administration, UNOG, informed the Applicant of his decision to suspend him with full pay for an initial period of one month, pending investigation, in accordance with paragraph 5 of ST/AI/371, entitled 'Revised Discipline Measures and Procedures'. On 17 January 2000, the Applicant admitted that he was the holder of the Visa card but produced a copy of an '*avis d'opération*' from his bank, purporting to show that he had reported the loss of his Visa card on 8 December 1999. However, he refused to produce any further information on the matter, including the original *avis d'opération*. On 4 February 2000, the Applicant was informed that his suspension with full pay would be extended for a further month. At the same time, as the preliminary investigation was not completed, the Applicant was requested once more to provide additional information concerning the alleged loss of the Visa card, and that, otherwise, the Administration would directly contact the Applicant's bank with respect to the *avis d'opération* submitted by the Applicant. On 7 March 2000, the Applicant resumed work and was reassigned outside SSS.

By letter dated 7 July 2000, the Director of Administration informed the Applicant that the investigation had been entrusted to the Office of Internal Oversight Services (OIOS). The investigation was effectively done only on 24 January 2001. The latter contacted the Applicant's bank, which confirmed that the Applicant was the holder of the Visa card and attested that he had reported the loss of his Visa card on 28 December 1999.

On 28 December 2001, the Applicant was informed that pursuant to the OIOS report, a disciplinary procedure was initiated, and on 30 July 2003, the case was transferred by OHRM to the Joint Disciplinary Committee (JDC) in Geneva. In its report dated 1 June 2004, the JDC rendered its conclusions on the charges against the Applicant, namely to have sent two anonymous insulting letters by fax to UNOG officials; and to have submitted a forged bank document. On 19 July 2004, the Under-Secretary-General for Management informed the Applicant that the Secretary-General agreed with the findings and conclusions of the JDC, and had decided to accept its unanimous recommendation to demote him by one level, with no possibility of promotion for two years, and to impose a written censure for misconduct. On 18 December 2004, the Applicant filed the present Application with the Tribunal. He contended that the Administration had relied on illegally obtained evidence concerning the ownership of credit cards in violation of Swiss and French banking laws, and thus, that such evidence and all conclusions inferred from that should be stricken from the dossier. He further claimed that the sanctions imposed on him had been

disproportionate to his alleged conduct, and were occasioned by prejudice, malice and discrimination by the Administration and some of its officials.

The Tribunal recalled that the internal laws of the United Nations should prevail and were the relevant legal basis upon which the Tribunal operated. However, where there is a lacuna in the internal laws, as in this case where the relevant legal instruments make no mention of banking secrecy or evidence obtained in such manner, the Tribunal was entitled, if not obliged, to consider general principles of law, and as such, it may take cognisance of foreign law, and grant it evidentiary value. However, the Tribunal is not obliged to have knowledge of foreign law invoked before it, and the onus is, then, on the Applicant to demonstrate that the information in question was specifically protected by the laws of France and Switzerland regarding banking secrecy and to provide detailed explanation of the laws in question. Further, the Tribunal recalled that the application of foreign law is highly complex and then no diligent Applicant would limit himself to making sweeping assertions on the nature and scope of certain concepts of foreign law and expect the Tribunal to proceed on such a fragile basis.

With respect to privacy, the Tribunal noted that the Applicant had not invoked any regulation or rule of the internal law of the United Nations and that he did not address the basic premise of whether any privacy right with respect to information printed upon a credit card was waived in the course of a credit card transaction as the merchant may have an automatic record of the cardholder's name. Therefore, the Tribunal found that the Applicant has failed to carry his burden of proving that it was illegal, *per se,* for the banks to provide the information in question.

The Tribunal observed that the Applicant himself, quite apart from the question of banking secrecy, provided sufficient evidence to justify the sanction imposed upon him. In the course of the preliminary investigation, the Applicant presented and relied upon a document which had either been altered, or erroneously issued by the bank. At the very least, the Applicant knew it was erroneous and misleading. The bank, when asked to authenticate the document, informed the Administration that there was an obvious discrepancy in the dates. Thus, the Tribunal was in no doubt that the alleged loss of the Applicant's Visa card was not communicated to the bank on 8 December, but on the 28th of that month, well after the second fax had been sent. Finally, it found suspicious that the Applicant refused to provide investigators with the original *avis d'opération* issued by the bank, which might have proven whether the document, as presented to the Organization, had been tampered with.

Thus, the Tribunal found that the Applicant's explanation of the *avis d'opération* was, at the very least, disingenuous and that he not only failed to prove his case but also committed a serious violation which was far from the conduct befitting an international civil servant. An important fact was thus established: the Applicant presented a possibly forged, or, at best, inaccurate and misleading, document in an effort to improve his situation.

The Tribunal considered that the evidence mentioned above was sufficient to constitute a *prima facie* case against the Applicant.

In Judgement No. 897, *Jhuthi* (1998), the Tribunal held:

> "In disciplinary cases, when the Administration produces evidence that raises a reasonable inference that the Applicant is guilty of the alleged misconduct, generally termed a *prima facie* case of misconduct, that conclusion will stand. The exception is if the Tribu-

> nal chooses not to accept the evidence, or the Applicant provides a credible explanation or other evidence, that makes such a conclusion improbable."

The Tribunal found likewise in the present case once the *avis d'opération* was entered into evidence in this case.

As to the proportionality of the sanction, the Tribunal recalled Judgement No. 1187, *Igwebe* (2004), in which it held:

> "Whilst the Tribunal has 'consistently taken the view that the Secretary-General has broad discretion under this regulation with regard to disciplinary matters, and this includes determinations of what constitutes serious misconduct, as well as the appropriate discipline' (Judgement No. 436, *Wiedl* (1988)), such discretion can be vitiated if the sanction imposed is found to be disproportionate."

The Tribunal found, in the instant case, that the Applicant's presentation of the forged or erroneous document in the course of the investigation was sufficiently serious to justify, by itself, the sanction applied, and considered, then, that the sanction was proportionate in the circumstances of the case.

The JDC found that the Chief of the SSS had violated the Applicant's procedural rights when he ordered a preliminary investigation without consulting his superiors and, particularly, by personally conducting the investigation when he was the party most affected by the faxes in question. However, the Tribunal stated that while deploring these breaches of the Applicant's procedural rights, it considered that his attitude and lack of cooperation during the investigation was below the standard of conduct expected from a staff member of this Organization.

The Tribunal recalled that in Judgement No. 983, *Idriss* (2000), it found that initial shortcomings in respect of due process may be "fully redressed" in later proceedings, thus not resulting in loss or damage to the staff member, and that the instant case came under that category. Hence, it declined to order compensation for violation of due process rights.

In view of the foregoing, the Application was rejected in its entirety.

2. *Judgement No. 1323 (27 July 2007): Applicant* v. *The Secretary-General of the United Nations*[4]

Separation due to abolition of post—Duty of the Administration to assist a staff member whose post has been abolished to find a new position—Scope of this obligation—Sexual harassment charges—Duty of the Administration to conduct an investigation on sexual harassment charges—Tribunal not competent to review Administration's evaluation of candidates to a post

The Applicant joined the UNICEF Rabat office (Morocco), in October 1988 on a series of short-term temporary appointments and on 1 December 1996 she was promoted to Operations Assistant at the GS-5 level, and continued to receive extensions of her fixed-term appointment until 31 December 2001, when she was separated upon the abolition of her post.

On 28 May 2001, the UNICEF Representative sent a letter to the Applicant informing her that her post would be abolished effective 31 December 2001, but that the Rabat

[4] Spyridon Flogaitis, President; Julio Barboza and Goh Joon Seng. Members.

Office would assist her in finding a new position as required by Chapter 18 of the UNICEF Human Resources Policy and Procedure Manual. At the same time, 12 posts were created and reclassified, three of them being relevant to this case: 1 GS-4, 1 GS-5 and 1 GS-6, of which the Applicant chose to apply only for the GS-6.

On 28 June 2001, an external Regional Human Resources Officer held interviews and tests for the GS-6 post, following which another female internal candidate, whose post has also been abolished, was recommended for the post. Afterwards, the Applicant alleged irregularities in the selection of the final candidates for the GS-6 post as well as gender discrimination against her. The investigation on the sexual harassment charges was conducted by an external female Regional Human Resources Officer, who concluded on 7 December 2001 that the Representative's "behaviour would not constitute sexual harassment". She also found that the Applicant was "fully and fairly considered for [the] post but was not found to be the best candidate".

Thus, on 26 September 2001, the Representative informed the Applicant that she would be separated from service due to the abolition of her post and she declined the option to receive an additional 50% termination indemnity if she did not contest the separation.

On 10 February 2002, the Applicant sent a request for administrative review to the Executive Director, UNICEF, and on 13 May 2002, she lodged an appeal with the JAB in New York that adopted its report on 19 May 2004. In the said report, the JAB Panel concluded that the alleged sexual advances by the Representative did not amount to sexual harassment; the Appellant was fully and fairly considered for the post to which she had applied; and it was within UNICEF's authority to withhold the additional 50% termination indemnity.

On 4 March 2005, the Applicant filed the present Application with the Tribunal.

The Tribunal observed that two basic issues, closely connected, were at stake in this case: whether the Applicant was subjected to sexual harassment by the Representative, and whether the Administration failed to comply with established procedures governing the placement of staff on abolished posts, and failed to fully and fairly consider her for the GS-6 post to which she had applied.

On a preliminary basis, the Tribunal took note of the fact that the Applicant did not complain of harassment until 3 September 2001, few months after she has been notified that her post would be abolished and that she had not been selected for the new GS-6 post.

The Tribunal firstly considered the alleged failure on the part of the Administration to fully and fairly consider her for the GS-6 position and, generally, its failure to follow the provisions and rules relating to placement of persons whose posts have been abolished, bearing in mind that the Applicant choose to compete only for the GS-6 position, despite the Administration's suggestions that she should also consider applying to the other positions. The Tribunal noted that the Administration could not be held accountable for not respecting the wishes of a staff member and that the duty of the Administration was only to make good faith efforts to find a suitable, alternative position for a staff member whose post was being abolished, which the Applicant admitted the Administration had done. (See Judgement No. 679, *Fagan* (1994).)

The Tribunal observed that the skills, the qualifications, the strengths and the weaknesses of both candidates to the GS-6 post were evaluated in a careful, thorough, detailed

and meticulous manner, and that the selected candidate was not in a very much different situation than the Applicant as her post had also been abolished. However, having a permanent position, she had higher priority, as well as considerably more seniority (21 years against 13 for the Applicant). Thus, the Tribunal was satisfied that the objective elements of priority in this case had been completely and satisfactorily taken into account, so that any suspicion of extraneous motivation or undue process of law may be alleviated. As for the remaining issues, i.e. the comparison of the merits of different candidates or the evaluation of the standard of performance or relative efficiency of staff members, the Tribunal has repeatedly decided that it would not substitute its own judgement for that of the Administration. In Judgement No. 1108, *Asombang* (2003), it recalled that

> "[t]he Tribunal has consistently held that it will not substitute its judgement for that of the relevant bodies with regard to the performance or relative efficiency of candidates for selection to a post. Indeed, all choices are invariably subjective to some extent (see . . . *Fagan* (*ibid.*) para. XI). The Tribunal has consistently held that 'qualifications, experience, favourable performance reports and seniority are appraised freely by the Secretary-General and therefore cannot be considered by staff members as giving rise to any expectancy' (see Judgement No. 1056, *Katz* (2000), para. IV)."

In order to complete its review of the legality of the selection, the Tribunal also considered the Applicant's allegation that she was a victim of "gender discrimination". This allegation was somehow changed into that of "sexual harassment" when the Administration ordered an investigation of that matter and the Applicant did not object to it, thus transforming the nature of the accusation. The link between the alleged "sexual harassment" and the Applicant's non-selection for the G-6 post was that the Applicant considered it "difficult to believe that, subjectively, in the interviewer's mind, he was not aware of the harassment rumours and that local management clearly did not wish [the Applicant] to remain in the organization". The simple reading of this allegation was sufficient for the Tribunal to conclude this was a fragile piece of evidence: it was a mere supposition, not based on any proven fact. Further, the Tribunal noted that the Administration took proper and rapid action to look into the Applicant's allegations of harassment. An investigation in the matter has been immediately ordered, conducted by an external female Human Resources Officer, who concluded to the absence of sexual harassment, even if some actions of the Representative were in bad taste or expressed unwanted humour. Thus, the Tribunal was satisfied that the investigation was properly conducted, and it had no cause to doubt the soundness of the Investigator's conclusions.

Regarding the undue administrative delays plea raised by the Applicant, the Tribunal recalled it has only criticized the Administration when the delays could be considered extraordinary, or inordinate, which was not the present case. Similarly, the Tribunal followed its well-established jurisprudence of denying costs unless some extraordinary circumstance intervened.

For the foregoing reasons, the Tribunal rejected the Application in its entirety.

3. *Judgement No. 1328 (27 July 2007): Applicant* v. *The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*[5]

Pension rights—Beneficiaries of entitlements of a deceased staff member—Administration's promise to withhold entitlements pending national legal proceedings to determine the legal custodian of minor children viewed as a unilateral commitment—United Nations law should prevail to determine whether entitlements were part of the deceased's estate—Administration's obligation to ensure that entitlements were delivered to the beneficiaries designated by the staff member

The Applicant is the second wife of a deceased staff member, who was separated from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNWRA) by early voluntary retirement in 1992 and who later died in January 1997. On 24 September 1996, the former staff had revoked previous designations of beneficiaries concerning his Provident Fund entitlements and designated as beneficiaries the Applicant, to receive US$ 10,000; his minor daughter, to receive $3,000; and, his five minor sons, who were to receive the remaining part of his entitlements in equal shares.

On 6 November 1997, a Judge of the First Instance Sharia Court decided that Mr. B.M.H., the eldest son from the deceased's first marriage, should be the provisional custodian of the six minor children, reversing an earlier decision dated 19 August 1997 by which the Applicant was designated as the legal custodian of her children. Thus, on 8 December 1997, the Applicant requested the Agency either to hold the entitlements of her minor children within the Agency until a final court decision was taken on the issue of custodianship or to pay the amounts to a Lebanese bank account, but clearly specified that they should not be transferred to a local bank account in Syria. Accordingly, on 22 December 1997, the Field Administration Officer, Syria, responded that the minors' entitlements would be retained by the Agency without any interest until a final court decision on the matter.

However, by letter dated 14 April 1998, the Ministry of Foreign Affairs of Syria requested UNRWA, pursuant to a 19 March 1998 First Instance Sharia Court Judge's Order, to deposit the Provident Fund entitlements due to the minor children at a Syrian bank, and the payment was done on 7 July 1998. The Applicant objected to the transfers on 8 July 1998 under Area staff rule 111.3.1. On 30 September 1998, Court Verdict No. 908 cancelled the previous decision by the First Instance Sharia Court which Mr. B.M.H. had been appointed provisional custodian of the minors. However, pending the legal procedure within the Syrian judicial system about the inheritance of the deceased staff, the entitlements were sequestered at the Syrian bank. On 25 June 2001, the Court of Cassation held that the Provident Fund entitlements fell into the deceased staff's estate, and thus should be distributed amongst the heirs in accordance with Sharia law, which resulted in a financial loss for the five minor sons.

On 14 February 2002, the Applicant lodged an appeal with the Joint Appeals Board (JAB) in Amman. In its undated report, the JAB concluded that the Administration had acted within the framework of its Regulations and Rules without any prejudice or bias to the Appellant. Not having received any decision from the Commissioner-General concerning her appeal to the JAB, the Applicant filed the present application with the Tribunal on 8 March 2005.

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[5] Jacqueline R. Scott, Vice-President; Julio Barboza and Goh Joon Seng, Members.

The Tribunal noted that the present case revolved around two issues: whether or not the amounts provided by the Provident Fund were part of the deceased's estate; and, the legal custody of minors who are beneficiaries of such funds. Further, it observed that the background to both issues was the question of the applicable law.

With respect to the deceased's estate, the Tribunal observed that the applicable legal norms were those of the internal law of UNRWA, according to which the amounts in question were not part of the estate, but belonged to the beneficiaries in their entirety and should be disposed of by the Fund as agreed with the deceased staff member. It recalled that its jurisprudence in this regard is clear and that the internal laws of the United Nations prevail. (See, for example, Judgements No. 932, *Al Arid* (1999) and No. 1256 (2005).) Accordingly, UNRWA was under an obligation to ensure that sums granted by the Fund were delivered to the beneficiaries. In other words, once the Agency has ensured that the amounts in question were safely in the hands of the beneficiaries, for instance, in an account in their names at a bank of their choosing, the Agency may rest in the certainty that its obligations have been correctly complied with. If, later on, any beneficiary must comply with local law and bring such monies to the estate, it is a personal obligation on his or her part and does not involve UNRWA.

In the present case, the Tribunal observed that the Agency had in a first time acceded to the Applicant's petition about the payment of the benefits and promised to retain the monies pending a final decision on the legal custody of the minor children. However, it did not honour its commitment. Had it done so, UNRWA would have been entirely free from any other obligation even if, in the long run, the local authorities would have persuaded the legal custodian of the minor children to bring those monies into the deceased's estate. In this case, the Tribunal held that the Agency's responsibility was not satisfied by the mere formality of transferring the sums to the Syrian bank and paying the benefits contrarily to the specific instructions of the custodian; the beneficiaries being in reality unlikely to receive the amounts to which they were entitled. Acting as it did, the Agency did not comply with its internal law and did not honour the assurances made to the deceased staff member and to the Applicant. The Tribunal viewed that the argument raised by UNRWA, that doing otherwise would have amounted to assist the Applicant in evading Syrian law, as totally unconvincing, since it is the internal law of the Organization which prevails and, in fact, the Agency itself had agreed to have a different conduct than that indicated by the Syrian law.

The question of custody of the minors was also of primary importance for the Tribunal's decision. The Agency could not possibly render monies which were the property of the children unless and until the question of their legal custodianship, disputed between the Applicant and the eldest son of the deceased, had been solved. In this context, the Tribunal viewed the Applicant's petition relating to the payment of benefits as totally justified and noted that the Agency had agreed thereto when the Field Administration Officer assured her that the minors' entitlements would be retained by the Agency until a final court decision was taken on custody. The Tribunal stressed that this agreement amounted to a unilateral commitment on the part of the Agency, superimposed upon—and in conformity with—the underlying obligation it had to conform to its internal rules and the designations of the deceased. The Agency subsequently breached this commitment without cause when the Syrian Ministry of Foreign Affairs requested that the benefits be deposited in a Syrian bank. In this regard, the Tribunal noted the language of Area staff regulation 1.3, "[i]n the

performance of their duties staff members shall neither seek nor accept instructions from any government or from any other authority external to the Agency", which provision is founded upon the terms of the Charter of the United Nations. Had the Agency proceeded in accordance with its commitment, it would have avoided any responsibility and Area staff rule 112.2 would have been entirely satisfied. That, however, was not the case, and the children found themselves in the unfortunate situation of seeing the amounts that their father left to them considerably diminished.

The Tribunal was satisfied that the Agency owed the children compensation for the damage they experienced due to its actions and fixed the amount of such compensation at the actual amount of loss incurred by the five male minor children, as quantified in the JAB report, of US$ 12,867.97 each, with interest. The Tribunal rejected all the other pleas.

In a separate opinion, Judge Goh Joon Seng explained his dissenting views as to the consequences of the legal errors committed by UNRWA in the present case.

4. *Judgement No. 1331 (27 July 2007): Applicant* v. *The Secretary-General of the United Nations*[6]

Promotion exercise—Staff members do not have right to a promotion but do have a right to full and fair consideration for a post—Past performance evaluations viewed as crucial in a promotion exercise—Unacceptable procedural delay caused by respondant—Rebuttal of performance evaluations in the context of a promotion exercise—Biased performance appraisal report—Incomplete and contradictory information about the Applicant—Violation of the Applicant's rights to be given equitable consideration for promotion

The Applicant is a staff member serving on a permanent appointment as an Arabic Interpreter in the Interpretation Service, Interpretation and Meetings and Publishing Division in the Department for General Assembly and Conference Management (IMPD/DGACM). She joined the Organization in 1982 at the P-1 level and was subsequently promoted to higher levels until she got promoted to the P-4 level on 1 April 1989.

This case deals with the "non-promotion" process involving the Applicant, which took place from 2000 to 2003 and pertained to two successive promotion exercises to P-5 posts to which the Applicant has unsuccessfully applied. Considering that she did not receive full and fair consideration during either promotion exercise, especially due to numerous irregularities pertaining to her performance evaluation and performance management, the Applicant lodged two appeals with the Joint Appeal Board (JAB) in New York, on 19 November 2001 and 13 May 2003. The JAB adopted one report on both appeals on 11 March 2004, in which it concluded that the Applicant had been given full and fair consideration and the decisions not to select the Applicant had not violated any of her rights, including her right to due process. On 15 March 2005, the Applicant filed the present Application with the Tribunal.

First, the Tribunal recalled that staff members were not entitled to be promoted, and that the Administration had discretionary authority in the area of promotion. (See Judgements No. 275, *Vassiliou* (1981); No. 375, *Elle* (1986); and No. 390, *Walter* (1987).) However, in accordance with the Tribunal's consistent jurisprudence, it also stressed that the

[6] Dayendra Sena Wijewardane, Vice-President; Julio Barboza and Brigitte Stern, Members.

Administration's power was not absolute and should be exercised in such a way as to ensure that staff members were treated fairly.

In the view of the Tribunal, the promotion processes contested by the Applicant were intimately linked to the various actions she took, within the framework of the United Nations performance appraisal system, to rebut her performance evaluations. The Tribunal stressed that, in order to establish whether the promotion exercises were conducted fairly and equitably, the various performance evaluation rebuttals submitted by the Applicant should be carefully considered and, in particular, the timing of those rebuttals in relation to the promotion exercises.

The Tribunal reviewed in detail the main points of the Applicant's evaluations for each cycle, as well as the pertaining rebuttal procedures, including the rebuttal panels' reports. It noted a drastic change in the Applicant's evaluation in 1998, after which her regularly excellent performance was consistently downgraded. The Tribunal recalled that, while the first Rebuttal Panel found that the Applicant's qualifications were not adequately reflected in her rating, it only recommended that the Applicant's ratings be upgraded in future performance appraisal reports. While the Tribunal found the report to contain inherent contradictions, it noted that it nonetheless suggested to the Administration what its future action should be.

As the Administration refused to take into account the Rebuttal Panel's recommendations, the Applicant undertook a rebuttal of her two following performance evaluations, procedures that were under way when her two initial evaluations were submitted within the framework of the promotion exercise. In the view of the Tribunal, it was clear that those appraisal reports were crucial for the proper conduct of the promotion process. It also stressed that within the framework of a promotion exercise, wherever possible, the Administration should await the outcome of a Rebuttal Panel before the selection of persons for promotion began. However, the Tribunal observed that the chronology of the various procedures in the present case showed disregard for the Applicant's right to be taken into consideration in a fair and equitable way.

The Tribunal also noted that the second Rebuttal Panel submitted an extremely critical report on the way in which the Administration had conducted the evaluation of the Applicant. The Panel noted that "Some astonishing and irresponsible remarks were made by . . . the first appraising officer", and concluded that "Judging from this very biased assessment by the first appraising officer, the staff member has been obviously short-changed and was being appraised unfairly". The Tribunal therefore concluded that the Departmental Panel's first recommendation regarding the first P-5 post, which was subsequently endorsed by the Appointment and Promotion Board (APB), was made on the basis of incomplete information about the Applicant and that, as a result, she was not given fair and equitable treatment during this initial—and often decisive—stage of the promotion process. The Tribunal recalled that while it is true that the Departmental Panel simply issues recommendations, it has often been found that even procedural irregularities before an advisory body could constitute a violation of a staff member's right to due process: "The fact that the [Subsidiary Promotion Review Panel] was an advisory body and not the authority taking the final decision on promotions is also immaterial. Insofar as it gave advice, its advice was tainted by the procedural irregularity." (Judgement No. 870, *Choudhury/Ramchandani* (1998), para. VII.) It also noted that the Administration did not take the trouble to re-examine, in the light of the Rebuttal

Panel's report, the list of proposed candidates or, more importantly, the comparative table of the various candidates initially submitted to the Departmental Panel.

The Tribunal concluded that the entire procedure was vitiated, as the competent bodies did not receive complete and accurate information about the Applicant's performance appraisal on time and her right to due process with regard to promotion was therefore violated. Here, the Tribunal followed its long-standing jurisprudence, according to which it condemned the violation of an Applicant's right to have his or her file examined impartially, as it did in Judgement No. 539, *Bentaleb* (1991), para. XI:

> "In a tight competition between several candidates for a limited number of vacant posts, all evaluations, especially recent ones in favour of the staff member, ensure a fair and objective appraisal of his or her performance and provide a basis for advancement. The Applicant was unfairly deprived of this opportunity in violation of his right to fair treatment."

The Tribunal subsequently considered the second P-5 promotion exercise, which took place in 2002–2003, when the Applicant's appeal to the JAB relating to the first promotion exercise was still under way. In this regard, it noted the unusual delay in the administration of justice between the date the Applicant filed her appeal with the JAB, on 19 November 2001, and the date the Respondent answered to her contentions, on 8 August 2003, thus delaying the JAB procedure by the same length of time. The Tribunal recalled its record of special vigilance in seeing that justice was done within a reasonable period, found that the Administration had an unacceptable procedural delay. The delay was in this case especially serious as it had resulted in that the report of the JAB, relating to the first promotion exercise, was not produced before the commencement of the second promotion exercise. It was especially important to note that one of the requests made to the JAB was that it recommend that the Applicant should be given priority consideration in any future promotion to a P-5 post. If it had done so, the Applicant would certainly have been in a better position during the second P-5 promotion exercise. In any event, it was hardly to a candidate's advantage to have an outstanding appeal against a previous promotion exercise at the time when she was engaged in a new one.

The Tribunal recalled that on 12 December 2002, the APB held an initial meeting to consider the recommendation from the Department to promote Mr. X., but expressed serious doubts in this regard. The Department, however, maintained its recommendation of Mr. X., pointing out that he had had more assignments as "team leader", omitting to state that it was Mr. X. himself, as "Organizational Officer", who distributed the "team leader" assignments. Moreover, although it presented a comparative table of the academic qualifications of the various candidates—and the Applicant had better qualifications than the candidate favoured by the Department—the Department made the following surprising comment: "The relative prestige or *level of the degrees* is not relevant". (Emphasis added by the Tribunal.) Moreover, the Tribunal found that the APB was not critical of the negative and contradictory information about the Applicant given by Ms. Y, Officer-in-Charge of the Interpretation Service, particularly regarding her interest in supervisory functions and assignments to sensitive meetings. These factors were nevertheless among the criteria mentioned by the Respondent in order to justify the appointment of Mr. X. in preference to the Applicant. Thus, the Tribunal concluded that the information on which the APB based its decision was contradictory, and in parts inaccurate and, indeed, biased.

The Tribunal also noted that the Panel of Inquiry which was established to ascertain certain facts surrounding the appointment of the staff representative to the Departmental Panel which recommended Mr. X. in this second promotion exercise, had reached a delicately balanced conclusion: without condemning Mr. X., the Panel let it be understood that it would have been better for him to refrain from taking part in a meeting to select a staff representative to a body which was to decide on his promotion.

The Tribunal concluded from the foregoing that the Applicant's candidature was not given full and fair consideration in the 2002–2003 promotion exercise.

The Tribunal therefore concluded that there was a pattern of violations of the Applicant's right to be given equitable consideration for promotion which extended over a period of several years, and found that the Applicant should be compensated. For all these reasons, the Tribunal ordered the Respondent to pay to the Applicant, compensation of 6 months' net base salary.

5. *Judgement No. 1333 (27 July 2007): Applicant* v. *The Secretary-General of the United Nations*[7]

Health benefits for retirees—Re-enrolment in the dental programme after termination—Successive administrative instructions—Principle of non-retroactivity—Compensation and assessment thereof

The Applicant retired from the service of the Organization on 31 July 1986 after a career started in 1959 at the United Nations Educational, Scientific and Cultural Organization (UNESCO) and pursued later on at the United Nations. Following his retirement, the Applicant relocated to a suburb of Washington, D.C., and elected to transfer his medical insurance coverage to the United Nations After-Service Health Insurance (ASHI) plan, effective 1 January 1987. Under the ASHI plan, the Applicant was a participant both in a medical plan with Aetna and in the Group Health Dental Insurance (GHI) plan. Unfortunately, there were no dentists in the Washington D.C. area who participated in the dental plan, and the Applicant was unable to avail himself of the dental benefits for which he was continuing to pay premiums. As a result, on 19 May 1989, he wrote to the Chief, Compensation and Classification Service, who, the Applicant asserts, advised him to withdraw from the dental portion of ASHI and, instead, to seek coverage under the World Health Organization (WHO) plan, pursuant to a reciprocity agreement between the two organizations. As it was ultimately impossible to join the WHO plan, the Applicant sought additional advice from the Chief, Compensation and Classification Service, regarding alternative dental coverage. There was no alternative coverage available and, as the Applicant asserts, the Chief, Compensation and Classification Service, advised the Applicant to simply withdraw from GHI, which the Applicant did, in 1988.

Following a change in the United Nations dental plan, on 15 July 1999, the Applicant requested to be re-enrolled, but the Chief, Insurance section, replied that there was no valid basis for him to make an exception by authorizing the Applicant to be reinstated in the programme.

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[7] Spyridon Flogaitis, President; Jacqueline R. Scott, First Vice-President; and Dayendra Sena Wijewardane, Second Vice-President.

On 22 June and on 12 August 2000, the Applicant submitted his appeal to the Joint Appeal Board (JAB) in New York that adopted its report on 17 September 2003. In the said report, the JAB concluded that there was merit to the Appellant's claim. However, the Secretary-General decided to not follow the recommendations of the JAB and refused to re-enroll the Applicant in the dental plan portion of his health insurance. On 5 April 2005, the Applicant filed the present Application with the Tribunal.

The Tribunal observed that at the time of the Applicant's withdrawal from the dental portion of the plan, the rules pertaining to after-service health care were set out in administrative instruction ST/AI/172/Amend.3, which was silent as to whether a former staff member who, having withdrawn from a portion of health coverage, could be reinstated into the plan from which he or she withdrew or into another, substitute portion of that plan. As a result, the Applicant alleged that when he withdrew from GHI, he believed he could be reinstated into the plan if the circumstances changed.

On May 1994, the instruction ST/AI/172/Amend.3 had been superseded by the instruction ST/AI/394, which specifically provided that "coverage, once cancelled, cannot later be reinstated". The Tribunal noted, however, that while the Administration relied upon this instruction on to deny the Applicant's re-enrolment, the Applicant had not been advised of this change in rules relating to after-service care.

Further, the Tribunal also recalled that having engaged in a correspondence on this matter with the Chief, Insurance Section, the Applicant was informed by a letter dated 15 July 1999 that

> "had you sought reinstatement of dental coverage at that time [presumably, in 1990], such request could have been considered. However, I regret to say that I see no valid basis for making an exception in your case by authorizing reinstatement in the dental insurance programme at this stage, more than eleven years after you terminated coverage."

The Tribunal observed that under ST/AI/172/Amend.3, the Applicant was not expressly prohibited from re-entering the dental insurance scheme. Thus, it was not convinced by the Administration's argument, *ex post facto,* that even though ST/AI/172/Amend.3 was silent on the re-entry right, the policy underlying that administrative instruction was always based on the understanding that re-entry was not allowed. Indeed, the Tribunal noted that the letter from the Chief, Insurance Section, dated 15 July 1999, made it clear that under some circumstances, it might have been possible for the Applicant to re-enter the scheme. Moreover, even if, in fact, such a policy had been implicit in the language of ST/AI/172/Amend.3, as the Administration asserted, the Tribunal emphasized that it would not have looked favorably upon a policy that denied to staff members a social right as important as the one to maintain health/dental insurance without providing expressly the circumstances under which such a right would be given up or compromised.

The Tribunal stated that when the dental scheme changed in 1998, and the Applicant sought re-enrollment, he should have been allowed to re-enroll. In addition, the Administration's repeated attempts to impose the prohibition of ST/AI/394 upon the Applicant, even though the administrative instruction did not exist at the time the Applicant decided to withdraw from dental coverage, also violated the long-standing principle of law regarding non-retroactivity. It recalled that in Judgement No. 1197, *Meron* (2004), citing Judgement No. 82, *Puvrez* (1961), the Tribunal held that "[n]o amendment of the regulations may affect the benefits and advantages accruing to the staff member for services rendered

before the entry into force of the amendment. Hence, no amendment may have an adverse retroactive effect in relation to a staff member." Therefore, the Tribunal found that the Applicant was entitled to re-enroll in the current dental scheme.

When the Tribunal turned to the Applicant's claims for reimbursement of dental expenses he incurred as a result of being denied participation in the dental scheme, it first noted that the Applicant had failed to provide any necessary documentation in support of his claim for reimbursement. Second, even it the Tribunal recognized that, had the Applicant participated in the dental scheme, he might have made different choices about dental care, and bearing in mind that in this case the Applicant would have been responsible for paying premiums and deductibles to maintain the insurance, it found that it would be virtually impossible to determine with accuracy the position he would have been in had his re-enrollment not been denied.

Therefore, under these circumstances, the Tribunal ordered the Respondent to allow the Applicant to enroll in the current dental scheme and decided to compensate the Applicant only for the failure of the Administration to allow his re-enrollment in the ASHI dental insurance scheme.

6. *Judgement No. 1336 (27 July 2007): Applicant* v. *The Secretary-General of the United Nations*[8]

Recruitment on a post—No right to promotion for staff members—Staff members have a right to full and fair consideration for a post—Discretionary power of the Secretary-General to appoint staff members—Composition of Selection Panel—No evidence of discrimination in the selection process—United Nations principle of geographic diversity—Statement of Deputy Chief infringed due process rights of the Applicant

On 18 April 1995, the Applicant, a national of the Czech Republic, entered the service of the International Criminal Tribunal for the ex-Yugoslavia (ICTY) as an Investigator at the P-3 level. On 24 June 2002, he applied for the P-4 post of Investigation Team Leader for Team 4 of the Investigations Division, Office of the Prosecutor, a post for which he had already unsuccessfully applied in 2000. On 6 August 2002, the Applicant and 17 other internal candidates were interviewed by a Selection Panel. The Applicant was included in the list of the four most qualified candidates to be interviewed in a second round of interviews on 26 August. Thereafter, another candidate was recommended as the "most suitably qualified candidate", whereas the Applicant and the other candidates were considered qualified but not recommended for the post. On 2 September, the Applicant was informed by the Human Resources Section that another candidate had been selected for the post.

On 22 October 2002, the Applicant requested the Secretary-General to review the decision not to select him. On 3 February 2003, he filed an appeal with the Joint Appeal Board (JAB). In its report of 18 October 2004, the JAB noted that the decision regarding the 2002 selection of the P-4 Team Leader post was receivable, although the Applicant's attempt to challenge the earlier administrative decision regarding the 2000 selection for the same post was time-barred. It concluded that the Applicant had not adduced sufficient evidence of discrimination, while the Respondent did demonstrate that the Applicant had

[8] Jacqueline R. Scott, Vice-President; Brigitte Stern and Goh Joon Seng, Members.

been given full and fair consideration. Thus, the JAB decided to make no recommendation regarding the appeal. On 28 February 2005, the Applicant was advised that the Secretary-General had accepted the findings of the JAB and had decided to take no further action in his case. On 29 April 2005, the Applicant filed the present Application with the Tribunal.

The Tribunal recalled that the selection of a staff member for any post within the Organization was within the discretionary power vested in the Secretary-General; that it would not substitute its own judgement for that of the Secretary-General; and that the same principle applied to promotion. (See Judgements No. 554, *Fagan* (1992); No. 592, *Sue-Ting-Lin* (1993); and No. 613, *Besosa* (1993).) It stressed that staff members, however, were entitled to full and fair consideration either for selection or promotion, and that in this regard, the Applicant was assessed over two rounds of interviews with three other candidates by the Selection Panel. Thus the question was whether the process resulting in the selection of the successful candidate was based on incorrect facts, favouritism, prejudice or other extraneous motives, as contended by the Applicant, including through the constitution of the Selection Panel.

With regard to the composition of the Selection Panel complied with the ICTY Guidelines, the Tribunal noted that it had been comprised of two representatives from the Investigations Division, a trial attorney from the Prosecution Division, and a member from "from outside" the section/unit concerned. The Tribunal found that while the inclusion of a trial attorney from the Prosecution Division rather than from the Human Resources Section was irregular, it was in coherence with the Guidelines Information Circular ICTY/IC/01/38 of 19 April 2001, as he was authorized to represent the Human Resources Section. In addition, there was no evidence that this, in itself, was prejudicial to the Applicant's candidacy.

The Tribunal considered the Applicant's complaint that the Administration failed to take into account the fundamental United Nations principle of geographic diversity by favouring candidate nationals from countries that were already over-represented in the Investigation Division. It observed in this regard that the table on "Member States Representation as of 30 November 2002" showed that the Czech Republic was not under-represented. The Tribunal further noted that, in any event, this selection exercise was confined to internal candidates and would, whoever was selected, not alter the existing geographical distribution of posts among the member states at ICTY.

In the view of the Tribunal, the most serious contention made by the Applicant was his allegation of "improper interference". Indeed, the Deputy Chief of Team 4 recommended the appointment of a strong candidate from outside Team 4 in order to alleviate major differences between the Applicant and the other Senior Investigator of Team 4. The Tribunal noted that there was no evidence as to what impact this had on the outcome of the selection process, but this recommendation and the basis on which it was made, were not made known to the Applicant who thus had no opportunities to rebut them. Accordingly, it was stressed by the Tribunal that while it was unable to and should not second guess what the outcome would have been but for this interference, it was of the view that this interference was a serious breach of the Applicant's due process rights to full and fair consideration for the post.

For the foregoing reasons, the Tribunal ordered the Respondent to pay to the Applicant US$ 8,000 for the violation of his due process rights stemming from procedural irregularities and rejected all the other pleas.

7. Judgement No. 1343 (27 July 2007): Applicant v. *The Secretary-General of the United Nations*[9]

Complaint of harassment—*Res judicata*—Different claims for relief raising the same issues presented in multiple applications viewed as an abuse of process and of the internal justice system—Sufficient and appropriate compensation for procedural errors in relation to the evaluation process of the staff member—Request to correct language in a previous judgement

The Panel constituted to hear the instant Application decided, in accordance with the provisions of article 8 of the Tribunal's Statute, to refer the case for consideration by the whole Tribunal. The Tribunal thus rendered its judgement *en banc*.

In the summer of 1998, a dispute commenced between the Applicant, a staff member of the United Nations Development Programme (UNDP), and his supervisors. The Applicant contended he had suffered obstruction and harassment in the discharge of his duties, and that a post to which he had applied had been filled in an irregular manner. This had, according to the Applicant, marked the beginning of "a pattern of hostility, threat and retribution" against him. For the year 1998, the Applicant received a Performance Appraisal Review (PAR) with a performance rating of "4" ("Meets some of the expectations of the performance plan but performance needs improvement"), justified by his supervisor by reference to a number of important performance issues which had been raised and documented by the Office of Human Resources Management during 1998.

On 23 September 1999, the Applicant wrote to the Administrator, UNDP, complaining of a paralysis in the internal justice system; of recruitment problems in the Legal Section, and, that he was being hampered in his work by certain officials. He requested, *inter alia,* that "an *independent* review body be constituted" to investigate his complaints. In his reply of 7 October 1999, the Administrator advised the Applicant that the internal justice and recruitment matters were under review but that he would have to submit a formal rebuttal in order for his personal problems to be examined.

In October 1999, the Management Review Group (MRG) endorsed the supervisor's PAR rating of the Applicant. The Applicant contested his performance assessment and challenged the MRG process. He was again advised to submit the performance issues to the PAR Panel of Reference, which he did, on 22 November 1999. In June 2000, the Applicant complained that the Chairperson of the Rebuttal Panel had not been appointed in accordance with staff regulation 8 and internal procedures. On 16 November 2000, he again requested the Administrator that an "independent review" be conducted, to investigate "the paralysis of [the] UNDP internal justice system" and "interferences and manipulation by some . . . officials of the internal justice system". In his reply of 4 January 2001, the Administrator stated that the delay in review of the Applicant's 1998 PAR rebuttal was

[9] Spyridon Flogaitis, President; Jacqueline R. Scott, First Vice-President; Dayendra Sena Wijewardane, Second Vice-President; Julio Barboza, Brigitte Stern and Goh Joon Seng, Members.

"caused by the delay introduced by [the Applicant himself]", and again declined to order the requested review. On the same date, a new PAR Panel of Reference was established.

On 14 June 2001, the Applicant wrote to the Assistant Administrator, requesting him to review his claim for retroactive payment of his step increase "from 2000". On 7 August 2002, he was informed of UNDP's decision to award him his within-grade increment for the period 2000–2002.

In its report of 4 June 2004, the Joint Appeal Board (JAB) unanimously concluded that the Applicant had not suffered any irreparable harm as there was adequate evidence proving that the Organization assisted him, taking into account his particular situation. However, it recommended that he be awarded US$ 2,000 for two procedural errors committed by the Administration—namely its failure to provide the Applicant with the statutory two-month prior notice about the withholding of his within-grade salary increment and its failure to regularly appoint a Chairperson to the PAR Reference Panel established to review his 1998 PAR rebuttal—that "[could not] be corrected otherwise". On 12 January 2005, the Secretary-General accepted the recommendation of the JAB.

On 7 July 2005, the Applicant filed the present Application with the Tribunal.

The Tribunal noted that the Applicant presented two claims, namely that the compensation of US$ 2,000 paid by the Secretary-General for the procedural errors, as recommended by the JAB, was not sufficient, and that he should be paid compensation for various other professional, moral and material injuries caused by the Respondent.

The Tribunal, while concurring with the JAB and the Secretary-General on the first issue, namely that the Applicant had received sufficient satisfaction, noted that the other relief sought in this Application was, in the main, similar to that sought by the Applicant in his earlier cases (see Judgements No. 1217 (2005), No. 1271 (2006), No. 1308 (2006) and No. 1309 (2006)) where he made the same complaints of harassment. It was, thus, of the view that such complaints were *res judicata.* In so holding, the Tribunal recalled its rationale in Judgement No. 1158, *Araim* (2003), in which it noted that "even if [the Applicant claimed that the Investigation Panel had not been properly constituted] it too would be subject to *res judicata,* as the Tribunal in its previous Judgements, with the same Applicant, dealt with the same issues".

Additionally or alternatively, the Tribunal was of the view that it was an abuse of process and of the internal justice system of the United Nations for the Applicant to ground his claims for relief in multiple Applications when the issues raised in these Applications were the same and could be dealt with in one application. It recalled, in this connection, its jurisprudence on this issue, noting in particular Judgement No. 1200, *Fayache* (2004), wherein it stated,

> "The Tribunal finds that the Applicant has demonstrably abused the process of administration of justice. As it has no power to fine the Applicant, or otherwise hold him in contempt, it wishes to state for the record that it can and will impose costs against the Applicant should further frivolous or abusive Applications be filed with the Tribunal".

In the present circumstances, the Tribunal found that the Applicant had been sufficiently compensated for the procedural errors in relation to his PAR for 1998 and that his other issues were *res judicata,* and therefore, both his claims should fail.

There was, however, one additional issue that the Tribunal had been asked to consider. In a letter dated 18 May 2007, the Applicant requested that the Tribunal, "before [it] addresses [his] Application No. 1426 . . . 'by its own motion' and without any further delay and proceedings . . . rectifies [(*sic*)] what may appear as a 'slip' of language" and that it "replace the word 'against' by the word 'for' or . . . simply strike out the whole paragraph [IV] from [Judgement No. 1309 (*ibid.*)]". The paragraph in question read as follows:

> "IV. We are constrained to note that the Applicant is a familiar figure in the corridors of the Tribunal, be it as counsel for Applicants; proposed intervener; or, Applicant in his own numerous cases. The pleadings and elaborate arguments he tenders in those proceedings *in his crusade against the Organization* belie his claim for loss of earning capacity as an attorney." (Emphasis added by the Applicant.)

The Tribunal presumed that this request was made under article 12 of the Statute, the relevant part of which read as follows: "[c]lerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties". However, as the request of the Applicant did not satisfy the requirements of article 12 of the Statute, either procedurally or substantively, it was rejected.

Finally, the Tribunal noted that the Applicant had also requested "confirmation that this rectification will be made before the Tribunal addresses Application 1426" and that, "[i]f no such rectification takes place . . . the judges involved in earlier judgements (1217–1308–1309) excuse [*sic*] themselves from the consideration of Application 1426". The Tribunal found no basis for such recusal.

In view of the foregoing, the Application was rejected in its entirety.

8. *Judgement No. 1348 (21 November 2007): Applicant* v. *The Secretary-General of the United Nations*[10]

Request for reclassification of a post to a higher level—Procedure to follow—Right of the Applicant to due process—Alleged agreement regarding reclassification of post—Administrative review of an implied decision—Applicant's responsibility to exercise due diligence with regard to her right to due process—Lack of communication that perpetuated Applicant's genuine, albeit mistaken, belief constituted a violation of her right to due process—Compensation due for violation of applicant's right to due process

The Applicant joined the United Nations in March 1972 as a bilingual secretary. From July 1992, she served in the position of Information Network Assistant in the Financing for Development Office (FFDO) of the Department of Economic and Social Affairs (DESA). In September 1993, the Applicant was promoted to the GS-6 level. Except for two periods of time (16 November 1999 to 16 April 2000 and 1 August 2001 to 26 July 2002) when she temporarily served against a GS-7 level post for which she was granted appropriate special post allowances (SPA), the Applicant continuously worked as a GS-6 Information Network Assistant until her separation from service on 31 July 2004. According to the Applicant, she consistently received performance evaluations stating that she worked at a higher level than her functions called for.

[10] Dayendra Sena Wijewardane, Vice-President; Brigitte Stern and Sir Bob Hepple, Members.

In 1997, 1999 and 2001, the Applicant formally requested that her post be reclassified to the G-7 level, by signing Requests for Classification, which were all counter-signed by her supervisor, and one by the Director. Yet, none were signed by the Executive Officer, and they were never forwarded to the Office for Human Resources Management (OHRM). The Applicant did not receive any notification from either the Director or the Executive Officer that her requests were not being forwarded to OHRM. The Applicant contented that there was an earlier agreement between herself and her Director that her post would be upgraded following the retirement of another GS-7 staff member within the Division in November 2002. However, in August 2002, she learnt that the GS-7 post would be maintained as such. Thus, by a memorandum dated 24 March 2003, she requested the Director of the Development Policy and Planning Office that the alleged agreement to upgrade her post be implemented. The Applicant never received a formal reply to her request, and on 27 May 2003, she requested administrative review of this implicit decision not to reclassify her post.

The Joint Appeal Board (JAB) adopted its report on 31 March 2005, in which it unanimously decided to make no recommendation in support of the appeal. On 15 December 2005, the Applicant filed the present Application with the Tribunal.

The Tribunal pointed out that there were two key issues in this case: whether the failure or refusal of representatives of the Applicant's Executive Office to sign and forward to OHRM her requests for reclassification in 1997, 1999 and 2001 constituted a violation of her right to due process; and, whether the Applicant was entitled to compensation for the failure to communicate to her the implied administrative decision not to proceed with the reclassification process.

In regard to the first issue, the Tribunal observed that it was undisputed that the Applicant formally requested that her post be reclassified in 1997, 1999 and 2001 but that none of these requests were forwarded to OHRM. It was also common ground that, on a number of occasions, the Applicant discussed the upgrading of her post with her Director. She claimed that it was during one of these discussions that the Director made it clear to her that he would help her to secure an upgrading from G-6 to G-7 on the new post when it was established. The Applicant's belief appears to have been shared by her immediate supervisor. The Director, however, informed the Executive Officer (by memoranda dated 24 June 2003 and 13 August 2004) that he had not signed the Applicant's requests for reclassification, because he did not consider that they accurately reflected the functions she performed and further, that he had not promised her that he would either promote her or upgrade her post, not only because he had doubts about the validity of the request, but also because it would not be entirely within his authority to deliver on such a promise.

The Tribunal was of the view that there was no document to substantiate the allegation made by the Applicant that there was an agreement between herself and the Director. However, the Tribunal also found that the Applicant had a genuine, albeit mistaken, belief that a post would become available for reclassification on the retirement of the GS-7 staff member. It also observed that, in any event, the decision to classify the Applicant's post at a particular level was not within the authority of her Department, but was vested in the Assistant Secretary-General, OHRM.

In the light of these facts, the Tribunal considered whether the failure or refusal of the Executive Office to forward the Applicant's requests for reclassification to OHRM constituted a violation of her rights to due process. It recalled that whilst the Tribunal "cannot

substitute its discretion for that of the Secretary-General in job classification matters" (Judgement No. 396, *Waldegrave* (1987)), it would examine the exercise of the Respondent's discretion, in determining whether it was reasonably exercised (Judgement No. 792, *Rivola* (1996).) Moreover, it would "consider whether there was a material error in procedure or substance, or some other significant flaw in the decision complained of" (See Judgement No. 541, *Ibarria* (1991) and, generally, Judgements No. 792, *Rivola* (1996); No. 1073, *Rodriguez* (2002); No. 1080, *Gebreanenea* (2002); No. 1136, *Sabet and Skeldon* (2003); and, No. 1325 (2007)).

The Tribunal noted that the administrative instruction regarding posts reclassification in force in 1997 appeared to place an obligation on the executive officer to forward the matter to OHRM in the event of disagreement. Although there was a breach of this obligation, the Applicant did not at the time seek an administrative review, and indicated her knowledge that the request had not been forwarded by submitting fresh requests in 1999 and 2001. The 1998 administrative instruction clearly gave the right to submit a request directly to OHRM for consideration, however the Applicant chose not to do so and failed to utilize the remedy which was available to her. The Tribunal recalled that it was well settled in the jurisprudence of the Tribunal that staff members must exercise due diligence in pursuing their claims. As the Tribunal held in Judgement No. 1325 (*ibid.*), "whilst staff members enjoy rights of due process, and the Respondent has the duty to protect same, a staff member may not neglect to take reasonable steps to protect his or her own interests in a timely fashion" (See also Judgements No. 232, *Dias* (1978) and No. 953, *Ya'coub* (2000)). Under these circumstances, the Tribunal found that there has been no violation of the Applicant's right to due process in this respect.

The Tribunal was noted that the Applicant believed that the Director had received her request "sympathetically", and was unaware of his doubts or his rejection. The Tribunal was further persuaded that the Applicant was under the genuine belief that a post would become available for reclassification in due course. It was only when she realized that the functions of the vacant post were not being changed to accommodate her that she recognized that she should have taken her request directly to OHRM. Although it was the Applicant's responsibility to exercise due diligence in her case, it was obvious to the Tribunal that the failure of the Director to communicate his implied decision not to forward her request, or to disabuse her of the above-mentioned belief, of which he was aware, played a significant contributory part in her decision not to exercise her right to make her request to OHRM. The Applicant was either induced to operate under misguided or mistaken beliefs or, at the very least, permitted to continue to operate thereunder despite the knowledge of the Director that she was so doing. The Tribunal concluded that this failure of communication constituted a violation of her right to due process.

In view of the foregoing, the Tribunal ordered the Respondent to pay to the Applicant, by way of reparation, compensation of US$ 10,000, and rejected all other pleas.

9. *Judgement No. 1352 (21 November 2007): Applicant* v. *The Secretary-General of the United Nations*[11]

Challenge of a promotion exercise—Application procedure—Alleged delayed application—Reasonable interpretation of an ambiguous administrative instruction—Burden of proof of allegation of discrimination rests on the Applicant—Adequate compensation for harm suffered

The Applicant entered the service of the Organization on 16 August 1977, as an English Language Clerk-Typist at the G-2 level on a short-term appointment. In August 1979, she was granted a permanent appointment. After completing a law degree, the Applicant was successful in the 1992 "G to P" exam and was promoted to the P-2 level position of Associate Legal Officer, Codification Division, Office of Legal Affairs (OLA), in July 1993. Effective 1 July 1999, she was promoted to the P-3 position of Legal Officer.

On 24 May 2002, the Applicant applied for the P-4 post of Legal Officer, Administrative Law Unit (ALU), Office of Human Resources Management (OHRM). The Applicant was one of three candidates interviewed for the position, but was not successful. On 4 September 2002, she applied to a P-4 post of Legal Officer within her Division, a few days after the 30-day mark. However at the 30-day mark, OHRM had released three applications to OLA, and the Director of the Codification Division reviewed the applications and interviewed the three candidates whose applications had been transferred to him. The successful candidate was subsequently selected for the position.

On 23 February 2003, the Applicant requested the Secretary-General to review the administrative decision not to promote her in either promotion exercise. On 5 April 2003, she lodged an appeal with the Joint Appeal Board (JAB) in New York. The JAB adopted its report on 17 March 2005, in which it found that the Applicant had denied a full and fair consideration for the post at OLA, recommended that the Applicant be awarded 18 months' net base salary as compensation. In his decision of 11 July 2005, the Secretary-General accepted the JAB's recommendation, with the change that the Applicant was awarded as compensation 9 months' net base salary.

On 24 July 2005, the Applicant lodged the present application with the Tribunal. She retired from service on 30 November 2005.

The Tribunal recalled that the JAB has found that, with respect to the OHRM post, the Applicant had been "accorded full and fair consideration for the post" and that she had failed to discharge the burden of proving her allegations of prejudice in the exercise, but "found them, nevertheless, disturbing". Further, the JAB has also found "disturbing elements" in the Applicant's claims concerning the Codification Division and that without entering further into consideration of these allegations, it has found that the promotion review was procedurally flawed: despite the ambiguous drafting of paragraph 6.2 of ST/AI/2002/4 relating to the 30-day mark procedure, the reasonable interpretation was that the Applicant was entitled to have her application considered, and she was, therefore, deprived of full and fair consideration for promotion.

First, the Tribunal observed that ultimately, the Applicant alleged that all these events indicated that she suffered discrimination in her career with the Organization. It also

[11] Spyridon Flogaitis, President; Jacqueline R. Scott, Vice-President and Goh Joon Seng, Member.

noted that the Applicant deserved commendation, as she had indeed proven an outstanding determination to change her life, pursuing her legal studies whilst working full-time as a General Service employee of the Organization. However, the Tribunal emphasized that the academic and professional qualifications the Applicant received were no guarantee of a legal career in the Organization. It further recalled that in personnel matters, it has consistently respected the broad degree of discretion afforded to the Secretary-General, albeit preserving its own role in assessing the administrative processes underpinning his decision-making and that all applicants for a post be given full and fair consideration. In its Judgement No. 1112, *Suresh* (2003), the Tribunal concluded that,

> "In the instant case—as in any case where arbitrariness, discrimination or other such improper motivation is alleged—the *onus probandi,* or burden of proof, rests upon the Applicant. (See Judgements No. 639, *Leung-Ki* (1994); *Knowles, ibid.;* and, No. 870, *Choudhury and Ramchandani* (1998).)"

In the present case, the Tribunal found that there was no evidence that the Applicant was not given full and fair consideration when she applied for the ALU post. With respect to the OLA post, the JAB has found—and the Secretary-General has agreed—that the Applicant was deprived of full and fair consideration for promotion because of the ambiguity of the pertinent rules of the Organization. However, the Secretary-General relied upon the fact that there was no certainty that the Applicant would have been promoted, even had she applied within the 30-day mark, to decide to only compensate her with nine months' net base salary. Under the circumstances of this case, the Tribunal held that it could not but accept the conclusions of the Secretary-General and found that the compensation paid was entirely adequate to the harm suffered. (See, generally, Judgement No. 1105, *Kingham* (2003).)

In view of the foregoing, the Application was rejected in its entirety.

10. Judgement No. 1358 (21 November 2007): Applicant v. *The Secretary-General of the United Nations*[12]

Compensation claim for service—Related injury—Allegation of workplace harassment—Recommendation to be made by the Advisory Board on Compensation Claims (ABCC) and failure of the Respondent to reply and provide adequate information—Obligation of ABCC to make a recommendation in view of the available evidence—Failure to make a recommendation viewed as a violation of Applicant's right to due process—Inordinate delay entirely the fault of the Respondent—Compensation for violation of right to due process—Exceptional decision to award costs

The Applicant entered the service of the Organization on 1 May 1980, as a local hire with the United Nations Development Fund (UNDP). Between 1980 and 1997, the Applicant was promoted several times and by 1997, she was finally promoted to the G-6 level. On 26 June 1995, the Applicant fell while at work and suffered an injury. She alleged that the injury was service-incurred, that it left lasting physical impairment, and that her physical symptoms worsened over time and were aggravated by the "extremely hostile working environment" to which she was subjected. In 1999, she was diagnosed with severe depres-

[12] Jacqueline R. Scott, Vice-President; Goh Joon Seng and Sir Bob Hepple, Members.

sion, which she also attributed to the performance of her duties at UNDP, allegedly as a result of workplace harassment.

Following her diagnosis of depression, the Applicant was placed on sick leave from April to October 1999. Upon her return, at the recommendation of her doctors and the Medical Service, she was relieved of any functions other than routine tasks. On 17 April 2000, she was granted Special Leave With Full Pay, and when it expired in January 2001, she was placed on annual leave until it expired on 12 June 2001. The Applicant continued in full-pay status through 6 December 2001, when the Pension Board Committee determined that she was incapacitated for further service and entitled to a disability benefit under the Regulations of the Fund.

On 5 April 2002, the Applicant sent a letter to the Secretary of the Advisory Board on Compensation Claims (ABCC), requesting compensation under article 11.1 (c) and 11.3 of Appendix D of the Staff Rules, contending that both her 1995 injury and her 1999 diagnosis of depression were service-incurred. She filed a formal claim on 4 May 2002.

On 25 June 2003, ABCC determined that while the Applicant's 1995 injury was indeed service-incurred, there was no evidence to link that injury with her 1999 diagnosis of depression. For that reason, it decided to treat separately the issue of whether the depression was service-incurred, and that the consideration of her depression would be deferred "pending receipt of additional information from UNDP" that had been requested. However, UNDP did not provide a satisfactory response and, on 15 October 2004, the Applicant's counsel requested that a date be set for consideration of the Applicant's claim. He reiterated his request on 2 December 2004 requested that, in the absence of additional material from UNDP, the ABCC consider the Applicant's claim on the basis of the record before it. Finally, on 4 March 2005, ABCC issued its recommendation in which it noted that, despite its repeated requests, UNDP had failed to provide the information/documentation that was critical to the Board's deliberation of the case. As a result, ABCC determined that it was "unable to make a recommendation to the Secretary-General as to whether or not the [Applicant's] illness (severe chronic depression) could be considered attributable to the performance of her official duties on behalf of the United Nations". Thereafter, the Secretary-General, following the position of ABCC, decided to take no action on the Applicant's claim for compensation. On 23 September 2005, the Applicant filed the present Application with the Tribunal.

The Tribunal first considered the claim by the Respondent that the Applicant's claims before the ABCC were time-barred and therefore non-receivable. As this issued had not been raised by the ABCC, but instead considered the case on its merits, and as the Secretary-General accepted the report of ABCC, the Tribunal found the Applicant's claims to be receivable.

The Tribunal subsequently addressed the failure of ABCC to make a recommendation as to whether the Applicant's depression was service-incurred, such that she might be entitled to compensation under Appendix D of the Staff Rules. It noted that ABCC is the advisory board established for the purpose of reviewing claims made by staff members for compensation and disability for service-incurred injury and illness. As such, it is tasked with finding the facts in order to make such a determination. In order to do that, ABCC must obtain relevant information from various staff members, departments, agencies, funds or programmes of the Organization. Failing to obtain such information, ABCC must then

consider the evidence in the record and make a recommendation, based on whatever is before it. In the opinion of the Tribunal, in the event, as in this case, that the only evidence in the record is that provided by the Applicant, where the Organization fails to provide any or sufficient evidence to rebut the allegations of the Applicant, ABCC must decide in the Applicant's favour and not ignore its obligation to make a recommendation. To allow such a result would make a mockery of the procedural safeguards provided to staff members under the Staff Regulations and Rules. This is especially true in the case where the failure of procedure is at the hands of a quasi-judicial body, such as the ABCC. (See Judgement No. 1325 (2007).) The Tribunal has repeatedly "reiterate[d] the importance it attaches to complying with procedural rules, as they are of utmost importance for ensuring the well functioning of the Organization". (See Judgement No. 1106, *Iqbal* (2003).)

Moreover, the Tribunal stressed that the Respondent mischaracterized the language of the ABCC report and wrongly concluded that, because the ABCC failed to find *in the Applicant's favour,* the Applicant's claim was, therefore, unfounded. ABCC did not simply fail to find in the Applicant's favour; it failed to reach any decision, one way or the other, as the sole result of the failure of UNDP to submit rebuttal evidence. Rather than making a recommendation based on the evidence in the record, as it should have, ABCC simply refused to make any recommendation. This was compounded by the Secretary-General's subsequent acquiescence in this failure. The Tribunal held that the Secretary-General should have remanded the issue to ABCC, demanding that a recommendation be made. Consequently, the Applicant was denied the right to have her medical issues adjudicated in accordance with the rules of procedure guaranteed to her. In the view of the Tribunal such a denial violated her rights to due process, for which she was entitled to compensation.

The Tribunal next turned to the corollary issue of the failure of UNDP to address in an appropriate manner the request from ABCC to provide specific information relating to the Applicant's claim. While the Applicant did provide very specific allegations about the nature of the alleged workplace harassment, UNDP failed to respond, despite the repeated requests of ABCC. While the failure of UNDP to respond was not in itself a violation of the Applicant's rights, as ABCC had to decide the matter with the evidence in the record, the Tribunal looked with disfavour upon the complete disregard of UNDP for the authority of ABCC. It also expressed its hope that the senior management of UNDP would review this matter.

Further, the Tribunal considered the issue of the inordinate period of the three-year delay between the filing of the claim with ABCC and the decision not to make any recommendation, to be entirely the fault of UNDP. It noted that this delay reasonably might have exacerbated the Applicant's depression, and thus awarded her compensation for the violation of her rights in this regard.

While the Tribunal recalled its general policy of not awarding costs, in view of the complexities of this case, taken together with the rather egregious failure of ABCC to carry out its mandate and the failure of UNDP to respond, it found appropriate to make an exception to the general rule.

Therefore, in view of the foregoing, the Tribunal ordered the Respondent to pay to the Applicant for violation of her due process rights, including for inordinate delay, the sum of US$ 25,000; and for costs, the sum of US$ 5,000.

11. *Judgement No. 1360 (21 November 2007): Applicant* v. *The* Commissioner-General *of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)*[13]

Time limit to file an Application with the Tribunal—Notification to the Applicant of the decision viewed as the relevant date for the beginning of the ninety-day period—Obligation of the Respondent to take a timely decision on the recommendations of the Joint Appeals Board—The broad discretion of the Commissioner-General for appointments—Applicant's right to be fully and fairly considered for a post—Appointment and promotion decisions should be premised upon the criteria set out in the vacancy announcement

The Applicant, a staff member of UNRWA, applied for the Grade 12 post of Senior Vocational Training Instructor on 1 July 2002. He sat for a written test and, subsequently, was one of three people interviewed. It appears from the file that he ranked third in both the written exam and the interview. The successful candidate was appointed to the position on 9 October 2002. On 21 December, the Applicant requested administrative review of this decision. Thereafter, on 6 February 2003, he lodged an appeal with the Area Staff Joint Appeal Board (JAB) in Gaza. In its report, submitted to the Commissioner-General on 9 May 2004, the JAB recommended that the impugned decision be upheld, concluding that "the Administration . . . acted within the framework [of the] Rules and Regulations without any prejudice or bias". The Applicant was not provided with a copy of the JAB report until 17 October 2004. He first attempted to file an application with the Tribunal on 11 January 2005; his final, corrected Application was filed on 6 September 2005.

The Tribunal considered first whether or not this Application was receivable, *ratione temporis*. In this regard, the Tribunal recalled its *rationale* in Judgement No. 1046, *Diaz de Wessely* (2002):

> "In the Tribunal's view, it is of the utmost importance that time limits should be respected because they have been established to protect the United Nations administration from tardy, unforeseeable requests that would otherwise hang like the sword of Damocles over the efficient operation of international organizations. Any other approach would endanger the mission of the international organizations, as the Tribunal has pointed out in the past . . . (see Judgement No. 579, *Tarjouman* (1992), para. XVII)".

The parties in this case contested the date on which the relevant ninety-day period to file an application with the Tribunal commenced to run: the Respondent believed that the date in question was that of the communication to the Commissioner-General of the report of the JAB, whereas the Applicant maintained the date in question was that on which he received the report. The Tribunal found that the Applicant's interpretation of the Statute was the correct one, as in law, no period of time, at the end of which the rights of a person expire, may commence without that person having been notified.

On 9 May 2004, the report of the JAB was sent to the Commissioner-General. Later, the Applicant made several enquiries about his appeal and after having been informed on 5 July that the JAB had adopted his report and had sent it to the Commissioner-General for a decision, he asked for a copy of the Commissioner-General's decision. He was advised, on 28 August, that the Commissioner-General had not made a final decision, but that

[13] Jacqueline R. Scott, Vice-President; Julio Barboza and Sir Bob Hepple, Members.

he could proceed directly to the Tribunal. It was only on 17 October 2004, after another request, that the Applicant received a copy of the report. The Tribunal found that it was the obligation of the JAB to communicate its report to the concerned staff member, and that such duty was not met by merely informing him that its report had been sent to the Respondent. In this case, from 9 June 2004 onwards, the Applicant was entitled to receive this report, and his repeated enquiries to the JAB secretariat should have prompted them to provide him with a copy. Thus, the Tribunal was satisfied, that 17 October 2004, the date on which the JAB report was communicated to the Applicant, was the relevant date from which the ninety-day period must be reckoned, and then, that the Application was receivable *ratione temporis*.

The Tribunal also stressed that the Commissioner-General omitted to observe his elementary duty of making a decision pursuant to the JAB's recommendations and that it was disappointed to be presented with another case in which an Applicant was denied a decision (see also Judgement No. 1328 (2007)). Thus, the Tribunal reminded the Respondent that a timely decision on the JAB's recommendations was imperative.

Regarding the claim itself, the Tribunal recalled that, in personnel matters, the discretion of the Commissioner-General was broad, and that it was not for the Tribunal to assess the relative merits of the candidates for the position in question. This was so even in cases where an Applicant presents a compelling case for his own superiority over the successful candidate. In Judgement No. 834, *Kumar* (1997), the Tribunal held:

> "The Tribunal is sympathetic to the fact that the Applicant sincerely believes himself deserving of this post. It has noted that the Applicant's performance evaluation reports have consistently assessed his performance as 'very good' or 'good' and that he has received a number of complimentary letters for a job well done. Nonetheless, the Tribunal may not substitute its judgement for that of the Secretary-General, in the absence of evidence showing bias, prejudice, improper motivation or extraneous factors, which the Tribunal has not found in this case."

It recalled also that the discretion of the Respondent was not, of course, absolute, as he was obliged to give all candidates full and fair consideration for appointment. In Judgement No. 828, *Shamapande* (1997), the Tribunal recalled that it "has held repeatedly that, in order to effect the foregoing purpose, it is indispensable that 'full and fair consideration' should be given to all applicants for a post".

The Tribunal stressed it was its longstanding position that transparency and due process in appointment and promotion decisions demand that the decision be premised upon the criteria set out in the vacancy announcement. In Judgement No. 1122, *Lopes Braga* (2003), the Tribunal held that

> "By advertising the post . . . as one that required an undergraduate degree, the Respondent made the degree a pre-requisite to selection for the post and cannot now be heard to argue that the possession of the degree was but one factor in its determination. To allow otherwise harms not only the Applicant, who was misled and not fairly considered by objective criteria for the position, but also harms all those putative applicants who did not apply because they did not possess an undergraduate degree."

In the present case, the vacancy announcement for the challenged position of Senior Vocational Training Instructor required "A minimum of one year experience as Technical Instructor 'A' or four years experience as a fully qualified Trades Instructor 'A'. However, it

was apparent that the successful candidate did not have such qualifications or experience as a Note for the Record concerning the filling of the vacancy, noted that the appointment of the successful candidate would require prior approval from the Department of Administration and Human Resources "as he lacks the required one year instructor training course and years of experience as instructor".

Thus, by his own admission, "the Respondent did not apply his own objective criteria of evaluation, as required by the rules and regulations governing the promotion exercise". (See Judgement No. 1326 (2007), citing *Lopes Braga* (*ibid.*).) This amounted to "a violation of the Applicant's right to be fully and fairly considered for the post and irreparably harmed the Applicant". (See *Lopes Braga* (*ibid.*).)

In view of the foregoing, the Tribunal ordered the Respondent to pay to the Applicant, by way of reparation, compensation of four months' net base salary.

12. Judgement No. 1370 (21 November 2007): Applicant v. *The Secretary-General of the United Nations*[14]

Promotion exercise—Legal vacuum regarding the procedure to fill a D-2 post—The failure of the Administration to follow its own procedure was a violation of the Applicant's right to full and fair consideration for the post—The Applicant's reassignment to a position where he had nothing to do was humiliating treatment causing moral injury

The Applicant entered service at the United Nations on 26 May 1967, as a Professional Trainee in the Offices of the Secretary-General, Office of Personnel, Economic and Social Organization in Beirut at the P-1 level. At the time of the events that gave rise to his Application, the Applicant held the D-1 level position of Chief, Commodities Branch, Division on International Trade in Goods and Services and Commodities (DITC), United Nations Conference on Trade and Development (UNCTAD).

He was appointed Officer-in-charge of DITC on 16 August 2001 and applied to the position of DITC Director at the D-2 level on 4 December 2001. On 21 October 2002, staff members of UNCTAD were informed of the appointment of the new DITC Director, who was one external woman candidate. On 17 December 2002, the Applicant requested an administrative review of the decision. He lodged an appeal with the Joint Appeal Board (JAB) on 25 April 2003 and resigned on 10 October 2003. The JAB adopted its report on 30 May 2005, in which it concluded that the decision not to promote the Appellant to the post of Director has indeed been tainted by a lack of due process. It concluded that as there was a violation of the Appellant's right to a full and fair consideration of his candidature, compensation should be granted and the Appellant should be paid six months' net base salary.

On 7 October 2005, the Applicant, having not received any decision from the Secretary-General regarding his appeal to the JAB, filed the present Application with the Tribunal. On 25 January 2006, the Applicant was advised that the Secretary-General had accepted the findings and conclusion of the JAB as well as its unanimous recommendation to pay him six months' net base salary.

[14] Dayendra Sena Wijewardane, Vice-President; Julio Barboza and Sir Bob Hepple, Members.

Concurring with the JAB, the Tribunal found that the Applicant did not receive full and fair consideration by the authorities because of "procedural flaws in the evaluation process of the candidates". Despite the legal vacuum regarding the applicable procedures for the filling of D-2 posts, the Tribunal noted that the paramount consideration in assessing the legality of the Administration's conduct in promotion matters should be the compliance with Article 101 of the Charter and staff regulation 4.2.

The Tribunal recalled that the JAB had examined the procedure employed for the selection of candidates: OHRM sent a list of screened candidates to the Deputy Secretary-General of UNCTAD, who selected nine and sent a short-list to an *ad hoc* panel he had established to provide advice on the candidates; and that the JAB has been struck by the lack of transparency of this panel. Moreover, it appeared that the criteria applied to rank the candidates were not those stated in the vacancy announcement. The Tribunal found this fact decisively against the Respondent. Indeed, the vacancy announcement called for an "[a]dvanced university degree in economics or related disciplines with specialization in international trade and development" and required "[t]wenty years of progressively responsible experience at the national and international levels dealing with issues relating to trade and development, with particular reference to trade negotiations". The successful candidate, however, had a master's degree in history, and her undergraduate education was in the same discipline. UNCTAD had nevertheless indicated that the successful candidate was the only candidate to have "fully" met all the requirements of the post, the Applicant having been considered to meet only "most" of the requirements. Thus, the Tribunal agreed with the JAB that, "on the contrary . . . [,] the successful candidate was not meeting this important formal requirement of the post".

The Tribunal recalled its jurisprudence in Judgement No. 1122, *Lopes Braga* (2003), in which it held that "the Respondent's failure to follow [his] own procedures; i.e., to apply objective criteria of evaluation in a consistent manner, was a violation of the Applicant's right to be fully and fairly considered for the post and irreparably harmed the Applicant".

The Tribunal was also in general accord with the remarks of the JAB about other irregularities in the procedure. In particular, the Tribunal found that the JAB's expressed disapproval of the fact that UNCTAD interviewed only two candidates, considered to be the best-placed candidates, was well-founded. In conclusion, the Tribunal agreed that the Applicant did not receive full and fair consideration for the position. It found that the compensation of six months' net base salary, recommended by the JAB and paid by the Secretary-General, was adequate.

The Tribunal turned next to the issue of the reassignment of the Applicant, after the promotion procedure, to the post of Senior Inter-Regional Adviser in the Office of the Secretary-General at the D-1 level, which amounted, in the Applicant's view to a humiliating and degrading treatment. The Tribunal observed that the Applicant had no right to be placed in a post of the same level as the one he had been temporarily occupying. However, it stressed that it was not satisfied that the Administration, after having violated the Applicant's rights in the promotion exercise, assigned him to a position in which he had literally nothing to do, was left without a secretary, was not invited to events in which he would normally have participated, and, in short, indicated, in the most direct and brutal way, that the Applicant was no longer necessary to the Organization.

In this regard, the Tribunal recalled its jurisprudence in Judgement No. 1313 (2006):

> "The Tribunal can readily accept that many persons would suffer deep unhappiness and upset at being required to daily attend an office for no useful purpose; for being denied the dignity and satisfaction of doing one's work; and, for the humiliation attendant on such a pointless way of passing time. The Tribunal accepts that the Applicant has suffered in the manner described by her in her Application and that she is, in the circumstances, entitled to compensation for moral injury. (See Judgements No. 997, *van der Graaf* (2001); No. 1008, *Loh* (2001); No. 1009, *Makil* (2001); and, No. 1290 (2006).)"

Likewise, it found the Applicant in the instant case deserved compensation under this heading, in addition to the compensation he was paid for the denial of his rights in the promotion exercise.

In view of the foregoing, the Tribunal ordered the Respondent to pay to the Applicant, by way of compensation for the moral injury he suffered, four months' net base salary.

B. Decisions of the Administrative Tribunal of the International Labour Organization[15]

1. *Judgment No. 2582 (7 February 2007): Mr. F. L.* v. *the International Olive Oil Council (IOOC)*[16]

Request for repatriation benefits—Implicit decision resulting from defendant's failure to respond to complainant's request—Obligation of the Organization to deliver a reasoned decision on the merits of the request—Receivability of the complaint—Right of former officials to appeal directly to the Tribunal

The Complainant, Executive Director of IOOC from 1987 to 2002, on detachment from the European Commission, challenged the implicit decision rejecting his request of payment of all the "end-of-service benefits" to which he considered himself entitled under the Staff Regulations and Rules. Thus, he asked the Tribunal to order the payment of such benefits and also claimed compensation for moral injury and costs.

[15] 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; the International Organization of Legal Metrology; the International Organisation of Vine and Wine; the Centre for the Development of Enterprise; the Permanent Court of Arbitration and the South Centre. 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/.

[16] Mr. Michel Gentot, President; Mr Seydou Ba, Vice-President; Mr Claude Rouiller, Judge.

Following an audit report on the budget of IOOC, which revealed serious irregularities, the competent department of the European Commission decided to terminate the detachment of the Complainant, and waive his immunity to enable the authorities of the Host Country, Spain, to conduct full investigation into the facts and bring charges before the Spanish criminal courts. The Complainant requested to retire with immediate effect on 1 January 2003 and his demand was accepted.

The Complainant submitted his request for payment of his repatriation benefits as well as travel and removal expenses on 27 January 2003. On 19 December 2003, the Complainant was informed that the Heads of Delegation, meeting at the IOOC's 89th session, had expressed the view that his requests were unfounded. Following a repeated request by the Complainant, the Executive Director informed him on 12 January 2004 that his request had been referred to an external legal adviser, and that he would be informed in due course of the decision ultimately taken. The Complainant repeated his requests regularly in view of the silence of the Organisation, until he wrote a last letter asking for a final decision on 23 August 2005. Having received no reply two months later, the Complainant filed a complaint before the Tribunal.

The Tribunal first considered the two objections raised by the Defendant as to the receivability of the complaint. While the Tribunal noted that it was true that the Complainant had not appealed to the IOOC's Joint Committee, as provided for in the Staff Regulations, it found that the Complainant did have the right to appeal directly to the Tribunal, as former officials have no access to internal remedies. Further, with regard to the claim that the complaint was time-barred, the Tribunal found that the decision of 19 December 2003 could not be considered final, as it had implicitly been revoked by the letter of 12 January 2004. Further, the failure by the Defendant to reply to the request, explained by its desire not to have any communication with the Complainant during the pending criminal investigation, constituted an implicit final decision to reject the Complainant's request, as the silence of the Organisation could not indefinitely paralyse the exercise of the Complainant's right to appeal to the Tribunal.

IOOC stated that it expressly recognised the competence of the Tribunal to hear this case despite some uncertainty as to whether it had actually recognised the competence of the Tribunal at the time the dispute had arisen.

On the merits, the Tribunal considered that, even though the Complainant had an obligation to supply IOOC with the necessary evidence of his repatriation to his home country and of the incurred expenses, it was up to the Administration to decide whether or not he was entitled to those benefits, and to deliver a reasoned decision on the merits of his request. The Defendant's prolonged failure to reply prevented the Complainant to exercise his rights, and constituted a breach of the commitments that were made, which was unlawful and could not be maintained.

The Tribunal decided to set aside the implicit negative decision and to send the matter back to IOOC, which has to respond after having considered the merits of the Complainant's request in accordance with the applicable rules and information supplied. Further, it awarded the Complainant 1000 euros in compensation for moral injury caused by the

uncertainty in which the Complainant was kept regarding the outcome of his request, as well as 2000 euros for the costs.

2. *Judgment No. 2635 (11 July 2007): Mrs. D. K.* v. *the International Telecommunication Union (ITU)*[17]

Reassignment of staff member following secondment—Discretionary decision by the executive head to reassign a staff member—Reassignment to be made in the interests of the organization—Limited review of a discretionary decision—Decision based in part on allegations to which the Complainant could not respond is considered to be flawed

The Complainant joined the ITU in 1988 as a Training and Support Programmer at grade P-2 in the Computer Department. After having been promoted to grade P-3 in 1991, in 2003 she was seconded for two years to the World Meteorological Organization where she held a grade P-4. Upon her return from her secondment, the Complainant was reassigned to the Information Services Department at grade P-3. On 1 November 2005, the Complainant requested that the Secretary-General reconsider the decision to reassign her to a P-3 post. The Secretary-General responded on 12 December 2005 that he had decided to maintain his decision. The Complainant filed an appeal to the Appeal Board against that decision on 21 February 2006. In its report of 26 April 2006, the Appeal Board concluded that the decision of the Secretary-General had been well founded and involved no breach of due process. By a memorandum of 15 May 2006, the Complainant was informed that the Secretary-General had decided to uphold the Board's recommendation.

The Complainant argued that the decision to reassign her to the said post was improperly motivated and based on allegations concerning her relational issues, to which she had not had have the opportunity to respond. She further argued that the new position violated her dignity and constituted a breach of her right to be given work in accordance with her skills, training and expertise and that it was indeed a hidden disciplinary measure.

The Tribunal recalled that decisions to transfer staff members were at the discretion of the executive head of the Organization and thus subject to limited review. The Tribunal could only assess that the impugned decision had not been taken *ultra vires,* did not have procedural flaw or mistake of fact or law, or was not taken in misuse of authority.

It further noted that in a transfer, the head of the Organization shall take into account the interests of the Organization and the interests and abilities of the staff member and in cases where the two are at odds, greater weight may be accorded to the interests of the Organization. It is also well established in the case law that the preservation of harmony and good relations in a working environment were legitimate interests, and the decision to transfer a staff member could not be considered to be invalid if taken in that purpose.

Despite the denial of the ITU, the Tribunal held that it was evident from the statements made by the *ad interim* Chief of Personal during the proceedings, that the issue of the Complainant's relational difficulties was material with regard to her assignment and her request of promotion. Thus, the Tribunal concluded that the decision by the Secretary-General, being based on the recommendation coming from staff members, itself based

[17] Mr. Michel Gentot, President; Ms Mary G. Gaudron, and Ms Dolores M. Hansen, Judges.

in part on information adverse to the Complainant to which she had no opportunity to respond, was flawed and the decision to reject her appeal should be set aside.

In view of the above, the Tribunal also decided that ITU should pay the Complainant 10,000 Swiss francs in moral damages and 5,000 francs in costs.

3. Judgment No. 2636 (11 July 2007): Mr. B. F. v. *the World Intellectual Property Organization (WIPO)*[18]

Freedom of association—Freedom of discussion and debates about Staff Association matters—Interest of the Organization to have a stable and functioning Staff Association—Providing facilities for discussion and debate among the Staff Association not considered to constitute an interference in the Staff Association affairs—Jurisdiction of the Tribunal—Applicable law to international civil servants—No jurisdiction to order sanctions or apologies—Investigation of claims of aggression—Duty of the Organization to investigate claims properly and promptly

The Complainant has been a staff member of WIPO since 1991 and held at the material time a P-3 post. Since January 2001 he was President of the Staff Council, until, on 28 June 2005, he resigned in troubled circumstances. The circumstances leading to the resignation of the complainant as President of the Staff Council involved a former President, who, at the relevant time held a D-2 post. In the summer of 2004, the former President sent a long email to some members of the Staff Council, but not to the Complainant, indicating that the Complainant had been consulted by the Administration in relation to a matter that eventually was the subject of Judgment 2288. A copy was also sent to the Director of HRMD. Following serious dissension of views between the Staff Council and other members of the Staff Association, an Emergency General Assembly (EGA) was requested by way of petition, and was held on 13 June 2005. The Assembly decided that a new election for the Staff Council would take place. On 20 June 2005, two members of the Staff Council resigned.

On 28 June 2005, the Complainant and the remaining members of the Council announced that they too resigned. On the same day, prior to that announcement, one member reported to the Director General that she had been approached in the cafeteria of four of the co-signatories of the petition, and that two of them had spoken to her aggressively. The Complainant also sent an e-mail to the Director General in which he indicated that he had been verbally aggressed and insulted by the same four co-signatories in his office. On 14 July 2005 the Complainant was placed on sick leave by his doctor.

On 29 July 2005, a lawyer acting for the complainant sent a letter to the Director General demanding that sanctions be taken against three of the alleged aggressors as well as the former Staff Council President. By a letter of 7 September 2005, the Complainant's lawyer was informed that the claims had been rejected.

On 21 October 2005 the Complainant lodged an appeal with the Appeal Board. In its report dated 25 November 2005, the Board held that it was not competent to deal with matters relating to the EGA of the Staff Association. Regarding the allegations of "harassment and physical attacks", it recommended that the Director General "consider the right forum or body within WIPO to deal with the appeal in this regard". The other claims raised by the Complainant were rejected. By a letter of 13 December 2005, the Director General

[18] Mr. Michel Gentot, President; Ms Mary G. Gaudron and Mr Agustín Gordillo, Judges.

confirmed the Appeals Board's recommendations, and informed the Complainant that he had decided to instruct the Internal Audit and Oversight Division to conduct an inquiry into his allegations of harassment and physical attacks.

The Complainant asked the Tribunal that sanctions be imposed against the former President of the Staff Council and against three persons closely associated to the events, including the aggression in his office on 28 June 2005, as well as an official apology from the Administration. He also requested that the election of the new Staff Council held on 11 August 2005 be invalidated, and he claimed costs and damages for moral injuries and injuries to his reputation as President of the Staff Council.

The Tribunal noted that it had no jurisdiction to issue injunctions requiring an organization to sanction staff members. In this context, it noted that the staff members concerned had filed applications to intervene but that none of the applicants were in the same position, in fact or law, as the complainant. Furthermore their applications were not considered to challenge a final administrative decision by WIPO, and must therefore be refused.

The Tribunal recalled that Article II of the Statute of the Tribunal dictate that various claims by the Applicant must derive from the Staff Regulations and those general legal principles recognized by the Tribunal as applicable law to international civil servants. The claim that the Tribunal make appropriate orders to enable investigation of the allegations by the Swiss authorities was therefore not receivable. The Tribunal further observed that by Article VIII of its Statute, the it was empowered to rescind impugned decisions, to order the performance of obligations and to award compensation, but not to order apologies, nor to require undertakings as to performance of obligations in the future, as claimed by the Complainant when he asked the Tribunal to order WIPO that Staff members of the Staff Council would not be subject of future discrimination. The latter requests by the Complainant were therefore dismissed.

The Tribunal finally considered the Complainant's claim for damages and costs. This claim was, according to the Tribunal, based on two distinct obligations: the obligation not to interfere in the freedom of association of staff members which, in turn, involves a duty not to interfere in the internal affairs of their representative bodies; and the duty to provide a safe and secure workplace environment, which, in turn, involves the duty to protect against workplace harassment and aggression.

The Tribunal recalled that freedom of association carried with it freedom of discussion and debate in relation to the Staff Association matters, which in the circumstances of the case, extended to the communications of the former President with the Director, the Complainant or other staff members. Further, the Tribunal held that is was in the interests of the Organization to facilitate discussion on outstanding issues among the members of the Staff Association, in the hope of restoring stability and a functioning Staff Council. Thus, the simple fact that WIPO provided facilities to the staff members of the Staff Association dissenting with the Staff Council could not support the Complainant's contentions of complicity and interference in the Staff Association affairs.

With regard to the claim made by the Complainant that he has been aggressed in his office by other staff members on 28 June 2005, the Tribunal held that no proper and prompt

investigation was made by WIPO. It observed that it was the Appeal Board's erroneous belief that the claims were not within the scope of its jurisdiction, which led the Director General to decide to transfer the investigation to the Internal Audit and Oversight Division.

The Tribunal decided that the decision to transfer the investigation of the claims of aggression to the Internal Audit and Oversight Division should be set aside and the Complainant should be paid 5,000 Swiss francs by way of moral damages plus 2,000 francs in costs. All other claims by the Complainant were dismissed.

4. *Judgment No. 2637 (11 July 2007): Mrs. C. H.-P.* v. *the World Trade Organization (WTO)*[19]

Nationality—Recognition of only one nationality for staff with dual nationality—Home country considered to be the country with which the staff member maintains the closest ties—Discretion of the Director-General to assess the various factors in this regard—Children of international civil servants—Entitlement to benefits for internationally recruited staff members—Benefits such as home leave and education grant not viewed as simple financial benefits—Principle of equality of treatment of staff members—Difference in treatment of different situations viewed as appropriate

The Complainant was born in 1961 in Switzerland and was a French national at birth. She was the daughter of a French and a British international civil servants working in Switzerland, where she was raised for 20 years. She obtained the Swiss nationality by naturalization in 1985, and the material time held both French and Swiss citizenship. After having worked in the United Kingdom, Luxembourg and Geneva, she was recruited locally for a Professional position in 1991 for a fixed-term contract at the Interim Commission for the International Trade Organization/General Agreement on Tariff and Trade, the predecessor of the WTO.

On 19 January 2005, a Notice to the Staff was issued, informing staff members that the Administration had decided to review the recruitment status of fixed-term and regular staff members who believed that their recruitment status had been erroneously determined at the time of their first appointment. The Complainant successfully requested an international status and her status was changed accordingly on 1 August 2005. However, when the Complainant enquired about her entitlement to benefits, including home leave and education grant, she was answered that as a Swiss national who was working in her recognised home country, she was not eligible for education grant or home leave. On 12 August the Complainant requested that the Director-General review the decision, but was however on 12 September informed that the decision had been upheld.

On 5 October 2005, the Complainant filed an appeal with the Joint Appeals Board. In its report of 20 December 2005, the Board Recommended that the Administration ascertain all the facts that existed at the time of the Complainant's recruitment, taking into account the new information provided by the Complainant during the appeal proceedings. The Complainant subsequently provided, upon the request of the Director-General, additional information. On 22 March 2006 she was informed that the Director-General had

[19] Mr. Michel Gentot, President; Ms Mary G. Gaudron and Mr Agustín Gordillo, Judges.

decided that, for the purposes of the Staff Regulations and Rules, she was a Swiss national, and that her "recognized home country" was Switzerland.

The Complainant argued that the decision to recognize Switzerland as her home country was arbitrary since it was according more weight to her Swiss nationality over her French nationality. Moreover, she argued that while home country is normally the state of nationality of the staff member, in exceptional and compelling circumstances, the Director-General could recognize another home country, when the staff member had maintained a normal residence for a prolonged period of time in the said country. Thus, she claimed that her recognized home country should have been the United Kingdom, or at least France.

The Tribunal recalled that so long as the Director-General considered all material facts and did not have regard to irrelevant considerations, it was for the Director-General to assess what weight to give to each particular factors. In the present case, the Tribunal found that nothing could suggest that he had exceeded his discretion in this regard. Indeed, the burden of proof being on the Complainant, the Tribunal held that she had not brought any compelling proof that she maintained her normal residency in the United Kingdom prior her appointment, the omission of which would have constituted an error by the Director-General.

Further, the Complainant argued that the decision not to recognize her as a French national having her home in the United Kingdom was discriminatory against children of international civil servants. In this regard, the Tribunal recalled that the main justification for granting benefits, such as home leave and education grant, was not to confer a financial benefit or to make monetary concession to the beneficiaries. Benefits are to enable staff members who, owing to their work, spend a number of years away from their country with which they have the closest personal material ties, to return there in order to maintain those connections, and to enable them to teach their mother tongue to a dependent child attending a local school in which the instruction is given in a language other than his of her. Therefore, the Tribunal observed that children of international civil servants were in some cases likely to develop closer ties with the country in which their parents worked and where they were brought up rather that their parents' country of origin. In the view of the purposes of the benefits, the Tribunal rejected the argument of discrimination.

The Complainant has identified other staff members who, although being nationals of Switzerland and another country, were recruited as nationals of that other country, and thus she claimed a breach in the principle of equality of treatment of staff members. The Tribunal noted that the principle of equality should not lead to treat in an identical manner different situations when a difference in treatment was appropriate and adapted, as it was the case in the situations she presented, as none of the other staff members were actually in the same situation than the Complainant, in fact or in law.

In view of the above, the Tribunal dismissed the Complaint.

5. *Judgment No. 2656 (11 July 2007): Mr. J. M.R.* v. *the International Atomic Energy Agency*[20]

Dismissal for serious misconduct—False allegations considered to constitute serious misconduct—Proportionality of a disciplinary decision—Discretionary nature of disciplinary decisions—Lack of proportionality to be treated as an error of law—Findings in a previous judgment cannot be controverted

The background facts to the claims made by the Complainant are set out in Judgment 2604. The Complainant was suspended without pay pending an investigation by the Office of Internal Oversight Services (OIOS) into a complaint made by his Director. During the course of the investigation, the Complainant made serious allegations which are at the centre of this matter. Following the investigation, four allegations of misconduct were referred to the Joint Disciplinary Board. With respect to one of the allegations, namely that the Complainant had deliberately made false allegations of misconduct against other staff members, the Board recommended that the Complainant be dismissed for serious misconduct. The Director General accepted that recommendation, and the Complainant's appointment was terminated with effect from 3 March 2006.

The Complainant challenged before the Tribunal the decision of 3 March 2006 by which his appointment was terminated.

The Tribunal noted that it may be appropriate to consider the nature of the allegations made by the Complainant, which had been to the effect that one staff member had had a "comet like career" as a result of a sexual relationship with a senior staff member and that a third staff member had been promoted despite his poor performance because he was blackmailing the other two.

The Tribunal subsequently observed that the main argument put forward by the Complainant was that the disciplinary measure to dismiss him lacked proportionality. In this regard, the Tribunal, recalled that lack of proportionality should be treated as an error of law warranting the setting aside of the disciplinary measure, even if such decision is discretionary in nature. It further added that in determining the proportionality between a disciplinary action and an offence, both objective and subjective features should be taken into account and, in the case of a dismissal, the closest scrutiny is necessary.

The Tribunal held that the allegations were indeed serious and which, in the absence of cogent evidence, should never have been made. Responding to the claim that the Joint Disciplinary Board had erred when it equated reckless indifference with deliberate falsehood, the Tribunal found that in the present case, given the nature of the allegations, there was little, if any, room for difference is the consequent sanction. The Complainant had, according to the Tribunal, showed a callous disregard for the feelings of the persons concerned and a lack of judgement that was wholly incompatible with the standards of conduct required of an international civil servant. Given the circumstance, the Tribunal concluded that the disciplinary action taken had not been disproportionate to the conduct in question.

The Complainant had further argued that the decision to dismiss him constituted an abuse of power as some of the matters upon which were based the original complaint

[20] Mr. Michel Gentot, President; Ms. Mary G. Gaudron and Mr. Giuseppe Barbagallo, Judges.

against him and his subsequent suspension, were not reported at the time they allegedly occurred and were not substantiated by the OIOS investigation. Further, he contended that he had no opportunity to answer those matters and was not informed of the reasons for his suspension for several weeks; that his suspension lasted in excess of 14 months and the matters on which it was originally based were not the matters relied upon for his dismissal. The Tribunal however recalled that in its Judgment 2604, dealing with the suspension of the Complainant, it had found that there was *prima facie* evidence entitling the Director General to suspend him and that proper procedures had been observed with respect to the OIOS investigation. It therefore concluded that those findings of the previous Judgment could not be controverted now and that there was no basis for a conclusion that the impugned decision involved an abuse of power.

The Tribunal dismissed the Complaint.

6. *Judgment No. 2657 (11 July 2007): Mr. R. K* v. *the European Patent Organisation (EPO)*[21]

Jurisdiction of the Tribunal—Competence limited by its Statute to complaints by present or past employees—Absence of jurisdiction for complaints on recruitment matters by external candidates—Physical requirements of the post—waiver of immunity—Legal vacuum

The Complainant, who had lost his left hand, his left eye and part of the fingers in the right hand and suffered injuries to his left ear following an accident when he was 18, asked the Tribunal to quash the decision to reject his application for a post of examiner on the grounds that his disabilities prevented him to meet the physical requirements for the post. He also requested the Tribunal to declare unlawful the decision to refuse his request to lodge an internal appeal as amounting to a denial of justice, or to order the EPO to waive its immunity and the medical examiner's immunity, so that he could bring an action before a German court.

Having applied to a post of examiner in 2005, the Complainant was informed by telephone that he had successfully passed the technical and linguistic tests as well as the interview over the phone. However, he was told that he would have to undergo the medical examination required by the Service Regulation to determine whether he met the physical requirements for the post. Following the medical examination on 23 June 2005, he was informed that he could not be appointed as a permanent employee in view of the serious likelihood of the deterioration of his condition in the near future.

The Complainant first contested the conclusions of the medical examiners as pure speculation and discriminatory against disabled persons. Further, he challenged the decision to refuse his internal appeal of this decision, as the internal appeal mechanisms are only available to permanent employees and former employees. In this regard, he made reference to the Court of First Instance of the European Communities that has implicitly recognized their jurisdiction to examine appeals of external candidates on recruitment matters.

The Tribunal recalled that it was well-established in its jurisprudence that it has only a limited jurisdiction. It was bound to apply the mandatory provision governing its competence and therefore it was not competent to hear complaints from external applicants regarding their non recruitment, except in cases where, even in the absence of a contract

[21] Mr. Michel Gentot, President; Mr Seydou Ba, Vice-President; Mr Claude Rouiller, Judge.

signed by the parties, the commitments were equivalent to a contract. However, the Tribunal noted that in the present circumstances, while proposals regarding and appointment were unquestionably made to the Complainant, the Defendant was not bound by them until it had established that the conditions governing appointments laid down in the regulations were met, including the physical requirements. The Tribunal also held that it had not authority to order that EPO waive its immunity.

While noting that the present judgment created a legal vacuum and that it was highly desirable that EPO sought a solution affording the Complainant access to a court, either by waiving its immunity or submitting the dispute to arbitration, the Tribunal dismissed the Complaint as irreceivable.

C. Decisions of the World Bank Administrative Tribunal[22]

1. *Decision No. 358 (3 February 2007): Aida Shekib* v. *the International Bank for Reconstruction and Development*[23]

Pension benefits—Relationship between decisions issued by national courts and the internal law of the Bank—Laws of member State do not govern the Bank or an organ within it—Guardianship order by a national court—Competence of the Bank to determine the capacity of the recipient

The Application was filed by the court-appointed guardian of the widow of a deceased staff member. The Applicant challenged a decision of the Bank's Pension Benefits Administration Committee (PBAC) to make payment of pension benefits directly to the widow of the staff member, Mrs. Naseem, rather than to the Applicant. The central issue was whether the PBAC abused its discretion in declining to give "full faith and credit" to guardianship order issued by an Illinois court and in deciding instead to pay the disputed pension benefits to Mrs. Naseem. The principal question for the Tribunal was whether PBAC was, as a matter of law, entitled to make its own determination of Mrs. Naseem's competence to manage her pension moneys, independent of the guardianship order issued in 2001 by the State Court of Illinois.

The Illinois State Court order in question stated, among other things, that Mrs. Naseem "lacks some but not all of the capacity" specified in Illinois statutory law. The State Trial Court took the view that this finding provided the foundation for the appointment of a "plenary guardian of the estate". The Applicant was so appointed. The Applicant argued that the Bank should not disregard the guardianship order of the Illinois court, and should

[22] 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://www.worldbank.org/tribunal.

[23] Jan Paulsson, President; Robert A. Gorman and Sarah Christie, Judges.

pay Mrs. Naseem's pension benefits to the Applicant as the guardian of Mrs. Naseem's estate, as dictated by the fundamental principle of "full faith and credit" embodied in the Constitution of the United States (U.S.). If Mrs. Naseem wished to revoke or undo the guardianship order, she should have petitioned the Illinois court, but she had not done so. The Applicant also argued that the Illinois court appointed the Applicant as the guardian of the estate upon a finding that Mrs. Naseem was unable to handle her financial affairs, and that no valid reasons existed for disregarding that guardianship order.

The Tribunal stated as follows:

"26. Article IV, Section 1, of the U.S. Constitution provides: "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State." Technically, this clause is altogether inapplicable to the case at hand. Designed to eliminate the prospect of repeated and evasive litigation within a nation composed of many states with separate court systems, the clause by its terms applies only when one state in the U.S. is asked to enforce or to ignore the laws or judgments of the courts of another state. Obviously, the World Bank, and the PBAC, are not a 'state.'

27. Beyond that, there is a more fundamental reason why the Full Faith and Credit Clause is not controlling. The Tribunal recently noted: "The Tribunal . . . has often declared that the laws of a member state within the Bank, whether statutory or judicial, do not govern the Bank or an organ within it such as the PBAC (de Merode, Decision No. 1 [1981], para. 36; Mould, Decision No. 210 [1999], paras. 23–24; Cissé, Decision No. 242 [2001], para. 23)." Rodriguez-Sawyer, Decision No. 330 [2005], para. 14. Otherwise, the Bank's operations could be encumbered by entanglements in the domestic laws and judgments of scores of its member nations.

28. In Rodriguez-Sawyer, a case also arising under the Bank's SRP . . . the Tribunal concluded that PBAC policies of ease of administration and insulation from uncertain and conflicting state laws within the U.S. could reasonably be given priority over the state divorce decree.

29. The situation in the present case is quite similar. A family member is contending that Mrs. Naseem, who would otherwise clearly succeed under the SRP to the pension rights of her deceased husband, should be deprived of the full enjoyment of those rights by virtue of a state-court decree creating a new relationship of guardian and ward. The Tribunal concludes here, as well, that the PBAC has articulated significant substantive policies that favor the designated pension beneficiary, and that it has not abused its discretion in giving those policies higher status than the guardianship order of the Illinois court.

The Tribunal found that the Bank's Staff Retirement Plan (SRP) articulated a policy that favoured full pension payments to the widow or widower of a deceased staff member; that disfavors the diversion of any part of those payments to another; and that allows for such diversion only in the extraordinary circumstance of the surviving spouse being "unable to care for his [or her] own affairs." The PBAC concluded that Mrs. Naseem should be clearly favored under these provisions, and that the Illinois guardianship proceedings of some three years before—especially when viewed in the light of a new and thorough medical examination, and of her *bona fide* relocation to Saudi Arabia—no longer provided a satisfactory basis for depriving her of the SRP benefits to which she would otherwise be entitled.

The Tribunal found that such treatment of the Illinois judgment is strongly supported by several decisions of U.S. courts which uphold the discretion of various federal agencies to

pay benefits to persons who would otherwise be ineligible by virtue of state-court guardianship orders (*In the Matter of the Guardianship of Blunt,* 358 F. Supp. 2d 882 (D.N.D. 2005), *Nelson* v. *Colegrove,* 267 Ill. App. 317 (1932), *See, e.g.*, *In the Matter of the Will of Mural W. Barnes,* 30 Interior Board of Indian Appeals (IBIA) 7 (1996). The Tribunal stated that

> these cases nonetheless support the principle that deference to state judicial decrees is not obligatory when there are significant substantive policies to be served as may be articulated by the U.S. Congress and implementing agencies. The Tribunal also believes this to be the case when such policies are articulated by an international organization such as the World Bank for the distribution of pension benefits to its staff members and their survivors.

The Tribunal thus rejected the Applicant's contention that principles of "full faith and credit" apply when the initial forum is a United States state court and the second "forum" is the World Bank and its PBAC.

The Tribunal proceeded to rule that the PBAC was free to make its own determination whether Mrs. Naseem was competent to manage her business affairs and in particular her pension payments, without treating the Applicant as Mrs. Naseem's guardian to whom those payments must continue to be made, and that the principal factual finding of the PBAC, i.e., that Mrs. Naseem was "capable of managing her own financial affairs," was supported by probative and credible evidence and was altogether reasonable.

2. Decision No. 373 (14 December 2007): S. v. *the International Bank for Reconstruction and Development*[24]

Termination of service—Mandatory disciplinary measure for conviction of felonious criminal offense—Discretion of President to make exception when felony in one jurisdiction is not punishable in most others, according to Staff Rule 3.02—Decision to impose disciplinary measures made on case-by-case basis, according to Staff Rule 3.01—Assessment of the particular circumstances of the case by the Tribunal—Award of costs

In this case, the Applicant challenged the Bank's decision to terminate his employment after he pleaded guilty to, and was convicted of, a felony count of structuring financial transactions to evade reporting requirements (Structuring) before the United States (U.S.) District Court for the District of Columbia (the U.S. District Court). Under the U.S. law, financial institutions are required to file a Currency Transaction Report with the Secretary of the Treasury for all cash transactions exceeding $10,000. Structuring is the division of a cash transaction exceeding $10,000 into multiple transactions of smaller amounts for the purpose of evading federal reporting requirements. The Applicant had engaged in structuring on the instructions or at the request of his older cousin and former guardian. Under the Bank's Staff Rules, the mandatory disciplinary measure in cases where a staff member is convicted of a felonious criminal offence is termination of service. Staff Rule 3.02 also states that the President of the Bank—or his designee—"retains the full and sole discretion to determine otherwise based on particular circumstances—i.e., where an act is a felony in one jurisdiction but not in most others . . ." The Applicant contended, *inter alia,*

[24] Jan Paulsson, President; Francisco Orrego Vicuña, Sarah Christie, Florentino P. Feliciano, Zia Mody, Stephen M. Schwebel, and Francis M. Ssekandi, Judges.

that the Bank's Vice-President for Human Resources did not properly exercise his discretion in deciding to terminate his employment. The Bank Group's Staff Association filed an *amicus curiae* brief in which it argued, *inter alia,* that the Staff Rules were designed to ensure that the employment of staff members stationed in over 100 country offices around the world is not terminated when they are convicted of a felony, such as structuring, which, as a matter of record, was not a crime in most other jurisdictions.

In its judgment, the Tribunal recalled its earlier jurisprudence regarding its authority in disciplinary cases, and confirmed that

> When reviewing disciplinary cases, the Tribunal examines (i) the existence of the facts, (ii) whether they legally amount to misconduct, (iii) whether the sanction imposed is provided in the law of the Bank, (iv) whether the sanction is not significantly disproportionate to the offense, and (v) whether the requirements of due process have been observed.

It noted Staff Rule 3.01, according to which any decision by the Bank to impose disciplinary measures is to be made on a case-by-case basis taking into account such factors as the seriousness of the matter, the extenuating circumstances, the situation of the staff member, the interests of the Bank and the frequency of conduct for which disciplinary measures may be imposed.

Regarding the "seriousness of the matter", the Tribunal found that "since the Bank is actively involved in the prevention of money laundering, it was not unreasonable for it to conclude that structuring is a serious financial crime", and noted that the Applicant had engaged in structuring over a period of three years. Regarding "extenuating circumstances", it had been argued that in the Applicant's native culture, to question a request from an older family member who is a much-loved father figure like his cousin would be unthinkable. The Bank found that the Applicant's claims of innocent explanations for his actions were implausible, and that deference to his cousin requests on the basis of cultural expectations was "not an acceptable argument from someone of the Applicant's background and seniority". Regarding the "situation of the staff member", the Tribunal found, in accordance with its established jurisprudence, that good performance ratings were not sufficient to overcome the consequences of financial impropriety by the staff member. Regarding the "interests of the Bank Group", the Applicant and the Staff Association had argued that it would be in the Bank interests not to terminate the Applicant's employment, but the Tribunal recalled its consistent jurisprudence to the effect that deference would be accorded to the evaluation of the Bank's management which is responsible for maintaining the ethical standards of the Bank. Regarding the last factor, namely "frequency of the conduct", it was noted that the Applicant engaged in structuring more than once.

The Tribunal found that

> The core factor favoring the Bank is that the Applicant's felony conviction involved a financial crime. Structuring is often linked with corruption and money laundering. The Bank has in recent years devoted significant resources to combating corruption and money laundering. It would be discordant for the Tribunal now to compel the Bank to retain a staff member convicted of the felony of structuring.

Furthermore, regarding the argument based on Staff Rule 3.02, that structuring was not a felony in most other jurisdictions, the Tribunal stated that

> Numerous factors might justify clemency in other cases, but do not apply to the Applicant. Acts deemed to be criminal under the unusual laws of a particular country may have

> nothing to do with the work of the Bank. Or the penal legislation itself may be odious, such as the criminalization of religious, political, or artistic expression. The staff member may be a recent arrival in the country where his or her conduct triggers unexpected national penal sanctions. Indeed, he or she may be on a temporary assignment in a country where, for example, presence at a private gathering where alcohol is consumed—even if only by others—is a criminal offense. Or the staff member may be a clerical worker or driver whose lack of awareness and punctiliousness in respect of laws regulating financial transactions cannot be said to bring the Bank into disrepute. In this case, the Applicant was a Senior Operations Officer who had moved to the U.S. at age 17 and had made his adult and professional life there without interruption. His insensitivity to local law is not readily excusable, particularly with respect to the rather obvious warning lights that he plainly should have perceived when asked to make ostensibly pointless transactions in and out of his bank account—which moreover is the account of a World Bank staff member exempt from U.S. income tax and therefore less subject to IRS audits.

The Tribunal thus concluded that it found no basis for rescinding the decision to terminate the Applicant's employment.

Even though the Tribunal dismissed all of the Applicant's other pleas, it stated, regarding the award of costs, that:

> Given that the text of paragraph 3.02 has not previously been examined by the Tribunal, that its full implications are not self-evident, and that the Applicant's case was not frivolous when viewed as a matter of his employment status as opposed to the characterization of his conduct under U.S. federal criminal law, the Tribunal considers it appropriate to award him $24,000 as a contribution to his costs.

D. Decisions of the Administrative Tribunal of the International Monetary Fund[25]

1. *Judgment No. 2007–1 (24 January 2007): Daseking-Frank* et al.*, Applicants* v. *the International Monetary Fund (IMF), Respondent*[26]

Determination of staff salaries—Extent of the competence of the Fund to amend the methodology of determination—Principle of "international competitiveness" possesses an essential and fundamental character—International competitiveness of salaries considered to be a legal obligation—Assessment of the Fund's exercise of discretion in revising the compensation system—Allegations of abuse of discretion and improperly motivated decision

The Application has been brought by five staff members, members of the governing board of the Staff Association, to challenge, as contrary to the internal law of the Fund and

[25] 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.

[26] Stephen M. Schwebel, President; Nisuke Ando and Michel Gentot, Associate Judges.

general principles of international administrative law, the 14 April 2006 decision of the IMF Executive Board to revise the methodology by which staff salaries are determined, as well as the implementation of that amended system in the 2006 compensation round.

The Tribunal observed at the outset that the case presented it with the question of what constraints operate to circumscribe the " . . . broad, although not unlimited, power of the organization to amend the terms and conditions of employment." (Report of the Executive Board to the Board of Governors on the Establishment of an Administrative Tribunal for the International Monetary Fund, p. 17.) Drawing upon the seminal case of the World Bank Administrative Tribunal, *de Merode,* Decision No. 1 (1981), a decision upon which Applicants and the Fund both had relied in support of their respective positions and which had influenced the drafting of the Statute of the IMF Administrative Tribunal, the Tribunal distinguished between "fundamental and essential" elements of the conditions of staff employment, which cannot lawfully be amended on a unilateral basis by the organization, and elements that are less fundamental or essential and, accordingly, are open to amendment, subject to review for abuse of discretion.

The Tribunal first considered the question of whether the 14 April 2006 decision of the Executive Board had violated any of the fundamental conditions of Applicants' employment. Applicants maintained that the decision contravened the principles of maintaining the "international competitiveness" of Fund salaries and of ensuring a "rules-based" compensation system.

As to the principle of "international competitiveness," the Tribunal concluded that it was clear from the record that a principal aim of the Fund's compensation system, at least since 1979, has been to maintain international competitiveness. Moreover, concluded the Tribunal, "[i]t may be maintained that 'there is evidence that [this practice] is followed by the organization in the conviction that it reflects a legal obligation' (*de Merode,* para. 23) . . .". In the view of the Tribunal, the conclusion that international competitiveness of Fund salaries is, or has become, a fundamental condition of staff employment flows from two sources: "First, the principle has, by dint of interpretation, been found to inhere in Article XII, Section 4 (d) of the Articles of Agreement. Second, the Fund consistently and expressly has incorporated the principle of international competitiveness in its methodology for adjusting staff salaries."

Addressing the question of whether the revised compensation system indeed met the essential element of international competitiveness, the Tribunal observed that it is a matter of judgment how that standard is to be achieved: "What characterizes the practice of the IMF in giving effect to international competitiveness is that (i) comparators are drawn from selected markets in which the Fund competes for talent, and (ii) these comparisons are updated from time to time to reflect changes in those markets and in the Fund's needs for staffing." At the same time, "[j]udgments as to which particular markets to target, in what countries, and what weight shall be attached to public v. private sectors, as well as the weight to accord the various comparators, are complex policy decisions which, when reasonably based, are beyond the competence of the Tribunal to reconsider."

The Tribunal also affirmed that another principle governing the Fund's compensation system since 1979 is that it is to be "rules-based." The Tribunal cited favorably the statement in *de Merode,* para. 43 that "'[s]ometimes it will be the principle itself of a condition of employment which possesses an essential and fundamental character, while its imple-

mentation will possess a less fundamental and less essential character . . . '". The Tribunal observed that it was clear from the history of the Fund's compensation system that it had been far from static. The Tribunal concluded that " . . . the Fund has always been, and remains, entitled to reconsider and re-shape the rules-based system for adjustment of staff salaries that it instituted in 1979."

The Tribunal next turned to the question of whether any of the challenged provisions of the revised compensation system were themselves "fundamental or essential" conditions of employment and concluded that they were not: "Indeed, the contested provisions reflect elements of the system that have been subject, not infrequently, to amendment in the past. Changes to the sector weights and market pitch have been implemented on a number of occasions during the course of the Fund's history. . . . Accordingly, . . . these provisions are 'not sacrosanct and could be modified from time to time.'"

As to Applicants' particular challenge to the expansion of the Executive Board's discretion to adjust the Fund's payline when it falls within (as well as outside of) the testing range, the Tribunal observed that the discretion at issue is subject to constraints that are themselves based upon considerations of international competitiveness. Accordingly, it rejected the view that this expansion of authority was tantamount to an abuse of discretion on the part of the Executive Board. The Tribunal noted that "[i]nternational administrative tribunals have recognized that provision for the exercise of discretion within a system does not invalidate the system, and that the exercise of that discretion within its governing parameters leads to solutions no less legally valid than another."

The Tribunal next weighed whether the Executive Board had abused its discretion in the process of enacting the amendments, as by failing to take proper account of the relevant facts or by adopting a decision that was not reasonably related to the objectives that it sought to achieve or was improperly motivated. Examining the process of the Executive Board's enactment and the relevant jurisprudence, the Tribunal noted that " . . . the structure of the compensation system adopted in 2006 reflect[ed] consultation with all pertinent stakeholders, the Board's drawing upon the information before it in taking its decision, and the compromises that characterize a legislative process." Furthermore, noted the Tribunal, "[t]his Tribunal has held that the fact that one decision is recommended to a decision-making authority and a different decision ultimately is taken does not of itself vitiate the reasonableness of that decision." In addition, " . . . the Fund's policy-making discretion extends to making choices between more than one reasonable alternative." In the light of these precedents, the Tribunal concluded that the Fund's Executive Board acted within its authority in its consideration of the relevant facts bearing upon the revised compensation system.

As to Applicants' claim that the decision was improperly motivated to reduce the benefits of staff members, the Tribunal answered that contention as follows:

> "107. In the view of the Tribunal, that the amendment of the system for setting staff salaries may have 'weakened' their competitiveness is not tantamount to a failure to adhere to the principle of 'international competitiveness,' especially where, as here, there is clear evidence in the record that the amendment was taken as a result of studied consideration leading to the conclusion that the Fund's payline had been 'misaligned' with comparator markets, resulting in its being 'overcompetitive' at particular grade levels. . . ."

The Tribunal observed that international administrative tribunals, in considering challenges to the amendment of terms of employment, have upheld revisions that resulted in lower staff compensation when they likewise were motivated by such legitimate concerns: "Similarly here, the Fund over time made an assessment that the compensation system was no longer fulfilling its objectives in the optimum fashion."

Finally, the Tribunal rejected Applicants' contention that the Executive Board had abused its discretion by its subsequent decision of 17 April 2006, applying the revised system of adjusting staff salaries to the 2006 compensation round. In the view of the Tribunal, having reviewed the record, that decision was not taken in disregard of the relevant facts and did not constitute an abuse of the Executive Board's discretion.

Accordingly, the Applications of Daseking-Frank *et al.* were denied.

2. *Judgment No. 2007–3 (22 May 2007): Mr. M. D'Aoust (No. 2), Applicant* v. *the International Monetary Fund, Respondent*[27]

Selection process to fill a vacancy—Principles of international administrative law—In selection decisions, the Tribunal may not substitute its own assessment for that of the competent Fund officials—Contention that shortlisted candidates did not meet qualifications set out in vacancy announcement—Fund's regulation and practice—Contention of "reverse discrimination" by promoting diversity—Statistics alone cannot establish discrimination—Review of the Fund's exercise of discretion in assessing the candidates

The Applicant, a staff member of the Fund, challenged the process by which the Fund filled a Deputy Division Chief vacancy, for which he had been an unsuccessful candidate. The Applicant contended that the selection process was affected by procedural deficiencies that contravened Fund rules and substantially affected its outcome. Additionally, he maintained that the Fund improperly took account of the "diversity profiles" of candidates, allegedly resulting in impermissible discrimination against him on the basis of his gender, race, nationality and age.

The Tribunal reviewed the process undertaken to fill the Deputy Division Chief vacancy in the light of Applicant's challenges to it. The Tribunal cautioned that " . . . in reviewing selection decisions, the Tribunal may not substitute its own assessment of candidates' merits for that of the competent Fund officials." At the same time, however, the " . . . organization is bound to observe the vacancy announcement and the elements of its internal law governing selection decisions, as well as applicable principles of international administrative law."

The Applicant contended that the three candidates who were shortlisted for the vacancy did not meet its qualifications as set out in the Vacancy Announcement and Job Standard, and that, accordingly, their applications should have been rejected at the initial screening stage. In the Applicant's view, this error was repeated by the Selection Panel, the Head of the hiring Department who endorsed the Selection Panel's rankings, and the Review Committee which reviewed the Department's selection process.

The Tribunal first considered whether the Fund abused its discretion in its initial screening of candidates. In the Tribunal's view, the evidence revealed that an assessment

[27] Stephen M. Schwebel, President; Nisuke Ando and Michel Gentot, Associate Judges.

of "minimum qualifications" constituted the basis for the initial screening and that such an approach was consistent with the Fund's regulations and practices. The Tribunal next considered whether there was any abuse of discretion in the Selection Panel's assessment of the candidates. In particular, the Tribunal considered whether the selection instruments, namely a blindly scored written test and interviews by the Selection Panel, were reasonably calculated to test the competencies required for the position as set out in the Job Standard and Vacancy Announcement, and it confirmed that they were. The Tribunal also rejected as unsubstantiated Applicant's contention that the Head of the hiring Department, in endorsing the Selection Panel's evaluation of the candidates, failed to discharge his duties in an impartial manner. Nor was it an abuse of discretion, concluded the Tribunal, for the Department Head, in assessing candidates' qualifications, to take into account his direct work experience with them. Likewise, the Tribunal found no merit to Applicant's claim that the Review Committee abused its discretion in reviewing and endorsing the decision of the hiring Department. In the view of the Tribunal, the Committee's review was "thorough and fully consistent with its responsibilities pursuant to the Fund's regulations."

The Tribunal next turned to the question of whether, as the Applicant contended, the process of filling the vacancy had been improperly motivated by "diversity" considerations, resulting in impermissible discrimination against Applicant on the basis of his gender, race, nationality and age. The Applicant put forward three arguments in support of this claim: (1) the process itself was defective, suggesting that it was pretextual; (2) the outcome of the process, resulting in the shortlisting of three candidates who fit a particular "diversity profile" further demonstrated that the process was discriminatory; and (3) the Fund's policies promoting "diversity" in the workplace provided circumstantial evidence of discriminatory motive in his case. The Tribunal rejected each of these contentions.

The Tribunal denied Applicant's contention that the process of filling the vacancy reflected flaws suggesting that it was "orchestrated" to produce a particular result: "Having concluded that there was no procedural irregularity in the filling of the contested vacancy, the Tribunal accordingly finds no merit to Applicant's contention that the Fund's explanation for the shortlisting and selection decisions was 'merely a pretext for reverse discrimination.'"

The Tribunal also rejected Applicant's view that an inference of discrimination should be drawn from the outcome of the competition, in particular that the three shortlisted candidates were female, nationals of countries underrepresented on the Fund staff, and were among the youngest candidates. Noting that in recent Judgments it has rejected the view that statistics alone might establish discrimination, the Tribunal confirmed that " . . . in view of its conclusion in this case that the process of filling the vacancy was itself sound, the Tribunal is unable to draw any inference of discrimination from the outcome of that process."

As to Applicant's allegation of age discrimination, the Tribunal observed that this claim was expressly linked to Applicant's view, rejected earlier by the Tribunal, that the selecting officials improperly discounted what he considered to be the most relevant qualifications for the job: "As the Tribunal has concluded above, however, it was within the Fund's discretion to fashion a selection process that gave greater weight to attributes such as 'strategic vision' than to specialized knowledge or long-term experience in the field of

recruitment. Accordingly, the Fund's approach to assessing suitability for the position cannot be said to evidence age discrimination."

Applicant additionally cited the Fund's policies promoting "diversity" in the workplace in support of his claim that the selection process was impermissibly affected by a discriminatory motive. The Tribunal observed that the Fund, from its inception, has recognized the importance to a global institution of maintaining a nondiscriminatory and inclusive workplace, goals that are "subject to the paramount importance of securing the highest standards of efficiency and of technical competence." (Rule N-1 and Article XII, section 4 (d) of articles of Agreement.) Accordingly, stated the Tribunal, "[m]erit-based selection is the paramount, governing principle."

Reviewing the relevant policies and the evidence in the case, the Tribunal emphasized that " . . . the Tribunal in the case brought by [the Applicant] has not been called upon to consider a situation where diversity may have been taken into account in selecting among candidates whose qualifications were deemed substantially equal." To the contrary, "[a]11 three shortlisted candidates showed themselves, in respect of the testing criteria used by the Selection Panel, to be discernibly more qualified than those, such as Applicant, who, however estimable their records of Fund service were, did not emerge from that process as contenders on the shortlist."

The Tribunal concluded: " . . . on the facts of this case, in light of the soundness of the process itself, including the blind reading of test results, Applicant has not established impermissible discrimination against him. He has shown neither pretext nor improper motive. The Tribunal has not been convinced that there is reason to doubt the *bona fides* of the Fund's position in this case." At the same time, the Tribunal cautioned that " . . . there are disquieting indications that the Fund's management, in its laudable pursuit of the objectives of a more diverse staff, is skating close to the line on the other side of which would be clear violation of the fundamentals of Fund law debarring discrimination in the promotion of staff. . . . In the view of the Tribunal, the Fund is chargeable with assuring that, in fact as well as form, no member of the Fund staff shall suffer from 'reverse discrimination,'" and that performance-based promotion not be compromised in the interest of promoting diversity.

Accordingly, the Application of the Applicant was denied.

3. *Judgment No. 2007–7 (16 November 2007): Mr. "N", Applicant* v. *the International Monetary Fund, Respondent (Admissibility of the Application)*[28]

To contest a notification of implementation viewed as a challenge to the validity of the judgment itself—Obligation for the Fund to implement Tribunal's judgments—Judgments by Tribunal are final and without appeal—Principle of *res judicata*—Motion for summary dismissal

The Applicant, a retiree of the Fund, contested the decision notified to him as follows: " . . . as required by the Administrative Tribunal's Judgment No. 2006–6, November 29, 2006, a $16^{2/3}$ percent deduction shall be made from your monthly pension payments, with effect from the January 2007 payment." In *Ms. "M" and Dr. "M", Applicants v. International Monetary Fund, Respondent,* IMFAT Judgment No. 2006–6 (29 November 2006),

[28] Stephen M. Schwebel, President; Nisuke Ando and Michel Gentot, Associate Judges.

the Administrative Tribunal had required the Fund, pursuant to section 11.3 of the Staff Retirement Plan, to give effect to a series of past child support orders by making deductions from Mr. "N"'s prospective pension payments, at the maximum percentage prescribed by section 11.3, until such payments have been fulfilled.

The Fund responded to Mr. "N"'s Application by filing a Motion for Summary Dismissal, maintaining that the Application was "clearly inadmissible" because neither the Tribunal's Judgment in *Ms. "M" and Dr. "M",* nor the Fund's implementation of that Judgment in compliance with the Tribunal's ruling, was an "administrative act" subject to review under article II of the Tribunal's Statute. As a Motion for Summary Dismissal suspends the period for answering an Application on the merits, the Tribunal's consideration of the case was confined to the issue of its admissibility.

The Tribunal observed that Mr. "N"'s challenge to the Fund's notification of him of its intention and means of giving effect to the Judgment (and its subsequent acts of deduction from his pension payments of the requisite portion of those payments as specified by the Tribunal's Judgment in *Ms. "M" and Dr. "M")* was tantamount to a challenge to the validity of the Judgment itself. The Tribunal concluded that in view of the provision of its Statute that Judgments are "final . . . and without appeal" (Statute, article XII, section 2), a challenge to the validity of a Judgment of the Tribunal is inadmissible. That statutory provision codifies and applies to the Judgments of the Administrative Tribunal the universally recognized principle of *res judicata,* barring the relitigation of claims already adjudicated, thereby promoting judicial economy and certainty among the parties. As a party to the Tribunal's Judgment, the Fund was bound to implement it. The Tribunal further observed: "That the Fund does not have discretion to decline to implement the Tribunal's Judgments indicates that such implementation is not an 'administrative act' of the Fund as contemplated by article II of the Tribunal's Statute."

The Tribunal also considered that the history of the litigation showed that Mr. "N" deliberately had elected to retain non-party status vis-à-vis the proceedings in the Administrative Tribunal. Mr. "N"'s knowing relinquishment of the opportunity to participate as an Intervenor in the case of *Ms. "M" and Dr. "M"* had been noted by the Tribunal in that Judgment. Additionally, the Tribunal had observed that, in the context of the administrative review proceedings leading up to the Tribunal's consideration of the case, Mr. "N" had had a "full measure of opportunity to present his views." (*Ms. "M" and Dr. "M",* para. 98.) In the opinion of the Tribunal, the fact that Mr. "N" was not a party to the Tribunal's Judgment, and deliberately chose not to be, did not mean that he could escape its legal effects upon his entitlements in the Staff Retirement Plan.

The Tribunal concluded that Mr. "N"'s challenge to the implementation of the Tribunal's Judgment in *Ms. "M" and Dr. "M"* failed on two grounds: "The first is that Applicant does not challenge an 'administrative act' of the Fund, as that term is employed in the Statute of the Tribunal. The second and more fundamental ground is that the thrust of Applicant's challenge is to the legal force of a Judgment of the Administrative Tribunal. It is a challenge not only to the legality of the particular Judgment but to the character of any Judgment of this Tribunal as 'final . . . and without appeal.'"

Accordingly, the Application of Mr. "N" was summarily dismissed.

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 to the Secretary-General regarding the Staff Council resolution 42/24 proposing to hire Counsel and explore the possibility of bringing a legal action in the United States of America Federal Courts

Exclusive responsibility of the Secretary-General to decide investments of United Nations Joint Staff Pension Fund (UNJSPF) assets—Exercise of fiduciary responsibility delegated to the Investment Management Service and to outside investment managers—Same status, privileges and immunities granted to UNJSPF, a subsidiary organ of the General Assembly, as to the United Nations—Immunity from legal process for the Secretary-General and other officials regarding the management of UNJSPF assets

20 February 2007

Background:

The Under-Secretary-General for Management has asked me to brief you on the legal aspects of the above-referenced matter, which arises from Staff Council resolution 42/24, which I understand was adopted on 15 February 2007. Under that resolution, the Staff Council has decided, "to explore the possibility of taking immediate legal action in United States Federal Courts, or elsewhere, in order to prevent the Secretary-General, in his capacity as fiduciary of the Pension Fund investments, from undertaking the indexation of the Pension Fund investments and outsourcing the management of such investments at this time." The resolution further authorizes the Staff Committee to hire external legal counsel to explore such legal options and measures, and has allocated $250,000 from the Staff Council's reserve fund to that end.

* This chapter contains legal opinions and other similar memoranda and documents.

Responsibility for investment of the assets of the Pension Fund:

Article 19 of the Regulations of the United Nations Joint Staff Pension Fund, adopted by the General Assembly, provides that the "investment of the assets of the Fund shall be decided upon by the Secretary-General after consultation with an Investments Committee and in light of observations and suggestions made from time to time by the Board [of the Fund] on the investments policy." The General Assembly has confirmed that the Secretary-General acts alone as "a fiduciary . . . for the interests of the participants and beneficiaries of the United Nations Joint Staff Pension Fund under the Regulations and Rules of the Fund" (General Assembly resolution 35/216 B, of 17 December 1980). However, in exercising such fiduciary responsibility, the Secretary-General must consult with the Investments Committee and receive observations and suggestions from the Board of the Fund on investment policy. In addition, the General Assembly has "established" the following criteria for the investment of the assets of the Fund: (i) safety, (ii) profitability, (iii) liquidity, (iv) convertibility, and (v) conformity with the Regulations and Rules of the Pension Fund (General Assembly resolution 49/224, Part VIII, of 23 December 1994).

Based on the foregoing, it is the Secretary-General's sole responsibility to decide on the investment of the assets of the Fund, subject to his obligation, under article 19 of the Regulations of the Pension Fund, to consult with the Investments Committee, and to receive observations and suggestions from the Board of the Fund from time to time on such policy. In exercising such responsibility, the Secretary-General should abide by the established criteria for investment of the assets of the Fund, and he should ensure, as a fiduciary, that his investment decisions are made for the interests of the participants and beneficiaries of the Pension Fund under the Regulations and Rules of the Fund.

The Secretary-General is not expected to act without support, and historically has delegated day-to-day responsibility for investment of the assets of the Fund to a Representative of the Secretary-General for Investment of the Assets of the Fund, who, in turn, is supported by the staff of the Investment Management Service. While the Representative of the Secretary-General and the staff of the Investment Management Service make most decisions on the disposition of investments, for many years, they have also delegated to outside investment managers responsibility for certain portions of the portfolio of the investments of the Fund, based on consultations with the Investments Committee and the observations and suggestions of the Board. In particular, such use of outside investment managers only has occurred thus far for the Fund's small capitalized equities investments portfolio, where the transactions are so numerous and the overall investments are so modest that the resources of the Investment Management Service are inadequate to appropriately manage such portfolio of investments.

Immunity of the Secretary-General and the Pension Fund from suit in the United States courts:

The Fund has been established as a subsidiary body of the General Assembly in accordance with Article 22 of the Charter of the United Nations and, therefore, is an integral part of the United Nations. Moreover, pursuant to article 18 of the Regulations of the Fund, the assets of the Fund "shall be acquired, deposited and held in the name of the United Nations, separately from the assets of the United Nations, on behalf of the partici-

pants and beneficiaries of the Fund." Accordingly, the Fund and its assets enjoy the same status, privileges and immunities as does the Organization.

In this regard, article II, section 2 of the 1946 Convention on the Privileges and Immunities of the United Nations,* to which the United States of America is a party, provides that the "United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process." Further, article V, section 18 (a) of the Convention provides that "officials of the United Nations shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity." Article V, section 19 of the Convention also provides that, in addition to such functional immunity under section 18, the Secretary-General and all officials at the level of Assistant Secretary-General and above "shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law." Overall, the courts of the United States have upheld the immunity of the Organization, including the Pension Fund, from legal process. The courts have similarly upheld the immunity of the Organization's officials and of the Secretary-General from legal process.

It should also be noted that, under article VIII, section 29 of the Convention, the Organization must provide "appropriate modes of settlement" in any case of "disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General." Any attempt by the Staff Council to institute a legal action against the Secretary-General or any other United Nations official involved with decisions on the investment of the assets of the Fund will result in the Organization's assertion of the immunities from legal process, as described above. In such case, the Staff Council may seek an "appropriate mode of settlement" of its dispute with the Secretary-General. If the Staff Council is unable to resolve its concerns satisfactorily through their representatives to the Board of the Pension Fund, then any settlement of this dispute should be pursued through informal consultations between the Secretary-General and the Staff Council.

Conclusion:

Based on the foregoing, the United States courts, or any other courts of the Member States, would not have jurisdiction to hear an action brought by the Staff Council against the Secretary-General, the Organization, the Pension Fund, or any officials thereof concerning the decisions taken by the Secretary-General, and his representatives, with respect to investment of the assets of the Pension Fund.

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

(*b*) Interoffice memorandum to the Officer in Charge, Policy Support Unit, Human Resources Policy Service, Division for Organizational Development, Office of Human Resources Management (OHRM) regarding liability for income tax in the United States (US) for United Nations staff members with permanent residence in the US

Potential tax liability of United Nations staff under US income tax law—Waiver of privileges and immunties upon acquiring permanent residence in the US—Current status of United Nations staff member without G-4 visa nor permanent residence

12 March 2007

1. I refer to your memorandum of 9 March 2007 concerning the potential tax liabilities of [Name], Assistant Secretary-General and New York Pandemic Influenza Coordinator, concerning her United Nations income for the years 2006 and 2007. You note in your memorandum that, following her departure from the employ of UNFPA on 31 October 2005, [Name] filed form 1–508 on the Waiver of Rights, Privileges, Exemptions and Immunities (the "Waiver") with the United States authorities, as part of her application for permanent resident status in that country. You also note that, subsequently, on 8 May 2006, [Name] was granted an appointment by the United Nations for an initial six months period which was then extended for another six months until 7 May 2007. You inform us that at the time of [Name]'s recruitment, OHRM did not request that she adjust to G-4 status, "as the process of her application for legal residence was already in an advanced stage". In this regard, while we are not aware of the current immigration status of [Name] which forms the legal basis for her presence in the United States and for her employment by the Organization, we understand that no final ruling has been made by United States authorities on her application for permanent residence, and that therefore, she does not currently have permanent residence status in the United States. You seek guidance from this Office as to whether, under the circumstances described above, [Name] is liable for taxation in the United States for her United Nations income and emoluments earned after her filing of the Waiver.

2. As an initial matter, we consider that the resolution of the issues described below require interpretation of relevant United States legislation, as well as, possibly, policy decisions to be made by regulatory authorities of the United States. As such, we recommend that the Organization seek the clarification of this matter with the United States Mission to the United Nations, before a final answer is provided to [Name]. The resolution of the related question of whether the Organization should report to the Internal Revenue Service the United Nations earnings of [Name], should also be deferred until a response to the queries described above is received from the United States Mission to the United Nations.

3. Notwithstanding the above, with a view to assist OHRM in its response to the queries of [Name], we provide the following observations.

4. At the outset, we note that, as this Office opined in a memorandum of 26 June 1995, a copy of which was attached to your 9 March 2007 request, the tax liabilities in the United States of staff members who are citizens or permanent residents of that country are set out in the applicable provisions of the Convention on the Privileges and Immunities

of the United Nations* (the "Convention"), and in the reservations entered by the United States, upon its accession to the Convention. In particular, article V, section 18(b) of the Convention provides as follows:

"18. Officials of the United Nations shall:

(*b*) be exempt from taxation on the salaries and emoluments paid to them by the United Nations".

5. In acceding to the Convention, the United States entered several reservations, including the following:

"Paragraph (b) of section 18 regarding immunity from taxation and paragraph (c) of section 18 regarding immunity from national service obligations shall not apply with respect to United States nationals and aliens admitted for permanent residence."

6. It follows that in accordance with the terms under which the United States acceded to the Convention, the United States has authority to impose tax liability on the United Nations salary and emoluments earned by staff members who are United States nationals or permanent residents only. On the understanding that [Name] is currently neither a United States citizen, nor a permanent resident, we consider that she is exempt from taxation by the United States on her United Nations salary and emoluments.

7. Notwithstanding the foregoing, a question may be raised as to whether [Name] has voluntarily exposed her United Nations salary and emoluments to tax liability in the United States, through the filing of her Waiver. At the outset, we have reservations about the validity of the Waiver filed by [Name]. As the Waiver form itself indicates, the only persons eligible to file the Waiver are those whose occupation groups would entitle them to A, G or E visa status. In this regard, [Name] indicated, in a 7 March 2007 memorandum to OHRM, that she filed the Waiver "at a time when [she] was not in the employ of the UN". It follows that unless [Name] can demonstrate that at the time of her filing of the Waiver, she had an occupation falling under one of the categories described in the Waiver form, she would be considered ineligible for filing the Waiver, whose validity could, therefore, be disputed by [Name] or by the Organization. However, as [Name] has already applied for permanent residence, and as her current occupation as a United Nations staff member falls within one of the groups requiring her to file the Waiver as a condition of being granted permanent resident status, it is possible that United States authorities would consider the Waiver to be valid, and seek to impose taxation on her United Nations salary and emoluments.

8. As noted in paragraph 2 above, as the resolution of the issues described above require interpretation of United States law, and depend on possible policy decisions to be undertaken by United States regulatory authorities, they fall outside the competence of this Office, and we recommend that the United States Mission to the United Nations be consulted to provide clarification.

9. In addition to the above, we note that any acquisition and maintenance of permanent residence status by [Name] would have to be in compliance with the established policy of the Organization pertaining to this matter, as set out in the applicable administrative issuances, including ST/AI/2000/19 of 18 December 2000 on the "Visa status of non-United States staff members serving in the United States, members of their household and their household employees, and staff members seeking or holding permanent resident

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

status in tie United States". We, therefore, recommend that OHRM take necessary action as appropriate, to ensure that the immigration status of [Name] remain consistent with such policy. In particular, we wish to raise the following two considerations.

10. First, as noted in section 1.1 of ST/AI/2000/19, "[s]taff members other than United States citizens and permanent residents whose duty station is in the United States and who are considered international recruits in accordance with the Staff Regulations and Rules . . . are required by the United States to obtain G-4 visa status on appointment and to relinquish any other visa status in the United States they held previously". From the information which has been provided to us, we understand that, while [Name] is currently neither a United States citizen, nor a permanent resident, she does not have G-4 status. As such, her current status maybe inconsistent with United States law. In this regard, we understand from your memorandum of 9 March 2007 that "[a]t the time of recruitment on 8 May 2006, OHRM did not request that she adjust to G-4 status, as the process of her application for legal residence was already in an advanced stage". With respect to this matter, we would recommend that OHRM take appropriate action to ensure that [Name]'s status remains consistent with applicable United States law, and with applicable United Nations administrative issuances.

11. Second, we note that, pursuant to section 5.6 of ST/AI/2000/19, the policy of the Organization is to not allow staff members to acquire or maintain permanent resident status in the United States, unless such staff members fall under the following categories of exceptions, as enumerated in section 5.7 of ST/AI/2000/19:

"(*a*) Stateless persons;

(*b*) Newly appointed staff members who have applied for citizenship by naturalization, when such citizenship will be granted imminently;

(*c*) General Service and related categories staff previously authorized to retain permanent resident status, on promotion to the Professional category;

(*d*) Staff members in the General Service and related categories;

(*e*) Staff members appointed to serve outside the United States either under the 200 series of the Staff Rules as technical assistance project personnel, or under an appointment of limited duration governed by the 300 series of the Staff Rules;

(*f*) Staff members appointed for less than one year; however if their appointments are extended beyond one year, that extension is subject to obtaining a G-4 visa."

12. In this regard, we note that, [Name]'s current appointment with the Organization is set to expire in 7 May 2007, one year after her initial appointment. Therefore, she currently falls within the exception set out in section 5.7(f). However, in the event that [Name] does not fall within any of the other categories of exceptions set out in section 5.7, any extension of her appointment would be subject to [Name] obtaining a G-4 visa. We recommend that OHRM advise [Name] accordingly.

(*c*) Note verbale to the Permanent Representative of Austria to the United Nations, regarding the arrest of a member of one delegation to a meeting of the Committee on the Peaceful Uses of Outer Space, held in Austria from 6 to 15 June 2007

Privileges and immunities of members of State delegation to a United Nations meeting—Notion of official duty—Immunity from personal arrest or detention—Duty of Member State to waive the immunity of its representative in any case where it would impede the course of justice

19 June 2007

The Legal Counsel of the United Nations presents his compliments to the Permanent Representative of Austria to the United Nations and has the honour to refer to the case concerning a representative of [State], [Name], to the fiftieth Meeting of the Committee on the Peaceful Uses of Outer Space, held from 6 to 15 June 2007 at the United Nations Office in Vienna, Vienna International Centre, Austria.

The United Nations Office in Vienna was informed by the Ministry of International and European Affairs of Austria by an email dated 15 June 2007 that "[Name] [. . .] entered Austria on Sunday, June 10th [2007] through Vienna Airport in Schwechat (according to his companion, they spent the day sight-seeing and shopping). On June 11th, both [[Name] and his companion] then travelled to Salzburg by train where [Name] was caught *in flagranti* upon committing delicts indictable according to Austrian penal laws (StGB ,§§ 256 und 319, 'Geheimer Nachrichtendienst zum Nachteil Österreichs' and 'Militärischer Nachrichtendienst für einen fremden Staat')".

The Ministry has requested the United Nations for "a statement, whether [it] considers the described incident as being committed by [Name] while exercising his functions and during the journey to and from the place of meeting" and noted that "[i]n case of affirmation, immunity would apply, [Name] would then be asked to leave the country. The United Nations would be requested to confirm that future nominations of [Name] as members of delegations to United Nations conferences would not be accepted." The Ministry also provided a copy of a Note Verbale of 15 June 2007 by the Embassy of [State] to Austria taking issue with the facts as alleged above.

The Legal Counsel wishes to offer the following in response to the Ministry's request.

At the outset, the United Nations Office in Vienna has confirmed that [Name] was on the list of representatives of [State] to the fiftieth Meeting of the Committee on the Peaceful Uses of Outer Space held from 6 to 15 June 2007, and that he was personally issued with a United Nations pass for the meeting in the morning of 11 June 2007.

Pursuant to the 1995 Agreement between the United Nations and the Government of Austria regarding the Seat of the United Nations in Vienna (hereinafter the "Seat Agreement"),[*] [Name] enjoys as a governmental representative to a United Nations conference in Vienna, the privileges and immunities set forth in article IV, section 11 of the 1946 Convention on the Privileges and Immunities of the United Nations.[**]

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[*] United Nations, *Treaty Series,* vol. 2023, p. 253.

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

Article XI, section 33 of the Seat Agreement stipulates that "[r]epresentatives of States and of intergovernmental organizations to meetings of, or convened by, the United Nations and those who have official business with the United Nations in Vienna, shall, while exercising their functions and during their journeys to and from Austria, enjoy the privileges and immunities provided in article IV of the [1946 Convention on the Privileges and Immunities of the United Nations (hereinafter the "General Convention")]".

Article IV, section 11 of the General Convention provides in relevant part that "[R]epresentatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities: (a) immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind; . . .".

In this connection, it is recalled that pursuant to section 14 of the General Convention "[p]rivileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded."

The Legal Counsel of the United Nations has previously held that the phrase "while exercising their functions and during their journey to and from the place of meeting" must be broadly interpreted in order to avoid results clearly not intended by the drafters of the General Convention. This interpretation was contained in a legal opinion provided by the Legal Counsel in 1961 and which was reproduced in a study entitled "the practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities" prepared by the Secretariat and published in the 1967 Yearbook of the International Law Commission (vol. II, p. 176).* In relevant part, the opinion noted that:

> "Nevertheless, I have no hesitation in believing that it was the 'broad' interpretation that was intended by the authors of the [General] Convention. This must follow from the fact that the expression 'while exercising their functions' is contained in the opening paragraph and qualified each and all of the privileges and immunities provided in the sub-paragraphs, (a) through (g), that follow.
>
> A glance at those sub-paragraphs will clearly show that the privileges and immunities provided by any of them would become meaningless if it is applicable only when the representative is 'actually doing something as a part of his functions', 'e.g., is present in the room or building where the meeting . . . is being held'. Such an interpretation would lead to the absurd conclusion that, a representative, immediately after having performed an official function, or after having left the meeting room may, under paragraph (a) for example, be arrested, or detained, or have his personal baggage seized. By the same narrow interpretation, he may, the moment he left the meeting room, have his papers confiscated, or his right to use codes suspended, or his courier seized, or be conscripted into national service, etc. Should such a narrow interpretation prevail, the basic purpose of

* *Yearbook of the International Law Commission, 1967*, vol. II (United Nations Publication, Sales No. E.68.V.2).

the Convention, which is to assure the representatives the independent exercise of their functions, would clearly be totally defeated.

The broader interpretation is also borne out by the fact that the phrase 'while exercising their functions' is immediately accompanied and complemented by the phrase "and during their journey to and from the place of meeting'. In other words, 'while exercising' means during the entire period of presence in the State (not city) for reasons of the conference in question. This is logical because the 'journey' necessarily is that to and from the State, not the conference hall. Only this interpretation avoids absurdity and only this is consistent with the immediately following reference in sub-section (a) to 'personal baggage'. Therefore, in accordance with the general principle that a treaty must be interpreted to effectuate its purpose and not to lead to absurdity, it seems to me, without, reference to other criteria of interpretation, that only the 'broad interpretation' should have been intended by the phrase in question."

The facts as known to us—which are contested—do not appear to warrant a change in the above position. Thus, in our view, the immunity provisions appear to apply. That being the case, section 14 of the General Convention quoted above also applies.

(*d*) Interoffice memorandum to the Officer-in-Charge, Travel and Transport Section, Office of Central Support Services, regarding media travelling with the Secretary-General

Privileges and immunities of United Nations officials travelling for official business—Journalists travelling with the Secretary-General or the Security Council "as part of official United Nations delegations" remain independent of the Organization—Journalists' travel cannot be considered as "official travel" with the pertaining privileges and immunities

23 July 2007

1. This is with reference to your memorandum dated 29 June 2007 addressed to [Name] of this Office by which you informed us that the Department of Management has recently been instructed by the Chef de Cabinet that "the media traveling with the Secretary-General and the Security Council are to be extended the same services as United Nations staff travelling with the Secretary-General and the Security Council". We note that the Chef de Cabinet in his Note of 22 June 2007 stipulates that "[j]ournalists will be responsible for the full cost of commercial flights and hotels which the travel office will book".

2. In this regard you seek our advice as to whether the travel of these journalists can be considered official travel on behalf of the Organization and whether the Travel and Transportation Section could approach Consulates and Embassies by way of a Note Verbale to seek their assistance in issuing these visas.

3. Pursuant to article VII, section 26, of the 1946 Convention on the Privileges and Immunities of the United Nations (hereinafter the "General Convention")[*] facilities for speedy travel and processing of visa applications are to be accorded to "experts and other persons who [. . .] have a certificate that they are travelling on the business of the United Nations".

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

4. While journalists may be travelling together with the Secretary-General or the Security Council "as part of official United Nations delegations" and be listed as "official travelling press", they are completely independent of the United Nations. The United Nations is not responsible for the journalists and their actions, and all flight and hotel costs are to be borne by the journalists themselves.

5. For the purposes of the General Convention, journalists cannot be considered "experts on mission" for the United Nations. Nor can they be considered as falling within the category of "other persons who [. . .] are travelling on the business of the United Nations". Thus, the travel by these journalists should not be considered as "official travel".

6. However, we see no legal impediment for the Travel and Transportation Section to write to Consulates, informing them that the journalists in question would be part of the Secretary-General or the Security Council's delegation, and asking for assistance in the processing of their visa applications.

(*e*) Interoffice memorandum to the Officer-in-Charge, Legal Support Office, United Nations Development Programme (UNDP), regarding privileges and immunities of United Nations Volunteers

Privileges and immunities of United Nations officials—United Nations Volunteers (UNV) covered under the Standard Basic Assistance Agreement (SBAA) with UNDP, as persons performing services—Under SBAA, these persons are granted the same privileges and immunities as accorded to officials of the United Nations—UNVs considered by the Organization, and generally by the Member States, as international civil servants—UNVs working for the Office of the High Commissioner for Human Rights on a UNDP project are covered by the SBAA with UNDP—Privileges and immunities of UNVs working strictly for OHCHR projects derive from the Agreement concluded by OHCHR with the Government concerned

25 July 2007

1. This is with reference to your memorandum of 15 May 2007, and further to our memorandum of 28 February 2007, seeking advice on the scope of the privileges and immunities of United Nations Volunteers (UNV) when they are working with Governments outside a UNDP project. Subsequent to your memorandum, we received a clarification from your Office that the immediate issue at hand pertains to whether internationally recruited United Nations Volunteers working for the Office of the High Commissioner for Human Rights (OHCHR) would be covered by Standard Basic Assistance Agreements (SBAAs). In this connection, we note that UNDP administers United Nations Volunteers, and all administrative issues, including the payment of their allowances and the issuance of contracts are dealt with by the UNDP Country Office.

2. From your memorandum, we further note the UNV's view on the matter and in particular their argument that Volunteers are covered under the SBAA as persons performing services, "irrespective of the project which they are working on" since they hold contracts with UNV and support UNV's mandate of promoting volunteerism in the activities of the United Nations.

3. In a legal opinion on the status of members of United Nations volunteers (published in the 1991 *United Nations Juridical Yearbook*),[*] it is observed that, under the SBAA, the Government agrees to grant these persons the same privileges and immunities as are accorded to officials of the United Nations. In another legal opinion included in the 1998 *United Nations Juridical Yearbook,* it is observed that "from the inception of the concept of volunteers, these individuals have been considered by the Organization, and generally recognized by the Member States, as international civil servants".[**] The latter legal opinion further states that "[t]he assignment of United Nations Volunteers is governed solely by the United Nations system and the scope of their activity is confined to projects assisted by the United Nations system".

4. Article I (1) of the SBAA provides as follows:

> "This Agreement embodies the basic conditions under which the UNDP and its Executing Agencies shall assist the Government in carrying out its development projects, and under which such UNDP assisted projects shall be executed. It shall apply to all such UNDP assistance and to such Project Documents or other instruments . . . as the Parties may conclude to define the particulars of such assistance and the respective responsibilities of the Parties and the Executing Agency hereunder in more detail in regard to such projects".

5. Furthermore, article IX (4) (a) of the SBAA stipulates that "[e]xcept as the Parties may otherwise agree in Project Documents relating to specific projects, the Government shall grant all persons, other than Government nationals employed locally, performing services on behalf of UNDP, a Specialized Agency or the International Atomic Energy Agency (IAEA) who are not covered by paragraphs 1 and 2 above the same privileges and immunities as officials of the United Nations, the Specialized Agency concerned or the IAEA under sections 18, 19 or 18 respectively of the Convention on the Privileges and Immunities of the United Nations or of the Specialized Agencies, or of the Agreement on the Privileges and Immunities of the IAEA". [***]

6. In accordance with article IX (5) of the SBAA, "[t]he expression 'persons performing services' as used in articles IX, X, and XIII of this Agreement includes operational experts, *volunteers,* consultants, and juridical as well as natural persons and their employees"(emphasis added).

7. From the provisions referred to above, it is our understanding that for internationally recruited Volunteers to be considered "persons performing services" and thus be entitled to the same privileges, immunities and facilities as enjoyed by United Nations staff under the SBAA, such volunteers are to be assigned *to work on UNDP projects or those carried out by UNDP Executing Agencies.* Accordingly, if international United Nations Volunteers are working for OHCHR on a UNDP project, or when OHCHR is acting as an Executing Agency for UNDP, then such volunteers will be covered by the SBAA and thus be entitled to the privileges, immunities and facilities enjoyed by United Nations staff.

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[*] *United Nations Juridical Yearbook, 1991* (United Nations publication, Sales No. E.95.V.19), chapter VI. A.

[**] *United Nations Juridical Yearbook, 1998* (United Nations publication, Sales No. E.03.V.5), chapter VI. A.

[***] United Nations, *Treaty Series,* vol. 374, p. 148.

8. However, in situations when United Nations Volunteers are working strictly for OHCHR projects, under the latter's mandate and pursuant to an Agreement between OHCHR and the Government, one can hardly argue that such United Nations Volunteers are eligible to fall within the category of "persons performing services" under the SBAA. In this context, their privileges and immunities would derive from the Agreement concluded by OHCHR with the Government concerned. In cases when United Nations Volunteers are assigned to work for a United Nations peace-building or peacekeeping mission, they would be entitled to the same scope of the privileges and immunities as are enjoyed by United Nations officials, by virtue of the Status of Mission Agreement or Status of Force Agreement concluded by the United Nations with the receiving State.

9. In the context of the issues under discussion, we would also like to caution that there might be a number of countries with whom UNDP has concluded SBAAs, which do not contain the standard provisions on Volunteers. It is also understood that except as the parties may otherwise agree in projects, United Nations Volunteers who are nationals of the host country do not enjoy any privileges and immunities under the SBAA. In this connection, we recall our advice to your Office in our 28 February 2007 memorandum that UNDP/UNV should consider concluding agreements with host countries by way of an exchange of letters extending *mutatis mutandis* the coverage of the UNDP SBAA to United Nations Volunteers who are assigned to work directly with Governments outside a UNDP project.

(*f*) Interoffice memorandum to the Director, Division for Organizational Development, Office of Human Resources Management, regarding the tax liability issues concerning Economic Commission for Africa (ECA) staff members with United States permanent resident status

United Nations tax reimbursement programme—Liability of staff members with permanent resident status in the United States(US) to pay income taxes—Under US law, staff member wishing to become permanent resident must file a waiver of their exemption from income tax—Categories of staff members allowed to acquire or retain US permanent resident status—Such staff member must obtain prior authorization from OHRM to file the waiver—Organization obligated to reimburse taxes imposed on staff member incomes by applicable national law in certain cases in accordance with 3.3 (f) of the Staff Regulations—Inconsistency between US law and United Nations policy—Only permanent residents who filed the waiver are required to pay taxes under US law—Staff members with US permanent resident status but who did not file the waiver failed to comply with US law—Permanent residents who did file a waiver but do not fall under 3.3 (f) of the Staff Regulations violated United Nations policy, but are to be reimbursed for income tax payments—Such staff must renounce immediately their permanent resident status—Having violated the United Nations policy and caused financial liability for the Organization, appropriate action may be taken against them

1 August 2007

1. I refer to your memoranda, various follow-up e-mail messages and telephone discussions concerning certain staff members of ECA who have acquired or have retained permanent resident status in the United States in a manner inconsistent with the proce-

dures and policies of the United Nations and the laws and regulations of the United States. You seek the advice of this Office with respect to the following issues raised by their situation: (i) the liability of such staff members to pay United States income taxes in respect of salary and emoluments they receive from the United Nations; (ii) the Organization's responsibility to reimburse any such income taxes paid by them; and, (iii) future action to be taken by the Organization regarding this matter.

2. Set forth below is our advice concerning each of the issues you have raised, as well as a discussion of the application of our advice to the circumstances of the specific staff members you have referred to in your queries regarding this matter.

I. Liability to pay United States income taxes in respect of official salary and emoluments

3. As you are aware, under the laws of the United States, staff members of the United Nations who wish to obtain or retain permanent resident status in the United States are required, as a condition for obtaining or retaining such status, to execute and file with United States authorities a waiver (the "Waiver"), within the time frame prescribed by applicable United States legislation.[1] This Waiver establishes the basis under United States law for the tax obligations in the United States for such staff members. Thus, United Nations staff members with permanent resident status in the United States become liable for tax payments in the United States as and from the date of their filing of the Waiver.

4. Nevertheless, as further elaborated below, it is possible that the United States may impose tax liability on the United Nations income of staff members who did not file the Waiver and should therefore be exempt from such liability, on the basis that they were

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[1] While article II, section 18 (b), of the Convention on the Privileges and Immunities of the United Nations (1 UNTS 15 (1946)) provides that officials of the Organization "shall be exempt from taxation on the salaries and emoluments paid to them by the United Nations, the United States entered a reservation to this provision when it acceded to the Convention in 1970. Thus, the United States does not recognize such exemption from taxation "with respect to United States nationals and aliens admitted for permanent residence" (see 21 UST 1418, 1442). Such reservation is reflected in the United States Internal Revenue Code (the "Code") and the accompanying regulations promulgated by the United States Department of Treasury. The Code provides, in pertinent part, that the "[w]ages, fees, or salaries of any employee of . . . an international organization . . . received as compensation for official services rendered to such . . . international organization shall . . . be exempt from taxation . . . if such, employee is not a citizen of the United States, or is a citizen of the Republic of the Philippines (whether or not a citizen of the United States)" (see 26 USC § 893 (a)(1)). Further, Treasury Regulations section 1.893-1 (b)(1) makes clear that the exemption from taxation conferred on employees of international organizations under section 893(a) of the Code applies, "[e]xcept to the extent that the exemption is limited by the execution of the waiver provided for in section 247 (b) of the 'Immigration and Nationality Act'" (see 26 CFR § 1.893–1 (b)(1)). In particular, that Treasury Regulation further provides that, "[a]n officer or employee of an international organization who executes and files with the Attorney General the waiver provided for in section 247 (b) of the Immigration and Nationality Act (8 USC § 1257 (b)) (the "Waiver") thereby waives the exemption conferred by section 893 of the Code. As a consequence, *that exemption does not apply to income received by that individual after the date of filing of the Waiver*" (*see* 26 CFR § 1.893-1 (b)(5), emphasis added). Section 247 (b) of the Immigration and Nationality Act (8 USC § 1257 (b)), in turn, requires an employee of an international organization seeking permanent resident status in the United States to file the Waiver within 10 days after being notified by the United States Government of its intention to grant such status.

required under United States law to file the Waiver as a condition of acquiring or retaining their permanent resident status whilst in the employ of the United Nations.

II. United Nations policies on acquiring and retaining United States permanent resident status and on reimbursement of taxes paid by staff members

5. The United Nations policy regarding the acquisition and retention of permanent resident status in the United States by staff members is set out in ST/AI/2000/19 of 18 December 2000 ("the AI").* Section 5.2 of the AI states that, in accordance with United States law, staff members may not hold United States permanent resident status, unless they execute and file the Waiver. Further, section 5.3 of the AI requires that staff members who wish to file the Waiver must obtain prior authorization to do so from OHRM. Finally, section 5.6 of the AI stipulates that, with the exception of categories of staff members enumerated in section 5.7 of the AI, staff members may not file the Waiver, and are required to renounce their permanent resident status in the United States, and revert to G-4 visa status.[2]

6. With respect to the obligation of the Organization to reimburse staff members for taxes paid in respect of United Nations income, Staff Regulation 3.3 (f) states as follows:

> "Where a staff member *is subject* both to staff assessment under this plan and to national income taxation in respect of the salaries and emoluments paid to him or her by the United Nations, the Secretary-General is authorized to refund to him or her, the amount of staff assessment collected from him . . ." (emphasis added).

7. While the jurisprudence of the Administrative Tribunal concerning Staff Regulation 3.3 (f) establishes that the Organization is in fact obligated to reimburse tax payments by staff members on their United Nations income, this jurisprudence is based on cases dealing with staff members *required* to pay taxes under applicable law (see Judgement No. 88 *Davidson,* (1963); Judgement No. 237 *Powell,* (1978)). By contrast, the Tribunal has not ruled on the obligation of the Organization to reimburse staff members in instances where a staff member has paid taxes despite having no legal requirement to do so. In such cases, it is not certain whether the staff member has been *subject* to taxation within the meaning of Staff Regulation 3.3 (f).

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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).

[2] The exempt categories set out in section 5.7 are as follows:

(*a*) Stateless persons;

(*b*) Newly appointed staff members who have applied for citizenship by naturalization, when such citizenship will be granted imminently;

(*c*) General Service and related categories staff previously authorized to retain permanent resident status, on promotion to the Professional category;

(*d*) Staff members in the General Service and related categories;

(*e*) Staff members appointed to serve outside the United States either under the 200 series of the Staff Rules as technical assistance project personnel, or under an appointment of limited duration governed by the 300 series of the Staff Rules;

(*f*) Staff members appointed for less than one year, however if their appointments are extended beyond one year, that extension is subject to obtaining a G-4 visa.

III. Future action to be taken by OHRM

8. In view of the foregoing, OHRM may wish to adopt a two-stage approach in rectifying the inconsistencies with United States law and United Nations policy, and in dealing with the financial implications of such inconsistencies. In particular, we recommend that OHRM take appropriate steps to ensure that the status of the staff members concerned are brought into compliance with all applicable United States laws and United Nations administrative issuances, including those referred to above.

9. Once such a first-stage has been achieved, the Organization may wish to review the circumstances of each of the staff members concerned, in particular, concerning the respective responsibilities of the Organization and such staff members with respect to the inconsistencies of their circumstances with United States laws and United Nations policies. Thus, OHRM may wish to decide on what action to take, based on its determinations as a result of its review of each individual case. Actions to be taken by OHRM could include, but are not limited to, reimbursing tax payments made by such staff members, providing financial compensation to them in lieu of tax reimbursement, seeking recovery of reimbursements already made, or refraining from any further action, as appropriate. In determining how to proceed, OHRM may wish to take into account the jurisprudence of the Tribunal. For example, in cases of tax liabilities incurred as a result of errors by both the staff member and the Administration, the Tribunal has held that the staff member in question is to be liable for taxes erroneously paid in view of his/her duty to know the law, but that the he/she would be entitled to compensation to the extent that the ignorance of the law resulted from the acts or omissions of the Administration (*see*, e.g., Judgement No. 1185, *Van Leeuwen* (2003)).

IV. ECA staff members with United States permanent resident status

10. Based on the foregoing general approach, the following reviews the cases of the ECA staff members with United States permanent resident status which you referred to this Office for review. The staff members are grouped into three categories, based on their eligibility to file the Waiver, and on whether they have in fact filed the Waiver.

A. Staff members who satisfy the conditions set out in section 5.7 of ST/AI/2000/19 but who have not signed the Waiver

11. The status of staff members who fall under one of the categories set out in section 5.7 of the AI, but who have not signed the Waiver, raises issues concerning their United States immigration status, their liability to pay United States income taxation in respect of their United Nations income, and the Organization's tax reimbursement obligations, if any, towards them.

12. With respect to their immigration status in the United States, staff members in this category are not in compliance with United States immigration law because of their failure to file the Waiver. Therefore, as an initial step, OHRM should take action to ensure that such staff members comply with all applicable requirements governing their United States permanent resident status. As the staff members in this category are eligible to retain United States permanent resident status under section 5.7 of the AI, we concur

with OHRM's proposal to give such staff members the option to now execute and file the Waiver in order to retain their United States permanent resident status, or to formally give up such status and revert to G-4 visa status.[3]

13. As regards the tax liabilities of such staff members in the United States, and the Organization's duty to reimburse them for taxes paid, United States law provides that these staff members are exempt from income taxes until such time as they file the Waiver. As such, it not clear whether the Organization is required, pursuant to the provisions of Staff Regulation 3.3 (f), to reimburse staff members in this category for United States income taxes they have paid on their United Nations income. As discussed in paragraph 4 above, however, it is conceivable that the United States authorities would seek to impose tax liability on such staff members, on the grounds that they were legally required to file the Waiver and make themselves subject to taxation within thirty (30) days after joining the service of the Organization. If the United States authorities were to make such a determination, thereby creating a legal requirement for staff members in this category to pay United States income taxes in respect of their United Nations income, the Organization would then be obligated to reimburse them for any tax liability so imposed.

14. In this regard, we note that the circumstances of staff members falling under this category vary in terms of whether they have in fact paid taxes, and whether they have been reimbursed by the Organization. In particular, we understand that some staff members in this category have paid United States income taxes and were reimbursed by the Organization, while others in this category may not have received reimbursement for taxes paid by them, and others may not have paid taxes in the first place. In view of this variance, and in view of the uncertainty concerning whether the Organization is obliged to reimburse staff members in this category, as discussed in paragraph 13 above, OHRM may wish to adopt a case-by-case analysis with respect to the circumstances concerning staff members in this category. Such analysis would permit OHRM to determine the respective responsibilities of the Organization and the staff members concerned, and the circumstances leading to the failure of such staff members to file the Waiver, even though they were required to do so under United Nations policy and United States law.

15. Based on its determinations with regard to the respective responsibilities of the Organization and the staff members in question, OHRM would be able to decide on the appropriate course of action. For example, in the case of staff members who have been reimbursed by the Organization for United States income taxes paid by them in the absence of a Waiver, OHRM may decide either to take no further action or to seek recovery of such tax reimbursements, to the extent that such recovery is not time barred in accordance with the procedures set out in ST/AI/2000/11, of 12 October 2000, entitled "Recovery of overpayments made to staff members." In the case of staff members in this category who may have paid United States income taxes on their United Nations income who have not been reimbursed by the United Nations, or in the case of staff members who

[3] In this regard, it should be noted that, while the granting such staff members the option to execute and file the Waiver is consistent with United Nations policy, this course of action may not be available to such staff members, since they might, in any case, be ineligible to retain United States permanent resident status while serving in ECA and, thus, residing outside the United States, or because it is conceivable that their failure to have executed and filed the Waiver in a timely manner has already resulted in the forfeiture of their United States permanent resident status.

are retroactively imposed tax obligations by United States authorities (please see paragraph 16 below), OHRM would have to decide whether to now provide such reimbursement, to pay compensation in lieu of reimbursement for having failed to properly instruct such staff members on their obligations concerning the filing of the Waiver, or to take no further action.

16. As any tax on United Nations income paid by staff members in this category relates to income that is exempt from taxation, the Organization could conceivably contact the United States tax authorities, or request the staff members in question to do so, in order to seek refunds in respect of such taxes. To the extent that any refunds so obtained would relate to tax payments already reimbursed by the Organization, staff members receiving such refunds would be required to reimburse such refunds to the Organization. However, the United States Government might not agree to provide such refunds on the basis that the staff members concerned were required to file the Waiver upon joining the Organization or after having acquired permanent resident status whilst in the employ of the Organization. Instead, the United States Government may impose measures which would retroactively make such staff members legally liable for taxation on their United Nations income, for the period in which they were in the employ of the United Nations and had United States permanent resident status.

17. In addition, because such staff members have not complied with United States immigration law, any contact with the United States authorities regarding this matter could, possibly, expose such staff members to penalties under United States law. Accordingly, the Administration should ensure that staff members who may have failed to comply with United States laws as a result of advice provided to them by the Administration, should not be penalized for such lack of compliance.

B. Staff members who do not satisfy the conditions set out in section 5.7 of ST/AI/2000/19 *but who have signed the Waiver*

18. The status of staff members who do not fall within the categories set out in section 5.7 of the AI, but who have signed the Waiver, raises issues concerning their compliance with the established policy of the United Nations with respect to the acquisition and retention of permanent resident status by staff members, their tax liabilities under United States law, and the Organization's tax reimbursement obligations, if any, towards them.

19. As an initial matter, OHRM should ensure that staff members in this category conform to established policy of the United Nations, as set out in section 5.7 of the AI, requiring them to cede their United States permanent resident status while in the service of the Organization. Thus, we concur with OHRM's proposed course of action to request such staff members to renounce their United States permanent resident status and revert to G-4 visa status.

20. With respect to tax liabilities under United States law, staff members who have executed and filed the Waiver are not exempt from United States income taxes in respect of their United Nations income, regardless of whether such staff members were authorized to file such Waiver in accordance with the policies of the United Nations. It follows that, since staff members in this category were obligated to pay such United States income taxes, under Staff Regulation 3.3(f), the Organization is required to reimburse them for any such United States income taxes paid. Accordingly, the Organization should provide such

reimbursement in the cases in which this has not already been done. However, given that the filing of the Waiver by such staff members constituted a violation of a United Nations policy, leading to financial liability for the Organization, OHRM might wish to investigate the circumstances under which those staff members executed and filed the Waiver, and take any appropriate action.

21. Additionally, we note that even if staff members in this category were to immediately comply with the request to renounce their United States permanent resident status, they would remain liable for taxation in respect of their United Nations income, to the extent that such income was generated during a period prior to such renunciation. Thus, the Organization would be obliged to reimburse such staff members for United States income taxes that they paid on their United Nations income corresponding to the period prior to their renunciation of their United States permanent resident status.

C. Staff members who do not satisfy the conditions set out in section 5.7 of ST/AI/2000/19 and who have not signed the Waiver

22. The status of staff members who do not fall within the categories set out in section 5.7 of the AI, and who have not signed the Waiver, raises issues concerning their United States immigration status, their compliance with the established policy of the United Nations with respect to the acquisition and retention of permanent resident status by staff members, their United States income tax liabilities, and the Organization's tax reimbursement obligations, if any, towards such staff members.

23. With respect to their immigration status in the United States, staff members in this category have not complied with United States immigration laws because of their failure to file the Waiver. In addition, they have not conformed with the established policy of the United Nations, as set out in section 5.7 of the AI, requiring them to cede United States permanent resident status while in the service of the Organization. Accordingly, we concur with OHRM's proposed course of action to request such staff members to renounce their United States permanent resident status and revert to G-4 visa status.

24. With respect to the issues of the liability of such staff members to pay United States income taxes in respect of their United Nations income, and the obligation, if any, of the Organization to reimburse any tax payments made by such staff members, we note that the status of staff members falling under this category are identical to the status of staff members discussed in section IV.A above. It follows that the analysis provided in paragraphs 13 to 17 is applicable to this category of staff members as well.

25. Finally, we recommend that before taking any action with respect to the staff members specified in OHRM's request, OHRM consult, at the working level, with [Name] of this Office.

(*g*) Interoffice memorandum to the Assistant Secretary-General for Human Resources, regarding waiving of immunity from legal process of officials of the Organization, other than Secretariat Officials and Experts on Mission

Privileges and immunities of United Nations officials—Sources of immunity from legal process of United Nations officials, other than Secretariat officials and

EXPERTS ON MISSION—WAIVER OF SUCH IMMUNITY—COMMUNICATION OF WAIVER TO THE GENERAL ASSEMBLY

14 August 2007

1. Reference is made to our correspondence on the above-mentioned subject, and in particular to [Name A]'s memorandum of 23 July 2007.

2. We have reviewed our files and have identified only two examples where the Secretary-General has waived the immunity from legal process of Officials of the Organization other than Secretariat Officials, and Experts on Mission, for inclusion in the report to the General Assembly being compiled by the Office of Human Resources Management (OHRM). The following paragraphs are offered for inclusion in the report.

PRIVILEGES AND IMMUNITIES APPLICABLE TO OFFICIALS OF THE ORGANIZATION OTHER THAN SECRETARIAT OFFICIALS, AND EXPERTS ON MISSION

The basic documents regulating the scope of the privileges and immunities of officials of the Organization are the Charter of the United Nations (Article 105), the 1946 Convention on the Privileges and Immunities of the United Nations (articles V and VII),* headquarters agreements with host States and, where applicable, the 1961 Vienna Convention on Diplomatic Relations.** Certain Member States hosting Offices of the United Nations have adopted national laws and regulations which can also be considered as a source of privileges and immunities for officials of the Organization.

Article 105, paragraph 1 of the United Nations Charter provides that "[t]he Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes". In order to give effect to Article 105 of the United Nations Charter, the General Assembly of the United Nations adopted the Convention on the Privileges and Immunities of the United Nations (hereinafter, "the General Convention") on 13 February 1946. Of particular relevance are sections 20 and 21 of the General Convention to which 153 Member States are Parties and are thus bound thereto. The sections read as follows:

> "*Section 20.* Privileges and immunities are granted to officials 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 officials in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.
>
> *Section 21.* The United Nations shall 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."

Pursuant to General Assembly resolution 3188 (XXVIII) of 18 December 1973, members of the Joint Inspection Unit (JIU) and the Chairman of the Advisory Committee

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

** United Nations, *Treaty Series,* vol. 500, p. 95.

on Administrative and Budgetary Questions (ACABQ) were granted the privileges and immunities referred to in articles V and VII of the 1946 Convention.

By its resolution 56/280 of 27 March 2002, the General Assembly adopted the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission (hereinafter "the Regulations"). These Regulations were promulgated by the Secretary-General in his Bulletin ST/SGB/2002/9 of 18 June 2002.*

Regulation 1 (e) provides as follows:

> "The privileges and immunities enjoyed by the United Nations by virtue of Article 105 of its Charter are conferred in the interests of the Organization. These privileges and immunities furnish no excuse to those who are covered by them to fail to observe the laws and police regulations of the State in which they are located; nor do they furnish an excuse for non-performance of their private obligations. In any case where an issue arises regarding the application of these privileges and immunities, an official or an expert on mission 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. The Secretary-General should inform and may take into account the views of the legislative bodies that appointed the officials or experts on mission".

On 17 November 2006, the Under-Secretary-General for Legal Affairs, the Legal Counsel, made a statement in the Fifth Committee replying to questions posed by the Bureau of the Fifth Committee pertaining to the waivers of immunity from legal process by the Secretary-General with regard to the two cases noted below. In the course thereof, the Legal Counsel provided a legal analysis of the relationship between the General Convention and the Regulations adopted by the General Assembly (see A/C.5/61/SR.22).

Cases of waiver of immunity of officials of the Organization other than Secretariat officials, and Experts on Mission

The Office of Legal Affairs has identified two cases where the Secretary-General has waived the immunity from legal process of Officials of the Organization other than Secretariat Officials, and Experts on Mission. As noted above, the Legal Counsel replied to questions posed by the Bureau of the Fifth Committee on these two cases during the meeting of the Fifth Committee held on 17 November 2006 (seeA/C.5/61/SR.22).

On 7 November 2005, the Secretary-General waived the immunity from legal process of a JIU Inspector at the request of the competent Swiss law enforcement authorities. The reasons for the waiver were grave allegations of a criminal nature which were being investigated by the Swiss law enforcement authorities. In view of the extreme seriousness and sensitivity of those allegations, the request had been conveyed to the United Nations on a strictly confidential basis. On 3 March 2006, the Legal Counsel had addressed a confidential communication to the President of JIU requesting the latter to transmit to the Inspec-

* 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).

tor concerned a confidential letter explaining, on behalf of the Secretary-General, the reasons why the decision to waive had not been brought to the General Assembly's attention. The Office of Legal Affairs had never received a reaction to those communications.

On 1 September 2005, the Secretary-General waived the immunity from legal process of the then serving Chairman of the ACABQ at the request of the United States Mission to the United Nations. The reasons for the waiver were serious United States federal criminal charges against [Name 2] relating to money-laundering in violation of United States laws. On 9 September 2005, the Secretary-General had addressed a letter to the President of the General Assembly informing him of the United States request, the applicable legal provisions and the reasons for the waiver and indicating that, in accordance with the Organization's existing procedures in cases of arrest or detention of United Nations officials, the assistance of the competent United States authorities had been requested with a view to facilitating a visit by a United Nations representative to [Name 2]. No reaction had ever been received to that letter.

(*h*) Interoffice memorandum to the Assistant Secretary-General and Controller, regarding the agreement with the New York State Department of Health for exemption of the United Nations from surcharges under the New York Health Care Reform Act

Immunity and privileges of the United Nations Organization—Exemption from direct taxation, including relating to health care surcharges within the New York State health scheme—United Nations acting as a self-insurer for its employees and their qualified dependents—Conclusion of agreement between the United Nations and the State of New York, Department of Health

16 August 2007

1. I refer to the e-mail message forwarded to this Office on 20 April 2007, from the Chief, Benefits Unit, Health & Life Insurance Section, Insurance and Disbursement Service, Accounts Division, Office of Programme Planning, Budget and Accounts (OPPBA), requesting advice on two notices received from the New York State Department of Health (NYSDOH), dated 13 March 2007, and 10 November 2006. Pursuant to such notices, NYSDOH seeks payment from the Organization of $[sum] in surcharges imposed under the New York State Health Care Act of 2000, as amended (codified at New York Public Health Law §§ 2807-j, 2807-s and 2807-t).

2. You may recall some of the background of this matter. On 8 November 2002, the Legal Counsel wrote to Commissioner of NYSDOH, as well as the New York State Attorney General, and the United States Mission, seeking an exemption from any payment by the United Nations of surcharges imposed under the New York State Health Care Act of 2000, as amended (HCRA Surcharges) on the basis of article II, section 7(b), of the Convention on the Privileges and Immunities of the United Nations.[*] The rationale was that two of the largest health insurance schemes of the United Nations were self-insurance plans, for which [Insurance Companies 1 and 2] were merely providing claims and related administrative services, under "Administrative Services Only" contracts. Accordingly, imposition

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

of HCRA Surcharges, which fund New York State medical education and health insurance programmes for children and other persons of need, were direct taxes on the insurance benefits which the Organization itself was directly funding through group health insurance premiums imposed on staff members, and held in accounts as assets denominated to the United Nations. Both at that time and previously,[1] this Office had communicated through the United States Mission a request that the United States Government take all necessary and appropriate action to assert and maintain the Organization's exemption from taxation in respect of this matter. However, neither the United States Mission nor the United States Government has assisted the United Nations in this matter, informally suggesting that the Organization should work this out directly with the State of New York.

3. After many discussions between representatives of this Office and of NYSDOH, on 21 August 2003, [Name], Director, Bureau of Financial Management and Information Support, NYSDOH, responded to the Legal Counsel's letter, dated 8 November 2002, addressed to the Commissioner, NYSDOH. In his letter of 21 August 2003, [Name] stated that, "upon due consideration, the Department is prepared to adopt a position that at this time it will not contest, on a prospective basis, the United Nations' assertion that HCRA Surcharges are 'direct taxes' from which the United Nations is exempt insofar as it is acting as a self-insurer for its employees and their qualified dependents." [Name]'s letter added that, "the Department's proposed position would apply only prospectively to future [HCRA] surcharges and covered lives assessment payments and liability arising subsequent to April 1, 2003," and that, accordingly, NYSDOH would not refund or forgive any HCRA Surcharges previously made or arising prior to that date. [Name] sought to memorialize the Organization's agreement to such proposed position of NYSDOH by having the legal counsel countersign the letter.

4. This Office presented NYSDOH proposal to OPPBA only a few days after receiving [Name]'s letter. However, OPPBA requested that, instead of accepting the proposal of NYSDOH, this Office should explore the possibility of challenging the NYSDOH position with respect to the non-application of the exemption from HCRA Surcharges retroactively. That is, OPPBA sought a refund of any HCRA Surcharges that had been previously assessed against health care insurance benefit payments made by the United Nations. For the next several months, this Office again sought to obtain the agreement of NYSDOH to both exempt the Organization from NYSDOH surcharges on a prospective and retroactive basis. In the meantime, this Office, together with OPPBA, convinced [Insurance Company 1] to voluntarily agree to cease making payments to NYSDOH in respect of HCRA Surcharges assessed against health care benefit payments administered by [Insurance Company 1]. [Insurance Company 2], however, refused to do so without an indemnification from the Organization, and this Office sought authority from your predecessor to provide [Insurance Company 2] with such an indemnity, but did not receive a reply, After many further discussions with NYSDOH, it was clear that NYSDOH would not agree to apply the exemption on a retroactive basis, and that the only way the Organization could achieve such a result would be to engage in costly and potentially risky litigation with the State of

[1] On 11 March 1997, this Office first wrote to the United States Mission seeking the assistance of the United States Government in asserting and maintaining the Organization's exemption from taxation in respect of HCRA surcharges.

New York, in which case the Organization's right to an exemption even on a prospective basis might be denied.

5. Accordingly, in July 2004, NYSDOH informed this Office that, in principle, it would agree to a form of agreement providing that: (i) NYSDOH would recognize the Organization's exemption from HCRA Surcharges as and from the date that the agreement was concluded (the "Effective Date"); (ii) NYSDOH would not seek payment from the Organization for any assessed and unpaid HCRA Surcharges arising prior to the Effective Date; but (iii) NYSDOH would not be liable for any refund or claim of payment for HCRA Surcharges actually paid prior to the Effective Date of such an agreement. For such purposes, this Office prepared an agreement in the form attached hereto, and sent it to NYSDOH for final approval of such form of agreement. Nearly six months went by before NYSDOH informed this Office, on 6 December 2004, that the proposed agreement resolving the Organization's exemption from HCRA Surcharges "remain[ed] under active review by the State of New York." Representatives from [Name]'s office informally advised representatives of this Office that the political climate in Albany was not at that time conducive to concluding the proposed agreement.

6. After receiving that informal communication referred to above, this Office again contacted NYSDOH, reminding [Name] and his staff of the prior discussions and negotiations concerning this matter, and requesting to know whether NYSDOH could now agree to conclude an agreement concerning the exemption of the United Nations from HCRA Surcharges in the form discussed in paragraph 5, above. Just recently, [Name] informed this Office that the Commissioner of NYSDOH was now prepared to conclude an agreement with the United Nations along these lines. Doing so would have the effect of resolving the NYSDOH notification concerning payment of some $[Sum] in HCRA Surcharges withheld by [Insurance Company 1], and would enable the Organization to require both [Insurance Companies 1 and 2] to discontinue making any such HCRA Surcharges payments from now on. This would represent substantial savings to the Organization's health care benefits plans.

7. Accordingly, if you are prepared to accept the position that NYSDOH has agreed to concerning the Organization's exemption from HCRA Surcharges, please sign and return to this Office two (2) copies of the enclosed form of agreement that NYSDOH is prepared to conclude, and this Office will transmit the copies to [Name] for counter-signature by the appropriate official of NYSDOH.

Agreement by and between the United Nations and the State of New York, Department of Health

This Agreement is made by and between the United Nations, an international intergovernmental organization established by its Member States pursuant to the Charter of the United Nations, signed in San Francisco on 26 June 1945 and having its Headquarters in New York, New York 10017, and the State of New York, Department of Health, having its headquarters at Corning Tower, the Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12237 ("Department"). The United Nations and the Department are each referred to in this Agreement individually as, a "Party," and collectively as the "Parties."

Witnesseth

Whereas, pursuant to the New York Public Health Law §§ 2807-j, 2807-s and 2807-t, the State of New York imposes certain surcharges on patient services payments as well as assessments on "covered lives" by various payers of health-care benefits and providers of health-care insurance benefits within New York State;

Whereas, the United Nations represents that is a self-insurer with respect to certain health-care benefits payable in respect of a large number of United Nations staff members, together with their qualified beneficiaries and dependents and, further, that the United Nations employs health insurance providers qualified to do business in New York State to provide administrative services only in respect of the United Nations' self-insured health plans (hereafter referred to as, "ASO Providers");

Whereas, the United Nations maintains that, pursuant to article II, section 7 (b), of the Convention on the Privileges and Immunities of the United Nations, a multilateral treaty adopted by the General Assembly of the United Nations in 1946 (1UNTS 15) and acceded to by the United States of America in 1970 (21 UST 1418, TIAS No. 6900), and pursuant to the International Organizations Immunities Act (codified at 22 USC §§ 288a, et seq., and at 26 USC §§ 892, 893, and 7701), the United Nations is exempt from direct taxes;

Whereas, the United Nations maintains, but the State of New York does not concede, that the exemption from taxation to which the United Nations is entitled under international and United States law includes exemption from payment of any surcharges and assessments under the HCRA with respect to health-care benefits paid by the United Nations under its self-insured health-care benefit plans; and,

Whereas, subject to and in accordance with the terms and conditions of this Agreement, the State of New York nevertheless adopted the position that it will not contest the United Nations' assertion that HCRA Surcharges are "direct taxes" from which the United Nations is exempt insofar as the United Nations is acting as self-insurer for health-care benefits payable in respect of United Nations staff members, together with their qualified beneficiaries and dependents;

Now therefore, the Parties agree as follows"

1. *Recognition of Exemption:* As and from the Effective Date of this Agreement, and with regard to any and all unpaid surcharges and assessments attributable to periods prior to the Effective Date of this Agreement, the Department shall not contest the United Nations' claim of exemption with respect to surcharge and covered lives assessment payments and liabilities that relate to health-care benefits paid for by the United Nations pursuant to the terms of the United Nations' self-insured heath-care plans maintained in respect of United Nations staff members, together with their qualified beneficiaries and dependents.

2. *No Right to Refund or to Forgiveness of Certain Payments:* The Parties acknowledge and agree that nothing in this Agreement or otherwise gives the United Nations any right to claim or to obtain any refund from the State of New York in respect of any surcharge or covered lives assessments or payments already made under any circumstances.

3. *Non-Applicability to Indemnity Insurance Purchased by the United Nations:* The United Nations acknowledges and agrees that it cannot claim, and that the State of New York will not concede, any exemption from any surcharge or covered lives assessments or payments made in respect of or arising from any health-care benefits payable from

any health insurance purchased by the United Nations and, consequently, not constituting a self-insured plan maintained by the United Nations. The United Nations further acknowledges and agrees that such insurance coverage arrangements remain fully subject to surcharge and covered lives assessment obligations.

4. *Cooperation:* The Parties shall reasonably cooperate with one another in order to ensure the effective operation of this Agreement. Without limiting the generality of the foregoing, the Parties shall share reasonably necessary information with one another (*e.g.*, regarding the self-insured nature of the United Nations' health insurance plans, the identity and terms of service of the United Nations' ASO Providers) and shall provide reasonably necessary information to third parties (*e.g.*, notices by the Department) to enable the United Nations to realize those exemptions from surcharge and covered lives assessments agreed to by the Department in accordance with the terms of this Agreement.

5. *Notices:* Any notices or communications sent by the Parties pursuant to this Agreement shall be sent via first-class mail, postage pre-paid to the following addresses:

a. If to the Department, addressed to the Director, Bureau of Financial Management, Information and Support, State of New York, Department of Health, [. . .]; and,

b. If to the United Nations, addressed to the Chief, Insurance Claims and Compensation Section, Accounts Division, Office of Programme Planning, Budget and Accounts, [. . .].

6. *Resolution of Disputes:* The Parties shall use their reasonable efforts to amicably resolve any dispute, controversy, or claim arising out of this Agreement. Unless otherwise settled by the Parties, any dispute, controversy, or claim between the Parties arising out of this Agreement, or the breach, termination, or invalidity thereof, shall be referred by either Party to arbitration in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules then obtaining. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in this Agreement, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate uttered ("LIBOR") then prevailing, and any such interest shall be simple interest only. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

7. *Privileges and Immunities of the United Nations:* 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.

(*i*) Interoffice memorandum to the Director, Facilities and Commercial Services Division, regarding the organizational shipments using the United Nations pouch

Privileges and immunities of United Nations diplomatic pouch service—United Nations correspondence granted the same immunities and privileges as diplomatic couriers and bags—Broad interpretation of the terms "articles for official use" allowed by States in their diplomatic bags—Restrictions imposed by the United Nations on the content of its pouch—Usual practice to allow critical goods in

POUCH TO PEACEKEEPING MISSIONS WITH NO REGULAR MAIL SERVICE—NEED TO REVIEW THE RULES AND TO ALIGN THEM WITHIN THE UNITED NATIONS SYSTEM

17 October 2007

1. This is with reference to your memorandum dated 3 April, and the follow-up emails from [Name A] of 14 September and 16 October 2007, requesting our advice regarding the shipment of critical goods using the United Nations pouch and whether the current practice is in compliance with the 1946 Convention on the Privileges and Immunities of the United Nations (hereinafter the "General Convention").* In particular, [Name A] requested to know whether DVDs from companies such as Amazon may be included in the pouch shipments to peacekeeping missions with no regular mail service.

2. We note that the United Nations pouch is currently being used to supply Peacekeeping Missions and Offices away from Headquarters with critical goods urgently needed in the field, since often, such goods cannot be delivered using regular mail and forwarding services. We further note that this practice has been a part of standard operations of the United Nations at Headquarters, Offices Away from Headquarters, and in the field for many years and instrumental in ensuring the supply of critical goods and that it is considered to be in compliance with the Organization's policy on the matter set out in Administrative Instruction ST/AI/368 of 10 January 1991, entitled "Instructions Governing United Nations Diplomatic Pouch Service".**

3. In this connection, the Procurement Task Force (PTF), in its Report dated 2 February 2007 on [Company] and the United Nations Pouch Unit, recommended that "ST/AI/368 be reviewed and updated to more clearly delineate the manner in which goods can be shipped by a Department to another United Nations entity, and that Staff in the Missions and at Headquarters with any involvement in international transportation of items be trained on the proper uses of the Diplomatic Pouch" (page 43, paragraph 211 of the Report). It is in light of the above PTF recommendations that you are seeking our advice on language which will more clearly address this issue.

4. It will be recalled that article III, section 10, of the General Convention provides that "[t]he United Nations shall have the right to [. . .] despatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags." Based on this provision, the United Nations has established its diplomatic pouch service, the main purpose of which is to provide a secure means of transmitting and receiving the Organization's correspondence.

5. The legal status of diplomatic couriers and bags is codified in the 1961 Vienna Convention on Diplomatic Relations.*** article 27(4) of the 1961 Vienna Convention unequivocally stipulates that the diplomatic bag "may contain only diplomatic documents or articles intended for *official use*" (emphasis added).

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

** For information on Administrative Instructions, see note under 1 (*f*), above.

*** United Nations, *Treaty Series,* vol. 500, p. 95.

6. States attach high importance to the inviolability of their diplomatic bags, particularly due to the vulnerability of wireless, telephone and other types of communication. However, it appears to be standard practice for States to use their diplomatic bags to send a wide range of items for the official use. For example, large items such as photocopying machines, cipher equipment, computers, and building materials (including for use in the construction of new embassy premises to reduce the likelihood of listening devices), as well as coins, currency notes, medals, films, books, food, drink and clothing have been sent by States using the diplomatic pouch. Thus, it appears that the words "articles for official use" is interpreted by each State according to its internal regulations. Some States seem to allow personal correspondence, medical supplies and luxury items for personal use not available in the receiving State to be sent through the diplomatic pouch.[1]

7. With regard to the practice within the United Nations, we note that ST/AI/368, in particular, paragraphs 3 to 5, places restrictions on the contents of the diplomatic pouch. In addition, this Office has on several occasions provided advice as to whether a specific item may be included in the diplomatic pouch.

8. In this connection, a Note from [Name B], then Director, Building and Commercial Services Division, Office of Central Support Services, to [Name C], then Director, General Legal Division, Office of Legal Affairs, dated 24 January 1996, and the reply from [Name D] of 30 January 1996 [. . .], addressed the need to revise ST/AI/368 to bring it in line with the current needs of the Organization. In addition, the issue at hand was related to the fact that the United Nations Development Programme (UNDP) has its own rules on the matter, as regulated by Chapter 6.4 of the UNDP General Administration Manual (hereinafter the "UNDP Manual") entitled "United Nations Diplomatic Pouch and UNDP Valise" [. . .] which differs from ST/AI/368.

9. Chapter 6.4.2 of the UNDP Manual stipulates that "items for personal use such as food, clothing, gifts, etc. are not accepted for inclusion in the pouch". However, Chapter 6.4.2.1 provides that all UNDP international staff members may, in reasonable amounts, have the following items sent via pouch for country offices: "first class correspondence, professional and technical magazines and journals, prescription medicines and eyeglasses (only when certified by the United Nations Medical Director), film for developing, one/two CD-ROMs per month [and] accredited correspondence courses". In addition, those stationed in country offices with "exception status" may receive by pouch, a reasonable amount of CD-ROMs, DVDs, VCDs, audio cassettes, newspapers, magazines and job-related books.

10. The Note of 30 January 1996 referred to above advised that there was "no legal objection to the decision that United Nations staff in hardship areas with no reliable mail service should be allowed to use the United Nations Pouch for limited shipments of audio and video cassettes, as is currently permitted to UNDP staff serving in [certain] duty stations". However, the UNDP Manual appears to allow the shipment of personal items in the pouch even in circumstances where mail service is available or reliable. It should be noted that there is a discrepancy in the UNDP manual with regard to the list of items which country offices are allowed to receive pursuant to Chapter 6.4.2.1, "Personal Mail to Country Office Staff, UNDP Staff Members", and Chapter 6.4.6, "Exception Status".

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[1] E. Denza, Diplomatic Law—Commentary on the Vienna Convention on Diplomatic Relations, pp. 185, 189 and 193.

11. As the right to send correspondence by a diplomatic pouch of the Secretariat as well as of the Programmes and Funds is derived from section 10 of the General Convention, the guidelines governing its use amongst the Secretariat and the Programmes and Funds should be aligned. In this regard, provisions contained in the UNDP Manual may be considered for inclusion in a revised ST/AI/368. As outlined above, there are no legal impediments to limited shipments of CDs and DVDs for personal use, however, any revised guidelines should make clear that they should be sent via the pouch only in exceptional circumstances, where mail service is not available.

12. We will be happy to be consulted on a revision of the ST/AI/368. However, as any such revision has the potential of affecting the welfare of staff stationed in the field, we would recommend that the Office of Human Resources Management be consulted as well.

(*j*) Note to the Secretary-General, regarding the placement under house arrest of a Special Rapporteur and a Special Representative of the Secretary-General (SRSG)

Privileges and immunities granted to a Special Rapporteur and a Special Representative of the Secretary-General—Special Rapporteur entitled to immunity from personal arrest and detention, and immunity from legal process of every kind in respect of words spoken or written and acts done in the course of the performance of her mission—Exclusive authority of the Secretary-General to establish whether privileges and immunities apply—Obligation for the State to consult the Secretary-General prior to any arrest, detention or similar action being taken against a Special Rapporteur or Special Representative of the Secretary General

9 November 2007

1. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has informed us that [Name A], Special Rapporteur on [Human Right A] has been placed under house arrest by the Government of [State 1][*] for 90 days on 3 November 2007. A similar order has been issued for [Name B], Special Representative of the Secretary-General (SRSG) on [Issue]. [Name B] is currently in London. In your statement of 5 November 2007, you expressed strong dismay at the detention of hundreds of human rights and opposition activists, including the Special Rapporteur.

2. [Name A], as Special Rapporteur, enjoys privileges and immunities as are necessary for the independent exercise of her functions as specified in article VI of the 1946 Convention on the Privileges and Immunities of the United Nations (General Convention),[**] to which [State 1] is a party. This includes immunity from personal arrest and detention, and immunity from legal process of every kind in respect of words spoken or written and acts done by her in the course of the performance of her mission. In addition, she is to be accorded facilities for speedy travel. This has been confirmed by the International Court of Justice in its advisory opinions of 15 December 1989 in the so-called "Mazilu case" and

[*] Country of origin of the Special Rapporteur and SRSG.

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

of 29 April 1999 in the so-called "Cumaraswamy case" (both Special Rapporteurs of the Human Rights Commission). [Name B] as an SRSG is entitled to diplomatic privileges and immunities under the same Convention.

3. Consistent with the position taken by the Organization in similar cases in the past, it is my firm belief that the legal position with respect to the privileges and immunities enjoyed by [Names A and B] ought to be communicated to the Government through the Permanent Representative without delay. Most recently, this has been done with regard to [Name C], Special Rapporteur on [Human Right B] who had been arrested in [State 2]. We will inform the Government that, under the General Convention, the Secretary-General has the sole authority and duty to establish whether privileges and immunities apply. Accordingly, the Secretary-General must be consulted prior to any arrests, detention or similar action being taken in this case.

4. We understand from OHCHR that [Name A] in her capacity as the Special Rapporteur is due to undertake a mission to [State 3] starting 18 November 2007. Therefore, in all likelihood she will be prohibited from traveling to [State 3] in the performance of her official functions. Accordingly, it is our intention to inform the Government of [State 1] of the legal status enjoyed by [Name A] as Special Rapporteur and to remind the Government of its obligation under the General Convention. In particular, we would request the Government to ensure that [Name A] be allowed to carry out her mission to [State 3] as Special Rapporteur as planned on 18 November 2007.

5. Given the urgency of the situation, we would appreciate your immediate attention to the matter and seek your approval to the course of action described above

2. Procedural and institutional issues

(*a*) Note to the High Commissioner for Human Rights, regarding the oversight role of the Human Rights Council over the work of the Office of the High Commissioner for Human Rights (OHCHR)

Relationship between the Human Rights Council (HRC) and OHCHR—HRC not viewed as a "relevant" intergovernmental organ within the meaning of article 48 of regulation ST/SGB/2000/8 with respect to the OHCHR planning, programming and budgeting process—Mandate of HRC limited to the provision of operational guidance on human rights—Responsibilities regarding programme planning and budgeting of OHCHR belong exclusively to the Secretary-General and the General Assembly—No legal basis for the HRC to request that the OHCHR strategic framework or annual report be submitted for its consideration

11 June 2007

1. I refer to the meeting of 1 May 2007 I had with the Deputy High Commissioner, during which she sought our advice and comments with respect to attempts by members of the Human Rights Council (HRC) to establish an oversight role for the Council over the work of the Office of the High Commissioner for Human Rights (OHCHR). In particular, she asked whether it would be advisable from a legal point of view to submit the strategic framework for Programme 19 (human rights) to the HRC for review. Reference is also made to her e-mail message of 24 May 2007 to the Assistant Secretary-General

for Legal Affairs, in which she reiterated the request for advice on the above issue and informed us that during the organizational session for the Fifth HRC session, the same HRC members have unexpectedly requested that the High Commissioner submit her Annual Report on the implementation of activities and use of funds to the HCR for consideration. I also refer to our meeting of 29 May 2007, where, among other issues, we briefly discussed this matter.

a) Relationship between the Human Rights Council and the Office of the High Commissioner for Human Rights

Applicable law

2. The post of the High Commissioner for Human Rights was established by General Assembly resolution 48/141 of 20 December 1993, by which, in its operative paragraph 4, the Assembly:

> "Decides that the High Commissioner for Human Rights shall be the United Nations official with principal responsibility for United Nations human rights activities under the direction and authority of the Secretary-General; within the framework of the overall competence, authority and decisions of the General Assembly, the Economic and Social Council and the Commission on Human Rights".

3. In operative paragraph 7 of that resolution, the General Assembly requested the Secretary-General "to provide appropriate staff and resources, within the existing and future regular budgets of the United Nations, to enable the High Commissioner to fulfil his/her mandate, without diverting resources from the development programmes and activities of the United Nations".

4. General Assembly resolution 60/251 of 15 March 2006, by which the HRC was established, mandated the HRC in operative paragraph 5 (g) to:

> "Assume the role and responsibilities of the Commission on Human Rights relating to the work of the Office of the United Nations High Commissioner for Human Rights, as decided by the General Assembly in its resolution 48/141 of 20 December 1993".

Analysis and advice

5. The specific role and responsibilities of the organs mentioned in the General Assembly resolution 48/141 are defined in accordance with their functions and responsibilities within the Organization. Accordingly, it is for the General Assembly to exercise legislative and financial authority; for the Economic and Social Council, through the Commission on Human Rights, to exercise operational guidance; and for the Secretary-General to exercise "direction and authority", as well as to provide the appropriate staff and resources.

6. The establishment of the HRC did not change the relationship between the High Commissioner, OHCHR and these intergovernmental organs responsible for decision and policy-making for the promotion and protection of human rights in the United Nations system, except that the operational guidance previously provided by the Commission on Human Rights is now provided by the HRC. In this respect, we note that, pursuant to operative paragraph 5 (g) of resolution 60/251, the HRC cannot have greater authority over OHCHR than the Commission had.

7. Furthermore, consistent with this distribution of responsibilities, the Commission had never exercised specific responsibilities on the programme planning and budgeting of OHCHR, which are, in fact, part of the powers of the Secretary-General, as the Chief Administrative Officer of the Organization, and of the General Assembly, as its "governing body".

8. In the absence of a specific General Assembly resolution conferring upon the HRC any such responsibilities, therefore, the decision by the HRC to assume such powers would be *ultra vires* and outside its mandate. In our view, attempts by members of the HRC to assume those responsibilities should be resisted.

b) Strategic framework of OHCHR

Background

9. The Assembly has affirmed in operative paragraph 7 of its resolution 58/269 of 23 December 2003 that the strategic framework "shall constitute the principal policy directive of the United Nations and shall serve as the basis for programme planning, budgeting, monitoring and evaluation".

10. The strategic framework is currently submitted by the Secretary-General to the General Assembly on a trial basis, subject to the review by the General Assembly of its format, content and duration, which will take place in the next 62nd session. The Secretary-General prepares the framework in accordance with the "Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation" (ST/SGB/2000/8 of 19 April 2000), issued pursuant to General Assembly resolutions 53/207 of 18 December 1998, 54/236 of 23 December 1999 and decision 54/474 of 7 April 2000.

11. The strategic framework is an integral part of the general policy-making and integrated management process, which includes the planning, programming and budgeting process. As such, it shall be governed by the principles stated in Regulation 3.1 (b) and (c), entitled "Planning programming and budgeting process", of ST/SGB/2000/8, including "full respect" for the "prerogatives of the principal organs of the United Nations with respect to the planning, programming and budgeting process" and for the "authority and prerogatives of the Secretary-General as the Chief Administrative Officer of the Organization".

Analysis and advice

12. In her e-mail message to the Assistant Secretary-General for Legal Affairs, the Deputy High Commissioner mentioned that the idea of submitting the strategic framework to the HRC for review would not be considered to be granting an "oversight" role, and that doing so might meet some of the demands from certain Council members giving them the opportunity to have "their say" in programmatic aspects of the OHCHR's work. Moreover, she mentioned that the strategic framework would be provided only on a voluntary basis.

13. The Deputy High Commissioner further mentioned that the Controller has indicated to her that intergovernmental bodies "routinely review the [strategic framework] for Secretariat programmes in areas of their competence" and that, therefore, you may wish

to consider submitting the OHCHR strategic framework to the HRC, "which is the intergovernmental body on human rights issues". The Controller's advice seems to be premised on Regulation 4.8 of ST/SGB/2000/8, requiring that the "relevant sectoral, functional and regional intergovernmental bodies" review the submissions "prior to their review by the Committee for Programme and Coordination, the Economic and Social Council and the General Assembly".

14. From a legal point of view, we wish to clarify that we do not consider the HRC to be a "relevant" intergovernmental organ within the meaning of the Regulation and with respect to the OHCHR planning, programming and budgeting process, nor has the Commission on Human Rights ever been considered a "relevant organ" for these purposes, either. As requested by operative paragraph 5 (g) of resolution 60/251, the HRC is to assume the role and responsibilities of the Commission *vis-à-vis* the work of OHCHR. As indicated in paragraph 7 above, the Commission did not exercise any function in this respect.

15. In our opinion, providing the HRC with the strategic framework, even if done on a voluntary basis, could establish a precedent which in time would create the perception that OHCHR is under an obligation to submit it, and the Council is mandated to review it. In addition, your Office might face criticism from non-members of the HRC because of the fact that those States would not have the opportunity to comment on it prior to its formal submission to the Committee for Programme and Coordination and the General Assembly.

16. In light of the above, while it would ultimately be for your Office to decide whether you would wish to take such an initiative, we would advise caution in pursuing it and that the above risks be carefully evaluated.

c) Annual report on the implementation of activities and use of funds by the High Commissioner

Background

17. We finally note that there has been a request from some HRC members that the High Commissioner's Annual Report on the implementation of activities and use of funds should be submitted to the Council for consideration.

18. We note that this report is not mandated by any legislative organ, but is prepared at the initiative of the High Commissioner as an OHCHR publication. We also note that this publication is addressed to donors and the general public, with a view to providing accurate and consolidated data about the use of voluntary contributions, as well as transparent information on achievements and impact of the work of OHCHR.

Analysis and advice

19. In our view, as is the case with respect to all other OHCHR publications, there is no rule or mandate which would serve as the legal basis for the HRC to request that this report be submitted for its consideration.

(*b*) Interoffice memorandum to the Assistant Secretary-General and Controller, regarding the proposal to suspend vendors identified in the fifth and final report of the Independent Inquiry Committee (IIC) into the United Nations Oil for Food Programme, from the United Nations Vendor Database

United Nations procurement rules and regulations—Removal or suspension from the Vendor Database of vendors having engaged in criminal activity, abusive, unethical or unprofessional conduct—Necessity to have substantial and documented evidence of such corrupt practices—Information contained in the IIC report not viewed as evidence as such but rather as a basis for further investigation

27 July 2007

1. I refer to the memorandum, dated 18 April 2007, from the Chief, Procurement Service (PS), and to the follow-up discussions and meetings on this matter, seeking the Office of Legal Affairs' advice on the recommendation by the Vendor Review Committee (VRC) of PS to suspend 103 vendors registered in the United Nations Vendor Database that were identified in the Fifth and Final Report of the Independent Inquiry Committee into the United Nations Oil for Food Programme (IIC Report) as having made either actual or projected illicit payments to the Government of Iraq.

2. The basis for suspending the 103 vendors in question is set forth in section 7.12.2 (1)(a) of the Procurement Manual, namely that there is "substantial and documented evidence" that a vendor "has failed to adhere to the terms and conditions of a contract with the United Nations, so serious as to justify suspension or removal from the [United Nations] Vendor Database," including a vendor's having engaged in "criminal activity (e.g., fraud)" or "abusive, unethical or unprofessional conduct, including corrupt practices and submission of false information," or "any documented or compelling proof of misconduct, which can negatively affect the interests of the United Nations and which would reasonably impair the Vendor's ability to perform a contract."

3. We have analyzed the basis for the conclusions set forth in the IIC Report, the rules governing suspension of vendors from the United Nations Vendor Database, and the actions taken by PS thus far. In this regard, we note that PS sent letters to those 103 companies seeking their explanation for why they were identified in the IIC Report as having made illicit payments to the Government of Iraq. According to the VRC, many but not all of the companies responded to PS, and only eight companies admitted to having made such illicit payments. The VRC then decided that if the IIC Report had identified a vendor as having made "actual" or "projected" illicit payments to the Government of Iraq, that itself was a sufficient basis to bar it from conducting future business with the Organization.

4. The IIC Report documents much evidence that the Government of Iraq manipulated the Programme and obtained illicit payments in the form of both oil surcharges and kickbacks on humanitarian contracts. However, as the IIC Report itself indicates throughout, the Report did not establish, by means of "substantial and documented evidence," that particular vendors engaged in corrupt practices or that the IIC Report provided documented or compelling proof that particular companies had engaged in misconduct. Indeed, last month, the Secretary-General's Spokesperson publicly stated that the findings set forth in

the IIC Report cannot serve as binding judicial determinations of fact or law, but rather would enable the United Nations and national authorities to further investigate and, as a result of such investigations, take appropriate action against the individuals or entities under their jurisdiction. Thus, in our view, the VRC's sole reliance on the findings of the IIC Report could be challenged on the ground that it does not meet the test of having "substantial and documented evidence" with respect to each of the companies concerned, as is required by section 7.12.2 (1)(a) of the Procurement Manual for suspension of a vendor.

5. Therefore, following this course of action could expose the Organization to claims. We fully share the view of the VCR that effective corrective action should be taken against wrongdoers. I am sure that you will want to be satisfied that any such action would occur on firm grounds. Accordingly, as PS has already begun to do by inviting each of the 103 companies to comment on the findings of the IIC Report, PS may wish to follow the procedures set forth in section 7.12.2(1)(a) of the Procurement Manual and consider how best to gather "substantial and documented evidence" with respect to each of the 103 vendors about their allegedly having made illicit payments to the Government of Iraq before taking a final decision.

(*c*) Interoffice memorandum to the Director, Accounts Division, Office of Programme, Planning, Budget and Accounts / Department of Management (OPPBA/DM), regarding the tax return information requested by the Procurement Task Force, Office of Internal Oversight Services (OIOS)

Mandate of OIOS—Broad right to access records and information pertinent to an investigation of violations of United Nations Staff Rules and Regulations—Due process and individual rights must be respected during such investigation—Procedure of reimbursement of income taxes of United States citizens or permanent residents—Obligation for the staff member to provide OPPBA with a written consent for the Internal Revenue Service to disclose information from the staff member's official tax return—Disclosure exclusively for the purpose of the administration of the tax reimbursement programme by OPPBA—Further disclosure by OPPBA for use unrelated to tax reimbursement deemed to be inappropriate in view of the possible violation of United States law—Tax related information may only be disclosed by OPPBA to OIOS for investigations on alleged misconduct concerning the tax reimbursement programme—OIOS must obtain consent of staff member for disclosure of this tax information during investigations not related to the tax reimbursement programme—Duty of staff members to cooperate with OIOS—Refusal to provide a copy of tax return required by OIOS would be a violation of the staff member's obligations under the Staff Rules and Regulations

31 July 2007

1. This responds to your memorandum of 3 July 2007, a copy of which was only received on 18 July 2007, concerning the above-referenced matter. Your memorandum stated that, in connection with an ongoing investigation into questions of compliance with the Staff Regulations and Rules, but one that, we understand, does not relate to the administration of the Organization's tax reimbursement programme, the Procurement Task Force (PTF) of OIOS has requested that OPPBA provide the PTF with copies of tax returns

submitted to OPPBA in 2005 by two staff members in connection with their requests for tax reimbursement. You sought our views as to whether OPPBA could provide copies of such tax returns to PTF.

2. The mandate of OIOS includes a broad right to access records and information pertinent to an OIOS investigation. Thus, in paragraph 5 (c)(iv) of its resolution 48/218 B, of 29 July 1994, the General Assembly provides that OIOS, "shall investigate reports of violations of United Nations staff regulations, rules and pertinent administrative issuances and transmit to the Secretary-General the results of such investigations together with appropriate recommendations to guide the Secretary-General in deciding on jurisdictional or disciplinary action to be taken." Part II, paragraph 4 of the Secretary-General's bulletin concerning the establishment and mandate of OIOS, ST/SGB/273, of 7 September 1994,* provides that OIOS, "shall have the right to direct and prompt access to all persons engaged in activities under the authority of the Organization, and shall receive their full cooperation." Additionally, OIOS "shall have the right of access to all records, documents or other materials, assets and premises and to obtain such information and explanations as they consider necessary to fulfil their responsibilities." However, the broad right of OIOS to obtain information and records pertinent to an investigation is not unlimited, in paragraph 7 of its resolution 48/219 B, the General Assembly requested that the Secretary ensure, *inter alia,* that "procedures are in place that protect individual rights, the anonymity of staff members, due process for all parties concerned and fairness during any investigation." In paragraph 18(a) of ST/SGB/273, the Secretary-General required that OIOS "investigations shall respect the individual rights of staff members and be conducted with strict regard for fairness and due process for all concerned following the staff and financial regulations, rules and administrative instructions."

3. Staff Regulation 3.3(f) authorizes the Secretary-General to refund the amount of income taxes that staff members may be required to pay to the tax authorities of a Member State in cases in which, notwithstanding article V, section 18 (b) of the Convention on the Privileges and Immunities of the United Nations (General Convention),** the Member State concerned has imposed income taxes in respect of a staff member's official United Nations salaries and emoluments. Normally, such income tax reimbursement is payable in respect of staff members either who are citizens of the United States of America or who have otherwise been authorized to retain their status as permanent residents of the United States of America and have signed the Waiver of Privileges and Immunities of the United Nations, as prescribed under section 247 (b) of the United States Immigration and Nationality Act (see Administrative Instruction ST/AI/1998/1, of 28 January 1998,*** entitled, "Payment of Income Taxes to the United States Tax Authorities"). The procedures for obtaining "tax reimbursement or advances to pay estimated taxes are announced on a yearly basis by the Controller in an information circular" (see *ibid.*, section 3).

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* For information on Secretary-General's Bulletins, see note under 1 (*g*) above.

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

*** For information on Administrative Instructions, see note under 1 (*f*), above.

4. Information circular, ST/IC/2005/9, of 30 January 2006,* entitled, "Payment of 2005 income taxes" ("Circular") is the information circular applicable to the reimbursement of income taxes for the tax year 2005. Paragraph 5 of the Circular provides that, in order to obtain tax reimbursement or advances for payment of estimated taxes in accordance with Staff Regulation 3.3 (f), a staff member "must submit to the Income Tax Unit" of OPPBA, *inter alia,* both a written "consent for the Internal Revenue Service (IRS) to disclose certain tax return information to the United Nations (United Nations form F.243)," as well as "true, complete and signed copies of the relevant income tax returns and supporting information for the tax year for which reimbursement is requested, including a copy of the statement of taxable earnings" issued by the United Nations. These requirements have not varied in corresponding information circulars issued in respect of tax reimbursement procedures for the many preceding tax years and for the following tax year, 2007. Thus, staff members who are United States nationals or permanent residents must submit copies of their tax returns to OPPBA in order to obtain reimbursement for the United States income tax liabilities in accordance with Staff Regulation 3.3 (f). Moreover, so that OPPBA can verify that the copy of the tax return submitted by the staff member actually corresponds to the information submitted by the staff member to the United States Internal Revenue Service on the staff member's official tax return, the staff member must also provide OPPBA with a written consent for the IRS to disclose information from the staff member's official tax return.

5. The Circular prescribes that the staff member's written consent must be given on Form F.243, which begins with the following advice to the staff member:

> "Information contained in United States federal income tax returns is confidential and, except as authorized by the Internal Revenue Code, may not be disclosed to any person. Taxpayers may authorize the Internal Revenue Service to release this confidential tax return information to persons otherwise not entitled to receive such information.
>
> "The purpose of this consent is to authorize the Internal Revenue Service to disclose certain confidential tax information to the United Nations to assist the United Nations in verifying the United States income taxes you paid on your earnings from the United Nations. The United Nations will use this information in connection with its programme of reimbursing income taxes paid on United Nations emoluments, pursuant to staff regulation 3.3 (f). The Internal Revenue Service has no involvement in such verification aside from processing any consents received from taxpayers and disclosing information in accordance with the terms of such consents. The United Nations will pay the fees incurred in processing the present consent." (ST/IC/2006/9, p. 35 (Form F.243, of January, 2006), emphasis added.)

Thus, Form F.243, which we understand has not changed in substance in several years, specifically places staff members on notice that their tax return information is "confidential" under United States law and that the Organization will only use the information from their tax returns "in connection with its programme of reimbursing income taxes paid on United Nations emoluments, pursuant to staff regulation 3.3 (f)." Staff members, therefore, could reasonably have an expectation that the Organization will maintain the

* 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).

privacy of their tax return information in accordance with United States law when they give their consent to the IRS to provide such tax return information to the United Nations for purposes of tax reimbursement under Staff Regulation 3.3 (f).

6. The requirement for staff members to provide written consent to the IRS to disclose information from the staff members' tax return derives from the provision of the United States Income Tax Code ("Code") prohibiting the IRS and others,[1] including other United States Government officials and people outside of the United States Government (e.g., tax preparers), who have access to information contained in a tax payer's official tax return from disclosing that information either without the taxpayer's consent or for the specific reasons set forth in the Code, such as in response to a Grand Jury *subpoena* (see 26 USC § 6103). Indeed, a violation of the privacy protections set forth in section 6103 of the Code could subject not only United States federal employees, but also other persons who have received such tax return information, to civil and criminal penalties for disclosing tax return information (see 26 USC § 7213). While it is not within the expertise of this Office to comment on the criminal laws and procedures of the United States, section 7213 (a)(3) of the Code specifically provides that, "it shall be unlawful for any person to whom any return or return information (as defined in section 6103 (b) [of the Code]) is disclosed in a manner unauthorized by this title thereafter willfully *to print or publish* in any manner not provided by law any such return or return information" (emphasis added). Thus, it is conceivable that, because return information is disclosed by the IRS to OPPBA only because the staff member has consented to such disclosure, on the basis of Form F.243, for purposes of the Organization's administration of the tax reimbursement programme, OPPBA's mere printing of a copy of that return and provision thereof to the PTF for a use that is unrelated to the United Nations's administration of the tax reimbursement programme might be considered to be "unlawful" under section 7213 (a)(3) of the Code. If that were to be the case, section 7213 (a)(3) of the Code provides that, "any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution."

7. Since, as we understand, OIOS's investigation in this case does not involve the administration of the United Nations tax reimbursement programme, it would be inappropriate for OPPBA to provide such taxpayer return information to OIOS in response to the request from PTF without the written consent of the two staff members concerned. Because of the possible violation of United States law that OPPBA officials conceivably could be said to have committed if they were to disclose such tax return information to OIOS *for purposes other than the administration of the Organization's tax reimbursement programme,* and in light of the confidentiality requirement set forth in the Information Circular, OPPBA should not provide such information to OIOS unless the staff member has consented to the disclosure of the tax return information or unless OIOS requires such information specifically to investigate alleged misconduct concerning the United Nations's tax reimbursement programme.

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[1] The United States Supreme Court has confirmed that "section 6103 of the Internal Revenue Code . . . lays down a general rule that 'returns' and 'return information' as defined therein shall be confidential" and that, when the provision was revised as part of the 1976 amendments of the Code, "one of the major purposes in revising § 6103 was to tighten the restrictions on the use of return information *by entities other than the [IRS].*" *Church of Scientology of Calif, v. Menial Revenue Service,* 484 U.S. 9, at 10 and 16, 108 S.Ct 271, 93 L.Ed.2d 228 (1987) (emphasis added).

8. Thus, in connection with OIOS's broad right to obtain information relevant to its investigations, if OIOS were investigating allegations of misconduct involving the administration of the Organization's tax reimbursement programme, then there would be no doubt that OIOS could and should have access to the taxpayer returns provided to OPPBA. However, to the extent that such taxpayer return information is germane to an OIOS investigation but does not concern the proper administration of the United Nations tax reimbursement programme, OIOS should specifically obtain the consent of a staff member concerned to the disclosure by OPPBA of such tax return information to OIOS. In this regard, pursuant to Staff Regulation 1.2 (r) and other applicable Staff Rules and pertinent administrative issuances, staff members have a duty to cooperate with OIOS and other United Nations authorities in connection with any investigations into alleged misconduct or other violations of the Organization's regulations and rules. Accordingly, a staff member's refusal to provide OIOS with a copy of such staff member's tax return, if required by OIOS to investigate possible misconduct, waste, or abuse, would be a violation of the staff member's obligations under the Staff Regulations and Rules.

(*d*) Interoffice memorandum to the Officer-in-Charge, Investments Management Service, United Nations Joint Staff Pension Fund (UNJSPF), regarding the Compliance Policy for the activities of the investment management service, UNJSPF

STATUS OF PROPOSALS UNDER THE COMPLIANCE POLICY TO ESTABLISH NEW STANDARDS AND RULES GOVERNING INVESTMENT MANAGEMENT ACTIVITIES IN SO FAR AS THEY DO NOT MERELY REITERATE ESTABLISHED STANDARDS—ABSENCE OF LEGAL BASIS FOR THE PROPOSED STANDARDS OF CONDUCT AND OPERATIONAL GUIDELINES—POSSIBILITY FOR STAFF TO SUCCESSFULLY CHALLENGE THEIR VALIDITY IF CHARGED WITH FAILURE TO COMPLY WITH THEM—NEW NORMS AND POLICIES MUST BE ESTABLISHED IN AN APPROPRIATE MANNER: FOR EXAMPLE TO BE PROMULGATED IN A NEW ADMINISTRATIVE INSTRUCTION*

13 August 2007

1. I refer to your memorandum of 26 July 2007, which this Office received on 2 August 2007, requesting comments on a draft "compliance policy" for the activities of the Investment Management Service (IMS), of the United Nations Joint Staff Pension Fund (Fund or UNJSPF). You stated that the draft Compliance Policy takes into account comments received from the Office of Internal Oversight Service (OIOS), OHRM and the Ethics Office, and reflects the observations of the Investments Committee, which discussed the draft Compliance Policy at its meeting in July 2007. You requested that we review the draft Compliance Policy "from a legal perspective" and that we provide any comments by 17 August 2007.

2. Your memorandum states that the "objectives of the Compliance Policy are to set out in one easily communicable paper the principles, standards, objectives and responsibilities of the office, in order to ensure clarity and transparency for the compliance function, and offer a single point of reference collecting all relevant papers that *govern the conduct of IMS staff members*" (emphasis added). It further indicates that the "responsibilities of the

* For information on Administrative Instructions, see note under 1 (*f*), above.

Compliance office of IMS consist in assisting senior management in effectively managing the compliance risk faced by the Fund, defined according to best practice as the risk of legal or regulatory sanctions, material financial loss or loss to reputation, [that] the Fund may suffer as a result of its failure to comply with laws, regulations, rules, related self-regulatory standards and codes of conduct applicable to its activities."

3. Based on the foregoing, and based on our review of the draft Compliance Policy, we understand that the proposed Compliance Policy would cover both operational aspects of the activities of IMS and standards of conduct for staff members serving in IMS. On the one hand, we recognize the value in creating a reference guide that would summarize *established* regulations, rules, policies and practices governing the activities and operations relating to investment of the assets of the Fund and the conduct of staff members carrying out activities relating thereto. On the other hand, we are concerned that those aspects of the proposed Compliance Policy that seek to establish new standards and rules governing such activities may not have the legal status that is desired.

4. For example, part V, section B (2), of the "Compliance Policy" provides that "in carrying out the investment operations of the IMS, staff members are required [,*inter alia*,] to adhere to the 'Code of Ethics and Standards of Professional Conduct' promoted by the Chartered Financial Analyst Institute (Annex C), regarded as a best practice in the investment services industry, as amended by notes and observations of the Compliance Office, in order to harmonize its guidance with the United Nations Staff Regulations and Rules, and the Standards of Conduct of the International Civil Service." Indeed, under the draft Compliance Policy, IMS staff members would be required to periodically "acknowledge" in writing their commitment to comply with the "Code of Ethics and Standards of Professional Conduct" of the Chartered Financial Analyst Institute (*see* draft Compliance Policy, Annex E). Likewise, we note that part IV, section A, of the "Compliance Policy" provides that compliance standards for IMS would include, "Guidelines and principles developed by international bodies and organizations, such as the Basel Committee on Banking Supervision or the Organization for Economic Co-operation and Development, providing frameworks in relation to issues such as corporate governance or corporate responsibility, as applicable to the Fund."

5. We are not aware of any resolutions or decisions of the General Assembly, any Regulations or Administrative Rules of the Fund, or any bulletin of the Secretary-General or other administrative issuance that has prescribed the "Code of Ethics and Standards of Professional Conduct" of the Chartered Financial Analyst Institute as a standard of conduct for staff members, or that has prescribed guidelines and principles developed by other international bodies and organizations as standards for the operations of IMS. Thus, establishing such standards of conduct or operational guidelines for the activities of IMS and its staff by means of the promulgation of the draft Compliance Policy may not have the desired effect of creating a legal basis for application of such standards or guidelines. This could lead to successful challenges by staff of IMS if they were to be charged with misconduct or unsatisfactory performance deriving from their alleged failure to comply with such standards of conduct or operational guidelines.

6. Pursuant to article 4 (c) of the Regulations of UNJSPF, "the administration of the Fund shall be in accordance with these Regulations and with the Administrative Rules consistent therewith which shall be made by the Board and reported to the General

Assembly and the member organizations" of the Fund. Article 19 of the Regulations of the Fund provides that, "the investment of the assets of the Fund shall be decided upon by the Secretary-General after consultation with an Investments Committee and in the light of observations and suggestions made from time to time by the Board on the investments policy." In addition to the foregoing, the General Assembly has promulgated resolutions concerning the four criteria for the investment of the assets of the Fund: safety, profitability, liquidity and convertibility.[1] The Secretary-General has appointed a Representative for the Investment of the Assets of the Fund as well as staff members of the Investment Management Service to assist him in carrying out his responsibilities under article 19 of the Regulations of UNJSPF for investment of the assets of the Fund. In accordance with Article 101 of the Charter of the United Nations, such staff members are subject to the United Nations Staff Regulations and Rules, the relevant resolutions and decisions of the General Assembly, and the administrative issuances promulgated in accordance with the ST/SGB/1997/1 of 28 May 1997 entitled "Procedures for the Promulgation of Administrative Issuances".[33]

7. Accordingly, to the extent that the draft Compliance Policy reiterates and summarizes established regulations, rules, administrative issuances and policies and procedures that are applicable to the activities of the Investment Management Service, the draft Compliance Policy may be a useful reference guide. Thus, for example, those matters addressed by the "Compliance Procedures Manual" of the draft Compliance Policy appear to summarize established policies and procedures concerning the investment activities of IMS. If these policies and procedures have already been vetted by the Secretary-General with the advice of the Investments Committee and, as appropriate, with the observations of the Board, in accordance with article 19 of the Regulations of UNJSPF, summarizing such established policies and procedures in the draft Compliance Manual would serve such purpose. Similarly, the draft Compliance Policy's reference to the "Status, Basic Rights and Duties of United Nations Staff Members," ST/SGB/2002/13, of 1 November 2002 (see draft Compliance Policy, Annex A), to the requirements for filing "Financial Disclosure and Declaration of Interest Statements," in accordance with ST/SGB/2006/6, of 10 April 2006, or to any other established regulations, rules or policies and procedures would similarly serve such purpose. We would caution, however, that the reproduction of the texts of any such materials, for example the so-called code of conduct for staff members set forth in Annex A of the draft Compliance Policy, should be carefully reviewed to ensure that the reproduced material is faithful to the original. In case of any doubt, the original materials could be included.

8. However, the draft Compliance Policy also appears to establish new norms of conduct for staff of IMS. These include the statement that staff members of IMS should adhere to the "Code of Ethics and Standards of Professional Conduct" of the Chartered Financial Analyst Institute or the requirement that they adhere to the "Guidelines and procedures on offers of gifts and hospitality," as set forth in Annex D of the draft Compliance

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[1] See, e.g., General Assembly resolution 33/121 of 19 December 1978. The General Assembly has reaffirmed these criteria on numerous occasions. See General Assembly resolutions 34/222 of 20 December 1979, 35/216 of 17 December 1980, 36/119 of 10 December 1981. More recently, the General Assembly referred to these criteria as being "established" criteria. See General Assembly resolution 49/224, part VIII, of 23 December 1994.

[*] For information on Secretary-General's Bulletins, see note under 1 (*g*), above.

Policy. Moreover, the draft Compliance Policy also appears to establish new policies governing the operations of IMS activities concerning the investment of the assets of the Fund, including references to guidelines and principles developed by other international bodies and organizations. If these norms of conduct or policies and guidelines are to become effective for the staff of IMS, then they should be promulgated in an appropriate manner and not in a proposed Compliance Policy that seeks to serve as "a single point of reference collecting all relevant papers that govern the conduct of IMS staff members." Thus, for example, an administrative issuance, promulgated in accordance with ST/SGB/1997/1, may have to be circulated in order to establish the "Code of Ethics and Standards of Professional Conduct" of the Chartered Financial Analyst Institute as an appropriate set of standards for investment activities, in doing so, the Secretary-General may have to consult with the Investments Committee and receive observations and suggestions from the Board in accordance with article 19 of the Regulations of the Fund.

9. Finally, we note that the Compliance Policy makes passing reference in various provisions to the need for compliance with laws, regulations, and rules. Any reference to any such laws, regulations and rules should, of course, be made within the context of the status and the privileges and immunities of the United Nations and the regulatory framework governing the Fund, as described in paragraph 6, above, in addition, we note that there is no reference to the United States Employee Retirement Income Security Act of 1974 (ERISA), under which the Fund has established itself as a "qualified" pension plan for purposes of favorable tax treatment for the participants and beneficiaries of the Fund. While this Office has previously advised that the Fund does not fall under the regulatory framework of ERISA from a procedural perspective (e.g., it is not subject to regulation and sanctions by the United States Department of Labor), this Office has also advised that, as much as possible and within the context of the status and the privileges and immunities of the United Nations and the regulatory framework governing the Fund, the Fund should adhere to the substantive aspects of ERISA, particularly those relating to the fiduciary duties owed to the participants and beneficiaries of the Fund.[2] To the extent that you may desire that the draft Compliance Policy appropriately reflects or references such substantive and relevant aspects of ERISA within such context, you may wish to request this Office to seek the review and advice of outside counsel retained by the Fund for questions relating to the legal aspects of the Fund's investments.

(*e*) Interoffice memorandum to the Chief, Procurement Service (PS), regarding the request for advice on the legality of monitoring telephone conversations between procurement staff and vendors

Right to privacy of United Nations staff members in the context of telephone conversations—Legality of monitoring telephone conversations of staff members—Under the current United Nations framework, monitoring of staff members' telephone conversations permitted only under certain circumstances and for so long as reasonably necessary to ascertain whether suspected misconduct

[2] The General Assembly has confirmed that the Secretary-General acts as "a fiduciary . . . for the interests of participants and beneficiaries of the United Nations Joint Staff Pension Fund under the Regulations and Rules of the Fund" (see General Assembly resolution 35/216 B of 17 December 1980).

HAS OCCURRED—ILO RECOMMENDATIONS REGARDING PROTECTION OF WORKERS' PERSONAL DATA—SURVEY OF NATIONAL JURISDICTIONS REVEALS TWO CONTRASTING APPROACHES REPRESENTED BY THE UNITED STATES (US) AND THE EUROPEAN UNION (EU)

14 November 2007

1. I refer to your memorandum of 15 August 2007, by which you sought advice of the Office of Legal Affairs (OLA) on the legality of monitoring telephone conversations between vendors and United Nations procurement officers. We understand that such proposal has been recently advocated as an internal control measure. In a telephone conversation with the Procurement Service (PS) held subsequent to the receipt of your memorandum, OLA was further informed that PS was seeking our advice on the legality of both (a) undisclosed and (b) disclosed monitoring of such telephone conversations. Finally, we understand that such monitoring is envisioned at the Headquarters in New York as well as at other United Nations duty stations and peacekeeping operations.

2. In rendering our advice, we have examined both the United Nations legal regime as well as that of the International Labour Office and of various jurisdictions around the world. We have concluded that, under the current United Nations framework, the investigation and monitoring of staff members' telephone conversations is permitted only under certain circumstances and can continue only for so long as is reasonably necessary to ascertain whether suspected misconduct had occurred. Our research of various jurisdictions worldwide has revealed two contrasting approaches *vis-à-vis* the monitoring of employees' telephone calls. The first, represented by the United States (US) position, generally permits the employer to monitor an employee's telephone conversation "in the ordinary course of business" or with the employee's consent. The second, represented by the European Union (EU), is much more protective of the workplace privacy of employees, and allows such monitoring only if it is previously disclosed and with the employees' consent.

Analysis

A. Monitoring telephone calls under the current United Nations legal framework

3. The Secretary-General's bulletin on "Use of information and communication technology (ICT) resources and data" (ST/SGB/2004/15)* concerns the proper use of information technology and related resources and data and addresses, *inter alia,* the monitoring and investigation of ICT data. Section 1 of the bulletin defines "ICT data" as "any data or information, regardless of its form or medium, which is or has been electronically generated by, transmitted via, received by, processed by, or represented in an ICT resource." ICT resource is defined as "any tangible or intangible asset capable of generating, transmitting, receiving, processing, or representing data in electronic form, where the asset is owned, licensed, operated, managed, or made available by, or otherwise used by, the United Nations." According to the Commentary annexed to the bulletin, ICT data covers telephone conversations and telephone logs.

4. Under section 7 of ST/SGB/2004/15, the use of ICT resources and ICT data is subject to monitoring and investigation. However, such monitoring and investigation may be conducted only by the Information Technology Services Division (ITSD), corresponding offices away from Headquarters as designated by the Department of Management, or the

* For information on Secretary-General's Bulletins, see note under 1 (*e*), above.

Office of Internal Oversight Services (OIOS). Moreover, such monitoring and investigation must be conducted in accordance with certain procedures and requirements, such as proper authorization. (See section 8 and section 9 of the bulletin.) In addition, staff members and their supervisors must be informed immediately preceding access to their ICT resources or ICT data, and monitoring or investigation may continue for only so long as is reasonably necessary to ascertain whether the suspected misconduct has occurred. (See section 8.5 (a) and section 8.5 (f).)

5. It follows from the foregoing that, in the absence of a reasonable suspicion that misconduct had occurred, the continuous monitoring of staff members' telephone calls for indefinite periods would not be permissible under the present United Nations legal regime.

B. The International Labour Office

6. The International Labour Office (ILO) is the International Labour Organization's secretariat, research body and publishing house. In 1997, the ILO published a code of practice on the "Protection of Workers' Personal Data." The code has no binding force and is intended to serve as a guide in the development of legislation, regulations, work rules and policies. It was adopted by a Meeting of Experts on Workers' Privacy of the ILO. The meeting was composed of 24 experts, eight of whom were appointed following consultation with governments (including India, South Africa, the Netherlands, Australia, Uruguay, Canada, Norway and Germany) and eight each following consultations with the Employers' and Workers' Groups of the Governing Body.

7. According to section 6.14 (1) of the above-mentioned code, "if workers are monitored they should be informed in advance of the reasons for monitoring, the time schedule, the methods and techniques used and the data to be collected, and the employer must minimize the intrusion on the privacy of workers." Secret monitoring should be permitted only if it is in conformity with national legislation, or if there is suspicion on reasonable grounds of criminal activity or other serious wrongdoing (See section 6.14 (2).) Finally, "continuous monitoring should be permitted only if required for health and safety or the protection of property." (Section 6.14 (3).)

8. As stated above, the ILO code of practice is not legally binding and does not replace national laws, regulations, international labour standards or other accepted standards. However, it sets forth recommendations for the development of national legislation, work rules, policies and practical measures dealing with workplace monitoring.

C. The United States position

9. Both US federal and state laws prohibit, with some exceptions, intercepting telephone conversations. The federal law, Title III of the Omnibus Crime Control and Safe Streets Act of 1986 (also known as the Wiretap Act) – which was amended in 1986 to cover electronic communications and in 1994 to encompass cordless telephones – prohibits intentionally intercepting any wire, oral or electronic communications or using or disclosing a communication's contents when a person knows that the communication was intercepted. (See 18 USC Section 2511.) However, Title III provides two exceptions, namely, the "business extension exemption," and the "consent" exception.

(1) The "Business Extension Exemption"

10. The "business extension exemption" permits undisclosed phone-call monitoring when the equipment used to listen in falls outside the statute's definition of a "device" used to intercept communications. Specifically, any telephone equipment furnished to a company by a communications service provider that is used "in the ordinary course of its business" does not constitute an intercepting "device" within the meaning of the statute.[1] (See USC Section 2510(5)(a)). Since no device is involved in monitoring or recording phone calls in such situations, the statute does not apply.

11. Many federal courts have held that use of standard extension telephones, furnished directly by telephone service providers to a company, falls within the exception. Moreover, if the telephone conversation of an employee pertains to business matters, the business extension exemption generally applies. Finally, many courts have held that non-business-related phone calls can be monitored only to the extent necessary to ascertain their personal nature. Hence, if an employer eavesdrops on a private phone call and overhears personal, private details about an employee's life, and a reasonable person would find that the disclosure of such information is offensive or embarrassing, the employer would be at risk in an invasion of privacy lawsuit. In the US, however, tortious invasion of privacy applies narrowly in the employer-employee relationship.

12. Nevertheless, relying on the "business extension exemption" poses certain risks since its application relies on the following imprecise determinations: whether the call uses a regulated device, whether the call is personal and, if so, whether the monitoring of the call ceased early enough.

(2) The consent exception

13. According to Title III, it is not unlawful to intercept telephone communications if one of the parties to the communications has given prior consent. (See 18 USC Section 2511 (2)(d)). Hence, under federal law, employers can lawfully monitor their employees' calls with the latter's prior consent. Consent has been found where an employer had notified its workers that it reserved the right to monitor calls, such as through employee handbooks or signed acknowledgements. Although most state wiretapping laws (including New York) apply the federal "one-party" consent, twelve states also require third parties (such as customers or clients) to consent in order to preclude application of their wiretap laws. Consent of third parties has been found where a verbal announcement has been provided at the beginning of incoming calls notifying such parties of the monitoring policy and of the

[1] Some US circuit courts have held that an employer violates the Wiretap Act when it uses non-standard telephone monitoring equipment, i.e., equipment that is neither obtained nor installed by a standard service provider. For example, one court ruled that a reel to reel tape recorder that continuously recorded seven phone lines did not qualify for the exclusion, since it did not further the plant's communication system. Another court ruled that a recorder purchased at [Company] which connected to an extension phone line and automatically recorded all conversations was the device that intercepted the phone calls (as opposed to the extension phone), and that the recorder did not qualify as telephone equipment for purposes of the exclusion. However, courts have held that "recorders that are highly specialized, expensive hardware designed to add monitoring functions to a commercial telephone system," are. distinguishable from "off-the-shelf recording devices available at retail outlets and useful for other stand-alone recording applications," and that such specialized recorders fall within the telephone equipment exception to the Wiretap Act.

purpose for the monitoring policy, or where employees have recited a similar announcement of the monitoring policy when making outbound calls to third parties.

(3) Summary of the United States position

14. In summary, federal US law allows undisclosed monitoring for business-related telephone calls. However, when an employer realizes that the call is personal, it is obliged to stop monitoring the call. In light of the uncertainties concerning what constitutes a personal call, employers wishing to monitor telephone calls can better protect themselves from legal challenges if they pursue the second main exception to Title III: consent. While most state wiretapping laws (including New York) apply the federal "one-party" consent, twelve states also require third parties (such as customers or clients) to consent in order to preclude application of their wiretap laws.

D. The European Union position

15. In contrast to the legal regime in the US, the European Union provides significant protection for personal data in the workplace. The European Court of Human Rights (ECHR) recently held in *Copland* v. *United Kingdom* (62617/00 [2007] ECHR 253 (3 April 2007) that an employee's privacy, as safeguarded by article 8 of the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms (the "European Convention"),* was breached by the employer's monitoring of the employee's telephone, e-mail and internet usage at the place of work. Moreover, the European Union's legislation mandates broad protection for employees' personal data.

(1) Article 8 of the European Convention

16. Article 8 of the European Convention provides that "Everyone has the right to respect for his private and family life, his home and his correspondence." *In Copland* v. *United Kingdom,* the European Court of Human Rights held that an employer's undisclosed monitoring of an employee's telephone conversations and e-mail to ascertain whether the employee was making improper use of the work facilities for personal purposes breached article 8 of the European Convention. The Court concluded that "telephone calls from business premises are *prima facie* covered by notions of 'private life' and 'correspondence.'" Under the Court's ruling, business telephone calls affect "private life" and may contain "personal information" protected by human rights and, presumably data protection law.

17. Significantly, the Court held that, even if the telephone monitoring were limited to "the date and length of telephone conversations" and "the numbers dialled," the monitoring would still give rise to a cause of action under article 8. Moreover, the Court concluded that, in the absence of any warning to the employee that her telephone calls could be monitored, the employee had a "reasonable expectation" that they would not be.

18. According to the Court, even in the absence of applicable national data protection law, article 8 presumes that workplace communications will not be monitored. The Court emphasized that article 8 requires that monitoring must be "in accordance with the law," and that "the law must be sufficiently clear in its terms to give individuals an adequate

* United Nations, *Treaty Series,* vol. 213, p. 221.

indication as to the circumstances in which and the conditions on which authorities are empowered to resort to any such measures."

19. The Court also held that, in the case of public authorities, the law must be "necessary in a democratic society, in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." In addition, the law must be proportional, meaning that no other less intrusive measures could achieve the same goal.

(2) Recommendation No. R (89) 2 of the Council of Europe

20. The Council of Europe adopted Recommendation No. R(89)2 (the "Recommendation") in order to adapt the provisions of the European Convention to the employment sector. Accordingly, it recommended that the governments of member States ensure that the principles contained in the Recommendation be reflected in the application of domestic legislation on data protection to the employment sector, as well as in other branches of the law bearing on the use of personal data for employment purposes.

21. According to article 3 (1) of the Recommendation, "employers should, in advance, fully inform or consult their employees or the representatives of the latter about the introduction or adaptation of automated systems for the collection and use of personal data of employees. *This principle also applies to the introduction or adaptation of technical devices designed to monitor the movements or productivity of employees*." (Emphasis added). Moreover, article 3 (2) stipulates that "the agreement of employees or their representatives should be sought before the introduction or adaptation of such systems or devices where the consultation procedure referred to in paragraph 3.1 reveals a possibility of infringement of employees' right to respect for privacy and human dignity unless domestic law or practice provides other appropriate safeguards."

22. Some member States, including Belgium, have adopted the Recommendation by legislating that the individual consent of the employee is required before the introduction or adaptation of automated systems for the collection of personal data. Such consent could be obtained, for example, through the execution of an *ad hoc* agreement or by modifying the employment contract.

(3) European Union Directive 95/46

23. Directive 95/46 EC (the "Directive") on the protection of individuals with regard to the processing of personal data and on the free movement of such data aims to protect the right to privacy with respect to the processing of personal data and specifies minimum requirements for national legislations on data protection. The Directive contains provisions on fair and lawful data processing and sets forth the criteria for making data processing legitimate. "Data processing" is defined as "any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction."

24. According to article 7 of the Directive, personal data may be processed only if: (1) unambiguous consent has been provided, (2) the processing is necessary for the

performance of a contract to which the data subject is party, (3) processing is necessary for compliance with a legal obligation to which the controller is subject, (4) processing is necessary in order to protect the vital interests of the data subject, (5) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed, or (6) processing is necessary for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed, except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject.

25. The Working Party on the Protection of Individuals with regard to the Processing of Personal Data set up by article 29 of the Directive has provided guidance on how internal whistleblowing schemes can be implemented in compliance with the EU data protection rules set forth in the Directive. (This guidance is set out in the Opinion 1/2006 on the application of EU data protection rules to internal whistleblowing schemes in the fields of accounting, internal accounting controls, auditing matters, fight against bribery, banking and financial crimes). According to the foregoing Opinion, for a whistleblowing scheme to be lawful, the processing of personal data needs to be legitimate and satisfy one of the grounds set out in article 7 of the Directive. Two grounds would be relevant: either (a) the establishment of a whistleblowing system in compliance with a legal obligation, or (b) the establishment of such system for the purposes of a legitimate interest pursued by the controller or by the third party to whom the data are disclosed. The Working Party has stressed the importance of striking a balance between the right to privacy and the interests pursued by whistleblowing schemes.

(4) National legislation within the EU

26. In some of the EU member States the right to privacy is incorporated in the constitution (e.g., Belgium, Finland, Germany, Greece) or implied from a certain constitutional right (e.g., Austria, Ireland and Norway). In the case of France, such right is incorporated in the Civil Code; in the case of the United Kingdom, in the Human Rights Act. Moreover, all EU member States are parties to the European Convention. While EU states have implemented the Directive, specific legislation concerning data protection in the workplace has not been promulgated in all national jurisdictions, and general privacy and secrecy provisions cover workers' privacy as well.

(5) Summary of the EU position

27. The European Union takes a more protective approach *vis-à-vis* employees' privacy rights than does the US. Under the existing EU legal regime, undisclosed monitoring of employees' telephone calls would violate article 8 of the European Convention from the perspective of both the employee and the third party to the communication. Thus, employers are first obliged to disclose to their employees the potential surveillance of telephone calls. Second, employees and third parties to telephone communications must also provide their consent to such surveillance. Third, such surveillance needs to fulfil the requirement of proportionality, meaning that no other less intrusive measures could achieve the same goal.

E. Conclusion

28. Under the current UN legal regime, the monitoring of staff members' telephone conversations requires proper authorization, and is permitted only when misconduct is suspected and for so long as is reasonably necessary to ascertain whether such suspected misconduct had occurred.

29. Our research of various jurisdictions has revealed two disparate positions *vis-à-vis* an employer's right to monitor the telephone calls of employees. The first is exemplified by the US position, and generally permits the employer to monitor an employee's telephone conversation "in the ordinary course of business" or with the employee's consent. As explained in paragraphs 10–12 above, if such monitoring is conducted "in the ordinary course of business," and if the conversation pertains to business matters, employers are permitted to conduct phone monitoring secretly. However, non-business-related phone calls can be monitored only to the extent necessary to ascertain their personal nature. US federal law also allows phone monitoring if the employee has given prior consent. Although most US states require only one party's consent, twelve states require all parties to a communication to consent in order to preclude application of their wiretap laws.

30. The EU position on this matter is more protective of the employees' right to privacy. Accordingly, undisclosed monitoring of employees' phone calls akin to the "business extension exemption" in the US is not permitted. Monitoring of employees' phone calls must be disclosed, and employees as well as third parties to the phone conversations must provide their consent.

31. As explained above, the current United Nations legal regime does not permit the monitoring of staff members' telephone calls except in very limited circumstances. Consequently, should it be decided, as a matter of policy, to institute such phone monitoring within the Organization, it would be necessary to promulgate a Secretary-General's bulletin that clearly sets forth all policy parameters and detailed modalities of such monitoring.

32. Accordingly, such bulletin should seek to establish a regime whereby the right of staff members, including that to the privacy of their personal data, and the duty to protect the assets and good name of the Organization are balanced. Crucial importance should be given to the following:

– explaining to staff why communications will be monitored;

– obtaining express written consent to the interception from each staff member; or, in the alternative, promulgating such bulletin after obtaining "collective consent" through staff-management consultations; and

– obtaining the consent of third parties to the telephone conversations.

33. While the practical implementation of these recommendations may be challenging, it is imperative that the steps to obtain employee and third-party consent be taken in order to protect the Organization from legal challenges and potential claims.

(*f*) Interoffice memorandum to the Secretary of the Human Rights Council, Office of the High Commissioner for Human Rights (OHCRH), regarding possible right of non-members of the Human Rights Council to raise points of order

Rules of procedures of the Human Rights Council (HRC)—General application of the rules of procedure established for Committees of the General Assembly—General United Nations practice to reserve procedural motions concerning conduct of business to full members of an organ, including the right to raise a procedural point of order—Rule 113 of the General Assembly rules of procedure—General right of non-member States of an organ to raise a non-procedural point of order or to make comments on a procedural matter—Specific right of States non-members of HRC to raise points of order, but not to challenge a ruling by the presiding officer

19 November 2007

1. I refer to your memorandum of 5 November 2007, whereby you seek the advice of this Office on whether non-members of the Human Rights Council (HRC) should have the right to raise points of order, "now that the HRC is a subsidiary body of the General Assembly". You indicated that this matter would be considered at the resumed Sixth session of the HRC, which is to be held from 10 to 14 December 2007.

Background

2. In your memorandum, you refer to a letter dated 26 September 2007 from the Permanent Representative of [State], on behalf of the [Regional] Group, to the HRC President requesting clarification of the "the right of non-members of the Council to make a 'Point of Order' during its deliberations." In his letter, the Permanent Representative of [State] notes that this matter was referred to in "the discussion that took place in the Council's meetings of 20/9/2007".

3. You also refer to the practice of the former Commission on Human Rights, as reflected in the Note by the Secretariat entitled "Main rules and practices followed by the Commission on Human Rights in the organization of its work and the conduct of its business" of 7 February 2002 (E/CN.4/2002/16). That Note states that "the Commission shall continue to apply the ruling made by the Chairperson of its fifty-fifth session giving the observer for Palestine the right to raise points of order 'relating to the Palestinian and Middle East issues', provided that the right to raise such a point of order shall not include the right to challenge a decision by the presiding officer" (para. 33).

4. With regard to Member States not members of the Commission, the Note states that "the right to raise points of order was also extended to representatives of State Members of the United Nations not members of the Commission on Human Rights but participating in its work in an observer capacity" (para. 34).

Applicable rule and decision

5. The HRC rules of procedure, adopted by resolution 5/1 of 18 June 2007, entitled "Institution-building of the Human Rights Council", are silent on this matter. In that context, rule 1 of the HRC rules of procedure states that "[t]he Council shall apply the rules

of procedure established for Committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council".

6. The relevant rule in the General Assembly rules of procedure is rule 113, which reads as follows:

> "During the discussion of any matter, a representative may rise to a point of order, and the point of order shall be immediately decided by the Chairman in accordance with the rules of procedure. A representative may appeal against the ruling of the Chairman. The appeal shall be immediately put to the vote, and the Chairman's ruling shall stand unless overruled by a majority of the members present and voting. A representative rising to a point of order may not speak on the substance of the matter under discussion."

7. However, by operative paragraph 11 of its resolution 60/251 of 3 April 2006, establishing the HRC, the General Assembly provided that the participation of and consultation with "observers, including States that are not members of the Council [. . .] shall be based on arrangements [. . .] and practices observed by the Commission on Human Rights".

Analysis

8. In accordance with United Nations practice, procedural motions which concern conduct of business are reserved for full members of the organ. Points of order raised under rule 113 are procedural motions, as by definition, they are questions relating to conduct of business which require a ruling by the presiding officer and are subject to possible appeal. Accordingly, the right to raise a point of order should be reserved solely for full members of the HRC.

9. However, as explained in paragraph 79 of annex V to the General Assembly rules of procedure, United Nations practice also provides for representatives, as a means of obtaining the floor, to make a "point of order" when requesting for information or clarification or to make remarks relating to material arrangements including, but not limited to seating arrangements, interpretation system, the temperature in the room, documents, or translations. These are not procedural "points of order" as defined by rule 113. However, they may be raised by non-members and addressed by the presiding officer without requiring a ruling. Statements or comments on procedural matters made by non-members are also considered to fall outside the purview of rule 113 and therefore permissible. Beyond that, the Note by the Secretariat E/CN.4/2002/16 (see, paragraph 4 above) makes it clear that even in the case of rule 113, Member States of the Organization not members of the Commission are entitled to raise points of order, but not including the right to challenge a ruling by the presiding officer.

10. In the specific case of Palestine, General Assembly resolution 52/250 of 13 July 1998, entitled "Participation of Palestine in the work of the United Nations", granted Palestine the "right to raise points of order related to the proceedings on Palestinian and Middle East issues, provided that the right to raise such a point of order shall not include the right to challenge the decision of the presiding officer". The Secretary-General further clarified that Palestine did not have the right to raise points of order in connection with the actual conduct of voting. (See A/52/1002 of 4 August 1998.) The ruling of the President of the Commission of Human Rights contained in document E/CN.4/2002/16 reflected both General Assembly resolution 52/250 and the advice provided by this Office on 1, 6, and 14 April 1999.

11. We note that in this regard the intention of the Assembly was to expand the rights of Palestine, not to grant them rights in excess of those enjoyed by Member States which are non-members of organs with limited membership.

12. We would also draw your attention to General Assembly resolution 58/314 of 1 July 2004, entitled "Participation of the Holy See in the work of the United Nations", and the subsequent Note of the Secretary-General contained in document A/58/871 of 16 August 2004, which grants the Holy See the right to raise points of order "relating to any proceedings involving the Holy See." Similar to the case of Palestine, this right does not allow the Holy See to challenge the decision of the presiding officer or raise a point of order in connection with the actual conduct of voting.

ADVICE

13. Palestine and the Holy See, by virtue of resolutions 52/250 and 58/314 quoted above, are entitled to raise points of order under rule 113 in the HRC. Pursuant to those resolutions, these entities are not permitted to challenge the decision of the presiding officer or to raise points of order in connection with the actual conduct of voting.

14. With respect to Member States which are non-members of the HRC pursuant to resolution 60/251, they may raise points of order under rule 113 but not make other procedural motions, including appealing the ruling of the presiding officer.

3. Procurement

(*a*) Interoffice memorandum to the Assistant Secretary-General and Controller, regarding the participation by non-United Nations officials in evaluations for procurement exercises undertaken by the United Nations

PROCUREMENT RULES AND REGULATIONS WITHIN THE UNITED NATIONS SYSTEM—PROCUREMENT EXERCISES PURSUANT TO DEVELOPMENT OR TECHNICAL ASSISTANCE PROJECTS—ONLY UNITED NATIONS OFFICIALS ENTITLED TO PERFORM PROCUREMENT FUNCTIONS—GENERAL ASSEMBLY MAY AUTHORIZE COOPERATION WITH GOVERNMENTS IN RESPECT OF PROCUREMENT ACTIVITIES, INCLUDING IN CARRYING OUT COMMON PROCUREMENT ACTIONS

15 March 2007

1. I refer to your note, dated 29 January 2007, and received on 7 February 2007, addressed to the Chair, Headquarters Committee on Contracts (HCC), and to the Chief, Procurement Service . . . Your note concerned a case considered by HCC in which a representative from a beneficiary Government of a project managed by the Department of Economic and Social Affairs (DESA) participated in the technical evaluation of a procurement exercise undertaken by DESA under that project. In your note, you requested this Office to review whether or not non-United Nations staff, in particular counterpart officials from beneficiary countries, should continue to participate in evaluations of procurement exercises undertaken by the United Nations.

2. As an initial matter, I understand that it has long been the practice to involve officials of either donor or beneficiary Governments, or both, in procurement exercises undertaken pursuant to development or technical assistance projects. In this regard, I

further understand that the involvement of such Government officials in procurement processes in respect of such projects has been considered necessary in order to ensure that the donor or beneficiary Governments would be satisfied with the use of technical assistance resources managed by the Organization. However such practice has evolved, it is not clear from the information provided with your Note whether or not the involvement of such Government officials in such procurement processes has been consistent with the Financial Regulations and Rules and the procurement policies and practices of the Organization relating to cooperation with other entities, including Governments, for common procurement activities.

3. In this regard, Financial Rule 105.11 provides that, "Management and other support services may be provided to Governments, specialized agencies and other international and intergovernmental organizations or in support of activities financed from trust funds or special accounts on a reimbursable, reciprocal or other basis *consistent with the policies, aims and activities of the United Nations,* with the approval of the Under-Secretary-General for Management" (emphasis added). Pursuant to that Financial Rule, any management support provided to donor or recipient Governments in respect of development or technical assistance projects must be performed in a manner consistent with the policies of the Organization.

4. In this regard, Financial Rule 105.13 (a) provides that the "Under-Secretary-General for Management is responsible for the procurement functions of the United Nations, shall establish all United Nations procurement systems *and shall designate the officials responsible for performing procurement functions*" (emphasis added). Thus, normally, only United Nations officials could be authorized, in accordance with the Financial Regulations and Rules, to perform "procurement functions," which include evaluations of bids or proposals submitted by prospective vendors of goods or services to be procured by the Organization. This principle is also reflected in the Procurement Manual. Thus, section 11.6.2 (1) of the Procurement Manual (Rev.3, August 2006), states that, "[p]rior to recommendation for contract award, it is the joint responsibility of the Procurement Officer, the requisitioning office, and programme managers (Source Selection Committee) to ensure that the Submission of the Selected Vendor fulfils all [of] the requirements of the Solicitation Document." Thus, the provisions of the Financial Regulations and Rules, as well as the Procurement Manual, concerning evaluations of bids or proposals submitted by prospective vendors of goods or services to be procured by the Organization appear to contemplate that only officials of the Organization would be involved in the evaluation of such submissions by vendors.

5. It should be noted, however, that Financial Rule 105.17 provides that the United Nations "may cooperate with other organizations of the United Nations System, provided that the regulations and rules of those organizations are consistent with those of the United Nations" and "may, as appropriate, enter into agreements for such purposes." That Rule also provides that the United Nations, "may, to the extent authorized by the General Assembly, cooperate with a Government, nongovernmental organization or other public international organization in respect of procurement activities and, as appropriate, enter into agreements for such purposes." The Rule also states that, "[s]uch cooperation may include *carrying out common procurement actions together* or the United Nations[‘] entering into a contract relying on a procurement decision of another United Nations organiza-

tion or requesting another United Nations organization to carry out procurement activities on behalf of the United Nations" (emphasis added).

6. Based on the foregoing, while the rules governing the performance of procurement functions provide that only United Nations staff members are to be involved in the evaluation of vendor submissions, the cooperation with officials of donor or beneficiary Governments in carrying out procurement activities, including evaluations, is specifically permitted under the Financial Regulations and Rules. However, any such cooperation between United Nations staff members and officials of donor or beneficiary Governments must be authorized by the General Assembly and may be subject to an appropriate agreement with such Government.

7. Accordingly, in order to determine whether the cooperation that took place with the beneficiary Government, which was involved in the DESA procurement exercise referred to in your note, was consistent with Financial Rule 105.17, it would be necessary to review the General Assembly mandate underlying the development or technical assistance project at issue, as well as the management services agreement between the Organization and the donor or beneficiary Government(s) involved.

(*b*) Interoffice memorandum to the Chief, Procurement Service, regarding the procurement authority of the United Nations Joint Staff Pension Fund (UNJSPF) for the approval of a new contract for banking services

Respective roles, responsibility and accountability for procurement of the Procurement Service and UNJSPF—UNJSPF is a subsidiary body of the General Assembly as well as an inter-agency body—Established practice of UNJSPF to utilize procurement services of the United Nations and to adhere to its financial rules and regulations—Responsibility of the UNJSPF Board to decide the responsibility of the UNJSPF Chief Executive Officer with respect to procurement activities—Such activities should be undertaken through the normal United Nations procurement machinery except in exceptional circumstances

5 July 2007

1. This responds to your memorandum of 22 May 2007, requesting advice in connection with procurement authority for the approval of a new contract with [Bank] for banking services for the United Nations Joint Staff Pension Fund (UNJSPF or the "Fund"). Your memorandum stated that, in the past, both the Procurement Service and the Fund have signed such banking agreements, including the contract with [Bank], which is now in the process of being extended. Your memorandum also stated that UNJSPF has informed you that it will be a "full-fledged party in all the process, including *post-facto* regularization and future bidding out of the services." Your memorandum asserted that "UNJSPF was granted direct procurement authority by the General Assembly in its resolution 51/217 paragraphs 111 and 112." Thus, you concluded that the Procurement Service has no authority over the UNJSPF's procurement delegation so that any recommendation made by the Procurement Service or the Headquarters Committee on Contracts (HCC) would have to be submitted to the Chief Executive Officer (CEO) of UNJSPF. In order to prevent any uncertainty with respect to the delineation between the Procurement Service and UNJSPF

regarding their respective roles, responsibility and accountability for procurement, you have asked this Office to clarify the appropriate procedure to follow.

2. UNJSPF was established as a subsidiary organ of the General Assembly. However, it is also an inter-agency body administered by the Board of UNJSPF, which reports to the General Assembly. The operation and the administration of the Fund are governed by the Regulations of UNJSPF, promulgated by the General Assembly. The Secretary of the Board, who also serves as the Chief Executive Officer of the Fund (see Art. 7 of the Regulations of UNJSPF), acts under the authority of, and reports to, the Board of UNJSPF.

3. The procurement activities of the Fund fall within the administrative responsibilities of the Chief Executive Officer within the meaning of article 7 of the Regulations of UNJSPF. However, it has been the long-standing practice of the Fund to utilize the procurement services of the United Nations and to adhere to the United Nations Financial Regulations and Rules, subject to any decisions made by the Assembly in respect of the Fund. Thus, in Part V, paragraph 4 of its resolution 51/217, dated 18 December 1996, the General Assembly,

> "request[ed] the Secretary-General to continue to make available to the Fund the United Nations machinery for contracting and procurement, as recommended by the United Nations Joint Staff Pension Board in paragraph 111 of its report [A/51/9]."

In paragraph 111 of the report cited by the General Assembly in that resolution, the UNJSPF Board stated that it had decided to recommend that the General Assembly request the Secretary-General to,

> "continue to make available to the Fund the United Nations machinery for contracting and procurement (i.e., the services of the United Nations Purchase and Transportation Division (United Nations/PTD) and the Headquarters Committee on Contracts). Under this arrangement, reviews and recommendations with respect to the Fund's contracting and procurement actions, made by United Nations/PTD or the Headquarters Committee on Contracts, would be submitted directly to the Secretary for decision."

In addition, in paragraph 112 of its report (A/51/9), the Board also stated that it had,

> "agreed to authorize the Secretary to continue to act on his own authority in the following special situations (which the Board expected to be quite rare):
>
> "(a) United Nations/PTD could not complete the process within the required timeframe;
>
> "(b) The Secretary was unable to accept a particular recommendation made by the United Nations/OTD or by the Headquarters' Committee on Contracts; or
>
> "(c) United Nations/PTD informed the Secretary that a particular contract or procurement could not be carried out by that Office."

4. In its resolution 51/217, the General Assembly had to refer to paragraph 111 of the Board's report on the question of the CEO's procurement authority, since it was fulfilling the Board's request that the General Assembly request the Secretary-General to make the United Nations' procurement "machinery" available to the CEO of the Fund. In that resolution, the General Assembly did not have to refer to the following paragraph 112 of the Board's report, in which, within its authority under article 7 of the Fund's Regulations, the Board authorized the CEO to deviate from the normal United Nations procurement practices in the exceptional circumstances described in that paragraph. Thus, it seems

clear that, as stated in Part V, para. 4, of its resolution 51/217, in recommending that the Secretary-General continue to make the United Nations procurement "machinery" available to the CEO of the Fund, the General Assembly took no issue with, and took into account, that the Board had also authorized the CEO to act on his own authority (i.e., outside of the United Nations procurement machinery) only in the special circumstances described in paragraph 112 of the Board's report, which the Board "expected to be quite rare." Paragraph 112 of the Board's report further requires the CEO to report any cases to the Board in which the CEO exercises such authority to conduct procurement activities outside of the United Nations Procurement Service "machinery."

5. Article 2 of the Regulations of the Fund authorizes the Board of UNJSPF to interpret the Regulations of the Fund. Thus, it is ultimately the role of the Board of UNJSPF to decide what the responsibility of the CEO should be with respect to procurement activities undertaken for the Fund under the Regulations of UNJSPF. As discussed above, the Board has taken a decision that such procurement activities should be undertaken by the CEO through the normal United Nations procurement machinery, except in the exceptional circumstances set forth in paragraph 112 of the Board's report. Thus, the statement in your memorandum that "UNJSPF was granted direct procurement authority by the General Assembly," does not appear to accurately reflect the decision of the Board and observed by the General Assembly concerning how procurement activities for the Fund should be conducted. Rather, the normal United Nations procurement processes are to be used for the procurement requirements of the Fund (e.g., the assistance of the Procurement Service in identifying sources of supply, and the services of the Headquarters Committee on Contracts in reviewing procurement activities), except that the final decision on the Fund's procurement activities is to be taken by the CEO of the Fund, rather than by the United Nations' Chief Procurement Officer. Any deviations from the foregoing practice made by the CEO of the Fund must be consistent with the circumstances described in paragraph 112 of the Board's report and must be specifically brought to the attention of the Board by the CEO.

4. Other issues relating to peacekeeping operations

(*a*) Note to the Under-Secretary-General for Peacekeeping Operations, regarding the provisional arrangements for the administration of United Nations Interim Administration Mission in Kosovo (UNMIK) travel documents during the post-status period and beyond the completion of UNMIK's mandate

Transition between UNMIK and the new authorities in Kosovo—Travel documents issued by the new Kosovo authority considered preferable—Extending the validity of the existing UNMIK travel document viewed only as the solution of last resort

15 February 2007

1. I refer to the Special Representative of the Secretary-General's code cable of 25 January 2007 regarding the need for an interim arrangement for travel documents to cover the immediate post-UNMIK period until the new Kosovo authority is able to issue its own

European Union-compliant travel document. While acknowledging that the issuance of travel documents in the post-UNMIK period by the future authorities of Kosovo would be the preferred option, the most realistic one, in UNMIK's view, seems to be extending the validity of the existing UNMIK Travel Document. An interim solution of issuing temporary travel documents is also proposed in paragraph 4 of the code cable.

2. With the completion of UNMIK's mandate, the UNMIK issued Travel Document will cease to have legal validity. Under the current Settlement proposal, this should occur at the conclusion of the 120-day transition period that starts from the entry into force of the Settlement. While it should be possible to secure extension of the recognition of the Travel Document beyond UNMIK's existence, we would not recommend this as the primary or sole solution. In the choice between using travel documents issued by the new Kosovo authority or travel documents of a "defunct" UNMIK, we should opt for the former, within whose power and authority the issuance of travel documents would rightfully fall in the post-UNMIK period. We are not convinced that, at this point in time, it can already be assumed with certainty that 8 more months, after the 4 month transition period (the starting date of which is yet to be determined) would be required in order for the new authorities to issue secure, European Union-compliant, travel documents. All efforts should, therefore, be made to put in place as early as practically possible, the necessary arrangements for the production of travel documents, or at least temporary ones. Extending UNMIK's Travel Documents should be a solution of last resort. We should note here that negotiations with relevant States to secure their recognition of the new (or revised) travel documents will be required for all of the options suggested.

3. For the foregoing reasons, we recommend that the Department of Peacekeeping Operations (DPKO) and UNMIK first pursue the interim solution suggested in paragraph 4 of the code cable.

4. Finally, we recommend that a decision on whether to extend UNMIK's travel documents beyond UNMIK's mandate and, if so, under what conditions and for how long, should be deferred until it becomes clear that this is the only viable option.

5. This Office stands ready to discuss with DPKO and UNMIK the foregoing recommendation and suggestions in greater detail and to explore alternative solutions as necessary.

(*b*) Note to the Assistant Secretary-General for Peacekeeping Operations, regarding the authority of United Nations Peacekeeping Force in Cyprus (UNFICYP) in the buffer zone

Authority and competence of UNFICYP in the buffer zone—UNFICYP's mandate in the buffer zone to prevent a recurrence of fighting—Buffer zone viewed as a sensitive area where any activities therein, including civilian activities such as farming, may give rise to security concerns—UNFFICYP's mandate to preserve international peace and security to be interpreted in such a way as to contribute to law and order and encourage a return to normal conditions of civilian life—UNFICYP's authority to carry out its mandate in the buffer zone with regard to both military and civilian activities—UNFICYP's authority not diminished by the

FACT THAT UNFICYP REGULARLY SOUGHT TO ENFORCE ITS AUTHORITY THROUGH MEANS OF COOPERATION WITH THE TWO RESPECTIVE COMMUNITIES

17 August 2007

1. This is in reference to your note to the Assistant Secretary-General for legal affairs of 13 April 2007 concerning UNFICYP's authority in the buffer zone. We note that the Office of Legal Affairs (OLA) had subsequently been requested to delay its reply pending receipt of the legal position of the European Commission. We wish to thank you for providing us with a copy of the draft European Commission opinion, which we received on 12 July.

2. In your note of 13 April you request our advice with respect to the status and the extent of UNFICYP's authority in the buffer zone. You attach for our information copies of a letter from the Permanent Representative of Cyprus to the United Nations of 9 March 2007, and a cable from UNFICYP of 26 March 2007. You note that the question of authority in the buffer zone has acquired particular relevance with the increase in civilian activities such as construction and farming, which has caused incidents not only between Greek Cypriot farmers and the Turkish forces, but also between the farmers and UNFICYP. You note that legal clarity with respect to UNFICYP's authority in the buffer zone would greatly assist the Mission in forming an appropriate position in relevant discussions with the parties, and would be essential should it be necessary to call on the Security Council to express itself on the issue. You state that in UNFICYP's view, the responsibility for maintaining security in the buffer zone rests solely with the Mission and, therefore, it retains the right to react and prevent activities which could affect the security and the *status quo.*

3. Pursuant to Security Council resolution 186 (1964) of 4 March 1964, paragraph 5, as extended most recently by resolution 1758 (2007) of 15 June 2007, UNFICYP has a mandate "in the interest of preserving international peace and security, to use its best efforts to prevent a recurrence of fighting and, as necessary, to contribute to the maintenance of law and order and a return to normal conditions". In our view, this is a wide mandate, which should be interpreted broadly, having regard to the facts on the ground.

4. However, while the "prevent[ion] of the recurrence of fighting" is UNFICYP's primary mandate, UNFICYP also has a mandate to contribute to the "maintenance of law and order" and "a return to normal conditions". As such, UNFICYP's security mandate should, where possible, be interpreted in such a way as "to contribute to law and order", and encourage a "return to normal conditions" of civilian life.

5. The status of UNFICYP, including within the buffer zone, is addressed in the Exchange of Letters Constituting an Agreement between the United Nations and the Government of the Republic of Cyprus concerning the Status of the United Nations Peacekeeping Force in Cyprus of 31 March 1964 ("the SOFA"). Pursuant to the SOFA, UNFICYP has an "international status" in accordance with Security Council resolution 186 (1964), and enjoys the status, privileges and immunities of the Organization in accordance with the Convention on the Privileges and Immunities of the United Nations.*

6. The "buffer-zone" is the area between the cease-fire lines of the National Guard and the Turkish forces, which came into effect following the hostilities of July and August 1974. Having regard to Security Council resolution 353 of 20 July 1974, the Foreign Minis-

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

ters of Greece, Turkey and the United Kingdom issued a Declaration on 30 July 1974, which concluded that a number of measures should be put into immediate effect, including that a "security zone . . . to be determined by representatives of Greece, Turkey and the United Kingdom in consultation with UNFICYP should be established at the limit of the areas occupied by the Turkish armed forces . . . This zone should be entered by no forces other than those of UNFICYP, which should supervise the prohibition of entry . . .". We note from various reports of the Secretary-General that the total area between the lines covers about 3 per cent of the land area of Cyprus and contains some of the island's most valuable agricultural land.

7. The Aide-Mémoire of 23 March 1989, (we understand that as of 30 March 1989, most of its provisions had been notified and accepted by both sides), sets out arrangements to be followed by UNFICYP to supervise the cease-fire. The Aide-Mémoire clearly identifies: (i) "the United Nations Protected Area" in which UNFICYP exercises exclusive control; (ii) areas for civilian activities, "which are freely accessible and policed by local civilian police forces"; and (iii) other areas where "no civilian movement or activities are permitted unless specifically authorized by UNFICYP". With respect to the latter, it is stated that

> "the responsibility for the maintenance of law and order in these areas lies with UNFICYP. If necessary, UNFICYP calls upon the police forces of the two communities for assistance. In deciding which movements and activities to authorize, UNFICYP is guided by the principle that no movement or activity should jeopardize the security of either side, the buffer zone itself or the safety of the individuals. In Nicosia, in view of the security implications, such authorization is only given with the concurrence of both sides".

Although we note that the Aide-Mémoire does not have the status of a formal agreement, it has been the basis for UNFICYP's activities for the last 19 years, and the principles contained therein appear to be supported by relevant practice.

8. The practice concerning UNFICYP's authority in the buffer zone is documented in the Reports of the Secretary-General on the United Nations Operation in Cyprus to the Security Council. In S/12253 of 9 December 1976, the Secretary-General observed:

> "It is an essential element of the cease-fire that neither side can exercise authority or jurisdiction beyond its own forward military lines or make any military moves beyond those lines. It follows that, in the area between the lines, the status quo (including innocent civilian activities and exercise of property rights) is maintained, without prejudice to an eventual political settlement concerning the disposition of the area. UNFICYP discharges certain responsibilities in relation to the cease-fire, as well as humanitarian and normalization functions, with a view to safeguarding the legitimate security requirements of both sides, while giving due regard to humanitarian considerations".

We note that in the subsequent Security Council debate, the then Foreign Minister of Cyprus expressed his Government's acceptance of the Secretary-General's position (S/PV 1979 of 14 December 1976).

9. Subsequent reports suggest that UNFICYP has ultimate authority in the buffer zone in so far as any activities therein may give rise to security concerns. In S/15812 of 1 June 1983, the Secretary-General notes that UNFICYP has continued to monitor agricultural activity carefully, noting "sensitive areas", the "requirement for escorts", that farming is only permitted in certain areas, and that "UNFICYP would not permit any activity in

the buffer zone which might destabilize the situation or lead to any escalation of tensions". In S/20663 of 31 May 1989, the Secretary-General refers to a number of incidents, including demonstrations by Greek and Turkish Cypriot women's groups in the buffer zone and over-flights by civilian aircraft, which UNFICYP either protested or intervened with the Government to ensure respect for the buffer zone. The Report also refers to UNFICYP's work to facilitate economic and other civilian activities in the buffer zone, especially farming, and the provision of good offices as necessary with respect to the supply of utilities between the communities.

10. In S/2002/1243 of 15 November 2002, the Secretary-General records that UNFICYP declined to give permission to Turkish Cypriot authorities to construct a new road on security grounds, and that UNFICYP granted permission for Turkish Cypriots to sink a bore well near the village of Pyla. He also notes UNFICYP's support of certain civilian activities in the buffer zone, including the opening of a street, the de-silting of a dam, and the repair of infrastructure. In S/2004/756 of 24 September 2004, the Secretary-General notes that UNFICYP has negotiated agreements by the respective sides to maximize opportunities for "civil" use of the buffer zone, including with respect to roads and economic enterprises.

11. In S/2006/931 of 1 December 2006, the Secretary-General observes that since the lifting in 2003 of the restrictions on movement across the ceasefire lines, there has been "an increasing number of civilians farming and/or an increase in the construction of buildings in the buffer zone, which is in contravention of the procedures established by UNFICYP to safeguard the stability of and security within the buffer zone", and that "continuing challenges in the buffer zone have the potential to destabilize a still delicate security situation". In this report, the Secretary-General notes UNFICYP's authorization of 13 civilian construction projects, and describes a number of incidents involving tension between the communities arising as a result of disputes on farming and land ownership in the buffer zone, which required intensive discussion by UNFICYP to diffuse the situation, and led to UNFICYP tightening its procedures for issuing farming permits in order to safeguard property rights and maintain security. Further, in S/2007/328 of 4 June 2007, the Secretary-General refers to the growing number of civilians seeking to construct or otherwise develop land in the buffer zone outside of the procedures established by UNFICYP to safeguard the stability and security within the buffer zone, and that a significant part of the resources and energy of UNFICYP was increasingly geared towards addressing this development. He notes that to this end "UNFICYP continued discussions with the two sides on practical modalities to prevent unauthorized civilian activities in the buffer zone outside of the areas designated for civilian use".

12. As may be seen in the examples referred to above, civilian use of the buffer zone has been regulated by UNFICYP in as far as such civilian activities have impacted on security concerns. In our view, there is no basis to interpret UNFICYP's mandate as set forth in resolution 186 (1964) narrowly by excluding the authority of UNFICYP to prevent violence that may have its cause in civilian activities, as opposed to military activities. As also seen from the examples above, civilian use of the buffer zone has the potential to cause tensions between the respective communities as to land ownership and use, and may also impact on the security of UNFICYP, and its security activities in the buffer zone. UNFICYP's mandate "to prevent a recurrence of fighting" provides no basis for differentiating between security risks according to their origin. The fact that UNFICYP has regularly sought to

enforce its authority through means of cooperation with the two respective communities does not diminish UNFICYP's authority in this regard.

13. In his letter of 9 March 2007, the Permanent Representative of Cyprus takes the position that "UNFICYP assumes responsibility in the buffer zone with regard to issues of security . . . [and] is therefore not mandated with authorizing, or otherwise deciding on, civilian projects in this area". In our view, the extent of UNFICYP's authority in the buffer zone is that which is required for UNFICYP to carry out its mandate, and in particular to "prevent a recurrence of fighting". It is for UNFICYP to determine whether security is at risk in any given circumstances, and to prevent and react to any activities which threaten such security.

(*c*) Note to the Under-Secretary-General for Peacekeeping Operations, regarding the transfer by the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) of members of the [rebel group] to the Congolese authorities

Clear policy of the Organization to guarantee moratorium on the death penalty—Necessity to include an unambiguous provision in this regard in the agreement for the transfer to national authorities of persons in custody of the Organization—Consultation with the Office of the High Commissioner for Human Rights (OHCHR) regarding other aspects of the agreement

6 September 2007

1. This is in reference to your note to the Under-Secretary-General for Legal Affairs, the Legal Counsel, dated 22 August 2007 and code cable CCX-495 of 16 August 2007 concerning the transfer of former members of [rebel group] from MONUC to the Government of the Democratic Republic of the Congo ("the Government"). Reference is also made to MONUC code cable of 31 August 2007. [. . .]

2. We note your endorsement of the Special Representative of the Secretary-General (SRSG)'s proposal to conclude a formal agreement with the Government concerning the transfer by reverting to the earlier text prepared by MONUC and agreed to by the Government (Attachment 4 to CCX-495). While we note the very real pressures on the Mission to resolve this issue without further delay, and the concerns as outlined in paragraph 3 of your Note, we nevertheless consider that paragraph 8 of the earlier draft agreement (Attachment 4) is too vague and imprecise with respect to the moratorium on the death penalty to provide any real guarantee that it will not be applied to any of the persons at hand. In light of the fundamental importance of the non-application of the death penalty and the clear policy of the Organization in this regard, we strongly urge MONUC to impress upon the Government to include a provision in the agreement which would guarantee its non-application in the present case.

3. We consider that the elements of an acceptable compromise solution to the impasse are already contained in the letters of the Minister of Foreign Affairs of 28 July 2007 and the Minister of Defence dated 13 August 2007, which are attached to CCX-495. In these letters the Government has indicated its willingness to consider commuting any death penalty imposed by the courts into a life sentence. In his letter of 28 July 2007, the Minister of Foreign Affairs suggests alternative wording for paragraph 8 of the draft

agreement to the effect that if the death penalty is imposed, it will be commuted to a life-sentence upon the decision of the President of the Republic. For his part, the Minister of Defence notes that this position is guaranteed by an obligation on the Prosecutor to apply for a reprieve by the President of the Republic, in conformity with the Decree on the Organization of the Judiciary No 299/79 of 20 August 1979. As this position is based on proposals made by the Government, we are inclined to believe that the Government would be amenable to agree to a provision to this effect in the agreement.

4. On the understanding that Decree No. 299/79 provides for the obligation to appeal for clemency, it is our view that paragraph 8 as set forth in the draft agreement in Attachment 4 should be revised along the following lines, taking language from the above-mentioned letters to ensure that any death penalty imposed will be commuted to a life sentence:

> "8. (i) Should legal proceedings be initiated against an element of [rebel group] or one of his dependents handed over by MONUC to the Government according to the present agreement, the Government guarantees that he shall benefit from a fair trial and fundamental judicial guarantees;
>
> (ii) In this respect, the Government reaffirms its will to maintain the moratorium on the death penalty applicable to all judicial sentences. Should death penalty be imposed, it would be commuted in life sentence following the application for a reprieve by the President of the Republic, in conformity with the Decree on the Organization of the Judiciary No 299/79 of 20 August 1979." *

5. Regarding your request for our views as to whether the SRSG should issue a public statement appealing to the authorities not to seek or carry out the death penalty, we consider that if the Government agrees to the inclusion of the language suggested above in the agreement concerning transfer, such a public statement may no longer be necessary. In any event, we are prepared to review any draft statement from a legal point of view.

6. Please note that we have consulted with the Office of the High Commissioner for Human Rights (OHCHR) on this issue. While concurring with our proposed language on the death penalty, OHCHR expressed concerns regarding other aspects of the Agreement. We trust that they will be addressed in the framework of the working group constituted in MONUC to develop modalities of transfer (MONUC's code cable CCX-536, para. 2).

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* Translated by the Secretariat. Original text in French reads as follows:

> « *8. (i) Dans le cas où des poursuites judiciaires seraient engagées contre un élément de la* [. . .] *ou un de ses dépendants remis par la MONUC au Gouvernement au terme du présent Arrangement, le Gouvernement s'engage a ce qu'il bénéficie d'un procès équitable et des garanties judiciaires fondamentales;*
>
> *(ii) A ce propos, le Gouvernement réaffirme sa volonté de maintenir le moratoire sur la peine de mort applicable à toutes les condamnations judiciaires. Au cas où la peine de mort serait prononcée, elle sera commuée en servitude pénale à perpétuité suite au recours en grâce auprès du Président de la République conformément à l'Arrêté d'organisation judiciaire n° 299/79 du 20 août 1979.* »

(*d*) Note to the Under-Secretary-General for Peacekeeping Operations, regarding the legal implications of the Madrid Accords and Algiers Agreement for Western Sahara

LEGAL IMPLICATIONS OF THE MADRID ACCORDS AND THE ALGIERS AGREEMENT FOR WESTERN SAHARA—REGISTRATION OF TREATIES WITH THE UNITED NATIONS SECRETARIAT PURSUANT TO ARTICLE 102 OF THE CHARTER OF THE UNITED NATIONS—SPAIN COULD NOT UNILATERALLY TRANSFER ITS STATUS AS ADMINISTERING POWER OVER WESTERN SAHARA—THE FACT THAT AN AGREEMENT IS NOT REGISTERED WITH THE UNITED NATIONS DOES NOT ALTER ITS BINDING FORCE UPON THE PARTIES—INTERNATIONAL STATUS OF WESTERN SAHARA REMAINS A NON-SELF-GOVERNING TERRITORY

9 October 2007

1. This is with reference to your note of 30 August 2007 to which was attached code cable 2007-MIN-100 of 28 August 2007 from the United Nations Mission for the Referendum in Western Sahara (MINURSO) concerning the "Madrid Accords"* concluded between Spain, Morocco and Mauritania in 1975 and the "Algiers Agreement" concluded between Mauritania and Polisario in 1979. We note your view that the provisions of these two treaties could have an impact on the talks on Western Sahara recently resumed under the auspices of the Secretary-General after seven years of political impasse. In this connection, you would like "to learn . . . the legal significance of these two agreements, in the event the parties refer to them in the third round of negotiations or in other instances". In addition, in its code cable, MINURSO is seeking clarification as to whether the Madrid Agreement included "clauses, annexes and or maps".

2. The impact of the agreements on the international status of Western Sahara as a Non-Self-Governing Territory was discussed in a letter dated 29 January 2002 addressed by my predecessor [. . .], to the President of the Security Council. That letter was issued as a document of the Security Council S/2002/161 of 12 February 2002 [. . .]. As you will note, paragraphs 6 and 7 of the letter read as follows:

> "6. On 14 November 1975, a Declaration of Principles on Western Sahara was concluded in Madrid between Spain, Morocco and Mauritania ("the Madrid Agreement"), whereby the powers and responsibilities of Spain, as the administering Power of the Territory, were transferred to a temporary tripartite administration. The Madrid Agreement did not transfer sovereignty over the Territory, nor did it confer upon any of the signatories the status of an administering Power, a status which Spain alone could not have unilaterally transferred. The transfer of administrative authority over the Territory to Morocco and Mauritania in 1975 did not affect the international status of Western Sahara as a Non-Self-Governing Territory.
>
> 7. On 26 February 1976, Spain informed the Secretary-General that as of that date it had terminated its presence in Western Sahara and relinquished its responsibilities over the Territory, thus leaving it in fact under the administration of both Morocco and Mauritania in their respective controlled areas. Following the withdrawal of Mauritania from the Territory in 1979, upon the conclusion of the Mauritano-Sahraoui agreement of 19 August 1979 (S/13503, annex I), Morocco has administrated the Territory of Western Sahara alone. Morocco, however, is not listed as the administering

* Declaration on Principles of Western Sahara, United Nations, *Treaty Series,* vol. 988, p. 259.

Power of the Territory in the United Nations list of Non-Self-Governing Territories, and has, therefore, not transmitted information on the Territory in accordance with Article 73 (e) of the Charter of the United Nations."

4. As regards the 1975 Madrid Agreement, please be advised that it was registered with the United Nations Secretariat, pursuant to Article 102 of the Charter of the United Nations, by Morocco on 9 December 1975 under the title "Declaration of Principles on Western Sahara by Spain, Morocco and Mauritania". This Agreement is published under registration No. 14450 in volume 988 of the United Nations *Treaty Series* [. . .]. The Madrid Agreement does not include any additional clauses, annexes or maps.

5. The 1979 Algiers agreement between Mauritania and Polisario, otherwise known as the "Mauritano-Sahraoui agreement," was not submitted to, and would not be registrable by, the United Nations Secretariat under Article 102 of the Charter of the United Nations. This agreement was attached to a letter dated 18 August 1979 from the Permanent Representative of Mauritania addressed to the Secretary-General and published as both General Assembly and Security Council documents A/34/427 and S/13503, respectively [. . .].

6. As to the legal significance of the Agreements referred to above, please be advised that the Madrid Agreement is binding on the Parties, i.e. Spain, Morocco and Mauritania. However, we would like to confirm that the Madrid Agreement did not transfer sovereignty over Western Sahara, nor did it confer upon either Morocco or Mauritania the status of an administering Power, a status which Spain alone could not have unilaterally transferred. The transfer of administrative authority over the Territory to Morocco and Mauritania in 1975 did not affect the international status of Western Sahara, as a Non-Self-Governing Territory.

7. With regard to the Algiers agreement, kindly note that the fact that it was not registered with the United Nations should not be perceived as altering the binding nature of the agreement for its parties, i.e. Mauritania and Polisario. As in the case of the Madrid Agreement, the Algiers agreement cannot be interpreted as transferring sovereignty over the Territory of Western Sahara to Polisario or somehow affecting the international status of Western Sahara as a Non-Self-Governing Territory.

5. Treaty law

Electronic message to the United Nations Mission in the Sudan, regarding the implications for the United Nations to sign a peace agreement as a witness

Signature as a witness by the Organization of a peace agreement between warring parties—Necessity to have draft agreement reviewed ahead of time by the Office of Legal Affairs, especially to have its view on the compliance of the provisions on justice and accountability with the principles and policies of the United Nations—Reservation to be made in case of blanket amnesty clause as the United Nations does not recognize amnesty for genocide, war crimes and crimes against humanity—No legal obligations entailed by signature as "witness" of a peace agreement, but gives the agreement a certain legitimacy

4 June 2007

This is in response to the query below on guidance for United Nations signature as a witness on a "possible protocol on item three", and the implications for the United Nations.

a. In negotiating, mediating or facilitating the negotiation of a peace agreement between the warring parties, the question of whether the United Nations should sign as a witness to the Agreement requires a review of the Agreement as a whole. For the Office of Legal Affairs properly to advise, it is essential that early drafts of the Agreement or the Protocol be shared with it ahead of time. In reviewing the draft Agreement and the provisions on Justice and accountability, in particular, this Office would advise on their conformity with long-standing principles and policies of the United Nations, such as amnesty or the relationship between international and national judicial and non-judicial accountability mechanisms.

b. If it is decided that the United Nations sign as a witness, the question would then be whether the signature should be accompanied with a reservation (if a number of clauses are unacceptable but it is politically important to be seen to be engaged in the process). Such "technique" was used in the Lomé Peace Agreement for Sierra Leone, when the blanket amnesty clause was unacceptable to the United Nations without a reservation that the "United Nations does not recognize amnesty for genocide, war crimes and crimes against humanity".

c. When signing the Agreement as a witness on behalf of the United Nations, the Special Representative of the Secretary-General would affix to his name and title the words "For the United Nations". We note that the Agreement on Comprehensive Solution between the Government of Uganda and the Lord Resistance Army of 2 May 2007, was witnessed by [Name], the United Nations Deputy Resident and Humanitarian Coordinator, Southern Sudan. The words "For the United Nations" were missing.

d. As for the legal implications of signature as a witness. Clearly, such a signature does not entail for the "witness" any legal obligations. The act of witnessing, however, is a reflection of the involvement in the negotiation of the State or the international organization, and an indication of a moral or political support for the principles contained therein. As far as the United Nations is concerned, a signature as a witness is a "stamp of legitimacy" of a kind, hence the importance of having the opportunity of vetting the content of the Agreement beforehand.

6. International humanitarian law

Note to the Assistant Secretary-General for Political Affairs, regarding the usage of the term "civil war"

Definition of term "civil war" under international law—Notion of two warring factions within a State—"Non-international armed conflict" considered a more technical, legal, term for this notion—Legal implications of the determination of the existence of a civil war

30 January 2007

1. This is in reference to your notes of 25 October 2006 and 16 January 2007 in which you request our guidance on the future use of the term "civil war" in the context

of the [State] conflict. In particular, you note that it would be useful to understand the definition of "civil war" and its implications in international law, and whether the internal conflict in [State] falls under this definition.

2. The term "civil war" is generally understood to connote a notion of two warring factions within a State—of which one is a sovereign Government—fighting for the control of the political system or secession, each having effective control over parts of the State territory.

3. The more technical, legal, term is "non-international armed conflict" as referred to in Common article 3 of the Geneva Conventions of 12 August 1949[*] and the Additional Protocol relating to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts ("Additional Protocol II").[**] In the absence of a general definition of "non-international armed conflict" the International Committee of the Red Cross Commentary on Additional Protocol II observes:

> " . . . a non-international armed conflict is distinct from an international armed conflict because of the legal status of the entities opposing each other: the parties to the conflict are not sovereign States, but the government of a single State in conflict with one or more armed factions within its territory . . . The expression "armed conflict" gives an important indication in this respect since it introduces a material criterion: the existence of open hostilities between armed forces which are organized to a greater or lesser degree. Internal disturbances and tensions, characterized by isolated or sporadic acts of violence, do not therefore constitute armed conflict in a legal sense, even if the government is forced to resort to police forces or even to armed units for the purpose of restoring law and order. Within these limits, non-international armed conflict seems to be a situation in which hostilities break out between armed forces or organized armed groups within the territory of a single State. Insurgents fighting against the established order would normally seek to overthrow the government in power or alternatively to bring about secession so as to set up a new State".
>
> ("Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949", International Committee of the Red Cross, Martinus Nijhoff Publishers, Geneva 1987, at pp 1319–1320).

4. A determination that a situation amounts to a "civil war" or a "non-international armed conflict" is significant because of the implications thereof under international law. First, such a determination implies that the Government has lost control of part of its territory, and that other States may have certain rights and responsibilities with regard to either or both parties. Second, such a recognition implies that a body of international law rules applies in the relationship between the Government forces and the opposing party in respect of the hostilities, rather than solely national law (for example, national criminal law). The international rules applicable during a non-international armed conflict are set forth in Common Article 3 of the Geneva Conventions and in Additional Protocol II. ([State] is bound by Common Article 3 of the Geneva Conventions, and while it is not party to Additional Protocol II, it is bound by the customary international law provisions of that Protocol).

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[*] United Nations, *Treaty Series*, vol. 75, p. 31, 85, 135 and 287.

[**] United Nations, *Treaty Series*, vol. 1125, p. 609.

5. While the situation in [State] may, legally speaking, satisfy some of the conditions for either or both terms, we suggest that the United Nations avoid making a general determination as to the precise nature of the conflict, and use instead the more neutral term "conflict".

7. Personnel questions

(*a*) Interoffice memorandum to the Registrar, International Criminal Tribunal for Rwanda (ICTR), regarding the Agreement between the United Nations and the Government of Tanzania on the construction and use of the Detention Facilities in Arusha

Payment procedure of prison officers on loan from a Government—Important that direct payment to officers on loan does not imply that they are United Nations staff members—Usual practice to pay the Government for their services—Revision of draft agreement to enable the direct payment of officers by the Tribunal—Agreement must clearly reflect that the United Nations is not liable under the United Nations Staff Regulations and Rules or national laws

24 January 2007

1. I refer to your memorandum, dated 27 December 2006, addressed to the Legal Counsel, which was referred to me for response. You have requested advice as to whether article 5.3 of the draft agreement between the United Nations and the Government of Tanzania on the construction and use of the Detention Facilities in Arusha ("the draft agreement") could be revised to reflect the Tribunal's current practice of directly paying the prison officers on loan from the Government of the United Republic of Tanzania ("the Government") for their services provided by them in accordance with the draft agreement. I also refer to your discussions regarding this matter with the Legal Counsel during a meeting on 15 December 2006.

2. I note that my Office had previously raised concerns regarding the Tribunal's practice of directly paying the individual prison officers on loan from the Government for their services provided to the Tribunal. The concern raised was that such payments could be taken to imply that these prison officers are staff members of the Tribunal, and that they would therefore be entitled to rights and benefits under either the United Nations Staff Regulations and Rules or local labour and social security laws. To avoid such an implication, this Office had recommended in a memorandum, dated 25 March 2004, from the Director, General Legal Division, to the Chief, Division of Administrative Support, ICTR, that payments for the services of prison officers on loan should be made to the Government. Accordingly, article 5.3 of the draft agreement forwarded to us provides that "[p]ayment shall be made to the Headquarters of the Tanzanian Prison Services on a quarterly basis in arrears, upon receipt and verification of the invoices [. . .]."

3. From the information provided to us, I understand, however, that the Tribunal would prefer to continue its practice of directly paying the individual prison officers on loan from the Government for their services provided in accordance with the draft agreement. As the Tribunal's earlier draft provision on such payments had stated, these payments would amount to the Tribunal paying each prison officer supplied by the Gov-

ernment every month a fixed amount based on an established daily rate. I note that such payments are made through the Arusha branch of the local Standard Chartered Bank. I further understand that this current payment arrangement has been practical and "trouble-free" for the Tribunal, and that the Government has made clear its desire to continue this arrangement.

4. While the previously stated concerns of this Office about the Tribunal's practice of paying prison officers loaned by the Government directly for their services provided to the Tribunal remains, in light of the fact that the current payment arrangement appears to suit all parties, this Office has prepared a revised draft agreement accommodating this arrangement in a manner that best protects the legal interests of the Organization.

5. In this regard, and as it may be foreseen that the Tribunal and the Government may wish to adjust the daily rate at which the Tribunal is paying the prison officers on loan from the Government for their services provided under the draft agreement in the future, the daily rate should be specified in an annex to the agreement and not in the text of the agreement itself, so that the annex can be updated or replaced at any time by means of an amendment, in accordance with article XIX of the draft agreement.

6. In light of the foregoing, we suggest that article 5.3 of the draft agreement forwarded to us on 27 December 2006 be deleted, and that the wording of the first two paragraphs of article V be revised to read as follows:

"5.1 The Tribunal shall be responsible for the costs and obligations expressly set forth in this Agreement relating to the provision of the Services provided by the Government. Except for the payment obligations set forth in article 5.2, below, the Tribunal shall not be liable to pay the salaries, overtime, insurance, benefits, or other related emoluments or benefit payments relating to the Services provided by the Prison Officers under this Agreement. For avoidance of doubt, the payment obligations assumed by the Tribunal in accordance with article 5.2, below, shall constitute the total liability of the Tribunal and of the United Nations to reimburse the Government for the salaries, overtime, insurance benefits, or other related emoluments or benefit payments payable by the Government to the Prison Officers.

5.2 The Tribunal shall pay a daily amount to the Prison Officers individually for the Services provided by them in accordance with this Agreement. Such payment shall be made by the Tribunal to the Prison Officers individually at the daily rate set forth in Annex I to this Agreement and the total daily amount per Prison Officer shall be multiplied by the number of days worked in a month and shall be paid by the Tribunal to the Prison Officer concerned on the last business day of each month. The Tribunal and the Government may amend or otherwise update or replace Annex I at any time by means of an amendment to this Agreement, in accordance with article XIX, below, provided that any new daily rate set forth in such revised Annex I shall not be effective until the first day of the month following the effective date of any such amendment."

7. In order to address this Office's concern that the direct payment of prison officers on loan from the Government for their services provided under the draft agreement could give rise to the implication that they are staff members of the Tribunal, article 4.7 of the draft agreement should be revised to read as follows:

"4.7 Nothing in this agreement, in particular not article 5.2, below, shall be construed to mean that Prison Officers are staff members of the Tribunal. They shall, however, be subject to the authority of the Registrar of the Tribunal and shall perform their duties

under the direction and control of the Commanding Officer of the Detention Facilities, in accordance with the Detention Rules."

8. Finally, in order to ensure that neither the Tribunal nor the Organization as a whole would be required to answer to any employment-related claims, including claims about payments of salary and emoluments, by such prison officers, the indemnity provision has been revised to make clear that the Government is responsible for defending the Tribunal and the Organization from such claims. Accordingly, article 6.3 should be revised to read as follows:

"6.3 The Government shall indemnify, hold and save harmless and defend, at its own expense, the Tribunal, its officials, agents, servants and employees from and against all demands, claims, suits and liability of any nature or kind related to the use of the Detention Facilities by the Tribunal, such demands, claims, suits and liability, including but not limited to any employment-related claims brought by any Prison Officers (including but not limited to claims regarding the payment obligations set forth in article 5.2, above), and any claim brought by any third party professing ownership of, or any other rights of whatever nature, in any or all parts of the Detention Facilities."

(*b*) Interoffice memorandum to the Assistant Secretary-General, Office of Human Resources Management, regarding the Congressional inquiry on the former Secretary-General's retirement allowance and other separation or termination benefits

Former Secretary-General's retirement package and pension benefits—Secretary-General is not a staff member—Secretary-General's salary and retirement allowance decided by the General Assembly in resolutions available to the public—The former Secretary-General entitled to additional pension benefits in his quality of retired staff member of the Organization—United Nations Joint Staff Pension Fund (UNJSPF) pension benefits considered confidential information and can be disclosed only following beneficiary's written consent

20 February 2007

1. I refer to your note to the Legal Counsel, dated 13 February 2007, asking for advice regarding the request of the United States Mission to the United Nations (USUN) to be provided with information on former Secretary-General Annan's retirement package, as well as any pension benefits he may be entitled to from the United Nations Joint Staff Pension Fund (UNJSPF). You specifically requested our advice whether the Organization may release such information, and whether the former Secretary-General's prior permission should be sought before any action is taken. In this regard, we understand that the USUN's request is based on a congressional inquiry of the Government of the United States. Your request has been forwarded to me for response.

The Secretary-General's retirement allowance

2. I note that the salary and retirement allowance of the Secretary-General are approved by the General Assembly on the basis of a recommendation of the Advisory Committee on Administrative and Budgetary Questions (ACABQ). In this regard, resolution 11 (I) of 24 January 1946, set out the terms of appointment of the first Secretary-

General. In resolution 13 (I) of 13 February 1946, the General Assembly decided that the Secretary-General will be entitled to a retirement allowance. By General Assembly resolution 45/251 of 21 December 1990, the retirement allowance of the Secretary-General was set at an amount equivalent to fifty percent of the recommended net remuneration (net base salary plus post adjustment) and it was decided that such remuneration would be adjusted by the application of the same procedure and percentage used for adjusting the scale of pensionable remuneration for staff in the Professional and higher categories. The last adjustment to the Secretary-General's salary and retirement allowance was made in resolution 57/310 of 18 June 2003. In that resolution, the General Assembly concurred with the ACABQ's recommendation that, effective as of 1 January 2003, the Secretary-General's annual net remuneration be increased to US$ 275,420 and that his retirement allowance be increased to US$ 137,710 (see paragraph 1 of General Assembly resolution 57/310, referring to paragraph 9 of A/57/7/Add.25; see also paragraphs 4 to 8 of A/57/7/Add.25). I further note that the Secretary-General's salary is not subject to deduction from pension since the Secretary-General's retirement allowance, unlike the pension of staff members, is paid directly from annual budget appropriations.

3. In light of the above, and given the fact that the exact amount of the Secretary-General's salary and retirement allowance have been set out in General Assembly resolutions which are available to the public, I am of the view that there is no legal objection to providing this information to USUN without seeking prior permission of the former Secretary-General. As a courtesy, however, you may wish to notify the former Secretary-General of the above-mentioned request of the USUN and the congressional inquiry.

Former Secretary-General's UNJSPF entitlements

4. I note that prior to his appointment as Secretary-General, [name]was a staff member of the Organization for a substantive number of years during which he contributed to the UNJSPF. He is, therefore, entitled to receive a pension benefit from the UNJSPF, acquired through his service as a staff member. If necessary, you may wish to confirm this directly with the UNJSPF.

5. I wish to note that, information regarding a staff member's or former staff member's UNJSPF pension benefits is treated as confidential information. In this regard, Rule B.4 of the Administrative Rules of the UNJSPF stipulates that "[i]nformation provided by or in respect of a participant or beneficiary under the Regulations or these Rules *shall not be disclosed without written consent or authorization by the participant or beneficiary concerned,* except in response to a court order or a request from a judicial or civil authority in the context of divorce or family maintenance obligations" (emphasis added). It is apparent from this Rule that the Organization is not in a position to provide the USUN with any information regarding the amount of pension benefits the former Secretary-General may be entitled to as a former staff member of the Organization without having received his prior written consent.

(*c*) Interoffice memorandum to the Director, Accounts Division, Office of Programme Planning, Budget and Accounts (OPPBA)/Department of Management, regarding the taxation of [State] staff member and the request for tax reimbursement

Reimbursement of income taxes paid by staff members to national State—Only compulsory contributions on official salaries to be reimbursed by the Organization—2 per cent contribution to obtain normal consular services viewed as a compulsory assessment—Need to have a staff member willing to be identified for the Organization to make reimbursement—Reimbursement by the Organization is charged from the State's account under the Tax Equalization Fund

10 August 2007

1. This responds to your memorandum of 16 March 2007, requesting our advice on the request by a [State] staff member, [Name], for reimbursement of income taxes, in accordance with Staff Regulation 3.3 (f). [Name] seeks such reimbursement in respect of what he claims to be compulsory contributions that he made to the Government of [State] as a percentage of his official United Nations salary and emoluments. In addition, you have requested clarification as to how cases of other staff members of [State] nationality who, like [Name], claim to be subject to a compulsory contribution on their official salaries and emoluments by the Government of [State] should be resolved under Staff Regulation 3.3 (f).

2. I note that you have referred to my earlier memorandum, dated 10 August 2006, addressed to the Chief, Legal Affairs Section, Office of the United Nations High Commissioner for Refugees (UNHCR), concerning this question generally. Citing prior exchanges of correspondence on this issue, that memorandum stated that, in March 1999, the Secretariat had exchanged Notes Verbales with the Government of [State] regarding the Government's assurances that amounts that staff members of [State] nationality had contributed to the Government of [State] in respect of their official United Nations emoluments were voluntary payments and not taxes. My earlier memorandum of 10 August 2006 noted that, in 1999, UNHCR had alleged that, notwithstanding the Government's assurances, the contributions in fact were compulsory and, thus, operated as a tax on the official emoluments of staff members of [State] nationality. The memorandum also stated that, at that time, this Office had "advised that only if a staff member is willing to be identified and to send a written statement alleging that the 2 per cent contribution is compulsory in the sense that it must be paid in order to obtain normal consular services, we were willing to take the matter up again with the Government and, if it appears that this 2 per cent contribution is a compulsory assessment, the Secretary-General would be authorized to consider making a refund" under Staff Regulation 3.3 (f). Thus, my memorandum of 10 August 2006 concluded that the Organization would be "unable to again take this matter up with the Government unless one or more of the staff members are willing to be identified."

3. By your memorandum of 16 March 2007, you forwarded a memorandum, dated 28 February 2007, from the Deputy Chief, Human Resource Management Service (HRMS), United Nations Office in Geneva (UNOG), seeking authorization from you "for settling the claim for refund of national income taxes that [Name] . . . has paid to the Government of [State]." The memorandum of 28 February 2007 also provided you a "clearance certificate [Name] obtained from the Embassy of the State of [. . .] regarding the payments

made by him from April 1998 to September 2006 for the purpose of paying the national income tax." [Name] has provided Human Resources Management Service, UNOG, with a signed written statement, dated 14 February 2007, submitting "copies of supporting documentation of my tax payments to the Embassy of [State] in Geneva from my United Nations income covering the period from April 1998 to September 2006 and amounting to 15,335.03 Swiss Francs." Those supporting documents consist of a certification from the [State] Embassy in Geneva that [Name] indeed made such payments.

4. As this Office has previously advised (see, e.g., memorandum of 26 September 2001, from the Director, General Legal Division, to OHRM, which was cited in your memorandum), [State] is not a party to the Convention on the Privileges and Immunities of the United Nations ("General Convention"),* which provides in article V, section 18 (b), that officials of the United Nations shall "be exempt from taxation on the salaries and emoluments paid to them by the United Nations." We note, however, that, in article VII, paragraph (1) (b), of the Agreement between the United Nations and the Government of [State] Relating to the Establishment in [State] of a United Nations Integrated Office" . . . ("[State] Agreement"), the Government of [State] has agreed that "Officials of the United Nations shall be exempt from taxation on the salaries and emoluments paid to them by the United Nations."[1] In addition to whatever obligation may be incumbent on the Government of [State] pursuant to the General Convention and the [State] Agreement with respect to exemption of staff members from national taxation in respect of their official salary and emoluments, this Office has previously made clear that if a staff member is, in fact, subject to taxation in respect of such salary and emoluments, the staff member is entitled to tax reimbursement in accordance with Staff Regulation 3.3 (f). Moreover, to the extent that the Organization is obliged to reimburse such staff members in respect of any such taxes paid on their official salary and emoluments, the amount of such reimbursement may be charged to the Tax Equalization Fund in accordance with Staff Regulation 3.3 (f) and Financial Regulations 4.10 through 4.12.

5. In view of the position previously taken by the Government of [State] that payments made by staff members of [State] nationality are voluntary contributions and not taxes, this Office has advised, as noted above, that such staff members should be willing to identify themselves and provide documentation of the payments made before reimbursement could be made from the Tax Equalization Fund in accordance with Staff Regulation 3.3 (f). In this case, [Name] has provided a written certification identifying himself as having paid taxes to the Government of [State] in respect of his United Nations salary and emoluments. Accordingly, as advised in my memorandum of 10 August 2006, you may wish to send a Note Verbale to the Government of [State], stating that [Name] has identified himself and obtained certification of payment from the Embassy of [State] in Geneva of amounts said to be taxes imposed in respect of his official United Nations salary and emoluments. Such Note Verbale could also advise that, unless the Government were will-

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

[1] For purposes of the [State] Agreement, the term "Officials of the United Nations" is defined in article I(h) as, "the Head of the United Nations Integrated Office, the Representative of the United Nations Agencies, Programmes and Funds, all members of their staff and any other staff members of the United Nations system, irrespective of nationality, employed under the Staff Regulations and Rules of the United Nations, with the exception of persons who are recruited locally and assigned to hourly rates, as provided for in United Nations General Assembly resolution 76(1) of 7 December 1946."

ing to effect a reimbursement of the amounts paid by [Name], the Organization would be obliged to provide tax to him in accordance with Staff Regulation 3.3 (f) and to charge such reimbursement to the account of [State] under the Tax Equalization Fund in accordance with Financial Regulations 4.10 through 4.12.[2] For these purposes, we enclose a draft of such a Note Verbale. Accordingly, unless the Government would be willing to effect a resolution of [Name]'s claim for reimbursement in an appropriate timeframe *(e.g.,* before the latest time when you would be required to charge the Tax Equalization Fund in the current fiscal period), then it would appear that [Name] would be entitled to reimbursement under the Tax Equalization Fund of the amounts he has claimed he was required to pay to the Government of [State] in respect of his official salary and emoluments.

6. With respect to other staff members of [State] nationality who may claim for reimbursement for amounts paid by them to the Government of [State] in respect of their official salary and emoluments, we would suggest that OPPBA follow the advice set forth in my earlier memorandum of 10 August 2006. That is, to the extent that any such other staff members are willing to be identified as having paid taxes to the Government of [State] in respect of their United Nations salary and emoluments, and to the extent that the Government of [State] is unwilling or unable to effect a resolution of their claims for reimbursement, the Organization would be required to reimburse such staff members for such amounts paid and charge such reimbursements to the Tax Equalization Fund. In this regard, the draft Note Verbale contains a statement along these lines.

Draft note verbale to the Government of [State]

The Secretariat of the United Nations presents its compliments to the Permanent Mission of [State] to the United Nations and has the honour to inform the Mission that a United Nations staff member, [Name], has claimed reimbursement from the United Nations in respect of amounts that he claims are taxes imposed by, and paid by him to, the Government of [State] in respect of his official United Nations salary and emoluments. In this regard, [Name] has provided the United Nations with a certificate given to him by the Embassy of [State] in Geneva concerning amounts he paid from the period April 1998 to September 2006, amounting to 15,335.03 Swiss Francs. Copies are enclosed for ease of reference.*

Article V, section 18(b), of the Convention on the Privileges and Immunities of the United Nations provides that officials of the United Nations shall "be exempt from taxation on the salaries and emoluments paid to them by the United Nations." Although [State] has not acceded to the Convention, in article VII, paragraph (1)(b), of the Agreement Between the United Nations and the Government of [State] Relating to the Establishment in [State] of a United Nations Integrated Office" [. . .], the Government of [State] has agreed that "Officials of the United Nations shall be exempt from taxation on the salaries and emoluments paid to them by the United Nations." Under United Nations Staff Regulation 3.3(f),

[2] Likewise, in the memorandum of 26 September 2001, this Office suggested that, before proceeding with reimbursement, the Government of [State] should be further reminded of the Organization's policies on tax reimbursement and use of the Tax Equalization Fund so that the Government could have the opportunity to reimburse any staff members concerned before being charged under the Tax Equalization Fund.

* Not reproduced herein.

any staff member who has paid national taxes in respect of such staff members official salary and emoluments is entitled to reimbursement from the Organization for all such amounts paid. Under Staff Regulation 3.3 (f) and pursuant to United Nations Financial Regulations 4.10 through 4.12, any such reimbursements are charged to the account of the Member State concerned under the Tax Equalization Fund.

Unless the Government of [State] is willing and can make separate provisions for reimbursing [Name] in respect of the amounts for which he claims reimbursement before . . . 2007, the latest time when the Organization will have to effect charges to the Tax Equalization Fund in the current fiscal period, the United Nations must effect such reimbursement and charge it to the account of [State] under the Tax Equalization Fund. Similarly, should any other staff members of [State] nationality come forward, as in the case of [Name], and claim reimbursement for amounts required to be paid by them in respect of their official salary and emoluments to the Government of [State], the Organization will also have to effect reimbursement of the amounts paid and charge such reimbursements to the account of [State] under the Tax Equalization Fund, unless the Government of [State] is willing and can make provisions to separately reimburse such staff members for such amounts.

(*d*) Interoffice memorandum to the Director, Operational Services Division, Office of Human Resources Management (OHRM), regarding the request for employment and wage data from the New York State Department of Labor

Privileges and immunities of the United Nations—Exemption of employment-related contributions under the New York State unemployment insurance law—Change of staff member immigration status within the United States—ST/AI/2000/19—Staff member must request permission to sign the waiver of rights, privileges and immunities as United Nations staff to acquire permanent resident status in the United States—Such change of status involves losing international benefits and possible reimbursement of those benefits received after the change

7 November 2007

1. I refer to your memorandum, dated 3 October 2007, regarding a request for employment and wage data ("Request") from the New York State Department of Labor addressed to the United Nations in respect of [Name], a former staff member of the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), requesting our advice with regard to the appropriate response to such Request. You informed us that [Name], a Russian national, joined UNMOVIC on 28 September 2000, on a fixed-term appointment, and that his last day with the Organization was 10 July 2007. His final separation Personnel Action has not been processed, since he has still to submit some pending administrative documents to OHRM. You also informed us that the UNMOVIC Executive Office has notified OHRM that [Name] had not renewed his G-4 visa since March 2006. In reply to a request for clarification from UNMOVIC as to his status since March 2006 [Name] stated in an e-mail message dated 18 September 2007 that he received his United States Permanent Resident Card, "since 05/08/06", presumably 8 May 2006. Based on the foregoing, you have requested an opinion as to whether OHRM would be obliged to report the information requested to the Department of Labor and what information, if any,

should be provided to these authorities. Moreover, given that [Name] did not inform the Organization that he had taken steps to acquire permanent resident status in the United States, you sought our advice on any other actions to be taken in this regard, including any tax implications resulting from [Name]'s change of immigration status.

2. Apparently, [Name] has filed a claim for unemployment insurance benefits with the Department of Labor, and the Department does not have a record of all wages paid by the United Nations to him during the period from 1 April 2006 to 30 June 2007. Accordingly, the Department of Labor has issued the standard Request to UNMOVIC. Neither the United Nations, nor its subsidiary organs, such as UNMOVIC, are subject to the unemployment compensation schemes of the Member States. Consequently, you will find enclosed a letter sent by this Office to the Department of Labor asserting the privileges and immunities of the Organization in respect of this matter, and enclosing a copy of the letter of the Department of Labor, dated 4 October 1946, confirming that "the United Nations is not a an employer liable for contributions" under the New York State Unemployment Insurance Law.*

3. With respect to [Name]'s change to United States permanent residence status, you may recall that pursuant to Staff Rule 104.4 (c) and to section 5.1 of the Administrative Instruction ST/AI/2000/19, entitled "Visa Status of Non-United States Staff Members Serving in the United States, Members of their Household and their Household Employees, and Staff Members Seeking or Holding Permanent Resident Status in the United States", staff members intending to acquire permanent resident status in the United States must notify the Administration in writing prior to applying for a change of status. Section 5.6 of ST/AI/2000/19 stipulates that staff members who have permanent resident status in the United States are required to renounce such status and to change to G-4 visa status upon appointment, and staff members who seek to change to permanent resident will not be granted permission to sign the waiver required to acquire or retain permanent resident status. Section 5.7 of ST/AI/2000/19** provides some exceptions to the general rule of section 5.6, *inter alia,* for staff members appointed to serve outside the United States under the 200 and 300 series of the Staff Rules and for staff members appointed for less than one year. However, if their appointments are extended beyond one year, that extension is subject to obtaining a G-4 visa. In any case, [Name] would first have had to require permission before signing the waiver, and there does not appear to be any record that [Name] sought such prior authorization before changing to United States permanent residence status.

4. With respect to the tax implications of [Name]'s change to United States permanent residence status, United States law provides that United Nations staff members who become United States permanent residents must sign a waiver of the rights, privileges, exemptions and immunities which would accrue to them as staff members of the United Nations. Section 5.3 of ST/AI/2000/19 requires that staff members must first request permission from OHRM to sign such a waiver. Staff members having signed the waiver become liable for payment of United States taxes on emoluments earned from the United Nations as of the date of their signing the waiver. Such taxes are subject to reimbursement by the Organization pursuant to Staff Regulation 3.3 (f). This Office was not informed as

* Not reproduced herein.

** For information on Administrative Instructions, see note under 1 (f) above.

to whether [Name] actually signed a waiver and/or requested reimbursement of United States taxes. In the absence of a specific request of [Name] in this regard, no further action would be required at this stage.

5. Pursuant to section 5.5 of ST/AI/2000/19, staff members who sign a waiver in order to acquire United States permanent resident status lose any entitlements they would otherwise have had to international benefits under the Staff Regulations and Rules by virtue of serving at a duty station outside the country of their nationality (e.g., home leave, education grant, repatriation grant, etc.), but only from the date on which they are granted United States permanent resident status, as shown on their alien registration card, and not from the date on which they sign the waiver. Thus, regardless of whether [Name] signed the waiver, if he became a United States permanent resident, he will have lost any entitlement to international benefits from the date, shown on his alien registration card, that he had become a United States permanent resident. The Organization may be in a position to recover any international benefits accorded to [Name] because of his change of status.

Annex

Dear Commissioner,

I refer to your request for employment and wage data ("Request") addressed to the United Nations in respect of [Name], a former United Nations staff member, serving with the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC).

The United Nations is an international inter-governmental organization established pursuant to the Charter of the United Nations ("Charter"), a multilateral treaty signed on 26 June 1945. The Charter was ratified by the United States of America on 8 August 1945 and came into force for the United States of America on 24 October 1945. (United Nations Charter, 59 Stat. 1031 (1945), reprinted in 1945 *United States Code,* Cong. & Admin. News, 961 *et seq*.)

As an international organization, the United Nations is subject to its internal Staff Regulations and Rules and has been accorded certain privileges and immunities which are necessary for the fulfillment of the purposes of the Organization. Paragraph 1 of Article 101 of the Charter provides that "[t]he staff [of the Organization] shall be appointed by the Secretary-General under regulations established by the General Assembly". Article 105 of the Charter provides the general basis for the privileges and immunities of the United Nations. Paragraph 1 of Article 105 of the Charter provides that "[t]he Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes." Paragraph 3 of Article 105 provides that the "General Assembly may make recommendations with a view to determining the details of the application of paragraph 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose."

In order to give effect to Article 105 of the United Nations Charter, the General Assembly of the United Nations adopted the Convention on the Privileges and Immunities of the United Nations ("Convention") on 13 February 1946.* The United States became a party to the Convention on 29 April 1970 (21 UST 1418, [1970] TIAS No. 6900). Prior to becoming a party to the Convention, the United States of America enacted the Interna-

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

tional Organizations Immunities Act ("IOIA"), Pub. L. No. 79–291, 59 Stat. 669 (codified at 22 U.S.C. 288 *et seq.*), in 1945 in order to give effect to Article 105 of the Charter. For the purposes of the IOIA, the President of the United States of America designated the United Nations as an "international organization." (Exec. Order, No. 9,698, 11 Fed. Reg. 1.809 (1946), reprinted in 22 *U.S.C.* 288a.)

Article II, section 2 of the Convention of the Privileges and Immunities of the United Nations, ("General Convention") to which the United States is a party (21 UST 1418; [1970] TIAS 6900; 1 UNTS 15 (1946)), states: "[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 it has expressly waived its immunity."

In addition, article II, section 4 of the General Convention provides that, "[t]he archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located." The United Nations also enjoys immunity under the United States International Organizations Immunities Act (22 USC Section 288, *et seq.*).

It appears from the Request that [Name] filed a claim for unemployment insurance benefits, and that your Department seeks a record of all wages paid by the United Nations to him during the period from 1 April 2006 to 30 June 2007. The United Nations is maintaining and is not waiving its privileges and immunities in respect of this matter. Please also note that as determined by your Department, in the enclosed letter of 4 October 1946, "the United Nations is not an employer liable for contributions" under the New York State Unemployment Insurance Law.

For the reasons stated above, I am, therefore, returning the Request to you.

(*e*) Interoffice memorandum to the Officer-in-Charge, Policy Support Unit, Human Resources Policy Service, Division for Organizational Development, Office of Human Resources Management, regarding the permission for staff to participate in staff credit union related activities

STATUS OF VARIOUS STAFF CREDIT UNIONS UNCLEAR IN RESPECTIVE NATIONAL LEGISLATION AND *VIS-À-VIS* THE ORGANIZATION—SERVICE ON THE BOARDS/COMMISSION OF STAFF CREDIT UNIONS CONSIDERED TO BE AN OUTSIDE ACTIVITY AND IS PERFORMED IN PERSONAL CAPACITY—VOLUNTARY SERVICE IN SUCH BOARD/COMMISSIONS NOT VIEWED AS EMPLOYMENT, OCCUPATION OR SOCIAL AND CHARITABLE ACTIVITY—SUCH SERVICE CONSIDERED TO BE AN OUTSIDE ACTIVITY RELATED TO THE UNITED NATIONS, AND THUS REQUIRING PRIOR APPROVAL

November 2007

1. I refer to your memorandum dated 28 May 2007, and subsequent discussions with this Office on the above-mentioned subject. You informed us that you received a request from the Operational Services Division of OHRM asking whether staff members who serve as volunteers on boards/committees of the United Nations Federal Credit Union (UNFCU) in New York and similar institutions such as the International Civil Servants Mutual Association (ICSMA, also referred to as MEC) in Geneva, the United Nations Staff Savings & Credit Association (UNSSCA) in Addis Ababa and the Staff Mutual Assistance Fund (MAF) in Bangkok (hereinafter referred to as "staff credit unions") are required to seek prior approval from the Administration.

I. Background

2. We understand that the practice has been not to require prior approval for participation in boards/committees of UNFCU. However, you were informed that when Office of Internal Oversight Services (OIOS) staff members raised similar questions with regard to participation in committees/boards with ICSMA in Geneva, they were advised by the OIOS Executive Office, allegedly based on advice by the Office of Legal Affairs (OLA), that such activities would require prior approval as an outside activity.

3. We were unable to locate any advice by OLA on the issue of requesting approval to engage in activities of staff credit unions. [Name A], the staff member who referred to such advice in an e-mail message attached to your memorandum, informed us orally that he has not seen such an opinion personally. [Name A] also mentioned the existence of a 1998 letter from [Name B], then Assistant Secretary-General, OHRM, to UNFCU, informing it that staff members involved in UNFCU activities would not require permission from the Administration. We understand that OHRM has not been able to find this letter. This Office does not have a copy of the letter, either. [Name A] informed us that he requested UNFCU to retrieve such a letter, apparently without success.

4. [Name C], Executive Officer, OIOS, provided us with an e-mail message dated 3 March 2007, from [Name D], Special Assistant to the Director, Division of Administration, United Nations Office in Geneva (UNOG), stating that "the functions performed by the directors of the Board [of ICSMA] are not considered to be an outside activity and therefore do not require the prior approval of the Secretary-General." As far as we are aware, OLA was not consulted by UNOG on this matter.

5. We understand that members of boards/committees of staff credit unions are not compensated for their activities but they may get their travel expenses reimbursed if they have to travel in connection with staff credit unions' activities. We note that the status of staff credit unions *vis-à-vis* the United Nations and the concerned Host Countries is the subject of on-going correspondence between our offices and the Controller's Office.[1] Set out below is a summary description of each staff credit union, as we understand it.

6. UNFCU is a not-for-profit federal credit union established under the laws of the United States and chartered and supervised by the National Credit Union Administration. It has a legal personality entirely separate from that of the Organization, to which it is tied by the definition of the members it serves (although there are other means of co-operation with the Organization, e.g. lease of United Nations premises, use of United Nations Inter-Office mail, etc.).

7. The status of ICSMA is not clear. A United Nations trust fund for ICSMA was established, and we understand that the Director-General, UNOG, was delegated the full administrative responsibility for authorization and issuance of allotments and administration of earned programme support resources in respect of ICSMA. We understand that ICSMA is governed by a seven-member Board of Directors composed of four directors elected by ICSMA members, two directors elected by ICSMA members from a list of persons designated by the UNOG Director-General, and one director elected by ICSMA members from a list of persons designated by the president of UNOG Staff Council. Employees

[1] See, in particular, a memorandum [. . .] dated 18 September 1987, and my memorandum [. . .] dated 8 January 2007 [. . .].

of ICSMA have been granted United Nations fixed-term appointments limited to service to ICSMA. We understand that the Swiss authorities acknowledged the status of ICSMA as a United Nations trust fund as from 1 January 1989. We are unaware as to whether the institutional status of ICSMA under Swiss law was further clarified later.

8. The status of UNSSCA is not clear and is the subject of on-going discussions. UNSSCA is governed by an eleven-member Board of Directors composed of nine directors elected from UNSSCA members, one director appointed by the Economic Commission for Africa (ECA) Executive Secretary (who is the Honorary President of UNSSCA), and the president of ECA Staff Union Committee. Also, ECA allows its staff members time off from official duties to serve in the various boards/committees of UNSSCA. Neither UNSSCA nor its employees, who are not United Nations staff members, have been given formal recognition by the Ethiopian Government. UNSSCA concluded on 6 May 2003 a Memorandum of understanding (MOU) with ECA, providing, *inter alia,* that "UNSSCA shall continue to exist under the sponsorship and umbrella of ECA but shall be guided in the conduct of its administrative and day-to-day activities and operations by its own rules and regulations." OLA was not consulted on this MOU. In a memorandum dated 8 January 2007 addressed to the Office of Programme Planning, Budget and Accounts and OHRM, this Office advised that it would be preferable for UNSSCA to be established by its members as a banking institution incorporated under the laws of the Host Country, in particular, in so doing, the issues of the privileges and immunities of the Organization, compliance with applicable laws, oversight, bankruptcy and liability would be addressed. It is not clear to us what action, if any, is being taken to clarify the status of UNSSCA.

9. The status of MAF is not clear either. The United Nations *ad hoc* Task Force that reviewed the matter of staff credit unions in 1987 indicated that Thailand had credit co-operatives governed by the Credit Co-operative Act of 1968, and regularizing MAF under that Act would clarify its legal status and its relationship *vis-à-vis* the laws of the Host Country. Therefore, the Task Force "concluded that any regularization of MAF should be undertaken within the framework of the Thai Credit Co-operative Act." In a memorandum of 25 August 1988 from the Officer-in-Charge, Department of Administration and Management (DAM), to the Economic and Social Commission for Asia and the Pacific (ESCAP) Executive Secretary, the Under-Secretary-General, DAM, adopted the recommendation of the Task Force above, and informed the Executive Secretary accordingly, and suggested that ESCAP approach the Thai authorities to resolve the difficulties identified by ESCAP relating to the implementation of the recommended action. There is no further record in the OLA files as to what action, if any, was taken by ESCAP to "regularize" MAF within the framework of the Thai Credit Co-operative Act. It is, therefore, not clear to us what status MAF has under Thai law.

II. Analysis

10. As we understand, the mandate of staff credit unions is the provision of private financial services to staff members and retired staff members of the United Nations and other international organizations related to the United Nations, and their families. However, as discussed above, each staff credit union appears to be operating under different rules, and has different status, if any, under the laws of the concerned Host Countries. Staff credit unions' activities are not United Nations' official activities in pursuit of its official

mandates. In our view, the establishment of a trust fund for ICSMA and the provision of United Nations fixed-term appointments to ICSMA employees do not change the fact that ICSMA's activities are not United Nations' official activities. Thus, we consider that the involvement of staff members who choose to serve on the boards/committees of staff credit unions would not be official activities, but outside activities.[2] The issue, therefore, is whether such volunteer activities require prior authorization of the Secretary-General, according to applicable administrative rules.

11. Staff Regulation 1.2 (o) and (p) provide as follows:

"*Outside employment and activities*

(o) Staff members shall not engage in any outside occupation or employment, whether remunerated or not, without the approval of the Secretary-General.

(p) The Secretary-General may authorize staff members to engage in an outside occupation or employment, whether remunerated or not, if:

(i) The outside occupation or employment does not conflict with the staff member's official functions or the status of an international civil servant;

(ii) The outside occupation or employment is not against the interest of the United Nations; and

(iii) The outside occupation or employment is permitted by local law at the duty station or where the occupation or employment occurs."

12. Further elaboration of the above provisions, as well as the procedure for submitting requests for authorization to engage in outside activities are set out in Secretary-General's bulletin ST/SGB/2002/13 of 1 November 2002, entitled "Status, basic rights and duties of United Nations staff members", Administrative Instruction ST/AI/2000/13 of 25 October 2000, entitled "Outside Activities" and Information Circular ST/IC/2006/30 of 16 August 2006, entitled "Outside Activities".*

13. We consider that serving on a board/committee of a staff credit union does not constitute an "employment" or "occupation". The word "employment" is defined in the commentary to Staff Regulation 12 (o) (see ST/SGB/2002/13), as a legal relationship pursuant to which one person is providing work and skill at the control and direction of another. The word "occupation" is defined in the commentary to Staff Regulation 1.2 (o) (see ST/SGB/2002/13) as including the exercise of a profession, whether as an employee or an independent contractor.

14. Section 5.1 of ST/AI/2000/13 defines "social and charitable activities" as "private non-remunerated activities for social or charitable purposes which have no relation to the staff member's official functions or to the Organization". Serving on a board/committee of

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[2] This memorandum does not address the question of the status of employees of staff credit unions who have been provided with United Nations fixed-term appointments, such as ICSMA employees. This memorandum also does not address the issue of one ECA staff member who is apparently appointed to the Board of Directors of UNSSCA by the Executive Secretary of ECA and two UNOG staff members who are elected to ICSMA Board of Directors from a list of persons designated by UNOG Director-General, as they are serving on staff credit unions Boards of Directors in their official capacity.

* For information on Secretary-General's Bulletins, on Administrative Instructions, and on Information Circulars, see, respectively, notes under 1 (*g*), (*f*), and 2 (*c*), above.

a staff credit union would not, in our view, be qualified as a "social or charitable activity", in view of the functions of the boards/committees,[3] and the nature of the relationship between the staff credit unions and the United Nations, by virtue of their members/owners.

15. It appears that serving on a board/committee of a staff credit union may be considered "an activity related to the United Nations", akin to the activities listed in section 4 of ST/AI/2000/13, since boards/committees serve staff credit unions whose members/owners are staff of the United Nations and other organizations in the United Nations system. Section 4.2 of ST/AI/2000/13 provides that:

> "Outside activities that are of benefit to the Organization or the achievement of its goals and/or contribute to the development of professional skills of staff members are usually not only permitted but encouraged, provided staff members exercise the utmost discretion with regard to all matters of official business and avoid any public statement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status."

We note that activities under section 4 of ST/AI/2000/13 require prior approval.

16. In addition, ST/IC/2006/30 provides in paragraph 11 as follows:

> "Participation in boards, panels, committees, expert groups or similar bodies that are external to the Organization constitutes an outside activity that requires the prior approval of the Secretary-General. If, after approval has been granted, it appears that the staff member's participation would involve the consideration of the granting of an honour, gift or remuneration to a United Nations official, the staff member should withdraw from the body concerned since his or her participation would create at least the appearance of a conflict of interest."

We note that paragraph 11 of ST/IC/2006/30 expressly requires prior approval.

17. In view of the above, if a staff credit union is "external to the Organization", as it is clearly the case with UNFCU, serving on its boards/committees requires prior authorization. Even in case a staff credit union is not deemed to be "external to the Organization" (which may be the case in respect of ICSMA), serving on its boards/committees appears to be an outside activity related to the United Nations (see paragraph 15 of this memorandum) which requires prior authorization.

18. In this regard, this Office has consistently advised that the Organization should take steps to insulate itself from liability related to staff credit unions' activities. As explained in our memorandum of 18 September 1987, staff credit unions which are not incorporated under the laws of a Host Country raise issues related to the privileges and immunities of the Organization, compliance with applicable laws, including oversight, bankruptcy and liability to the Organization. For example, there is a risk that claimants bringing lawsuits against staff credit unions allege that the United Nations should be jointly held liable for the actions of such credit unions and/or their officials because the United Nations allows its staff members to serve on boards/committees of such staff credit unions. Such claimants could also allege that the Organization somehow condones the activities of staff credit unions, for example by allowing credit unions to operate within United Nations

[3] It appears that the function of boards/committees of staff credit unions is to provide operational and managerial direction and/or guidance to the staff credit unions.

premises, by giving the status of United Nations staff members to employees of a credit union, by allowing a head of office to serve as the honorary president of a credit union *ex officio,* or by allowing staff members some time off from their regular duties to serve in the various boards/committees of a credit union. In view of the foregoing, requiring staff members to request permission to serve on boards/committees of staff credit unions could be a step to insulate the Organization from liability related to staff credit unions' activities, and would be an occasion for the Administration to inform staff that credit unions' activities are not official functions and that staff members involved with credit unions are solely acting in their private capacity.

19. In view of the above, we consider that serving on a board/committee requires prior approval from the Administration. However, the above-cited rules of the Organization do not preclude granting such authorizations provided that the requirements and conditions set out in those rules are satisfied.

8. Miscellaneous

(*a*) Note to the Chef de Cabinet, Executive Office of the Secretary-General, on the death penalty under international law and the position of the United Nations Secretariat

Question of death penalty under international law—Restrictions and/or prohibition applies to parties of certain regional and universal conventions—Position of the United Nations Secretariat that United Nations-based Tribunals shall not be empowered to impose the death penalty—The United Nations Secretariat has refused to lend its assistance to courts and tribunals empowered to impose the death penalty

2 January 2007

1. At your request, we set out below the legal aspects of the question of the death penalty under international law, and the long-standing position of the United Nations Secretariat in a decade-long engagement in establishing judicial accountability mechanisms. Limited to the legal aspects only, this note does not address the numerous attempts made throughout the years in various inter-governmental organs to abolish capital punishment, nor the desirability of so doing.

2. The International Covenant on Civil and Political Rights, 1966,[*] recognizes the right to life and prohibits its arbitrary deprivation article 6. While not imposing an obligation to abolish the death penalty, it endeavours to limit its use, in those countries that still recognize it, to the most serious crimes in accordance with the law in force at the time of the commission of the crime, and pursuant to a final judgment by a competent court. Death penalty under the Covenant is prohibited for crimes committed by persons below eighteen years of age, and its execution is prohibited against pregnant women article 6 (4).

3. The Second Optional Protocol to the International Covenant Aiming at the Abolition of Death Penalty, 1989,[**] prohibits the execution of the death penalty within the

[*] United Nations, *Treaty Series*, vol. 999, p. 171.

[**] United Nations, *Treaty Series*, vol. 1642, p. 414.

jurisdiction of the States Parties to the Protocol, and enjoins them to take all necessary measures to abolish the death penalty within their jurisdiction. The Second Protocol, in force since 1991, presently has 60 States parties.

4. Furthermore, Protocol 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms* abolishes the death penalty and prohibits its execution in all circumstances, including in respect of acts committed in time of war.

5. With few exceptions international humanitarian law does not prohibit the imposition of the death penalty but only limits its use. The death penalty is recognized, within limitations, under the Third Geneva Convention, against Prisoners of war for offences punishable by death under the laws of the detaining power article 100; it is recognized also under the Fourth Geneva Convention, against protected persons in occupied territory when the person is guilty of espionage or of serious acts of sabotage against the Occupying Power article 68. The death penalty is prohibited, however, against persons under the age of 18 (at the time of the offence), and cannot be carried out on pregnant women or mothers with young children article 76 (3) of Additional protocol I, and article 6 (4) of Additional Protocol II).

6. Quite apart from its legality or otherwise under international law, the United Nations Secretariat has adopted the position that United Nations-based tribunals shall not be empowered to impose the death penalty on any convicted person, regardless of the seriousness of the crime of which he is accused. This position, first articulated in the Secretary-General's report on the establishment of the ad-hoc Tribunal for the former Yugoslavia, was maintained throughout the years with regard to the ad-hoc International Tribunal for Rwanda, established by Security Council chapter-VII resolution, as well as with regard to courts and tribunals established by agreement with the Secretariat (the Special Court for Sierra Leone), or by national law (the Extraordinary Chambers for Cambodia). The Secretariat has, furthermore, refused to lend its assistance to national courts and tribunals, including the Iraqi Special Tribunal, empowered to hand down sentence of capital punishment.

7. In conclusion, with the exception of persons below 18 years of age and pregnant women, the death penalty is not prohibited under customary international law. Its use, however, is limited under the 1966 Covenant. It is completely prohibited under the Second Protocol to the Covenant and Protocol 13 of the European Convention but only for the Parties bound by these instruments. In the practice of establishing United Nations-based tribunals, however, it has been the long-standing position of the Secretariat not to empower any of these tribunals to hand down capital punishment, or otherwise to cooperate with any court or tribunal similarly empowered, regardless of the gravity of the crime.

[. . .]

* United Nations, *Treaty Series*, vol. 2246, p. 110.

(*b*) Interoffice memorandum to the Legal Adviser, Office of the High Commissioner for Human Rights (OHCHR), regarding the proposed memorandum of understanding between the Swiss Confederation and the United Nations concerning the transfer to the United Nations of responsibility for the operation and maintenance of the Universal Human Rights Index (UHRI)

Intellectual property rights—Question of licensing intellectual property rights, including software licensing, in the context of the UHRI transfer to the United Nations—Some software may be developed by third parties, who may retain copyright or other intellectual property right—Terms of such license most likely inconsistent with privileges and immunities of the United Nations and its financial regulations, including procurement policies—Agreement between the United Nations and the Government must address the right to use all relevant aspects of intellectual property to be found in the UHRI—Not appropriate for the Government to "license" to the United Nations the use of United Nations documentation—Internal regulatons address rules and policies governing United Nations internet publishing—Standard conditions and final clauses should be included in an agreement between the United Nations and a Government

16 March 2007

1. I refer to your note, dated 18 January 2007, addressed to the Assistant Secretary-General for Legal Affairs, concerning a proposed memorandum of understanding between the Swiss Confederation and the United Nations concerning the transfer to the United Nations of responsibility for the operation and maintenance of the Universal Human Rights Index (MOU). By your Note, you forwarded, for review by this Office, a draft text of a proposed MOU that had been prepared by the Government of the Swiss Confederation ("Government"), acting through the Federal Department of Foreign Affairs (FDFA). You requested this Office's review of the Government's draft of such proposed MOU, particularly with respect to the issue of software licensing.

Background

2. The Government's draft of the proposed MOU indicates that the Universal Human Rights Index (UHRI) was developed "under the auspices of the University of Berne". Your Note stated that the Index, which was developed with input from OHCHR, is a compilation of approximately 1,000 "United Nations documents", intended to serve as "a working tool for the Human Rights Council, governments, international organisations and civil society", and consists of "a web database with search capacity providing instant access for all countries to the recent observations and recommendations of the following main international expert bodies: the seven Treaty Bodies monitoring the implementation of core international human rights treaties; the Special Procedures of the Commission / the Human Rights Council". You stated that, in addition to the involvement of the University of Berne in the development of the Universal Human Rights Index (UHRI), software for the operation of the Index had been "developed by lexUM, a software company associated with the University of Montreal".

3. Your note stated that, under the arrangements worked out in principle with the Government, OHCHR had planned to take over responsibility for the operation and main-

tenance of the Index as and from 1 January 2007, for purposes of updating the content of the Index and "to ensure the effective operation of the UHRI management interface and website". In addition, both the Government's draft of the proposed MOU, as well as your note, indicated that the FDFA had agreed to provide financial and human resources support and assistance in order to enable OHCHR to take over responsibility for the operation and maintenance of the UHRI. I note that, under the Government's draft of the proposed MOU, the Government would only transfer to the United Nations the right to operate and maintain the UHRI for a period of three years, subject to further agreements extending that period. Accordingly, OHCHR and FDFA have considered that an agreement should be concluded between the United Nations and the Government, in order to effect the transfer of responsibility from the Government to the United Nations for the operation and maintenance of the UHRI, and in order to establish terms and conditions for the support to be provided by the Government and the cooperation to be exercised between the parties for such purposes.

Analysis

4. We have reviewed the Government's draft of the MOU and have concluded that it does not sufficiently address certain important issues concerning, e.g., software licensing, and other matters, as further elaborated below. Accordingly, this Office has prepared a revised draft of the proposed MOU, a copy of which is enclosed herewith.*

(a) Licensing and disposition of intellectual property rights in and to the UHRI

5. As your note mentions, the issue of the licensing of intellectual property rights, including software licensing, has not been addressed in the Government's draft of the proposed MOU in a manner that is acceptable to the Organization. Under the Government's draft of the proposed MOU, the FDFA would "provide [ ] the OHCHR with a software license in which the UHRI is integrated," and "OHCHR will use this license pursuant to the terms of the General Public License (http://www.gnu.org/licenses/gpl.html). In this regard, it should be noted that the General Public License is a form of agreement that has been promulgated by the Free Software Foundation, a not-for-profit organization based in Boston, Massachusetts, USA, for purposes of the licensing of rights for the free use of software.

6. As an initial matter, your note had indicated that some of the software required for the operation of the UHRI was developed by third parties, including the University of Berne and lexUM, which appears to be operated by the Faculty of Law at the University of Montreal. Thus, it is not clear that any license to use such software could be transferred from any such third parties by the Government to the United Nations by means of the Free Software Foundation's General Public License. In this connection, the General Public License specifically provides that if a third party, such as a private concern, maintains copyright or other intellectual property rights in any software being licensed under the General Public License, the licensee's use of the software may be subject to a further license from such third party, notwithstanding the licensee's having been given rights under the General Public License. In such case, despite being given a right by the Government under

* Not reproduced herein.

the General Public License, the United Nations, nonetheless, could be subject to software licenses conferred by a third party, such as the universities. The terms of such license are most likely inconsistent with the privileges and immunities of the Organization. Likewise, the terms by which the Organization may become subject to any such third party licenses may also be inconsistent with the Organization's financial regulations, rules, policies and practices, including its procurement policies. Thus, the General Public License is not an appropriate form of agreement for the United Nations to receive rights in and to the use of any intellectual property in the UHRI that may be susceptible to licensing.

7. In addition to the foregoing, it should be noted that the UHRI does not appear to consist only of software, but rather it appears to be comprised of a mixture of software, Internet protocols, and electronic information, or content. Thus, the UHRI consists of many different aspects of intellectual property, the licensing and disposition of the rights to transfer and the use of which cannot be addressed merely by the form of a software license, i.e., the General Public License, proposed by the Government in its draft of the proposed MOU. Thus, under the terms of any agreement between the United Nations and the Government, the license provided to the United Nations by the Government for the operation and maintenance of the UHRI must address the United Nations's right to use all relevant aspects of intellectual property to be found in the UHRI. This would include not only the right to use any imbedded software programme, routine, sub-routine, source or object code, or any other elements relating thereto, but also the right to use and display, in any form whatsoever, whether electronic or otherwise, all content contained in the UHRI.

8. Moreover, such an agreement must allocate among those aspects of the intellectual property rights comprising the UHRI that the Government is in the position to actually license to the United Nations and those which it is not. In this regard, to the extent that some, if not all, of the content of the UHRI consists of United Nations documents, it is not appropriate for the Government of the Swiss Confederation to "license" to the United Nations the right to use such United Nations documentation. Additionally, at the time when the Government transfers to the United Nations the intellectual property rights in and to the UHRI under the proposed MOU, the Government may not possess the right to transfer such intellectual property rights. This might be the case, for example, if the UHRI contains certain intellectual property rights (e.g., software routines or certain content) for which the Government either is unaware that a license is required to be obtained or for which ownership may be in dispute. Indeed, this might be the case with respect to third party intellectual property rights, such as those of lexUM in such circumstances, the Government would have to procure for the United Nations the right to use any such intellectual property rights, even though the Government has already transferred responsibility for the operation and maintenance of the UHRI to the United Nations. Thus, the proposed MOU between the Government and the United Nations must allocate among those intellectual property rights that are susceptible of being licensed to the United Nations by the Government and those which are not subject to such a license, as well as those intellectual property rights for which the Government may be required to obtain a license, whether upon the effective date of the proposed MOU, or sometime later.

(b) United Nations policies on internet publishing

9. Under the Government's draft of the proposed MOU, not only would the Organization's right to use the UHRI be governed by the General Public License, but also, under the provisions of the General Public License, the rights of individuals and entities who might access the UHRI through a United Nations-hosted website would also be governed by that General Public License. To the extent that the UHRI would be made available as a public information resource through a United Nations-hosted website, the terms of use by the public cannot be determined by reference to the General Public License. Instead, the applicable rules and policies governing the public's use of United Nations Internet publications are set forth in the provisions of United Nations Administrative Instruction, ST/AI/2001/5, dated 22 August 2001, entitled, "United Nations Internet publishing".* That Administrative Instruction provides the specific terms and conditions for public use of United Nations Internet resources, and those terms and conditions differ in many respects from the General Public License.

10. Moreover, to the extent that the UHRI is an Internet-based system, the manner in which it is presented on the Internet, the modes of public access to such Internet-based system, and all other aspects of the operation of such system must conform to the provisions of, as well as the detailed procedures, set forth in the Administrative Instruction. In this regard, the OHCHR may wish to coordinate with the Department of Public Information concerning such policies and procedures.

(c) Standard conditions of the proposed MOU

11. In addition to the foregoing concerns, the Government's draft of the proposed MOU does not contain various standard terms that are normally set forth in agreements between the Organization and Governments. Among these are those conditions regarding the resolution of third party liabilities, indemnification between the parties, privileges and immunities of the parties, resolution of disputes, and various final clauses. In addition, the Government's draft of the proposed MOU does not sufficiently elaborate on the procedures for the contribution of financial and human resources by the Government to the United Nations, as well as any accounting by the United Nations therefore, as well as the procedures necessary for cooperation between the Government and the United Nations.

Revised draft of the proposed MOU

12. Based on the foregoing concerns, this Office has prepared a revised draft of the proposed MOU . . . Please review the draft to ensure that it addresses all of OHCHR's concerns about the proposed transfer of responsibility for the operation and maintenance of the UHRI, as well as the concerns described above. Should you require any further assistance in this matter, in particular regarding any questions you may have about the revised draft of the MOU or with respect to negotiating and concluding the proposed MOU with the Government, please contact the Director, General Legal Division, of this Office.

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* For information on Administrative Instructions, see note under 1 (*f*), above.

(*c*) Note to the Under-Secretary-General for Political Affairs, regarding the Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement(LRA/M)

"Nationalization" of accountability and reconciliation mechanisms—Formal and non-formal institutions and measures for ensuring justice and reconciliation—United Nations principled position that a truth and reconciliation commission and a tribunal are two distinct, albeit complementary, accountability mechanisms operating independently of each other—A reconciliation process could not exempt anyone alleged to have committed serious violations of international humanitarian law or human rights from criminal responsibility—United Nations position on the non-applicability of the death penalty in any of the United Nations-based or assisted tribunals—Granting of amnesty for genocide, crimes against humanity or war crimes could preclude any United Nations cooperation with any eventual judicial mechanism, national or international, before which persons accused of such crimes would be prosecuted

15 November 2007

1. This is in reference to your note of 2 July 2007 to the High Commissioner for Human Rights and the Under-Secretary-General for Legal Affairs, the Legal Counsel, requesting, on behalf of the Special Envoy of the Secretary-General, our comments on the Agreement on Accountability and Reconciliation signed between the Parties on 29 June 2007 ("the Agreement"), and the way forward. Reference is also made to the High Commissioner's Note to you of 17 July 2007 on the same matter, a copy of which was forwarded to this Office. Reference is finally made to a series of meetings which has taken place since between [Legal officers A and B] of this Office and members of the Department of Political Affairs (DPA)'s Africa I Division, where our legal analysis was shared with them informally. Valuable information was provided to enable us to consider the question of accountability and reconciliation in Northern Uganda in all its aspects. We set out below our comments, both general and specific, on the Agreement and its implications, in particular, on the pending warrants of arrest issued by the International Criminal Court (ICC).

1. General comments

2. The Agreement on Accountability and Reconciliation ("the Agreement") is a framework Agreement whose practical implementation depends on future mechanisms to be developed in an implementing protocol annexed to the Agreement (para. 15.1). To ensure that in implementing the Agreement, the annex does not deviate from it in any significant way, paragraph 14.2 of the Agreement provides that the Parties: "Ensure that any accountability and reconciliation issues arising in any other agreement between themselves are consistent and integrated with the provisions of this Agreement".

3. The basic principle underlying the Agreement is the so-called "nationalization" of all accountability and reconciliation mechanisms under the Uganda Constitution. Accordingly, paragraph 2.1 of the Agreement provides that: "The Parties shall promote *national legal arrangements* consisting of formal and non-formal institutions and measures for ensuring justice and reconciliation with respect to the conflict"; paragraph 4.4 further stipulates that "[F]or purposes of this Agreement, accountability mechanisms *shall be implemented through the adapted legal framework in Uganda*" (emphasis added).

Under paragraph 5.1 of the Agreement, the Parties confirm that Ugandan national institutions and mechanisms are capable, albeit with modifications, of addressing the crimes and human rights violations committed during the conflict; and finally, para. 5.4 provides that "[I]nsofar as practicable, accountability and reconciliation processes shall be promoted *through existing national institutions and mechanisms* with necessary modifications" (emphasis added).

4. The transitional justice mechanisms envisaged under the Agreement include:

(i) the "formal courts" established under the Constitution;

(ii) "alternative justice mechanisms" not administered in the formal courts, i.e., traditional rituals of all kinds which according to para. 3.1 of the Agreement are "a central part of the framework for accountability and reconciliation"; and

(iii) appropriate reconciliation mechanisms, including truth-seeking or truth-telling processes to be developed (para. 7).

5. While the "internationalization" of the accountability process is expressly excluded, the Agreement makes two brief references to the ICC, none of which, however, mentions the pending arrest warrants against the remaining four LRA leaders. The third preambular paragraph of the Agreement provides that the Parties are

> "Committed to preventing impunity and promoting redress in accordance with the Constitution and international obligations and recalling, in this connection, the requirements of the Rome Statute of the International Criminal Court (ICC) and *in particular the principle of complementarity*" (emphasis added).

By paragraph 14.6 of the Agreement, the Government undertakes to "[a]ddress conscientiously the question of the ICC arrest warrants relating to the leaders of the LRA/M." While it is unclear in what manner the ICC arrest warrants would be "conscientiously addressed", we assume that surrender to the ICC is probably not what the Parties had in mind. It is more than likely, therefore, that while committing themselves to the principle of accountability, the Parties are seeking alternative accountability mechanisms meeting the same or similar standards of justice.

II. Specific comments

A. Jurisdiction of the "formal courts"

6. The subject matter jurisdiction of the Ugandan court system, otherwise referred to as "formal criminal and civil justice measures", is limited to those alleged to have committed serious crimes, or human rights violations (para. 4.1), in particular, to those "alleged to bear particular responsibility for the most serious crimes, especially crimes amounting to international crimes, during the course of the conflict" (para. 6.1). The choice of the forum for any one particular case shall depend, among other considerations, "on the nature and gravity of the offending conduct and the role of the alleged perpetrator in that conduct" (para. 4.3). The Agreement foresees, in addition, accountability 'across the board', namely, one applicable both to the LRA and to State actors. In respect of the latter, however, only "existing criminal justice processes" will apply, not the special justice processes (para. 4.1).

B. Relationship between accountability and reconciliation procedures

7. Determining the relationship between accountability and reconciliation processes, or among formal court proceedings, truth-telling and traditional accountability mechanisms will be crucial to the good-faith implementation of the Agreement. Paragraph 3.10 of the Agreement, under the title of "Finality and effect of proceedings", is an implicit recognition that appearance before "reconciliation proceedings"—i.e., Truth and Reconciliation Commission (TRC) or traditional accountability mechanisms—may exempt the individual concerned from a judicial accountability process. It provides that:

> "Where a person has already been subjected to proceedings or exempted from liability, for any crime or civil acts or omissions, or has been subjected to accountability *or* reconciliation proceedings for any conduct in the course of the conflict, that person shall not be subjected to any other proceedings with respect to that conduct" (emphasis added).

8. We would recall that a similar concept of relationship between a TRC and a Special Tribunal was advanced by the Government of [State] in the course of the negotiation on the establishment of a twin accountability-mechanism for [State]. The linkage between the two accountability mechanisms, rejected by the United Nations, is the main reason for the current stalemate in the negotiation process between the United Nations and the Government of [State]. It is the United Nations principled position that a TRC and a tribunal – of any kind – are two distinct, albeit complementary, accountability mechanisms operating independently of each other. If an accountability process is to be meaningful, a reconciliation process could not exempt any one alleged to have committed serious violations of international humanitarian law or human rights, from criminal responsibility.

C. Standards of justice

9. Elements of due process of law are scattered throughout the Agreement. They include: the right to a fair hearing and due process of law; a fair, speedy and public hearing before an independent and impartial court or tribunal (para. 3.3); guarantees for the safety and privacy of witnesses, and their protection from intimidation (3.4); and a right to represent himself or herself or be represented by a lawyer of his or her choice, or one assigned to him or her by the tribunal if he or she is unable to afford it.

10. The foregoing provisions are only some of the elements of due process of law and fair trial. It is assumed, however, that at the time of the establishment of any judicial accountability mechanism, the full range of international standards of justice and due process of law would apply.

D. Penalties and sanctions

11. Under paragraphs 6.3 and 6.4 of the Agreement, a regime of alternative penalties shall replace the existing penalties with respect to serious crimes and human rights violations committed by non-State actors (LRA presumably will be subject to a more lenient penalties and sanctions regime). Such alternative penalties, according to the Agreement, shall reflect the gravity of the crimes or violations, promote reconciliation and take into account individual admissions or cooperation with the proceedings.

12. While it is unclear what alternative penalties are proposed to replace the existing ones, these provisions have given rise to some concerns (expressed notably by [NGO])

that the penalties imposed would be too lenient in comparison to existing Ugandan Penal Code provisions, which include lengthy prison terms along with the death penalty for serious offences. To meet international standards of justice, the approach taken should be one where a term of imprisonment matches the gravity of the crime while taking into account mitigating factors. Given the United Nations position on the non-applicability of the death penalty in any of the United Nations-based or assisted tribunals, it is a condition for the United Nations cooperation in the establishment and operation of any judicial accountability mechanism in Northern Uganda, that the said mechanism cannot impose the death penalty.

E. Amnesty Act

13. The Government of Uganda finally undertakes to introduce any amendments to the Amnesty Act or to the Ugandan Human Rights Act in order to bring it into conformity with the principles of this Agreement (para. 14.4). We note that the 2000 Ugandan Amnesty Act 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 war or armed rebellion". The amnesty is thus applicable to any person, including LRA leaders indicted by the ICC, and to crimes which were, or are being committed with no limitation in scope or time. In 2006 an amendment was introduced to the Amnesty Act which provided that "a person shall not be eligible for grant of amnesty if he or she is declared not eligible by the Minister [for Internal Affairs] by statutory instrument made with the approval of Parliament". Whatever further amendments may be contemplated, we should underscore the long-established United Nations position that there is no amnesty for genocide, crimes against humanity and war crimes, as well as for other serious violations of human rights and international humanitarian law. We should also add that amnesty for any of these crimes, if granted, would preclude any United Nations cooperation with any eventual judicial accountability mechanism—national or internationalized—before which persons accused for these crimes would have been brought to justice.

III. The way forward

14. In his request, the Special Envoy sought our advice on the way forward, which with the up-coming resumption of the talks, has become acute. The way forward is primarily a question for the Parties to determine in the implementing Annex. It is, at the same time also, a question of the United Nations role in assisting the Parties both in devising the legal framework for transitional justice mechanism and in addressing, "conscientiously" in the language of the Agreement, the pending ICC arrest warrants. But while the former is within the purview of OHCHR, the latter would require a coordinated approach by the Secretariat, OHCHR, the ICC and, depending on the preferred solution, the agreement of Members of the Security Council, as well.

15. The position of the ICC is clear. The arrest warrants issued against the LRA leaders should be respected, and Uganda should comply with its international obligation to arrest the LRA leaders and surrender them to the Court, notwithstanding the conclusion

of the Agreement on Accountability and Reconciliation. For the ICC to cease all investigations and prosecutions, any of the following scenarios must materialize:

(i) The Security Council uses its authority under article 16 of the Rome Statute and requests the ICC, by means of a Chapter VII resolution, that no investigation or prosecution be commenced or proceeded with under the Statute for a period of 12 months; "that request" according to article 12, "may be renewed by the Council under the same conditions".

(ii) Uganda challenges the admissibility of the case before the Court under articles 17 and 19 of the Statute. Article 17 (a) of the Statute provides that the Court shall determine the admissibility of the case where:

> "the case is *being investigated or prosecuted* by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out investigations or prosecutions" (emphasis added).

Under article 19 (1)(b) of the Statute, a State may challenge the admissibility of the case on the grounds "that it is *investigating or prosecuting* the case or has investigated or prosecuted" it (emphasis added).

16. While a challenge to the admissibility of a case under articles 17 and 19 of the Statute has not yet been tested by the Court, it is the general assumption that Uganda will have to prove not only its ability and willingness to prosecute the LRA leaders in its national court system in a credible judicial process and in full respect of international standards of justice, but that it is actually investigating and prosecuting the four LRA leaders against whom an arrest warrant was issued, and for the same charges. The ultimate decision would obviously be for Judges of the Court to make.

17. The role which could, or should be played by the United Nations Secretariat in assisting the Parties would ultimately depend on the "complementarity package" agreed to by all stake-holders and approved by the ICC. If the option of article 16 of the Statute materializes and a chapter VII resolution is adopted, Uganda would be relieved, for 12 months at least, of its obligation to surrender the LRA leaders in the event that they come into its custody. In an ideal situation, such Chapter VII resolution would have conditioned Uganda's exemption from its obligation on the development within a given time-frame of a credible alternative judicial accountability mechanism. If, on the other hand, Uganda is to succeed in challenging the admissibility of the case, it will be required to convince ICC Judges that a credible judicial accountability mechanism has already been put in place which is investigating and prosecuting crimes attributed to the LRA leaders.

18. While the United Nations cannot be seen as undermining in any way the activities and authority of the ICC, the validity of its arrest warrants or the treaty obligations of Uganda, this Office will be prepared to advise the Special Envoy of the Secretary-General on the legal aspects of the notion of "complementarity" under the Rome Statute.

19. In your note of 8 November addressed to the Legal Counsel, you request that this Office make available two legal officers to accompany the Special Envoy on his upcoming visit to the region to advise him on the sensitive issues of accountability and reconciliation currently under discussion between the parties. I am pleased to confirm that we are prepared to release [Legal officers A and B], to travel with the Special Envoy and advise him as requested.

(*d*) Interoffice memorandum to the Chief, Monitoring, Database and Information Branch, Office of Disarmament Affairs (ODA), regarding the Disarmament Digest

Intellectual property rights—Permission of the Publications Board needed to continue the distribution of the Disarmament Digest outside the Organization—Information available on a website without charge cannot necessarily be reproduced and redistributed without obtaining permission to do so from the copyright holder—Copyrighted material can be used only with copyright holder's permission or within the limits of "fair use"—Mere acknowledgment of sources of copyrighted material not equivalent to obtaining permission to use it—Each extract of the digest potentially gives rise to separate infringement claims that must be defended on the basis of the doctrine of "fair use"

6 December 2007

1. This refers to the memorandum, dated 8 November 2007, ("ODA Memorandum"), regarding a daily Disarmament Digest ("Digest") compiled by ODA, and consisting of news wire and similar information about disarmament matters. By that memorandum, ODA requested legal advice as to whether linking the Digest to non-United Nations websites may damage the reputation and neutrality of the Organization or infringe copyrights or other intellectual property rights of the information providers.

2. The ODA Memorandum explains that the Digest compiles "relevant open source material mainly from public websites not requiring paid subscriptions". The format of the Digest consists of a title, a brief three or four-line summary of an article, and a hyperlink to the relevant website where the item is available in full. The sources of materials extracted from such websites include commercial news agencies, newspapers, magazines, weblogs, universities, think-tanks, foreign and defense ministries, and international organizations. The Digest is circulated by e-mail to over one hundred individuals within the Organizations and to another one hundred entities and individuals such as former staff members, academics, foreign ministries and non-governmental organizations outside the Organization. ODA does not know where else the Digest might be disseminated thereafter, but is confident that it is further distributed. A number of outside organizations and individuals have recently approached ODA about including them in the Digest mailing list, which would substantially expand the distribution of the Digest outside the United Nations.

3. Regarding the issue of linking the Digest to non-United Nations websites, Administrative Instruction ST/AI/2001/5, of 22 August 2001,[*] entitled "United Nations Internet Publishing", provides as follows in paragraph 3.6:

> "Generally, links from United Nations web sites to external web sites should be avoided. Exceptions to the general policy may be warranted to highlight external web sites that provide information regarding the activities of other non-United Nations system intergovernmental or non-governmental organizations that operate programmes or conduct activities consistent with the policies, aims and activities of the Organization or external web sites that contain information or non-commercialized products (such as downloadable software) that facilitate the use of United Nations web sites. Exceptions to the general policy may be made upon a decision of the Publications Board, through its Working

[*] For information on Administrative Instructions, see note under 1 (*f*), above.

Group on Internet Matters, with advice, as appropriate, from the Office of Legal Affairs, that the proposed link to an external web site would further the policies, aims and purposes of the Organization and would not operate as, or potentially be seen to operate as, an endorsement of the activities or policies of the operator of the external web site."

4. We understand that ODA needs to be aware of all type of information concerning disarmament issues, including from sources which operate programmes or conduct activities not consistent with the policies, aims and activities of the Organization. However, sharing such information with individuals or entities outside of the Secretariat, such as distributing the Digest to third parties, may potentially be seen to operate as an endorsement of the activities or policies of the operator of the external web site, in these circumstances, should ODA intend to continue to distribute the Digest outside the Secretariat, it would have to request permission of the Publications Board to do so. Thus, in light of the foregoing provisions of the Administrative Instruction on Internet Publishing, ODA could seek a general authorization from the Publications Board not only to continue to link to external web sites for information from which the Digest's extracts are derived but also to distribute such materials outside the Secretariat. Moreover, any distribution of the Digest materials outside the United Nations must address the copyright concerns discussed below.

5. Regarding the copyright issues raised by ODA's compilation and distribution of the Digest, it should be highlighted that simply because information is available from a web site without charge, it cannot be assumed that such information is "open source material" that can be reproduced and redistributed without the need to obtain permission to do so from the copyright holder as suggested in the ODA Memorandum. Indeed, the articles listed in the issue of the Digest attached to the ODA Memorandum all appear to be copyrighted, and their use by the United Nations, therefore, would be subject to copyright laws and to the terms of use of the copyright owners. Copyrighted materials may only be used with owner's permission or, without such permission, if such use amounts to "fair use" within the meaning of the copyright laws. In the United States, for example, section 107 of the Copyright Act contains a list of the various purposes for which the reproduction of a particular work may be considered "fair use", such as criticism, comment, news reporting, teaching, scholarship, and research. Section 107 also sets out four factors to be considered in determining whether or not "fair use" of copyrighted material has been made:

i. The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;

ii. The nature of the copyrighted work;

iii. Amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

iv. The effect of the use upon the potential market for or value of the copyrighted work.

6. Unless the Organization has permission to use copyrighted materials in the Digest or, otherwise, unless the use of such materials in the Digest constitutes "fair use" within the meaning of the copyright laws, the reproduction and distribution of copyrighted materials in the Digest without permission could give rise to claims of copyright infringement against the United Nations. In this regard, the distinction between "fair use" and infringement of copyrighted material is a matter of degree. There is no specific number of words, lines or notes that may safely be taken without permission under the doctrine

of "fair use", and therefore each extract of the Digest potentially gives rise to a separate infringement claim that must be defended on the basis that such Digest extract amounted to fair use of the copyrighted materials on the basis of the factors enumerated in section 107 of the US Copyright Act. Such an intensely fact-bound inquiry could result in long and expensive proceedings in each case in order to defend against any infringement claims. Moreover, merely acknowledging the source of the copyrighted material does not substitute for obtaining permission from the copyright owner to use the material in question.

7. Web sites, including the United Nations web site, often disclose the terms of use of their copyrighted materials. For example, [News Agency]'s web site, a news agency often listed in the issue of the Digest attached to the ODA Memorandum, stipulates as follows: "All rights reserved. Users may download and print extracts of content from this web site for their own personal and non-commercial use only. Republication or redistribution of [News Agency] content, including by framing or similar means, is expressly prohibited without the prior written consent of [NewsAgency] [. . .]."

8. In these circumstances, this Office is not in a position to confirm that the distribution of the Digest, in its present form, within or outside the United Nations is not infringing title copyright of the producers of the extracted materials. However, we can confidently predict that ODA's distributing the Digest outside the United Nations would significantly increase the likeliness of having claims for copyright infringement brought against the Organization. The safest course of action for dealing with copyrighted material is always to request permission from the owner of the material before using it. You may wish to liaise with the Department of Public Information, which entertains relations with the press and news agencies, to discuss how to obtain appropriate licenses to compile and distribute the Digest materials

B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations

1. International Labour Organization

(Submitted by the Legal Adviser of the International Labour Conference)

Opinion concerning the impact of a proposed amendment to the text on the obligations of flag States and members' ability to regulate the activities of foreign vessels*

Obligations of the flag State under the proposed convention on the work in the fishing sector** —Proposed convention imposed obligations only on the flag State—Port State may exercise jurisdiction but may not do so in a discriminatory manner—Compliance with standards of proposed convention could possibly be regulated by coastal State in accordance with article 62 (4) of the United Nations Convention on the Law of the Sea (UNCLOS)—Different schools of

* Provisional Record No. 12, ninety-sixth session: Fourth item on the agenda: Work in the fishing sector, Report of the Committee on the Fishing Sector, ILC96-PR12–205-En.doc.

** The text of the Convention as adopted is reproduced in this publication, chapter IV. B.

THOUGHT REGARDING HOW FAR PORT STATE JURISDICTION OVER FOREIGN VESSELS EXTENDS WHEN NOT BASED ON SPECIFIC TREATY PROVISIONS

In response to a request for clarification, the representative of the Legal Adviser recalled that, during the Government group meeting, three questions had been asked by the Government member of [State] in connection with the issues addressed by the proposed new articles.

As to the first question, whether there were any provisions in the Convention that required to be enforced or applied by a State party other than in its capacity as a flag State, he explained that no such provisions existed. Under article 40, ensuring compliance with the Convention was an obligation of the flag State. In its capacity as a port State a member could exercise jurisdiction as provided in paragraph 2 of article 43 but this was not an obligation, as followed from the word "may" in that provision. article 44 merely sought to ensure that members did not exercise their jurisdiction in a discriminatory manner.

The second question asked had been whether the Convention contained provisions that a member could in its discretion enforce or apply other than in its capacity as a flag State. The relevant provisions were again paragraphs 2–5 of article 43 concerning port State control, which were based on similar provisions contained in the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). The Maritime Labour Convention, 2006, and several conventions of the International Maritime Organization also contained provisions on port State control. As to the possibility for a Member to ensure compliance with the standards of this Convention in its exclusive economic zone, the Office had consulted the United Nations Office of Legal Affairs, Division for Ocean Affairs and the Law of the Sea, among other things on the compatibility of paragraph 53 of the proposed recommendation (which was similar to the first new article proposed in the amendment) with UNCLOS.* The advice received was, in essence, that the matters dealt with by the proposed fishing convention could possibly qualify as matters that can be regulated by the coastal State in accordance with article 62 (4) of UNCLOS, since the list contained in that provision was not exhaustive.

In response to the third question, the representative of the Legal Adviser stated that there were no provisions in the proposed convention that could have the effect of limiting what a member may do in regulating the activities of foreign vessels. While International Labour Organization Conventions never prevented members from adopting higher standards nationally, it was important to bear in mind that there were different schools of thought on the question of how far port State jurisdiction over foreign vessels goes when it is not based on specific treaty provisions.

* United Nations, *Treaty Series*, vol. 1833, p. 3.

2. World Meteorological Organization*

Information note on the procedures for amending the World Meteorological Organization (WMO) Convention**

PROCEDURE TO AMEND THE CONVENTION ESTABLISHING WMO—DIFFERENT PROCEDURES FOR AN AMENDMENT CREATING A NEW OBLIGATION FOR MEMBER STATES AND FOR AN AMENDMENT NOT CREATING SUCH OBLIGATION—POWER TO PROPOSE AMENDMENTS—QUALIFIED MAJORITY—QUORUM OF MEMBER STATES—ENTRY INTO FORCE OF AMENDMENTS

REGULATORY FRAMEWORK

1. Article 28 in part XV of the Convention reads as follows:

(a) The text of any proposed amendment to the present Convention shall be communicated by the Secretary-General to Members of the Organization at least six months in advance of its consideration by Congress;

(b) Amendments to the present Convention involving new obligations for Members shall require approval by Congress, in accordance with the provisions of Article 11 of the present Convention, by a two-thirds majority vote, and shall come into force on acceptance by two thirds of the Members which are States for each such Member accepting the amendment, and thereafter for each remaining such Member on acceptance by it. Such amendments shall come into force for any Member not responsible for its own international relations upon the acceptance on behalf of such a Member by the Member responsible for the conduct of its international relations;

(c) Other amendments shall come into force upon approval by two-thirds of the Members which are States.

2. This article corresponds to the original text adopted by the Washington Conference in 1947. However, its meaning and operation has been refined and elaborated upon in the almost 60 years of history of the Organization by a number of interpretative agreements reached by Congress or through constitutional practice. Table I at the end of this appendix*** contains, in summary form, the list of amendments to the Convention adopted to date. Table II enumerates the decisions and resolutions relating to the procedure for amending the Convention adopted by Congress.

TYPES OF AMENDMENTS

3. Article 28 of the Convention distinguishes two types of amendments by their impact on the contracting parties:

– Those creating new obligations for members, and

– Those considered not to create any such obligation,

and accordingly provides for two different procedures for their adoption. Likewise, the consequences of each type of amendment differ. However, the power to propose both types of amendments and the procedure for referring them to Congress is the same.

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* Note prepared by the Secretariat for the XV session of the Word Meteorological Congress.

** United Nations, *Treaty Series*, vol. 7, p. 144.

*** Not reproduced herein.

4. In the absence of a definition or clear criteria as to whether a proposed amendment creates new obligations, practice has it that the determination rests with Congress at the time it adopts the amendment.

5. However, on one occasion, at the time of the adoption of the first amendments to the Convention in 1959, namely an amendment to article 10 (2) (a), Congress could not agree on whether the amendment was being approved under paragraph (b) or (c) of article 28 of the Convention. Congress accordingly requested the Secretary-General to transmit to Member States the text of the amendment asking them to indicate under what provision of article 28 they wished to accept the amendment.[1]

6. At the same session, Congress approved another amendment to the Convention, concerning an increase in the membership of the Executive Council, which it considered to fall under article 28 (c). It fixed accordingly a date for its entry into force.

7. Due to the apparent contradiction between these two courses of action, an in-depth study of article 28 was requested for the next session of Congress. It was also put on record that neither of the procedures followed with respect to the adoption of the amendments to article 10 (2) (a) and to article 13 (c) should be considered as setting a precedent pending a determination on the interpretation of article 28.[2]

8. Since then, all amendments subsequently proposed to the Convention have been expressly considered prior to their adoption as not creating any new obligations for Members and have been adopted under article 28 (c).

Power to propose amendments and procedure for their referral to Congress

9. Paragraph (a) of article 28 of the Convention is silent on who has authority to propose an amendment to the Convention. When the matter was first raised, Third Congress agreed by its Resolution 4 (Cg-III) that only member States, as the contracting parties, had the right to propose amendments to the Convention. By the same Resolution, Congress instructed the Executive Council to keep under continuous review the Convention between sessions of Congress and to submit to Congress any proposed amendment to the Convention, for its consideration, thereby recognizing that the Executive Council too enjoyed the power to propose amendments to the Convention.[3]

10. Article 28 (a) provides for a six-month time limit ahead of Congress for proposed amendments to be considered receivable. In practice, this means that any amendment proposed by a member has to reach the Secretariat more than six months before Congress in order to allow for the processing, translation and dispatch of the proposed amendment within the statutory time limit.

11. Regarding the amendments submitted by the Executive Council, Third Congress called on the Secretariat to make sure that any proposal made to Fourth Congress by the Executive Council be communicated to members at least nine months ahead of Congress so that member States would have sufficient time to submit counter-proposals to the amendment within the six-month time limit provided for in article 28 (a) of the

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[1] Cg-III, Abridged report with resolutions, General Summary, §3.1.3 (WMO-No. 88 RC. 17).

[2] *Ibid.*

[3] *Ibid.,* General Summary, §3.1.1 to 3.1.3.

Convention.[4] This time limit, set specifically for Fourth Congress, has not been extended to amendments proposed by the Executive Council to subsequent meetings of Congress, nor has it been expressly abandoned.

12. In practice, amendments proposed by the Executive Council have been communicated to member States before the six-month time limit provided for in article 28 (a) of the Convention, but not necessarily nine months ahead of Congress.

13. Subsequently, in the interpretation of article 28 of the Convention agreed upon by Sixth Congress in 1971, it was considered that counter-proposals to a proposed amendment, or modifications to it, would be receivable even if they were made after the six-month time limit, provided that the proposed modification would not result in a change in the basic intent of the draft amendment or in the introduction of a subject not covered by the proposed amendment. Any proposal that would not meet these two requirements would need to be presented as a separate amendment in accordance with the provisions of article 28 (a) six months ahead of the ensuing Congress.[5]

Amendments creating new obligations

14. Under the provisions of article 28 (b), an amendment creating new obligations for members needs to be approved by a two-third majority vote, and be accepted by two thirds of the members.

15. As with other decisions made by Congress, the quorum of presence required under article 12 of the Convention (the majority of members which are States) needs to be attained for the amendment to be put to a vote.

16. In accordance with the interpretation given to article 28 by Third Congress, the two-third majority should be of members which are States present at Congress. For the calculation of the two thirds, only votes cast for and against (i.e. excluding abstentions) are counted, as confirmed by Sixth Congress in 1971.[6]

17. Upon approval of an amendment by Congress under the above conditions, it shall be open for acceptance by Member States. Such acceptance is to be notified, by analogy with the provisions governing ratification or acceptance of the Convention, to the Depositary, i.e. the Government of the United States of America, in accordance with the provisions in part XIX of the Convention.

18. According to the letter of article 28 (b) of the Convention, the amendment will come into force in respect of members having accepted it on receipt by the Depositary of the acceptance by the member State bringing the total number of acceptances to two-thirds of the members which are States (or 121 out of a total of 181 as at 31 August 2005). Thereafter, the amendment comes into force for each member accepting it on receipt of its acceptance by the Depositary.

19. This procedure has never been resorted to in practice, as it was feared that it would lead to a situation where two texts of the Convention would co-exist. For instance, if amendments to the composition of the Executive Council were to be adopted under

[4] Cg-III, Proceedings, paragraph 21.1 (WMO, No. 89, RC.18).

[5] Cg-VI, Abridged report with resolutions, General Summary, §5.1.2 (WMO-No. 292).

[6] *Ibid*., General Summary, §5.1.2 (b).

article 28 (b), a situation could arise where the Executive Council would have a different composition *vis-à-vis* different members, depending on whether and when they accepted the amendment. This explains some proposals aimed at making amendments under article 28 (b) binding on all members after their entry into force or at merging the amendment procedures set out in article 28 (b) and in article 28 (c) into a single procedure. However, such proposals were in the end not deemed advisable as it was considered that an amendment creating obligations should not be imposed on members which have not accepted it formally.[7]

Amendments not creating obligations

20. Under article 28 (c) of the Convention, a proposed amendment that does not create new obligations requires a simple approval procedure by a majority of two thirds of the members.

21. In accordance with the interpretation agreed upon at Third Congress, such majority is of members which are States.[8] This interpretation, together with the provisions of articles 11 (b)—voting—and 12—quorum—of the Convention are to the effect that three conditions are to be met for an amendment to be formally adopted:

- First, that at least a majority of the members which are States are present at the meeting of Congress at which the amendment is to be decided upon;
- Second, that the amendment is supported by at least two thirds of the total of votes cast for and against (excluding abstentions) of the member States present at Congress; and
- Third, that the members voting for the amendment represent at least two thirds of WMO members which are States.

22. In practice, these three stages tend to be ascertained at the same time, i.e. that no amendment is put for decision unless two thirds of member States are present. In fact, a number of amendments have been approved even without an actual vote where the presiding officer was satisfied that all three conditions were clearly met and no objection was raised.[9]

23. In the event that an amendment under article 28 (c) is approved by a two-thirds majority vote of the members present, but fails to receive the approval of two thirds of all the members which are States, Sixth Congress decided that the amendment could be referred to next Congress for a new vote if Congress so decided.[10] This interpretation was agreed in order to overcome the difficulties faced during Third Congress referred to in paragraph 5 above. Indeed, the amendment to article 10 (2) (a) was then approved by two thirds of the members present at Congress, but fell short of the number of member States required. This gave rise to a dispute as to whether the amendment involved new obligations. When Congress decided to ask all member States to notify the Depositary of their

[7] Cg-VI, Abridged report with resolutions, General Summary, §5.1.4.

[8] *Ibid*., General Summary, §5.1.2 (c).

[9] See Cg-VII, Proceedings, §22 (WMO-No. 428); Cg-IX, Proceedings, §12, 27 and 38 (WMO-No. 645) and Cg-XIV, Proceedings, §21 (WMO-No. 972).

[10] Cg-VI, Abridged report with resolutions, General Summary, §5.1.2 (c).

approval, indicating whether it was under article paragraph (b) or (c) of article 28, it was understood that the amendment would be considered adopted as soon as the Depositary would have received confirmation by two-thirds of member States that they had approved it under article 28 (c).[11]

24. The interpretation agreed by Sixth Congress was put in practice during Seventh Congress in 1975 when a proposal to increase the membership of the Executive Council was approved by a two-thirds majority vote, but the votes cast for did not account for two-thirds of all WMO member States [12]. The proposal to increase the number of members of the Executive Council was eventually adopted by Eighth Congress in 1979.

25. Concerning the voting procedure, Third Congress[13] agreed that the adoption by a postal vote of amendments to the Convention even when they do not involve new obligations was not permissible or desirable, an interpretation that was confirmed by Sixth Congress[14]. It was, however, exceptionally set aside by Ninth Congress in 1983. Congress then requested the Executive Council to organize the approval of proposed amendments to article 3 and 34 of the Convention by a postal ballot (so as to enable the United Nations Council for Namibia to become a member of the Organization)[15]. Unlike the procedure concerning elections by correspondence, where there is a time limit under the General Regulations for the receipt of ballot papers, no time limit is foreseen or was fixed for this approval of the amendments by correspondence. Eventually, these amendments did not receive the majority required for their adoption, but Namibia became a member of WMO as an independent State in 1991.

26. As regards the date of entry into force of an amendment adopted under article 28 (c), Third Congress considered that upon receipt of the necessary approval, an amendment entailing no new obligations enters into force immediately, unless Congress fixes upon approval of the amendment a different date for its entry into force[16]. Congress has fixed in the relevant resolution a date for the entry into force of amendments in all but three cases, two relating to purely linguistic or terminological amendments[17] and one because of the circumstances referred to in paragraphs 5 and 23 above[18].

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[11] Cg-III, Proceedings, §68 (WMO, No. 89, RC.18).

[12] Cg-VII, Abridged report with resolutions, General Summary, §10.1.6 (WMO-No. 416).

[13] Cg-III, Abridged report with resolutions, General Summary, §3.1.1.4.

[14] Cg-VI, Abridged report with resolutions, General Summary, §5.1.3.

[15] Cg-IX, Abridged report with resolutions, General Summary, §10.1.9 to 10.1.11 (WMO-No. 615).

[16] Cg-III, Abridged report with resolutions, General Summary, paragraph 3.1.1.3 and Resolution 3.

[17] Cg-V, Abridged report with resolutions, Resolution 2 (Cg-V) (WMO-No. 213 RC. 28); Cg-XIV, Abridged final report with resolutions, Resolution 41 (Cg-XIV) (WMO-No. 960).

[18] Cg-III, Abridged report with resolutions, General Summary, Resolution 1.

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 is the principal judicial organ of the United Nations. It was established in June 1945 by the Charter of the United Nations and began work in April 1946.

1. Judgments

(i) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro),* Judgment, 26 February 2007.

(ii) *Ahmadou Sadio Diallo* (*Republic of Guinea* v. *Democratic Republic of the Congo*), Preliminary Objections, Judgment, 24 May 2007.

(iii) *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras),* Judgment, 8 October 2007.

2. Advisory Opinions

No advisory opinions were delivered by the International Court of Justice in 2007.

3. Pending cases as at 31 December 2007

(i) *Certain Questions of Mutual Assistance in Criminal Matters* (*Djibouti* v. *France*) (2006—).

(ii) *Pulp Mills on the River Uruguay* (*Argentina* v. *Uruguay*) (2006-).

(iii) *Dispute regarding Navigational and Related Rights* (*Costa Rica* v. *Nicaragua*) (2005-).

(iv) *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine)* (2004-).

[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, the summaries can also be found in *Summaries of Judgments, Advisory Opinions and Orders of the International Court of Justice* (United Nations Publication, Sales Nos. E.97.V.7, E.05.V.12, E.08.V.6, (ST/LEG/SER.F/1 and Add. 1–3), which is published in the six official languages of the United Nations.

(v) *Sovereignty over Pedra Branca/Pulau Batu Puteh, 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) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia)* (1999-).

(ix) *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)* (1999-).

(x) *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)* (1998-).

(xi) *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,[4] 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.

1. Judgments

(i) *Case No. 14—The "Hoshinmaru" Case (Japan* v. *Russian Federation), Prompt Release,* 6 August 2007.

(ii) *Case No. 15—The "Tomimaru" Case (Japan* v. *Russian Federation), Prompt Release,* 6 August 2007.

2. Pending cases as at 31 December 2007

Case No. 7—Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile v. *European Community)* (2000-).

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[2] For more information about the Tribunal's activities, including relating to orders rendered in 2007, see the Annual report of the International Tribunal for the Law of the Sea for 2007 (SPLOS/174) and the Tribunal's website at http:\\www.itlos.org. See also the *Reports of Judgments, Advisory Opinions and Orders/Recueil des arrêts, avis consultatifs et ordonnances, Volume 9 (2005–2007),* Martinus Nijhoff Publishers, 2008.

[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] As at 31 December 2007, in accordance with the Statute and the Rules of Procedure and Evidence, the Prosecutor had opened investigations into four situations.

(i) *Situation in the Democratic Republic of the Congo ICC-01/04*

On 29 January 2007, Pre-Trial Chamber I confirmed charges of war crimes against Thomas Lubanga Dyilo. Both the prosecution and the defence sought leave of the Pre-Trial Chamber to appeal aspects of the confirmation of charges decision. The Pre-Trial Chamber dismissed these requests on 24 May 2007. A second appeal filed by the defence directly to the Appeals Chamber was also dismissed on 13 June 2007. Following the confirmation of the charges, the presidency constituted Trial Chamber I on 3 March 2007, which engaged in preparations for the opening of the trial. (*The Prosecutor* v. *Thomas Lubanga Dyilo* (ICC-01/04–01/06)).

On 2 July 2007, Pre-Trial Chamber I issued an arrest warrant under seal for Germain Katanga. Germain Katanga surrendered to the Court and was transferred to The Hague on 17 October, and made his first appearance before the Pre-Trial Chamber I on 22 October 2007. On 6 July 2007, Pre-Trial Chamber I issued an arrest warrant under seal for Mathieu Ngudjolo Chui. (*The Prosecutor* v. *Germain Katanga and Mathieu Ngudjolo Chui* (ICC-01/04–01/07)).

(ii) *Situation in Uganda ICC-02/04*

In 2005, five warrants of arrest were issued against five alleged members of the Lord's Resistance Army. On 11 July 2007, following the reception by ICC of a death certificate, Pre-Trial Chamber II terminated the proceedings against Raska Lukwiya and rendered the warrant of arrest without effect. (*The Prosecutor* v. *Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen* (ICC-02/04–01/05)).

(iii) *Situation in the Central African Republic ICC-01/05*

On 22 May 2007, the opening of an investigation into the situation in the Central African Republic was announced by the Prosecutor.

(iv) *Situation in Darfur, the Sudan ICC-02/05*

On 27 April 2007, Pre-Trial Chamber I issued warrants of arrest against Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammed Ali Abd-Al-Rahman ("Ali Kushayb"). (*The Prosecutor* v. *Ahmad Muhammad Harun* (*"Ahmad Harun"*) *and Ali Muhammed Ali Abd-Al-Rahman ("Ali Kushayb")* (ICC-02/05–01/07)).

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[5] For more information about the Court's activities, see Report of the International Criminal Court (A/62/314 and A/63/323). See also the Court's website at http://www.icc-cpi.int/.

[6] United Nations, *Treaty Series,* vol. 2187, p. 3.

D. International Criminal Tribunal for the former Yugoslavia[7]

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 of 25 May 1993.[8]

1. Judgements delivered by the Appeals Chamber

(i) *Prosecutor* v. *Miroslav Bralo,* Case No. IT-95–17, "Lašva Valley", Judgment on Sentencing Appeal, 2 April 2007.

(ii) *Prosecutor* v. *Radoslav Brđanin,* Case No. IT-99–36, "Krajina", Judgment on Sentencing Appeal, 3 April 2007.

(iii) *Prosecutor* v. *Vidoje Blagojević and Dragan Jokić,* Case No. IT-02–60, Judgment on Sentencing Appeal, 9 May 2007.

(iv) *Prosecutor* v. *Fatmir Limaj, Isak Musliu and Haradin Bala,* Case No. IT-03–66, Judgment, 27 September 2007.

(v) *Prosecutor* v. *Sefer Halilović,* Case No. IT-01–48, Judgment, 16 October 2007.

(vi) *Prosecutor* v. *Dragan Zelenović,* Case No. IT-99–36, Judgment on Sentencing Appeal, 31 October 2007.

2. Judgements delivered by the Trial Chambers

(i) *Prosecutor* v. *Domagoj Margetić,* Case No. IT-95–14-R77.6, Judgment on Allegations of Contempt, 7 February 2007.

(ii) *Prosecutor* v. *Josip Jović,* Case No. IT-95–14 and 14/2-R77, Judgment, 15 March 2007.

(iii) *Prosecutor* v. *Dragan Zelenović,* Case No. IT-99–36, Judgment, 4 April 2007.

(iv) *Prosecutor* v. *Milan Martić,* Case No. IT-95–11, Judgment, 12 June 2007.

(v) *Prosecutor* v. *Mile Mrkšić, Miroslav Radić, Veselin Šljivančanin,* Case No. IT-95 –13/1, "Vukovar hospital", Judgement, 27 September 2007.

(vi) *Prosecutor* v. *Dragomir Milošević,* Case No. IT-98–29/1, "Sarajevo", Judgment, 12 December 2007.

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[7] The texts of the indictments, decisions and judgements are published in the *Judicial Reports / Recueils judiciaires* of the International Criminal Tribunal for the former Yugoslavia for each given year. The texts are also available in English and French on the Tribunal's website at 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/62/172-S/2007/469 and A/63/210-S/2008/515).

[8] The Statute of the Tribunal is annexed to the report of the Secretary-General pursuant to Security Council resolution 808 of 22 February 1993 (S/25704 and Add.1).

E. International Criminal Tribunal for Rwanda[9]

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.[10]

1. Judgements delivered by the Appeals Chamber

(i) *Prosecutor* v. *Emmanuel Ndindabahizi,* Case No. ICTR-01–71-A, Judgement, 16 January 2007.

(ii) *Prosecutor* v. *Mikaeli Muhimana,* Case No. ICTR-95–1B-A, Judgement, 21 May 2007.

(iii) *Prosecutor* v. *Aloys Simba,* Case No. ICTR-01–76, Judgement, 27 November 2007.

(iv) *Prosecutor* v. *Ferdinand Nahimana* et al, Case No. ICTR-96–11, Judgement, 28 November 2007.

2. Judgements delivered by the Trial Chambers

(i) *Prosecutor* v. *Joseph Nzabirinda,* Case No. ICTR-2001–77-T, Judgement and Sentence, 23 February 2007.

(ii) *Prosecutor* v. *Juvénal Rugambarara,* Case No. ICTR-00–59-T, Judgement and Sentence, 16 November 2007.

(iii) *Prosectuor* v. *François Karera*, Case No. ICTR-01–74-T, Judgement and Sentence, 7 December 2007.

(iv) *Prosecutor* v. « *GAA* », Case No. ICTR-07–90-R77-I, Judgement and Sentence (case of false testimony and contempt of Tribunal), 4 December 2007.

[9] 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/62/284–S/2007/502 and A/63/209-S/2008/514).

[10] The Statute of the Tribunal is contained in the annex to the resolution.

F. Special Court for Sierra Leone[11]

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.[12]

1. Judgements delivered by the Trial Chambers

(i) *Prosecutor* v. *Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu,* (Armed Forces Revolutionary Council (AFRC) Case), Case No. SCSL-04–16-T, Judgement, 20 June 2007; Sentencing Judgement, 19 July 2007.

(ii) *Prosecutor* v. *Moinina Fofana and Allieu Kondewa,* (Civil Defence Forces (CDF) Case),[13] Case No. SCSL-04–14-T, Trial Judgement, 2 August 2007; Sentencing Judgement, 9 October 2007.

2. Judgements delivered by the Appeals Chamber

No judgements were delivered by the Appeals Chamber of the Special Court for Sierra Leone in 2007.

3. Selected decisions of the Appeals Chamber[14]

There were no decisions of the Appeals Chamber pertaining to jurisdictional and other matters relating to the competence of the Court in 2007.

4. Selected decisions of the Trial Chambers[15]

There were no decisions taken by the Trial Chambers pursuant to rule 98 of the Rules of Procedure and Evidence of the Special Court (Motion of judgment of acquittal) in 2007.

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[11] 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 May 2007, and the Fifth annual report of the President of the Special Court, covering the period from June 2007 to May 2008.

[12] For the text of the Agreement and the Statute of the Special Court, see United Nations, *Treaty Series,* vol. 2178, p. 137.

[13] On 22 February 2007, Trial Chamber I was informed of the death of the first accused in the Civil Defense Forces Trial, Samuel Hinga Norman. Thus, on 21 May 2007, Trial Chamber I decided to terminate proceedings against Norman and that its Trial judgment would be rendered only against the remaining accused, Fofana and Kondawa, on the basis of the entirety of the evidence adduced during the trial.

[14] Selected decisions of the Appeals Chamber pertaining to jurisdictional and other matters relating to the competence of the Court are covered in this section.

[15] Only decisions of the Trial Chamber made pursuant to rule 98 of the Rules of Procedure and Evidence of the Special Court (Motions of judgment of acquittal) in 2007 are covered in this section.

G. Extraordinary Chambers in the Courts of Cambodia

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,[16] 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.

No judgment was issued by the Trial Chamber or Supreme Court Chamber in 2007. However, the Co-Investigating Judges indicted and issued orders of Provisional Detention against Kaing Guek Eav alias Duch; Nuon Chea; Ieng Sary and Thirith; and Khieu Samphan.[17] Furthermore, on 3 December 2007, the Pre-Trial Chamber rendered its decision on the Appeal by Kaing Guek Eav (Duch) against the Order for Provisional Detention, case No. 001/18–07–2007-ECCC-OCIJ-(PTC01).

H. Special Tribunal for Lebanon

In 2007, the Special Tribunal for Lebanon was established pursuant to the Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon, dated 22 January and 6 February 2007, and the resolution of the Security Council 1757 (2007) of 30 May 2007.[18]

[16] United Nations, *Treaty Series,* vol. 2328.

[17] On 31 July 2007; 19 September 2007; 14 November 2007; and 19 November 2007, respectively.

[18] The Statute of the Tribunal, and the Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon, to which it is attached, are reproduced in chapter II. B.

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

A. The Netherlands

1. *Judgment of the Court of Appeal of The Hague, LJN: BA 2778 (15 March 2007)*[*]

(Extracts)

Privileges and immunities of international organizations—Organization for the Prohibition of Chemical Weapons (OPCW)—Immunity of jurisdiction and from execution granted to OPCW—Headquarter Agreement—Respect of property of OPCW intended to ensure the performance of its official activities—Legal consequences of notification given in breach of the State's obligations under international law—Prevalence of State's interests to perform its obligations under international law over an individual's interests to execute a judgment in his favour

The Facts: X entered the employment of the Organisation for the Prohibition of Chemical Weapons (OPCW) in The Hague as a security guard under a fixed-term contract on 1 March 2001. From 28 May 2005 onwards, however, he no longer performed any work for OPCW. He then served a writ of summons on OPCW before the subdistrict court in The Hague demanding continued payment of his salary. By letter of 31 October 2005 OPCW wrote as follows to the subdistrict court judge: '(. . .) OPCW would like to inform the Court that according to the Headquarters Agreement. Article 4, the OPCW enjoys immunity from any form of legal process in the Netherlands. The OPCW would highly appreciate it if the necessary steps are taken to dismiss this case'. In his default judgment the subdistrict court judge responded as follows: 'The court agrees with what the plaintiff has said about the OPCW's immunity status and its claim to immunity. Taking into account, among other things, the case law cited by the plaintiff, the OPCW has not made clear—or not made sufficiently clear—why it claims immunity in this dispute, which specifically concerns Dutch employment law and in which no diplomatic or similar interests are involved.' The subdistrict court judge then directed the OPCW by default judgment of 7 November 2005, among other things, to continue paying the salary. The judgment was served by a bailiff on the OPCW on 5 December 2005. On 5 January 2006 the Minister of Justice notified the bailiff that the service of the writ and judgment was in conflict with the obligations of the State of the Netherlands under international law and that the performance of such official acts (in so far as not yet performed) should be refused. X then applied to the District Court of The Hague for an interim injunction against the State of the Netherlands ordering it to negate the consequences of the notification of 5 January

[*] Source: *Netherlands Yearbook of International Law* (2008) case law survey No. 3.2113.

2006 by the Minister of Justice. He argued that the notification had been wrongly given. He claimed that the OPCW was not entitled to immunity in so far as these acts were juristic acts under private law. As the subdistrict court judge had held that the OPCW was not entitled to immunity from jurisdiction, it was also not entitled to immunity from execution of the judgment. According to the interim relief judge, there was no need to answer the question of whether service of the writ of summons was in conflict with international law obligations. Only the question of whether service of the judgment was in conflict with these obligations was relevant. According to the interim relief judge, this was the case and he therefore dismissed X's application (judgment of 23 August 2006).[1] X appealed against this judgment to the Court of Appeal of The Hague.

Held: ". . . . 3. X's ground of appeal is that the interim relief judge either wrongly held that the OPCW has immunity from execution of the judgment of the subdistrict court or failed to provide arguments for this. X submits that the interim relief judge wrongly supposed that he (X) was appointed to perform the official activities of the OPCW and that the interim relief judge assumed in the light of the case law of the Supreme Court—albeit wrongly—that the OPCW has immunity from execution.

4. The Court of Appeal notes at the outset that immunity under international law from execution in respect of property (things and patrimonial rights) is intended to ensure that it remains available for the purpose for which it is held, namely the performance of official activities by the State or international organisation concerned. This immunity from execution is, in principle, separate from any immunity from jurisdiction. Under Article 4 (2) of the Headquarters Agreement the OPCW has such immunity from execution in respect of all property and possessions of the OPCW.

5. Article 3a, paragraph 2, of the Bailiffs Act gives the Minister the power to notify a bailiff that an official act which he has been or will be instructed to perform or which he has already performed is in conflict with the obligations of the State under public international law. The State has submitted that one of the legal consequences of such a notification is that official acts already performed are void. The Court of Appeal does not agree with this submission for the time being. The legal consequences of the notification are regulated in paragraphs 5 and 6 of this article. Paragraph 6 concerns official acts already performed at the time of the notification. It is exclusively provided in this connection that if the official act involves service of a writ of seizure, the bailiff should immediately serve the notification, end the seizure and negate the consequences thereof. This in itself means, in the provisional opinion of the Court of Appeal, that the official act is not void. Paragraph 5 concerns official acts that have not yet been performed. It provides that in such circumstances the bailiff is no longer competent to perform the act and that an official act performed in breach of this prohibition is void.

6. As there had still been no seizure at the moment of notification, the Court of Appeal is merely required as interim relief judge to determine whether the prohibition on further execution measures as a consequence of the notification should be lifted. For the time being the Court of Appeal is of the opinion that the further execution of the

[1] *LJN* No. BB1261, NIPR (2007) No. 300. The interim relief judge held, finally, that although the Minister had exercised his power under Article 3a at the request of the OPCW this did not mean that this power had been abused. After all, the Minister had himself assessed the case and come to the conclusion that the notification should be given.

judgment of the subdistrict court would be in conflict with the obligation under international law entered into by the State in the headquarters agreement, which extends to all property and possessions of the OPCW. Unlike X, the Court of Appeal is of the opinion that the notification is not premature because it is not clear how X wishes to proceed with the execution. Under Article 4 (2) of the Headquarters Agreement the State is, after all, obliged to guarantee that the OPCW can make use of its property and possessions without being constrained by any measure of execution. In the provisional opinion of the Court of Appeal, the interests of the State in being able to perform this obligation under international law are so great as to take precedence over X's interest in being able to execute the judgment given in his favour.

7. In view of the above, the ground of appeal fails and the appealed judgment should be upheld. X will therefore be ordered to bear the costs of the State in the appeal proceedings. . . . '

2. Judgment of the Court of Appeal of The Hague, LJN: BC 1757 (17 December 2007)[*]

Prosecution of crime of genocide—Referral by the International Criminal Tribunal for Rwanda (ICTR) to the authorities of the Netherlands—Differentiation between referral of prosecution and referral of execution—Question of original and secondary jurisdiction of national courts—Charter of the United Nations—State's obligations under resolutions of the Security Council—Statute and Rules of Procedure of ICTR—Form of international convention—Interpretation of international treaty—National implementation of international treaty—Retroactivity

Hearings

1. This judgement is rendered as a result of the hearings in the Court of first instance and the hearing on appeal in this Court of Appeal on 3 December 2007.

The Court of Appeal has taken cognizance of the demand of the Advocate-General and of that which has been brought forward by and on behalf of the suspect.

The Advocate-General has moved that the judgement be set aside insofar as it concerns barring the public prosecutor from prosecution of the suspect on count 1 in the summons with case number 09/750007–07.

Charges

2. The charges against the suspect are contained in the initiatory writs of summons and a further description of one of them is laid down in Section 314a of the Code of Criminal Procedure. A copy is attached to this judgement.[**] This Court of Appeal derives the following summary description of the charges which the public prosecutor's office brought against the suspect from the judgement of the Court of first instance.

[*] Translation provided by the Government of the Netherlands and edited by the Secretariat of the United Nations.

[**] Not published herein.

1. The suspect is on trial for involvement in a number of serious offences allegedly committed in Rwanda in April 1994. The charges against the suspect are contained in two writs of summons which will be handled in a joint action.

2. The suspect was summoned for the first time on 21 November 2006 for a pro forma session for case number 09/750009–06. This case was again handled pro forma on 12 February 2007 and 5 March 2007, and also in the session of 11 May 2007, which was continued on 16 and 21 May 2007. This summons contains the following complex of facts:

I. Ambulance murders, namely, the killing of a number of women and children who were being transported in an ambulance;

II. Seventh Day Adventists buildings Mugonero, that is, the killing and/or inflicting (grievous) bodily and/or mental injury on a large group of people who had fled to these buildings;

III. Taking of hostages/ humiliating/ threatening their families [A].

3. The suspect was summoned for the first time on 11 May 2007 for a hearing on case number 09/750007–07 (continued on 16 and 21 May 2007). This second summons contains the following complex of facts:

IV. Rape and attempts on the lives of a number of women;

V. Taking of the grandchildren from their family and their murder [B].

4. The whole of this complex of facts has been charged as the principal charge of war crimes (section 8 of the Act on laws governing war crimes) and as the alternative charge of torture (sections 1 and 2 of the Convention against Torture Implementations Act).

5. On the second summons, all five of the complex of facts were jointly charged (in count 1) as genocide (section 1 of the Genocide Convention Implementation Act). The prosecution was taken over by the public prosecutor from the Prosecutor of the International Tribunal for the prosecution of persons responsible for genocide and other serious violations of the international humanitarian law, committed on the territory of Rwanda or neighbouring countries of Rwanda during the period in time between 1 January 1994 and 31 December 1994 (to be referred to as: Rwanda-Tribunal).

Proceedings

3. In the Court of first instance, the public prosecutor was barred from prosecuting the charge of genocide, formulated in the second summons as count 1(case number 09–750007–07) on the grounds of lack of jurisdiction for this count. The public prosecutor filed an appeal against the judgement on 1 August 2007. The objections to the judgement of the Court of first instance were laid down in a document of Appeal dated 17 August 2007 and a Further Appeal dated 28 September 2007.

The scope of the appeal

4. The Court of Appeal establishes that the decision of the Court of first instance exclusively refers to (preliminary questions with respect to) the fact charged under count 1 of the second summons. The Court of Appeal assumes that the Court of first instance (after joining the facts of the first and second summons on 11 May 2007) has substantively separated this fact from the other facts as laid down in section 285 of the Code of Criminal Procedure.

Permissibility of the appeal of the public prosecutor's office

5. During the hearing in the Court of Appeal on 3 December 2007, counsel for the defence pleaded that the appeal of the public prosecutor's office should be dismissed. Counsel for the defence argued, in essence, that the decision of the Court of first instance is an intermediary decision not open to appeal. The Court of Appeal already ruled on this defence during the hearing on appeal. The Court of Appeal, with reference to the judgement of the Supreme Court of 13 January 2004 (LJN: AN 9235), judges that in view of the wording and the description of the decision in the judgement of the Court of first instance, it concerns a final judgement as defined by section 138 of the Code of Criminal Procedure against which, on the grounds of section 404, first subsection, of the Code of Criminal Procedure, an appeal may be lodged. Hence, the Court of Appeal rejected this defence. Furthermore, during counsel's speech for the defence it was argued that the public prosecutor's appeal should be dismissed on the ground that the document of appeal had not been submitted within the required time frame as laid down in section 410 of the Code of Criminal Procedure. The Court of Appeal considers that section 410 of the Code of Criminal Procedure gives the Court of Appeal the possibility to decide for dismissal of the appeal. However, this section does in no way contain an obligation for that and the Court of Appeal sees no reason whatsoever in the underlying matter to decide for a dismissal. Therefore, the Court of Appeal rejects this defence.

Permissibility of the public prosecutor's office to prosecute

6. Counsel for the defence has pleaded, consistent with his plea in the first instance, that the public prosecutor's office should also be barred from prosecuting the suspect on other grounds than those in connection with the jurisdiction. The Court of Appeal rejects this defence. Insofar as the Court of Appeal thinks to be able to fathom the underlying grounds for the argument, the motivation for this decision will be omitted for the sake of efficiency. After all, the public prosecutor's office is barred from prosecuting the suspect in the matter of genocide for reasons connected to jurisdiction, as will hereafter be considered and decided.

Request for adjournment of the proceedings

7. Counsel for the defence, after an earlier request to that effect at the beginning of the hearing in appeal, which was rejected by the Court of Appeal, repeated his request for an adjournment of the proceedings during his speech. Counsel for the defence argues to that end that he wishes to have a number of witnesses heard with respect to the actual procedure around the prosecution referral by the Prosecutor of the Rwanda Tribunal to the Dutch Judicial Authorities. Moreover, according to counsel's argument, the opinions of experts issued recently by the public prosecutor and introduced at the hearing, only raises new questions. These require study, for which the defence should be awarded time. Counsel would also like to have more time to respond to the position taken by the Advocate-General. With respect to that, the Court of Appeal takes the following stand. The legal questions under discussion during the appeals trial are in essence the same as those of the trial in the first instance. Therefore, Counsel has had ample time to (also further) consider these questions. Counsel had moreover already known for a month that the Court of Appeal had asked the Advocate-General to issue an expert's report on the aspects of the practices in conventional

law connected to the contacts maintained between the Prosecutor and the Dutch judicial authorities. To that extent the admittedly short notice before the hearing and issued expert's reports cannot have constituted a surprise for him. Also in view of the small size of the last report of the Prosecutor, one side with an annex of five pages, and the circumstance that the trial on appeal was interrupted for an hour in order to study the new report, the Court of Appeal once again rejects counsel's request. That same fate was shared by the request to hear a number of witnesses since the Court of Appeal considers itself to be sufficiently informed about the contacts between the Prosecutor of the Rwanda Tribunal and the Dutch justice authorities. The need to hear these witnesses has consequently not been demonstrated.

The procedure with respect to the prosecution

8. The suspect, who applied for political asylum in the Netherlands in 1998, was arrested on 7 August 2006 in Amsterdam on suspicion of war crimes. His prosecution was initially founded on that (cf. the first summons, see 2 under 2). By means of a letter dated 11 August 2006 the Public Prosecutor informed the Prosecutor of the Rwanda Tribunal of the arrest of the suspect. On 29 September 2006 the Prosecutor of the Rwanda Tribunal subsequently submitted a written request to take the prosecution over in the matter of genocide, committed during two of the described incidents in the request (defined in the first initiatory summons under 1. and 2.) and similar facts on other dates between 6 April 1994 and 17 July 1994 in the territory of Rwanda. This request was made through the Dutch Ambassador in Tanzania to the Minister of Justice, who authorized the public prosecutor's office by means of a letter dated 27 November 2006 to take over the criminal prosecution from the Tribunal. On 5 January 2007 the public prosecutor demanded (for the second time) that a judicial inquiry be initiated, also related to the suspicion of genocide (cf. 2 under 5 above). In response to a written request from the Advocate-General dated 23 November 2007, the Prosecutor of the Rwanda Tribunal notified by email of 30 November 2007 among other things, that he had come to an understanding with the Dutch authorities with regards to the referral of the prosecution of the suspect with respect to genocide.

9. As already indicated above (2), in the initiatory writs of summons the suspect has been accused of a set of five serious offences which allegedly were committed by him as a Rwandan in Rwanda in the year 1994. Each of these charges have, on the one hand, been worded as war crime (or torture), and on the other hand as genocide. The Court came to the conclusion that there was no jurisdiction for the facts formulated as genocide and consequently barred the public prosecutor's office from prosecuting those facts.

Assessment of the judgement

10. The Court of Appeal reached the same decision as the Court of first instance, though in part on somewhat different grounds. Partly with respect to that, the Court of Appeal will reverse the judgement that was appealed. With some regularity hereafter, the Court of Appeal will adopt the considerations of the Court of first instance by referring to the latter's considerations in its judgement. The judgement of the Court of first instance has been published on www.rechtspraak.nl under LJN-number BB8462.

Original jurisdiction

11. Original jurisdiction can, according to the Court of first instance, (grounds for judgement 15 through 27), be derived from the provisions in the sections 2 through 4 and 5 through 7 of the Criminal Code, or from section 5 of the Genocide Convention Implementation Act or section 3 of the War Crimes Act. The appellate Court, just as the Court, the public prosecutor and the defence, finds that the regulations with respect to the charge of genocide lack applicability and so no jurisdiction can be derived from them. In that respect the appellate Court refers to the above-mentioned considerations of the Court of first instance. In the appellate trial the Advocate-General took the position that section 3 sub 2 of the War Crimes Act can constitute the basis for jurisdiction for this case, now that a Dutch interest is at issue. According to the Advocate-General's opinion, maintaining the international legal order can and must be regarded as a national interest. The Advocate-General points out, *inter alia,* that international arbitration of disputes in large part takes place in the Netherlands. In addition to the above-mentioned considerations of the Court, especially grounds for judgement 22 through 25, the appellate Court would like to point out that should the Advocate-General's point of view with respect to section 3 sub 2 of the War Crimes Act be followed, this could lead to creating universal jurisdiction. In the view of the appellate Court, this broadening of jurisdiction and the many jurisdictional conflicts which would ensue from such an interpretation of the term Dutch interest could not reasonably have been the intention of the legislator.

12. Just as the Court did, (grounds for judgement 29 through 32), the appellate Court finds that also no additional jurisdiction can be derived from conduct charged before the International Crimes Act came into force (which in section 3 creates a secondary universal jurisdiction with respect to genocide). In connection with legal certainty, the legislator explicitly did not want a retroactive effect (*ex post facto*).

13. Just as the Court did, (grounds for judgement 33 through 44), the appellate Court finds that a basis for jurisdiction cannot be found in international law either.

Secondary jurisdiction on the basis of section 4 Criminal Code

14. Finally jurisdiction could be derived, in secondary or alternative form, from the provisions of section 4a of the Criminal Code. The Court of first instance came to the conclusion that this section is not applicable in the current case.

15. Section 4a, first subsection, of the Criminal Code (in force since 19 July 1985) reads:

> "The Dutch Criminal Code is applicable to anyone against whom prosecution was referred to The Netherlands from a foreign State on the basis of a convention from which the competence to prosecute ensues for The Netherlands."

In order to have secondary jurisdiction on the grounds of this provision, it would consequently be required that:

a) mention be made of a State

b) the State have original jurisdiction

c) authorized prosecution had been referred by that State to the Netherlands and

d) a convention be designated from which competence for prosecution by the Netherlands ensues.

16. With respect to the requirement of point a), the appellate Court judges, as does the Court, that taking into consideration the status of the Rwanda Tribunal itself, there is much to be said for a favourable, functional explanation of this requirement which leads to regarding this Tribunal as a State within the meaning of section 4a Criminal Code. On the other hand, there are opposing considerations which bring the appellate Court, diverging from the position of the Court, to conclude that such a functional explanation may not be accepted, so that on that ground alone this section loses its applicability. First of all, the Court took the nature of the requirement at issue into consideration. In the opinion of the appellate Court, a jurisdictional regulation can be compared (to a certain extent) to a penalization and a penalty standard; that is why such a regulation must meet the requirements of recognizability. To equate a body of the United Nations with a State in the meaning of section 4a of the Criminal Code does not meet that requirement for recognizability. Just like the Court (grounds for judgement 39) the appellate Court points towards the grounds for cassation developed by N. Keijzer, Master in Law, at the time Advocate-General, for the Supreme Court's judgement of 18 September 2001 on the December Murders. Moreover, legal assistance between States is based on reciprocity, and it is exactly this mutuality in the relationship between the Tribunal and the Netherlands which is largely absent, given the vertical character of that relation. The appellate Court furthermore points out that the institutional legislations of tribunals (see hereafter 25 under c, the regulation in the Institutional Act for the Yugoslavia Tribunal has also been declared to be applicable to the Rwanda Tribunal) with respect to different rules of competence in the framework of international legal assistance, stipulate that they are applicable *mutatis mutandis,* because, according to the appellate Court, they lack direct applicability in relation to the Tribunal. In the Memorandum to the Act of the bill which led to this Act, the following is mentioned in this respect:

> "Furthermore the Statute of the Tribunal obligates States to judicial and police cooperation with the Tribunal, in the scope of collecting evidence and transferring suspects to the Tribunal (article 29 Statute)."

Specific legislation is required in order to fully comply with these obligations. The existing legal regulations with respect to international criminal cooperation are tailored to cooperation between States and not to cooperation where one of the parties is an international Tribunal. This pertains to extradition and so-called small legal assistance as well as carrying out sentences from other judges than the Dutch. The present bill intends to offer an addition to the existing legislation.

Also, with respect to transfer to the Rwanda Tribunal, the Memorandum of Explanation to the bill which led to the Institutional Act of the Rwanda Tribunal, mentions that a separate, specific regulation must be implemented in view of this variation on international legal assistance.

In this respect, pursuant to section 2, first subsection of this bill, the regulated version for international legal assistance, unlike classic extradition, provides for the surrender of a claimed person, to an international body, pursuant to a Resolution of the United Nations Security Council, and not, as is the usual case, to another sovereign state. This justifies its own regulation, which is provided by this bill.

Finally, the appellate Court establishes that in addition to the Vienna Convention on Treaties* (23 May 1969, *Trb.* 1977, 169), which concerns international written agreements between States, a second Vienna Convention was established on the law of treaties between States and international organizations or between international organizations** (Convention of 21 March 1986, *Trb.* 1987, 136). This also indicates that a distinction should be made between organizations and States. Although the appellate Court agrees with the Court (grounds for judgement 55) that at the time there was no thought of referral of prosecution to the Netherlands, this does not make for a forceful argument to now apply a teleologic interpretation without sufficient basis. Even the circumstance shown in the decision of the Rwanda Tribunal in the (comparable) *Bagaragaza* case that the Dutch government took the view that the Rwanda Tribunal does fall under the category of State in section 4a Criminal Code, does not bring the appellate Court to a different judgement.

Although, as mentioned before, the appellate Court finds that on this ground section 4a Criminal Code lacks applicability, the appellate Court feels it is advisable to also discuss the criteria for application of this section mentioned in paragraphs 15 b), c) and d).

17. As did the Court, the appellate Court finds that the jurisdiction and thus the competence of the Rwanda Tribunal, or its Prosecutor, to prosecute on the basis specifically of articles 1 and 2 of the Statute of the Tribunal established by Security Council resolution 955 (1994) of 8 November 1994 (hereinafter to be called: the Statute), is without any doubt, a fact. Thus, the condition stated in paragraph 15 b) above for application of section 4a of the Criminal Code has been met.

18. The condition of section 4a of the Criminal Code, mentioned above under paragraph 15 c), has also been met. In view of the complete and exclusive competence of the Prosecutor, as a body of the Tribunal, to prosecute this case (based on the articles 10 and 15, second paragraph, of the Statute), the appellate Court, along with the Court, has no doubt about the competence of the Prosecutor to refer the prosecution of this case. The appellate Court also considered that according to the wording of the Tribunal's procedure for referral of prosecution, described in article 1*bis* of its Rules of Procedure and Evidence (RPE), only cases which have already been brought before the Tribunal were concerned. In his request dated 29 September 2006 concerning referral of the prosecution in the present case, the Prosecutor mentioned that, according to the Statute, the referral of such un-indicted cases also lay within his competence. The appellate Court finds no reason to question this information, even more in view of the paragraph 39 of the letter dated 29 May 2006 from the President of the Tribunal to the Security Council of the United Nations, dealing with the Completion Strategy of the Tribunal.

Referral based on a convention?

19. Referral of prosecution is only one of the forms of international legal assistance in criminal matters, which in and of itself does not need to be based on a convention. This requirement does apply, however, as shown in section 4a of the Criminal Code, if the Netherlands has no original jurisdiction and the referral of prosecution must create (secondary) jurisdiction. The Court (grounds for judgement 61 through 65) ruled, also

* United Nations, *Treaty Series,* vol. 1155, p. 331.

** A/CONF.129/15.

on the base of the legal history provided by the Court, that a convention with such legal consequence requires a certain level of specificity: the competence to prosecute and bring to trial must ensue from the convention, which must include explicit agreements about referral of prosecution rights, and at least a regulation must have been set up with respect to the cases where referral is possible (grounds for judgement 65).

20. The appellate Court shares the view of the Court that some specificity is required. In any case, general agreements or declarations of intent about (mutual) cooperation in criminal matters cannot be deemed sufficient to create jurisdiction, also in view of the great interest attached to preventing conflicts of jurisdiction. As stated before, the requirements demanded from a jurisdiction creating referral of prosecution must be more stringent than those which apply to referral of prosecution alone (and to which the requirement to be based on a convention does not apply). In this respect, the appellate Court also draws attention to the statement made in the Explanatory Memorandum for the bill that led to the implementation of section 4a of the Criminal Code:

> "Additions to the rules of the Dutch Criminal laws with respect to penalization and liability to prosecution cannot be found in the proposed stipulations. To settle these subjects in view of international referral of prosecutions, a convention would be the appropriate place. That is also the case for the expansion of the competence of the Dutch criminal Court judge, for which the basis would not be the newly inserted section 4a of the Criminal Code, but the appropriate convention."

As it is, the public prosecutor is correct in pointing out that the conventions mentioned in section 552hh of the Code of Criminal Procedure (which in the case of refusal to extradite, demand the initiation of prosecution by referring the case to the prosecution authority, according to the principle of *aut dedere aut judicare*) do not contain a detailed system of rules. However, the States involved are obliged, in view of that possible trial, to guarantee the competence for the prosecution of the facts referred to in those conventions. That was the purpose of the insertion into the Code of Criminal Procedure of the indicated section. Now that the conventions relate to a group of specific offences, a certain limitation is also encountered in them (namely with respect to the cases to which the regulation applies).

In this respect, the appellate Court draws attention to the provision in article 4 of the United Nations Convention against illicit trade in drugs and psychotropic substances* of 20 December 1988, *Trb.* 1990, article 94. That article prescribes that jurisdiction is established with respect to certain situations (for example, should the act have been committed on the territory of the State which is a party to the convention, or should the suspect not be extradited because the suspect is a national of that State). In other cases, for example when the suspect is in the territory of a State who does not wish to extradite him, that State is competent, but surely not in every case obligated to establish jurisdiction. This convention has not been included in 552hh Code of Criminal Procedure, as the appellate Court deducts from the parliamentary history of the Sanctioning Act in question, because in this respect The Netherlands does not accept a secondary jurisdiction (the mandatory establishment of jurisdiction according to the convention has already been provided for in the regulation of jurisdiction in the Criminal Code). In other words, secondary jurisdiction must not only have a basis in a convention, but the Dutch legislator must also decide

* United Nations, *Treaty Series,* vol. 1582, p. 164.

whether to make use of an optional competence or not. That fact compels the judge to even more restraint in his interpretation of the rules of law.

21. The prosecution also draws attention to the formulation of section 4a: the competence to prosecute must ensue from the convention, which, according to the explanatory memorandum of the bill, the prosecution paraphrases. Whatever the case may be of this linguistic paraphrasing, the appellate Court also deduces from the quoted passage in paragraph 20 from the Explanatory Memorandum that a convention in the sense of section 4a of the Criminal Code not only must contain a regulation providing for referral of prosecution, but also must explicitly provide for secondary jurisdiction.

22. The prosecution also referred to a) the Charter of the United Nations in connection with the Statute of the Rwanda Tribunal (and the relevant resolutions and the Completion Strategy) and b) the Genocide Convention,* as being a convention in the sense of section 4a of the Criminal Code, from which the competence to prosecute ensues.

The Charter of the United Nations

23. With respect to the Charter of the United Nations, the Statute of the Rwanda Tribunal and the applicable Rules of Procedure and Evidence, the following can be established. Chapter VII of the Charter of the United Nations also forms, according to Resolution 955 (1994) a basis for the establishment of the Rwanda Tribunal, which underlines the weight of that body and the dominant obligations of states to comply with the Charter. The prosecution was correct in pointing this out, referring to the articles 25 and 103 of the Charter, which read as follows:

> "Article 25
>
> The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."
>
> [. . .]
>
> Article 103
>
> In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

But, as considered before, those obligations should then be sufficiently articulated. The Charter does not contain a blank authorization to randomly make a demand on a State. The formulation of the mentioned Resolution also proves this under point 2, referring to the obligations which result from the Resolution and the Statute of the Rwanda Tribunal:

> "Decides that all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 28 of the Statute. . . ."

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* Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations, *Treaty Series,* vol. 78, p. 277.

24. In this respect the appellate Court points out a number of more specific stipulations:

a) The Statute of the Rwanda Tribunal stipulates among other things:

"Article 8: Concurrent Jurisdiction

1. The International Tribunal for Rwanda and national Courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens for such violations committed in the territory of the neighbouring States, between 1 January 1994 and 31 December 1994.

2. The International Tribunal for Rwanda shall have the primacy over the national Courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national Courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda.

[. . .]

Article 28: Cooperation and Judicial Assistance

1. States shall cooperate with the International Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including but not limited to:

(a) the identification and location of persons;

(b) the taking of testimony and the production of evidence;

(c) the service of documents:

(d) the arrest or detention of persons;

(e) the surrender or the transfer of the accused to the International Tribunal for Rwanda."

b) The Rules of Procedure and Evidence stipulate in Rule 11*bis,* among other things:

"Rule 11*bis:* Referral of the Indictment to another Court

(A) If an indictment has been confirmed, whether or not the accused is in the custody of the Tribunal, the President may designate a Trial Chamber which shall determine whether the case should be referred to the authorities of a State:

(i) in whose territory the crime was committed; or

(ii) in which the accused was arrested; or

(iii) having jurisdiction and being willing and adequately prepared to accept such a case, so that those authorities should forthwith refer the case to the appropriate Court for trial within that State.

(B) The Trial Chamber may order such referral *proprio motu* or at the request of the Prosecutor, after having given to the Prosecutor and, where the accused is in the custody of the Tribunal, the accused, the opportunity to be heard."

c) For Dutch legislation, the Establishment Act of the Yugoslavia Tribunal is especially important. The Act, from which the following paragraphs apply also to the Rwanda Tribunal, stipulates *inter alia:*

"Article 2.

Upon request of the Tribunal persons may be transferred for prosecution and trial for punishable facts of which the Tribunal pursuant to its Statute is competent to take cognizance of.

[. . .]

Article 9.

1. Requests of the Tribunal for any form of legal assistance, whether or not addressed to a specified judicial or police body in The Netherlands, will be acceded to by required action as much as possible.

2. The sections 552i, 552j, 552n, 552o through 552q, with the exception of the reference in section 552p, fourth subsection, to section 552d, second subsection of the Code of Criminal Procedure and section 51, first and fourth subsection, of the Extradition Act are *mutatis mutandis* applicable.

3. Representatives of the Tribunal will be permitted upon request to be present at the execution of the requests, and to have questions presented to the persons involved in the execution of the requests, as meant in the first subsection.

4. The Dutch authorities in charge of the execution of the requests for legal assistance are responsible for the safety of the persons involved therein and are authorized to that purpose to set conditions to the manner in which requests for legal assistance are executed.

Section 11.

1. Upon request of the Tribunal it is possible to enforce the imposed final and conclusive sentence of imprisonment by the Tribunal, in The Netherlands.

2. Upon request of the Tribunal the person sentenced may to that end be provisionally arrested.

3. The public prosecutor or deputy public prosecutor of The Hague is authorized to order the provisional arrest.

4. The sections 9, second subsection through fifth subsection. 10, 11, first subsection and second subsection, under a, and 12 of the sentence transfer enforcement Act are *mutatis mutandis* applicable.

5. Upon request of the Tribunal the issued orders at final and conclusive sentence by the Tribunal for refund as meant in section 24, third subsection, of the Statute, can be executed in The Netherlands. The sections 13, 13a, 13b and 13d through 13f with the exception of the reference in section 13d, second subsection, to section 552d, second

subsection, of the Code of Criminal Procedure of the sentence transfer enforcement Act are *mutatis mutandis* applicable."

25. According to the appellate Court, the following conclusions may be drawn from these stipulations:

a) Upon referral of prosecution to the Rwanda Tribunal the request must be acceded to without any reservation, while referral by the Tribunal according to Rule 11*bis* of the RPE in the under (*iii*) mentioned situation not only is dependent on the willingness of the requested state, but also on the existence of jurisdiction. That jurisdiction issue is extensively assessed (with other issues) by the Rwanda Tribunal before a request for referral to a State becomes effective. In this respect, the appellate Court refers to the decision of 19 May 2006 of Trial Chamber III , in which the Tribunal refused to refer prosecution of Bagaragaza to Norway because Norway did not have jurisdiction *ratione materiae* (in the sense of penalization of genocide) and could only prosecute on the basis of general offences. Norway did (according to note 11 of this decision) ratify the Genocide Convention, but had not implemented it in its national legislation. The appellate Court deduces that referral of prosecution of the Tribunal on the basis of Rule 11*bis* RPE can only take place if the requested State has independent (original) jurisdiction. There is no reason to assume that the Prosecutor would not be bound by this condition for (a request for) referral in the event that a case is not one brought before the Tribunal;

b) Article 28 of the Statute obligates States to cooperate with the Tribunal and in the second paragraph clearly mentions a number of requests for legal assistance which must be acceded to without delay. Along with the Court (grounds for judgement 75) the appellate Court finds that these obligations according to the wording of the article are linked to investigation and prosecution by the Tribunal itself.

The prescription of Rule 11*bis* RPE relates to the referral of prosecution to a State and is not supported by article 28 of the Statute. From the obvious connection with the hereafter mentioned Completion Strategy (see paragraph 26) in compliance with the instruction of the Security Council, the appellate Court deduces that Rule 11*bis* of the RPE finds direct support in the Charter. But this does not lead to the conclusion that the Prosecutor has more competence as a result of that Rule or that related obligations for States should be deduced from it other than those which follow from the wording of that Rule. And in Rule 11*bis* A, under (iii), the clear starting point is—as has already been established above—referral to a State that already has (original) jurisdiction. For that reason, according to the appellate Court, it cannot be said that by means of the Charter of the United Nations, prescriptions in the Statute of the Rwanda Tribunal and/or the Rules of Procedure and Evidence, the request in the present case for referral of prosecution made by the Prosecutor results in a conventional legal duty for the Netherlands which makes this request like a request as meant in section 4a of the Criminal Code.

The appellate Court would in this respect like to refer to the short paper submitted by the Advocate-General during the appeals trial, enclosed as an annex to the above-mentioned email message from the Prosecutor of 30 November 2007 (see paragraph 8),[3] with respect to the relationship between article 28 of the Statute of the Rwanda Tribunal and article 11*bis* of the Rules of Procedure and Evidence. In this paper attention is given, among

[3] Not reproduced herein.

other things, to the case law of the Appeals Chamber (of the Yugoslavia Tribunal) with respect to these articles. From this case law, the deduction can be made that the Appeals Chamber holds the opinion that no obligation exists for the States, neither on the basis of article 28 of the Statute of the Tribunal, nor on the basis of article 11*bis* of the Rules of Procedure and Evidence, for referral of prosecution by the Tribunal.

c) In the above-mentioned Establishing Act an attempt was made to translate the ensuing obligations from the Statute of the Rwanda Tribunal, into the Dutch situation, taking other Dutch legislation into account. In this way, the Establishing Act set up a bridge between the extradition laws, the laws governing the transfer of sentence enforcement and the regulation with respect to the (general) international small legal assistance in criminal matters. The appellate Court like the Court (grounds for judgement 77) cannot conclude otherwise than that the Dutch legislator (intentionally or by mistake) omitted to regulate the referral of prosecution to the Netherlands. The latter could (other than at the referral for execution of the Tribunal decisions) also still take place without a convention, but then without the case law expansion provided for in section 4a of the Criminal Code. Just as the Court, the appellate Court is of the opinion that the judge is not competent to fill the current void, apparently experienced by the prosecutor's office, by relying in this respect on the sole teleological interpretation.

26. The Prosecutor's request is prompted by the explanation in the Completion Strategy of the Rwanda Tribunal, which in accordance with instruction of the Security Council (Resolution 1503 (2003) of 28 August 2003) is aimed at concentrating on the senior leaders suspected of being most responsible for the crimes for which the Tribunal is competent, finalizing the proceedings not later than 2010, and, for that reason, transferring the intermediate and lower-rank accused to competent national jurisdictions. Thus the text of this Resolution cannot create any relevant obligation, since the Netherlands does not have the required (original) jurisdiction (competence).

The Genocide Convention

27. With respect to the jurisdiction which can be based on the Genocide Convention, of particular importance are articles V and VI of that convention and their transformation to article 5 of the Genocide Convention Implementation Act.

Convention on the Prevention and Punishment of the Crime of Genocide

"Article V

> The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

Article VI

> Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction."

GENOCIDE CONVENTION IMPLEMENTATION ACT, ARTICLE 5

"1. Dutch criminal law is applicable to the Dutchman, who outside of the Netherlands is guilty of:

1. a crime described in the sections 1 and 2 of this Act;

2. the crime described in section 131 of the Criminal Code, if the crime spoken of in that section, is a crime as meant in the sections 1 and 2 of this Act.

2. Prosecution can also take place, if the suspect only after commission of the fact, becomes a Dutch national."

The appellate Court establishes that the Genocide Convention on its own, in view of the stipulations in article V, allows for an ample, even (secondary) universal establishment of jurisdiction, just as the International Court of Justice decided in its judgement of 11 July 1996:

"The Court sees nothing in this provision which would make the applicability of the Convention subject to the condition that the acts contemplated by it should have been committed within the framework of a particular type of conflict. The contracting parties expressly state therein their willingness to consider genocide as 'a crime under international law', which they must prevent and punish independently of the context 'of peace' or 'of war' in which it takes place. In the view of the Court, this means that the Convention is applicable, without reference to the circumstances linked to the domestic or international nature of the conflict, provided the acts to which it refers in Articles II and III have been perpetrated. In other words, irrespective of the nature of the conflict forming the background to such acts, the obligations of prevention and punishment which are incumbent upon the States parties to the Convention remain identical.

As regards the question whether Yugoslavia took part—directly or indirectly—in the conflict at issue, the Court would merely note that the Parties have radically differing viewpoints in this respect and that it cannot, at this stage in the proceedings, settle this question, which clearly belongs to the merits.

Lastly, as to the territorial problems linked to the application of the Convention, the Court would point out that the only provision relevant to this, Article VI, merely provides for persons accused of one of the acts prohibited by the Convention to "be tried by a competent tribunal of the State in the territory of which the act was committed . . .". It would also recall its understanding of the object and purpose of the Convention, as set out in its Opinion of 28 May 1951, cited above: "The origins of the Convention show that it was the intention of the United Nations to condemn and punish genocide as 'a crime under international law' involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations (Resolution 96 (1) of the General Assembly, 11 December 1946).

The first consequence arising from this conception is that the principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation. A second consequence is the universal character both of the condemnation of genocide and of the co-operation required 'in order to liberate mankind from such an odious scourge' (Preamble to the Convention)."

(I.C.J. Reports 1951, p. 23.)

It follows that the rights and obligations enshrined by the Convention are rights and obligations *erga omnes*. The Court notes that the obligation each State thus has to prevent and to punish the crime of genocide is not territorially limited by the Convention.

At the time, the legislator, however, chose only to apply an active personality principle to the Implementation Act. It is important to establish that by doing that the Netherlands did not underestimate its conventional obligations, as can be deduced from the recent decision of the International Court of Justice of 26 February 2007.* Paragraph 442 of this decision reads:

> "The Court would first recall that the genocide in Srebrenica, the commission of which it has established above, was not carried out in the Respondent's territory. It concludes from this that the Respondent cannot be charged with not having tried before its own Courts those accused of having participated in the Srebrenica genocide, either as principal perpetrators or as accomplices, or of having committed one of the other acts mentioned in Article III of the Convention in connection with the Srebrenica genocide. Even if Serbian domestic law granted jurisdiction to its criminal Courts to try those accused, and even supposing such proceedings were compatible with Serbia's other international obligations, *inter alia* its obligation to cooperate with the ICTY, to which the Court will revert below, an obligation to try the perpetrators of the Srebrenica massacre in Serbia's domestic Courts cannot be deduced from Article VI. Article VI only obliges the Contracting Parties to institute and exercise territorial criminal jurisdiction; while it certainly does not prohibit States, with respect to genocide, from conferring jurisdiction, on their criminal Courts based on criteria other than where the crime was committed which, are compatible with international law, in particular the nationality of the accused, it does not oblige them to do so."

The (secondary) universal jurisdiction for genocide has, in the meantime, been laid down in section 3 of the International Crimes Act, which has been in force since 1 October 2003, as indicated before (see paragraph 12). That paragraph also established that the legislator at the time intentionally chose not to give retroactive force to this regulation. In this connection, the appellate Court also points to the answer of the Minister of Justice to Parliamentary questions asked as a result of the sentence of the Court of first instance in the current case.

The Court's consideration that it is faced with a void in the existing regulations, which it cannot solve by means of a reasonable interpretation of the law, is based on the phrasing of the above-mentioned multilateral conventions. To the extent that the Court considers that at the time of the indicted facts there was no national legal provision applicable which provided for jurisdiction with respect to genocide, it must be stated that this non-applicability results from the choice of the Dutch legislator and the position of the international law at the time not to establish broad extraterritorial jurisdiction. Currently, the Netherlands has, on the basis of the International Crimes Act, which came into force on 1 October 2003, a broader jurisdiction regulation for, among other things, the crime of genocide. The legislator explicitly chose, upon the enactment of this act, not to award retroactive force to this regulation with a broadened jurisdiction.

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* *Case concerning the application of the Convention on the prevention and punishment of genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro),* Judgment of 26 February 2007, General List No. 91, available at http://www.icj-cij.org.

28. In view of the manner in which our country implemented the Genocide Convention, the appellate Court is not able to see that this convention could now, by means of section 4a of the Criminal Code, create jurisdiction. The appellate Court again, perhaps unnecessarily, points out that the legislator has a choice upon implementation of conventions regarding the extent to which he wishes to implement the optional obligations in Dutch legislation.

Mini-convention

29. Ultimately the question is whether in the current case another agreement could amount to a convention in the meaning of section 4a of the Criminal Code. In the correspondence between the Prosecutor of the Rwanda Tribunal and organs of the State of the Netherlands, detailed above in paragraph 8, there are certain reference that may lead to the supposition that both organs have made agreements about the referral of the current case, so that the question could arise whether it was the intention to enter into a convention (in a substantive sense).

The prosecutor's office is of the opinion that this question can be answered affirmatively since there is consensus and there is sufficient specification about what the subject of the agreement is. In the view of the prosecutor's office, there are grounds to speak of a convention in the sense of section 4a of the Criminal Code. To support this point of view, the prosecutor's office refers to the requested opinion of 30 November 2007, given by K. Brölmann, senior lecturer in International Law at the University of Amsterdam. In this opinion it is concluded that, based on the free form of the convention, international law is not opposed to viewing the correspondence between the Prosecutor of the Rwanda Tribunal and the Minister of Justice as an international legal agreement or convention in the sense of international law. Brölmann reaches this conclusion based on the following: The agreement between the Dutch Minister and the Prosecutor of the Tribunal rests on (i) mutual communications; (ii) has legal effect; (iii) is between international legal entities, (iv) the parties are represented by (in accordance with relevant internal laws) organs, which from a perspective of international law, may be deemed to dispose of competence to enter into conventions. Considering this, according to Brölmann, the agreement conforms to the definition of convention.

Furthermore, the prosecutor's office draws attention to the reaction of the Prosecutor of the Rwanda Tribunal as shown in paragraph 8. In answering to the written request of the Advocate-General, the Prosecutor provided the information that an agreement was reached with the Dutch authorities concerning the transfer of prosecution of the suspect. The Prosecutor states in the message:

> . .
>
> "there was an agreement between the Prosecutor of the ICTR and authorities in the Netherlands concerning the transfer of the case against [suspect] as far as proceedings for the crimes of genocide are concerned."
>
> and furthermore:
>
> "In the opinion of the ICTR Prosecutor the agreement was binding upon delivery of the assent to the Request by the Minister of Justice of the Kingdom of the Netherlands."

The request of the Prosecutor and the letter of the Minister of Justice to the public prosecutor are, according to the Ministry of Foreign Affairs, on the other hand, not to be designated as a convention in the sense of international law. This point of view, as indicated in a letter of 22 November 2007 from the Legal Advisor, Head of the International Law Department of the Ministry of Foreign Affairs, to the Advocate-General, is based on the consideration that written consensus forms the basis of a convention in the sense of international law. In the present case, since the written request from the Prosecutor of the Rwanda Tribunal to refer prosecution did not result in a written response from the Dutch authorities, this requirement was not met.

The Court considers that in the above–mentioned correspondence (paragraph 8) between the Prosecutor of the Rwanda Tribunal and organs of State of the Netherlands certain points of reference can be found for the supposition that both organs have made arrangements about the transfer of the current case. Since the appellate Court sees no reason to doubt the authority of the Prosecutor to make those kinds of arrangements, the appellate Court assumes that in this manner an extremely free-form convention was entered into between the Prosecutor and the Dutch Minister of Justice.

Subsequently the question arises whether such a free-form convention can be regarded as a convention in the sense of section 4a of the Criminal Code. The appellate Court answers this question negatively. The appellate Court considers that section 4a of the Criminal Code relates to a general regulation which meets the requirements of recognizability. As it has been considered, those requirements have not been met. Also, article 91 of the Constitution prevents the Kingdom from being bound by such a convention since the free-form convention cannot be placed among the cases for which no approval is required. The appellate Court furthermore considers that the regulations of jurisdiction form an explicit and closed system with a high public order standard. In view of article 94 of the Constitution, it is not possible to deviate from this on the basis of unwritten law, but only on the basis of the overall binding stipulations of conventions and of decisions of international organizations. Things might have been different, if the United Nations had concluded a treaty with the Dutch authorities stipulating that within the framework of the Completion Strategy, the prosecution of suspects whose cases had not (yet) been brought before the Tribunal, could, in consultation with the Netherlands, be transferred to the Netherlands, also for cases for which the Netherlands has no original jurisdiction.

Conclusion

30. The above leads the appellate Court to the following conclusion. With respect to the regulation of jurisdiction in the case of genocide, a development in international and of national opinions has taken place in the past decades, which resulted in establishing a broad jurisdiction regulation in the International Crimes Act, to which however, no retroactive force has been assigned. The circumstances departed from at the establishment legislation for the Tribunals, have been fundamentally changed by the prescribed Completion Strategy of the Tribunals and have led to the need arising to take over criminal cases of (in this case) the Rwanda Tribunal. The appellate Court has had to establish however that the Dutch legal instruments on the point of secondary jurisdiction are not adequate. Inasmuch as the appellate Court sympathizes with the wish not to let the most serious of crimes, which is the case at present, go with impunity (as is emphasized in the Explanatory

Memorandum of the International Crimes Act), that wish, however, cannot provide sufficient underlying support for jurisdiction in the matter of genocide. The appellate Court stipulates that the above considerations have no relation to the (continued) prosecution of the same complex of facts in the form of war crimes or torture.

31. The above must result in declaring the prosecutor's office barred from prosecution of the suspect in the matter of genocide.

Decision

The appellate Court:

Overturns the judgement appealed against and renders new judgement.

Declares the prosecutor's office barred from prosecution of the suspect for count on the summons with case number 09/750007–07.

This judgement has been rendered by G.P.A. Aler, Master of Laws. G. Oosterhof. Master of Laws and CM. le Clercq-Meijer, Master of Laws, in the presence of the registrar M.C. Zuidweg, Master of Laws. It was pronounced in open appellate Court on 17 December 2007.

B. The United Kingdom

Judgment of the House of Lords: R (on the application of Al-Jedda) v. *Secretary of State for Defence (12 December 2007)*[*]

Responsibility of international organization—Draft articles of the International Law Commission—Article 5 (1) of the European Convention of Human Rights—Reference to the Behrami case—Question of the attribution of a detention to a State member of the coalition or to the United Nations—Peacekeeping operations—Distinction between delegation and authorization of powers—Article 103 of the Charter of the United Nations—Detention without charge or trial for security reasons—Obligations imposed by resolutions of the Security Council—Role of the United Nations in the operation in Iraq—Law of foreign occupation—Competence of national courts

Summary

In the *Al-Jedda* case, the House of Lords was confronted with questions of attribution of conduct carried out by military forces acting under an authorization by the United Nations Security Council. The appellant, a national of the United Kingdom and Iraq, had been held in custody at detention facilities in Iraq by British troops belonging to the "multinational force under unified command" (MNF) authorized by Security Council resolutions 1511(2003) and 1546(2004). He complained, *inter alia,* that his detention, allegedly based on imperative reasons of national security, infringed his rights under article 5,

[*] Due to the length of the judgment, only selected extracts are reproduced herein. However, with the view to ease the comprehension of this judgment, a summary has been prepared by the United Nations Secretariat. The complete text is available on the internet at http://www.parliament.the-stationery-office.co.uk/pa/ld200708/ldjudgmt/jd071212/jedda.pdf.

para. 1, of the European Convention on Human Rights* (ECHR). Relying on the decision of the European Court of Human Rights (ECtHR) in *Behrami* & *Saramati,* the United Kingdom Secretary of State for defence claimed that the detention of Mr. Al-Jedda by British troops in Iraq was attributable to the United Nations, and not to the United Kingdom. This argument was rejected by all Lords with the exception of Lord Rodger of Earlsferry. Following the reasoning of ECtHR in *Behrami & Saramati,* Lord Rodger considered that the impugned conduct was attributable to the United Nations since there was no material difference between the legal position of the International Security Force in Kosovo (KFOR) and that of MNF; according to him, in both cases the United Nations Security Council had lawfully "delegated" its powers to the relevant forces while retaining the "ultimate authority and control" over those forces. The other Lords, who found that the detention of Mr. Al-Jedda was attributable to the United Kingdom and not to the United Nations, based their conclusions on the fundamental differences that existed, in their opinion, between the legal position of KFOR and that of MNF. In particular, they pointed to the fact that MNF was not acting under United Nations auspices and that the role of the United Nations in Iraq was limited to humanitarian relief and reconstruction. While Lord Brown of Eaton-under-Heywood reached his conclusions by denying that the United Nations had retained "ultimate authority and control" over the MNF—thus applying the criterion adopted by the ECHR in *Behrami & Saramati,* Lord Bingham based his reasoning on the lack of "effective authority and control" by the United Nations, thus following an approach which is more consistent with draft article 5 on responsibility of international organizations, as provisionally adopted by the International Law Commission. However, the Lords agreed that the authorisation laid in the Security Council resolution to intern the persons considered to be a real threat, which could be an obligation in certain circumstances, entitled the British forces to intern Mr. Al-Jedda. Furthermore, Lord Carswell noted this right, in accordance with Article 103 of the United Nations Charter prevailed on the right to liberty enshrined in article 5 of ECHR. Thus, the Government won ultimately on this ground. Finally, on the issue of the applicable law in this case, the Lords unanimously agreed that it was the Iraqi civil law that governed the British forces while in Iraq.

Extracts

Lord Bingham of Cornhill

[. . .]

21. The court summarised (paras 73–120) the submissions of the applicants, the respondent states, seven third party states and the United Nations. In its own assessment it held that the supervision of de-mining at the relevant time fell within [the] United Nations Interim Administration Mission in Kosovo ["UNMIK"]'s mandate and that for issuing detention orders within the mandate of KFOR (paras 123–127). In considering whether the inaction of UNMIK and the action of KFOR could be attributed to the United Nations, the court held (para 129) that the United Nations had in resolution 1244 (1999) "delegated" powers to establish international security and civil presences, using "delegate" (as it had explained in para 43) to refer to the empowering by the Security Council of another entity to exercise its function as opposed to "authorising" an entity to carry out functions which

* United Nations, *Treaty Series,* vol. 213, p. 221

it could not itself perform. It considered that the detention of Mr Saramati was in principle attributable to the United Nations (para 141). This was because (paras 133–134) the United Nations had retained ultimate authority and control and had delegated operational command only. This was borne out (para 134) by the facts that Chapter VII allowed the Security Council to delegate, the relevant power was a delegable power, the delegation was prior and explicit in Resolution 1244, the extent of the delegation was defined, and the leadership of the security and civil presences were required to report to the Security Council (as was the Secretary General). Thus (para 135) under Resolution 1244 the Security Council was to retain ultimate authority and control over the security mission and it delegated to North Atlantic Treaty Organisation ["NATO"] the power to establish KFOR. Since UNMIK was a subsidiary organ of the United Nations created under Chapter VII of the United Nations Charter its inaction was in principle attributable to the United Nations (paras 129, 142–143). Dealing finally with its competence *ratione personae,* the court said (para 149):

> "In the present case, Chapter VII allowed the United Nations Security Council to adopt coercive measures in reaction to an identified conflict considered to threaten peace, namely Security Council resolution 1244 establishing UNMIK and KFOR. Since operations established by Security Council resolutions under Chapter VII of the United Nations Charter are fundamental to the mission of the United Nations to secure international peace and security and since they rely for their effectiveness on support from member states, the Convention cannot be interpreted in a manner which would subject the acts and omissions of Contracting Parties which are covered by Security Council resolutions and occur prior to or in the course of such missions, to the scrutiny of the Court. To do so would be to interfere with the fulfilment of the United Nations's key mission in this field including, as argued by certain parties, with the effective conduct of its operations. It would also be tantamount to imposing conditions on the implementation of a Security Council resolution which were not provided for in the text of the Resolution itself. This reasoning equally applies to voluntary acts of the respondent States such as the vote of a permanent member of the Security Council in favour of the relevant Chapter VII resolution and the contribution of troops to the security mission: such acts may not have amounted to obligations flowing from membership of the United Nations but they remained crucial to the effective fulfilment by the Security Council of its Chapter VII mandate and, consequently, by the United Nations of its imperative peace and security aim."

The court accordingly concluded (para 151) that, since UNMIK was a subsidiary organ of the United Nations created under Chapter VII and KFOR was exercising powers lawfully delegated under Chapter VII by the Security Council, their actions were directly attributable to the United Nations, an organisation of universal jurisdiction fulfilling its imperative collective security objective. The applicants' complaints were accordingly incompatible *ratione personae* with the provisions of the Convention.

22. Against the factual background described above a number of questions must be asked in the present case. Were United Kingdom ["UK"] forces placed at the disposal of the United Nations? Did the United Nations exercise effective control over the conduct of UK forces? Is the specific conduct of the UK forces in detaining the appellant to be attributed to the United Nations rather than the UK? Did the United Nations have effective command and control over the conduct of UK forces when they detained the appellant? Were the UK

forces part of a United Nations peacekeeping force in Iraq? In my opinion the answer to all these questions is in the negative.

23. The United Nations did not dispatch the coalition forces to Iraq. The Coalition Provisional Authority ["CPA"] was established by the coalition states, notably the United States ["US"], not the United Nations. When the coalition states became occupying powers in Iraq they had no United Nations mandate. Thus when the case of Mr Mousa reached the House as one of those considered in *R (Al-Skeini and others)* v. *Secretary of State for Defence) (The Redress Trust intervening)* [2007] UKHL 26, [2007] 3 WLR 33 the Secretary of State accepted that the UK was liable under the European Convention for any ill-treatment Mr Mousa suffered, while unsuccessfully denying liability under the Human Rights Act 1998. It has not, to my knowledge, been suggested that the treatment of detainees at Abu Ghraib was attributable to the United Nations rather than the United States. Following Security Council resolution 1483 in May 2003 the role of the United Nations was a limited one focused on humanitarian relief and reconstruction, a role strengthened but not fundamentally altered by Security Council resolution 1511 in October 2003. By Security Council resolution 1511, and again by Security Council resolution 1546 in June 2004, the United Nations gave the multinational force express authority to take steps to promote security and stability in Iraq, but (adopting the distinction formulated by the European Court in para 43 of its judgment in *Behrami and Saramati*) the Security Council was not delegating its power by empowering the UK to exercise its function but was authorizing the UK to carry out functions it could not perform itself. At no time did the US or the UK disclaim responsibility for the conduct of their forces or the United Nations accept it. It cannot realistically be said that US and UK forces were under the effective command and control of the United Nations, or that UK forces were under such command and control when they detained the appellant.

24. The analogy with the situation in Kosovo breaks down, in my opinion, at almost every point. The international security and civil presences in Kosovo were established at the express behest of the United Nations and operated under its auspices, with UNMIK a subsidiary organ of the United Nations. The multinational force in Iraq was not established at the behest of the United Nations, was not mandated to operate under United Nations auspices and was not a subsidiary organ of the United Nations. There was no delegation of United Nations power in Iraq. It is quite true that duties to report were imposed in Iraq as in Kosovo. But the United Nations' proper concern for the protection of human rights and observance of humanitarian law called for no less, and it is one thing to receive reports, another to exercise effective command and control. It does not seem to me significant that in each case the United Nations reserved power to revoke its authority, since it could clearly do so whether or not it reserved power to do so.

25. I would resolve this first issue in favour of the appellant and against the Secretary of State.

The second issue

26. As already indicated, this issue turns on the relationship between article 5(1) of the European Convention and Article 103 of the United Nations Charter. The central questions to be resolved are whether, on the facts of this case, the UK became subject to an obligation (within the meaning of Article 103) to detain the appellant and, if so, whether

and to what extent such obligation displaced or qualified the appellant's rights under article 5(1).

[. . .]

30. It remains to take note of Article 103, a miscellaneous provision contained in Chapter XVI. It provides:

> "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail".

This provision lies at the heart of the controversy between the parties. For while the Secretary of State contends that the Charter, and Security Council resolutions 1511 (2003), 1546 (2004), 1637 (2005) and 1723 (2006), impose an obligation on the UK to detain the appellant which prevails over the appellant's conflicting right under article 5(1) of the European Convention, the appellant insists that the Security Council resolutions referred to, read in the light of the Charter, at most authorize the UK to take action to detain him but do not oblige it to do so, with the result that no conflict arises and Article 103 is not engaged.

31. There is an obvious attraction in the appellant's argument since, as appears from the summaries of Security Council resolutions 1511 and 1546 given above in paras 12 and 15, the resolutions use the language of authorization, not obligation, and the same usage is found in Security Council resolution 1637 (2005) and 1723 (2006). In ordinary speech to authorize is to permit or allow or license, not to require or oblige. I am, however, persuaded that the appellant's argument is not sound, for three main reasons.

32. First, it appears to me that during the period when the UK was an occupying power (from the cessation of hostilities on 1 May 2003 to the transfer of power to the Iraqi Interim Government on 28 June 2004) it was obliged, in the area which it effectively occupied, to take necessary measures to protect the safety of the public and its own safety. Article 43 of the Hague Regulations[*] 1907 provides, with reference to occupying powers:

> "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country".

This provision is supplemented by certain provisions of the Fourth Geneva Convention.[**] Articles 41, 42 and 78 of that convention, so far as material, provide

> "41. Should the Power, in whose hands protected persons may be, consider the measures of control mentioned in the present Convention to be inadequate, it may not have recourse to any other measure of control more severe than that of assigned residence or internment, in accordance with the provisions of articles 42 and 43 . . .
>
> 42. The internment or placing in assigned residence of protected persons may be ordered only if the security of the Detaining Power makes it absolutely necessary . . ."

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[*] Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

[**] Geneva Convention relative to the protection of civilian persons in time of war, United Nations *Treaty Series,* vol. 75, p. 286.

> "78. If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment".

These three articles are designed to circumscribe the sanctions which may be applied to protected persons, and they have no direct application to the appellant, who is not a protected person. But they show plainly that there is a power to intern persons who are not protected persons, and it would seem to me that if the occupying power considers it necessary to detain a person who is judged to be a serious threat to the safety of the public or the occupying power there must be an obligation to detain such person: see the decision of the International Court of Justice in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)* [2005] ICJ Rep 116, para 178. This is a matter of some importance, since although the appellant was not detained during the period of the occupation, both the evidence and the language of Security Council resolution 1546 (2004) and the later resolutions strongly suggest that the intention was to continue the pre-existing security regime and not to change it. There is not said to have been such an improvement in local security conditions as would have justified any relaxation.

33. There are, secondly, some situations in which the Security Council can adopt resolutions couched in mandatory terms. One example is Security Council resolution 820 (1993), considered by the European Court (with reference to an European Community regulation giving effect to it) in *Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi* v. *Ireland* (2005) 42 EHRR 1, which decided in paragraph 24 that "all states shall impound all vessels, freight vehicles, rolling stock and aircraft in their territories . . .". Such provisions cause no difficulty in principle, since member states can comply with them within their own borders and are bound by Article 25 of the United Nations Charter to comply. But language of this kind cannot be used in relation to military or security operations overseas, since the United Nations and the Security Council have no standing forces at their own disposal and have concluded no agreements under article 43 of the Charter which entitle them to call on member states to provide them. Thus in practice the Security Council can do little more than give its authorisation to member states which are willing to conduct such tasks, and this is what (as I understand) it has done for some years past. Even in Security Council resolution 1244 (1999) relating to Kosovo, when (as I have concluded) the operations were very clearly conducted under United Nations auspices, the language of authorisation was used. There is, however, a strong and to my mind persuasive body of academic opinion which would treat article 103 as applicable where conduct is authorised by the Security Council as where it is required: see, for example, Goodrich, Hambro and Simons (eds), *Charter of the United Nations: Commentary and Documents,* 3rd ed (1969), pp 615–616; *Yearbook of the International Law Commission* (1979), Vol II, Part One, para 14; Sarooshi, *The United Nations and the Development of Collective Security* (1999), pp 150–151. The most recent and perhaps clearest opinion on the subject is that of Frowein and Krisch in Simma (ed), *The Charter of the United Nations: A Commentary,* 2nd ed (2002), p 729:

> "Such authorizations, however, create difficulties with respect to Article 103. According to the latter provision, the Charter–and thus also Security Council resolutions–override existing international law only insofar as they create 'obligations' (cf. Bernhardt on Article 103 MN 27 et seq.). One could conclude that in case a state is not obliged but merely authorized to take action, it remains bound by its conventional obligations. Such a result,

> however, would not seem to correspond with state practice at least as regards authorizations of military action. These authorizations have not been opposed on the ground of conflicting treaty obligations, and if they could be opposed on this basis, the very idea of authorizations as a necessary substitute for direct action by the Security Council would be compromised. Thus, the interpretation of Article 103 should be reconciled with that of Article 42, and the prevalence over treaty obligations should be recognized for the authorization of military action as well (see Frowein/Krisch on Article 42 MN 28). The same conclusion seems warranted with respect to authorizations of economic measures under Article 41. Otherwise, the Charter would not reach its goal of allowing the Security Council to take the action it deems most appropriate to deal with threats to the peace–it would force the SC to act either by way of binding measures or by way of recommendations, but would not permit intermediate forms of action. This would deprive the Security Council of much of the flexibility it is supposed to enjoy. It seems therefore preferable to apply the rule of Article 103 to all action under Articles 41 and 42 and not only to mandatory measures."

This approach seems to me to give a purposive interpretation to Article 103 of the Charter, in the context of its other provisions, and to reflect the practice of the United Nations and member states as it has developed over the past 60 years.

34. I am further of the opinion, thirdly, that in a situation such as the present "obligations" in article 103 should not in any event be given a narrow, contract-based, meaning. The importance of maintaining peace and security in the world can scarcely be exaggerated, and that (as evident from the articles of the Charter quoted above) is the mission of the United Nations. Its involvement in Iraq was directed to that end, following repeated determinations that the situation in Iraq continued to constitute a threat to international peace and security. As is well known, a large majority of states chose not to contribute to the multinational force, but those which did (including the UK) became bound by Articles 2 and 25 to carry out the decisions of the Security Council in accordance with the Charter so as to achieve its lawful objectives. It is of course true that the UK did not become specifically bound to detain the appellant in particular. But it was, I think, bound to exercise its power of detention where this was necessary for imperative reasons of security. It could not be said to be giving effect to the decisions of the Security Council if, in such a situation, it neglected to take steps which were open to it.

35. Emphasis has often been laid on the special character of the European Convention as a human rights instrument. But the reference in Article 103 to "any other international agreement" leaves no room for any excepted category, and such appears to be the consensus of learned opinion. The decisions of the International Court of Justice (*Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising From the Aerial Incident at Lockerbie* [1992] ICJ Rep 3, para 39; *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide* [1993] ICJ Rep 325, per Judge *ad hoc* Lauterpacht, pp 439–440, paras 99–100) give no warrant for drawing any distinction save where an obligation is *jus cogens* and according to Judge Bernhardt it now seems to be generally recognised in practice that binding Security Council decisions taken under Chapter VII supersede all other treaty commitments (Simma (ed), *The Charter of the United Nations: A Commentary,* 2nd ed (2002), pp 1299–1300).

36. I do not think that the European Court, if the appellant's article 5(1) claim were before it as an application, would ignore the significance of Article 103 of the Charter in international law. The court has on repeated occasions taken account of provisions of international law, invoking the interpretative principle laid down in article 31(3)(c) of the Vienna Convention on the Law of Treaties,* acknowledging that the Convention cannot be interpreted and applied in a vacuum and recognising that the responsibility of States must be determined in conformity and harmony with the governing principles of international law: see, for instance, *Loizidou* v. *Turkey* (1996) 23 EHRR 513, paras 42–43, 52; *Bankovic* v. *Belgium* (2001) 11 BHRC 435, para 57; *Fogarty* v. *United Kingdom* (2001) 34 EHRR 302, para 34; *Al-Adsani* v. *United Kingdom* (2001) 34 EHRR 273, paras 54–55; *Behrami and Saramati,* above, para 122. In the latter case, in para 149, the court made the strong statement quoted in para 21 above.

37. The appellant is, however, entitled to submit, as he does, that while maintenance of international peace and security is a fundamental purpose of the United Nations, so too is the promotion of respect for human rights. On repeated occasions in recent years the United Nations and other international bodies have stressed the need for effective action against the scourge of terrorism but have, in the same breath, stressed the imperative need for such action to be consistent with international human rights standards such as those which the Convention exists to protect. He submits that it would be anomalous and offensive to principle that the authority of the United Nations should itself serve as a defence of human rights abuses. This line of thinking is reflected in the judgment of the European Court in *Waite and Kennedy* v. *Germany* (1999) 30 EHRR 261, para 67, where the court said:

> "67. The court is of the opinion that where states establish international organisations in order to pursue or strengthen their co-operation in certain fields of activities, and where they attribute to these organisations certain competences and accord them immunities, there may be implications as to the protection of fundamental rights. It would be incompatible with the purpose and object of the Convention, however, if the contracting states were thereby absolved from their responsibility under the Convention in relation to the field of activity covered by such attribution. It should be recalled that the Convention is intended to guarantee not theoretical or illusory rights, but rights that are practical and effective . . ."

The problem in a case such as the present is acute, since it is difficult to see how any exercise of the power to detain, however necessary for imperative reasons of security, and however strong the safeguards afforded to the detainee, could do otherwise than breach the detainee's rights under article 5(1).

38. One solution, discussed in argument, is that a state member of the Council of Europe, facing this dilemma, should exercise its power of derogation under article 15 of the Convention, which permits derogation from article 5. However, such power may only be exercised in time of war or other public emergency threatening the life of the nation seeking to derogate, and only then to the extent strictly required by the exigencies of the situation and provided that the measures taken are not inconsistent with the state's other obligations under international law. It is hard to think that these conditions could ever be met when a state had chosen to conduct an overseas peacekeeping operation, however

* United Nations, *Treaty Series,* vol. 1155, p. 331.

dangerous the conditions, from which it could withdraw. The Secretary of State does not contend that the UK could exercise its power to derogate in Iraq (although he does not accept that it could not). It has not been the practice of states to derogate in such situations, and since subsequent practice in the application of a treaty may (under article 31(3)(b) of the Vienna Convention) be taken into account in interpreting the treaty it seems proper to regard article 15 as inapplicable.

39. Thus there is a clash between on the one hand a power or duty to detain exercisable on the express authority of the Security Council and, on the other, a fundamental human right which the UK has undertaken to secure to those (like the appellant) within its jurisdiction. How are these to be reconciled? There is in my opinion only one way in which they can be reconciled: by ruling that the UK may lawfully, where it is necessary for imperative reasons of security, exercise the power to detain authorised by Security Council resolution 1546 and successive resolutions, but must ensure that the detainee's rights under article 5 are not infringed to any greater extent than is inherent in such detention. I would resolve the second issue in this sense.

[. . .]

Lord Rodger of Earlsferry

[. . .]

59. There is an obvious difference between the factual position in Kosovo that lay behind the *Behrami* case and the factual position in Iraq that lies behind the present case. The forces making up KFOR went into Kosovo, for the first time, as members of KFOR and in terms of Security Council Resolution 1244. By contrast, the Coalition forces were in Iraq and, indeed, in occupation of Iraq, for about six months before the Security Council adopted Resolution 1511, authorising the creation of the MNF, on 16 October 2003.

60. While resolution 1511 provided the authority for establishing the MNF, the legal position of the British forces in Iraq changed significantly at the end of June 2004. From May 2003 until the end of June 2004, the British forces had been the forces of a power which was in occupation of the relevant area of Iraq. But on 28 June the occupation ended. The interim constitution of Iraq, the Transitional Administrative Law, came into effect and sovereignty was transferred to the Iraqi Interim Government. Since the United States and the United Kingdom were no longer occupying powers, a new legal basis for their actions had to be established. This is to be found in resolution 1546 which was co-sponsored by the United States and the United Kingdom and which the Security Council adopted on 8 June 2004. That Resolution regulated the position of the MNF when Mr Al-Jedda was detained in October 2004. By virtue of later resolutions, which do not need to be examined in detail, the core provisions of that Resolution have continued to regulate the position throughout the period of his detention.

61. It respectfully appears to me that the mere fact that resolution 1244 was adopted before the forces making up KFOR entered Kosovo was legally irrelevant to the issue in *Behrami*. What mattered was that resolution 1244 had been adopted before the French members of KFOR detained Mr Saramati so the Resolution regulated the legal position at the time of his detention. Equally, in the present case, the fact that the British and other Coalition forces were in Iraq long before resolution 1546 was adopted is legally irrelevant for present purposes. What matters is that resolution 1546 was adopted before the British

forces detained the appellant and so it regulated the legal position at that time. As renewed, the provisions of that resolution have continued to do so ever since.

62. Moreover, if there were ever any questions as to the exact interplay between the rights and duties of the British forces as the forces of an occupying power and as members of the MNF under resolution 1511, those questions no longer arose after the end of June 2004. From that point onwards the legal position of the members of the MNF set up under resolution 1511 was governed by resolution 1546.

63. Another factual difference between the situations in Kosovo and Iraq is, in my view, equally irrelevant to the legal position of the members of the military forces. In Kosovo the United Nations itself was in charge of the civil administration of the country through the United Nations Interim Administration Mission in Kosovo (UNMIK). In Iraq, after the end of June 2004, the civil government of the country was in the hands of the Iraqi Interim Government and the United Nations Assistance Mission for Iraq (UNAMI) was there simply to provide humanitarian and other assistance. The fact that the civilian administration in Kosovo was in the hands of UNMIK played no part in the European Court's decision that the actions of members of KFOR were attributable to the United Nations. Similarly, the fact that the civil government of Iraq was in the hands of the Iraqi Interim Government at the relevant time must be irrelevant for purposes of deciding whether the actions of members of the MNF in detaining the appellant were attributable to the United Nations.

64. Another point requires to be cleared out of the way. As already mentioned, in *R (Al-Skeini)* v. *Secretary of State for Defence* [2007] 3 WLR 33 the House held that proceedings could be brought under the HRA in United Kingdom courts in respect of violations of Convention rights by a United Kingdom public authority acting within the jurisdiction of the United Kingdom in terms of article 1 of the Convention. For purposes of the first issue in this appeal, however, the House is not concerned with whether or not Mr Al-Jedda, while detained by British forces, has been within the jurisdiction of the United Kingdom in terms of article 1. The decision of the European Court in *Behrami* makes that quite clear. At para 71, the court said:

> "The court therefore considers that the question raised by the present cases is, less whether the respondent states exercised extra-territorial jurisdiction in Kosovo but far more centrally ['fondamentalement'], whether this court is competent to examine under the Convention those states' contribution to the civil and security presences ['le rôle joué par ces Etats au sein des présences civile et de sécurité'] which did exercise the relevant control of Kosovo."

Having concluded that it was not competent, *ratione personae,* for the court to scrutinise the role played by the states in the civil and security presences in Kosovo, the court found it unnecessary to consider whether the court would have been competent *ratione loci* to examine complaints against the respondent states about extraterritorial acts or omissions: para 153. Equally, for purposes of the first issue in this appeal, the crucial point is whether the European Court would be competent, *ratione personae,* to scrutinise the role played by the British members of the MNF in detaining the appellant. If the court would not be competent for that reason, then the issue of whether it would be competent, *ratione loci,* does not arise.

65. My Lords, it may seem tempting to begin and end any discussion of the position by focusing on the appellant's detention and by asking—using the language in article 5 of the International Law Commission's draft articles on the Responsibility of International Organisations (2004)—whether the United Nations Organization was in "effective control" of the British forces as they were detaining him. Obviously, the answer is that what the British forces did by way of detaining the appellant, they did as members of the MNF under unified command. No one would suggest that the Security Council either was, or could have been, involved in the particular decision to detain the appellant or in the practical steps taken to carry out that decision. But that was equally obviously the case with the detention of Mr Saramati in the *Behrami* case. The Grand Chamber held, at para 140, that the Security Council "retained ultimate authority and control and that *effective command of the relevant operational matters was retained by NATO"* (emphasis added). On this basis—and despite the fact that the "effective command" of the relevant operational matters was retained by NATO—the Grand Chamber held that the detention of Mr Saramati was attributable to the United Nations.

66. The first step in the chain of reasoning which led the Grand Chamber to that conclusion was a consideration of what the Security Council was doing when it adopted the relevant provisions of resolution 1244 under Chapter VII of the Charter. Similarly, in the present case, the correct starting point is with the Security Council's adoption of resolution 1546.

[. . .]

77. Paragraph 10 of resolution 1546 therefore gave the MNF the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq in accordance with the letters annexed to the Resolution. This authorisation was essentially similar to the authorisation given to KFOR in resolution 1244. Notably, for present purposes, it gave specific authorisation for the MNF to undertake the task of "internment where this is necessary for imperative reasons of security."

78. I now turn to see how the Grand Chamber analysed the provisions of resolution 1244 and how that analysis would apply to any corresponding provisions of resolution 1546.

79. The key to the Grand Chamber's analysis is its recognition that in international law, by virtue of the terms of the Charter, the responsibility for preserving the peace and for taking the necessary military measures to achieve that end rests squarely on the Security Council. To what extent, therefore, is it lawful for the Security Council to delegate its responsibility to another body? Quite clearly, it could never delegate to any other body its duty under Article 39 of the Charter to determine the existence of any threat to the peace. But can it delegate to another body its power to take the necessary military action to maintain or restore international peace and security? The Grand Chamber's answer to that question (Yes, within limits) and the ramifications of that answer are critical elements in the court's decision that it would not be competent to scrutinise the actions of members of KFOR acting in terms of their mandate from the Security Council.

80. The Grand Chamber explains, in para 43, that:

> "Use of the term 'delegation' in the present decision refers to the empowering by the United Nations Security Council of another entity to exercise its function as opposed to 'authorising' an entity to carry out functions which it could not itself perform."

In this passage the court is not drawing a distinction between the Security Council empowering another entity to exercise a function which the Council itself would have the practical capability to perform and authorising an entity to carry out functions which the Council could not, as a practical matter, perform. On the contrary, it is drawing a distinction between the Council empowering another entity to exercise the Council's own function under the Charter ("delegation") and "authorising" an entity to carry out functions which the Council itself would have no legal power under the Charter to perform.

81. In a United Nations context, this distinction appears to go back to the decision of the International Court of Justice in *Application for Review of Judgment No 158 of the United Nations Administrative Tribunal, Advisory Opinion* [1973] ICJ Rep 166. The General Assembly, which did not itself have power under the Charter to review decisions of the United Nations Administrative Tribunal, had set up a committee to carry out this function. The question for the International Court of Justice was whether the committee had the competence to ask the International Court for advisory opinions, arising out of the exercise of its power to review Tribunal decisions. The General Assembly itself had the competence to request advisory opinions. The International Court held that the committee did indeed have the competence to request advisory opinions for its own purposes, but not because the General Assembly had impliedly delegated its own competence to the committee. That could not be the basis, because the General Assembly could not have delegated to the committee the legal power, which it did not itself possess, to review Tribunal decisions. The court said, at p 174:

> "This is not a delegation by the General Assembly of its own power to request an advisory opinion; it is the creation of a subsidiary organ having a particular task and invested with the power to request advisory opinions in the performance of that task."

The distinction between delegation and this kind of authorisation is discussed, in relation to Security Council authorisations under Chapter VII of the Charter, for example, in D Sarooshi, *The United Nations and the Development of Collective Security: The Delegation by the UN Security Council of its Chapter VII Powers* (1999), pp 11–13, and E de Wet, *The Chapter VII Powers of the United Nations Security Council* (2004), pp 258–260. The Grand Chamber referred to these works, among others, in para 130 of its judgment, when deciding that Chapter VII provided the framework for the Security Council's delegation of its security powers to KFOR in Resolution 1244.

82. What therefore has to be considered is whether, in resolution 1546, the Security Council was lawfully delegating its Chapter VII legal powers to take the necessary military measures to restore and maintain peace and security in Iraq to the MNF. As the Grand Chamber pointed out in *Behrami,* at para 132, under reference to, *inter alia, Meroni* v. *High Authority* (Case 9/56) [1958] ECR 133:

> "[the] delegation must be sufficiently limited so as to remain compatible with the degree of centralisation of United Nations Security Council collective security constitutionally necessary under the Charter and, more specifically, for the acts of the delegate entity to be attributable to the United Nations."

In other words, the delegation would be unlawful if it amounted to the Security Council transferring the responsibility which is vested in it under the Charter to the delegate. More specifically, the delegation would be unlawful if the acts of the delegate entity were *not* attributable to the Security Council. As Blokker puts it, these principles "indicate a prefer-

ence for control by the Council over operations by 'coalitions of the able and willing' so as not to abdicate the authority and responsibility bestowed on it by the Charter": N Blokker, "Is the Authorization Authorized? Powers and Practice of the United Nations Security Council to Authorize the Use of Force by 'Coalitions of the Able and Willing'" (2000) 11 EJIL 541, 554. The article is cited by the Grand Chamber at para 132. In the words of de Wet, *The Chapter VII Powers of the United Nations Security Council,* pp 265–266:

> "What is important, however, is that overall control of the operation remains with the Security Council. The centralisation of control over military action embodies the centralisation of the collective use of force, which forms the corner stone of the Charter. A complete delegation of command and control of a military operation to a member state or a group of states, without any accountability to the Security Council, would lack that degree of centralisation constitutionally necessary to designate a particular military action as a United Nations operation. It would undermine the unique decision-making process within an organ which was the very reason states conferred to it the very power which that organ would now seek to delegate. This concern is encapsulated in the maxim *delegatus non potest delegare:* a delegate cannot delegate."
>
> [. . .]

87. If one compares the terms of resolution 1244 and resolution 1511, for present purposes there appears to be no relevant legal difference between the two forces. Of course, in the case of Kosovo, there was no civil administration and there were no bodies of troops already assembled in Kosovo whom the Security Council could authorise to assume the necessary responsibilities. In paragraph 5 of resolution 1244 the Security Council accordingly decided "on the deployment in Kosovo, under United Nations auspices, of international civil and security presences." Because there were no suitable troops on the ground, in paragraph 7 of resolution 1244 the Council had actually to authorise the establishing of the international security presence and then to authorise it to carry out various responsibilities.

88. By contrast, in October 2003, in Iraq there were already forces in place, especially American and British forces, whom the Security Council could authorise to assume the necessary responsibilities. So it did not need to authorise the establishment of the MNF. In paragraph 13 the Council simply authorised "a multinational force under unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq"—thereby proceeding on the basis that there would indeed be a multinational force under unified command. In paragraph 14 the Council urged member states to contribute forces to the MNF. Absolutely crucially, however, in paragraph 13 it spelled out the mandate which it was giving to the MNF. By "authorising" the MNF to take the measures required to fulfil its "mandate", the Council was asserting and exercising control over the MNF and was prescribing the mission that it was to carry out. The authorisation and mandate were to apply to all members of the MNF—the British and American, of course, but also those from member states who responded to the Council's call to contribute forces to the MNF. The intention must have been that all would be in the same legal position. This confirms that—as I have already held, at para 61—the fact that the British forces were in Iraq before resolution 1511 was adopted is irrelevant to their legal position under that Resolution and, indeed, under Resolution 1546.

89. Allowing for the different situations on the ground, the terms of that mandate to the MNF are comparable with the terms of the mandate given to KFOR in resolution 1244. The terms of the mandate to the MNF were, of course, subsequently altered by resolution

1546 in June 2004, but the changes had the effect of making the mandate more specific. Just as resolution 1244 defined the responsibilities which KFOR was to carry out in terms of its mandate from the Security Council, so, equally, resolution 1546 defined the tasks which the MNF was to carry out in terms of its mandate from the Security Council. The two resolutions were essentially similar in these respects.

90. It is true, of course, that the words "under United Nations auspices" appear in paragraph 5 of resolution 1244 and do not appear in resolution 1511 or resolution 1546. But the only point in its reasoning where the Grand Chamber attaches significance to the words "under United Nations auspices" is at para 131, where it is concerned with the phrase as it appears in the Military Technical Agreement. There is nothing in the judgment to suggest that the inclusion of those words in resolution 1244 played any part in the reasoning (from para 132 onwards) which led the court to hold that the Security Council had delegated effective command of the relevant operational matters to NATO, while retaining ultimate authority and control. Indeed the court does not mention the phrase in that context.

91. I therefore conclude that, when the Security Council, acting under Chapter VII, authorised the MNF to carry out its various tasks in terms of resolution 1546, it was purporting to delegate these functions to the MNF, just as it had delegated functions to KFOR in resolution 1244. Certainly, I can see no reason in the circumstances of the present case why, in the light of the decision of the Grand Chamber in *Behrami,* the European Court would hold otherwise. I should add that any other conclusion would be surprising since the lawyers who draft Security Council resolutions on this "authorisation" model build on the practice of the Council. One would therefore expect to find that the, later, resolution 1546 was based on the same principles as resolution 1244. The Security Council will always be concerned, of course, to avoid the danger that a force, though nominally acting on behalf of the Council, is truly just made up of the forces of member states pursuing their own ends by military means in contravention of both Article 2 (4) of the Charter and the *ius contra bellum* of modern international law. Hence the insertion into the resolutions, first, of a clear mandate for the force, of an indication of the date when the mandate will expire, of a mechanism for reports to be made to the Council and, finally, of an indication that the Council will remain seised of the matter. Again, the need for all these matters to be spelled out will be well known to the experts who draft the Resolutions.

[. . .]

99. Again, the provision in paragraph 12 of resolution 1546 is different and must have been tailored to the realities of the situation in Iraq. It provided for the mandate of the MNF to be reviewed after 12 months or at the request of the Government of Iraq. So the Security Council could terminate the mandate after 12 months or alter it if experience showed that this was desirable. This is a further element which is designed to ensure that the Council retains ultimate control of the MNF. In addition, the mandate was to expire on the completion of the political process for the development of democratic civil government in Iraq set out in paragraph 4 of the resolution. So there was no question of the MNF having an indefinite open-ended mandate. Moreover, the Security Council declared that it would terminate the mandate earlier if requested by the Government of Iraq. This provision, too, is designed to make sure that the forces whose actions are authorised by the mandate cannot stay on beyond the time when their presence and assistance are required.

100. Arguably, in this respect also, resolution 1546 gave more control to the Security Council than resolution 1244. Under paragraph 19 of Resolution 1244, the mandate to KFOR was to continue, unless the Security Council decided otherwise. The risk, identified by the Grand Chamber, was that by using its veto, a permanent member could prevent the Council from deciding to bring the mandate to an end. By contrast, under paragraph 12 of Resolution 1546, the mandate to the MNF was to terminate automatically on the completion of the political process described in paragraph 4. This meant that a permanent member could not prolong the MNF's mandate by using its veto. Admittedly, the veto could be used against any proposal to alter the terms of the mandate after a review. But, if the provision in resolution 1244 was not sufficient for the Grand Chamber to conclude that the Security Council did not retain ultimate authority and control over the actions of the members of KFOR, I can see no reason why the court would decide differently in respect of resolution 1546.

[. . .]

105. My Lords, if that was the conclusion reached by the Grand Chamber in the case of the detention of Mr Saramati, I am bound to conclude that the court would reach the same conclusion in the case of Mr Al-Jedda. Just as the members of KFOR were exercising powers of the Security Council lawfully delegated to them by the Council, so also the members of the MNF were exercising powers of the Security Council lawfully delegated to them by the Council under resolution 1546. That being so, the court would hold, first, that the Council retained ultimate authority and control and so remained responsible in law for the exercise of those powers and, secondly, that the action of the British troops, as members of the MNF, in detaining Mr Al-Jedda was in principle attributable to the United Nations in terms of article 3 of the draft articles on the Responsibility of International Organisations.

[. . .]

118. Had it been necessary to decide the point, I would accordingly have held that, by virtue of Articles 25 and 103 of the Charter, the obligation of the United Kingdom forces in the MNF to detain the appellant under resolution 1546 prevailed over the obligations of the United Kingdom under article 5(1) of the Convention.

Baroness Hale of Richmond

[. . .]

123. . . . [I]t is suggested that it is lawful to intern a person in Iraq. The source of that authority is said to be the United Nations Security Council resolutions dealing with the activities of US, UK and other forces making up the multi-national force ("MNF") after the transfer of power to the Iraqi Interim Government on 28 June 2004. It is said that either (i) those resolutions make the acts of the MNF attributable to the United Nations in international law, thus relieving the UK of responsibility for them; or (ii) those resolutions qualify or displace the obligations in the ECHR so that internment may in certain circumstances be lawful.

124. I would reject the first argument, for the reasons given by my noble and learned friend, Lord Bingham of Cornhill. I agree with him that the analogy with the situation in Kosovo breaks down at almost every point. The United Nations made submissions to the

European Court of Human Rights in *Behrami* v. *France, Saramati* v. *France, Germany and Norway* (Application Nos. 71412/01 and 78166/01) (unreported, 2 May 2007), concerning the respective roles of UNMIK and KFOR in clearing mines, which was the subject of the *Behrami* case. It did not deny that these were United Nations operations for which the United Nations might be responsible. It seems to me unlikely in the extreme that the United Nations would accept that the acts of the MNF were in any way attributable to the United Nations. My noble and learned friend, Lord Brown of Eaton-under-Heywood, has put his finger on the essential distinction. The United Nations's own role in Iraq was completely different from its role in Kosovo. Its concern in Iraq was for the protection of human rights and the observance of humanitarian law as well to protect its own humanitarian operations there. It looked to others to restore the peace and security which had broken down in the aftermath of events for which those others were responsible.

125. I also have difficulty with the second argument. It would be so much simpler if the European Convention on Human Rights had contained a general provision to the effect that the rights guaranteed are qualified to the extent required or authorised by United Nations resolutions. This may not be surprising: by then the European nations who had vowed "never again" would they tolerate the abuses they had suffered before and during the Second World War had become disillusioned with the United Nations as a reliable source of human rights protection. As Brian Simpson has put it, "Europe must go it alone" (*The European Convention on Human Rights: The First Half Century,* University of Chicago Law School). But now that the United Nations has to some extent emerged from its cold war paralysis, some way has to be found of reconciling our competing commitments under the United Nations Charter and the European Convention. I agree with Lord Bingham, for the reasons he gives, that the only way is by adopting such a qualification of the Convention rights.

126. That is, however, as far as I would go. The right is qualified but not displaced. This is an important distinction, insufficiently explored in the all or nothing arguments with which we were presented. We can go no further than the United Nations has implicitly required us to go in restoring peace and security to a troubled land. The right is qualified only to the extent required or authorised by the resolution. What remains of it thereafter must be observed. This may have both substantive and procedural consequences.

127. It is not clear to me how far Security Council resolution 1546 went when it authorised the MNF to "take all necessary measures to contribute to the maintenance of security and stability in Iraq, in accordance with the letters annexed to this resolution expressing, *inter alia*, the Iraqi request for the continued presence of the multinational force and setting out its tasks" (para 10). The 'broad range of tasks' were listed by Secretary of State Powell as including "combat operations against members of these groups [seeking to influence Iraq's political future through violence], internment where this is necessary for imperative reasons of security, and the continued search for and securing of weapons that threaten Iraq's security". At the same time, the Secretary of State made clear the commitment of the forces which made up the MNF to "act consistently with their obligations under the law of armed conflict, including the Geneva Conventions".

[. . .]

Lord Carswell

[. . .]

132. The detention of the appellant would be in breach of article 5(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), if it applies, for it does not fall within any of the cases in which it may be justified. Nor would it appear possible, as Lord Bingham has set out in paragraph 38 of his opinion, for the United Kingdom to exercise its power of derogation from article 5(1) in the circumstances of this case. The decision of the appeal on the second issue must therefore turn on the effect of Article 103 of the Charter, which formed the main subject of the argument before your Lordships.

133. Article 103 provides:

> "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

The Secretary of State's case was therefore that the United Kingdom was under an obligation imposed by the United Nations under Chapter VII of the Charter to take such steps as are necessary to restore and maintain peace and security following the armed insurrection consequent upon the invasion of Iraq. This obligation overrode the United Kingdom's obligations under article 5(1) of the Convention.

134. Resolution 1546 of the Security Council, the material terms of which are set out in para 15 of Lord Bingham's opinion, provides that:

> "the multinational forces shall have the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq in accordance with the letters annexed to this resolution . . ."

One of the annexed letters, dated 5 June 2004 and sent by the US Secretary of State General Colin Powell to the President of the Security Council, stated that the Multi-National Force stood ready:

> "to continue to undertake a broad range of tasks to contribute to the maintenance of security and to ensure force protection. These include activities necessary to counter ongoing security threats posed by forces seeking to influence Iraq's political future through violence. This will include combat operations against members of these groups, *internment where this is necessary for imperative reasons of security* . . ." (my emphasis).

It was accordingly contemplated by the resolution that the MNF could resort to internment where necessary.

135. It was argued on behalf of the appellant that the resolution did not go further than authorising the measures described in it, as distinct from imposing an obligation to carry them out, with the consequence that Article 103 of the Charter did not apply to relieve the United Kingdom from observing the terms of article 5(1) of the Convention. This was an attractive and persuasively presented argument, but I am satisfied that it cannot succeed. For the reasons set out in paragraphs 32 to 39 of Lord Bingham's opinion I consider that resolution 1546 did operate to impose an obligation upon the United Kingdom to carry out those measures. In particular, I am persuaded by State practice and the clear statements of authoritative academic opinion—recognised sources of international law—that expressions in Security Council resolutions which appear on their face to confer

no more than authority or power to carry out measures may take effect as imposing obligations, because of the fact that the United Nations have no standing forces at their own disposal and have concluded no agreements under Article 43 of the Charter which would entitle them to call on member states to provide them.

136. I accordingly am of opinion that the United Kingdom may lawfully, where it is necessary for imperative reasons of security, exercise the power to intern conferred by resolution 1546. I would emphasise, however, that that power has to be exercised in such a way as to minimise the infringements of the detainee's rights under article 5(1) of the Convention, in particular by adopting and operating to the fullest practicable extent safeguards of the nature of those to which I referred in paragraph 130 above.

137. I would dismiss the appeal.

Lord Brown of Eaton-under-Heywood

[. . .]

Issue One—Attributability

142. The respondent submits that there are no distinctions of principle to be found between Mr Saramati's detention by KFOR under Security Council resolution 1244 and the appellant's detention by the multinational force ("MNF") under Security Council resolution 1546. And since, if that be right, the appellant could not succeed in an application under the Convention in Strasbourg, he cannot succeed either in a claim domestically under the Human Rights Act 1998.

143. Lord Bingham (para 24) concludes that the analogy with Kosovo breaks down at almost every point. I wish I found it so easy. My difficulty is not least with my Lord's view that "there was no delegation of United Nations power in Iraq." By that I understand him to mean (paras 21 and 23) that, in contrast to the position in Kosovo, the United Nations in Iraq was merely authorising the US and the UK to carry out functions which it could not perform itself as opposed to empowering them to exercise its own function. It seems to me, however, that in this respect the situation in Kosovo and Iraq was the same: in neither country could the United Nations as a matter of fact carry out its central security role so that in both it was necessary to authorise states to perform the role. As the court in *Behrami* explained in paras 132 and 133, that necessarily follows from the absence of Article 43 agreements. When the court posed "the key question whether the Security Council resolution retained ultimate authority and control so that operational command only was delegated", it noted (para133): "This delegation model is now an established substitute for the Article 43 agreements never concluded". And this seems to me entirely consistent with para 43 of the court's judgment: the mention there of "functions which it could not itself perform" I understand to refer to functions which the Security Council cannot itself perform as a matter of *law* and which accordingly can only be done by a different body properly authorised under the United Nations Charter—see Sarooshi, "The United Nations and the Development of Collective Security: The Delegation by the United Nations Security Council of its Chapter VII powers" (1999).

144. I turn, therefore, to "the key question" and in particular to the five factors which led the court in *Behrami* (para 134) to conclude that the United Nations in Kosovo had retained ultimate authority and control. The first, that Chapter VII of the Charter

allows the Security Council to delegate to member states, applies equally here. So too the second, the power to provide for security being a legally delegable power. The third I shall leave over for the moment. It is difficult to find any relevant distinction with regard to the fourth: Security Council resolution 1511 (which authorised the formation of the MNF) fixed its mandate no less precisely than Security Council resolution 1244 defined KFOR's mandate. Indeed, so far as the power of internment was concerned, resolution 1546 was altogether more specific (see paras 14 and 15 of Lord Bingham's opinion), resolution 1244 having entrusted KFOR merely with such general responsibilities as "ensuring public safety and order". Nor could the fifth factor, the reporting requirements, reasonably lead to a different conclusion about ultimate authority and control here. True, this case lacks the additional safeguard noted in *Behrami* that KFOR's report had to be presented by the United Nations Secretary General, but that surely is counterbalanced by the fact that the MNF's mandate ceases unless renewed by the Security Council whereas KFOR's mandate was to continue until the Security Council decided otherwise (a decision which, at least theoretically, a permanent member could have vetoed).

145. To my mind it follows that any material distinction between the two cases must be found in the third factor, or rather in the very circumstances in which the MNF came to be authorised and mandated in the first place. The delegation to KFOR of the United Nations's function of maintaining security was, the court observed, "neither presumed nor implicit but rather prior and explicit in the resolution itself". Resolution 1244 decided (para 5) "on the deployment in Kosovo, under United Nations auspices, of international civil and security presences"—the civil presence being UNMIK, recognised by the court in *Behrami* (para 142) as "a subsidiary organ of the United Nations"; the security presence being KFOR. KFOR was, therefore, expressly formed under United Nations auspices. Para 7 of the resolution "[a]uthorise[d] member states and relevant international organisations to establish the international security presence in Kosovo as set out in point 4 of Annex 2. .". Point 4 of Annex 2 stated: "The international security presence with substantial NATO participation must be deployed under unified command and control and authorised to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees."

146. Resolution 1511, by contrast, was adopted on 16 October 2003 during the USA's and UK's post-combat occupation of Iraq and in effect gave recognition to those occupying forces as an existing security presence. Para 13 of the resolution is instructive:

> "*Determines* that the provision of security and stability is essential to the successful completion of the political process as outlined in paragraph 7 above and to the ability of the United Nations to contribute effectively to that process and the implementation of resolution 1483 (2003), and *authorises* a multinational force under unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq, including for the purpose of ensuring necessary conditions for the implementation of the timetable and programme as well as to contribute to the security of the United Nations Assistance Mission for Iraq ["UNAMI"], the Governing Council of Iraq and other institutions of the Iraqi interim administration, and key humanitarian and economic infrastructure."

147. By resolution 1483, adopted on 22 May 2003, the Security Council had "[r]esolved that the United Nations should play a vital role in humanitarian relief, for reconstruction of Iraq, and the restoration and establishment of national and local insti-

tutions for representative governance" and, pursuant to it, the Secretary General [. . .] had established UNAMI, an essentially humanitarian and civil aid mission. As para 13 of resolution 1511 indicated, it was that mission which was the United Nations's contribution to the situation in Iraq. The MNF under unified command which para 13 was authorising was to contribute to the security of, amongst others, UNAMI. Unlike KFOR, however, it was not itself being deployed "under United Nations auspices". UNAMI alone represented the United Nations's presence in Iraq.

148. Nor did the position change when resolution 1546 was adopted on 8 June 2004, three weeks before the end of the occupation and the transfer of authority from the CPA to the interim government of Iraq on 28 June 2004. UNAMI was to continue with its work (para 7). So too was the MNF, both of them acting at the request of the incoming interim government of Iraq. Resolution 1546 accordingly reaffirmed the authorisation of the MNF under unified command (this time "in accordance with the letters annexed", described by Lord Bingham at para 14). And, as para 10 noted, consistently with the previous position, the MNF's tasks, including the prevention and deterrence of terrorism, were imposed so that, amongst other things, "the United Nations can fulfil its role in assisting the Iraqi people as outlined in para 7 above"—namely UNAMI's humanitarian and civil aid work. Nothing either in the resolution itself or in the letters annexed suggested for a moment that the MNF had been under or was now being transferred to United Nations authority and control. True, the Security Council was acting throughout under Chapter VII of the Charter. But it does not follow that the United Nations is therefore to be regarded as having assumed ultimate authority or control over the force. The precise meaning of the term "ultimate authority and control" I have found somewhat elusive. But it cannot automatically vest or remain in the United Nations every time there is an authorisation of United Nations powers under Chapter VII, else much of the analysis in *Behrami* would be mere surplusage.

149. It is essentially upon this basis, therefore, that I regard the present case as materially different from *Behrami* and am led to conclude that the appellant's internment is to be attributed, not to the United Nations acting through the MNF, but rather directly to the UK forces.

Issue 2—did the United Nations resolutions qualify or displace article 5(1)?

150. The United Nations resolutions expressly authorised "internment where this is necessary for imperative reasons of security". For the purposes of these proceedings it has to be assumed that security considerations have indeed demanded the appellant's internment. Even so, submits Mr Starmer QC for the appellant, his internment nevertheless remains unlawful unless and until the UK exercises its article 15 right to derogate from article 5. I would reject this argument. In the first place it is highly doubtful whether article 15 could be invoked with regard to action taken outside the member state's own territory—see, for example, the Grand Chamber's judgment in *Bankovic* v. *Belgium* (2001) 11 BHRC 435, para 62.

> " . . . the court does not find any basis upon which to accept the applicants' suggestion that article 15 covers all 'war' and 'public emergency' situations generally, whether obtaining inside or outside the territory of the contracting state."

151. But the sounder and more fundamental reason for holding the article 5(1) proscription on internment to be qualified or displaced here is that Article 25 of the Charter

requires member states to accept and carry out Security Council decisions and Article 103 provides that in the event of a conflict between that obligation and the member state's obligations under any other international agreement, the former are to prevail. The Security Council's decision here (see para 10 of Security Council resolution 1546) was "that the multinational force shall have the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq in accordance with the letters annexed . . ." (which included amongst the MNF's "tasks" "internment where this is necessary for imperative reasons of security").

152. I find it quite impossible to regard that "task" as anything other than an Article 25 (Charter) obligation which is to prevail over the article 5 (ECHR) obligation not to intern. Mr Starmer argues that the UK could decline to intern a prisoner just as it could decline to execute him. As, however, Lord Bingham points out (at para 34) if, as is here to be assumed, internment is indeed necessary for imperative reasons of security, a decision not to intern would be a refusal to carry out the UK's allotted task. No such reasoning, of course, would apply in the case of capital punishment. In short, on this issue I agree with all that Lord Bingham has said.

[. . .]

The United Nations System

Principal Organs

Trusteeship Council

Security Council

Subsidiary Bodies

Military Staff Committee
Standing Committee and ad hoc bodies
Peacekeeping Operations and Missions
Counter-Terrorism Committee
International Criminal Tribunal for the former Yugoslavia (ICTY)
International Criminal Tribunal for Rwanda (ICTR)

General Assembly

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

Economic and Social Council

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
United Nations Forum on Forests
Sessional and standing committees
Expert, ad hoc and related bodies

International Court of Justice

Secretariat

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
UNODA Office for Disarmament Affairs
DPKO Department of Peacekeeping Operations
DFS[4] Department of Field Support
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
UN-OHRLLS Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States
OHCHR Office of the United Nations High Commissioner for Human Rights
UNODC United Nations Office on Drugs and Crime
DSS Department of Safety and Security

UNOG UN Office at Geneva
UNOV UN Office at Vienna
UNON UN Office at Nairobi

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
UN-INSTRAW United Nations International Research and Training Institute for the Advancement of Women

Other UN Entities

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[8]

UNFIP United Nations Fund for International Partnerships
UNDEF United Nations Democracy Fund

Related Organizations

WTO World Trade Organization
IAEA[5] International Atomic Energy Agency
CTBTO Prep.Com[6] PrepCom for the Nuclear-Test-Ban Treaty Organization
OPCW[6] Organization for the Prohibition of Chemical Weapons

Specialized Agencies[7]

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

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, the United Nations Ombudsman's Office, and the Chief Information Technology Officer report directly to the Secretary-General.
[4] In an exceptional arrangement, the Under-Secretary-General for Field Support reports directly to the Under-Secretary-General for Peacekeeping Operations.
[5] IAEA reports to the Security Council and the General Assembly (GA).
[6] The CTBTO Prep.Com and OPCW report to the GA.
[7] 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.
[8] 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.

Published by the United Nations Department of Public Information
DPI/2470—07-49950—December 2007—3M

Part Four

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